

Codington County Planning Commission/Board of Adjustment Minutes

November 21, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on November 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, Brenda Hanten, Rodney Klatt, Mel Ries, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Jeff DeVille, Jamie Dolen, Linus Cordell, Lonny Ehlebracht, Joe Haider, Jerome Haider, Mike Cole, Jim Czech, Mark Fox, Alfred Fox, Merrill Simon, and Becky Goens.

Chairman Fox brought the meeting of the Planning Commission to order.

Due to the agenda items and the number of persons in attendance wishing to speak, Chairman Fox advised the audience there will be a time limit of five (5) minutes for each speaker.

Motion by Hanten, second by Ries, to approve the October 17, 2016 minutes. Motion passed unanimously.

Motion by Hanten, second by Rossow, to approve the variance request for Jerome Haider. Mr. Haider is seeking a 16' front yard variance for purposes of constructing a residence. Property is located in NE1/4 less highway and less S750' of E700' in Section 24-T116N-R52W. Muller reviewed history per Staff Report (attached). Mr. Haider had been in the zoning office several times inquiring as to the setbacks prior to construction and placement of the house. Haider indicates he wants to be legal but feels there was a misunderstanding and he would not have placed the foundation and home at the current location. Joe Haider, son of Jerome Haider, indicates he should have been with Jerome during his visits to the zoning office so as to avoid this misunderstanding. Lonny Ehlebracht, son-in-law of Jerome Haider, also believed it was just a misunderstanding and Haider would have complied had he known the setbacks. Public hearing closed. Per Klatt, the primary problem is that no building permit was issued prior to the project. Board member Johnson asked Township Supervisor Merrill Simon to speak. Simon indicated the house is too close to the road and could create a show problem; and it is a visible block on the corner as oncoming traffic cannot be seen as well. The township does not support the variance. Johnson would like to see more contractors verify building permits have been obtained prior to commencing on their projects. Upon voting, if any board member chooses to vote against the variance, it is suggested they also cite the unique circumstance for their decision. Motion failed unanimously. Board members referred to Staff Report items 9.a-h when citing their decisions.

Motion by Rossow, second by Hanten, to allow Haider and his contractor until December 21, 2016 in which to move the house and foundation to meet ordinance compliance. During this time, the house may be moved and stored anywhere in this section, owned by Haider, until which time it can be relocated onto a new foundation. Muller reviewed Staff Report item 11.a-e (attached). It was suggested they extend the foundation to the south until it meets the setback requirement. The house can then slide onto the new foundation accordingly. Contractor Mike Cole, would like more than a month to complete this project. Per Chairman Fox, the board would like to see that within the given 30 days, if activity has been done but weather has conflicted and the project is not done, additional time can be allowed. If, however, at the end of 30 days nothing has been done, this item will be turned directly over to the Codington County States Attorney. Public hearing closed. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve two variance requests made by Jim Czech on property located in OL a and 2 of OL A of Appleby, Section 34-T116N-R52W and N520' replat OL A NE1/4 less OL's 1 and 2, Section 24-T116N-R52W. He is requesting a variance to the minimum lot size and minimum lot width in which to place a Type B manufactured home on site for purposes of employee housing. Muller reviewed Staff Report (attached). Motion passed unanimously.

Motion by Hanten, second by Klatt, to approve a Conditional Use Permit request by Jim Czech on property located in OL a and 2 of OL A of Appleby, Section 34-T116N-R52W and N520' replat OL A NE1/4 less OL's 1 and 2, Section 24-T116N-R52W. He is requesting to place a Type B Manufactured home on site for purposes of employee housing. Muller reviewed Staff Report (attached). Motion passed unanimously.

Motion by Johnson, second by Ries, to approve the Conditional Use Permit request by Dakota Range Wind, LLC to place a 198' guyed wire meteorological tower on property owned by Coletta Buchholz based upon findings as read by staff and included in the Staff Report (attached). Property is described as SW1/4 of SE1/4, Section 2-T118N-R52W. Conditions to be placed upon this Conditional Use Permit include:

- 1) The tower shall be constructed greater than one thousand (1,000) feet from any existing off-site residences. Final latitude/longitude of the tower location shall be submitted to the zoning officer prior to issuance of building permit.
- 2) 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.

- 3) Grantor shall submit with building permit application a written statement from an Engineer(s) or the project architect that the construction of the proposed Meteorological Tower shall comply with the 2015 version of the International Building Code.
- 4) The proposed Meteorological 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.
- 5) The Grantor further agrees to notify the following entities of the location (legal description) and height of the anemometer tower via certified mail:
  - a. Wilbur-Ellis Air LLC  
45149 152<sup>nd</sup> Street  
Summit, SD 57266-5112
  - b. Watertown Regional Airport  
2416 Boeing Avenue  
Watertown, SD 57201
  - c. Scott Thompson  
Thompson Farm Air  
PO BOX 308  
Estelline, SD 57234

Motion passed unanimously.

The Board adjourned as Board of Adjustment and convened as Planning Commission.

Motion by Ries, second by Klatt, to recommend approval of Ordinance Amendment 64 to the Board of County Commissioners. Muller reviewed Staff Report (attached). Muller also read a letter provided by Patrick McCann, Codington County States Attorney. Motion passed unanimously.

Jamie Dolen, member of Punished Woman's Lake Association, was present to address concerns and suggestions for Wind Energy Systems Regulations. Chairman Fox confirmed that Mr. Dolen would not object to another party speaking to the board regarding this matter when Dolen is not present. Dolen did not object. His Association has concerns about future wind towers interfering with views and would like to see increased setbacks. They do not oppose wind farms but are looking to keep the aesthetic beauty of the area as well as natural nesting and habitat areas. The lake and town are proposing to construct bike and walking paths in the future. Fox indicates that if setbacks were increased and wind farms were place in agriculture land, there are also farmers with the same issues as to aesthetic views. Current ordinance

requires 1,000' setback from off-site structures and 500' from on-site structures (lessor). Distance should be 110% of the proposed height of the structure. Johnson reminded everyone there are local and school tax benefits to having wind farms. Income for the landowners is also a benefit. Dolen is proposing no wind farms be placed within 3 miles each way of South Shore (i.e. 36 square miles or 36 total sections).

Motion by Hanten, second by Ries, to enter into Executive Session to discuss litigation. Motion passed unanimously. Motion by Ries, second by Rossow, to adjourn Executive Session. Motion passed unanimously.

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

Respectfully Submitted,

Becky Goens, Secretary

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

**MONDAY – NOVEMBER 21, 2016 – 9:00 a.m.**

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ISSUE #1 VARIANCE**

**Owner/Applicant:** Jerome Haider

**Property Description** NE1/4 less highway and less S750' of E700' in Section 24-T116N-R52W, Codington County, South Dakota. (Sheridan Township)

**Action Item – Variance – 16' Front yard setback variance (175<sup>th</sup> Street) (3.04.03.3)**

**Zoning Designation:** A – Agricultural District

**Request:** Construct a residence 49' from 175<sup>th</sup> Street Right of Way.

**History/Issue(s):**

1. Mr. Haider owns the entire quarter section in 3 different legal descriptions.
2. The property has two front yards: 460<sup>th</sup> Avenue (County Highway); 175<sup>th</sup> Street (Township Road)
3. The applicant submitted a building permit, but a permit has not yet been issued.
  - a. The application indicates the house is to be placed 115' from the center of 460<sup>th</sup> Avenue and 100' from the center of 175<sup>th</sup> Street
4. The foundation and home were set (without permit being issued) approximately 105' from the center of 460<sup>th</sup> Avenue and 82' from the center of 175<sup>th</sup> Street.
5. Codington County Zoning Ordinance requires all structures to be sixty-five (65) feet from the right-of-way. On 175<sup>th</sup> Street there is a thirty-three (33) foot “right-of-way” from the center of the road thereby requiring all structures to be at least 98' from the center of the road.
6. The Board has granted variance in the past due to exceptional topography, support from the township/road supervisor, or small lot size/configuration.
7. This property is relatively flat, consists of 146 acres, and the township does not support the granting of the variance.
8. Mr. Haider contends that the zoning officer informed him the setback was 70' from the center of the road.
9. (From Section 4.05.02) In order to approve a variance the Board must find ALL of the below have been met (c – h are converse of how listed in ordinance):
  - a. That it is empowered to grant the variance
  - b. That the granting of the variance will not adversely affect the public interest
  - c. There are special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures or buildings in the same district.
  - d. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.

- e. Any special conditions and circumstances do not result from the actions of the applicant.
  - f. Financial disadvantage of the property owner is not being used as conclusive proof of unnecessary hardship within the purposes of zoning.
  - g. The granting of this request would **not** confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
  - h. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts were considered as grounds for issuance of the variance.
10. Staff Summary: if approved the Board needs to identify how the hardships make this instance unique. If denied, the Board will need to specify
11. Staff recommendation – **Variance – 16' Front yard setback variance** - The Board could table, deny or approve the request. If approved the Board would be certifying the a-h listed above have been satisfied and needs to identify how the hardships make this instance unique. If denied, the Board shall specify which of the above (a-h) are not satisfied and are thus the basis for denial. If none are specified it will be implied that none of the items were satisfied. FURTHER, if denied the Board should rule on what to do with the existing structure. IF DENIED, Staff Recommendation would be:
- a. Remove structure from foundation and remove any portion of foundation located closer than 98' from the center of the road (65' from right-of-way line) on or before December 21, 2016.
  - b. The house may be moved to and stored in any location on the quarter section, provided it is greater than 98' from the center of the road (65' from right-of-way line), and not occupied until placed upon a foundation or moved off the property.
  - c. The zoning officer is authorized to issue the building permit and the home may be placed on a foundation provided the structure is located compliant with setback requirements including the requirement that it be placed greater than or equal to 98' from the center of 175<sup>th</sup> Street.
  - d. Compliant construction or removal of the house shall be completed on or before June 1, 2017.
    - i. The Board may after a public hearing authorize one (1) thirty (30) day extension if notice of all adjacent landowners is provided prior to the hearing.
  - e. Failure to comply with this order of the Board of Adjustment will result in the matter being forwarded to the State's Attorney for prosecution.

## **ISSUE #2 (2) VARIANCES (1) CONDITIONAL USE PERMIT**

**Applicant/Owner: Jim Czech**

**Property Description:** OL 1 and 2 of OL A of Appleby Section 34-T116N-R52W; and N520' replat OL A NE1/4 less OL's 1 & 2, Section 34-T116N-R52W. (Sheridan Township)

**Action Item – Variance – Minimum lot size (3.04.03.1); Minimum Lot width (3.04.03.2)  
Conditional Use – Type B Manufactured Home (3.04.02.17)**

**Zoning Designation:** A – Agricultural District

**Request:** The applicants request to re-draw the lot lines on the above described property and

place a single-wide manufactured home on the property.

**History/Issue(s):**

1. Mr. Czech owns the above 3 legal descriptions which were platted with the Town of Appelby.
2. Each lot maintains a building right since they were created prior to the adoption of the zoning ordinance, but only 2 lots have houses on them.
3. The portion of OL 1 that still has a building right is low and would conflict with the farms operations.
4. Placing a second home on OL 2 conflicts with the zoning ordinance.
5. The Board has allowed owners of nonconforming lots of record to replat their property provided the lot sizes remain substantially the same and density does not increase. (Raml/Laquia; Syhre/Hurkes)
6. Mr. Czech seeks to purchase and place a Type B Manufactured home on the property.
7. He requests permission to, if approved, place the structure prior to the replat being approved by the County Commission.
8. Staff recommendation – **Variances to Minimum Lot Size and Width.** Staff recommends using one motion to approve request based upon the following findings:
  - a. Three lots were platted prior to the adoption of the zoning ordinance.
  - b. Approval of the variance will only not allow the creation of a lot smaller than what existed on October 26, 1976.
  - c. The approval of the variance will allow for a residential density equal to what existed on October 26, 1976.
  - d. The intent of the Comprehensive Land Use Plan and Agricultural Zoning District will be met if the following condition is complied with:
    - i. Applicant plat 3 lots substantially similar in size, with one house on each lot.

**Conditional Use Permit: Type B Manufactured Home** The Board may table the request, deny the request, or approve the Conditional Use Permit(s). The Zoning officer recommends approval 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  
Type B Manufactured Home (Ref: Zon. Ord. 3.04.02.17).
- C. On or before November 4, 2016 Jim Czech applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to construct a Type B Manufactured Home on property described as:  
OL 1 and 2 of OL A of Appleby Section 34-T116N-R52W; and N520' replat OL A NE1/4 less OL's 1 & 2, Section 34-T116N-R52W.
- D. That Type B Manufactured Homes (Ref: Zon. Ord. 3.04.02.17) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 5.11.1.b). Therefore The Board of Adjustment finds that it is empowered under Section 3.04.02.17 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. That the Manufactured Home will be required to have more than 700 square feet of occupied space in a single, double, expando or multi-section unit. (Ref: Zon. Ord. 5.11.1.b.i)
- F. That the manufactured home shall be at least fourteen (14) feet in width. (Ref: Zon. Ord. 5.11.1.b.i)
- G. That the applicant will utilize a perimeter enclosure of metal, vinyl, wood or styrofoam in

- accordance with manufacturer's specifications. (Ref: Zon. Ord. 5.11.1.b.ii)  
That the age of the manufactured house will not exceed fifteen (15) years from the date of manufacture. (Ref: Zon. Ord. 5.11.1.b.iii)
- H. That the manufactured home will be anchored to the ground, in accordance with manufacturer's specifications, or as prescribed by the ANSI/NFPA 501A Standards. (Ref: Zon. Ord. 5.11.1.b.iv)
- I. That the manufactured home will have siding material of a type customarily used on site-constructed residences. (Ref: Zon. Ord. 5.11.1.b.v)
- J. That the manufactured home will have roofing material of a type customarily used on site-constructed residences. (Ref: Zon. Ord. 5.11.1.b.vi)
- K. That the manufactured home will be placed onto a support system, in accordance with approved installation standards, as specified in subsection (2), Installation Standards. (Ref: Zon. Ord. 5.11.1.b.vii)
- L. 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 provided the findings contained herein are satisfied.
- M. In order to comply with the requirements of Section 4.05.01.6, Chapter 5.11, and Chapter 5.20 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 agrees that one (1) additional Type B Manufactured Home is allowed on the above legally described property.
  - ii. Grantor agrees to provide a replat of the above described property into three(3) lots of similar size to the existing lots with not more than one (1) residence to be upon each lot.
  - iii. The Zoning Officer is authorized to issue a building permit for the Type B Manufactured Home authorized by this Conditional Use Permit prior to approval of the above described plat under the following conditions:
    - a. Building Permit application is received by the Zoning Officer prior to December 31, 2016.
    - b. The above described Plat is submitted to the Zoning Officer prior to December 31, 2016.
    - c. Grantor agrees the Type B Manufactured Home authorized by this conditional use permit shall be removed from the above described property if the plat is not received by the Zoning Officer prior to December 31, 2016.

### **ISSUE #3 CONDITIONAL USE PERMIT**

**Applicant: Dakota Range Wind, LLC (DRW)**

**Property Owner: Coletta Buchholz**

**Property Description:** SW1/4 of SE1/4 of Section 2-T118N-R52W, Codington County, South Dakota. (Rauville Township)

**Zoning Designation:** A - Agricultural

**Action Item – Conditional Use Permit – Telecommunications Tower (3.04.02.15).**

**Request:** DRW proposes to erect a 198' guyed wire meteorological tower.

**History/Issue(s):**

**Specifics of Request:**

1. DRW is working to secure permitting for the 198' guyed meteorological tower to record wind data.
2. The applicant has obtained an easement from the property owner for the construction of this and larger wind towers. (Larger wind towers are not a part of this request.)

**Ordinance, Comprehensive Land Use Plan and other regulations regarding this request:**

- a. 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 – 5.24.11 do not apply.
- b. Since the Tower is greater than 100' in height, the following setbacks apply (which are met with this application):
  - a. Distance from existing off-site residences, business and public buildings **is PROPOSED less than** one thousand (1,000) feet (985' proposed). Distance from on-site or lessor's residence **is greater than** five hundred (500) feet.
  - b. Distance from public right-of-way (629') **is greater than** the height of the tower.
  - c. Distance from any property line (757') **is greater than** the height of the tower.
- c. Since the Tower is greater than 150' in height, consistent with 5.24.02.1 and 5.24.12 the Board needs to determine that:
  - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
  - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
  - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

*For reference, Section 5.24.12.1 describes multiple items for a contractor to provide for consideration of “site plan development modifications.” The only portion not specifically outlined by the applicant is 5.24.12.1.a.iv which would require the applicant to identify “all other parcels that the tower could be located, attempts by the applicant to... [collocate]” Since the only limiting factor is the actual height being 196’ no difference between this or any other property (aside from setbacks) would be relevant, nor would it be practical to collocate an anemometer tower on an existing telecommunications tower.*

*Given that the applicant exceeds the required setbacks and the proposed structure is located on an otherwise vacant quarter section it appears most adverse impacts are mitigated by the property’s relative “remoteness”.*

4. It should be noted that South Dakota Codified Law 50-9-13 regulates the marking of anemometer towers such as this. The law is enforced by the South Dakota Department of Transportation – Aeronautics Commission. It requires (for reference only)
  - d. alternating orange and white painting
  - e. orange “balls” to be placed on the guyed wires
5. Towers less than 200' in height do not require lights per FAA regulations.
6. Since towers less than 200' 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, certain airports of the construction of such towers.

- a. It should be noted that the last 5 similar towers were constructed, voluntarily, to the above standards.
- 7. Non commercial 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.
- 8. As of the date of this report staff has received no objections regarding this request.

Staff recommendation:

**Conditional Use Permit: Telecommunications Tower (Meteorological 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 August 1, 2016 Dakota Range Wind applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to construct a 198' guyed Meteorological Tower on property owned by Steve and LeeAnn Maag described as: SW1/4 of Section 17-T119N-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 proposed tower will be greater than 150' in height. (Ref. Zon. Ord. 5.24.02.1 & 5.24.03.1)
- F. The tower shall be constructed greater than one thousand (1,000) feet from any existing off-site residences, businesses, and public buildings. No on-site residences are located on the above parcel. (Ref. Zon. Ord 5.24.03.2.a)
- G. The tower will be constructed greater than one hundred ninety-six (196) feet from the nearest right of way. (Ref. Zon. Ord 5.24.03.2.b)
- H. The tower will be constructed greater than one hundred ninety-six (196) feet from the nearest property line. (Ref. Zon. Ord 5.24.03.2.c)
- I. 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)
- J. 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, except that Section 5.24.12 applies due to the height of the tower exceeding 150'.
- K. The sole purpose of the construction of this tower is to collect wind data and not otherwise to provide telecommunications signals it would be impractical to require collocation of this tower with another tower; and that the sole reason for requiring additional criteria for site plan development modifications per Section 5.24.2.1 is the height of the tower exceeding would lead yield the same result on any property meeting setbacks, Section 5.24.12.1.a.iv. is considered satisfied.
- L. Due to the ability of the applicant to exceed the required setbacks, the location of no “on-site residences”, and satisfaction of other conditions attached by the Board of Adjustment it has been determined by the Board that the proposed tower:

- 1) Will be compatible with and not adversely impact the character and integrity of surrounding properties (Ref. Zon. Ord 5.24.12.1.b.i.); and
  - 2) Off-site or on-site conditions exist which mitigate the only adverse impacts, created by the [height of the tower] (Ref. Zon. Ord 5.24.12.1.b.ii.); and
  - 3) In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification (Ref. Zon. Ord 5.24.12.1.b.iii.).
- M. The applicant is expected to comply with all applicable state and federal regulations regarding the construction of towers and transmission of radio signals.
- N. SDDOT and FAA may not have specific regulations regarding the construction and marking of towers less than 100' in height.
- O. 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.
- P. 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:
- 1) The tower shall be constructed greater than one thousand (1,000) feet from any existing off-site residences. Final latitude/longitude of the tower location shall be submitted to the zoning officer prior to issuance of building permit.
  - 2) 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.
  - 3) Grantor shall submit with building permit application a written statement from an Engineer(s) or the project architect that the construction of the proposed Meteorological Tower shall comply with the 2015 version of the International Building Code.
  - 4) The proposed Meteorological 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.
  - 5) The Grantor further agrees to notify the following entities of the location (legal description) and height of the anemometer tower via certified mail:
    - a. Wilbur-Ellis Air LLC  
45149 152<sup>nd</sup> Street  
Summit, SD 57266-5112
    - b. Watertown Regional Airport  
2416 Boeing Avenue  
Watertown, SD 57201
    - c. Scott Thompson  
Thompson Farm Air  
PO BOX 308  
Estelline, SD 57234

## CODINGTON COUNTY PLANNING COMMISSION

### ISSUE #1 ORDINANCE AMENDMENT

**Applicant:** Directed by Planning Commission

**Request:**

- A. List Single Family Residences less than  $\frac{1}{2}$  mile from an existing CAFO as a conditional Use
- B. Define Established Residence in reference to existing and planned CAFO's (necessary for present litigation as well)
- C. Identify performance standards for the (conditional use) ...residence less than  $\frac{1}{2}$  mile from a CAFO
  1. Create a waiver for the CAFO operator to sign allowing a residence less than  $\frac{1}{2}$  mile from his/her feedlot
  2. Amend existing "Waiver" to acknowledgement that feedlot is less than  $\frac{1}{2}$  mile from proposed home.
- D. Address homes constructed less than  $\frac{1}{2}$  mile from an existing CAFO under the 2006-present rule (reference number c.ii above).

**Action Item – Public Hearing and Recommendation of Approval for County Commissioners.**

**History/Issue(s):**

1. The Land Use Plan and Zoning Ordinance have been structured around the premise that residential uses are secondary to agricultural uses in the county.
  - a. "Concentrated Animal Feeding Operation Setback Waiver" is referenced (supported) on pages 40, 49, and 59
  - b. The following are citations from the Codington County Comprehensive Land Use Plan that seem to support this ordinance or a similar waiver.
- Recognize and improve upon regulations which have a negative impact on farming operations. (*Agricultural Preservation Policies*. page 40. *Codington County Comprehensive land use Plan – 2012*.)
- Promote development patterns which will avoid producing inflated agricultural land values. (*Agricultural Preservation Policies*. page 40. *Codington County Comprehensive land use Plan – 2012*.)
- When considering future land use decisions, the preservation of agricultural land should be of significance. (*Agricultural Preservation Policies*. page 40. *Codington County Comprehensive land use Plan – 2012*.)
- Identify policies for the permitting of non-agricultural land use which protect agricultural land uses. (*Agricultural Preservation Policies*. page 40. *Codington County Comprehensive land use Plan – 2012*.)
- Preserve agricultural lands and protect the rural area from uses which interfere with and are not compatible with general farming practices. This may include the use of Agricultural easements, and Concentrated Animal Feeding Operation waivers, or exemptions to setbacks from Concentrated Animal Feeding Operations for certain development exceeding a residential development of one residence per quarter-quarter. (*Agricultural Preservation Policies*. page 40. *Codington County Comprehensive land use Plan – 2012*.)

- Preserve and protect the agricultural productivity of rural land by restricting the development of non-farm residential sites. (*Residential Development Policies*. page 46. *Codington County Comprehensive Land Use Plan – 2012*.)
- Identify policies for certain types of residential land uses permitted in the unincorporated areas of Codington County which protect agricultural land uses. (*Residential Development Policies*. page 46. *Codington County Comprehensive Land Use Plan – 2012*.)
- Codington County supports the creation and expansion of concentrated animal feeding operations in rural areas. (*Concentrated Animal Feeding Operation Policy*. page 59. *Codington County Comprehensive Land Use Plan – 2012*.)
- Protect existing CAFO's from encroachment of non-agricultural or residential uses by requiring any new construction within one-half mile of an existing CAFO to waive the right to protest any future expansion of the specified CAFO at the existing location. (*Concentrated Animal Feeding Operation Policy*. page 59. *Codington County Comprehensive Land Use Plan – 2012*.)

“Codington County has and will continue to use zoning to promote the continuation of agricultural activities in the rural area and to minimize residential land uses that are incompatible with farming.” (*Zoning Techniques: Agricultural Preservation*. page 85. *Codington County Comprehensive Land Use Plan – 2012*.)

2. Board decisions between 1997 and 2006 led the County to create a waiver for prospective home builders to sign if they construct a home within ½ mile of an existing CAFO waiving the right to object to the operation and future expansion of an existing CAFO.
3. To be consistent with the policies of the land use plan and clarify in ordinance what residences qualify as “established residences,” the definition was added.
4. The State’s Attorney supports this ordinance amendment to allow residences less than ½ mile from an existing CAFO as a conditional use on the condition an acknowledgement of an existing CAFO within ½ mile which allows for the grantor to object, but puts the grantor on notice that the Board may consider whether a CAFO pre-dated the residence at any subsequent variance hearing for expansion of the CAFO.

#### **ORDINANCE 64**

#### **AN ORDINANCE AMENDING ORDINANCE 30 AN ORDINANCE AMENDING ORDINANCE #15 AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR CODINGTON COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, PURSUANT TO SDCL 11-2, 1967, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND/OR ORDINANCES IN CONFLICT HEREWITH.**

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that Article II Definitions, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended to add the following definition:

**Established Residence. A dwelling established before June 30, 1997 or a dwelling located greater than one-half (1/2) mile from any existing concentrated animal feeding operation at the time of the dwelling’s construction.**

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF

CODINGTON COUNTY, SOUTH DAKOTA: that Section 3.04.02 [Agricultural District] Conditional Uses, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended to add the following Conditional Use in the Agricultural District:

**41. Single family dwelling (farm or non-farm) constructed less than one-half (1/2) mile from an existing concentrated animal feeding operation. See Chapter 5.29**

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that Section 3.04.03.9 [Agricultural District] Area Regulations/Easement/Waiver, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended to remove the text in strikethrough font and adding the text in bold and underline font:

9. Agriculture Easement/Waiver:

- a. All new residential development (farm and non-farm) shall be required to file an "Agricultural Easement" with the Register of Deeds before the issuance of a building permit. (See Chapter 5.27)
- b. ~~Applicants for residential development (farm and non-farm) are required to obtain a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site. If the applicant is unable to obtain the written waiver, he/she shall be required to file a waiver with the Register of Deeds waiving any or all common law challenges to future expansions of the said existing concentrated animal feeding operation. The waiver is to be filed with the Register of Deeds.~~ (See Chapter 5.29)

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that ARTICLE V SUPPLEMENTAL REGULATIONS, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended by adding the text in bold and underline font and removing the text in strikethrough font:

~~Chapter 5.29. Waiver of Setback from Existing Concentrated Animal Feeding Operation~~

**CHAPTER 5.29. SINGLE FAMILY DWELLING (FARM OR NON-FARM) CONSTRUCTED LESS THAN ONE-HALF (1/2) MILE FROM AN EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

**Section 5.29.01. Single family dwelling (farm or non-farm) Constructed Less than One-Half (1/2) Mile from an existing Concentrated Animal Feeding Operation as a Conditional Use.**

Applicants for a Single family dwelling (farm or non-farm) proposed to be constructed less than one-half (1/2) mile from an existing concentrated animal feeding operation may obtain a conditional use permit provided one of the following conditions is met:

1. Applicant obtains a written waiver from the owner/operator of any existing concentrated animal feeding operation which is closer than one-half (1/2) mile from the proposed residential building site.

2. **Applicant files a document consistent with Section 5.29.02 with the Register of Deeds acknowledging the existence of a concentrated animal feeding operation less than one-half mile from the proposed building site at the time of application for a building permit. Exception: This requirement does not apply to lots of record with existing residential development that are destroyed by an act of God (wind, fire, flood) and subsequently are rebuilt.**

### **Section 5.29.02. Acknowledgement of Existing Concentrated Animal Feeding Operation**

The following waiver acknowledgement is to be utilized as required for a conditional use permit in Section 5.29.01 for farm and non-farm residential development in the Agricultural District which is located within one-half (1/2) mile of an existing concentrated animal feeding operation.

Prepared by:

Codington County Zoning Officer (or by Grantor or Grantor's Attorney)  
1910 West Kemp Avenue (or Grantor's or Grantor's Attorney's address)  
Watertown, SD 57201 (or Grantor's or Grantor's Attorney's city)

### **ACKNOWLEDGEMENT OF WAIVER OF SETBACK FROM EXISTING CONCENTRATED ANIMAL FEEDING OPERATION**

The following waiver acknowledgement is to be used when a dwelling (Farm or Non-Farm) is proposed to be constructed within one-half (1/2) mile of an existing Concentrated Animal Feeding Operation. The waiver acknowledgement shall be filed with the Register of Deeds. Grantors are the owner(s) of property applying for the proposed residential development. (See 3.04.03.9.b 3.04.02.41 and 5.29.01.2)

1. Purpose. This waiver acknowledgement is required for any dwelling to be constructed within one-half (1/2) mile of an existing concentrated animal feeding operation as defined by the Codington County Zoning Ordinance.
2. Waiver:

("Grantors") are the owners of real property described as follows:

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In accordance with the conditions set forth in the decision of Codington County, dated \_\_\_\_\_ 20\_\_\_\_\_, approving a plat with a residential dwelling development right or by the issuance of a permit for a residential dwelling either to be located within one-half (1/2) mile of the existing concentrated animal feeding operation located at the following property, \_\_\_\_\_ and in consideration of such approval, Grantors ~~agree to the perpetual non-exclusive easement as follows~~ acknowledge the following:

1. The Grantors, their heirs, successors, and assigns acknowledge that the location of a residential development/dwelling on (legal description) is within one-half (1/2) mile of an existing concentrated animal feeding operation. ~~This easement waives the Grantors, their heirs, successors, and assigns common law rights to object to the existing concentrated animal feeding operation's, located at the above legal description, potential need for a variance from the setback requirements of the Codington County Zoning Ordinance.~~

2. Further, ~~t~~Ihe grantors hereby waive all common law rights to appeal any decision of Codington County Board of Adjustment relating to the issuance of a variance regarding separation setbacks from the existing concentrated animal feeding operation located at above legal description. acknowledge that the construction of this residence will not result in the existing concentrated animal feeding operation becoming a nonconforming use as defined by the Codington County Zoning Ordinance.

IN WITNESS WHEREOF, \_\_\_\_\_, 20\_\_\_\_

Grantors (Print)\_\_\_\_\_

Grantors (Signature) \_\_\_\_\_

STATE OF SOUTH DAKOTA

SS:

COUNTY OF CODINGTON

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_  
(Grantors).

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Section 5.29.03. Waiver of Setback from Existing Concentrated Animal Feeding Operations**

Any Waiver of Setback from Existing Concentrated Animal Feeding Operations recorded as a condition of receiving building permit for a farm or non-farm residence on or before (date of adoption) shall, without action by the Board of Adjustment, or property owner revert to the Acknowledgement of Existing Concentrated Animal Feeding Operation in Section 5.29.02.

**ISSUE #2 Open**

- Wind Energy SystemsRegulations
  - Mr. Dolen of the Punished Woman's Lake Association has requested up to 10 minutes to address concerns and suggestions for Wind Energy Systems Regulations.
- Staff Report

**ISSUE #3 Executive Session**