

County Planning Board of Adjustment Minutes

October 16, 2023

The Codington County Board of Adjustment met for their monthly meeting on October 16, 2023 at the Codington County Extension Complex. Members of the Board of Adjustment present were Mark O'Neill, Myron Johnson, Alex Kahnke, Brenda Hanten, Mel Ries, Calvin Mack, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer). Absent: Rodney Klatt.

Others present: Larry Helle, John Moes, Bob Fox, Sara Dallman, Kevin Traffie, Kaylynn Traffie, Maurice Struckman, Brandt Waliezer, Jeff Popham, Tracy Popham, Mitch Koehn, Reid Kulla, Angelica Kulla, Marietta Lakness, Merlin Heathcote, Brian Friedrichsen, and Becky Goens.

Chair Hanten brought the meeting to order at 7:32 pm.

Motion by Johnson, second by Ries, to approve the September 18, 2023 meeting minutes. Motion passed unanimously.

Motion by Ries, second by O'Neill, to approve the agenda. Motion passed unanimously.

Motion by O'Neill, second by Ries, to recommend approval of TJ Farms, LLC's request to amend conditions on its Conditional Use Permit to restore the Concentrated Animal Feeding Operation (CAFO) to 10,000 animal units (AU). Property is located in SE1/4 and the W1/2 of SW1/4, Section 9-T117N-R54W. Muller reviewed Staff Report (attached). Mitchell Koehn, attorney representing TJ Farms, spoke on behalf of the applicant. Bob Fox spoke during the public hearing and as a previous Board Member and being involved in creating these ordinances, he believes the rules have been set and the standards have been set; therefore, if the Board does not act according to ordinance they will be setting a precedent for future enforcement action issues. Public hearing closed. All board members spoke. Board agreed that if motion passed, any future violations would result in hearing to revoke the Permit. Motion passed, 4-2.

Motion by Johnson, second by Kahnke, to approve the Conditional Use Permit request by Brandt Waliezer to operate a contractor office, shop, and yard on property located in Watertown Coop Elevator Addition in Section 35-T116N-R52W. Muller reviewed Staff Report (attached). If approved, Waliezer will be required to sign a Letter of Assurance agreeing to the following conditions:

- i. Effective date, transferability, and future permits required:
 - a. The permit shall become active upon signing of this letter of assurance; but not before October 21, 2023.

- b. The Conditional Use permit for a contractor shop, office, and yard is transferable. Subsequent owners/operators shall agree to the same conditions described herein.
- ii. Site improvements (hard surfacing):
 - a. Site improvements shall result in zero (0) additional stormwater discharge (back-up) on neighboring properties from pre-construction flows.
- iii. General Requirements
 - a. Grantor shall provide at least three (3) parking spaces or equivalent to the maximum number of employees at the largest shift (on site) (whichever is greater).
 - ~~b. Any vehicles or equipment associated with the business which are stored outside shall be screened from the right-of-way and adjacent residentially used property by means of a fence (greater than 30% solid), and tree planting as the existing shelterbelts. Any trees used for screening shall be conifer trees spaced not more than twenty-five (25) feet apart, and greater than five feet (5') at the time of planting.~~
 - b. All removal of junk, seeding of grass, grading, etc. is to be substantially completed on or before October 16, 2024.**
 - c. Any area not used for driving, parking, or structures shall be seeded to grass, with noxious weeds shall to be controlled.
 - d. Outdoor piling or storage of scrap materials, junk, etc. is prohibited.
 - e. On-site wastewater shall be managed by septic tank in accordance with any applicable regulations of the South Dakota Department of Agriculture and Natural Resources.
 - f. All new structures shall be constructed in accordance with the most recently adopted (by South Dakota Codified Law) International Building Code.
 - g. Sign area is limited to the maximum amount allowed by ordinance.
 - h. Discharge of industrial processed water on site is prohibited without Board of Adjustment approval.
 - i. No structures will be placed less than forty (40) feet from any street right-of-way, nor less than ten (10) feet from the edge of the railroad right-of-way. No structure shall be placed less than twenty-five (25') feet from the northeast property line.
- iv. Violations and Penalties.
 - (1) Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - a. Any violation will result in the prescription of actions to correct the violation and may result in a review of the validity of the conditional use permit and potential revocation of said permit.

- b. The applicant may make appeal from the decision of the Zoning Officer or other agent of the Board to the Board. 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 shall be taken to Circuit Court.

Waliezer explained his plans for clean up of the property and new construction. Kaylynn Traffie, Maurice Struckman, Larry Helle, Marietta Lakness, and Sara Dallmann all spoke during the public hearing. Public hearing closed. Motion by O'Neill, second by Kahnke, to amend the conditions to remove the requirement of paved parking, remove item 'b' listed above, and require documentation that construction will not take place over the easement with Lakness. Motion on the amendment passed unanimously. Muller read the Findings of Fact. There were no questions or objections. Motion on the request, with the amendment, passed unanimously.

Motion to adjourn made by Johnson, second by O'Neill. Motion passed unanimously. Meeting adjourned at 9:45 pm.

Respectfully Submitted,

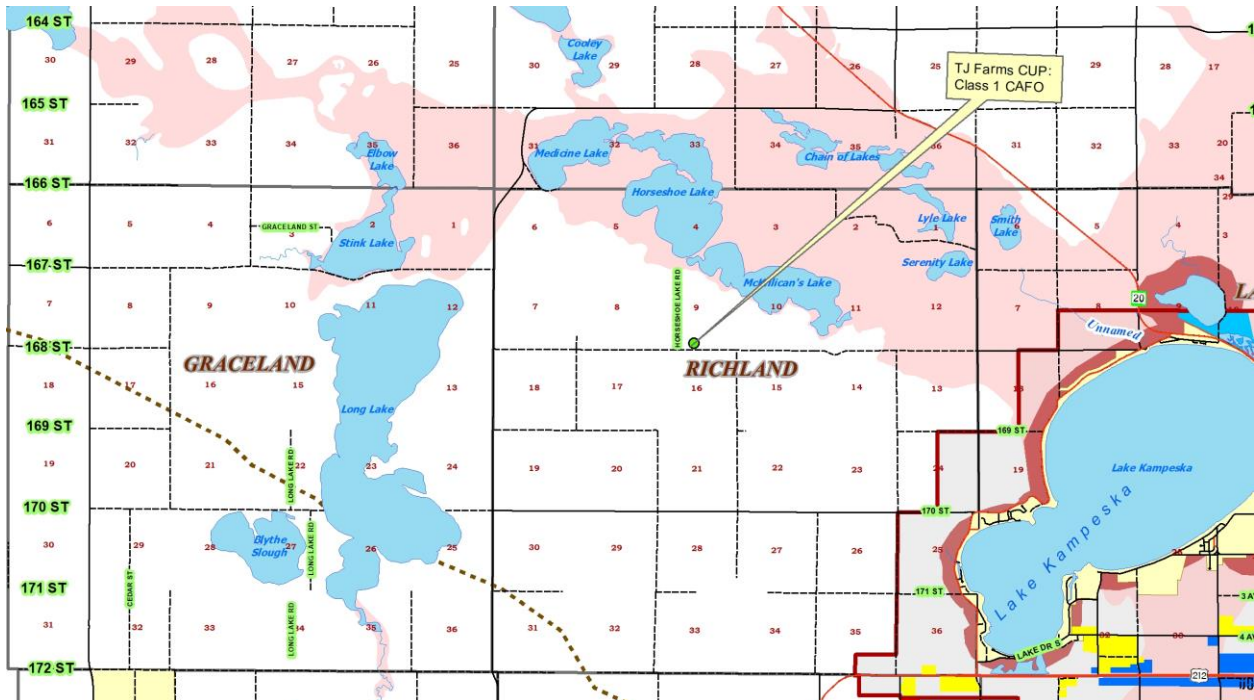
Becky Goens

**OCTOBER 2023
CODINGTON COUNTY BOARD OF ADJUSTMENT STAFF REPORT**

ITEM #1 AMENDMENT TO CONDITIONAL USE

Applicant/Owner: TJ Farms, LLC

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



Action Items – Amendments to Conditional Use – Class A CAFO (3.04.02.8)

Zoning Designation: A – Agricultural District

Request: The applicant seeks amend conditions on its conditional use permit (issued: September 21, 2020), last amended on June 26, 2023.

History/Issue(s):

Specifics of Request:

1. On June 26, 2023 the BOA amended TJ Farms' CUP to allow a maximum of 7,500 feeder cattle at the permitted site (from 10,000). The Board offered to consider increasing in herd size back to 10,000 head for June 2024.
2. TJ Farms requests to increase heard size effective immediately based upon compliance since June 2023 and changes to the operation since that time. Changes include:
 - a. Fences have been removed from areas near, but not within the permitted area where animals were previously confined (according to county rules.) Animals are no longer confined/fed in those areas. Current and Future grazing has been/will be done in a manner to avoid depletion of post-harvest residue.
 - b. TJ Farms has updated manure management plan with the DANR and detailed maps to identify where/when manure may be applied.

- c. In any instances where interpretation of any rules related to management are concerned, questions are being raised to the zoning office for clarification before proceeding.
 - d. Water sampling was performed, and determined to be within stock-watering standards (SDSU Lab) for all matters tested.
3. TJ Farms has complied with the order(s) of the Board of Adjustment and zoning office since being notified of the violations and corrective actions.
 4. (Special Note – The public notice referenced a request to stockpile manure for greater than 14 days at fields off the site of the permitted operation. At the June 26 meeting, a question was raised on the ability to do so. Upon review of the zoning ordinance, the zoning officer has determined that the zoning ordinance allows stockpiling of manure on fields (off-site) provided SDDANR rules are complied with. No specific permission is necessary (outside the joint jurisdiction area).)

Ordinance and Comprehensive Land Use Plan regarding this request:

1. As referenced above, the Board of Adjustment required a decrease in herd size on June 26, 2023 in accordance with the zoning ordinance and terms of the original conditional use permit issued in September of 2020.
2. The order in June allowed for the applicant to request the re-stocking to 10,000 head in June of 2024.
 - a. Because this action was made (without prejudice) as a condition of approval, staff determined the applicant had the ability to request amendment(s) to conditions.
 - b. Further, the applicant is appealing on the basis of changes to the operation since the last decision was made.
3. The Board of Adjustment has the authority to enforce the conditions of a permit provided such enforcement is not arbitrary, including the ability to revoke a permit.
 - a. The Board had never required a decrease in herd size of a permitted CAFO, prior to this meeting.
 - b. The Board has never had reports of greater than 2 violations of a permit in any given year, prior to this case.

Staff Recommendation and Summary

Conditional Use Permit – **Amend Conditions placed on a Conditional Use Permit (maximum herd size)** may postpone the request, deny the request or approve the request with or without amendment.

Regardless of the decision of the Board in this case, it should be made “with prejudice” to be clear this is the final decision of the Board involving this matter.

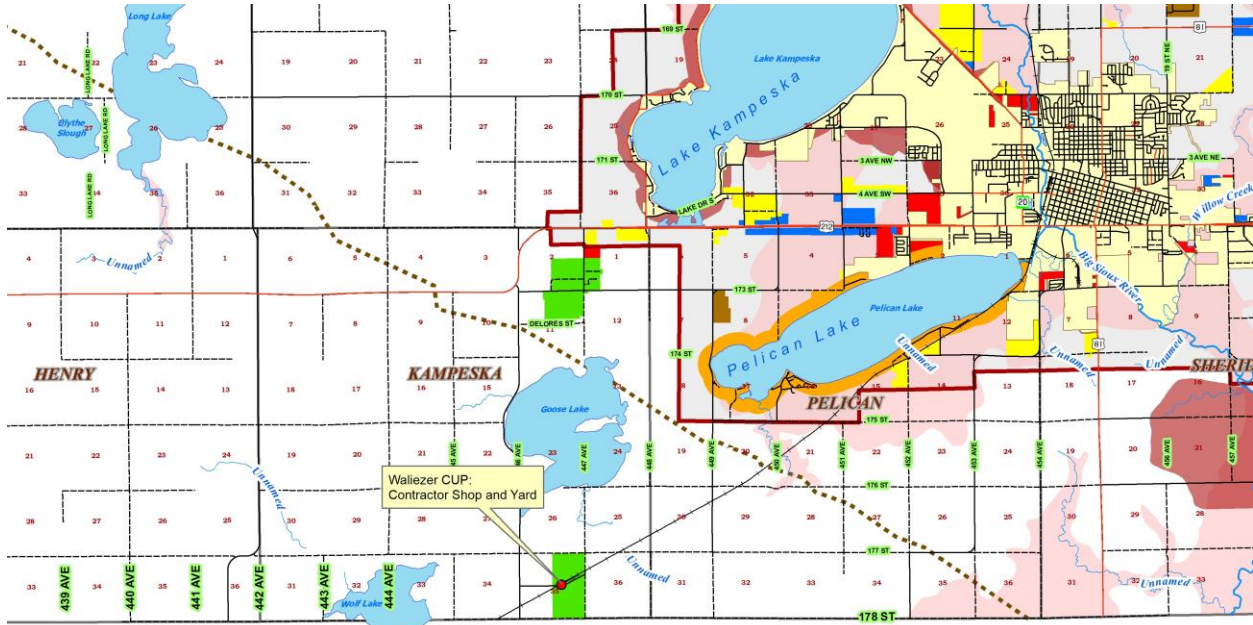
- If it is the intent of the Board to postpone the decision until the originally stated June of 2024 time frame, staff recommends to amend the motion to approve to specify “TJ Farms is authorized to have up to 10,000 feeder cattle/animal units as of June 1, 2024; provided no further violations occur.”
- Approval of the motion without amendment would allow the applicant to increase herd size as of the date of this meeting.
- Denial of the motion would require TJ Farms to wait until the June, 2024 Meeting of the Board of Adjustment to request restocking to 10,000 head.

ITEM #2 CONDITIONAL USE

Applicant: Brandt Waliezer

Owner: HCK Properties

Property Description: Watertown Coop Elevator Addition in Section 35, Township 116 North, Range 52 West of the 5th P.M., Codington County, South Dakota. (Kampeska Township)



Action Items – Conditional Use – Contractor Office, Shop, and Yard (3.10.02.9)

Zoning Designation: TD –Town District

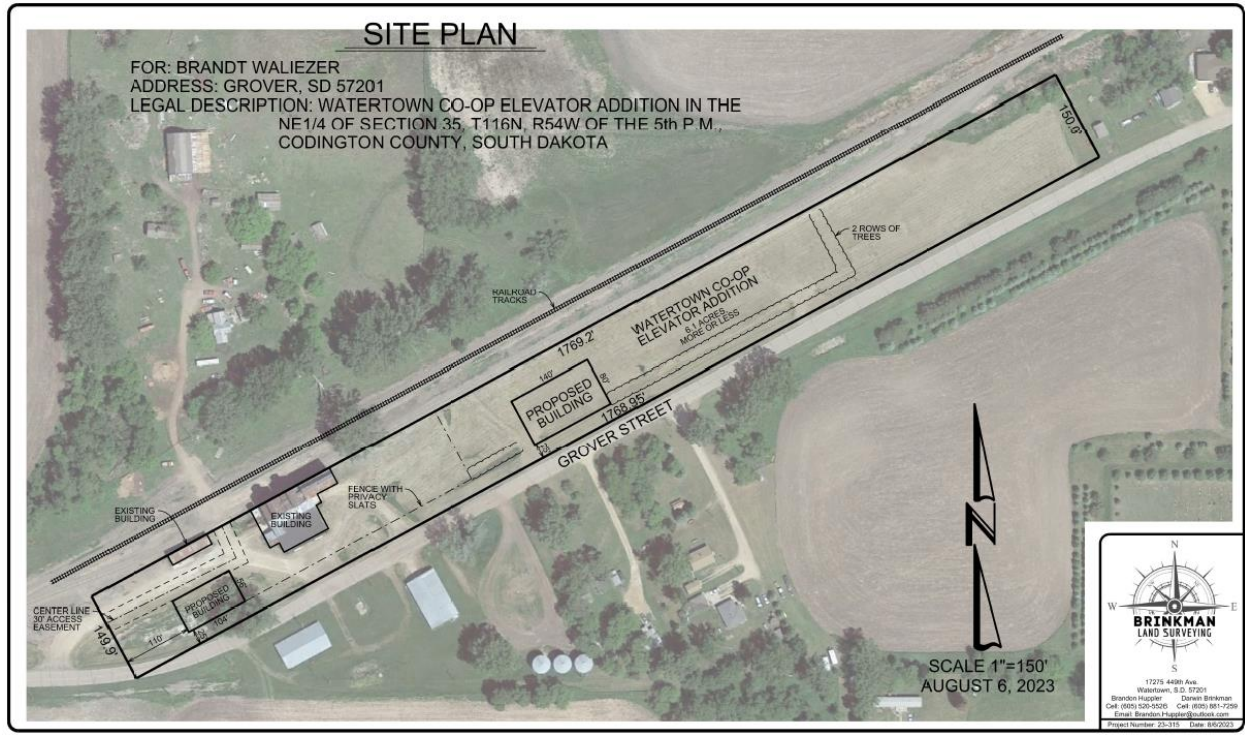
Request: The applicant seeks to operate an excavating contracting business.

History/Issue(s):

Specifics of Request:

1. HCK recently purchased the above described property.
2. This property was formerly used as the Grover Elevator and owned by multiple different elevator companies. Most recently the property was used by a farmer for grain storage.
3. The applicant intends to construct one building to be used as a shop/office (58' x 104'); and one future shop (80 x 140).
4. The site will have outdoor storage of machinery used in the excavation and construction business. Storage is proposed to be exclusively outdoor until the second shed can be constructed. It will be screened by proposed tree plantings and slatted fence.
5. Access to the property is provided from Grover Street, which is maintained by the County.
6. The property boundary (SW) is actually located within the pavement of Grover Street.
 - a. The applicant has consulted with the County Highway Superintendent who prefers the buildings to be as far from the right of way as possible. Though the site plan indicates the structures will be located 25' from the right-of-way, the applicant is not averse to moving the buildings back if necessary.

- b. The Highway Superintendent requests the Board of Adjustment allow a rear yard setback of 10' from the railroad right-of-way, to allow the proposed shops to be as far north as possible.



Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Board of County Commissioners approved Ordinance #82, allowing for contractor offices, shops and yards in the Town District on September 26, 2023. The Ordinance will become effective on October 21, 2023. The zoning office and auditor’s office have heard no complaints, objections, or comments regarding this ordinance.
2. The Codington County Comprehensive Land Use Plan lists Grover as an Area of Development Transition, in which certain commercial uses and higher density residential development may occur.
3. The newly adopted Ordinance #82 requires certain performance standards for contractor yards.
 - a. The site directly accesses a county maintained road.
 - b. The applicant intends to use outdoor storage only for equipment used in day to day operations, with no inoperable vehicles stored on site.
 - c. Since residences are located within 300’ of the property boundary, the applicant proposes screening by means of fence and trees.
4. Sufficient area exists on site for employee parking.
5. No on or off-premise signs are planned at this time and no additional structures.
6. No additional lighting, except security lighting, is anticipated.
7. The Board of Adjustment has authority to establish setbacks for conditional uses in the Town District. If, based on the recommendation of the highway superintendent, the intent is to require the applicant to be farther from the road, but closer to the railroad, the Board could do so without the need for variance.

Staff Recommendation

Conditional Use Permit – **Contractor office shop and yard** may postpone the request, deny

the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

v. Effective date, transferability, and future permits required:

- a. The permit shall become active upon signing of this letter of assurance; but not before October 21, 2023.
- b. The Conditional Use permit for a contractor shop, office, and yard is transferable. Subsequent owners/operators shall agree to the same conditions described herein.

vi. Site improvements (hard surfacing):

- a. Site improvements shall result in zero (0) additional stormwater discharge (back-up) on neighboring properties from pre-construction flows.

vii. General Requirements

- a. Grantor shall provide at least three (3) paved parking spaces or equivalent to the maximum number of employees at the largest shift (on site) (whichever is greater).
- b. Any vehicles or equipment associated with the business which are stored outside shall be screened from the right-of-way and adjacent residentially used property by means of a fence (greater than 30% solid), and tree planting as the existing shelterbelts. Any trees used for screening shall be conifer trees spaced not more than twenty-five (25) feet apart, and greater than five feet (5') at the time of planting.
 - i. All tree plantings shall be completed on or before October 16, 2024 (unless deemed unnecessary for screening of storage by the zoning officer.)
- c. Any area not used for driving, parking, or structures shall be seeded to grass, with noxious weeds shall to be controlled.
- d. Outdoor piling or storage of scrap materials, junk, etc. is prohibited.
- e. On-site wastewater shall be managed by septic tank in accordance with any applicable regulations of the South Dakota Department of Agriculture and Natural Resources.
- f. All new structures shall be constructed in accordance with the most recently adopted (by South Dakota Codified Law) International Building Code.
- g. Sign area is limited to the maximum amount allowed by ordinance.
- h. Discharge of industrial processed water on site is prohibited without Board of Adjustment approval.
- i. No structures will be placed less than forty (40) feet from any street right-of-way, nor less than ten (10) feet from the edge of the railroad right-of-way. No structure shall be placed less than twenty-five (25') feet from the northeast property line.

viii. Violations and Penalties.

- (2) Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - c. Any violation will result in the prescription of actions to correct the violation and may result in a review of the validity of the conditional use permit and potential revocation of said permit.
 - d. The applicant may make appeal from the decision of the Zoning Officer or other agent of the Board to the Board. 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 shall be taken to Circuit Court.