

Codington County Planning Commission/Board of Adjustment Minutes

September 21, 2020

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on September 21, 2020 via teleconference. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Charles Rossow, Brenda Hanten, Mel Ries, Mark O'Neill, Rodney Klatt, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Tom Henning, Liz Nutsch, Lee Gabel, Brian Friedrichsen, Joe Caster, Jeff Popham, Tracy Popham, Jeff DeVille, Alex Kahnke, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 7:35 pm.

Motion by Hanten, second by Ries, to approve the August 17, 2020 meeting minutes. Motion passed unanimously.

Motion by Johnson to approve the agenda, second by Ries. Motion passed unanimously.

Motion by Hanten, second by Rossow, to recess as the Planning Commission and convene as Board of Adjustment. Motion passed unanimously.

Motion by Hanten, second by Rossow, to approve two variance requests by Gary and Dawn Hamann. They are seeking an existing farmstead exemption and minimum lot width variances on property located in W585' S686' SE1/4 less Lot H1 and less Highway ROW, Section 18-T119N-R51W. Muller reviewed Staff Report (attached). A call from adjoining landowner, Leo Kannas, was received stating his support of the variances. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Board member Rodney Klatt recused himself from Jeff Popham's Conditional Use Permit request for a Class 1 Concentrated Animal Feeding Operation.

Motion by Johnson, second by Rossow, to approve the Conditional Use Permit request subject to conditions listed in Staff Report (attached). Said conditions include:

(1) ***Effective Date and Transferability:***

- a. This permit shall authorize up to 10,000 feeder cattle (10,000 animal units) on this site.
- b. Though construction may occur prior to approval of a General Water Pollution Control Permit for Concentrated Animal Feeding Operations (State General Permit) by the South Dakota Department of Environment and Natural Resources (SDDENR), the site may only be stocked in accordance the applicable State General Permit.
- c. The Conditional Use permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.

- d. 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.

(2) General Requirements:

- a. Applicant shall provide updated nutrient and manure management plans information regarding fields included in the nutrient management plans upon request by the Board of Adjustment.
- b. The Grantor shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
- c. 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.

(3) Haul Road Agreements:

- a. Haul road agreements with Codington County shall be provided for the use of approximately 2 miles of 168th Street from its intersection with 442nd Ave to the site as the primary haul route. Secondary haul routes are identified in the preliminary haul route map (incorporated and included here by reference). Primary and secondary haul routes may change if the terms of maintenance meet this section and/or are agreed to with the applicable road authority. Unless otherwise agreed to between the township and the applicant, Codington County requires the Grantor to abide by the following terms to be included in the Agreements:
 - 1) Unless otherwise agreed upon between the grantor and the applicable road authority, the grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the above described portion of 168th Street for the hauling of manure, feed, animals etc. for the operation, which are hereby designated as the primary haul roads, and
 - 2) Unless otherwise agreed upon between the grantor and the applicable road authority, all road work whether customary or extraordinary shall be done under the authority and supervision of the applicable road authority and meet its specifications. The work shall be done through the applicable contractor unless

the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.

- 3) The applicable road authority shall be responsible for all ordinary snow removal on the above described portion of 168th Street on the same basis as provided to the remainder of the county. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - 4) 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 rights-of-way due to the result of the Grantor's operations (i.e. Delivery of feed, 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.
 - 5) The Grantor may have an Agreement with a contractor for hauling manure and shall notify the road authorities in advance of utilizing any roads other than the hereinbefore described portion of 168th Street as a Primary Haul route or for manure hauling by listing the roads that will be traveled.
 - 6) Unless otherwise agreed upon by the applicable road authority, the applicant shall at a minimum agree to the terms contained in 3.a of this agreement for any other roads utilized as primary or secondary haul roads as referenced in 3.a.5 above.
 - 7) The applicable road authority and applicant may review and assign new haul routes as determined necessary by either party.
- b. In the event the haul road agreements hereinbefore described are not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "3" are to be deemed a covenant running with the above-described property and shall suffice as the "Haul Road Agreement" referenced in Item "3." Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "3."

(4) Violations

- a. 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 in accordance with the procedure(s) of Item "4.b" below.

- b. 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, permit 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.

Muller reviewed Staff Report, Site Specifics/History. Muller displayed site photos during the presentation. Brian Friedrichsen of Dakota Environmental spoke on behalf of the applicant. He is the engineer designing the containment system. Adjoining landowner, Tom Henning, supports the request but does have concerns regarding road conditions and Haul Road Agreements. With this large number of cattle, there will be a lot of feed trucks and manure trucks and wants to be sure the county is prepared for the large volume of traffic. In reference to questions regarding access to 168th Street, Muller explained that access location and width is determined by the Highway Superintendent, unless otherwise specified by the Board. The Board agreed to support any future highway superintendent determination should the need to remove one of the access points or narrow an approach is made. No one else was present to speak on this request. Public hearing closed. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Johnson, second by Ries, to recess the Board of Adjustment and reconvene as Planning Commission. Motion passed unanimously.

Motion by Rossow, second by Klatt, to recommend approval to the Board of County Commissioners the Plat of Carlson's Second Addition in the NE1/4 of Section 6-T117N-R53W. Motion passed unanimously.

Motion by Hanten, second by Ries, to reconvene jointly the Board of Adjustment and Planning Commission. Motion passed unanimously.

Muller advised the Board of some nuisance issues in the county.

Motion to adjourn by Johnson, second by O'Neill. Motion passed unanimously. Meeting adjourned at 9:12 pm.

Respectfully Submitted,

Becky Goens, Secretary

**SEPTEMBER 2020
CODINGTON COUNTY
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT**

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 (2) VARIANCES

Applicant/Owner: Gary and Dawn Hamann

Property Description: W585' S686' SE1/4 Less Lot H1 & Less HWY ROW in Section 18-T119N-R51W, Codington County, South Dakota. (Leola Township)

Action Items – Variances – Existing farmstead exemption/minimum lot area (3.04.03.7.b), Minimum lot width (3.04.03.2).

Zoning Designation: Agricultural

Request: The applicant seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), to retain building rights on property with an existing farmstead.

History/Issue(s):

1. The Hamann's have owned this property for over 20 years. It was split from the surrounding farmland before that, but after 1976.
2. The applicant seeks to retain building rights at the site of the existing farmstead located on the above property.
3. The property was used as a base for farming operations prior to October 1976.
4. Codington County's Zoning Ordinance does allow for variance from the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead which contains at least five acres and thereby affording building rights.
5. The parcel contains an existing farmstead as defined by the Zoning Ordinance.
6. Based upon the Comprehensive Land Use Plan, since this lot was created prior to 2004, it is not necessary to require a Plat of the lot
7. **Staff recommendation (Variance) –Existing Farmstead Exemption and variance to Minimum Lot Width-** Approve request because 1) The lot does contain at least five acres which meets the terms of the Ordinance. 2) The Zoning Officer/Board of Adjustment after review of anecdotal information, records and site-visit has determined that this parcel is under contiguous ownership of an existing farmstead/residential site prior to October 26, 1976. Since the building site has been split in a manner described in the Comprehensive Land Use Plan, there is no requirement to plat the property unless it is further subdivided.

ISSUE #2 CONDITIONAL USE

Applicant/Owner: TJ Farms, LLC (by Jeff Popham)

Property Description: SE1/4 and the W1/2 of the SW1/4 of Section 9-T117N-R54W, Codington County, South Dakota. (Richland Township)

Request: The applicant seeks to expand an existing Class 4 CAFO to allow up to 10,000 AU (approximately 10,000 beef feeder cattle) in open lots as a Class 1 CAFO.

Lat/Long (Existing Approach): 44.948983°; - 97.32208°

Action Item – Conditional Use - Class 1 CAFO (2.04.04.10)

Zoning Designation: Agricultural

History/Issue(s):

Site Specifics/History:

1. Jeff Popham has owned and operated a concentrated animal feeding operation at this site for several years.
2. He commercially feeds cattle. In the past when questioned he noted that feeding of any animals rarely, if ever lasted as long as 45 days; therefore a conditional use permit was not necessary despite confining significantly more than 1,000 head at some times.
3. In 2018, Mr. Popham was notified that manure was spread in a manner that did not meet county manure application setbacks. He removed the manure upon notification, and notified the office he would begin working on engineering for a conditional use application and state general permit.
4. This application requests up to 10,000 feeder cattle (10,000 au) to be housed in open lots on site. Further;
 - a. 3 large open lots (2 with center runs for feeding/maintenance)
 - i. East lots approximately 12 acres
 - ii. Middle lots approximately 7 acres
 - iii. West Lots approximately 9 acres
 - b. All lots are surrounded on at least 2 sides by shelterbelts
 - c. Sediment basins are located in the northeast corner of the east lots; the northeast corner of the west lot and the west side of the west lot to catch stormwater and manure runoff.
 - d. Numerous diversion berms and pipes are placed to divert water to the sediment basins.
5. All lots are located greater than 150' from 168th Street. The closest point of the west lots and berm are located on the Horseshoe Lake Road right-of-way line.
 - a. The applicant provided a letter of support for the location of the lots and berm from Richland Township (road authority) with the application.
6. One residence is located less than one mile from the site.
 - a. The applicant provided a letter of support for the location and number of animals from the owner of the affected established residence.
7. Haul routes for feed and animals are not expected to significantly change. The nutrient management plan calls for spreading on many fields currently used by the operation with agreements to spread on additional fields as well. Operation will not expand if it does not have sufficient acreage to spread manure (state and county requirements.) A preliminary map of haul routes is provided below for reference:
- 8.



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 allow for an expansion to hold up to 10,000 feeder cattle (10,000 animal units) on a *grandfathered* site which would be allowed up to 999 animal units without additional permittng. *Ref: 5.21.04*
3. None of the operation is located over the shallow aquifer. *Ref: 5.21.03*
4. Most lots have been constructed in the past, but engineering and additional drainage improvements are expected to be required in order to obtain a state general permit and to ensure the site does not violate DENR rules. *Ref: 5.21.05.1; 5.21.05.2.*
5. The applicant has completed a nutrient management plan. Though not required by ordinance, the applicant has supplied a detailed Nutrient Management Plan (NMP) with the application. Approval of the permit by the county would be subject to approval of the NMP by SDDENR. The NMP provided land spreading agreements for land not owned by the applicant. Land to receive manure is expected to change over the life of the permit/CAFO. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan. *Ref 5.21.05.3*
6. The applicant has completed a manure management plan. Approval of the permit by the county would be subject to approval of the manure management plan by SDDENR. The issuance of a State General Permit satisfies the county's requirements for an approved manure management plan. *Ref 5.21.05.4*
 - a. The plan included location and specifics of manure management facilities (described in part above). *Ref 5.21.05.4.e.i*
 - b. Appendix E included preliminary Operation and Maintenance information for the manure management plan. *Ref 5.21.05.4.e.ii*
 - c. The entire application was prepared by a registered professional engineer. *Ref 5.21.05.4.e.iii*

- d. Plans specify that manure will not be stored longer than 2 years and that minimum design volumes are intended to hold 365 days of storage and hold a minimum of a 25-year runoff event. (Calculations included) *Ref 5.21.05.4.e.iv and Ref 5.21.05.4.e.v*
 - e. Applicant provided proposed haul route map indicating that manure is planned to be hauled in trucks on roads in multiple townships. *Ref 5.21.05.4.e.vi*
7. A fly and odor control plan was included with the application. In included:
 - a. Best Management Practices recommended by Codington County Zoning Ordinance *Ref 5.21.05.5.b*
 - b. Dead animals will be disposed of by utilizing a rendering service. *Ref 5.21.05.5.a.ii*
 - c. Operational plans for manure collection, storage treatment and how plans will be updated/implemented were included. *Ref 5.21.05.5.a.i*
 - d. The application included site plans and description of existing tree plantings in reference to this site/project. No new tree plantings are proposed beyond maintenance and potential extension of existing tree belts surrounding the open lots/site. *Ref 5.21.05.5.a.iii*
 - e. Use of open storage systems nor bio-filters is proposed for this site despite not meeting suggested setbacks. Applicant received written consent of the only neighbor located less than the suggested setback distance from the site based upon the current proposal (without the items referenced in this section.) *Ref 5.21.05.5.c*
 8. The site is greater than suggested separation distances for churches, businesses, commercially zoned areas, Incorporated municipalities, and 168th Street Right-of-way. known private wells other than the operator's, and lakes and streams classified as fisheries. *Ref: Table 5.21.2*
 9. The proposed facility does not meet the suggested separation distance from Horseshoe Lake Road right-of-way. *Ref: Table 5.21-2*
 - a. The applicant submitted a letter from Richland Township Board waiving the setback to allow for the retention pond to be located up to the right-of-way boundary. *Ref: 5.21.05.7.b (exemption to Separation Distances).*
 - b. Any right-of-way for which approval of the location less than the suggested separation distance by the road authority is submitted with the application is exempt from the suggested separation distance. (No variance is necessary.) *5.21.05.7.a*
 10. The proposed facility does not meet the suggested separation distance from Gary and Douglas Wishard's residence. *Ref: Table 5.21-2*
 - a. The applicant submitted a letter by Richard and Douglas Wishard waiving the setback to the nearest point of the operation to be less than one mile from their residence (at the proposed location on the condition it not move nearer to their house.) *Ref: 5.21.05.7.d (exemption to Separation Distances).*
 - b. Any residence for which approval of the location less than the suggested separation distance by the owner is submitted with the application is exempt from the suggested separation distance. (No variance is necessary.) *5.21.05.7.a*
 11. The proposed structure will meet setbacks for interior property lines (side and rear).
 12. The zoning officer was made aware during review of this application that the state is currently investigating a complaint made on this operation regarding the number of animals (needing a state general permit) and potential for pollution running off the site. DENR is unable to comment further during its investigation.
 13. All information required of the applicant in Section 5.21.05.11 were provided.
 14. Information on soils, shallow aquifers, wellhead protection areas and floodplain (provided)
 15. The applicant notified rural water provider.
 16. Staff notified the County Highway office. (168th Street)

Staff Recommendation

Conditional Use Permit – **Class A CAFO**: The Board may postpone the request, deny the request or approve the request. If approved, the staff recommends, at a minimum, the following conditions:

(5) **Effective Date and Transferability:**

- a. This permit shall authorize up to 10,000 feeder cattle (10,000 animal units) on this site.
- b. Though construction may occur prior to approval of a General Water Pollution Control Permit for Concentrated Animal Feeding Operations (State General Permit) by the South Dakota Department of Environment and Natural Resources (SDDENR), the site may only be stocked in accordance the applicable State General Permit.
- c. The Conditional Use permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.
- d. 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.

(6) **General Requirements:**

- a. Applicant shall provide updated nutrient and manure management plans information regarding fields included in the nutrient management plans upon request by the Board of Adjustment.
- b. The Grantor shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
- c. 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.

(7) **Haul Road Agreements:**

- a. Haul road agreements with Codington County shall be provided for the use of approximately 2 miles of 168th Street from its intersection with 442nd Ave to the site as the primary haul route. Secondary haul routes are identified in the preliminary haul route map (incorporated and included here by reference). Primary and secondary haul routes may change if the terms of maintenance meet this section and/or are agreed to with the applicable road authority. Unless otherwise agreed to between the township and the applicant, Codington County requires the Grantor to abide by the following terms to be included in the Agreements:

- 8) Unless otherwise agreed upon between the grantor and the applicable road authority, the grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the above described portion of 168th Street for the hauling of manure, feed, animals etc. for the operation, which are hereby designated as the primary haul roads, and
- 9) Unless otherwise agreed upon between the grantor and the applicable road authority, all road work whether customary or extraordinary shall be done under the authority and supervision of the applicable road authority and meet its

specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.

- 10) The applicable road authority shall be responsible for all ordinary snow removal on the above described portion of 168th Street on the same basis as provided to the remainder of the county. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - 11) 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 rights-of-way due to the result of the Grantor's operations (i.e. Delivery of feed, 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.
 - 12) The Grantor may have an Agreement with a contractor for hauling manure and shall notify the road authorities in advance of utilizing any roads other than the hereinbefore described portion of 168th Street as a Primary Haul route or for manure hauling by listing the roads that will be traveled.
 - 13) Unless otherwise agreed upon by the applicable road authority, the applicant shall at a minimum agree to the terms contained in 3.a of this agreement for any other roads utilized as primary or secondary haul roads as referenced in 3.a.5 above.
 - 14) The applicable road authority and applicant may review and assign new haul routes as determined necessary by either party.
- b. In the event the haul road agreements hereinbefore described are not executed, the grantor, his heirs, assigns or successors in interest of the Grantor agree that all of the terms and conditions of Item "3" are to be deemed a covenant running with the above-described property and shall suffice as the "Haul Road Agreement" referenced in Item "3." Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "3."

(8) Violations

- a. 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 in accordance with the procedure(s) of Item "4.b" below.
- b. 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, permit 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.

CODINGTON COUNTY PLANNING COMMISSION

ITEM #1 PLAT

Applicant/Owner: Kari Carlson

Property Description: Carlson's Second Addition in the Northeast Quarter of Section 6, Township 117 North, Range 53 West of the 5th Prime Meridian, Codington County, South Dakota. (Lake Township)

Action Items – Plat approval.

Zoning Designation: Agricultural

Request: Applicants seek to consolidate (3) 40 acre lots into; one 86-acre lot and one 40-acre lot.

ISSUE #3 OPEN/ADMINISTRATIVE REPORT

Staff has numerous enforcement actions to update the Board on.

ISSUE #4 EXECUTIVE SESSION (if Necessary)