

Codington County Board of County Commissioners/Planning Commission Minutes

April 15, 2019

Chairman Fox convened the Planning Commission. Chairman Johnson convened the Board of County Commissioners. Chairman Fox will guide the meeting until the first reading of the Ordinance.

A joint public meeting with the two boards is being held with regarding to Ordinance #69. Following discussion, a recommendation will be made by the Codington County Planning Commission and there will be a first reading by the Board of County Commissioners. Motion by Klatt, second by Ries, to recommend approval of Ordinance #69 to the Board of County Commissioners. Commissioners present include Brenda Hanten, Myron Johnson, and Lee Gabel. Others present for this portion of the joint meeting included Tyler McElhany and Jim Czech. Muller provided a review of the process involved in the changes/updates suggested in the draft. This draft was published online as well as in a public notice. One email but no calls or letters were received regarding this draft. Jim Czech requested clarification on the 365-day storage of manure. This remains unchanged from the previous ordinance. Muller read John West's email.

Motion by Klatt to amend the requirement for covers only to mitigate smaller setbacks, second by Johnson. Motion on amendment passed unanimously. See "Amendment 1" on attached draft.

Motion by Hanten to change Table 5.21.2 from 2,000-4,999 AU to 2,000-7,499 AU and change 5,000-9,999 AU to 7,500-9,999. Second by Klatt. Motion on this amendment passed 6-1. See "Amendment 2" on attached draft.

Motion by Klatt, second by Ries, to make the following typographical and/or grammatical corrections identified as "Amendment 3" on attached draft.

Motion on Ordinance #69, with the amendments, passed unanimously.

Myron Johnson requested Muller to provide the first reading of Ordinance #69, An ordinance entitled, an ordinance amending Chapter 3.04 Agricultural District of Article III District regulations and Chapter 5.21 Concentrated Animal Feeding Operations (CAFO) of Article V General Provisions of Ordinance 65, 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. A second reading of the Board of County Commissioners regarding Ordinance 69 will take place on April 23. This will not be a public hearing.

Motion by Ries, second by Klatt, to recommend approval of the Plat of Korth Addition in the NE1/4 of NE1/4 of Section 14-T119N-R52W in the Sisseton and Wahpeton Indian

Reservation, Codington County, SD (5 acres). A variance to the minimum lot size had been granted to this property in 2010 as it was previously the site of a school. This plat is a requirement of the variance. Motion passed unanimously.

Motion by Commissioner Hanten, second by Commissioner Gabel, to approve the Plat of Korth Addition. Motion passed unanimously.

Motion to adjourn Board of County Commissioners by Hanten, second by Gabel. Motion passed unanimously. (Planning commission still in session.)

During open session, Muller indicated that Gergen's would like their second house to be considered as farm employee housing which does allow for two residences on one property; however, it has been the board's practice that secondary employee housing consists of mobile homes. This is also written in the Comprehensive Land Use.

Motion to adjourn by Hanten, second by Ries. Motion passed unanimously. Meeting adjourned at 9:16 pm.

Respectfully Submitted,

Becky Goens, Secretary

APRIL 2019

CODINGTON COUNTY PLANNING COMMISSION STAFF REPORT

**CODINGTON COUNTY PLANNING COMMISSION and
CODINGTON COUNTY BOARD OF COUNTY COMMISSIONERS**

ISSUE #1 Ordinance Amendment

Initiated by Planning Commission

Action Item – Recommendation of approval of Ordinance Amending the Zoning Ordinance:

Summary: This is the version of the Concentrated Animal Feeding Regulations, based upon the determination of the Planning Commission and County Commission during work sessions held from April 2017 through March 2019 relating to this matter.

- It should be noted: following the placement of the proposed draft on the website, it was found that no reference is made to a setback from “Township Right-of-Way”. Though inadvertently left off of the draft before these Boards; staff recommends a Motion to amend, to add “Township” to the list of Rights-of-way in Table 5.21.2 Separation Distances.

Ordinance #69

AN ORDINANCE ENTITLED, AN ORDINANCE AMENDING CHAPTER 3.04 AGRICULTURAL DISTRICT OF ARTICLE III DISTRICT REGULATIONS AND CHAPTER 5.21 CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) OF ARTICLE V GENERAL PROVISIONS, OF ORDINANCE 65, 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.

ISSUE #2 PLAT

Applicant/Property Owners: Robert Korth

Property Description: Plat of Korth Addition in the Northeast Quarter of the Northeast Quarter of Section 14-T119N-R52W of the 5th P.M., in the Sisseton and Wahpeton Indian Reservation, Codington County, South Dakota.

Zoning Designation: A-Agricultural District

Request: Plat a 5 acre lot at the site of a nonconforming 1-acre lot of record, granted variance in 2010.

ISSUE #3 OPEN/ADMINISTRATIVE REPORT

ISSUE #4 EXECUTIVE SESSION

Ordinance #69

AN ORDINANCE ENTITLED, AN ORDINANCE AMENDING CHAPTER 3.04 AGRICULTURAL DISTRICT OF ARTICLE III DISTRICT REGULATIONS AND CHAPTER 5.21 CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO) OF ARTICLE V GENERAL PROVISIONS, OF ORDINANCE 65, 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 Section 3.04.01 of Article III District Regulations, adopted by Ordinance #65, March 27, 2017, as amended, of the Zoning Ordinance of Codington County be amended by adding the following terms highlighted in bold and underline font:

Highlighted items in bold and underline font to be added.

Highlighted items in strikethrough font to be removed.

Items for edit (strikethrough/bold and underline font) in green highlight were changed by Planning Commission **Amendment #3** prior to final recommendation and First Reading at the April 15, 2019 Meeting.

Section 3.04.01 Permitted Uses.

1. Agricultural activities and farm related buildings, including **Type Class 54** Concentrated Animal Feeding Operations.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that Section 3.04.02 of Article III District Regulations, adopted by Ordinance #65, March 27, 2017, as amended, of the Zoning Ordinance of Codington County be amended by adding the following terms highlighted in bold and underline font:

Highlighted items in bold and underline font to be added.

Highlighted items in strikethrough font to be removed.

Section 3.04.02 Conditional Uses.

8. Class 1, Class 2, ~~Class 3~~, and Class **34** concentrated animal feeding operations. See Concentrated Animal Feeding Operation, Section 5.~~4421~~.

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that Chapter 5.21 CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS (CAFO's) of Article V General Requirements, adopted by Ordinance #65, March 27, 2017, as amended, of the Zoning Ordinance of Codington County be amended by adding the highlighted items in bold and underline font; and deleting the highlighted items in "strikethrough" font.

Highlighted items in bold and underline font to be added.

Highlighted items in strikethrough font to be removed.

Items for edit (strikethrough/bold and underline font) in green highlight were changed by Planning Commission **Amendment #1** prior to final recommendation and First Reading at the April 15, 2019 Meeting.

Items for edit (strikethrough/bold and underline font) in grey highlight were changed by Planning Commission **Amendment #2** prior to final recommendation and First Reading at the April 15, 2019 Meeting.

Items for edit (strikethrough/bold and underline font) in green highlight were changed by Planning Commission **Amendment #3** prior to final recommendation and First Reading at the April 15, 2019 Meeting.

CHAPTER 5.21 CONCENTRATED ANIMAL FEEDING OPERATION REGULATIONS (CAFOs).

Section 5.21.01 Intent

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of county citizens and the State of South Dakota. ~~However, livestock, poultry, and other animals produce manure which may, where improperly stored, transported, or disposed, negatively affect the County environment. Animal manure must be controlled where it may add to air, surface water, ground water, or land pollution. The following regulations have been adopted to provide protection against pollution caused by manure from domesticated animals.~~ All new and proposed expansions of Concentrated Animal Feeding Operations shall comply with the regulations as outlined herein.

~~It is the intention of the Board of Adjustment in the enforcement of this ordinance that when an operator of an existing Concentrated Animal Feeding Operation applies for a permit to expand to another class level, the standards that apply to the expansion will not be applied to existing structures that were built in compliance with accepted industry standards in existence at the time of the construction of such facilities.~~

Section 5.21.02 Animal Units Equivalent to Animal Species.

Table 5.21.1 shows ~~Animal species and number of a species required to equal 500, 1,000 and 2,000 animal units.~~ **Codington County uses an animal unit equivalency ratio to determine the head count of a specific animal species for the purpose of defining the specific class of a Concentrated Animal Feeding Operation by animal unit. The animal species equivalents are based upon a species' manure production. The standards for determining an animal unit to animal head count equivalency are derived from the Environmental Protection Agency and the State of South Dakota General Permit. Table 5.21.1 details the classes of Concentrated Animal Feeding Operation and the specific animal unit equivalency ratio.** Note that these figures relate to inventory rather than annual production. Other animal species equivalents which are not listed will be based on species' waste production.

TABLE 5.21.1
EQUIVALENT NUMBER OF A SPECIES TO EQUAL:

ANIMAL SPECIES	500 AU	1,000 AU	2,000 AU	ANIMAL UNIT EQUIVALENT SPECIES/AU
Feeder or Slaughter Cattle	500 hd	1,000 hd	2,000 hd	1.0
Mature Dairy Cattle	350 hd	700 hd	1,400 hd	1.43
Calves (up to 400 pounds)	1,250 hd	2,500 hd	5,000 hd	0.4
Finisher Swine (over 55 lbs)	1,250 hd	2,500 hd	5,000 hd	0.4
Nursery Swine (less than 55 lbs)	5,000 hd	10,000 hd	20,000 hd	0.1
Farrow-to-Finish (sows)	135 hd	270 hd	540 hd	3.7
Swine Production Unit (Sows Breeding, Gestating & Farrowing)	1,060 hd	2,130 hd	4,260 hd	0.47
Horses	250 hd	500 hd	1,000 hd	2.0
Sheep	5,000 hd	10,000 hd	20,000 hd	0.1
Turkeys	27,750 hd	55,000 hd	110,000 hd	0.018
Laying Hens and Broilers (continuous overflow watering in facility)	50,000 hd	100,000 hd	200,000 hd	0.01
Laying Hens and Broilers (liquid handling system in confinement facility)	15,150 hd	30,000 hd	60,000 hd	0.033
Ducks	2,500 hd	5,000 hd	10,000 hd	0.2

Table 5.21.1
Number of Animals to Define Classes of
Concentrated Animal Feeding Operations

Animal Species	Class 1 CAFO (Over 2,000 Animal Units)	Class 2 CAFO (1,000-1,999 Animal Units)	Class 3 CAFO (50 to 499 Units¹ - Zone B & C Shallow Aquifer)	Class 4 CAFO (50 to 999 Units)	Animal Unit Equivalency Ratio
	Animal numbers equal to or more than:	Animal numbers equal to:	Animal numbers equal to:	Animal numbers equal to or less than:	
Cattle other than mature dairy cows or veal calves^{2,3}	2,000	1,000 to 1,999	100 to 499	50 to 999	1.0
Mature Dairy Cattle (milked or dry)	1,400	700 to 1,399	70 to 349	35 to 699	1.43
Swine (weighing over 55 lbs.)	5,000	2,500 to 4,999	250 to 1,249	125 to 2,499	0.4
Swine (weighing less than 55 lbs.)	20,000	10,000 to 19,999	1,000 to 4,999	500 to 9,999	0.1
Horses	1,000	500 to 999	50 to 249	25 to 499	2.0
Sheep or lambs	20,000	10,000 to 19,999	1,000 to 4,999	500 to 9,999	0.1
Turkeys	110,000	55,000 to 109,999	5,550 to 27,499	2,775 to 54,999	0.018
Chickens, other than laying hens using other than liquid manure handling system	250,000	125,000 to 249,999	12,500 to 62,499	6,250 to 124,999	.008
Laying hens using other than liquid manure handling system	164,000	82,000 to 163,999	8,200 to 40,999	4,165 to 81,999	.0122
Laying Hens & Broilers using liquid manure handling system	60,000	30,000 to 59,999	3,000 to 14,999	1,500 to 29,999	.0333
Ducks Using liquid manure Handling system	10,000	5,000 to 9,999	500 to 2,999	250 to 4,999	0.2
Ducks using other than liquid manure handling system)	60,000	30,000 to 59,999	3,000 to 14,999	515 to 29,999	.033
Geese	60,000	30,000 to 59,999	3,000 to 14,999	515 to 29,999	.033

1. Only in accordance with Chapter 3.12 Aquifer Protection District.
2. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.
3. Animals are counted individually once they are separated from the mother.

Section 5.21.03 Classes of Concentrated Animal Feeding Operations

A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any twelve (12)-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

For the purpose of these regulations, Concentrated Animal Feeding Operations are divided into the following classes:

<u>ANIMAL UNITS</u>		
Class 1	2,000 or more	
Class 2	1,000 to 1,999	
Class 3	500 to 999	
Class 43	50 to 499	(Potential water pollution hazard <u>Located in Zone A, B, or C of the Aquifer Protection Overlay District</u>)
Class 54	500 to 999	(No pollution hazard)

Section 5.21.04 Concentrated Animal Feeding Operation Permit Requirements.

Owners of Class 1, Class 2, Class 3, and Class 4 Concentrated Animal Feeding Operations are required to complete, **where applicable, a building permit, permitted and/or conditional use permit application whenever any of the following occur as follows:**

1. A new Concentrated Animal Feeding Operation is proposed where one does not exist.
2. An expansion is proposed beyond what a current permit allows. **that exceeds the number of animal units allowed by an existing county-issued permit.**
3. **An cumulative expansion by three hundred (300) animal units, after July 1, 1997, in the number of animal units of an existing concentrated animal feeding operation that does not have a permit without a county-issued permit, that existed prior to January 1, 2019 which would result in the creation of either a Class 1, 2, 3, or 4 concentrated animal feeding operation.**
4. **A change in ownership or transfer of control. In the event there is a change in ownership of a Class 1, 2, 3, or 4 Concentrated Animal Feeding Operation, which has a previously issued county permit, the new owner(s) has thirty (30) days from the date of legal conveyance of ownership in which to apply for a transfer of a previously issued county Concentrated Animal Feeding Operation permit in order to keep said current permit valid. The new owner will be required to abide by the permit requirements, findings of fact and any letter of assurances that were issued under the previously approved permit application(s). If no transfer is completed within thirty (30) days, the new owner will be required to submit a new application for approval.**

5. An existing concentrated animal feeding operation is to be restocked after being idle for five (5) or more years.
6. A signed complaint has been received by the County Zoning Officer and/or South Dakota Department of Environment and Natural Resources and after inspection reveals that the **An unpermitted Concentrated Animal Feeding Operation** that is in violation of either County or State regulations **and does not correct the violation as required by the applicable authority**. Violations of State regulations shall be inspected by State officials.
7. **A change in ownership of any Concentrated Animal Feeding Operation with a pollution related violation documented by the County Zoning Officer or State of South Dakota less than ten (10) years prior to the change in ownership.**

Section 5.21.05 Concentrated Animal Feeding Operation Control Requirements.

1. No Significant Contribution of Pollution Compliance with South Dakota Department of Environment and Natural Resources.

a. In general, no All Concentrated Animal Feeding Operations shall be constructed, located, or operated so as to create a significant contribution of pollution in compliance with the rules and regulations of South Dakota Department of Environment and Natural Resources.

2. State General Permit

a. Classes 1 and 2 Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County permit may be approved conditioned on receiving a State **General Permit**. **The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**

~~Classes 3 and 4 Concentrated Animal Feeding Operations will be required to obtain a State General Permit if the following occur:~~

~~a. If an earthen storage basin or lagoon is used for manure storage, excluding existing operations that are improving waste handling facilities according to Natural Resource Conservation Service standards.~~

~~b. The Board of Adjustment decides conditions require a State permit.~~

b. It shall be at the discretion of the Zoning Officer and/or the Board of Adjustment to require an applicant to submit plans for a Class 3 or Class 4 Concentrated Animal Feeding Operations to be reviewed to determine general compliance with standards adopted for a State General Permit.

3. Nutrient Management Plan.

a. **Class 1, 2, 3, and 4 Concentrated Animal Feeding Operations are required to have a nutrient management plan. The applicant shall develop, maintain, and follow a nutrient management plan to ensure safe disposal of manure and protection of surface and ground water. The South Dakota Department of Environment & Natural Resources must approve the plan prior to land application of any wastes. Due to crop rotation, site changes, and other operational changes, the producer should update the plan annually to reflect the**

~~current operation and crops grown on the application sites. The applicant shall collect, store, and dispose of liquid and solid manure according to recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site are secondary to the proper and safe disposal of the manure.~~ **The applicant shall develop, maintain, and follow a nutrient management plan, per the requirements below, to ensure safe disposal of manure and process wastewater and protection of surface and ground water.**

- b. ~~The Nutrient Management Plan is a conservation system for an animal feeding operation. It describes practices and management activities on how best to utilize manure as a fertilizer resource while protecting surface and ground water. The plan deals specifically with managing the amount, source, placement, and timing of the application of manure nutrients to the land. The use of other nutrient sources (i.e. commercial fertilizer) also must be taken into account when planning manure applications. All nutrient management plans developed must meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standard (590) and all applicable DENR and Codington County Zoning Standards.~~ **New Class 1, 2, 3, and 4 (with more than eight hundred (800) animal units) Concentrated Animal Feeding Operations are required to have a nutrient management plan.**
- c. **Nutrient management plan(s) for Class 1 and Class 2 Concentrated Animal Feeding Operations shall be reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan.**
- d. ~~The plan must comply with County Manure Application Setbacks.~~ **The nutrient management plan(s) for Class 3 and 4 (with more than eight hundred (800) animal units) Concentrated Animal Feeding Operations nutrient management plans shall be developed by a Certified Crop Advisor and meet the current Natural Resources Conservation Service (NRCS) South Dakota Technical Nutrient Management Standards and all other applicable South Dakota Department of Environment & Natural Resources and Codington County regulations.**
- e.e. ~~The applicant must maintain records to show compliance with the~~ **approved nutrient management** plan.
- e.f. ~~Land spreading agreements shall be provided if applicant does not have minimum acreage to apply animal manure.~~ **Documentation of land spreading agreements shall be available upon request by the County.**

4. Manure Management and Operation Plan

- a. ~~New~~ **Classes 1, 2, 3, and 4 (with more than eight hundred (800) animal units) Concentrated Animal Feeding Operations shall submit** ~~are required to have~~ a Manure Management and Operation Plan.

b. The manure management and operation plan for Class 1 and 2 Concentrated Animal Feeding Operations shall be reviewed and approved by the South Dakota Department of Environment & Natural Resources. The issuance of a State General Permit satisfies the county's requirements for an approved manure management plan.

c. Class 3 & 4 (with more than eight hundred (800) animal units) Concentrated Animal Feeding Operations manure management and operation plans shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable DENR and Codington County Zoning regulations.

d. Any field or other site upon which manure is intended to be piled for more than fourteen (14) days shall at a minimum meet the current Natural Resources Conservation Service (NRCS) Standards and all applicable DENR and Codington County Zoning regulations.

a.e. Plan must include:

- i. The location and specifics of proposed animal manure **management** facilities.
- ii. The operation procedures and maintenance of manure **management** facilities.
- iii. Plans and specifications must be prepared or approved by a registered professional engineer, or a Natural Resource Conservation Service (NRCS) engineer. **Waste treatment manure management** facilities will require inspection by an engineer **and as-built plans to be submitted to the County Zoning Officer.**
- iv. Animal manure shall not be stored longer than two **(2)** years.
- v. Manure **management containment structures facilities** shall provide for a minimum design volume of three hundred sixty-five (365) days of storage for 1,000 animal units or more and two hundred forty (240) days of storage for less than one thousand 1,000 animal units. The Board of Adjustment may reduce the number of days of storage if deemed appropriate. **In addition, open outdoor storage shall include minimum storage for direct precipitation and/or runoff from a 25-year, 24-hour storm.**
- vi. ~~Producers shall keep records on manure applications on individual fields which document acceptable manure and nutrient management practices have been followed. These records shall include soils test results for surface two feet of soil, actual and projected crop yields, nutrient analysis of manure, and information about date, rate and method of manure applications for individual fields. **Manure management facilities utilizing methane digesters may receive on and off-site generated manure and/or organic wastes.**~~
- vii. **The applicant will provide information regarding how manure from the Concentrated animal feeding operation site will be transported to fields identified in the nutrient management plan. This may require the need for a haul road agreement and/or the applicable agreement for pipes to cross the right-of-way or private property. Unless otherwise agreed to between the Road Authority and the applicant, at Codington County requires, at a minimum, the applicant to abide by minimum requirements of the adopted findings of facts for the applicable size of operation.**

b.e. As a condition of the permit, **the Zoning Officer and/or the County** Board of Adjustment may require the **producer applicant** to participate in environmental training programs **and become a certified livestock manager.**

5. Management Plan for Fly and Odor Control

a. **New Classes 1, 2, 3, and 4 (with more than eight hundred (800) animal units)**

Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. A management plan is required for submission of a permit. The **Zoning Officer and/or County** Board of Adjustment will review the need for control measures on a site-specific basis **taking into consideration prevailing wind direction and topography.** The following procedures to control flies and odors should be considered in a management control plan.

a.i. Operational plans for manure collection, storage treatment and how said plans **and use must be kept will be** updated and implemented.

b.ii. Methods to be utilized to dispose of dead animals **should shall** be included **in the management plan.**

c.iii. ~~Plant trees and shrubs to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons.~~ **Location of existing and proposed tree/shrub plantings.**

b. **The County recommends the following Best Management Practices in the development of a fly and odor control management plan:**

d.i. Provide adequate slope and drainage to remove surface water from pens and keep pen area dry so odor production is minimized.

e.ii. Store solid manure in containment areas having good drainage to minimize odor production.

f.iii. Remove manure from open pens as frequently as possible to minimize odor production.

h.iv. Avoid spreading manure on weekends, holidays and evenings during warm season when neighbors may be involved in outdoor recreation activities.

i.v. Avoid spreading during calm and humid days, since these conditions restrict the dispersion and dilution of odors.

c. **To assist in mitigating odors for operations which do not meet the suggested setbacks, the County may require any or all of the following:**

g.i. ~~consider~~ **Use** of covers on open storage systems for liquid manure systems to reduce odor production.

ii. The use of bio-filters or other proven odor mitigation technologies on enclosed concentrated animal feeding operation barns/structures to reduce odor production.

6. Suggested setbacks and separation distance for new **class 1, 2, 3, and 4** concentrated

animal feeding operations and those existing, non-permitted concentrated animal feeding operations expanding by 300 or More Animal Units after July 1, 1997 into a Class 1 or 2 Concentrated Animal Feeding Operations after January 1, 2019. See Table 5.21.2.

SUGGESTED MINIMUMS

	CLASS 1	CLASS 2	CLASS 3	CLASS 4 & 5
Established Residences	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Churches, Businesses and Commercially Zoned Areas, Town Districts	2,640 feet	2,640 feet	1,320 feet	1,320 feet
Incorporated Municipality Limits	5,280 feet plus 440 feet for each additional 1,000 AU over 2,000	5,280 feet	2,640 feet	1,320 feet
Private Wells other than the operator	2,640 feet	1,760 feet	1,320 feet	1,320 feet
Lakes and Streams classified as Fisheries as identified by the State	500 feet	500 feet	200 feet	200 feet
Federal, State & County				
Road ROW				
Confinement	300 feet	300 feet	200 feet	200 feet
Open Lot	150 feet	150 feet	150 feet	150 feet
Township Road ROW				
Confinement	150 feet	150 feet	150 feet	150 feet
Open Lot	150 feet	150 feet	150 feet	150 feet

Table 5.21.2
Suggested Minimum Separation Distances and Setbacks^{1, 4}

	Number of Animal Units	Less than 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to 4,999 Animal Units	7,500 to 9,999 Animal Units	Over 10,000 Animal Units	
SEPARATION DISTANCES	Established Residences^{2,3}	1,320 feet	1,760 feet	2,640 feet	3,960 feet	5,280 feet	
	Churches, Businesses and Commercially Zoned Areas³	1,320 feet	1,760 feet	2,640 feet	3,960 feet	5,280 feet	
	Incorporated Municipality Limits³	2,640 feet	5,280 feet	5,280 feet plus 440 feet for each additional 1,000 animal units over 2,000 animal units	6,600-7,480 feet plus 440 feet for each additional 1,000 animal units over 75,000 animal units	8,800 feet plus 440 feet for each additional 1,000 animal units over 10,000 animal units	
	Federal, State, Township & County Road ROW						
	Confinement	200 feet	300 feet	300 feet	300 feet	300 feet	300 feet
	Open Lot	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
SETBACKS	Established Private Water Well^{5,6}	1,320 feet	1,760 feet	2,640 feet	2,640 feet	2,640 feet	
	Existing Public Water Well	1,320 feet	1,760 feet	2,640 feet	2,640 feet	2,640 feet	
	Lakes and Streams classified as Fisheries as identified by the State	200 feet	500 feet	500 feet	500 feet	500 feet	

¹ Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the suggested minimum setback required for each operation if said operations were treated as individual operations.

² Established residences do not include any residence established after July 1, 1997 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.

³ The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application.

⁴ The Board of Adjustment may utilize Section 5.21.05.7 to increase or decrease the required setback.

⁵ Established private water wells refer to wells used as a source of potable water for human consumption one (1) year prior to application date for the proposed CAFO.

⁶ Setback does not apply to the wells of the CAFO operator.

7. **Exceptions/Exemptions to Separation and/or Setback Distance Requirements, Variance Still Required**

a. **A concentrated animal feeding operation that satisfies any of the criteria below shall be exempt from the applicable separation or setback distance with no variance required by the Board of Adjustment.**

b. **A Concentrated Animal Feeding Operation which is expanded or constructed less than the suggested setback from a right-of-way (ROW) provided approval of the applicable road authority is submitted to the zoning officer prior to issuance of any applicable building permits or stocking of the Concentrated Animal Feeding Operation if no building permits are required. County Highway Department (County right-of-way), Township Board of Supervisors (Township right-of-way), or State Department of Transportation (state right-of-way) are authorized to provide approval on behalf of the respective road authority. Other entities may provide approval on behalf of the listed entities if documentation of their authority to grant such approval is submitted.**

c. **All Concentrated Animal Feeding Operations in operation prior to January 1, 2019 which do not comply with the suggested minimum setback/separation requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from suggested separation distance:**

i. **Example 1: A Class 4 CAFO expands to a Class 1 or 2 CAFO.**

ii. **Example 2: A Class 2 CAFO expands to a Class 1 CAFO.**

iii. **Example 3: A Class 1 CAFO expands by 10% of the number of animal units**

Provided, that the expansion does not further encroach the setback/separation distance existing on January 1, 2019. See Figure 5.21.1.

d. **A Concentrated Animal Feeding Operation which is expanded or constructed, if the title holder of the land benefitting from the distance separation requirement executes a written waiver with the title holder of the land where the Concentrated Animal Feeding Operation is located, under such terms and conditions which the parties may negotiate. The title holder of the land benefitting from the distance separation requirement is the residence, commercial enterprise, individual or individuals, governmental entity, religious institution, or educational institution from which separation is required. The waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.**

e. **A Concentrated Animal Feeding Operation which is constructed or expanded closer than the suggested setback/separation distance from the corporate limits of a community that does not have an established Joint City/County Jurisdiction Zoning Ordinance, if the incorporated community approves a written waiver.**

f. **A Concentrated Animal Feeding Operation which existed prior to the creation of a residence, educational institution, commercial enterprise, religious institution, incorporated community, if the residence, educational institution, commercial enterprise or religious institution was constructed or expanded or the boundaries of the incorporated community were expanded, after the date that the concentrated**

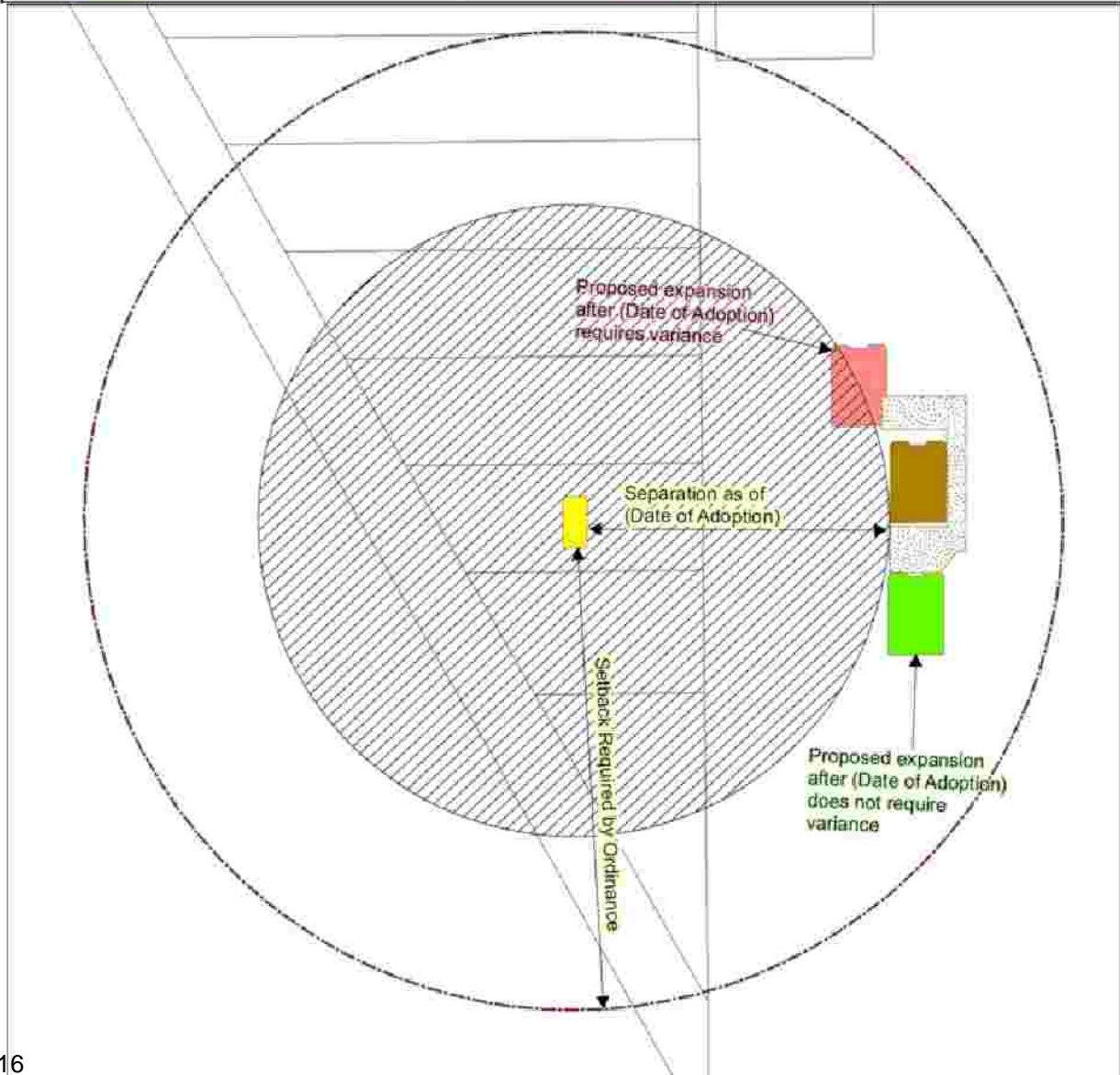
animal feeding operation was established. The date that the Concentrated Animal feeding Operation was established is the date on which the Concentrated Animal Feeding Operation commenced operating. A change in ownership or expansion shall not change the date of operation.

g. Any Concentrated Animal Feeding Operation in operation as of January 1, 2019 which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided, that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 5.21.1.

FIGURE 5.21.1

Suggested Setback vs Existing Separation Distance

- | | |
|--|--|
|  Lots |  House Existing at time of expansion |
|  Required Setback |  Open Lot Existing as of (Date of Adoption) |
|  Separation as of (Date of Adoption) |  Proposed Expansion - ALLOWED |
|  Barn Existing as of (Date of Adoption) |  Proposed expansion - NOT ALLOWED |



8. Additional Setback and Separation Distance Requirements for Class 1, 2, 3, and 4 Concentrated Animal Feeding Operations.

Each application for a new or expanded Concentrated Animal Feeding Operation (CAFO) will be reviewed by the Board of Adjustment on a site-specific basis. The Board of Adjustment reserves the right to increase or decrease the minimum **required suggested** setbacks and separation distance on a site-specific review, based on one (1) or more of the following considerations.

a. Considerations to Decrease Suggested Setbacks and Separation Distances

- i. ~~An existing Concentrated Animal Feeding Operation proposes to expand but does not meet suggested setback or separation distances, the Board of Adjustment may reduce suggested setbacks and separation distances after review of past management practices and proposed improvements to waste handling facilities. **The Board of Adjustment may reduce suggested minimum setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:**~~
 - a) **The South Dakota Odor Footprint Tool or other comparable instrument accepted by the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation suggestions.**
 - b) Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used.**
 - (1) Due to the type of **manure** handling and management of the CAFO little or no impact on adjacent property is expected. **The use of Bio-filters, neoprene lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of suggested setbacks and separation distances.**
 - (2) Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected.
 - (3) **By limiting the proposed expansion to specific number of animal units** no adverse impacts are expected.
- ii. ~~A new Concentrated Animal Feeding Operation is proposed which, because of the waste handling facilities, would not require conformance with suggested setback and separation distances as outlined herein.~~

b. Considerations to Increase Suggested Setbacks and Separation Distances

- i. **Existing Concentration** - A concentration of CAFOs in the area exists or would occur which may pose an air or water quality concern. **A Concentrated Animal Feeding Operation of two thousand (2,000) or more animal units is proposed to be located in an area where a concentration of three thousand (3,000) animal units currently exists within one (1) mile of the proposed Concentrated Animal Feeding Operation site.**

In the event the Board determines that a concentration of animal units already exists and an increase in animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint Tool or other instrument accepted by the Board of Adjustment to determine the need to increase setback and/or separation suggestions.

- ii. Due to topography and prevailing wind direction, **and/or concentration of animal units,** additional setback and separation distance is appropriate to safeguard air or water quality. **The South Dakota Odor Footprint Tool or other instrument accepted by the Board of Adjustment may be utilized to determine the need to increase setback and/or separation suggestions.**
- iii. **Siting of A a** Concentrated Animal Feeding Operation is in excess of 5,000 animal units.

In the event the Board determines that the siting of a Concentrated Animal Feeding Operation, where one did not previously exist, with more than five thousand (5,000) animal units may pose air or water quality concerns, the Board may utilize the South Dakota Odor Footprint or other instrument accepted by the Board of Adjustment to determine the need to increase setback and/or separation suggestions.

- iv. **Review of past management practices and proposed improvements to manure handling facilities.**

7.9. Manure Application Setbacks

- a. The **County** Board of Adjustment may require liquid manure to be incorporated or injected in order to minimize air and water quality impacts.
- b. Requests for application of liquid manure by means of irrigation will be reviewed by the Board of Adjustment on a site-specific basis. Impact on air and water quality will be taken into consideration.
- c. **Any manure which is piled or stored on a field for fourteen (14) or less days shall be stored in locations which comply with Table 5.21.3.**
- d. **Table 5.21.3 provides the** following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

Table 5.21.3**COUNTY MANURE APPLICATION SETBACKS**

CATEGORY	SURFACE APPLIED	INCORPORATED OR INJECTED
Lakes, Rivers and Streams Classified as Fisheries	300 feet*	100 feet* (lake) 50 feet (river & stream)
Streams and Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation) from right-of-way	10 feet from right-of-way
Area of 10 or More Residences	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Established Private Water Well	250 feet	250 feet
A Residence Other Than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Manmade Surface Drainage	200 feet*	50 feet

*Or as prescribed within the South Dakota General Permit for Manure Application on Saturated, Snow Covered, or Frozen Soil

8.10. Standards for Conditional Uses

- a. The County Board of Adjustment may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- b. The County Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Board of Adjustment considers necessary to protect the public health, safety and welfare.
- c. 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.
- d. When considering an application, the County Board of Adjustment will take into consideration current and past violations **documented by the Environmental Protection Agency, the South Dakota Department of Environment and Natural Resources, or similar applicable agency in other states**, relating to Concentrated Animal Feeding Operations that the applicant has **or had** an interest in.
- e. **Conditional Use** permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. The letter of assurances will be prepared by the zoning officer **and/or Board of Adjustment** and signed by both the applicant and the zoning officer **Board of Adjustment's designee**. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and letter of assurances. Any violation of the regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. **If a violation of these regulations or non-compliance with the letter of assurance occurs, p**ermit applicants will be notified by registered mail and a hearing before the board of adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked, and the permit

holder ordered to cease operations.

9.11. Information Required for Class 1 and 2 Concentrated Animal Feeding Operation Permit Suggested Minimum Application Information.

- a. Owner(s)/Applicant(s) name, address and telephone number.
- b. Legal descriptions of site and site plan.
- c. Number and type of animals.
- d. **Preliminary** Nutrient management plan, **if required**.
- e. **Preliminary** Manure management and operation plan, **if required**.
- f. **Preliminary** Management plan for fly and odor control.
- g. Information on ability to meet suggested setbacks and separation distances **including site plan to scale**.
- h. **As a condition of approval of any Concentrated Animal Feeding Operation over 1,000 animal units or as determined by the Board of Adjustment, the documentation of an approved General Permit from the South Dakota Department of Environment & Natural Resources for animal species is required. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.**
- i. ~~Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources.~~
- j. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.
- k. ~~Notification~~ **Documentation of notice to** of whoever maintains the access road (township, county and state). ~~Notification of~~ **and** public water supply officials.
- l. Any other information as contained in the application and requested by the County Zoning Officer.

10. Information Required for Class 3 and 4 Concentrated Animal Feeding Operation Permit.

- ~~a. Owner's name, address and telephone number.~~
- ~~b. Legal descriptions of site and site plan.~~
- ~~c. Number and type of animals.~~
- ~~d. Nutrient management plan.~~
- ~~e. Manure management and operation plan.~~
- ~~f. Management plan for fly and odor control.~~

- ~~g. Information on ability to meet suggested setbacks and separation distance, including site plan to scale.~~
- ~~h. Review of plans and specifications and nutrient management plan by the South Dakota Department of Environment & Natural Resources if using lagoon or earthen storage basin.~~
- ~~i. Information on soils, shallow aquifers, designated wellhead protection areas, and 100-year floodplain designation.~~
- ~~j. Notification of whoever maintains the access road (township, county and state). Notification of public water supply officials.~~
- ~~k. Any other information as contained in the application and requested by the County Zoning Officer.~~

Passed and adopted this 23rd day of April, 2019.

Chairperson

Auditor

This ordinance shall become effective 20 days after the last publication of this notice.

Dated this __ day of ____, 20__
Auditor, Codington County, South Dakota