

Codington County Planning Commission/Board of Adjustment Minutes

January 16, 2018

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on January 16, 2018 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Myron Johnson, Rodney Klatt, Brenda Hanten, Mel Ries, Charles Rossow, Mark O'Neill, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Calvin Mack, Ed Raml, Tyler Wilhelm, and Jamie Gentile.

Chairman Fox announced there will not be a Joint Meeting today. The matter will be re-advertised and brought before the Codington County Board of Adjustment at a future date.

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

Motion by Hanten, second by Rossow, to approve the December 18, 2017 meeting minutes. Motion passed unanimously.

Ries nominated Bob Fox as Chairman of the Board, second by Johnson, casting a unanimous ballot. There were no other nominations. Motion passed unanimously.

Johnson nominated Mark O'Neill as Vice Chairman of the Board, second by Hanten, casting a unanimous ballot. There were no other nominations. Motion passed unanimously.

Motion by Hanten, second by Klatt, to approve the variance request by Calvin Mack, as read and presented by Staff, to expand his existing Concentrated Animal Feeding Operation (CAFO) less than 1,320' from two (2) established neighboring residences. Property is located in SE1/4, Section 23-T117N-R51W, less Harry Mack Addition. Muller reviewed Staff Report whereas discussion included both the Conditional Use Permit request and variance application request made by Mr. Mack. Muller displayed a map identifying the depths of water in a 25 year event. There have been no objections, to date, by the neighboring residences.

Calvin Mack informed the board that he operates a cow/calf and feeder calf operation in which he'd like to expand. He is changing to a deep pit barn for better containment and management ease. He is working with NRCS to reconstruct the outside lots so the runoff goes into the drainage. Mack discussed his plans with existing buildings and lots. There was no one present to speak on these requests. Public hearing was closed. Regarding the lots that will continue to be used, Chairman Fox inquired about whether they are concrete or dirt. Per Mack, there will be a newly constructed cement apron with the remainder being dirt. This is an expansion of an existing operation that does not have any complaints and will improve/upgrade the manure handling capability. Adjoining landowners have been notified of these requests via certified mail. There has been no response or inquiries. Motion on the variance passed unanimously.

Motion by Hanten, second by Ries, to approve the Conditional Use Permit request made by Calvin Mack to expand a Class 4 CAFO to a Class 3 CAFO (total 999 AU), subject to the improvement of manure handling capabilities by an engineered drawing, subject to the NRCS engineer review and doing the plans; and the applicant signing a Letter of Assurance agreeing to the following conditions:

1. The proposed barns and open lots combined will not contain greater than 999 feeder cattle (999 animal units) and will have capacity to provide manure containment for the number of cattle occupying the site for at least 270 days.
2. The applicant agrees to comply with the submitted nutrient management plan, fly and odor management plan, and manure management plan.
3. Applicant shall provide updated information regarding fields included in the nutrient management plans upon request by the Zoning Officer.
4. This Conditional Use Permit authorizes the use of this property for a Concentrated Animal Feeding Operation (Beef/Feeder Cattle) consisting of 999 animal units. Any expansion beyond 999 animal units will require a new conditional use permit and the review of the site by SDDENR for compliance with the State General Permit requirements.
5. Unless otherwise agreed upon by the applicable township, the applicant shall notify the applicable township prior to hauling manure upon any streets maintained by said township or the laying of any pipes intended to transport liquid manure within the township right-of-way.
6. 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 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.
7. The Township and applicant may review and assign new haul routes on an annual basis.
8. The Grantor shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
9. The conditional use 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 adhered to.

10. The Grantor shall sign an affidavit attesting that to the best of his knowledge he does not have any record of environmental violations to be filed with the permit.
11. The Conditional Use Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.
12. If there are 1) Violations of the Conditional Use Permit or other Codington County Zoning regulations or 2) Failure of the manure containment system, the applicant may be required to forfeit the Conditional Use Permit.
13. 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 feeder 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.
14. 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.

If approved, a letter to Mr. Mack will address the board's concerns about pipe size and depth; however, we may want to leave the ultimate decision up to Mack and his engineer.

Chairman Fox read the Findings of Fact. There were no objections. Motion on the Conditional Use Permit passed unanimously.

Motion to adjourn Board of Adjustment made by Hanten, second by Ries.

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

Motion by Klatt, second by Rossow, to recommend approval of the Plat of Boettcher Addition in the SW1/4, Section 21-T118N-R52W. Motion passed unanimously.

Muller would like the board to meet at noon on January 29 to act on two variance requests that were incorrectly noticed for today's meeting as well as an ordinance review session. Dates were also discussed for future ordinance review sessions.

Board Member Hanten left the meeting at 2:04 pm.

Muller recently received a complaint that manure was being spread too close to residences. The manure was being spread on a pasture right up to the fence line. Manure cannot be spread closer than 300' from a house or closer than 25' from a fence line. The homeowner also contacted the State. Muller will continue to follow up on this complaint.

In January of 2016, a permit was issued allowing a homeowner to reside in his camper for up to one year before building a house. As of today's date, he has sealed up the camper and is not residing in the camper nor will he be constructing a home.

Muller provide an update to a junkyard that had started in the county. The junk did not belong to the homeowner. The homeowner has since passed away. The owner of the junk was given until the end of December to clean it up and has not done so. Muller will be working with the States Attorney to determine how to proceed with prosecution.

Chairman Fox indicated that after the last meeting, someone was trying to hand out books regarding wind farms. As a member of this board, it is recommended that if you did receive one, that you do not read it and discard it accordingly. It is considered ex parte communications.

Motion to adjourn made by Johnson, second by Ries. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

**JANUARY 2018  
CODINGTON COUNTY PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**TUESDAY – JANUARY 16, 2018 – 12:30 p.m.**

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1: ELECTION OF OFFICERS**

**ISSUE #2 CONDITIONAL USE AND VARIANCE**

**Applicant/Owner: Calvin Mack**

**Property Description:** SE1/4, Section 23-T117N-R51W, less Harry Mack Addition, Codington County, South Dakota. (Kranzburg Township)

**Request:** Mr. Mack seeks to expand his existing Class 4 CAFO to 900 animal units with a portion of the site less than 1,320 feet from two neighboring residents

**Action Item – Conditional Use – Expansion of Class 4 CAFO not to exceed cumulative total of 999 animal units (3.04.02.8),  
Variance – Suggested Separation from Established Residence (5.21.05.6)**

**Zoning Designation:** Agricultural and Zone C – Shallow Aquifer Protection District

**History/Issue(s):**

**Specifics of Request:**

1. Mr. Mack currently operates a Class 4 Concentrated Animal Feeding Operation on the above property.
2. Currently Mr. Mack maintains approximately 400 head of feeder cattle in an open lot system.
3. A portion of one open-lot is currently located over the shallow aquifer and a manure lagoon is located over the shallow aquifer.
4. Mr. Mack is seeking to improve the management of storm water/wastewater on his site by making the following changes:
  - a. Decrease the size of his open lot(s) including those located over the shallow aquifer to accommodate approximately 200 animal units.
  - b. Install a storm water/wastewater lagoon to capture runoff from open lots and feed storage areas. A portion of the lagoon is located over the shallow aquifer and a portion of the open lot, though decreased in size, will still be situated over the shallow aquifer.
  - c. Removal of one lagoon situated over the shallow aquifer (NW of open lots)
  - d. Construct a deep pit barn (engineered – 50' x 322') to accommodate up to 700 head of beef cattle.
5. Two residences other than Mr. Mack's are located less than 1,320' from the proposed lagoon. Both residences are located approximately 1,200' from the proposed lagoon. They are already located less than 1,320' from the existing open-feedlot.
6. Most common haul routes for the feedlot include 170<sup>th</sup> Street east and west; and 465<sup>th</sup> north and south. The roads are maintained by Kranzburg Township.

**Ordinance and Comprehensive Land Use Plan regarding this request:**

1. 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).
2. The request is to expand from 400 animal units to up to 999 animal units of feeder cattle.
3. Currently approximately 0.5 acres of the existing operation are located over the shallow aquifer. Upon completion of the changes it is anticipated that approximately the same amount of the CAFO will be situated over the shallow aquifer, although the portion over the shallow aquifer will now be engineered to NRCS standards with the purpose of eliminating run-off from any potentially contaminated source.
4. Earthen Lagoons/storage basins as well as expansions of existing Class 4 CAFO's to a Class 3 are allowed as Conditional Uses in Zone B of the aquifer protect district provided borings are performed to determine materials underneath the surface.
  - a. Borings were performed and the engineer is confident in the suitability of the soils for the proposed lagoon.
  - b. The Board of Adjustment has accepted plans which were engineered to accommodate greater than 2x the projected volume of storm/wastewater generated by the site in lieu of any other form of secondary containment. (At the recommendation of East Dakota Watershed Development District in 2015).
5. It should be noted that this proposal is not to a scale large enough to require a State General Permit from SDDENR, and unless the applicant removes all facilities situated over the shallow aquifer, he is not eligible to expand to a level to require a General Permit according to Codrington County Ordinance.
6. The Board shall consider the following in determining whether the proposed CAFO will create a significant contribution of pollution:
  - a. Size of feeding operation and amount of manure reaching waters of the state
    - 1) At its meeting on August 28, 2017, the Board heard from SDDENR – Feedlot permitting that they have had no pollution issues with deep pit barns.
    - 2) All manure from new facilities will be stored under roof and only removed when being hauled to be spread. No outdoor storage with the expansion is proposed.
    - 3) The proposed lagoon for the existing open lot and feed pads are engineered to NRCS standards with the purpose of keeping storm and wastewater from leaving the site.
  - b. Location of feeding operation in relation to waters of the state
    - 1) The proposed lagoon is located approximately 2,000' (as the crow flies) northeast of the nearest blue line.
  - c. Means of conveyance of manure and process wastewater into waters of the state
    - 1) An earthen dam is located on the tributary directly downstream from the lagoon and between the feedlot and blue line.
    - 2) Manure will be trucked or pumped from the proposed new barn which is farther away from the downstream blue line.
  - d. The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the state.
    - 1) The plans are to decrease the amount of animals in open lots and decrease the area which slopes toward the waterway dedicated to open lots, in addition to engineering the lots to handle a minimum 25-year rainfall.
    - 2) Between the existing open lots and the waterway, the land is used entirely for pasture.
7. A nutrient management plan is required.
  - a. Nutrient management plan has been prepared by a licensed Agronomist and submitted.
  - b. Fields in the nutrient management plan are expected to change (per the applicant and based upon the zoning ordinance.)
  - c. The agronomist certifies that the land currently used for spreading is sufficient for spreading the manure generated.

8. A manure management plan is required
  - a. The applicant prepared the manure management plan. It included:
    - 1) A site plan
    - 2) Operation procedures and maintenance of manure facilities for existing and proposed facilities.
    - 3) Verified that no containment is intended to store waste for more than two years
    - 4) Final as-built plans will be submitted to the zoning officer.
    - 5) The manure management for the deep pit barn and lagoon are being designed by licensed engineers.
    - 6) Plans specify manure will not be stored more than 2 years.
    - 7) Plans specify records on manure application will be kept and document that acceptable manure and nutrient management practices have been followed.
9. A Management plan for fly and odor control.
  - a. Completed –
    - 1) Operational plans for manure collection storage, treatment are expected to be updated and implemented
    - 2) Applicant has a composting site for death lost which is screened by trees from adjacent landowners.
    - 3) Existing treebelts surround existing facilities on the north and partly on the west. It would be difficult to plant trees immediately south of the open lots due to topography. No new trees are proposed with the new facilities.
    - 4) Uses feed additives specifically designed to minimize odor generation.
    - 5) Manure and odor plan plans for removing manure from pens.
    - 6) Plans are to decrease the amount of manure stored outdoors.
    - 7) It is the intent to avoid spreading manure on weekends, holidays, and evenings on warm days.
    - 8) It is the intent to avoid spreading on calm and humid days.
10. The site is greater than suggested separation distances for Churches, businesses, commercially zoned areas, Town Districts, Incorporated municipalities, private wells other than the operator's, and lakes and streams classified as fisheries.
11. The lagoon is proposed to be approximately 1,200' from two existing residences. At the time of this report the applicant had not heard back from the affected neighbors regarding their intent to sign a waiver of suggested setback.
  - a. The Board has a history of allowing operations to be less than the suggested setbacks (as outlined in ordinance) where:
    - 1) The producer does not have a history of complaints.
    - 2) The expansion will improve manure handling capabilities; and/or
    - 3) The affected neighbor(s) do not object to the expansion.
12. The existing and proposed facilities meet the minimum setbacks from rights-of-way.
13. The Board has historically accepted proposed setbacks of facilities where they can meet suggested minimums or variances have been issued.
14. Review of Specifications and nutrient management plan by DENR.
  - a. Applicant is required to keep and maintain records of fields to receive manure, utilize adequate acres for the spreading of manure in accordance with state general permit standards, and adhere to minimum manure application setbacks.
15. The zoning office does not have a record of any complaints against the Mack Operation.
16. All information required of the applicant in Section 5.14.9 were provided.
17. Information on soils, shallow aquifers, wellhead protection areas and floodplain (provided)
18. Zoning Officer notified Kranzburg Township of the request.
19. Zoning Officer notified Sioux Rural Water director of the request.

Staff Recommendation

**Variances: Variance to the suggested minimum setback from residences for Class 1 CAFO's:** The board, utilizing one motion could approve, deny or table the variance requests. If approved the Board may use the following findings:

- The county has no history of complaints against the applicant regarding his manure management system.
- Applicant's proposal is certified by an engineer to improve manure management system.

Conditional Use Permit – **Class 4 expanding to a Class 3 CAFO:** The Board may table the request, deny the request or approve the request. If approved, the staff recommends, at a minimum, the following conditions:

15. The proposed barns and open lots combined will not contain greater than 999 feeder cattle (999 animal units) and will have capacity to provide manure containment for the number of cattle occupying the site for at least 270 days.
16. The applicant agrees to comply with the submitted nutrient management plan, fly and odor management plan, and manure management plan.
17. Applicant shall provide updated information regarding fields included in the nutrient management plans upon request by the Zoning Officer.
18. This Conditional Use Permit authorizes the use of this property for a Concentrated Animal Feeding Operation (Beef/Feeder Cattle) consisting of 999 animal units. Any expansion beyond 999 animal units will require a new conditional use permit and the review of the site by SDDENR for compliance with the State General Permit requirements.
19. Unless otherwise agreed upon by the applicable township, the applicant shall notify the applicable township prior to hauling manure upon any streets maintained by said township or the laying of any pipes intended to transport liquid manure within the township right-of-way.
20. 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 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.
21. The Township and applicant may review and assign new haul routes on an annual basis.
22. The Grantor shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
23. The conditional use 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 adhered to.
24. The Grantor shall sign an affidavit attesting that to the best of his knowledge he does not have any record of environmental violations to be filed with the permit.
25. The Conditional Use Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.
26. If there are 1) Violations of the Conditional Use Permit or other Codington County Zoning regulations or 2) Failure of the manure containment system, the applicant may be required to forfeit the Conditional Use Permit.
27. Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
  - (1) 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 feeder operations within forty-five days (45) of notice of revocation.
- (2) 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.
  - (3) 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.
28. 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.

## **CODINGTON COUNTY PLANNING COMMISSION**

### **ISSUE #1 Plat**

**Applicant/Property Owner: Robert and Brenda Boettcher**

**Property Description:** Plat of Boettcher Addition in the Southwest Quarter of Section 21-T118N-R52W of the 5<sup>th</sup> P.M., Codington County, South Dakota. (Sheridan Township)

**Zoning Designation:** C-Commercial

**Request:** Create one 10 acre lot

**Action Item – Recommendation of Plat approval to County Commissioners.**

### **ISSUE #2 Open/Staff Report**