

Codington County Planning Commission/Board of Adjustment Minutes

March 21, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on March 21, 2016 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Mark O'Neill, Myron Johnson, Charles Rossow, Mel Ries, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Courtney Livingston, Christopher Lee, Michele Lee, Ron Tesch, Kim Tesch, Mark Arnold, Marilyn Arnold, Nathan Mack, Dan Becking, John Foley, Jodi Kones, Gordon Little, Lonnie Becking, Terry Little, Jeff DeVille, Terry Egerstrom, Carina Little, Travis VanWell, Trevor VanWell, Heath Thompson, Dale Tesch, Chad Noeldner, Wayne Hammond, and Becky Goens.

Chairman Fox brought the meeting of the Board of Adjustment to order.

Motion by Johnson, second by Ries, to approve the February 22 meeting minutes. Motion passed unanimously.

Motion by Rossow, second by Klatt, to approve the March 7 meeting minutes. Motion passed unanimously.

Codington County Commissioner Lee Gabel filled the vacant seat on the board.

Motion by O'Neill, second by Ries, to approve the variance request by Christopher Lee which would allow Mr. Lee to construct a home while temporarily residing in an existing home. Property is located in N711' of S2217' of W681.5' of SW1/4, Section 20-T116N-R52W, less Lot H1-W1/2 SW1/4, Section 20-T116N-R52W. Upon completion and occupancy of the newly constructed home, Lee will remove the existing house within 12 months; however, the garage will remain for personal storage use. Motion passed unanimously.

Motion by Johnson, second by Klatt, to approve the request by Mark and Marilyn Arnold to construct an accessory building prior to construction of the primary residence which is planned to be constructed within one year of completion of the shed. Property is located in E1/2 of NE1/4 less right-of-way and Lot H1, Section 31-T116N-R52W. The applicant is required to sign a Letter of Assurance agreeing to the following conditions:

- a) Building permit is required prior to the commencement of construction activities.
- b) Applicant shall obtain building permit for a single family residence not more than one (1) year from the date of issuance of the building permit for the aforementioned accessory structure.
- c) If building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure the Board of Adjustment

will forward the matter with no further action to the Codington County State's Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance.

Motion passed unanimously.

Motion by Ries, second by Gabel, to approve the shelterbelt setback request by Ryan and Pamela Carlson to place shrubs 10' from the 169th Street right-of-way on property located in Lot 1B and Lot 2 of the replat of Schneider Addition located in S1/4, Section 18-T117N-R53W. Carlson's were not in attendance nor have they paid the variance fees. Based upon past board practices, these items are tabled. Motion by Johnson, second by Gabel, to table this action until the end of the meeting.

Motion by Klatt, second by Ries, to approve the Class 1 Concentrated Animal Feeding Operation Conditional Use Permit request by Dale Tesch. Property is located in S1/2, Section 24-T116N-R53W. Tesch would like to secure a permit and search for a potential buyer of his property for a feedlot of up to 14,000 animal units. Muller reviewed Staff Report (attached) through page 10 "Staff Summary". No other information other than the application has been provided to the Zoning Office. "Specifics of Request" as provided in the Staff Report was posted so the audience could view it. Fox indicated that with past requests similar to this, material was submitted by a certified engineer. No such information has been provided. Fox is not comfortable considering this application when an animal species has not been identified. He referred to a recent deposition regarding a dairy Conditional Use Permit application approved by the Board in 2015. The request does meet some setback requirements that have been certified for others. Per Muller, a couple of applications for farmers near Waverly were granted Permits so as to preserve their property for future expansion. One option before the board is to offer a substitute motion that would include the board certifies that this site can meet the required setback for a 14,000 animal unit CAFO, and give the applicant one year to submit a completed application to the zoning office. The applicant would need to include a South Dakota licensed engineer's report detailing the planned CAFO on this site. The report would need to be sufficient enough to meet the requirements of the county and state. If this information is received before one year deadline, a public hearing will be noticed in the newspaper and sent to adjacent landowners. During the certified period, the Zoning Officer shall require a signed acknowledgement or waiver to contest this certified area of any applicant before issuing a permit to build a building or other infringing use within the setback areas certified by this motion. If the applicant does not submit the remaining information within one year, the certified setback designation on this site will lapse. It would be the board's intention to re-publish the public notice and notify adjoining landowners accordingly. O'Neill would make that motion if a line could be

added stating the motion in no way does it guarantee that a CAFO permit will be granted. The Board recessed to allow O'Neill and the Zoning Officer to draft the substitute motion. The Board reconvened. O'Neill made the following substitute motion:

- a) The Board acknowledges the site can meet the setback currently for a 14,000 animal unit CAFO (as displayed on map on the screen.) [included as attachment to minutes.]
- b) This acknowledgement is not to be construed as an implied approval of a CAFO.
- c) The applicant has one year (until March 21, 2017) to submit additional materials required by the zoning ordinance, at which time, if the information is submitted, a public hearing will be advertised in the same manner as today's hearing and held.
- d) If someone does make application during the one year for a building permit for a home or other use requiring a specific setback within the required setback area of this property, the Zoning Officer is instructed to require an acknowledgement from the person requesting a building permit that the applicant understand this site has been acknowledged and meets the setbacks for a 14,000 CAFO; and the construction of a building does not change that fact during the one year period.

Klatt seconded the substitute motion.

Fox advised the audience the applicant will be allowed 15 minutes to explain his project to the board and the public. Following that, persons in favor will be allowed 4 minutes each to speak about the issue. Opponents will then also be allowed 4 minutes each to speak about the issue.

Mr. Tesch indicated the potential of locating 4,000,000 chickens in a laying facility that is all concrete. You will not see or smell the manure as it will be ventilated 30' above ground. Water grading is self-contained as there will not be any water draining on the ground. Tesch indicating there currently is no water draining in Lake Pelican as described in the Staff Report. The soil was probed to 55' and was determined to be solid clay under 1-1/2' of black dirt. Fox advised Tesch he may be called upon later in the meeting with additional questions.

Fox advised the audience that comments shall be limited to the motion in front of the board. For clarification, Muller reviewed the substitute motion.

Proponents speaking in favor of the applicant's request:

- Courtney Livingston – resident of Air Haven Road, approximately 3-4 miles from proposed site. He is in favor of the substitute motion as it will allow the board more time to investigate the ramifications of this site and study other sites similar to this. Everything will be self-contained and drainage will not be an issue.

There was no one else present to speak in favor of the motion and this portion of the public hearing was closed.

Opponents speaking against the applicant's request:

- Terry Little – concerns regarding notification of adjoining and adjacent landowners as there were other area landowners/residents that were not notified because they were not adjacent. Regarding runoff, the slopes going northeast and southeast run into an aquifer.
- Ron Tesch – would like to know why Dale's residence or his son's residence do not apply to the setback requirement.
- Dan Becking – concerned about the odor produced by the spreading of the manure.
- Gordon Little – feels that if this substitute motion is approved, then everything else following it with regard to a large CAFO will be approved as well.
- Terry Egerstrom – doesn't feel this is great for the environment and believes Tesch is requesting this Permit so that he can receive an inflated rate for his land.
- Chad Noeldner – would urge the board to deny.
- Trevor VanWell – feels the manure would be over double the amount that VanWell Livestock produces; but with the size of a 14,000 AU CAFO manure would need to be hauled year-round. For this reason, it would most likely need to be stored on site until such spreading can take place.
- Mark Arnold – had chickens on his farm as a child and indicates there is a strong ammonia smell associated with chickens.
- Carina Little – mother of seven children and has concerns with the large number of trucks traveling these roads along with all the children riding bikes in this area.

There was no one else present to speak in opposition of the motion and this portion of the public hearing was closed.

Muller addressed the questions raised during the public hearing portion. With regard to the setback concerns for Dale Tesch and his son, the setback requirements are for off-site residences and not residences located on the legal description in which the application was made. A Conditional Use Permit is not required to spread manure so it may be spread anywhere in the county as long as it does not violate state or federal rules. If the substitute motion is passed, things that could stop this project from moving forward would be the lack of submission of the required paperwork as regulated by the county and state to include a Haul Road Agreement, among other documents. Fox did advise Terry Little that in addition to notifying adjoining and adjacent landowners, public notices are also placed in the paper. This board is friendly to livestock agriculture because most that come before the board are local family-owned and operated farms. It's hard to place an encumbrance on them all. Approximately 8 out of the last 10 large CAFO requests in the state have gone to the Supreme Court. Mr. Tesch followed up by indicating there are so many positive things about this proposed chicken operation. He did visit an existing operation and was very impressed and found no odor at

the site or residual odor on his clothing after returning home. Fertilizer is expensive and people would like to have this manure spread on their fields and lasts longer. A large operation like this will bring additional funds into Watertown when the employees buy equipment, gas, food, and pay taxes. Public hearing portion is closed. Houses can be built within the setback parameter. It would be made known to the applicant that Mr. Tesch's Conditional Use Permit is in existence. Landowners that are not adjacent, but do own property within the setback distance, do not receive certified letters. Those landowners are still allowed to build on their property within the ordinance guidelines but will also be advised of Mr. Tesch's Permit, should it pass, and sign a waiver. If in the future a request comes before the Board for more than 14,000 AU, variances will also be required. Chairman Fox asked fellow board members for their thoughts on this variance request:

- Charles Rossow requested that if and when an application comes before the board for a CAFO, the applicant must have all of the required information compiled by said meeting date so that action can be made without having to table the board's decision for a future meeting. He confirmed that action today was only regarding the setbacks.
- Myron Johnson feels that after listening to all of his neighbors and friends that on a county level, the intent of the ag district in Codrington County is to maintain farming and related activities and that is what we (board) do. We protect agriculture, encourage agriculture in the rural communities. In doing so, the comprehensive land use identifies CAFO's as one of the farming activities. As he reviews the information in front of him, he remembers the problems with a recent dairy application and he does not have enough information. Johnson cannot speak in favor of a CAFO; however, he does not agree with the opponents at this time because if he votes in favor of the substitute motion, it is not passing a CAFO, only approving the setbacks. Tesch, or anyone he represents, has to present and prove all of the requirements listed by the board before going forward with the project. He asked the audience to put themselves in the board's position.
- Rodney Klatt does not want to vote "no" to see Tesch's plans squelch but would like to see more research done; however, he would like to see the setbacks preserved so that no one can obtain a building permit and not allow Tesch this opportunity.
- Mel Ries agrees with Klatt.
- Mark O'Neill agrees with Lee Gabel and the rest of the board in that he does not feel comfortable tabling this issue because then a notification is not required. Would like to see the substitute motion protecting the setback. Also agrees with the rest of the board in there is not enough information to approve a CAFO operation. He is leaning toward the substitute motion as presented.

Klatt clarified the substitute motion is only to preserve the setback. Motion on substitute motion passed unanimously.

Motion by O'Neill, second by Ries, to approve two variance requests by Sioux Rural Water System, Inc. on property located on a .355-acre parcel in Tower Tract G in SE1/4 of SE1/4 and a 75'x75' parcel in SE1/4 of SE1/4, Section 32-T117N-R51W. The variance requests are to the minimum lot size and minimum lot width. Sioux Rural Water would like to construct a new booster station at this location which has been used for transmitting their own telecommunications signals in the past. Muller reviewed Staff Report (attached). Motion passed unanimously subject to the following conditions:

- The applicant plat the two parcels described in this application into a single lot.
- The applicant notify, via certified mail, the following airports of the construction of such towers:

Wilbur-Ellis Air LLC
45149 152nd Street
Summit, SD 57266-5112

Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201

Scott Thompson
Thompson Farm Air
PO BOX 308
Estelline, SD 57234

Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

Motion by Gabel, second by Ries, to approve the Conditional Use Permit request by Sioux Rural Water Systems, Inc. to install a booster station at Tower Tract G in SE1/4 of SE1/4 and a 75'x75' parcel in SE1/4 of SE1/4, Section 32-T117N-R51W. Muller reviewed Staff Report (attached). Motion passed unanimously.

Motion by Klatt, second by Gabel, to approve the Conditional Use Permit request by Sioux Rural Water Systems, Inc. to install a telecommunications facility on existing structures at Tower Tract G in SE1/4 of SE1/4 and a 75'x75' parcel in SE1/4 of SE1/4, Section 32-T117N-R51W. Muller reviewed Staff Report (attached). Motion passed unanimously subject to the following condition:

- The applicant notify, via certified mail, the following airports of the construction of such towers:

Wilbur-Ellis Air LLC

45149 152nd Street
Summit, SD 57266-5112

Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201

Scott Thompson
Thompson Farm Air
PO BOX 308
Estelline, SD 57234

Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

Motion by Johnson, second by Gabel, to postpone action on Ryan and Pamela Carlson's variance request until the April 18, 2016 meeting. Motion passed unanimously.

Motion to adjourn by Gabel, second by Ries. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

**MARCH 2016
JOINT PLANNING COMMISSION/BOARD OF ADJUSTMENT
CODINGTON COUNTY
STAFF REPORT**

MONDAY – MARCH 21, 2016 – 9:00 a.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ISSUE #1 VARIANCE

Owner/Applicant: Christopher Lee

Property Description N711' of S2217' of W681.5' of SW1/4 of Section 20-T116N-R52W, less Lot H1-W1/2 SW1/4, Section 20-T116N-R52W, Codington County, South Dakota. (Sheridan Township)

Zoning Designation: A – Agricultural District

Request: The Lee's seek to construct a new home while keeping an existing home on site until construction is complete.

History/Issue(s):

1. Mr. Lee owns the above described property and proposes to remove the existing house and build a new house.
2. When removing the old home, Mr. Lee intends to keep the existing attached garage, to be used as a detached garage.
3. Regarding the second home, the zoning ordinance specifies that only one principal structure (in this case, a house) can be located on a single lot.
4. In the past, the Board has granted variance to temporarily allow more than one residence on a site provided the applicant agree to remove the existing house. Historically, one of the two houses has been required to be removed within one year of occupying the new residence.
5. Staff recommendation – ***Variance to temporarily allow two principal structures on the same lot***- Staff recommends approval of the variance for 2 principal structures subject to the applicant signing a letter of assurance agreeing to remove the existing residential structure from the above-described parcel within one year of taking occupancy of the new home.

Action Item – Variances – more than one principal structure per lot (5.20)

ISSUE #2 Variance

Applicant/Owner: Mark and Marilyn Arnold

Property Description: E1/2 of NE1/4 less Right-of-way and Lot H1, Section 31-T116N-R52W, Codington County, South Dakota. (Sheridan Township)

Zoning Designation: A - Agricultural

Request: The applicant requests to construct pole foundation, steel sided accessory structure until a home can be completed.

History/Issue(s):

1. Codington County Zoning Ordinance requires all accessory structures to be located on the same lot as a primary structure – in this case – a single family residential structure.
2. The Arnolds propose to construct a shed on site prior to constructing a single-family residence.
3. The Arnolds seek to store personal vehicles and equipment to be used for construction of the house in the shed. They expect to pull a building permit for the house in the fall of 2016.
4. The Board has a history of granting variances to allow an accessory structure prior to building a house, provided the applicant agree to get a building permit for a new house on the same lot within one year.
5. Staff Summary: Based upon past practices and the land use plan, the Board is warranted in granting the request. The below recommendation includes a timeframe based upon the last approved similar variances. It is recommended to address the timeframe specifically before voting on the variances.
6. Staff Recommendation – **Variance to allow accessory structure without a primary structure:** Staff recommends approval of the request to allow the construction of an accessory structure before construction of a primary structure (house) on the above described property. Should the Board approve the request approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions:
 - a. Building permit is required prior to the commencement of construction activities.
 - b. Applicant shall obtain building permit for a single family residence not less than one (1) years from the date of issuance of a building permit for the aforementioned accessory structure.
 - c. If building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure the Board of Adjustment will forward the matter with no further action to the Codington County State’s Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance

Action Item – Variances – Construct an accessory use prior to constructing a primary use on the lot (5.14.2)

ISSUE #3 VARIANCE

Owner/Applicant: Ryan and Pamela Carlson

Property Description: Lot 1B and Lot 2 of the replat of Schneider Addition located in S1/4, Section 18-T117N-R53W, Codington County, South Dakota. (Lake Township)

Zoning Designation: A – Agricultural

Request: The Carlson’s request to plant two rows of trees shelterbelt parallel to and 10’ from the 169th Street Right-of-Way.

History/Issue(s):

1. The Carlson’s live at the above described parcel and hope to plant 2 rows of trees (lilacs and dogwoods) 10’ from the 169th Street Right-of-way for an approximate 133’ span to cut down on dust.
2. The applicant proposes to place the closest row 75’ west of the 439th Avenue Right-of-Way.
3. Codington County Ordinance requires shelterbelts on the north side of a road to be at least 150’ from the right-of-way; however variance may be granted if the following conditions are met:
 - a. An established treebelt is located within ½ mile to the (north)

- b. Approval is granted from the (Township Supervisors)
 - c. No trees are planted closer than 75' north of the right-of-way.
4. The Board has allowed similar plantings (distance) less than 75' north of county roads, but has no history of allowing less than 75' adjacent to township roads.
 5. The Lake Township Supervisors have been contacted. They have not determined whether they object to the placement at the time of this report.
 6. Staff recommendation – Variance – **Shelterbelt setback** – The Board has the option to table, deny or approve the request. If the Board approves the request it could use the following findings:
 - An established shelterbelt is located parallel to and north of the proposed shelterbelt.
 - The Board, based upon lack of objection from the road authority, has allowed setbacks of less than 150' north of a right-of-way for residential uses adjacent to county roads in the past.
 - The unique configuration of this lot, including the trees perpendicular to the road, 10' north of the right-of-way and the shelterbelt surrounding the building site north and west of the site.
 - The proposed rows of trees will span less than 150 lineal feet.
 - Future requests for variance will have to meet the same unique requirements as are met by this application.
 - The intent of the zoning ordinance and the comprehensive land use plan may be met if the following conditions are met:
 - i. The applicant present the zoning officer of written documentation from the Lake Township Board of Supervisors that it authorizes the location of the proposed two rows of trees.
 - ii. The two rows of trees be placed a distance as prescribed by the Lake Township Board of Supervisors provided that distance is not less than 10 feet north of the 169th Street Right-of-way.

If the Board denies the request, the Board could use the following findings:

- There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
- The board does not have a history of granting variances to allow shelterbelts less than 75' north of township right-of-way.
- The granting the variance request would confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

Action Item: Variance – Minimum Required Setback for Shelterbelts (5.08.01)

ISSUE #4 CONDITIONAL USE PERMIT

Applicant/Property Owner: Dale Tesch

Property Description: S1/2, Section 24-T116N-R53W, Codington County, South Dakota. (Pelican Township)

Zoning Designation: A - Agricultural

Request: Dale Tesch seeks to reserve his site for a potential 14,000 animal unit feedlot.

History/Issue(s):

Specifics of Request:

1. Mr. Tesch intends to secure a permit and search for a potential buyer of the above property for a feedlot of up to 14,000 animal units.
2. At this time there is no site plan or proposed operator of the property
3. General site information:
 - a. 320 acre parcel
 - b. A large portion in the south central part of this property meets suggested setbacks from residences.
 - c. The proposed 14,000 animal units is would not encroach upon the suggested setbacks from the City of Watertown.
 - d. Drainage of the property is split, with the northwest portion of the property draining northwest toward Lake Pelican; the southeast portion of the property drains southeast toward the Big Sioux River.
4. Designated primary haul roads for finished product will be 176th Street, between 453rd Avenue (Foley Road) and US HWY 81. 176th Street is a gravel road maintained by Codington County.
5. 176th Street and 453rd Avenue are posted with weight limits every year in the Spring. Highway Superintendent indicates that will not change. Further, depending on proposed traffic, significant improvements may be required for 176th Street.
6. Maps indicate the property is not over the shallow aquifer.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The comprehensive land use plan (p56) states that “The rural areas of Codington County are reserved for Agricultural Uses. Even certain agricultural uses result in externalities which require case by case basis.”
2. The Comprehensive land use plan lists numerous considerations for CAFO’s on pages 59-60, all of which are addressed in the zoning ordinance (see below).
3. A new Class 1 CAFO requires a conditional use permit
4. Codington County Zoning Ordinance suggests a setback of 2,640 from established residences for CAFO’s with greater than 2,000 animal units.
5. Information on soils, shallow aquifers, wellhead protection areas and floodplain has been provided
6. The Board has approved permits based upon preliminary plans or on the condition that the following information be submitted:
 - a. A nutrient management plan
 - b. A manure management plan
 - c. A management plan for fly and odor control
 - d. Site plan has been provided
 - e. The applicant is required to obtain a State General Permit from SDDENR to review the manure management, nutrient management, site, fly and odor management, and stormwater management plans prior to operation. Regarding nutrient and manure management plans, the Board has historically accepted changes and recommendations by DENR to the preliminarily submitted plans. Further, the Board has always authorized approval of CAFO permits that met the County’s siting requirements and of DENR approved plans
 - f. Haul Road agreement(s) if necessary

Staff Summary

The intent of the Agricultural District to maintain and promote farming and related activities, and the Land Use Plan identifies Concentrated Animal Feeding Operations as one of those farming activities. The Board has granted conditional use permits in the past on the condition that certain information is provided prior to populating the site or receiving building permits. Approving the

request would be consistent with past approval.

Staff Recommendation

Conditional Use Permit – **Class 1 CAFO (14,000 Animal Unit Operation)**: The Board may table the request, deny the request or approve the request. If approved, the Board may use findings based upon the comprehensive land use plan, zoning ordinance and testimony heard at this meeting:

- A. Standard Findings of Fact for Conditional Uses and Variances adopted March 17, 2014.
- B. The following use is listed in the A – Agricultural Zone of the Codington County Zoning Ordinance (Ref: SDCL 11-2-17.3):
 - Class 1 CAFO (Ref: Zon. Ord. 3.04.02.8).
- C. On or before March 7, 2016, Dale Tesch applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to operate a Class 1 Concentrated Animal Feeding Operation on the following legally described property:

S1/2, Section 24-T116N-R53W, Codington County, South Dakota.
- D. That Class 1 Concentrated Animal Feeding Operations (Ref: Zon. Ord. 3.04.02.18) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 3.05.02.18). Therefore The Board of Adjustment finds that it is empowered under Section 3.05.02.18 of the Zoning Ordinance to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest. (Ref: Zon. Ord. 4.05.01.5)
- E. Section 5.21.05.1 of the Codington County Zoning Ordinance (Zoning Ordinance) requires the Board to determine that “In general, no Concentrated Animal Feeding Operation shall be constructed, located, or operated so as to create a significant contribution of pollution.”
 - a. Factors to consider (Ref Zon. Ord. Article II Definitions) when determining whether a will be a significant contributor of pollution relate to:
 - i. size and location of the CAFO in conjunction with the means of conveyance of manure and process wastewater
 - ii. the slope rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state
 - b. The South Dakota Department of Environment and Natural Resources (SDDENR) is the state agency responsible for regulating the waters of the state.
 - c. Since, Codington County does not have the technical capacity nor the authority to regulate waters of the state, the Board has historically relied upon the engineering review and measures prescribed by SDDENR through the “General Water Pollution Control Permit for Concentrated Animal Feeding Operations” (State General Permit) in determining whether a proposed CAFO site is a significant contributor of pollution.
 - d. Therefore the board finds the issuance of a State General Permit satisfies the requirements of the Zoning Ordinance acknowledging the CAFO not to be a significant contributor of pollution. (Ref. Zon. Ord. 5.21.05.1 and 5.21.05.9.h)
- F. Section 5.21.05.8.d of the Zoning Ordinance stipulates that the Board will take into consideration current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in.
 - a. SDCL 1-40-27 (1)(a)-(e) provides for the rejection of applications for certain environmental protection permits.

- b. Section 3.15.2 of the SDDENR State General Permit references SDCL 1-40-27 (1)(a)-(e) and further requires the applicant to disclose past applicable compliance history.
 - c. The Board has historically relied upon the review of SDDENR through the State General Permit in determining whether an applicant has a history of current and past violations relating to Concentrated Animal Feeding Operations.
 - d. Therefore the board finds the issuance of a State General Permit satisfies the requirements of the Zoning Ordinance in considering current and past violations relating to Concentrated Animal Feeding Operations that the applicant has an interest in. (Ref. Zon. Ord. 5.21.05.8.d. and 5.21.05.9.h)
- G. Section 5.21.05.3 and 5.21.05.4 of the Zoning Ordinance requires the applicant to have a nutrient management plan and manure management and operation plan.
- a. Section 1.2.2. of the SDDENR State General Permit provides guidance for Nutrient Management Plans and Manure Management Systems.
 - b. The Board has historically relied upon the review of SDDENR through the State General Permit in determining whether an applicant has an approved nutrient management plan and manure management system.
 - c. Therefore the board finds the issuance of a State General Permit satisfies the requirements of the Zoning Ordinance for an approved nutrient management plan and manure management plan, provided the SDDENR incorporates the county's requirement in Section 5.21.05.4.a.v. that the minimum design volume of 365 days for manure containment structures. (Ref. Zon. Ord. 5.21.05.9.d, 5.21.05.9.e, 5.21.05.9.h, 5.21.05.9.i.)
- H. The application included the Owner's Name, address, and telephone number (Ref. Zon. Ord. 5.21.05.9.a)
- I. The application included the legal description of the site. (Ref. Zon. Ord. 5.21.05.9.b)
- J. The Board is authorized to attach conditions prohibiting the stocking of the site until the applicant has specified the number and type of animals proposed (Ref. Zon. Ord. 5.21.05.9.c)
- K. The Board is authorized to attach conditions prohibiting the stocking of the site until the applicant has provided a fly and odor management plan was provided (Ref. Zon. Ord. 5.21.05.9.f)
- L. The Board of Adjustment reviewed information regarding the ability of the applicant to meet suggested setbacks and separation distance. (Ref. Zon. Ord. 5.21.05.9.g)
- M. The Board is authorized to attach conditions prohibiting the stocking of the site until the applicant has provided a documentation of obtaining a State General (Ref. Zon. Ord. 5.21.05.9.h).
- N. The Board of Adjustment reviewed information regarding the soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain delineation (Ref. Zon. Ord. 5.21.05.9.j)
- O. Codington County maintains 176th Street near this property and was notified. (Ref. Zon. Ord. 5.21.05.9.k)
- P. Sioux Rural Water provides a public water supply in this area and was notified of the application. (Ref. Zon. Ord. 5.21.05.9.k)

- Q. (If approved) The findings contained herein combined with the findings of the Board contained in the motion to approve the conditional use permit serve as the Official Findings of Fact referenced in Section 4.05.01.6. The zoning officer is hereby authorized to prepare and issue the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.
- R. In order to comply with the requirements of Section 4.05.01.6 and Chapter 5.21 of the Zoning Ordinance the Board of Adjustment prescribes the following conditions and safeguards in conformity with the Codington County Comprehensive Land Use Plan and Zoning Ordinance (Zon. Ord. 4.05.01.7) to be agreed to in the form of a "Letter of Assurance":
1. The issuance of a Class I Concentrated Animal Feeding Operation Permit is contingent upon the zoning officer receiving the following information on or before March 21, 2018:
 - a. Detailed site plan including the number and type of species to be raised on site;
 - b. Nutrient management plan prepared and reviewed by a South Dakota licensed engineer;
 - c. Manure Management and Operation Plan prepared and reviewed by a South Dakota licensed engineer;
 - d. A fly and odor management plan;
 - e. Documentation and compliance with a State General Permit for Concentrated Animal Feeding Operations from the State of South Dakota.
 2. 176th Street between US Highway 81 and 453rd Avenue is designated as the primary haul road for this operation.
 3. A haul road agreement shall be provided for the use of 176th Street between US Highway 81 and 453rd Avenue with Codington County for primary haul routes. Agreements shall be executed for the piping of manure within any and all utilized rights-of-way. Codington County requires the Grantor to abide by the following terms to be included in the Agreements:
 - a. The Codington County Highway Superintendent reserves the right to review the projected traffic to be created by the proposed CAFO upon submittal of the information required in Item #1 above, and may require certain improvements to ensure that 176th Street will accommodate the projected traffic.
 - b. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of 176th Street between US Highway 81 and 453rd Avenue, which is hereby designated as the primary haul roads, and
 - c. All road work whether customary or extraordinary shall be done under the authority and supervision of the Codington County Highway Superintendent and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - d. Codington County shall be responsible for all ordinary snow removal on its portion of 176th Street on the same basis as provided to the remainder of the Township and County respectively. Any additional snow removal on 176th Street between US Highway 81 and 453rd Avenue deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - e. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road right-of-ways due to the result of the Grantor's dairy operations (i.e. Delivery of feed, silage chopping or manure disposal). Work will

be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.

- f. In the event dust control becomes a problem as determined by each applicable road authority's road on the hereinbefore specified haul roads, then in the event, the Grantor shall take steps to control the problem utilizing "Mag water" or by other means agreed to by the applicant and the applicable road authority for an area not to exceed 100' from the source of the complainant.
 - g. The Grantor may have an Agreement with the contractor for cutting silage or forage and shall notify the Townships in advance of chopping listing the roads that will be traveled (if applicable).
4. In the event the manure piping and or haul road agreements hereinbefore described are not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item 3 are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item 3 and 12.
 5. No animal units will be placed on site until a State General Permit has been issued and a copy of the permit is received by the Codington County Planning and Zoning Office.
 6. No animal units will be placed on site until a conditional use permit has been issued by the Codington County Planning and Zoning Office.
 7. The Grantor shall plant a shelterbelt consisting of not less than five rows of trees surrounding the entire area to be used for confining animals and manure containment except for necessary entrance/exit from the feedlot area. Shelterbelt type (variety and number of rows) and location shall be determined by the NRCS and the Codington County Zoning Officer.
 8. The Grantor shall comply with the Fly and Odor Control plan identified in the proposed nutrient management plan.
 9. The Grantor shall adhere to a nutrient management plan that includes the following:
 - a. Liquid Manure generated on site shall be transported only by pipeline. Codington County encourages locating the pipeline and associated connections and pumps on private property, however:
 - 1) The pipeline may be located, temporarily, in a Township, County or State right-of-way running parallel with the road.
 - 2) The pipeline may traverse the Township, County, or State right-of-way at a right angle.
 - 3) The pipeline will not travel through county or township culverts, unless otherwise agreed to by the applicable road authority.
 - 4) The pipeline may be required to be bored under the Township, County, or State Road, unless otherwise agreed to by the applicable road authority.
 - 5) If a pipeline is to be used for transporting manure from the dairy to the field for application and the pipeline is to cross a public right-of-way, the applicant agrees to notify the appropriate governing authority at least seven (7) days prior to pumping manure through the pipeline.

- 6) Grantor agrees to use bonded or insured manure pipeline operators and manure applicators. Grantor shall provide the Codington County Zoning Officer with proof of insurance or bonding. Said proof shall be submitted to the Codington County Zoning Officer at least seven (7) days prior to the piping the manure off the dairy site.
- 7) Grantor agrees that any cost associated with manure spills that reach public or private property shall be the responsibility of the Grantor.
- 8) The Grantor agrees that manure shall be required to be injected or incorporated within forty-eight (48) hours of application.
- 9) The Grantor agrees that liquid or solid manure shall not be land applied on frozen ground.

10. Conditional Uses shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are being adhered to.

11. The Grantor, his heirs and assigns agree that the permitted number of animal units on site will be no greater than fourteen thousand (14,000). Expansion over fourteen (14,000) animal units will require a new conditional use permit action.

12. The Conditional Use Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.

13. The Grantor agrees to create a plan for notification, clean-up, and monitoring of any spill in the future. At a minimum the plan is expected to require:
 - a. Notification of SDDENR, Codington County Emergency Management, and Codington County Zoning Officer within 2 hours of becoming aware of the spill.
 - b. Notification of affected landowners (owners of property with spilled effluent on their property) within 4 hours of becoming aware of the spill, or within 2 hours of containment of the spill whichever is less.
 - c. Clean-up of spill shall be carried out in accordance with SDDENR requirements.
 - d. Unless otherwise agreed upon by the operator of the CAFO and the affected landowner, or a requirement of SDDENR; clean-up of affected property (not owned/operated by the CAFO operator) should be cleaned up first.
 - e. Unless otherwise agreed upon by the operator of the CAFO and the affected landowner(s), SDDENR, and the Codington County Board of Adjustment; the CAFO operator shall at a minimum provide weekly updates regarding the status of the clean-up, projected completion of clean-up, and monitoring of affected waterways.
 - f. Monitoring of affected waterways/ water sources shall be coordinated, at a minimum, with SDDENR. The results of which shall be provided to the Codington County Zoning Office, and the owner of land from which the sample was taken.

14. The County requires that if there are 1) Documented complaints or 2) Failure to comply with the established haul road/manure piping agreements, or conditions of the SDDENR General Permit or 3) Violations of the Conditional Use Permit or other Codington County Zoning regulations or 4) Failure of the manure

containment system, the applicant may be required to forfeit the Conditional Use Permit.

15. Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - a. The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all dairy operations within forty-five days (45) of notice of revocation.
 - b. The applicant may make appeal from the decision of the Zoning Officer or other agent of the Codington County Board of Adjustment to the Codington County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
 - c. Failure to comply with the decision of the Zoning Officer or other agent of the Codington County Board of Adjustment may be deemed a separate violation.
16. All of the terms and conditions herein shall extend to and be binding upon the heirs, assigns, or successors in interest of the Grantor, and are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement which shall, upon its execution, be recorded with the Codington County Register of Deeds Office.
17. The conditional use permit for a Class 1 Concentrated Animal Feeding Operation issued by the Codington County Board of Adjustment on March 21, 2016 will expire with no further action by the Board if no building permit is applied for prior to March 21, 2018.

Action Items: Conditional Use - Class 1 CAFO (3.04.02.18)

ISSUE #5 2 CONDITIONAL USE PERMITS and 2 VARIANCES

Property Owner/Applicant: Sioux Rural Water

Property Description: Tower Tract G in SE1/4 of SE1/4 and a 75'x75' parcel in SE1/4, all located in Section 32-T117N-R51W, Codington County, South Dakota. (Kranzburg (N) Township)

Zoning Designation: A – Agricultural

Request: Permit for existing pump station on a lot of less than 35 acres and to construct a new 70' data transmission tower.

History/Issue(s):

Specifics of Request:

1. Sioux Rural Water has owned and operated the above described 0.35 acre site since prior to 1974. There is no record of any building permits or Special Exception permits for this location.
2. Sioux Rural Water proposes to construct a new pump house/booster station at the existing water tower site, which has been used for transmitting their own telecommunications signals in the past.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Regarding the Public Utility CUP:
 - a. No specific conditions are listed in the zoning ordinance regarding public utilities
 - b. This site has been used for over 25 years for this purpose without complaint
 - c. The Board has granted conditional use permit to Sioux Rural Water in the past for other sites which were constructed without a special exception permit under a previous zoning administrator.
2. Regarding Variances to Lot width and area:
 - a. The Board of Adjustment has the authority to determine minimum lot area for conditional uses.
 - b. Allowing a smaller than 35 acre lot would be consistent with the intent of the agricultural district to reserve most land for agricultural uses (requiring 35 acres in this case would only take 33 more acres out of production for a public use.)
 - c. The Board has granted variance to Clark Rural Water for minimum lot area on a site in the past (May 2006 and 2015.)
3. Regarding the Telecommunications Tower:
 - a. The applicant has historically used the water tower on the site for transmission of its own telecommunications and for co-location of other transmitters/receivers.
 - b. Most of the regulations in Section 5.24 are written for television, radio, and cell towers. Sections 5.24.02.2. and 5.24.05 – 5.24.13 do not apply.
 - c. Since the Tower is less than 100' in height, the Ag District Setbacks apply.
 - d. Since towers less than 150' in height do not require specific markings from FAA and SDDOT, in the past, the Board has required those constructing towers to notify, via certified mail, the following airports of the construction of such towers:

Wilbur-Ellis Air LLC
45149 152nd Street
Summit, SD 57266-5112

Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201

Scott Thompson
Thompson Farm Air
PO BOX 308
Estelline, SD 57234

Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

- e. Noncommercial structures, according to state law are required to meet the latest edition of the International Building Code. The Codington County Zoning Ordinance also requires written confirmation from the project engineer that the structure will be structurally sound.
4. In October of 2012 the Comprehensive Land Use was adopted which supports the approval of off-premise signs in appropriately zoned locations.

Staff recommendation:

Conditional Use Permit: Public Utility. The Board may table the request, deny the request, or approve the Conditional Use Permit(s). The Zoning officer recommends approval based upon based upon the comprehensive land use plan, zoning ordinance and testimony heard at this meeting:

- A. Standard Findings of Fact for Conditional Uses and Variances adopted March 17, 2014.
- B. The following use is listed in the A – Agricultural Zone of the Codington County Zoning Ordinance Public Utility (Ref: Zon. Ord. 3.04.02.11).
- C. On or before March 7, 2016, Sioux Rural Water applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to authorize the location of the existing water pump and storage location on property described as: Tower Tract G in SE1/4 of SE1/4 and a 75'x75' parcel in SE1/4, all located in Section 21-T117N-R51W, Codington County, South Dakota.
- D. That Public Utilities (Ref: Zon. Ord. 3.04.02.11) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 3.04.02.11). Therefore The Board of Adjustment finds that it is empowered under Section 3.04.02.11 of the Zoning Ordinance to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest. (Ref: Zon. Ord. 4.05.01.5)
- E. The findings contained herein combined with the findings of the Board contained in the motion to approve the conditional use permit serve as the Official Findings of Fact referenced in Section 4.05.01.6. The zoning officer is hereby authorized to prepare and issue the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.

Variances: Minimum lot area and minimum lot width If approved the Board may use the following findings:

- Approval is based upon the unique size, shape and use of the lot.
- It is consistent with the comprehensive land use plan and zoning ordinance to allow a lot of less than 35 acres for a public utility of this nature.
- The board has a history of granting similar requests for public utilities (water services).
- Further, approval of the variance will be consistent with the intent of the Comprehensive Land use Plan and Zoning Ordinance if the following condition is met:
 - The applicant plats the two parcels described in the application into a single lot otherwise according to the County's subdivision regulations.

Conditional Use Permit: Telecommunications Tower. The Board may table the request, deny the request, or approve the Conditional Use Permit(s). The Zoning officer recommends approval based upon based upon the comprehensive land use plan, zoning ordinance and testimony heard at this meeting:

- A. Standard Findings of Fact for Conditional Uses and Variances adopted March 17, 2014.

- B. The following use is listed in the A – Agricultural Zone of the Codington County Zoning Ordinance Telecommunications Towers (Ref: Zon. Ord. 3.04.02.15).
- C. On or before March 7, 2016, Sioux Rural Water applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to authorize the location of the existing telecommunications towers and future transmitters/receivers on property described as: Tower Tract G in SE1/4 of SE1/4 and a 75'x75' parcel in SE1/4, all located in Section 21-T117N-R51W, Codington County, South Dakota.
- D. That Telecommunications towers (Ref: Zon. Ord. 3.04.02.15) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 5.24). Therefore The Board of Adjustment finds that it is empowered under Section 3.04.02.15 of the Zoning Ordinance to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest. (Ref: Zon. Ord. 4.05.01.5)
- E. The proposal is to continue using a public utility structure (water tower) as a “usable Antenna Support Structure” and therefore the required setbacks in Section 5.24.03.2 do not apply.
- F. The proposed tower will be less than 150' in height. (Ref. Zon. Ord. 5.24.02.1 & 5.24.03.1)
- G. The tower will be designed and certified to be structurally sound and, at minimum, in conformance with the Building Code [as established by SDCL]. The tower shall be fixed to land. (Ref. Zon. Ord. 5.24.04.1)
- H. Since the tower is to be used by the owner to relay information specifically for the use of this business and not for any transmission of television, radio, or cellular (public) purposes, Sections 5.24.02.2. and 5.24.05 – 5.24.13 do not apply.
- I. The applicant is expected to comply with all applicable state and federal regulations regarding the construction of towers and transmission of radio signals.
- J. SDDOT and FAA may not have specific regulations regarding the construction and marking of towers less than 150' in height.
- K. The findings contained herein combined with the findings of the Board contained in the motion to approve the conditional use permit serve as the Official Findings of Fact referenced in Section 4.05.01.6. The zoning officer is hereby authorized to prepare and issue the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.
- L. In order to comply with the requirements of Section 4.05.01.6 and Chapter 5.24 of the Zoning Ordinance the Board of Adjustment prescribes the following conditions and safeguards in conformity with the Codington County Comprehensive Land Use Plan and Zoning Ordinance (Zon. Ord. 4.05.01.7) to be adhered to:
 - i. Grantor shall submit with building permit application a written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - ii. Grantor shall submit with building permit application a written statement from an Engineer(s) or the project architect that the construction of the proposed Telecommunications Tower shall comply with the 2015 version of the International Building Code.
 - iii. The proposed Telecommunications Tower shall meet or exceed all requirements of the Federal Aviation Administration (FAA) and South Dakota Department of Transportation-Aeronautics Commission with regard to transmission of signals, height, marking, and registration of the Tower. If compliance is not necessary, documentation from the applicable agency shall be provided to the Zoning Officer and kept with this application.
 - iv. The Grantor further agrees to notify the following entities of the location (legal description) and height of the telecommunications tower via certified mail:
 - Wilbur-Ellis Air LLC
 - 45149 152nd Street
 - Summit, SD 57266-5112

Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201

Scott Thompson
Thompson Farm Air
PO BOX 308
Estelline, SD 57234

Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

**Action Item – Conditional Use Permit – Public Utility (3.04.02.11).
Conditional Use Permit – Telecommunications Tower (3.04.02.15).
Variance – Minimum Lot Area (3.04.02.1)
Variance – Minimum Lot width (3.04.02.2)**

Adjourn