

Yankton County Planning Commission

October 9, 2018

The monthly meeting of the Yankton County Planning Commission was called to order by Chairperson Michael Welsh at 7:00 p.m. on October 9, 2018.

Members present at call to order: Kettering, Becker, Bodenstedt, Gudahl, Koenigs, Williams, Kretsinger, and Welch.

Members absent: Guthmiller.

This was the time and place to review and approve the minutes from September 11, 2018.

Action 10918A: Moved by Gudahl, second by Bodenstedt to approve the September 11, 2018 minutes as written.

By voice vote, all members present voted aye.

Motion carried.

Plat Considerations:

Deerfield Truck and Equipment Company

Lot 7, 8, 9 & 10, Whitetail Run, SE1/4, NE1/4, S16-T93N-R56W, hereinafter referred to as Utica South Township, County of Yankton, State of South Dakota. The E911 address is TBA Deer Boulevard, Yankton, SD.

Action 10918B: Moved by Kettering, second by Kretsinger to recommend correction of the plat. The plat must correct the ¼ section line to locate proposed Right Of Way (ROW) thirty three (33) feet on both sides of ¼ section line. Currently the plat shows forty seven (47) feet on the south of the line and nineteen (19) feet on the north side of the line. The Zoning Administrator is authorized to present the corrected plat to the County Commission when correction is done.

Lots 1B, NE1/4, S24-T95N-R56W, hereinafter referred to as Central Township, County of Yankton, State of South Dakota. The E911 address is US Hwy 81, Utica, SD.

By roll call vote, all members present voted aye.

Motion carried.

Planning Commission chairman, Mike Welch, explained the public comment period implemented on July 1, 2018. The session will be provided at the meeting. Please sign the speaker sheet in the back of the room prior to speaking.

This was the time and place for discussion regarding application from Julliann Reiland. Applicant is requesting a variance of Minimum Yard Requirement in side yard from seventy-five (75) feet to thirteen (13) feet in an Agriculture District (AG) in Yankton County. Said property is legally described as Lot A, Parcel C, Weverstad's Addition, S1/2, S21-T93N-R54W, hereinafter referred to as Gayville Township, County of Yankton, State of South Dakota. The E911 address is 44873 River Rat Road, Gayville, SD.

An appeal filed by John Gunderson on September 19, 2018 stating improper public hearing notification. The public hearing minutes from September 11, 2018 are: *Phillip Tau, representing Julliann Reiland, stated he built an accessory structure in 2016. The structure is thirteen feet from*

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*the property line in an Agriculture District. The yard requirements in an Agriculture District are seventy-five (75) feet. Mr. Tau stated the structure is 24 foot x 40 foot on a cement slab foundation. Mr. Tau stated he inquired at the City of Gayville about building permit requirement and was informed the property is out of their jurisdiction. He stated he no longer pursued the building permit requirement. The accessory structure was discovered with the "Change Finder" software Yankton County utilizes for aerial imagery.*

*A discussion regarding a second residence on the property and any Conditional Use Permit issued to occupy the second residence. A septic system was discussed and each house has a dedicated septic system. The Planning Commission will hear this variance request and schedule a hearing regarding the multi-residential use.*

*Mr. Welch requested any proponents of the variance to present their statements. LeAnn Johnson stated she is the neighbor to the north and has no issue with accessory structure.*

*Mr. Welch requested any opponents to present their statements. Craig Johnson stated the property is an Agriculture District and should be required to obtain an Agriculture covenant to allow agriculture activities in the area.*

*John Gunderson stated his concerns regarding the septic system near the Missouri River, the property notice six (6) days before the meeting therefore not meeting seven (7) day ordinance requirement and Mr. Tau attention to high standards regarding agriculture operations must also be applied to residential property too.*

*Mr. Welch asked for rebuttal. Mr. Tau stated he is unaware of the ordinance and more publicity should be provided. The houses have separate septic systems and are serviced by Harper Septic Service.*

*Mr. Welch ended public comment and requested commission discussion.*

*The Planning Commission discussed the application as presented. The accessory structure is already built.*

*Mr. Gudahl moved to deny the variance as requested by Juliann Reiland. No second. Motion dies. Planning Commission has no further discussion.*

*No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.*

October 9, 2018 public hearing began with Phil Tau stating he built the accessory structure in 2016. The structure is thirteen feet from the property line in an Agriculture District. The yard requirements in an Agriculture District are seventy-five (75) feet. Mr. Tau stated the structure is 24 foot x 40 foot on a cement slab foundation. Mr. Tau stated he inquired at the City of Gayville about building permit requirement and was informed the property is out of their jurisdiction. He stated he no longer pursued the building permit requirement. The accessory structure was discovered with the "Change Finder" software Yankton County utilizes for aerial imagery.

Mr. Welch requested any proponents of the variance to present their statements. LeAnn Johnson stated she is the neighbor to the north and has no issue with accessory structure.

Mr. Welch requested any opponents to present their statements. John Gunderson stated his concerns with two residences on a single non-conforming lot in an Agriculture District. No Conditional Use Permit is issued for the applicants' property and it is a requirement under Article 5, Section 513 and Article 16, Yankton County Ordinance #16. Mr. Gunderson states all zoning requirements must be compliant before the variance request.

Karl Schenk stated he owns property north and east of the applicants' property. Mr. Schenk discussed Article 16 – Nonconformance – YC Ordinance #16 which provides regulations on nonconforming lots, structures and uses of land and structures. The lot is non-conforming because

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it is under twenty (20) acres. The accessory structure continues the non-conforming use which is only allowed through the variance procedure under Article 18 and Article 19. The larger issue is the two (2) residences on a non-conforming lot. The property does not have Conditional Use Permit for this use of land as required by Article 5 and Article 16, YC Ordinance #16. The Missouri River is classified as “drinking water” resource and has strict regulations under SD Administrative Rules 74:53...which is enforced by YC Planning & Zoning and SD Department of Environmental and Natural Resources.

Mr. Schenk stated ignorance of the regulations not acceptable. He also stated frustration with agriculture producers are critically scrutinized when appearing at public hearing zoning hearings and residential non-conforming lots and uses expect variances.

Mr. Schenk provided different ownership registration since this hearing process began and feels this meeting has improper notice.

John Gunderson stated he wants to remind citizens of the non-conforming house in McKennen Historical District in Sioux Falls, SD. The home was constructed in the yard setbacks and not meeting the historical districts requirements. It was removed the summer of 2018 after numerous lawsuits.

Action 10918C: Moved by Kretsinger, second by Becker to recommend denial of the Variance, pursuant to Article 18, Section 1807 of the Yankton County Zoning Ordinance, based on improper notice regarding the ownership property registration. Said property is legally described as Lot A, Parcel C, Weverstad’s Addition, S1/2, S21-T93N-R54W, hereinafter referred to as Gayville Township, County of Yankton, State of South Dakota. The E911 address is 44873 River Rat Road, Gayville, SD.

By roll call vote, all members present voted aye.

Motion carried

This was the time and place for discussion regarding application from Daniel Dolejsi. Applicant is requesting a Conditional Use Permit for a swimming pool in an Agriculture District in Yankton County. Said property is legally described as N700.5’, S1608’, W1/2, NW1/4, S26-T94N-R55W, hereinafter referred at as Mission Hill North Township, County of Yankton, State of South Dakota. The E911 address is 30732 444<sup>th</sup> Avenue, Mission Hill, SD.

An appeal filed by John Gunderson on September 19, 2018 stating improper public hearing notification. The public hearing minutes from September 11, 2018 are: *Dan Dolejsi stated the swimming pool is an old structure which should not be required to apply for a Conditional Use Permit. Mr. Dolejsi stated the swimming pool be granted a non-conforming legal status (grandfathering). The pool structure was discovered with the “Change Finder” software Yankton County utilizes with aerial imagery. The Zoning Administrator provided photos showing the footprint on the property changed from 2013 imagery to 2017 imagery.*

*Mr. Welch requested any proponents of the variance to present their statements. No proponents were present.*

*Mr. Welch requested any opponents of the variance to present their statements. John Gunderson stated the footprint change as presented requires a Conditional Use Permit.*

*Craig Johnson stated when a bin is moved or a house is increased in size the zoning ordinance requires a building permit and/or Conditional Use Permit. The applicant should be required to get a Conditional Use Permit.*

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*Mr. Welch ended public comment and requested commission discussion.*

*The Planning Commission discussed the application and stated the swimming pool is not a problem as it is a listed use in an Agriculture District. The Planning Commission confirmed requirement for a Conditional Use Permit for the swimming pool.*

*No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.*

October 9, 2018 public hearing began with Dan Dolejsi stating the swimming pool is an old structure which should not be required to apply for a Conditional Use Permit. Mr. Dolejsi stated the swimming pool be granted a non-conforming legal status (grandfathering). The pool structure was discovered with the “Change Finder” software Yankton County utilizes with aerial imagery. The Zoning Administrator provided photos showing the footprint on the property changed from 2013 imagery to 2017 imagery.

Mr. Welch requested any proponents of the variance to present their statements. No proponents were present.

Mr. Welch requested any opponents of the variance to present their statements. John Gunderson stated the property has additional uses not permitted in an Agriculture District, such as retail business activity.

Karl Schenk stated he has no issue with Mr. Dolejsi requesting Conditional Use Permit for a swimming pool. The challenge is how an Agriculture District regulates residential expectations with the agriculture practices in modern agriculture, i.e. CAFO’s.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the application and stated the swimming pool is not a problem as it is a listed use in an Agriculture District. The Planning Commission confirmed requirement for a Conditional Use Permit for the swimming pool.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

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Meeting date: October 9, 2018

CONDITIONAL USE  
Article 18, Section 1805

FINDINGS OF FACT

Applicant: Dan Dolejsi

Parcel Number: 06.026.400.300

Legal description: N700.5’, S1608’, W1/2, NW1/4, S26-T94N-R55W

Physical Address: 30732 444<sup>th</sup> Avenue, Mission Hill, SD

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1. The applicant specifically cited the section of the zoning ordinance under which the conditional use is sought and has stated the grounds on which it is requested; Applicant is requesting a Conditional Use Permit for a Conditional Use Permit Article 5, Section 507) for a swimming pool in an Agriculture District in Yankton County. Said property is legally described as N700.5', S1608', W1/2, NW1/4, S26-T94N-R55W, hereinafter referred at as Mission Hill North Township, County of Yankton, State of South Dakota. The E911 address is 30732 444<sup>th</sup> Avenue, Mission Hill, SD.
2. Notice of public hearing was given, as in Section 1803 (3-5); The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed CUP on September 25, 2018 (supported by affidavit), a legal notice was published on September 29, 2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 6, 2018.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney; A public meeting was held at 7:10 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. An appeal filed by John Gunderson on September 19, 2018 stating improper public hearing notification. The public hearing minutes from September 11, 2018 are: Dan Dolejsi stated the swimming pool is an old structure which should not be required to apply for a Conditional Use Permit. Mr. Dolejsi stated the swimming pool be granted a non-conforming legal status (grandfathering). The pool structure was discovered with the "Change Finder" software Yankton County utilizes with aerial imagery. The Zoning Administrator provided photos showing the footprint on the property changed from 2013 imagery to 2017 imagery.  
Mr. Welch requested any proponents of the variance to present their statements. No proponents were present.  
Mr. Welch requested any opponents of the variance to present their statements. John Gunderson stated the footprint change as presented requires a Conditional Use Permit. Craig Johnson stated when a bin is moved or a house is increased in size the zoning ordinance requires a building permit and/or Conditional Use Permit. The applicant should be required to get a Conditional Use Permit.  
Mr. Welch ended public comment and requested commission discussion.  
The Planning Commission discussed the application and stated the swimming pool is not a problem as it is a listed use in an Agriculture District. The Planning Commission confirmed requirement for a Conditional Use Permit for the swimming pool.  
No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.  
October 9, 2018 public hearing began with Dan Dolejsi stating the swimming pool is an old structure which should not be required to apply for a Conditional Use Permit. Mr. Dolejsi stated the swimming pool be granted a non-conforming legal status (grandfathering). The pool structure was discovered with the "Change Finder" software Yankton County utilizes with aerial imagery. The Zoning Administrator provided photos showing the footprint on the property changed from 2013 imagery to 2017 imagery.  
Mr. Welch requested any proponents of the variance to present their statements. No proponents were present.

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Mr. Welch requested any opponents of the variance to present their statements. John Gunderson stated the property has additional uses not permitted in an Agriculture District, such as retail business activity.

Karl Schenk stated he has no issue with Mr. Dolejsi requesting Conditional Use Permit for a swimming pool. The challenge is how an Agriculture District regulates residential expectations with the agriculture practices in modern agriculture, i.e. CAFO's.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the application and stated the swimming pool is not a problem as it is a listed use in an Agriculture District. The Planning Commission confirmed requirement for a Conditional Use Permit for the swimming pool.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

4. The Planning Commission shall make a finding and recommendation that it is empowered under the section of this Ordinance described in the application, to include:

- A. Recommend granting of the conditional use;

- B. Recommend granting with conditions; or

The commission recommends granting approval of the conditional use permit with listed conditions.

- C. Recommend denial of the conditional use.

5. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:

- A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe; The applicant has shown sufficient access to property with established roadway (444<sup>th</sup> Avenue) and sufficient distance from the public road (300 feet) for safety consideration.

- B. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district; All off right-of-way areas are currently compliant.

- C. Refuse and service areas, with particular reference to the items in (A) and (B) above; Refuse and service areas is in compliance.

- D. Utilities, with reference to locations, availability, and compatibility; Utilities will be available and will be in operational condition, the security lights will be monitored for proper downcast illumination to provide sufficient security.

- E. Screening and buffering with reference to type, dimensions, and character; Screening and buffering are not required.

- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; All signage will conform to Article 14, Yankton County Zoning Ordinance

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- G. Required yards and other open spaces; *Yards and open spaces requirements are compliant with current regulations for proposed activity.*
- H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest. *The use is compatible with adjacent properties in the district and the granting of a Conditional Use Permit will not adversely affect the public interest.*

Action 10918D: Moved by Kettering, second by Kretsinger to recommend to approve a Conditional Use Permit based on Finding of Facts dated October 9, 2018, pursuant to Article 18, Section 1805 of the Yankton County Zoning Ordinance, for a swimming pool in an Agriculture District in Yankton County. Said property is legally described as N700.5', S1608', W1/2, NW1/4, S26-T94N-R55W, hereinafter referred at as Mission Hill North Township, County of Yankton, State of South Dakota. The E911 address is 30732 444<sup>th</sup> Avenue, Mission Hill, SD.

By roll call vote, seven (7) members voted aye, one (1) member voted nay.

Motion carried.

This was the time and place for discussion regarding application from Robert Law. Applicant is requesting a variance of Maximum Accessory Structure Size from 2,000 sq.ft. with 14 foot sidewalls to 12,000 sq.ft. with 20' foot sidewalls (80'x150') in a Low Density Rural Residential District (R-1) in Yankton County. Said property is legally described as W1/2, NW1/4, N/Hiway, S10-T93N-R56W, hereinafter referred at as Utica South Township, County of Yankton, State of South Dakota. The E911 address is 3812 SD Hwy 314, Yankton, SD.

Robert Law was not present for the public hearing. The Planning Commission offered a continuance until November 13, 2018.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

Action 10918E: Moved by Kretsinger, second by Gudahl to recommend a continuance to November 13, 2018 for a variance of Maximum Accessory Structure Size from 2,000 sq.ft. with 14 foot sidewalls to 12,000 sq.ft. with 20' foot sidewalls (80'x150') in a Low Density Rural Residential District (R-1) in Yankton County. Said property is legally described as W1/2, NW1/4, N/Hiway, S10-T93N-R56W, hereinafter referred at as Utica South Township, County of Yankton, State of South Dakota. The E911 address is 3812 SD Hwy 314, Yankton, SD.

By roll call vote, all members voted aye.

Motion carried.

This was the time and place for discussion regarding application from Matt and Jon Maras. Applicant is requesting a Conditional Use Permit for self-storage facilities in a Lakeside Commercial District (LC) in Yankton County. Said property is legally described as Lot 8, Whitetail Run, SE1/4, NE1/4, S16-T93N-R56W, hereinafter referred at as Utica South Township, County of Yankton, State of South Dakota. The E911 address is TBA Deer Boulevard, Yankton, SD.

Jon Maras discussed the proposal to build self-storage facility in a Lakeside Commercial District. The project site plan shows three (3) buildings 326 feet X 80 feet (26,000 sq. ft. each) on a four (4) acre lot. The drive surface will be crushed asphalt base around each building site. The drainage

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is proposed to go 50% east direction and 50% west direction. This is an issue as no proper drainage plan is in place to receive the water flowing west. Mr. Maras stated the project could arrange for all drainage to flow east to Deer Boulevard ditch. The preliminary plan shows proposed lots and access but no plans for proper drainage from the proposed lots.

The Planning Commission discussed the application and determined the preliminary plan needs to address drainage from the subdivision to retention ditches and Deer Boulevard ditch. The plan needs to show retention when necessary and long term implementation of the drainage plan in the entire subdivision. That current owners are responsible to develop the complete preliminary subdivision plan with proper grading and drainage plan.

The Planning Commission offered a continuance until November 13, 2018.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

Action 10918F: Moved by Williams, second by Kretsinger to recommend a continuance to November 13, 2018 for a Conditional Use Permit for self-storage facilities in a Lakeside Commercial District (LC) in Yankton County. A preliminary subdivision plan with proper grading and drainage plan is required prior to the hearing. Said property is tentatively legally described as Lot 8, Whitetail Run, SE1/4, NE1/4, S16-T93N-R56W, hereinafter referred at as Utica South Township, County of Yankton, State of South Dakota. The E911 address is TBA Deer Boulevard, Yankton, SD.

By roll call vote, all members voted aye.

Motion carried.

This was the time and place for discussion regarding application from Verizon Wireless. Applicant is requesting a Conditional Use Permit to construct a wireless telecom facility with a 190' monopole in an Agriculture District (AG) in Yankton County. Said property is legally described as E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W, hereinafter referred at as Central Township, County of Yankton, State of South Dakota. The E911 address is TBA 303<sup>rd</sup> Street, Yankton, SD.

Richard Adams, representing CommNet Cellular, d/b/a Verizon Wireless, stated the application is completed and all requirements are documented. The cell tower will be 190 foot monopole with colocation for additional carriers. The site plan meets the required setbacks and Article 25 is acknowledged and the applicant will comply with all requirements.

The Planning Commission discussed the application and stated it was properly documented to meet all requirements in Article 25. The exhibits are available for reference to clarify any communication issues.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

CONDITIONAL USE

Meeting Date: October 9, 2012

Article 18, Section 1805



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FINDINGS OF FACT

Applicant: Verizon Wireless

Parcel Number: 11.036.200.100

Legal description: E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W

Physical Address: TBA 303<sup>rd</sup> Street, Yankton, SD

1. The Applicant shall specifically cite, within the application the section of this Ordinance under which the conditional use is sought and stating grounds on which it is requested; Applicant is requesting a Conditional Use Permit (Article 25) to construct a wireless telecom facility with a 190' monopole in an Agriculture District (AG) in Yankton County. Said property is legally described as E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W, hereinafter referred at as Central Township, County of Yankton, State of South Dakota. The E911 address is TBA 303<sup>rd</sup> Street, Yankton, SD.
6. Notice of public hearing shall be given, as in Section 1803 (3-5); The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed CUP on September 25, 2018 (supported by affidavit), a legal notice was published on September 29, 2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 6, 2018.  
The public hearing shall be held. Any party may appear in person, or by agent or attorney; A public hearing was held October 9, 2012 at 7:35 pm. Richard Adams, representing CommNet Cellular, d/b/a Verizon Wireless, stated the application is completed and all requirements are documented. The cell tower will be 190 foot monopole with colocation for additional carriers. The site plan meets the required setbacks and Article 25 is acknowledged and the applicant will comply with all requirements.  
The Planning Commission discussed the application and stated it was properly documented to meet all requirements in Article 25. The exhibits are available for reference to clarify any communication issues.  
No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.
1. The Planning Commission shall make a finding and recommendation that it is empowered under section of this Ordinance described in the application, to include:
  - A. Recommend granting of the conditional use;
  - B. Recommend granting with conditions; The Planning Commission recommends approval with conditions as listed in the findings.
  - C. Recommend denial of the conditional use
2. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements has been made concerning the following, where applicable:
  - A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access

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in case of fire or catastrophe; The applicant has met the requirements pursuant to Article 25.

- B. Off right-of-way parking and loading areas where required, with particular attention to the items I (A) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties generally in the district; The applicant has met the requirements pursuant to Article 25.
- C. Refuse and service areas, with particular reference to the items in (A) and (C) above; The applicant has met the requirements pursuant to Article 25.
- D. Utilities, with reference to locations, availability, and compatibility; The applicant has met the requirements pursuant to Article 25.
- E. Screening and buffering with reference to type, dimensions, and character; The applicant has met the requirements pursuant to Article 25.
- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; The applicant has met the requirements pursuant to Article 25.
- G. Required yards and other open spaces; The applicant has met the requirements pursuant to Article 25.
- H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest; The applicant has met the requirements pursuant to Article 25.

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CONDITIONAL USE

Article 25

FINDINGS OF FACT

Applicant: Verizon Wireless

Parcel Number: 11.036.200.100

Legal description: E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W

Physical Address: TBA 303<sup>rd</sup> Street, Yankton, SD

1. All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Section. The Planning Commission, pursuant to Section 1805 of the Yankton County Zoning Ordinance, is the officially designated agency or body of the County to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to

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recommending the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities to the Yankton County Board of Adjustment. The Board of Adjustment shall have the power to hear and decide, pursuant to Section 1905 of the Yankton County Zoning Ordinance, the granting of Conditional Use Permits. The County may at its discretion delegate or designate other official agencies or officials of the County to accept, review, analyze, evaluate and make recommendations to the Planning Commission with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities.

Verizon Wireless acknowledges compliance.

2. The County may reject applications not meeting the requirements stated herein or which are otherwise incomplete.

Verizon Wireless acknowledges compliance.

3. No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the County, and the Conditional Use Permit has been issued.

Verizon Wireless acknowledges compliance.

4. Any and all representations made by the Applicant to the County on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the County.

Verizon Wireless acknowledges compliance.

5. An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

Verizon Wireless acknowledges compliance.

6. The Applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

Verizon Wireless acknowledges compliance.

7. The Applicant shall include a statement in writing:

- A. That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations;

Verizon Wireless acknowledges compliance.

- B. That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.

Verizon Wireless acknowledges compliance.

8. Where a certification is called for in this Section, such certification shall bear the signature and seal of a Registered Professional Engineer licensed in the State.

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Verizon Wireless acknowledges compliance.

9. In addition to all other required information as stated in this ordinance, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.
  - A. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements; Exhibit #4 and Exhibit #5
  - B. Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage; Exhibit #4
  - C. The name, address and phone number of the person preparing the report; Jerry Haffield and Chad Loecker, Verizon Wireless, Sioux Falls, SD Exhibit #4 and Exhibit #7.
  - D. The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner; Exhibit #7 and Exhibit #8.
  - E. The postal address and tax map parcel number of the property; Exhibit #5.
  - F. The Zoning District or designation in which the property is situated; Exhibit #5.
  - G. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines; Exhibit #1 and Exhibit #5
  - H. The location of the nearest residential structure; Exhibit #5.
  - I. The location, size and height of all existing and proposed structures on the property which is the subject of the Application; Exhibit #1 and Exhibit #5.
  - J. The type, locations and dimensions of all proposed and existing landscaping, and fencing; Exhibit #1 and Exhibit #5.
  - K. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure; Exhibit #1.
  - L. The number, type and model of the Antenna(s) proposed with a copy of the specification sheet; Exhibit #1 and Exhibit #9
  - M. The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users; Exhibit #3.
  - N. A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting; Exhibit #1 and Exhibit #5.
  - O. The frequency, modulation and class of service of radio or other transmitting equipment; Exhibit #19.
  - P. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts; Exhibit #19.
  - Q. Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions

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- guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification; Exhibit #11.
- R. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices; Exhibit #12.
  - S. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities; Exhibit #13 thru Exhibit #17. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design. Exhibit #2.
  - T. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design. Exhibit #2
10. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application. Exhibit #18.
11. Application for New Tower
- 1. In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection. Exhibit #5.
  - 2. In order to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, hold a “balloon test”. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. The Applicant shall inform the County, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application. Exhibit #20.
  - 3. The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for

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example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

- A. The foreseeable number of FCC licenses available for the area; Exhibit #3.
- B. The kind of Wireless Telecommunications Facilities site and structure proposed; Exhibit #3.
- C. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites; Exhibit #3.
- D. Available space on existing and approved Towers. Exhibit #3.

- 4. The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
  - A. Respond within 60 days to a request for information from a potential shared-use Applicant;
  - B. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
  - C. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
  - D. Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit.

Verizon acknowledges Section #4.

- 12. The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads. Exhibit #3.
- 13. If proposal is for a co-location or modification on an existing Tower, the applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers. N/A
- 14. All proposed Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually intrusive reasonably possible, given the facts and circumstances involved and thereby have the least adverse visual effect on the environment

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and its character, on existing vegetation, and on the residences in the area of the Wireless Telecommunications Facility. Exhibits #5.

15. If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
  - A. If a new Tower or increasing the height of an existing structure is proposed, a computer generated “Zone of Visibility Map” at a minimum of one mile radius from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen. Exhibit #20.
  - B. Pictorial representations of “before and after” (photo simulations) views from key viewpoints both inside and outside of the County as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure. Exhibit #20.
  - C. A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening. Exhibit #21.
16. The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility Exhibit #1.
17. The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the County. Exhibit #1.
18. All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, Ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. Exhibit #1.
19. At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. Exhibit #1.

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20. All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to area codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply. Exhibit #1.
21. A holder of a Conditional Use Permit granted under this Section shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant. Yankton Verizon acknowledges compliance.
22. There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Site visit 7-17-2018 interview completed 8-24-2018.
23. An Applicant shall submit to the County the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested. Verizon acknowledges compliance.
24. The holder of a Conditional Use Permit shall notify the County of any intended Modification of a Wireless Telecommunication Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility. Verizon acknowledges compliance.

Section 2507      Location of Wireless Telecommunications Facilities

1. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (6) being the lowest priority.
  - A. On existing Towers or other structures on other property in the County;
  - B. A new Tower on County-owned properties;
  - C. A new Tower on properties in areas zoned for Commercial use;
  - D. A new Tower on properties in areas zoned for Agricultural use; and Verizon proposes to install al equipment on new tower in an Agriculture District.
  - E. A new Tower on properties in areas zoned for Residential use.



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2. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site. Exhibit #5.
3. An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the County why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship. Exhibit #5.
4. Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Exhibit #5.
5. The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application. Exhibit #5.
6. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an Application for any of the following reasons.
  - A. Conflict with safety and safety-related codes and requirements;
  - B. Conflict with the historic nature or character of a neighborhood or historical district;
  - C. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
  - D. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers; and
  - E. Conflicts with the provisions of this Ordinance.

Verizon acknowledges Section #6.

Section 2508      Shared Use of Wireless Telecommunications Facilities and Other Structures

1. The County, as opposed to the construction of a new Tower, shall prefer locating on existing

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Towers or others structures without increasing the height. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used. Exhibit #5.

2. An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant. N/A
3. Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown. Exhibit #5.

Section 2509     Height of Telecommunications Tower(s)

1. The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown. Exhibit #4
2. No Tower constructed after the effective date of this amended Section, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with County, State, and/or any Federal statute, law, local law, County Ordinance, code, rule or regulation. N/A

Section 2510     Visibility of Wireless Telecommunications Facilities

1. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law. N/A
2. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance. N/A
3. If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. N/A

Section 2511     Security of Wireless Telecommunications Facilities

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

1. All Antennas, Towers and other supporting structures, including guy anchor points and wires,

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shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and Exhibit #4.

2. Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them. Exhibit #1.

Section 2512     Signage

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted. Exhibit #1.

Section 2513     Lot Size and Setbacks

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

Verizon acknowledges compliance.

Section 2514     Retention of Expert Assistance and Reimbursement by Applicant

1. The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections. Verizon acknowledges compliance.
2. An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the County shall precede the pre-application meeting. The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or

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consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant. Verizon acknowledges compliance.

3. The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. Verizon acknowledges compliance.

Section 2515      Public Hearing and Notification Requirements

Notice of public hearing shall be given pursuant to Section 1803 (3-5)

1. Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the County, notice of which shall be published in the newspaper general circulation in the County no less than ten (10) calendar days prior to the scheduled date of the Public Hearing. In order that the nearby landowners are notified, the Applicant shall notify all landowners as determined by records of the Director of Equalization, whose property is located within two thousand six hundred forty (2,640) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located. A list of property owners that lie within the notification area shall be furnished to the applicant by Yankton County.
2. There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
3. The County shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the County, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

Verizon acknowledges compliance of Section 2515.

Section 2516      Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities

1. The County will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
2. The County may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.

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3. After the Public Hearing and after formally considering the Application, the County may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
4. If the County approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the County's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the County, such as site plan or zoning approvals, shall be required by the County for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.
5. If the County denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the County's action.

Verizon acknowledges compliance of Section 2516.

Section 2517                      Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

1. Such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.
2. Such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

Verizon acknowledges compliance of Section 2517.

Section 2518                      Application Fee

At the time that a Person submits an Application for a Conditional Use Permit for a new Tower, such Person shall pay a non-refundable application fee of \$5,000.00 to the County. If the Application is for a Conditional Use Permit for co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, the non-refundable fee shall be \$2,500.00.

Verizon acknowledges compliance of Section 2518.

Section 2519                      Performance Security

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities

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property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit. Verizon acknowledges compliance of Section 2519.

Section 2520      Reservation of Authority to Inspect Wireless Telecommunications Facilities

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

Verizon acknowledges compliance of Section 2520

Section 2521      Liability Insurance

1. A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below.
  - A. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
  - B. Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate; and
  - C. Workers Compensation and Disability: Statutory amounts.
2. For a Wireless Telecommunications Facility on County property, the Commercial General Liability insurance policy shall specifically include the County and its officers, Councils, employees, committee members, attorneys, agents and consultants as additional insured's.
3. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an A.M. Best's rating of at least A.
4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty-(30) day's prior written notice in advance of the

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cancellation of the insurance.

5. Renewal or replacement policies or certificates shall be delivered to the Zoning Administrator at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
6. Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the granting of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

Verizon acknowledges compliance of Section 2521.

Section 2522 Indemnification

1. Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County. Exhibit #6.
2. Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities. N/A

Section 2523 Fines

1. In the event of a violation of this Ordinance or any Conditional Use Permit issued pursuant to this Ordinance, the County may impose and collect, and the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the County, fines or penalties as set forth below.
2. The holder of a Conditional Use Permits failure to comply with provisions of this Ordinance shall constitute a violation of this Ordinance and shall subject the Applicant to the code enforcement provisions and procedures as provided in Article 23, Section 2303 of the Yankton County Zoning Ordinance and an action for civil injunctive relief, pursuant to SDCL 21-8.

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Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the County.

Verizon acknowledges compliance of Section 2523.

Section 2524     Default and/or Revocation

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the County shall notify the holder of the Conditional Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 24 and if a violation is not corrected to the satisfaction of the County in a reasonable period of time the Conditional Use Permit is subject to revocation.

Verizon acknowledges compliance of Section 2524.

Section 2526     Removal of Wireless Telecommunications Facilities

1. Under the following circumstances, but not limited to the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.
  - A. Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;
  - B. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard; and
  - C. Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization and the Conditional Permit may be revoked.
2. If the County makes such a determination as noted in subsection (A) of this section, then the County shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.



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3. The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the County.
4. If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the County may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
5. If, the County removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the COUNTY may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

Verizon acknowledges compliance of Section 2526.

Section 2527 Relief

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such at the pre-application meeting, provided that the relief or exemption is contained in the submitted Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

Verizon acknowledges compliance of Section 2527.

Section 2528 Adherence to State and/or Federal Rules and Regulations

1. To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical

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and RF emission standards. Exhibit #6.

2. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity. Exhibit #6.

CONDITIONAL USE

Meeting Date: October 13, 2018

Article 18, Section 1805

FINDINGS OF FACT

Applicant: Verizon Wireless

Parcel Number: 11.036.200.100

Legal description: E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W

Physical Address: TBA 303<sup>rd</sup> Street, Yankton, SD

1. The Applicant shall specifically cite, within the application the section of this Ordinance under which the conditional use is sought and stating grounds on which it is requested; Applicant is requesting a Conditional Use Permit to construct a wireless telecom facility with a 190' monopole in an Agriculture District (AG) in Yankton County. Said property is legally described as E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W, hereinafter referred to as Central Township, County of Yankton, State of South Dakota. The E911 address is TBA 303<sup>rd</sup> Street, Yankton, SD.
2. Notice of public hearing shall be given, as in Section 1803 (3-5); The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed CUP on September 25, 2018 (supported by affidavit), a legal notice was published on September 29, 2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 6, 2018.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney; A public hearing was held October 13, 2018 at 7:35 pm. Richard Adams, representing CommNet Cellular, d/b/a Verizon Wireless, stated the application is completed and all requirements are documented. The cell tower will be 190 foot monopole with colocation for

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additional carriers. The site plan meets the required setbacks and Article 25 is acknowledged and the applicant will comply with all requirements.

The Planning Commission discussed the application and stated it was properly documented to meet all requirements in Article 25. The exhibits are available for reference to clarify any communication issues.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

4. No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

The Planning Commission shall make a finding and recommendation that it is empowered under section of this Ordinance described in the application, to include:

- A. Recommend granting of the conditional use;
- B. Recommend granting with conditions; The Planning Commission recommends approval with conditions as listed in the findings.
- C. Recommend denial of the conditional use

5. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangements has been made concerning the following, where applicable:

- A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe; The applicant has met the requirements pursuant to Article 25.
- B. Off right-of-way parking and loading areas where required, with particular attention to the items I (A) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties generally in the district; The applicant has met the requirements pursuant to Article 25.
- C. Refuse and service areas, with particular reference to the items in (A) and (C) above; The applicant has met the requirements pursuant to Article 25.
- D. Utilities, with reference to locations, availability, and compatibility; The applicant has met the requirements pursuant to Article 25.
- E. Screening and buffering with reference to type, dimensions, and character; The applicant has met the requirements pursuant to Article 25.
- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; The applicant has met the requirements pursuant to Article 25.
- G. Required yards and other open spaces; The applicant has met the requirements pursuant to Article 25.
- H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest; The applicant has met the requirements pursuant to Article 25.

Action 10918G: Moved by Kretsinger, second by Gudahl to recommend approval based on Finding of Facts dated October 9, 2018 for a Conditional Use Permit to construct a wireless telecom facility with a 190' monopole in an Agriculture District (AG) in Yankton County. Said property is legally described as E1/2, SE1/4, exc Lot H-1, S36-T95N-R56W, hereinafter referred

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at as Central Township, County of Yankton, State of South Dakota. The E911 address is TBA 303<sup>rd</sup> Street, Yankton, SD.

By roll call vote, all members voted aye.

Motion carried.

This was the time and place for discussion regarding application from Caleb Pedersen. Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum Property Line Setback requirement from 660 feet to 65 feet on west property line and 500 feet on north property line, with an Agriculture waiver, in an Agriculture District (AG) in Yankton County. Said property is legally described as Tract 1, Weidenbach Addition, S29-T96N-R57W, hereinafter referred to as Odessa Township, County of Yankton, State of South Dakota. The E911 address is 29533 430<sup>th</sup> Avenue, Lesterville, SD.

Caleb Pedersen stated is requesting Conditional Use Permit to place a 2400 head pork finishing barn on his farmstead lot. Mr. Pedersen provided an agriculture waiver from his neighboring property owner to the north and west. The site meets the Right of Way requirements of 330 feet. The barn will be a tunnel ventilated design with curtains on the south side. The nutrient management plan will be in coordination with Tabor Coop. All the requirements are included in the application packet.

Mr. Welch requested any proponents of the Conditional Use Permit to present their statements.

Craig Johnson, county resident, stated the future of Yankton County is represented by Mr. Pedersen. The opportunity provided by the proposed 2400 head feeder barn will allow a young farmer to begin building equity and enter the capital intensive agriculture business.

Adam Termeer, Ethan Lumber, stated the barn style is dictated by the existing shelterbelt. The design is compact and fits in the space requirements of the farmstead.

Karl Schenk, county resident, stated the applicant is beginning the investment for equity development. The investment is forecasted to 10% return on investment. The minimum yard requirements are met and the application should be approved.

Brad Hohn, MDS – Parkston, SD, stated barn designs are modified to meet the producers' expectations and unique situations. All designs are utilizing the technology available today and will continue to be innovative in the future.

Jay Cutts, county resident, is impressed with opportunities the pork finisher barns provide young farmers in a capital intensive business.

Leroy Pedersen, neighbor and Caleb father, stated the barn will provide income for the farm operation and the nutrients are an input bonus.

Dan Boehmer, Ethan Lumber, stated the tax benefits, the barns are technology current and recommends approval of the permit.

Mr. Welch requested any opponents of the Conditional Use Permit to present their statements.

Patty Gramkow, county resident, stated she is concerned with Mr. Pedersen's nutrient management plan. She questioned Mr. Pedersen about his monitoring of P (phosphorus) and N (nitrogen) on the production fields.

Paul Weidenbach, neighbor, stated his opposition to the CUP because pork barns smell, waterways will be impacted, the family has six generations on the farm, road impact issues and maintenance and question the 1,320 feet setback from his property.

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Kristi Schultz, county resident, stated a variance of a Conditional Use Permit is illegal as stated by Mitch Peterson, safety is first with no detriment to the district from the documented health risks associated with CAFO's, a road agreement should be required and all CAFO's should have performance bonds before any approvals. Ms. Schultz recommends denial of the application.

Mr. Welch stated the applicant has ten (10) minutes for rebuttal.

Caleb Pedersen stated he has secondary education in agronomy and will be responsible with his future production property. The proposed system is a no-discharge operation which means no animal waste will be discharged from this facility into the waterways. Mr. Pedersen stated the future production practices are important to his family for continuing to farm in the next generation.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the site plan and noted the existing tree / shrub placement and compliant setbacks with the agriculture waiver issued by Doug and Josh Schaeffer.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

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Meeting date: October 9, 2018

CONDITIONAL USE  
Article 18, Section 1805

FINDINGS OF FACT

Applicant: Caleb Pedersen

Parcel Number: 16.029.150.100

Legal description: Tract 1, Weidenbach Addition, S29-T96N-R57W

Physical Address: 29533 430<sup>th</sup> Avenue, Lesterville, SD

1. The applicant specifically cited the section of the zoning ordinance under which the conditional use is sought and has stated the grounds on which it is requested; Applicant is requesting a Conditional Use Permit (Article 5, Section 507 & 519) to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum Property Line Setback requirement from 660 feet to 65 feet on west property line and 500 feet on north property line, with an Agriculture waiver, in an Agriculture District (AG) in Yankton County. Said property is legally described as Tract 1, Weidenbach Addition, S29-T96N-R57W, hereinafter referred to as Odessa Township, County of Yankton, State of South Dakota. The E911 address is 29533 430<sup>th</sup> Avenue, Lesterville, SD.
2. Notice of public hearing was given, as in Section 1803 (3-5); The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed CUP on September 28, 2108 (supported by affidavit), a legal notice was published on September 29

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2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 29, 2018.

3. The public hearing shall be held. Any party may appear in person, or by agent or attorney; A public meeting was held at 7:50 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

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Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.
- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.
- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates “finding of fact” and requests motion for action.

Caleb Pedersen stated is requesting Conditional Use Permit to place a 2400 head pork finishing barn on his farmstead lot. Mr. Pedersen provided an agriculture waiver from his neighboring property owner to the north and west. The site meets the Right of Way requirements of 330 feet. The barn will be a tunnel ventilated design with curtains on the south side. The nutrient management plan will be in coordination with Tabor Coop. All the requirements are included in the application packet.

Mr. Welch requested any proponents of the Conditional Use Permit to present their statements.

Craig Johnson, county resident, stated the future of Yankton County is represented by Mr. Pedersen. The opportunity provided by the proposed 2400 head feeder barn will allow a young farmer to begin building equity and enter the capital intensive agriculture business. Adam Termeer, Ethan Lumber, stated the barn style is dictated by the existing shelterbelt. The design is compact and fits in the space requirements of the farmstead.

Karl Schenk, county resident, stated the applicant is beginning the investment for equity development. The investment is forecasted to 10% return on investment. The minimum yard requirements are met and the application should be approved.

Brad Hohn, MDS – Parkston, SD, stated barn designs are modified to meet the producers’ expectations and unique situations. All designs are utilizing the technology available today and will continue to be innovative in the future.

Jay Cutts, county resident, is impressed with opportunities the pork finisher barns provide young farmers in a capital intensive business.

Leroy Pedersen, neighbor and Caleb father, stated the barn will provide income for the farm operation and the nutrients are an input bonus.

Dan Boehmer, Ethan Lumber, stated the tax benefits, the barns are technology current and recommends approval of the permit.

Mr. Welch requested any opponents of the Conditional Use Permit to present their statements.

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Patty Gramkow, county resident, stated she is concerned with Mr. Pedersen's nutrient management plan. She questioned Mr. Pedersen about his monitoring of P (phosphorus) and N (nitrogen) on the production fields.

Paul Weidenbach, neighbor, stated his opposition to the CUP because pork barns smell, waterways will be impacted, the family has six generations on the farm, road impact issues and maintenance and question the 1,320 feet setback from his property.

Kristi Schultz, county resident, stated a variance of a Conditional Use Permit is illegal as stated by Mitch Peterson, safety is first with no detriment to the district from the documented health risks associated with CAFO's, a road agreement should be required and all CAFO's should have performance bonds before any approvals. Ms. Schultz recommends denial of the application.

Mr. Welch stated the applicant has ten (10) minutes for rebuttal.

Caleb Pedersen stated he has secondary education in agronomy and will be responsible with his future production property. The proposed system is a no-discharge operation which means no animal waste will be discharged from this facility into the waterways. Mr. Pedersen stated the future production practices are important to his family for continuing to farm in the next generation.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the site plan and noted the existing tree / shrub placement and compliant setbacks with the agriculture waiver issued by Doug and Josh Schaeffer.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

4. The Planning Commission shall make a finding and recommendation that it is empowered under the section of this Ordinance described in the application, to include:
  - A. Recommend granting of the conditional use;
  - B. Recommend granting with conditions; or

The commission recommends granting of the conditional use permit with conditions as stated in the findings.

- C. Recommend denial of the conditional use.
5. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:
  - A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe; The applicant has shown sufficient access to property with established roadway (430<sup>th</sup> Avenue) and site plan turn around for emergency vehicles. (Exhibit #3)
  - B. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district; All off right-of-way areas are designated in the detailed site plan with sufficient area for deliveries, parking and

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production barn facilities such as animal disposal areas is in compliance required by Article 5. (Exhibit #3)

- C. Refuse and service areas, with particular reference to the items in (A) and (B) above; Refuse and service areas, including specific requirements such as equipment storage areas, animal disposal areas, nutrient handling areas and personnel requirements will be in compliance with Article 5 as shown in applicant site plan. (Exhibit #3)
- D. Utilities, with reference to locations, availability, and compatibility; Utilities will be available and will be in operational condition, the security lights will be monitored for proper downcast illumination to provide sufficient security. Exhibit #3)
- E. Screening and buffering with reference to type, dimensions, and character; Screening and buffering at this site location will provide trees / shrubs (Exhibit #3).
- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; All signage will conform to Article 14, Yankton County Zoning Ordinance
- G. Required yards and other open spaces; Yards and open spaces requirements are compliant with current regulations (Exhibit #3).
- H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest. The use is compatible with adjacent properties in the district and the granting of a Conditional Use Permit will not adversely affect the public interest. The intent of the Agriculture District is to preserve land best suited to agriculture uses.

Section 519 Animal Feeding Operation Performance Standards

Animal Feeding Operations are considered conditional uses and shall comply with the Conditional Use Process, all applicable state and federal requirements, and the applicable requirements as defined in this section:

Class A (5,000 – 10,000)	Section 519 (1,2,3,4,5,6,7(a),8(a),9,10,11,12,13)
Class B (3,000 – 4,999)	Section 519 (1,2,3,4,5,6,7(b),8(b),9,10,11,12,13)
Class C (2,000 – 2,999)	Section 519 (1,2,3,4,5,7(c),8(c),9,10,11,12,13)
Class D (1,000 – 1,999 )	Section 519 (1,2,3,4,5,7(d),8(d),9,10,11,12,13)
Class E (300 – 999)	Section 519 (2,3,4*,5,7(e),8(e),9,10,11,12,13)

This is a Class E proposed operation. The facility will be one (1) 2400 head feeder swine (960 animal units).

Class F (1 – 299) NA

\*If required by state law

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources or as amended by the State of South Dakota or the South Dakota Department of Environment and Natural Resources.



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The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

2. Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. The Storm Water Pollution Prevention Plan required by the permit must be developed and implemented upon the start of construction.

The facility will be required to receive and maintain a Storm Water Permit by South Dakota Department of Environment and Natural Resources. The DENR contact is Kent Woodmansey, Natural Resources Feedlot Engineer.

3. Animal confinement and waste facilities shall comply with the following facility setback requirements:

A. Public Wells	1,000 feet
B. Private Wells	250 feet
C. Private Wells (Operator's)	150 feet
D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply	1,000 feet
E. Lakes, Rivers, Streams Classified as Fisheries	1,000 feet
F. Designated 100 Year Flood Plain	PROHIBITED

As illustrated in the attached site plan, the proposed facility will meet or exceed all setbacks as required in the Yankton County Zoning Ordinance for a Class E CAFO. The facility acknowledges and will meet each of the requirements and the applicant detailed site plans verifying compliance. (Exhibit #3).

4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification. Examples of such management shall include at least:

- A. Proposed maintenance of waste facilities;

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

- B. Land application process and/or methods;

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

- C. Legal description and map, including documented proof of area to be utilized for nutrient application; and

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

- D. All CAFO's are required to obtain a South Dakota State General Permit that outlines the manure management practices that an operator must follow to prevent water pollution and protect public health.

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

5. New animal feeding operations, new CAFO's and waste facilities shall be setback six hundred and sixty (660) feet from a property line delineating a change in ownership and three hundred

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and thirty (330) feet from a right-a-way line. Additionally, the applicant shall locate the operation  $\frac{1}{4}$  of a mile or 1,320 feet from neighboring residential dwellings. The Planning Commission and/or Board of Adjustment may mandate setbacks greater than those required herein to further the intent of the Zoning Ordinance while protecting the public health, safety, and welfare.

The facility is compliant with the Property Line Setback and Right of Way Setback Requirement with attached agriculture waiver (Exhibit #4) and will meet neighboring residential setback with applicant detailed site plans verifying compliance. (Exhibit #3)

6. New Class A and B Animal Feeding Operations shall be prohibited from locating within the area bounded by the City of Yankton, 431<sup>st</sup> Avenue, the Missouri River, and South Dakota Highway 50.

The proposed site is outside the described area and a Class E operation. (Exhibit #3)

7. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from any Class I incorporated municipality or residentially zoned area bounded by the City of Yankton, 431<sup>st</sup> Avenue, the Missouri River and South of South Dakota Highway 50:

A. Class A	4 miles
B. Class B	2 miles
C. Class C	1 mile
D. Class D	2,640 feet
E. Class E	2,640 feet

The proposed site is outside the described area and is a Class E operation. (Exhibit #3)

8. New animal confinement and waste facilities shall be located no closer than  $\frac{1}{2}$  mile from any Class II or III incorporated municipality, active church, or established R2 or R3 residential area as shown on the Official Zoning Map. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from a residential dwelling; one dwelling unit is allowed on the facility site. The owner(s) of an animal feeding operation and/or residential dwelling may request the required setback be lessened or waived in accordance with the variance procedures as detailed herein. Residential waiver request forms are obtainable from the Zoning Administrator. This waiver would run with the land and be filed with the Yankton County Register of Deeds.

A. Class A	2 miles
B. Class B	1.25 miles
C. Class C	2,640 feet
D. Class D	1,320 feet
E. Class E	1,320 feet

The proposed site is a Class E operation outside the described buffer area. (Exhibit #3)

9. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.

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Manure from the facility will be transported via leak proof tankers and incorporated in to the soil of the lands in the NMP by injection. Yankton County load limits will be followed and no manure will be transported further than five (5) miles. The plan will provide details regarding aspects of nutrient application. (Exhibit #5, #5A, #6, #6A, #7, #7A, #8, #8A additional field information in original application)

10. Animal Feeding Operations shall prepare a facility management plan. The plan shall be designed to dispose of dead animals, manure, and wastewater in such a manner as to control odors and flies. The County Planning Commission and 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 shall be addressed in a management control plan:

A. An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented:

An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented; all operational plans, will be kept updated and implemented (Exhibit #9).

B. The methods to be utilized to dispose of dead animals shall be identified:

Mortality management shall be done in compliance with one of the methods allowed by the South Dakota Animal Industry Board. Current plans are to place a rendering service on contract to promptly dispose of mortalities. Mortalities will be screened by a 3-sided, minimum of 4' high enclosure as illustrated in the site plan. (Exhibit #3)

C. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of odors generated by the facility:

As illustrated in the attached odor model (Exhibit #10), we are proposing to position the facility in such a way to avoid potential odor impacts on neighbors as much as possible. With even our closest neighbors being beyond the 98% nuisance level, we are not planning to add a shelterbelt at this time. Below is additional information written by Dr. Erin Cortus pertaining to the South Dakota Odor Footprint Tool provided by SDSU:

The South Dakota Odor Footprint Tool (SDOFT) provides estimates of the odor footprint for livestock facilities in South Dakota. Think of a footprint in the sand. If the pressure increases, the indented area will also increase. An odor footprint works the same way. As odor emission increases, the area affected increases. As odor emission decreases, so does the area affected. The key components to the odor footprint estimate are the South Dakota County, the type of housing and/or manure storage, the surface area of the housing or manure storage, and whether there are any odor control technologies in place. The list of odor control technologies currently built into SDOFT are biofilters, oil sprinkling and manure storage covers (geotextile, impermeable or straw).

An odor footprint is shown through annoyance-free frequency curves during warm weather. For example, an annoyance-free frequency of 97% means that annoying odors should not be experienced more than 22 hours a month between April and October, at or beyond the setback distance estimate. The affected area is rarely a perfect circle around an odor source – this is because there are different setback distances in different directions, depending on the prevailing winds between April and October for the selected county. Annoyance-free does not mean odor

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free. Annoyance-free means the odor intensity is a 2, on a scale of 0-5, for which the majority of the population would not find annoying. Note: Cold weather reduces odor generation by manure sources, so the footprint would be smaller during winter months.

Odor footprint estimates are useful for livestock producers, local government land use planners, and citizens concerned about the odor impact of existing, expanding or new animal production sites. These estimates are based on measured odor emission rates and dispersion modeling. SDOFT takes average South Dakota climatic conditions into account. While SDOFT does not take into account all of the impacts topography and site-specific features (like animal diet and management) can have on the odor footprint for a particulate site, it does provide a starting point for investigating the impacts odor-mitigating technologies can have on the area surrounding a facility.

- D. A storm water management section shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining drier confinement areas to reduce odor production.

Our enclosed facility will not expose pens to uncontrolled water and the site will be graded to direct storm-water drainage away from the facility so to avoid any standing water near the facility.

- E. A solid manure storage plan detailing the number and size of containment areas and methods of controlling drainage to minimize odor production.

All animal organic waste/nutrients will be contained in an 8' covered concrete vault directly underneath the facility. Construction materials will be reinforced concrete construction commonly used in the industry with the desired results of controlling the manure/nutrients and limiting potential odors. The manure/nutrients shall be contained within the reinforced concrete vault designed and constructed in accordance with accepted industry standards. (Exhibit #11)

- F. A description of the method and timeframe for removal of manure/nutrients from open pens to minimize odor production:

Aside from daily cleaning as needed, each facility will empty out and receive new pigs approximately 2.5 times per year during which times it will be fully disinfected and power washed throughout the inside of the building.

The proposed facility will have the manure/nutrients in a covered vault which will be removed annually via pump. The manure/nutrients will be directly applied to nearby fields identified in section (H) via injection below the soil surface. The transportation method will be tanker equipment (covered/contained) for direct application via injection.

The time frame is expected to take three days for application of all the manure/nutrients and will occur primarily in the fall after harvest or, on rare occasion, in the spring before planting but after snow melt.

- G. The applicability, economics, and effect of Industry Best Management Practices shall be covered:

Industry Best Management practices are to control the manure/wastewater in a covered pit. The design of Caleb Pedersen's facility is designed to do this. Although the sealed concrete pit has higher relative cost than an uncovered open lagoon, the benefits of odor control and

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manure/wastewater containment are worth the additional investment. This greatly controls the dissemination of odor to the neighboring area as reflect in the attached odor model.

Industry Best Management Practices are to apply the manure/nutrient as a fertilizer to farmed fields. To control odor, the best practice is to do this once annually and to do it via direct injection to reduce gas and particle emissions. This best practice is more costly than direct spreading on top of the soil but the benefits of odor reduction and decreased nitrogen volatilization are worth the extra investment.

Industry Best Management Practices is to promptly remove mortalities and that is the practice Caleb Pedersen will follow. Industry Best Management Practice is to avoid the application of the manure/nutrient on extremely windy days and to avoid land application ahead of rain that may produce run-off. Application preceding a rain that does not produce run-off may reduce particle emissions. Caleb Pedersen's operation shall follow these practices.

Aeration, anaerobic lagoons and digesters and solid separation are all practices that may reduce odor and particle emissions at additional expense. Caleb Pedersen's operation will employ the covered pit method to control odor and particle emissions at additional expense because of its wide acceptance as an effective best industry management practice and does not intend to use these alternative methods.

Location of the facility to limit the effect of odor on neighboring residences is one of the most effective best management practices. The attached odor model demonstrates the limited impact this facility is expected to have on its neighbors based upon greater than one-half mile. (Exhibit #6)

- H. A notification section should be formulated by the applicant. It is to include the names, addresses, and phone numbers of all occupied residences and public gathering places, within one-half mile of the applicant's manure application fields. The preferred hauling and application process shall be detailed and include timetables of probable application periods. Application of manure on weekends, holidays, and evenings during the seasons shall be avoided whenever possible. Complaints could lead to having to give 48 hour notice in advance of manure applications. Annual notification advising of an upcoming 30 day window should be given.

**OCCUPIED RESIDENCES WITHIN ½ MILE OF CROP GROUND ON  
WHICH INJECTION OF NUTRIENTS MAY OCCUR:**

<b>Exhibit #5 &amp; #5A</b>		
<b>Resident</b>	<b>Address</b>	<b>City / State / Postal Code</b>
AUCH, DARLENE K (LE)	PO BOX 111	SCOTLAND SD 57059
AUCH, DENNIS R REVOCABLE TRUST	43608 287 ST	MENNO SD 57045
AUCH, DUANE E	29896 463 AVE	CENTERVILLE SD 57014
AUCH, LUELLA D REV LIV TRUST	408 S HIGH ST	MENNO SD 57045
FISCHER, RICHARD E	42964 SD HWY 46	LESTERVILLE SD 57040
FISCHER, STEVEN	29549 431 AVE	LESTERVILLE SD 57040
GALL, RODNEY	31024 434 AVE	YANKTON SD 57078

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SCHAEFFER, DOUGLAS R LIV TRUST	42845 SD HWY 46	LESTERVILLE SD 57040
VAITH, JEFFREY A	29552 429 AVE	LESTERVILLE SD 57040
WEIDENBACH FMLY LTD PARTNRSHP	29533 430 AVE	LESTERVILLE SD 57040
WEIDENBACH, EUGENE R REV TRUST	1010 MAIN ST	SCOTLAND SD 57059
WEIDENBACH, LYLE R LIV TRUST	29533 430 AVE	LESTERVILLE SD 57040
WEIDENBACH, PAUL R LIV TRUST	29484 430 AVE	LESTERVILLE SD 57040
ZION AMERICAN LUTHERAN CHURCH	BOX 323	SCOTLAND SD 57059

**Exhibit #6 & #6A**

<b>Resident</b>	<b>Address</b>	<b>City / State / Postal Code</b>
AUCH, DARLEEN A	29421 429 AVE	LESTERVILLE SD 57040
AUCH, DARLENE K (LE)	PO BOX 111	SCOTLAND SD 57059
AUCH, DONALD T	29421 429 AVE	LESTERVILLE SD 57040
DUMMER, PAUL LIVING TRUST	30244 429 AVE	LESTERVILLE SD 57040
FISCHER, GARY M	29441 430 AVE	LESTERVILLE SD 57040
GALL, RODNEY	31024 434 AVE	YANKTON SD 57078
KAUL, LORENE D	27238 469 AVE	TEA SD 57064
SCHAEFFER, DOUGLAS R LIV TRUST	42845 SD HWY 46	LESTERVILLE SD 57040
VAITH, JEFFREY A	29552 429 AVE	LESTERVILLE SD 57040
WEIDENBACH FMLY LTD PARTNRSHP	29533 430 AVE	LESTERVILLE SD 57040

**Exhibit #7 & #7A**

<b>Resident</b>	<b>Address</b>	<b>City / State / Postal Code</b>
AUCH, DENNIS R REVOCABLE TRUST	43608 287 ST	MENNO SD 57045
AUCH, DUANE E	29896 463 AVE	CENTERVILLE SD 57014
AUCH, LUELLA D REV LIV TRUST	408 S HIGH ST	MENNO SD 57045
DAVIS, LINDA P	816 EAST 19 ST	YANKTON SD 57078
FISCHER, STEVEN	29549 431 AVE	LESTERVILLE SD 57040
GOEHRING, BRIAN W	29368 431 AVE	LESTERVILLE SD 57040
GOEHRING, WILLARD (LE)	507 S 5 ST	MENNO SD 57045
SCHAEFFER, DOUGLAS R LIV TRUST	42845 SD HWY 46	LESTERVILLE SD 57040
WEIDENBACH FMLY LTD PARTNRSHP	29533 430 AVE	LESTERVILLE SD 57040
WEIDENBACH, EUGENE R REV TRUST	1010 MAIN ST	SCOTLAND SD 57059
WEIDENBACH, LYLE R LIV TRUST	29533 430 AVE	LESTERVILLE SD 57040
WEIDENBACH, PAUL R LIV TRUST	29484 430 AVE	LESTERVILLE SD 57040

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<b>Exhibit #8 &amp; #8A</b>		
<b>Resident</b>	<b>Address</b>	<b>City / State / Postal Code</b>
AUCH, DARLENE K (LE)	PO BOX 111	SCOTLAND SD 57059
ELLINGER, ROXANNE	PO BOX 35	LESTERVILLE SD 57040
FISCHER, RICHARD	42964 SD HWY 46	LESTERVILLE SD 57040
GALL, FREDERICK V	42846 298 ST	LESTERVILLE SD 57040
MUELLER, LARRY	1010 WEST 10 ST	YANKTON SD 57078
PEDERSEN, LEROY EUGENE	42929 SD HWY 46	LESTERVILLE SD 57040
SCHAEFFER, ALFRED E LV TRST LE	215 S ALFALFA ST	MENNO SD 57045
SCHAEFFER, DOUGLAS LIV TRUST	42845 SD HWY 46	LESTERVILLE SD 57040
VAITH, BRIAN	42763 296 ST	SCOTLAND SD 57059

There are no public meeting sites within ½ mile of the proposed facilities.

All manure application setbacks will be followed in accordance to the Zoning Ordinance and incorporated by injection in to the soil.

Industry best management practices are to apply the manure/nutrient as a fertilizer to nearby fields. To control odor, the manure /nutrients are directly injected annually into the soil to reduce gas and particle emissions. This best practice is more costly than surface application but the benefits of odor reduction and decreased nitrogen volatilization are worth the extra investment. (Exhibit #3 and Exhibit #5, #5A, #6, #6A, #7, #7A, #8, #8A additional field information in original application)

- I. A review of weather conditions shall include reviewing the effect of climate upon manure application. This section shall also include the preferred times and conditions for application to mitigate the potential effects upon neighboring properties while outlining the least advantageous climatic conditions.

Most advantageous weather conditions are in cool dry conditions with a mild breeze. The least advantageous time is in hot wet weather. Our intent, to capitalize on favorable conditions and avoid unfavorable conditions, is to apply the manure in the fall after harvest. In rare instances, the manure will be applied in the spring (after snow-melt). In every instance, the application shall be done in compliance with both Yankton County Zoning Ordinances.

**Additional procedures Caleb Pedersen will follow to control flies and odors:**

**Fly, Odor & Rodent Control Guidelines  
For Animal Feeding Operations**

Fly, Odor and Rodent control are important to maintain a healthy, community friendly livestock operation. These guidelines are provided as a broad management tool to control fly populations, odor emissions and dust at an acceptable level. Each animal feeding operation must implement a system to fit their specific operation.

A) Fly Control

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1. Remove and properly dispose of spilled and spoiled feed.
2. Repair leaky waterers.
3. Keep vegetation mowed near the facilities.
4. Properly drain rainwater away from the facilities.
5. Apply commercial insecticides in a proper and timely manner.

B) Odor Control

1. Manage mortalities per SD Animal Industry Board requirements.
2. Adjust feed rations per industry standards to reduce potential odor generating byproducts.

C) Rodent Control

1. Two foot wide gravel barrier around the perimeter to discourage rodent entry.
2. Bait boxes at 75-100 ft. intervals that are checked 2x per month.
3. Spilled feed will immediately be cleaned up to discourage rodent activity.
4. Site routinely mowed to remove rodent harborage areas

The fly and odor control guidelines above will be conducted concurrently with one another to help prevent a nuisance problem from occurring.

11. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is injected or incorporated within twenty-four (24) hours:

A. Public Wells 1,000 feet  
There are no known Public Wells within 1,000 feet of fields.

B. Private Wells 250 feet  
The applicant will meet the setback requirement for Private Wells.

C. Private Wells (Operator's) 150 feet  
The applicant will meet the setback requirement for Private Wells (Operator's).

D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet  
The applicant will meet the setback requirement for Lakes, Rivers, Streams Classified as Public Drinking Water Supplies.

E. Lakes, Rivers and Streams Classified as Fisheries 200 feet  
The applicant will meet the setback requirement for Lakes, Rivers, Streams Classified as Fisheries.

F. All Public Road Right-of-ways 10 feet  
The applicant will meet the setback requirement for All Public Road Right-of-ways.

G. Incorporated Communities 660 feet  
The applicant will meet the setback requirement for Incorporated Communities.



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- H. A Residence other than the Operators 100 feet  
The applicant will meet the setback requirement for a Residence other than the Operators.
12. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is irrigated or surface applied:
- A. Public Wells 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.
- B. Private Wells 250 feet  
The facility will not irrigate or surface apply any nutrient applications.
- C. Private Wells(Operator's) 150 feet  
The facility will not irrigate or surface apply any nutrient applications.
- D. Lakes, Rivers, Steams Classified as a Public Drinking Water Supply 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.
- E. Lakes, Rivers and Streams Classified as Fisheries 660 feet  
The facility will not irrigate or surface apply any nutrient applications.
- F. All Public Road Right-of-ways (Surface Applied) 10 feet  
The facility will not irrigate or surface apply any nutrient applications.
- G. All Public Road Right-of-ways (Irrigated Application) 100 feet  
The facility will not irrigate or surface apply any nutrient applications.
- H. Incorporated Communities (Surface Applied) 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.
- I. Incorporated Communities (Irrigated Application) 2,640 feet  
The facility will not irrigate or surface apply any nutrient applications.
- J. A Residence other than the Operators (Surface Applied) 330 feet  
The facility will not irrigate or surface apply any nutrient applications.
- K. A Residence other than the Operators (Irrigated Application) 750 feet  
The facility will not irrigate or surface apply any nutrient applications.
13. If irrigation is used for removal of liquid manure, dewatering a lagoon (gray water) basin, or any type of liquid manure holding pit, these rules apply:
1. Drops must be used on systems that disperse the liquid no higher than 18" off the ground if no crop is actively growing on the field.  
Applicant is not requesting irrigation application permit.
2. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.  
Applicant is not requesting irrigation application permit.
3. No runoff or diffused spray from the system onto neighboring property or public right-of-way will be allowed.  
Applicant is not requesting irrigation application permit.
4. No irrigation of liquid on frozen ground or over FSA designated wetlands.  
Applicant is not requesting irrigation application permit.
5. No "big gun" type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.  
Applicant is not requesting irrigation application permit.

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Action 10918H: Moved by Gudahl, second by Kretsinger to recommend based on Finding of Facts dated October 9, 2018 to a Conditional Use Permit based on Finding of Facts dated October 9, 2018, pursuant to Article 18, Section 1805 of the Yankton County Zoning Ordinance, a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. Said property is legally described as Tract 1, Weidenbach Addition, S29-T96N-R57W, hereinafter referred to as Odessa Township, County of Yankton, State of South Dakota. The E911 address is 29533 430<sup>th</sup> Avenue, Lesterville, SD.

By roll call vote, all members present voted aye.

Motion carried.

Yankton County Planning Commission

Meeting date: October 9, 2018

VARIANCE

Article 18, Section 1807

FINDINGS OF FACT

Applicant: Caleb Pedersen

Parcel Number: 16.029.150.100

Legal description: Tract 1, Weidenbach Addition, S29-T96N-R57W

Physical Address: 29533 430<sup>th</sup> Avenue, Lesterville, SD

1. No such variance shall be recommended for approval by the Planning Commission unless it finds:
  - A. The strict application of the ordinance would produce undue hardship; The agriculture property has an agriculture waiver from the neighboring landowners.
  - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; The hardship can be shared by other properties but is limited to properties requiring agriculture Concentrated Animal Feeding Operations setback regulations.
  - C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; The granting of a variance will not be of substantial detriment to adjacent property nor the character of the district. Occupied farmstead are all greater than 1,320 feet from the site. The intent of the Agriculture District is to preserve land best suited to agriculture uses.
  - D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposed of convenience, profit, and caprice. No convenience, profit or caprice was shown.

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2. No variance shall be recommended for approval unless the Planning Commission finds the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance. The requested variance can be recurring with special circumstances discussed in the findings.
3. A recommendation of approval concerning a variance from the terms of this ordinance shall not be founded by the Planning Commission unless and until:
  - A. A written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; The property is demonstrating special conditions or circumstances regarding an agriculture waiver and proposed proper siting to minimize impact.
  - B. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; Previous variances of minimum Property Line Setbacks Requirement have been granted in Yankton County.
  - C. The special conditions and circumstances do not result from the actions of the applicant; The special conditions and circumstances are not a result of the applicant.
  - D. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district. Variance requests of this type (minimum Property Line Setback Requirement) have been recommended previously by the Planning Commission.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance. No nonconforming uses of neighboring lands, structures, or buildings in this district, and no permitted or nonconforming use of lands, structures, or buildings in other districts were considered.
5. Notice of public hearing shall be given, as in Section 1803 (3-5). The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed variance on September 28, 2018 (supported by affidavit), a legal notice was published on September 29 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 28, 2018.
6. The public hearing shall be held. Any party may appear in person or by agent or by attorney A public meeting was held at 7:50 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

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Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.
- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.

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- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates “finding of fact” and requests motion for action.

Caleb Pedersen stated is requesting Conditional Use Permit to place a 2400 head pork finishing barn on his farmstead lot. Mr. Pedersen provided an agriculture waiver from his neighboring property owner to the north and west. The site meets the Right of Way requirements of 330 feet. The barn will be a tunnel ventilated design with curtains on the south side. The nutrient management plan will be in coordination with Tabor Coop. All the requirements are included in the application packet.

Mr. Welch requested any proponents of the Conditional Use Permit to present their statements.

Craig Johnson, county resident, stated the future of Yankton County is represented by Mr. Pedersen. The opportunity provided by the proposed 2400 head feeder barn will allow a young farmer to begin building equity and enter the capital intensive agriculture business. Adam Termeer, Ethan Lumber, stated the barn style is dictated by the existing shelterbelt. The design is compact and fits in the space requirements of the farmstead.

Karl Schenk, county resident, stated the applicant is beginning the investment for equity development. The investment is forecasted to 10% return on investment. The minimum yard requirements are met and the application should be approved.

Brad Hohn, MDS – Parkston, SD, stated barn designs are modified to meet the producers’ expectations and unique situations. All designs are utilizing the technology available today and will continue to be innovative in the future.

Jay Cutts, county resident, is impressed with opportunities the pork finisher barns provide young farmers in a capital intensive business.

Leroy Pedersen, neighbor and Caleb father, stated the barn will provide income for the farm operation and the nutrients are an input bonus.

Dan Boehmer, Ethan Lumber, stated the tax benefits, the barns are technology current and recommends approval of the permit.

Mr. Welch requested any opponents of the Conditional Use Permit to present their statements.

Patty Gramkow, county resident, stated she is concerned with Mr. Pedersen’s nutrient management plan. She questioned Mr. Pedersen about his monitoring of P (phosphorus) and N (nitrogen) on the production fields.

Paul Weidenbach, neighbor, stated his opposition to the CUP because pork barns smell, waterways will be impacted, the family has six generations on the farm, road impact issues and maintenance and question the 1,320 feet setback from his property.

Kristi Schultz, county resident, stated a variance of a Conditional Use Permit is illegal as stated by Mitch Peterson, safety is first with no detriment to the district from the documented health risks associated with CAFO’s, a road agreement should be required and all CAFO’s should have performance bonds before any approvals. Ms. Schultz recommends denial of the application.

Mr. Welch stated the applicant has ten (10) minutes for rebuttal.

Caleb Pedersen stated he has secondary education in agronomy and will be responsible with his future production property. The proposed system is a no-discharge operation which means no animal waste will be discharged from this facility into the waterways.

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Mr. Pedersen stated the future production practices are important to his family for continuing to farm in the next generation.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the site plan and noted the existing tree / shrub placement and compliant setbacks with the agriculture waiver issued by Doug and Josh Schaeffer.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

7. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a variance; the Commission shall further make a finding that the reasons set forth in the application justify the recommendations of granting the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Planning Commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

The Planning Commission further finds that the reasons set forth in the application and hearing does satisfy all requirements for this variance request.

8. In recommending approval of any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance. The Planning Commission approves this request.
9. Under no circumstances shall the Planning Commission recommend granting a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district. The variance request of Minimum Property Line Setback Requirement is approved. The intent of the Agriculture District is to preserve land best suited to agriculture uses.

Action 10918I: Moved by Becker, second by Kettering to recommend to a variance based on Finding of Facts dated October 9, 2018, pursuant to Article 18, Section 1807 of the Yankton County Zoning Ordinance, a variance of Minimum Property Line Setback requirement from 660 feet to 65 feet on west property line and 500 feet on north property line, with an Agriculture waiver, in an Agriculture District (AG) in Yankton County. Said property is legally described as Tract 1, Weidenbach Addition, S29-T96N-R57W, hereinafter referred to as Odessa Township, County of Yankton, State of South Dakota. The E911 address is 29533 430<sup>th</sup> Avenue, Lesterville, SD.

By roll call vote, all members present voted aye.

Motion carried.

This was the time and place for discussion with Karl Schenk. Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, exc Lot 2, Helgerson's Addition, S14-T94N-R55W and SW1/4, exc Parcel A, NW1/4, SW1/4, exc Lot 1, Helgerson's Addition, S14-T94N-R55W hereinafter referred to as Mission Hill

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North Township, County of Yankton, State of South Dakota. The E911 address is TBA 306th Street, Mission Hill, SD.

Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

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Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.
- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.
- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates “finding of fact” and requests motion for action.

Mike Stevens, representing Karl Schenk, stated the application meets all requirements for Article 5, Section 519. The variance request is a Right of Way (ROW) setback from 330 feet to 150 feet to move the barn additional distance from residences and provide better soil type for the tree / evergreen planting. The odor footprint model impact is non-residential areas and this is a no discharge operation.

Mr. Welch requested comments from the proponents.

Craig Johnson, county resident, stated his approval of the Conditional Use Permit because animal production is not a dangerous activity. The nutrient content in manure is valuable for grain production in Yankton County. Animal nutrient input significantly reduces the amount of petroleum based nutrients for grain production.

Robert Freng, county resident, stated his approval of the Conditional Use Permit. Mr. Freng states zoning should protect agriculture producers in Yankton County. The application shows the applicant meets all zoning requirements which promotes good managers and operation decisions. Brad Hohn, MDS – Parkston, SD, stated the barn design will be the curtain style which controls all water input into the system. The process increases the nutrient value of manure while increasing holding capacity. Mr. Hohn stated zoning should protect farmers to conduct farm activities.

Mr. Welch requested comments from the opponents.

Jim Williams, neighbor, stated his concern of odor at his residence. Mr. Williams stated his observation of the odor model shows his residence will be outside the model annoyance-free zone. Mr. Williams requests the findings to assure this odor model will be utilized to monitor and manage odor when the structure is complete and operating. Mr. Williams also stated the variance request is actually better for his property because of distance and better soil for the four rows of trees as stated in the site plan. He recommends some trees larger than the USDA conservation trees, suggesting potted evergreens.

Kristi Schultz, county resident, stated the Conditional Use Permit should be denied. The application is not addressing performance bonds, road maintenance agreements, modern “state of art” facilities, biofilters, buffer of evergreens, electrostatic fencing, feed additives, air monitoring for noxious gases, disease & insect control, ground water monitor, shallow aquifers, berms of

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specific specifications, grass buffer strips, no manure applications on slopes, soil testing, annual inspection by SD Department of Environment and Natural Resources, mandatory Concentrated Animal Feeding Operation training, enough barns in Yankton County...rich get richer and poor get poorer.

Mr. Welch stated the applicant has ten (10) minutes for rebuttal.

Mike Stevens, representing Karl Schenk, stated the application meets the criteria requirements in Yankton County Zoning Ordinance #16. The Section 519 clearly defines the criteria an applicant must meet to approve a Conditional Use Permit.

The tree planting will be four rows with fabric weed protection at planting time. Two rows will be evergreen (Meyer Spruce and Pine species) and two rows deciduous species. Corn will be in rotation for 2019 and will contribute to the buffer.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the site plan and noted the tree placement and the odor footprint model. The odor footprint model will be utilized to monitor the facilities for odor control.

The variance request will require four (4) rows of trees on the north and west side of the facility. The buffer will have fabric installed for weed prevention and mulch. It is recommended to plant potted evergreens to hasten the tree growth.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

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Meeting date: October 9, 2018

CONDITIONAL USE  
Article 18, Section 1805

FINDINGS OF FACT

Applicant: Karl Schenk

Parcel Number: 06.014.200.150

Legal description: SE1/4, exc Lot 2, Helgerson's Addition, S14-T94N-R55W and SW1/4, exc Parcel A, NW1/4, SW1/4, exc Lot 1, Helgerson's Addition, S14-T94N-R55W

Physical Address: TBA 306<sup>th</sup> Street, Mission Hill, SD

1. The applicant specifically cited the section of the zoning ordinance under which the conditional use is sought and has stated the grounds on which it is requested; Applicant is requesting a Conditional Use Permit (Article 5, Section 507 and 519) to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet in an Agriculture District (AG)

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in Yankton County. Article 5, Section 519. Said property is legally described as SE1/4, exc Lot 2, Helgerson's Addition, S14-T94N-R55W and SW1/4, exc Parcel A, NW1/4, SW1/4, exc Lot 1, Helgerson's Addition, S14-T94N-R55W hereinafter referred to as Mission Hill North Township, County of Yankton, State of South Dakota. The E911 address is TBA 306th Street, Mission Hill, SD.

2. Notice of public hearing was given, as in Section 1803 (3-5); The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed CUP on September 27, 2108 (supported by affidavit), a legal notice was published on September 29 2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 29, 2018.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney; A public meeting was held at 8:15 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

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Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.
- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.
- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates "finding of fact" and requests motion for action.

Mike Stevens, representing Karl Schenk, stated the application meets all requirements for Article 5, Section 519. The variance request is a Right of Way (ROW) setback from 330 feet to 150 feet to move the barn additional distance from residences and provide better soil type for the tree / evergreen planting. The odor footprint model impact is non-residential areas and this is a no discharge operation.

Mr. Welch requested comments from the proponents.

Craig Johnson, county resident, stated his approval of the Conditional Use Permit because animal production is not a dangerous activity. The nutrient content in manure is valuable for grain production in Yankton County. Animal nutrient input significantly reduces the amount of petroleum based nutrients for grain production.

Robert Freng, county resident, stated his approval of the Conditional Use Permit. Mr. Freng states zoning should protect agriculture producers in Yankton County. The application shows the applicant meets all zoning requirements which promotes good managers and operation decisions.

Brad Hohn, MDS – Parkston, SD, stated the barn design will be the curtain style which controls all water input into the system. The process increases the nutrient value of manure while increasing holding capacity. Mr. Hohn stated zoning should protect farmers to conduct farm activities.



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Mr. Welch requested comments from the opponents.

Jim Williams, neighbor, stated his concern of odor at his residence. Mr. Williams stated his observation of the odor model shows his residence will be outside the annoyance-free zone. Mr. Williams requests the findings to assure this odor model will be utilized to monitor and control odor when the structure is complete and operating. Mr. Williams also request the variance request is actually better for his property because of distance and better soil for the four rows of trees as stated in the site plan. He recommends some trees larger than the USDA conservation trees, suggesting potted evergreens.

Kristi Schultz, county resident, stated the Conditional Use Permit should be denied. The application is not addressing performance bonds, road maintenance agreements, modern "state of art" facilities, biofilters, buffer of evergreens, electrostatic fencing, feed additives, air monitoring for noxious gases, disease & insect control, ground water monitor, shallow aquifers, berms of specific specifications, grass buffer strips, no manure applications on slopes, soil testing, annual inspection by SD Department of Environment and Natural Resources, mandatory Concentrated Animal Feeding Operation training, enough barns in Yankton County...rich get richer and poor get poorer.

Mr. Welch stated the applicant has ten (10) minutes for rebuttal.

Mike Stevens, representing Karl Schenk, stated the application meets the criteria requirements in Yankton County Zoning Ordinance #16. The Section 519 clearly defines the criteria an applicant must meet to approve a Conditional Use Permit.

The tree planting will be four rows with fabric weed protection at planting time. Two rows will be evergreen (Meyer Spruce and Pine species) and two rows deciduous species. Corn will be in rotation for 2019 and will contribute to the buffer.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the site plan and noted the tree placement and the odor footprint model. The odor footprint model will be utilized to monitor the facilities for odor control.

The variance request will require four (4) rows of trees on the north and west side of the facility. The buffer will have fabric installed for weed prevention and mulch. It is recommended to plant potted evergreens to hasten the tree growth.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

4. The Planning Commission shall make a finding and recommendation that it is empowered under the section of this Ordinance described in the application, to include:

- A. Recommend granting of the conditional use;

- B. Recommend granting with conditions; or

The commission recommends granting of the conditional use permit with conditions as stated in the findings.

- C. Recommend denial of the conditional use.

5. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:

- A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and

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- control, and access in case of fire or catastrophe; The applicant has shown sufficient access to property with established roadway (306<sup>th</sup> Avenue) and site plan turn around for emergency vehicles. (Exhibit #3)
- B. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district; All off right-of-way areas are designated in the detailed site plan with sufficient area for deliveries, parking and production barn facilities such as animal disposal areas is in compliance required by Article 5. (Exhibit #3)
- C. Refuse and service areas, with particular reference to the items in (A) and (B) above; Refuse and service areas, including specific requirements such as equipment storage areas, animal disposal areas, nutrient handling areas and personnel requirements will be in compliance with Article 5 as shown in applicant site plan. (Exhibit #3)
- D. Utilities, with reference to locations, availability, and compatibility; Utilities will be available and will be in operational condition, the security lights will be monitored for proper downcast illumination to provide sufficient security. Exhibit #3)
- E. Screening and buffering with reference to type, dimensions, and character; Screening and buffering at this site location will provide trees / shrubs (Exhibit #3).
- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; All signage will conform to Article 14, Yankton County Zoning Ordinance
- G. Required yards and other open spaces; Yards and open spaces requirements are compliant with current regulations (Exhibit #3).
- H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest. The use is compatible with adjacent properties in the district and the granting of a Conditional Use Permit will not adversely affect the public interest. The intent of the Agriculture District is to preserve land best suited to agriculture uses.

Section 519 Animal Feeding Operation Performance Standards

Animal Feeding Operations are considered conditional uses and shall comply with the Conditional Use Process, all applicable state and federal requirements, and the applicable requirements as defined in this section:

Class A (5,000 – 10,000)	Section 519 (1,2,3,4,5,6,7(a),8(a),9,10,11,12,13)
Class B (3,000 – 4,999)	Section 519 (1,2,3,4,5,6,7(b),8(b),9,10,11,12,13)
Class C (2,000 – 2,999)	Section 519 (1,2,3,4,5,7(c),8(c),9,10,11,12,13)
Class D (1,000 – 1,999 )	Section 519 (1,2,3,4,5,7(d),8(d),9,10,11,12,13)
Class E (300 – 999)	Section 519 (2,3,4*,5,7(e),8(e),9,10,11,12,13)

This is a Class E proposed operation. The facility will be one (1) 2400 head feeder swine (960 animal units).

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Class F (1 – 299)

NA

\*If required by state law

2. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources or as amended by the State of South Dakota or the South Dakota Department of Environment and Natural Resources.

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

3. Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. The Storm Water Pollution Prevention Plan required by the permit must be developed and implemented upon the start of construction.

The facility will be required to receive and maintain a Storm Water Permit by South Dakota Department of Environment and Natural Resources. The DENR contact is Kent Woodmansey, Natural Resources Feedlot Engineer.

4. Animal confinement and waste facilities shall comply with the following facility setback requirements:

A. Public Wells	1,000 feet
B. Private Wells	250 feet
C. Private Wells (Operator's)	150 feet
D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply	1,000 feet
E. Lakes, Rivers, Streams Classified as Fisheries	1,000 feet
F. Designated 100 Year Flood Plain	PROHIBITED

As illustrated in the attached site plan, the proposed facility will meet or exceed all setbacks as required in the Yankton County Zoning Ordinance for a Class E CAFO. The facility acknowledges and will meet each of the requirements and the applicant detailed site plans verifying compliance. (Exhibit #3).

5. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification. Examples of such management shall include at least:

A. Proposed maintenance of waste facilities;

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

B. Land application process and/or methods;

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

C. Legal description and map, including documented proof of area to be utilized for nutrient application; and

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

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- D. All CAFO's are required to obtain a South Dakota State General Permit that outlines the manure management practices that an operator must follow to prevent water pollution and protect public health.

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

6. New animal feeding operations, new CAFO's and waste facilities shall be setback six hundred and sixty (660) feet from a property line delineating a change in ownership and three hundred and thirty (330) feet from a right-a-way line. Additionally, the applicant shall locate the operation  $\frac{1}{4}$  of a mile or 1,320 feet from neighboring residential dwellings. The Planning Commission and/or Board of Adjustment may mandate setbacks greater than those required herein to further the intent of the Zoning Ordinance while protecting the public health, safety, and welfare.

The facility is compliant with the Property Line Setback and will meet neighboring residential setback with applicant detailed site plans verifying compliance. The applicant is requesting a variance of 180 feet with the Right of Way (ROW) Setback to facilitate distance from residences and improve tree buffer potential (soil types)(Exhibit #3)

7. New Class A and B Animal Feeding Operations shall be prohibited from locating within the area bounded by the City of Yankton, 431<sup>st</sup> Avenue, the Missouri River, and South Dakota Highway 50.

The proposed site is outside the described area and a Class E operation. (Exhibit #3)

8. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from any Class I incorporated municipality or residentially zoned area bounded by the City of Yankton, 431<sup>st</sup> Avenue, the Missouri River and South of South Dakota Highway 50:

- |            |            |
|------------|------------|
| A. Class A | 4 miles    |
| B. Class B | 2 miles    |
| C. Class C | 1 mile     |
| D. Class D | 2,640 feet |
| E. Class E | 2,640 feet |

The proposed site is outside the described area and is a Class E operation. (Exhibit #3)

9. New animal confinement and waste facilities shall be located no closer than  $\frac{1}{2}$  mile from any Class II or III incorporated municipality, active church, or established R2 or R3 residential area as shown on the Official Zoning Map. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from a residential dwelling; one dwelling unit is allowed on the facility site. The owner(s) of an animal feeding operation and/or residential dwelling may request the required setback be lessened or waived in accordance with the variance procedures as detailed herein. Residential waiver request forms are obtainable from the Zoning Administrator. This waiver would run with the land and be filed with the Yankton County Register of Deeds.

- |            |            |
|------------|------------|
| A. Class A | 2 miles    |
| B. Class B | 1.25 miles |
| C. Class C | 2,640 feet |

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D. Class D 1,320 feet

E. Class E 1,320 feet

The proposed site is a Class E operation outside the described buffer area. (Exhibit #3)

10. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.

Manure from the facility will be transported via either dragline hose or in leak proof tankers and incorporated in to the soil of the lands in the NMP by injection. Yankton County load limits will be followed and no manure will be transported further than five (5) miles. The plan will provide details regarding aspects of nutrient application. (Exhibit #4, #4A, #4B, #4C, #4D, additional field information in original application)

11. Animal Feeding Operations shall prepare a facility management plan. The plan shall be designed to dispose of dead animals, manure, and wastewater in such a manner as to control odors and flies. The County Planning Commission and 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 shall be addressed in a management control plan:

A. An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented:

An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented; all operational plans, will be kept updated and implemented (Exhibit #5).

B. The methods to be utilized to dispose of dead animals shall be identified:

Mortality management shall be done in compliance with one of the methods allowed by the South Dakota Animal Industry Board. Current plans are to place a rendering service on contract to promptly dispose of mortalities. Mortalities will be screened by a 3-sided, minimum of 4' high enclosure as illustrated in the site plan. (Exhibit #3)

C. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of odors generated by the facility:

As illustrated in the attached odor model (Exhibit #6), we are proposing to position the facility in such a way to avoid potential odor impacts on neighbors as much as possible. The operation will plant four rows of trees on the north and west side of the facility. The Right of Way variance is important to provide suitable soil types for acceptable tree growth. It is also recommended to plant potted evergreens if available. The odor model will be utilized to monitor the facility odor control performance.

Below is additional information written by Dr. Erin Cortus pertaining to the South Dakota Odor Footprint Tool provided by SDSU:

The South Dakota Odor Footprint Tool (SDOFT) provides estimates of the odor footprint for livestock facilities in South Dakota. Think of a footprint in the sand. If the pressure increases, the indented area will also increase. An odor footprint works the same way. As odor emission

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increases, the area affected increases. As odor emission decreases, so does the area affected. The key components to the odor footprint estimate are the South Dakota County, the type of housing and/or manure storage, the surface area of the housing or manure storage, and whether there are any odor control technologies in place. The list of odor control technologies currently built into SDOFT are biofilters, oil sprinkling and manure storage covers (geotextile, impermeable or straw).

An odor footprint is shown through annoyance-free frequency curves during warm weather. For example, an annoyance-free frequency of 97% means that annoying odors should not be experienced more than 22 hours a month between April and October, at or beyond the setback distance estimate. The affected area is rarely a perfect circle around an odor source – this is because there are different setback distances in different directions, depending on the prevailing winds between April and October for the selected county. Annoyance-free does not mean odor free. Annoyance-free means the odor intensity is a 2, on a scale of 0-5, for which the majority of the population would not find annoying. Note: Cold weather reduces odor generation by manure sources, so the footprint would be smaller during winter months.

Odor footprint estimates are useful for livestock producers, local government land use planners, and citizens concerned about the odor impact of existing, expanding or new animal production sites. These estimates are based on measured odor emission rates and dispersion modeling. SDOFT takes average South Dakota climatic conditions into account. While SDOFT does not take into account all of the impacts topography and site-specific features (like animal diet and management) can have on the odor footprint for a particulate site, it does provide a starting point for investigating the impacts odor-mitigating technologies can have on the area surrounding a facility.

- D. A storm water management section shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining drier confinement areas to reduce odor production.

Our enclosed facility will not expose pens to uncontrolled water and the site will be graded to direct storm-water drainage away from the facility so to avoid any standing water near the facility (Exhibit #5).

- E. A solid manure storage plan detailing the number and size of containment areas and methods of controlling drainage to minimize odor production.

All animal organic waste/nutrients will be contained in an 8' covered concrete vault directly underneath the facility. Construction materials will be reinforced concrete construction commonly used in the industry with the desired results of controlling the manure/nutrients and limiting potential odors. The manure/nutrients shall be contained within the reinforced concrete vault designed and constructed in accordance with accepted industry standards. (Exhibit #7)

- F. A description of the method and timeframe for removal of manure/nutrients from open pens to minimize odor production:

Aside from daily cleaning as needed, each facility will empty out and receive new pigs approximately 2.5 times per year during which times it will be fully disinfected and power washed throughout the inside of the building.

The proposed facility will have the manure/nutrients in a covered vault which will be removed annually via pump. The manure/nutrients will be directly applied to nearby fields identified in

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section (H) via injection below the soil surface. The transportation method will be via hose or tanker equipment (covered/contained) for direct application via injection. The time frame is expected to take three days for application of all the manure/nutrients and will occur primarily in the fall after harvest or, on rare occasion, in the spring before planting but after snow melt (Exhibit #5).

G. The applicability, economics, and effect of Industry Best Management Practices shall be covered:

- Industry Best Management practices are to control the manure/wastewater in a covered pit as this facility is designed to do. Although the sealed concrete pit has higher relative cost than an uncovered open lagoon, the benefits of odor control and manure/wastewater containment are worth the additional investment. This greatly controls the dissemination of odor to the neighboring area as reflected in the attached odor model.
- Industry Best Management Practices are to apply the manure/nutrient as a fertilizer to farmed fields. To control odor, the best practice is to do this once annually and to do it via direct injection to reduce gas and particle emissions. This best practice is more costly than direct spreading on top of the soil but the benefits of odor reduction and decreased nitrogen volatilization are worth the extra investment.
- Industry Best Management Practices are to promptly remove mortalities and that is the practice we will follow.
- Industry Best Management Practice is to avoid the application of the manure/nutrient on extremely windy days and to avoid land application ahead of rain that may produce run-off. Application preceding a rain that does not produce run-off may reduce particle emissions. Our operation shall follow these practices.
- By having the building above the concrete pit, our facility will be using the covered pit method as an effective best industry management practice way to control odor and particle emissions.
- Location of the facility to limit the effect of odor on neighboring residences is one of the most effective best management practices. The attached odor model demonstrates the limited impact this facility is expected to have on its neighbors.

H. A notification section should be formulated by the applicant. It is to include the names, addresses, and phone numbers of all occupied residences and public gathering places, within one-half mile of the applicant's manure application fields. The preferred hauling and application process shall be detailed and include timetables of probable application periods. Application of manure on weekends, holidays, and evenings during the seasons shall be avoided whenever possible. Complaints could lead to having to give 48 hour notice in advance of manure applications. Annual notification advising of an upcoming 30 day window should be given.

**OCCUPIED RESIDENCES WITHIN ½ MILE OF CROP GROUND ON  
WHICH INJECTION OF NUTRIENTS MAY OCCUR:**

<b>Exhibit #4 thru #4D</b>		
<b>Resident</b>	<b>Address</b>	<b>City / State / Postal Code</b>
James Williams	30579 444 <sup>th</sup> Avenue	Mission Hill, SD 57046
Ben Williams	30579 444 <sup>th</sup> Avenue	Mission Hill, SD 57046
Randall Larson	115 Hideaway Drive	Mission Hill, SD 57046
Nathen Kuchta	117 Hideaway Drive	Mission Hill, SD 57046
Steven Knight	135 Hideaway Drive	Mission Hill, SD 57046
Doug Klemp	30572 44 <sup>th</sup> Avenue	Mission Hill, SD 57046
Davis Helgersen	30589 445 <sup>th</sup> Avenue	Mission Hill, SD 57046
Richard Adams	44521 306 <sup>th</sup> Street	Mission Hill, SD 57046
Duane Tiezen	PO Box 125	Mission Hill, SD 57046
Gary Smith	PO Box 151	Mission Hill, SD 57046
Elwyn Aase	30551 444 <sup>th</sup> Avenue	Mission Hill, SD 57046
Dale Hebda	30661 444 <sup>th</sup> Avenue	Mission Hill, SD 57046
Jackie Louge	44342 307 <sup>th</sup> Street	Mission Hill, SD 57046
Tom Moore	30665 446 <sup>th</sup> Avenue	Mission Hill, SD 57046
Tim Steiner	120 Crest Ridge Road	Mission Hill, SD 57046
Dennis Fleeer	112 Crest Ridge Road	Mission Hill, SD 57046
Pat Hauer	165 Hideaway Road	Mission Hill, SD 57046
Lacee Feltman	111 Hideaway Road	Mission Hill, SD 57046
Jeff Larson	183 Hideaway Road	Mission Hill, SD 57046

There are no public meeting sites within ½ mile of the proposed facilities.

All manure application setbacks will be followed in accordance to the Zoning Ordinance and incorporated by injection in to the soil.

Industry best management practices are to apply the manure/nutrient as a fertilizer to nearby fields. To control odor, the manure /nutrients are directly injected annually into the soil to reduce gas and particle emissions. This best practice is more costly than surface application but the benefits of odor reduction and decreased nitrogen volatilization are worth the extra investment. (Exhibit #3 and Exhibit #4, #4A, #4B, #4C, #4D, additional field information in original application)

- I. A review of weather conditions shall include reviewing the effect of climate upon manure application. This section shall also include the preferred times and conditions for application to mitigate the potential effects upon neighboring properties while outlining the least advantageous climatic conditions.

Most advantageous weather conditions are in cool dry conditions with a mild breeze. The least advantageous time is in hot wet weather. Our intent, to capitalize on favorable conditions and avoid unfavorable conditions, is to apply the manure in the fall after harvest. In rare instances,



the manure will be applied in the spring (after snow-melt). In every instance, the application shall be done in compliance with both Yankton County Zoning Ordinances.

**Additional procedures Karl Schenk will follow to control flies and odors:**

**Fly, Odor & Rodent Control Guidelines  
For Animal Feeding Operations**

Fly, Odor and Rodent control are important to maintain a healthy, community friendly livestock operation. These guidelines are provided as a broad management tool to control fly populations, odor emissions and dust at an acceptable level. Each animal feeding operation must implement a system to fit their specific operation.

A) Fly Control

1. Remove and properly dispose of spilled and spoiled feed.
2. Repair leaky waterers.
3. Keep vegetation mowed near the facilities.
4. Properly drain rainwater away from the facilities.
5. Apply commercial insecticides in a proper and timely manner.

B) Odor Control

1. Manage mortalities per SD Animal Industry Board requirements.
2. Adjust feed rations per industry standards to reduce potential odor generating byproducts.

C) Rodent Control

1. Two foot wide gravel barrier around the perimeter to discourage rodent entry.
2. Bait boxes at 75-100 ft. intervals that are checked 2x per month.
3. Spilled feed will immediately be cleaned up to discourage rodent activity.
4. Site routinely mowed to remove rodent harborage areas

The fly and odor control guidelines above will be conducted concurrently with one another to help prevent a nuisance problem from occurring.

11. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is injected or incorporated within twenty-four (24) hours:

A. Public Wells 1,000 feet

There are no known Public Wells within 1,000 feet of fields.

B. Private Wells 250 feet

The applicant will meet the setback requirement for Private Wells.

C. Private Wells (Operator's) 150 feet

The applicant will meet the setback requirement for Private Wells (Operator's).

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D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet  
The applicant will meet the setback requirement for Lakes, Rivers, Streams Classified as Public Drinking Water Supplies.

E. Lakes, Rivers and Streams Classified as Fisheries 200 feet  
The applicant will meet the setback requirement for Lakes, Rivers, Streams Classified as Fisheries.

F. All Public Road Right-of-ways 10 feet  
The applicant will meet the setback requirement for All Public Road Right-of-ways.

G. Incorporated Communities 660 feet  
The applicant will meet the setback requirement for Incorporated Communities.

H. A Residence other than the Operators 100 feet  
The applicant will meet the setback requirement for a Residence other than the Operators.

14. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is irrigated or surface applied:

A. Public Wells 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.

B. Private Wells 250 feet  
The facility will not irrigate or surface apply any nutrient applications.

C. Private Wells(Operator's) 150 feet  
The facility will not irrigate or surface apply any nutrient applications.

D. Lakes, Rivers, Steams Classified as a Public Drinking Water Supply 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.

E. Lakes, Rivers and Streams Classified as Fisheries 660 feet  
The facility will not irrigate or surface apply any nutrient applications.

F. All Public Road Right-of-ways (Surface Applied) 10 feet  
The facility will not irrigate or surface apply any nutrient applications.

G. All Public Road Right-of-ways (Irrigated Application) 100 feet  
The facility will not irrigate or surface apply any nutrient applications.

H. Incorporated Communities (Surface Applied) 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.

I. Incorporated Communities (Irrigated Application) 2,640 feet  
The facility will not irrigate or surface apply any nutrient applications.

J. A Residence other than the Operators (Surface Applied) 330 feet  
The facility will not irrigate or surface apply any nutrient applications.

K. A Residence other than the Operators (Irrigated Application) 750 feet  
The facility will not irrigate or surface apply any nutrient applications.

15. If irrigation is used for removal of liquid manure, dewatering a lagoon (gray water) basin, or any type of liquid manure holding pit, these rules apply:

6. Drops must be used on systems that disperse the liquid no higher than 18" off the ground

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if no crop is actively growing on the field.

Applicant is not requesting irrigation application permit.

7. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.

Applicant is not requesting irrigation application permit.

8. No runoff or diffused spray from the system onto neighboring property or public right-of-way will be allowed.

Applicant is not requesting irrigation application permit.

9. No irrigation of liquid on frozen ground or over FSA designated wetlands.

Applicant is not requesting irrigation application permit.

10. No “big gun” type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.

Applicant is not requesting irrigation application permit.

Action 10918J: Moved by Kettering, second by Gudahl to recommend, based on Finding of Facts dated October 9, 2018, a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, exc Lot 2, Helgerson’s Addition, S14-T94N-R55W and SW1/4, exc Parcel A, NW1/4, SW1/4, exc Lot 1, Helgerson’s Addition, S14-T94N-R55W hereinafter referred to as Mission Hill North Township, County of Yankton, State of South Dakota. The E911 address is TBA 306th Street, Mission Hill, SD.

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Meeting date: October 9, 2018

VARIANCE

Article 18, Section 1807

FINDINGS OF FACT

Applicant: Karl Schenk

Parcel Number: 06.014.200.150

Legal description: SE1/4, exc Lot 2, Helgerson’s Addition, S14-T94N-R55W and SW1/4, exc Parcel A, NW1/4, SW1/4, exc Lot 1, Helgerson’s Addition, S14-T94N-R55W

Physical Address: TBA 306<sup>th</sup> Street, Mission Hill, SD

1. No such variance shall be recommended for approval by the Planning Commission unless it finds:

A. The strict application of the ordinance would produce undue hardship; The agriculture property has a flood plain which is a prohibited site therefore propose a

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- location sufficient distance from the flood plain, the proposed setback increases distance from area residence, the proposed site is beneficial for agriculture row crop production, and the beneficial tree buffer all contribute to requesting a ROW setback variance.
- B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; The hardship can be shared by other properties but is limited to properties requiring agriculture Concentrated Animal Feeding Operations setback regulations.
- C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; The granting of a variance will not be of substantial detriment to adjacent property nor the character of the district. Occupied farmstead are all greater than 1,320 feet from the site. The intent of the Agriculture District is to preserve land best suited to agriculture uses.
- D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposed of convenience, profit, and caprice. No convenience, profit or caprice was shown.
2. No variance shall be recommended for approval unless the Planning Commission finds the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance. The requested variance can be recurring with special circumstances discussed in the findings.
3. A recommendation of approval concerning a variance from the terms of this ordinance shall not be founded by the Planning Commission unless and until:
- A. A written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; The property is demonstrating special conditions or circumstances regarding flood plain regulations and proposed proper siting to minimize impact.
- B. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; Previous variances of minimum Right of Way (ROW) setback requirement have been granted in Yankton County.
- C. The special conditions and circumstances do not result from the actions of the applicant; The special conditions and circumstances are not a result of the applicant.
- D. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district. Variance requests of this type (minimum Right of Way (ROW) setback requirement) have been recommended previously by the Planning Commission.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance. No nonconforming uses of neighboring lands, structures, or buildings in this district, and no permitted or nonconforming use of lands, structures, or buildings in other districts were considered.

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5. Notice of public hearing shall be given, as in Section 1803 (3-5). The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed variance on September 27, 2018 (supported by affidavit), a legal notice was published on September 29, 2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 28, 2018.
6. The public hearing shall be held. Any party may appear in person or by agent or by attorney. A public meeting was held at 8:15 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

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Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.
- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.
- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates “finding of fact” and requests motion for action.

Mike Stevens, representing Karl Schenk, stated the application meets all requirements for Article 5, Section 519. The variance request is a Right of Way (ROW) setback from 330 feet to 150 feet to move the barn additional distance from residences and provide better soil type for the tree / evergreen planting. The odor footprint model impact is non-residential areas and this is a no discharge operation.

Mr. Welch requested comments from the proponents.

Craig Johnson, county resident, stated his approval of the Conditional Use Permit because animal production is not a dangerous activity. The nutrient content in manure is valuable for grain production in Yankton County. Animal nutrient input significantly reduces the amount of petroleum based nutrients for grain production.

Robert Freng, county resident, stated his approval of the Conditional Use Permit. Mr. Freng states zoning should protect agriculture producers in Yankton County. The application shows the applicant meets all zoning requirements which promotes good managers and operation decisions.

Brad Hohn, MDS – Parkston, SD, stated the barn design will be the curtain style which controls all water input into the system. The process increases the nutrient value of manure while increasing holding capacity. Mr. Hohn stated zoning should protect farmers to conduct farm activities.

Mr. Welch requested comments from the opponents.

Jim Williams, neighbor, stated his concern of odor at his residence. Mr. Williams stated his observation of the odor model shows his residence will be outside the annoyance-free zone. Mr. Williams requests the findings to assure this odor model will be utilized to monitor and control odor when the structure is complete and operating. Mr. Williams also request the variance request is actually better for his property because of distance and better soil for the

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four rows of trees as stated in the site plan. He recommends some trees larger than the USDA conservation trees, suggesting potted evergreens.

Kristi Schultz, county resident, stated the Conditional Use Permit should be denied. The application is not addressing performance bonds, road maintenance agreements, modern “state of art” facilities, biofilters, buffer of evergreens, electrostatic fencing, feed additives, air monitoring for noxious gases, disease & insect control, ground water monitor, shallow aquifers, berms of specific specifications, grass buffer strips, no manure applications on slopes, soil testing, annual inspection by SD Department of Environment and Natural Resources, mandatory Concentrated Animal Feeding Operation training, enough barns in Yankton County...rich get richer and poor get poorer.

Mr. Welch stated the applicant has ten (10) minutes for rebuttal.

Mike Stevens, representing Karl Schenk, stated the application meets the criteria requirements in Yankton County Zoning Ordinance #16. The Section 519 clearly defines the criteria an applicant must meet to approve a Conditional Use Permit.

The tree planting will be four rows with fabric weed protection at planting time. Two rows will be evergreen (Meyer Spruce and Pine species) and two rows deciduous species. Corn will be in rotation for 2019 and will contribute to the buffer.

Mr. Welch ended public comment and requested commission discussion.

The Planning Commission discussed the site plan and noted the tree placement and the odor footprint model. The odor footprint model will be utilized to monitor the facilities for odor control.

The variance request will require four (4) rows of trees on the north and west side of the facility. The buffer will have fabric installed for weed prevention and mulch. It is recommended to plant potted evergreens to hasten the tree growth.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

7. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a variance; the Commission shall further make a finding that the reasons set forth in the application justify the recommendations of granting the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Planning Commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

The Planning Commission further finds that the reasons set forth in the application and hearing does satisfy all requirements for this variance request.

8. In recommending approval of any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance. The Planning Commission approves this request.
9. Under no circumstances shall the Planning Commission recommend granting a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district. The variance request of Minimum Right of Way (ROW) Setback Requirement is approved. The intent of the Agriculture District is to preserve land best suited to agriculture uses.

Action 10918K: Moved by Bodendstedt, second by Kretsinger to recommend, based on Finding of Facts dated October 9, 2018, a variance of Minimum ROW Setback requirement from 330 feet

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to 150 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, exc Lot 2, Helgerson's Addition, S14-T94N-R55W and SW1/4, exc Parcel A, NW1/4, SW1/4, exc Lot 1, Helgerson's Addition, S14-T94N-R55W hereinafter referred to as Mission Hill North Township, County of Yankton, State of South Dakota. The E911 address is TBA 306th Street, Mission Hill, SD.

By roll call vote, all members present voted aye.

Motion carried.

This was the time and place for discussion with Jay Cutts. Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD. This a continuance from the September 26, 2018 public hearing.

The September 26, 2018 minutes: *This was the time and place for discussion regarding application from Jay Cutts. Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD.*

*Jay Cutts stated the application has met all Conditional Use Permit requirements for a Class E Animal Feeding Operation. The variance request of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet is the main concern in this application. Mr. Cutts explained his production property is in Mission Hill South Township which is in the Zone A Floodplain. Yankton County prohibits Animal Feeding Operations in established floodplains. The site is in the five (5) mile transportation buffer to supply these southern fields with the nutrient management plan. The site plan shows a barn location with the best setbacks from area residents and the Zone A Floodplain. The proposal is the same design as the almost completed facility north of this site.*

*Mr. Cutts stated Yankton County has granted many variances in the Mission Hill North Township. The most common variance is the Minimum Lot Requirement for residential farmsteads or acreages. This is not always meeting the intent of the Agriculture District "and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery."*

*Proponents for the application were requested to present their comments:*

*Lynn Peterson, area businessman, stated the agriculture economy is currently in downturn. The Class E facilities provide an opportunity to diversify income and increase profitability of the corn produced in the area. Each barn is consuming one half section (320 acres) per year. The city of Yankton has several CAFO's located near the community. The manure management is in place and is effectively implemented year after year. In 2012 Yankton County agriculture census was*

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10,000 head of swine, Sioux County, IA census was 1,100,000,000 head of swine. Yankton County has some room for expansion of pork production.

Mr. Peterson also discussed some comparisons regarding health concerns and Concentrated Animal Feeding Operations. A comparison between Sioux County, IA and Yankton County, SD shows little difference between the counties in regard to air quality and respiratory health issues. Brad Holm, MDS Manufacturing, stated the natural ventilated curtain barn are modern and provide many features a producer requires to be successful. Other barn designs are appropriate for producers based on weather conditions, topography, production type and many other factors. Mr. Holm also stated his experience with injection application of manure in a nutrient management program is the best choice for healthy soils.

Opponents for the application were requested to present their comments:

Milo Hanson, an adjacent landowner impacted by the 660 foot setback, request no variance for the application. Mr. Hanson stated the applicant has not provided sufficient hardship for his variance request.

Andrea Wittmayer, an adjacent landowner, stated her opposition to the variance request. She provided a letter (Exhibit #1).

Brandon Gramkow, an adjacent landowner, sated his opposition to the variance request. He provided a letter (Exhibit #2).

Patty Gramkow stated her opposition to variance and conditional use permit. She stated several things about campaign signs, a review of the CAFO School in Huron, SD, the Beresford SDSU research facility and the flood waters from this summer rain events (Exhibit #5).

Paige Heirigs, Mission Hill resident, stated his opposition to the variance and conditional use permit. He states chapter seven of the Comprehensive Plan and Section 105 of the Yankton County Zoning Ordinance. Mr. Heirigs states the curtain barns are not compatible with the public welfare because of the particulates and pathogens in the odor. Mr. Heirigs will not be able to enjoy his garden, his outdoor life will be diminished and his property value will diminish. The previous application was denied in January and this application should be denied.

Kristi Schultz, area resident, stated her opposition to the variance and conditional use permit. M. Schultz stated M. Peterson is not a doctor and feels the statistics will be worse if CAFO's are permitted in Yankton County. She also stated that manure is not organic until the feed and production practices are certified... deadly gases are ventilated from curtain barns...Attorney Mr. Peterson stated it is illegal to have variances along with conditional use permits...this application only benefits the producer...everything is the same as the January application...court costs will be incurred if this is approved...any future permits will require berms around the facility, performance bonds, enclosed barns with biofilters, buffer evergreen strips, electronic fences, ground water monitors, semi-annual inspections, shallow well monitoring, application training, no CAFO systems and no combining feeding operations or application fields.

Michael Welch admitted two letters to the record as opposition to the Conditional Use Permit and variance request. The letters were from David Nielsen (Exhibit #3) and LaRue Hanson (Exhibit #4).

A ten minute (10) rebuttal from the applicant, Mr. Cutts, stated the Agriculture District intent as provided in Article 5, Section 501...odor will always be present in Agriculture Districts...nutrient management plans are science based application systems to properly apply multiple elements beyond the N-P-K requirements with many micro nutrients included in the plan...the floodplain is on part of the property but the barn is not in the floodplain as provided in the site plan...animal production is a listed permitted principal use with conditions as listed in Section 519...town of



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Mission Hill has an open lagoon and no complaints...restated his property south of Mission Hill is in the floodplain and it is prohibited...this is forty (40) acre field (1,320 feet by 1,320 feet) and it is very difficult to site a barn with the current six hundred sixty (660) foot and three hundred thirty (330) foot setback requirements.

The Planning Commission began discussion and Mr. Gudahl requested Brad Holm to discuss types of barns and the ventilation systems designs. Mr. Holm discussed curtain barns and tunnel air barns, dust control and animal health concerns.

Don Kettering stated the precedence for variances is to evaluate the neighbor property owners concerns regarding the applicant's request. It is evident the conditional use permit is not the issue but the variance is meeting resistance from adjacent property owners. The Planning Commission discussed the Marquardt conditional use permit and variance request. The applicant received a variance of three hundred thirty (330) feet to locate a barn from the adjacent property line. The discussion continued about the hardship of the topography and floodplain impact on the site plan. The Planning Commission discussed the application and asked for a continuance to allow the applicant to arrange the barn on the site plan to meet the adjacent property line setback (660 feet) and allow a 180 foot variance for the Right of Way setback requirements (330 feet).

The October 9, 2018 minutes: Jay Cutts stated he has a revised site plan which meets the Property Line Setback requirement with a Right of Way (ROW) variance to be out of the floodplain located on the property. The proposal is two curtain style barns as shown on site plan (Exhibit #3 & #3A). The site plan needs to include the mortality bins before the building permit will be issued.

Planning Commission chairman determined the application was a continuance from two weeks ago and public comment is currently recorded in video and written minutes. Mr. Welch referred the application to the commission for comment.

The Zoning Administrator received a letter from Janice Wahlers and will enter it into the record. No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

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Meeting date: January 9, 2018

CONDITIONAL USE  
Article 18, Section 1805

FINDINGS OF FACT

Applicant: Jay Cutts

Parcel Number: 02.019.200.200

Legal description: SE1/4, SE1/4, S19-T94N-R54W

Physical Address: TBA 307<sup>th</sup> Street, Mission Hill, SD

1. The applicant specifically cited the section of the zoning ordinance under which the conditional use is sought and has stated the grounds on which it is requested; Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units)

pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. (Article 5, Section 519) The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet (Article 5, Section 519) in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD. This a continuance from the September 26, 2018 public hearing.

2. Notice of public hearing was given, as in Section 1803 (3-5); The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed CUP on September 13, 2018 (supported by affidavit), a legal notice was published on September 15, 2018 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on September 5, 2018.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney; A public meeting was held at 8:45 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

### Yankton County Planning Commission

#### Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.
- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.
- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates “finding of fact” and requests motion for action.

This a continuance from the September 26, 2018 public hearing.

The September 26, 2018 minutes: This was the time and place for discussion regarding application from Jay Cutts. Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD.

Jay Cutts stated the application has met all Conditional Use Permit requirements for a Class E Animal Feeding Operation. The variance request of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet is the main concern in this application. Mr. Cutts explained his

production property is in Mission Hill South Township which is in the Zone A Floodplain. Yankton County prohibits Animal Feeding Operations in established floodplains. The site is in the five (5) mile transportation buffer to supply these southern fields with the nutrient management plan. The site plan shows a barn location with the best setbacks from area residents and the Zone A Floodplain. The proposal is the same design as the almost completed facility north of this site.

Mr. Cutts stated Yankton County has granted many variances in the Mission Hill North Township. The most common variance is the Minimum Lot Requirement for residential farmsteads or acreages. This is not always meeting the intent of the Agriculture District “and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery.”

Proponents for the application were requested to present their comments:

Lynn Peterson, area businessman, stated the agriculture economy is currently in downturn. The Class E facilities provide an opportunity to diversify income and increase profitability of the corn produced in the area. Each barn is consuming one half section (320 acres) per year. The city of Yankton has several CAFO’s located near the community. The manure management is in place and is effectively implemented year after year. In 2012 Yankton County agriculture census was 10,000 head of swine, Sioux County, IA census was 1,100,000,000 head of swine. Yankton County has some room for expansion of pork production.

Mr. Peterson also discussed some comparisons regarding health concerns and Concentrated Animal Feeding Operations. A comparison between Sioux County, IA and Yankton County, SD shows little difference between the counties in regard to air quality and respiratory health issues.

Brad Hohn, MDS Manufacturing, stated the natural ventilated curtain barn are modern and provide many features a producer requires to be successful. Other barn designs are appropriate for producers based on weather conditions, topography, production type and many other factors. Mr. Holm also stated his experience with injection application of manure in a nutrient management program is the best choice for healthy soils.

Opponents for the application were requested to present their comments:

Milo Hanson, an adjacent landowner impacted by the 660 foot setback, request no variance for the application. Mr. Hanson stated the applicant has not provided sufficient hardship for his variance request.

Andrea Wittmayer, an adjacent landowner, stated her opposition to the variance request. She provided a letter (Exhibit #1).

Brandon Gramkow, an adjacent landowner, sated his opposition to the variance request. He provided a letter (Exhibit #2).

Patty Gramkow stated her opposition to variance and conditional use permit. She stated several things about campaign signs, a review of the CAFO School in Huron, SD, the Beresford SDSU research facility and the flood waters from this summer rain events (Exhibit #5).

Paige Heirigs, Mission Hill resident, stated his opposition to the variance and conditional use permit. He states chapter seven of the Comprehensive Plan and Section 105 of the Yankton County Zoning Ordinance. Mr. Heirigs states the curtain barns are not compatible with the public welfare because of the particulates and pathogens in the

odor. Mr. Heirigs will not be able to enjoy his garden, his outdoor life will be diminished and his property value will diminish. The previous application was denied in January and this application should be denied.

Kristi Schultz, area resident, stated her opposition to the variance and conditional use permit. M. Schultz stated M. Peterson is not a doctor and feels the statistics will be worse if CAFO's are permitted in Yankton County. She also stated that manure is not organic until the feed and production practices are certified... deadly gases are ventilated from curtain barns...Attorney Mr. Peterson stated it is illegal to have variances along with conditional use permits...this application only benefits the producer...everything is the same as the January application...court costs will be incurred if this is approved...any future permits will require berms around the facility, performance bonds, enclosed barns with biofilters, buffer evergreen strips, electronic fences, ground water monitors, semi-annual inspections, shallow well monitoring, application training, no CAFO systems and no combining feeding operations or application fields.

Michael Welch admitted two letters to the record as opposition to the Conditional Use Permit and variance request. The letters were from David Nielsen (Exhibit #3) and LaRue Hanson (Exhibit #4).

A ten minute (10) rebuttal from the applicant, Mr. Cutts, stated the Agriculture District intent as provided in Article 5, Section 501...odor will always be present in Agriculture Districts...nutrient management plans are science based application systems to properly apply multiple elements beyond the N-P-K requirements with many micro nutrients included in the plan...the floodplain is on part of the property but the barn is not in the floodplain as provided in the site plan...animal production is a listed permitted principal use with conditions as listed in Section 519...town of Mission Hill has an open lagoon and no complaints...restated his property south of Mission Hill is in the floodplain and it is prohibited...this is forty (40) acre field (1,320 feet by 1,320 feet) and it is very difficult to site a barn with the current six hundred sixty (660) foot and three hundred thirty (330) foot setback requirements.

The Planning Commission began discussion and Mr. Gudahl requested Brad Holm to discuss types of barns and the ventilation systems designs. Mr. Holm discussed curtain barns and tunnel air barns, dust control and animal health concerns.

Don Kettering stated the precedence for variances is to evaluate the neighbor property owners concerns regarding the applicant's request. It is evident the conditional use permit is not the issue but the variance is meeting resistance from adjacent property owners. The Planning Commission discussed the Marquardt conditional use permit and variance request. The applicant received a variance of three hundred thirty (330) feet to locate a barn from the adjacent property line. The discussion continued about the hardship of the topography and floodplain impact on the site plan. The Planning Commission discussed the application and asked for a continuance to allow the applicant to arrange the barn on the site plan to meet the adjacent property line setback (660 feet) and allow a 180 foot variance for the Right of Way setback requirements (330 feet).

The October 9, 2018 minutes: Jay Cutts stated he has a revised site plan which meets the Property Line Setback requirement with a Right of Way (ROW) variance to be out of the floodplain located on the property. The proposal is two curtain style barns as shown on site plan (Exhibit #3 & #3A).

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Planning Commission chairman determined the application was a continuance from two weeks ago and public comment is currently recorded in video and written minutes. Mr. Welch referred the application to the commission for comment. The commission discussed the application and determined the current site plan meets the Property Line Setback requirement but the Right of Way (ROW) setback is 150 feet to remove the facility from the Zone A floodplain. The site plan needs to include the mortality bins before the building permit will be issued.

The Zoning Administrator received a letter from Janice Wahlers (Exhibit #18) and LaRue Hanson (Exhibit #19). The Zoning Administrator will enter them into the record.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

4. The Planning Commission shall make a finding and recommendation that it is empowered under the section of this Ordinance described in the application, to include:

B. Recommend granting of the conditional use;

C. Recommend granting with conditions; or

The commission recommends to approve granting of the conditional use permit with conditions.

D. Recommend denial of the conditional use.

5. Before any conditional use is decided, the Planning Commission shall make written findings certifying compliance with the specific rules governing individual conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:

A. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe; The applicant has shown sufficient access to property with established roadway (307<sup>th</sup> Street) and site plan turn around for emergency vehicles (Exhibit #3 & #3A).

B. Off right-of-way parking and loading areas where required; with particular attention to the items in (A) above and economic, noise, glare or odor effects of the conditional use on adjoining properties and properties generally in the district; All off right-of-way areas are designated in the detailed site plan with sufficient area for deliveries, parking and production barn facilities such as animal disposal areas is in compliance required by Article 5. (Exhibit #3 and #3A)

C. Refuse and service areas, with particular reference to the items in (A) and (B) above; Refuse and service areas, including specific requirements such as equipment storage areas, animal disposal areas, nutrient handling areas and personnel requirements will be in compliance with Article 5 as shown in applicant site plan. (Exhibit #3 and #3A)

D. Utilities, with reference to locations, availability, and compatibility; Utilities will be available and will be in operational condition, the security lights will be monitored for proper downcast illumination to provide sufficient security.

E. Screening and buffering with reference to type, dimensions, and character; Screening and buffering are not required at this site location due to odor footprint modeling for

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annoyance-free conditions. The area residences are in the 98% or greater annoyance free zones. The odor footprint model will be utilized to monitor facility odor control management (Exhibit #8).

- F. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; All signage will conform to Article 14, Yankton County Zoning Ordinance
- G. Required yards and other open spaces; Yards and open spaces requirements are not compliant with current regulations and will require a Variance of Minimum ROW Setback Requirement (Exhibit #3 and #3A).
- H. General compatibility with adjacent properties and other property in the district and that the granting of the conditional use will not adversely affect the public interest. The use is compatible with adjacent properties in the district and the granting of a Conditional Use Permit will adversely affect the public interest due to the adjacent property owners' objection to the Variance of Minimum ROW Setback Requirement. The intent of the Agriculture District is to preserve land best suited to agriculture uses.

Section 519 Animal Feeding Operation Performance Standards

Animal Feeding Operations are considered conditional uses and shall comply with the Conditional Use Process, all applicable state and federal requirements, and the applicable requirements as defined in this section:

Class A (5,000 – 10,000)	Section 519 (1,2,3,4,5,6,7(a),8(a),9,10,11,12,13)
Class B (3,000 – 4,999)	Section 519 (1,2,3,4,5,6,7(b),8(b),9,10,11,12,13)
Class C (2,000 – 2,999)	Section 519 (1,2,3,4,5,7(c),8(c),9,10,11,12,13)
Class D (1,000 – 1,999 )	Section 519 (1,2,3,4,5,7(d),8(d),9,10,11,12,13)
Class E (300 – 999)	Section 519 (2,3,4*,5,7(e),8(e),9,10,11,12,13)

This is a Class E proposed operation. The facility will be one (1) 2400 head feeder swine (960 animal units).

Class F (1 – 299) NA

\*If required by state law

1. Animal Feeding Operations shall submit animal waste management system plans and specifications for review and approval prior to construction, and a Notice of Completion for a Certificate of Compliance, after construction, to the South Dakota Department of Environment and Natural Resources or as amended by the State of South Dakota or the South Dakota Department of Environment and Natural Resources.

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

2. Prior to construction, such facilities shall obtain a Storm Water Permit for Construction Activities from the South Dakota Department of Environment and Natural Resources. The Storm Water Pollution Prevention Plan required by the permit must be developed and implemented upon the start of construction.

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The facility will be required to receive and maintain a Storm Water Permit by South Dakota Department of Environment and Natural Resources. The DENR contact is Kent Woodmansey, Natural Resources Feedlot Engineer.

3. Animal confinement and waste facilities shall comply with the following facility setback requirements:

A. Public Wells	1,000 feet
B. Private Wells	250 feet
C. Private Wells (Operator's)	150 feet
D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply	1,000 feet
E. Lakes, Rivers, Streams Classified as Fisheries	1,000 feet
F. Designated 100 Year Flood Plain	PROHIBITED

The facility acknowledges and will meet each of the requirements and the applicant detailed site plans verifying compliance. (Exhibit #3 and #3A).

4. Applicants must present a nutrient management plan to the Department of Environment and Natural Resources for approval and/or certification. Examples of such management shall include at least:

A. Proposed maintenance of waste facilities;

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

B. Land application process and/or methods;

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

C. Legal description and map, including documented proof of area to be utilized for nutrient application; and

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

D. All CAFO's are required to obtain a South Dakota State General Permit that outlines the manure management practices that an operator must follow to prevent water pollution and protect public health.

The facility is not required to receive and maintain a General Permit by South Dakota Department of Environment and Natural Resources.

5. New animal feeding operations, new CAFO's and waste facilities shall be setback six hundred and sixty (660) feet from a property line delineating a change in ownership and three hundred and thirty (330) feet from a right-a-way line. Additionally, the applicant shall locate the operation  $\frac{1}{4}$  of a mile or 1,320 feet from neighboring residential dwellings. The Planning Commission and/or Board of Adjustment may mandate setbacks greater than those required herein to further the intent of the Zoning Ordinance while protecting the public health, safety, and welfare.

The facility requests a Variance of Right of Way Setback Requirement and will meet neighboring residential setback with applicant detailed site plans verifying compliance. The adjacent landowners are in opposition to granting the variance. (Exhibit #3 and #3A)

6. New Class A and B Animal Feeding Operations shall be prohibited from locating within the

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area bounded by the City of Yankton, 431<sup>st</sup> Avenue, the Missouri River, and South Dakota Highway 50.

The proposed site is outside the described area and a Class E operation. (Exhibit #3 and #3A)

7. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from any Class I incorporated municipality or residentially zoned area bounded by the City of Yankton, 431<sup>st</sup> Avenue, the Missouri River and South of South Dakota Highway 50:

A. Class A	4 miles
B. Class B	2 miles
C. Class C	1 mile
D. Class D	2,640 feet
E. Class E	2,640 feet

The proposed site is outside the described area and is a Class E operation. (Exhibit #3, #3A and #9)

8. New animal confinement and waste facilities shall be located no closer than ½ mile from any Class II or III incorporated municipality, active church, or established R2 or R3 residential area as shown on the Official Zoning Map. New animal confinement and waste facilities shall be located no closer than the following regulations prescribe from a residential dwelling; one dwelling unit is allowed on the facility site. The owner(s) of an animal feeding operation and/or residential dwelling may request the required setback be lessened or waived in accordance with the variance procedures as detailed herein. Residential waiver request forms are obtainable from the Zoning Administrator. This waiver would run with the land and be filed with the Yankton County Register of Deeds.

A. Class A	2 miles
B. Class B	1.25 miles
C. Class C	2,640 feet
D. Class D	1,320 feet
E. Class E	1,320 feet

The proposed site is a Class E operation outside the described buffer area. (Exhibit #3, #3A and #9)

9. Animal waste shall be transported no further than five miles from the point of origination by equipment designed for direct application. Animal waste hauled within non-application or transportation equipment shall not be restricted as to distance. Both methods of transportation must comply with federal, state, and local load limits on roads, bridges, and other similar structures.

The plan will provide details regarding aspects of nutrient application (Exhibit #5, #5A, #5B, #6, #6A, #6B, #7, #7A, #7B, #7C).

10. Animal Feeding Operations shall prepare a facility management plan. The plan shall be designed to dispose of dead animals, manure, and wastewater in such a manner as to control odors and flies. The County Planning Commission and Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind



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direction and topography. The following procedures to control flies and odors shall be addressed in a management control plan:

- A. An operational plan for manure collection, storage, treatment, and use shall be kept updated and implemented:

Manure/nutrients are a valuable input component to my, in fact, any farm for crop production. The manure/nutrients management starts with capturing the manure/nutrients in a reinforced concrete vault directly under each of the proposed facilities. This has the benefit of both containing the manure/nutrients and also covering the vault with the facility structure so the manure/nutrients are both contained and covered. This design also aids in the control of potential odors. In addition, the manure/nutrients are controlled and beneficial by annually directly applying the manure/nutrients via injection into nearby fields as a fertilizer (reducing the use of surface applied petroleum based fertilizers). The annual application period is expected to take three days and neighbors will be notified as indicated in the notification section (H). Reputable area vendors who specialize in the application of manure/nutrient shall be used to ensure best practices and suitable equipment is utilized. A 2,400 unit facility is expected to produce annual nutrient adequate to enhance 200 acres. Due to differing nutrient needs of expected annual crop rotations each 2,400 unit facility will need approximately 400 acres of land for nutrient application on a rotational basis. Consequently, the manure/nutrient application plan has identified approximately 400 acres in direct proximity to the proposed swine facilities for treatment. This will maximize the use of nutrients in crop rotation which minimizes the risk of water contamination.

The design of facility is NOT an open lagoon system. The building is designed so that storm waters are diverted away from the manure/nutrient vault. The vault shall be constructed to be approximately eight feet deep, of which approximately 36 inches will be above grade. The vault shall be located directly underneath and attached to each of the covered facilities. In addition, the site shall be graded to direct storm-water drainage away from the facility. This construction design and grading plan shall prevent any storm-water from reaching the manure/nutrients and shall prevent the manure/nutrients from escaping its intended confinement area unintentionally.

All waste-water from cleaning activities shall be captured in the underground enclosed vault.

- B. The methods to be utilized to dispose of dead animals shall be identified:

The plan for mortality management shall be done in compliance with one of the methods allowed by the South Dakota Animal Industry Board. Current plans are to place a rendering service on contract to promptly dispose of mortalities.

- C. A screening and/or buffering section to include the planting of trees and shrubs of adequate size to control wind movement and dispersion of odors generated by the facility:

The South Dakota State University odor footprint tool shows the level of odor annoyance free for the buffer area around the facility. The odor footprint model will be utilized to monitor facility odor control management. (Exhibit #8) There are no residential structures on property within a quarter mile (1,320 feet) of the proposed site, so no screening or buffering is being proposed. (Exhibit #3, #3A) This will maximize the best use of the surrounding property as agricultural production.

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- D. A storm water management section shall provide adequate slopes and drainage to divert storm water from confinement areas, while providing for drainage of water from said area, thereby assisting in maintaining drier confinement areas to reduce odor production.  
The manure/ nutrients will be collected in a reinforced concrete vault to prevent any leakage. The vault shall be constructed to be approximately eight feet deep, of which approximately 36 inches will be above grade. The vault shall be located directly underneath and attached to the covered facility. In addition, the site shall be graded to direct storm-water drainage away from the facility. This construction design and grading plan shall prevent any storm-water from reaching the manure/nutrients and shall prevent the manure/nutrients from escaping its intended confinement area unintentionally.
- E. A solid manure storage plan detailing the number and size of containment areas and methods of controlling drainage to minimize odor production.  
All animal organic waste/nutrients will be contained in an 8' covered concrete vault directly underneath the facility. Construction materials will be reinforced concrete construction commonly used in the industry with the desired results of controlling the manure/nutrients and limiting potential odors. The manure/nutrients shall be contained within the reinforced concrete vault designed and constructed in accordance with accepted industry standards.
- F. A description of the method and timeframe for removal of manure/nutrients from open pens to minimize odor production:  
The proposed facility will have the manure/nutrients in a covered vault which will be removed annually via pump. The manure/nutrients will be directly applied to nearby fields identified in section (H) via injection below the soil surface. The transportation method will be via hose or tanker equipment (covered/contained) for direct application via injection. The time frame is expected to take three days for application of all the manure/nutrients and will occur primarily in the fall after harvest or, on rare occasion, in the spring before planting but after snow melt.
- G. The applicability, economics, and effect of Industry Best Management Practices shall be covered:  
Industry best management practices are to control the manure/nutrients and wastewater in a covered vault. The facility is designed to do this. Although the reinforced concrete vault has higher relative cost than an uncovered open lagoon, the benefits of odor control and manure/wastewater containment are worth the additional investment. This reduces the potential dissemination of odor to the neighboring area as reflected in the attached odor model. The design of the facility is NOT an open lagoon system.  
Industry best management practices are to apply the manure/nutrient as a fertilizer to nearby fields. To control odor, the organic manure /nutrients are directly injected annually into the soil to reduce gas and particle emissions. This best practice is more costly than surface application but the benefits of odor reduction and decreased nitrogen volatilization are worth the extra investment.  
Industry best management practices is to promptly remove mortalities and that is the practice Jay Cutts will follow.  
Industry best management practice is to avoid the application of the manure/nutrient on extremely windy days and to avoid land application ahead of rain that may produce run-off.

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Application preceding a rain that does not produce run-off may reduce particle emissions. Jay Cutts' operation shall follow these practices.

Aeration, anaerobic lagoons and digesters and solid separation are all practices that may reduce odor and particle emissions. However, Jay Cutts' operation will employ the covered vault method to control odor and particle emissions at additional expense because of its wide acceptance as an effective best industry management practice and does not intend to use these alternative methods. Location of the facility is sited to limit the effect of odor on neighboring residences in one of the most effective best management practices.

Please see exhibit #3, #3A – proposed site plans

- H. A notification section should be formulated by the applicant. It is to include the names, addresses, and phone numbers of all occupied residences and public gathering places, within one-half mile of the applicant's manure application fields. The preferred hauling and application process shall be detailed and include timetables of probable application periods. Application of manure on weekends, holidays, and evenings during the seasons shall be avoided whenever possible. Complaints could lead to having to give 48 hour notice in advance of manure applications. Annual notification advising of an upcoming 30 day window should be given.

**OCCUPIED RESIDENCES WITHIN ½ MILE OF CROP GROUND ON  
WHICH INJECTION OF NUTRIENTS MAY OCCUR:**

<b>Exhibit #5</b>		
<b>Resident</b>	<b>Address</b>	<b>City State Postal Code</b>
BAK, RENEE J	30837 447 AVE	MISSION HILL SD 57046
BEESON, DUSTIN D	44571 CHRIS RD	YANKTON SD 57078
BRANAUGH, DARLENE B REV TRUST	PO BOX 8	MISSION HILL SD 57046
CHRIS AND KRISTIE BURKE LLC	PO BOX 220	YANKTON SD 57078
COOK, KEITH	44674 310 ST	MISSION HILL SD 57046
CUTTS, JAY F	44681 309 ST	MISSION HILL SD 57046
DORZOK, RONALD E	44563 CHRIS RD	MISSION HILL SD 57046
EPP, RAYMON	30849 448 AVE	MISSION HILL SD 57046
FAULK, TIMOTHY	30925 DAKOTA LN	MISSION HILL SD 57046
HEINE FARMS	PO BOX 477	YANKTON SD 57078
HEINE, ARLENE REVOCABLE TRUST	2201 VALLEY RD	YANKTON SD 57078
HILLBERG, RONALD C	30908 DAKOTA LN	MISSION HILL SD 57046
HUBER, BERNAL H REV TRUST	44728 309 ST	MISSION HILL SD 57046
J & J FARMING COMPANY LLC	214 CAPITAL ST STE 4	YANKTON SD 57078
J J INDUSTRIES LLC	205 GREEN ST	YANKTON SD 57078
JANSSEN, LAMOINE	PO BOX 75	MISSION HILL SD 57046
JENSEN, RANDY	44553 CHRIS RD	MISSION HILL SD 57046

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KOEPSSELL, SCOTT	44573 CHRIS RD	MISSION HILL SD 57046
LYONS, JIM	30844 447 AVE	MISSION HILL SD 57046
MARQUARDT, DOUG	1314 GOLF VIEW LN	YANKTON SD 57078
MARQUARDT, RALPH	PO BOX 1040	YANKTON SD 57078
MISSION HILL PROPERTY LLC	30995 446 AVE	MISSION HILL SD 57046
NELSON, NANCY L	30997 446 AVE	MISSION HILL SD 57046
PALSMA, MARLYN	41349 BUZZY'S RD	SPRINGFIELD SD 57062
PAPIK, LELAND	30852 446 AVE	MISSION HILL SD 57046
SCHMIDT, NICHOLAS S	30846 447 AVE	MISSION HILL SD 57046
SCHWADER, TOM	PO BOX 42	MISSION HILL SD 57046
SYLLIAASEN, DOROTHY REV TRUST	44772 309 ST	MISSION HILL SD 57046
WALSH, RANDY J	31352 465TH AVE	VERMILLION SD 57069
WOOD ACRES INC	44755 309 ST	GAYVILLE SD 57031

Exhibit #5A

<b>Resident</b>	<b>Address</b>	<b>City State Postal Code</b>
BAGSTAD, DON A	1005 EAST 13 ST	YANKTON SD 57078
BAGSTAD, RAMONA (LE)	30753 447 AVE	MISSION HILL SD 57046
BERBERICH, JOSEPH A	89851 556 AVE	SAINT HELENA NE 68774
CUTTS, JAY F	44681 309 ST	MISSION HILL SD 57046
FREEBURG LIMITED PARTNERSHIP	PO BOX 188	GAYVILLE SD 57031
GRAMKOW, BRENDAN	30674 447 AVE	MISSION HILL SD 57046
HANSON, MILAN D	615 EAST 72 ST	KANSAS CITY MO 64131
HEINE FARMS	PO BOX 477	YANKTON SD 57078
HERRIG WAHLERS REVOCABLE TRUST	44628 308 ST	MISSION HILL SD 57046
J J INDUSTRIES LLC	205 GREEN ST	YANKTON SD 57078
LAFAVE, STEVEN L	30752 446 AVE	MISSION HILL SD 57046
LANE, SUSAN R	30782 446 AVE	MISSION HILL SD 57046
NELSON AG HOLDINGS LLC	44023 306 ST	YANKTON SD 57078
NELSON, ELLA E	44023 306 ST	YANKTON SD 57078
NIELSEN FARM ENTERPRISES	17 STAGECOACH RD	AMHERST MA 01002
NIELSEN, ANDREW J	44670 308 ST	MISSION HILL SD 57046
SAWTELL, RICHARD W	30731 447 AVE	MISSION HILL SD 57046
VANGEN NORSK EVANGELISK	300 WEST 3 ST	MISSION HILL SD 57046

Exhibit #5B

<b>Resident</b>	<b>Address</b>	<b>City State Postal Code</b>
BERBERICH, JOSEPH A	89851 556 AVE	SAINT HELENA NE 68774
CUTTS, JAY F	44681 309 ST	MISSION HILL SD 57046
EPP, RAYMON	30849 448 AVE	MISSION HILL SD 57046

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FREEBURG PARTNERSHIP	LIMITED	PO BOX 188	GAYVILLE SD 57031
GRAMKOW, BRENDAN		30674 447 AVE	MISSION HILL SD 57046
HANSON, MILAN D		615 EAST 72 ST	KANSAS CITY MO 64131
KLIMCZYK, ALOJZY		89741 556 AVE	CROFTON NE 68730
NIELSEN FARM ENTERPRISES		17 STAGECOACH RD	AMHERST MA 01002
SAWTELL, RICHARD W		30731 447 AVE	MISSION HILL SD 57046
SMITH, JOHN C		2507 VALLEY RD	YANKTON SD 57078
SMITH, ROBERT G		44630 306 ST	MISSION HILL SD 57046

There are no public meeting sites within ½ mile of the proposed facilities.

Industry best management practices are to apply the manure/nutrient as a fertilizer to nearby fields. To control odor, the manure /nutrients are directly injected annually into the soil to reduce gas and particle emissions. This best practice is more costly than surface application but the benefits of odor reduction and decreased nitrogen volatilization are worth the extra investment.

Please see (Exhibit #5, #5A, #5B, #6, #6A, #6B, #7, #7A, #7B, #7C)– manure/nutrient application fields.

- I. A review of weather conditions shall include reviewing the effect of climate upon manure application. This section shall also include the preferred times and conditions for application to mitigate the potential effects upon neighboring properties while outlining the least advantageous climatic conditions.

Jay Cutts intends to avoid application of the manure/nutrients during the warmer summer months and will avoid holiday and weekends whenever feasible.

Jay Cutts will provide notification to the effected neighbors by a letter (electronic notification and telephone will be utilized when feasible) to remind them of our application time frame with a 30-day window and a goal of a one week window. Due to the number of residents a sign at the field may also be placed.

Most advantageous weather conditions are in cool dry conditions with a mild breeze. The least advantageous time is in hot wet weather. Avoid application if rain is forecast in the near future. The plan, to capitalize on favorable conditions and avoid unfavorable conditions, is to apply the manure/nutrient in the fall after harvest. In rare instances, the manure/nutrient will be applied in the spring (after snow-melt).

**Additional procedures Jay Cutts will follow to control flies and odors:**

**Fly, Odor & Rodent Control Guidelines  
For Animal Feeding Operations**

Fly, Odor and Rodent control are important to maintain a healthy, community friendly livestock operation. These guidelines are provided as a broad management tool to control fly populations, odor emissions and dust at an acceptable level. Each animal feeding operation must implement a system to fit their specific operation.

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A) Fly Control

1. Remove and properly dispose of spilled and spoiled feed.
2. Repair leaky waterers.
3. Keep vegetation mowed near the facilities.
4. Properly drain rainwater away from the facilities.
5. Apply commercial insecticides in a proper and timely manner.

B) Odor Control

1. Manage mortalities per SD Animal Industry Board requirements.
2. Adjust feed rations per industry standards to reduce potential odor generating byproducts.

C) Rodent Control

1. Two foot wide gravel barrier around the perimeter to discourage rodent entry.
2. Bait boxes at 75-100 ft. intervals that are checked 2x per month.
3. Spilled feed will immediately be cleaned up to discourage rodent activity.
4. Site routinely mowed to remove rodent harborage areas

The fly and odor control guidelines above will be conducted concurrently with one another to help prevent a nuisance problem from occurring.

11. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is injected or incorporated within twenty-four (24) hours:

A. Public Wells 1,000 feet

There are no known Public Wells within 1,000 feet of fields.

B. Private Wells 250 feet

The applicant will meet the setback requirement for Private Wells.

C. Private Wells (Operator's) 150 feet

The applicant will meet the setback requirement for Private Wells (Operator's).

D. Lakes, Rivers, Streams Classified as a Public Drinking Water Supply 1,000 feet

The applicant will meet the setback requirement for Lakes, Rivers, Streams Classified as Public Drinking Water Supplies.

E. Lakes, Rivers and Streams Classified as Fisheries 200 feet

The applicant will meet the setback requirement for Lakes, Rivers, Streams Classified as Fisheries.

F. All Public Road Right-of-ways 10 feet

The applicant will meet the setback requirement for All Public Road Right-of-ways.

G. Incorporated Communities 660 feet

The applicant will meet the setback requirement for Incorporated Communities.

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- H. A Residence other than the Operators 100 feet  
The applicant will meet the setback requirement for a Residence other than the Operators.
16. Manure generated from Animal Feeding Operations shall comply with the following manure application setback requirements if it is irrigated or surface applied:
- A. Public Wells 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.
- B. Private Wells 250 feet  
The facility will not irrigate or surface apply any nutrient applications.
- C. Private Wells(Operator's) 150 feet  
The facility will not irrigate or surface apply any nutrient applications.
- D. Lakes, Rivers, Steams Classified as a Public Drinking Water Supply 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.
- E. Lakes, Rivers and Streams Classified as Fisheries 660 feet  
The facility will not irrigate or surface apply any nutrient applications.
- F. All Public Road Right-of-ways (Surface Applied) 10 feet  
The facility will not irrigate or surface apply any nutrient applications.
- G. All Public Road Right-of-ways (Irrigated Application) 100 feet  
The facility will not irrigate or surface apply any nutrient applications.
- H. Incorporated Communities (Surface Applied) 1,000 feet  
The facility will not irrigate or surface apply any nutrient applications.
- I. Incorporated Communities (Irrigated Application) 2,640 feet  
The facility will not irrigate or surface apply any nutrient applications.
- J. A Residence other than the Operators (Surface Applied) 330 feet  
The facility will not irrigate or surface apply any nutrient applications.
- K. A Residence other than the Operators (Irrigated Application) 750 feet  
The facility will not irrigate or surface apply any nutrient applications.
17. If irrigation is used for removal of liquid manure, dewatering a lagoon (gray water) basin, or any type of liquid manure holding pit, these rules apply:
1. Drops must be used on systems that disperse the liquid no higher than 18" off the ground if no crop is actively growing on the field.  
Applicant is not requesting irrigation application permit.
2. If a crop is actively growing on the field, the liquid must then be dispersed below the crop canopy.  
Applicant is not requesting irrigation application permit.
3. No runoff or diffused spray from the system onto neighboring property or public right-of-way will be allowed.  
Applicant is not requesting irrigation application permit.
4. No irrigation of liquid on frozen ground or over FSA designated wetlands.  
Applicant is not requesting irrigation application permit.
5. No "big gun" type irrigation systems shall be used for liquid manure or dewatering lagoons or other manure containment systems.  
Applicant is not requesting irrigation application permit.

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Action 10918L: Moved by Kretsinger, second by Kettering to recommend approval of a Conditional Use Permit based on Finding of Facts dated October 9, 2018 and September 26, 2018, pursuant to Article 18, Section 1805 of the Yankton County Zoning Ordinance, to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production facility in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD.  
By roll call vote, seven (7) members voted aye and one (1) member voted nay.  
Motion carried.

Yankton County Planning Commission

Meeting date: October 9, 2018

VARIANCE

Article 18, Section 1807

FINDINGS OF FACT

Applicant: Jay Cutts

Parcel Number: 02.019.200.200

Legal description: SE1/4, SE1/4, S19-T94N-R54W

Physical Address: TBA 307<sup>th</sup> Street, Mission Hill, SD

1. No such variance shall be recommended for approval by the Planning Commission unless it finds:
  - A. The strict application of the ordinance would produce undue hardship; The agriculture property has a flood plain which is a prohibited site therefore propose a location sufficient distance from the flood plain, the proposed Right of Way (ROW) Setback Requirement increases distance from area residence and the proposed site is beneficial for agriculture row crop production.
  - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; The hardship can be shared by other properties but is limited to properties requiring agriculture Concentrated Animal Feeding Operations setback regulations.
  - C. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the grant of the variance; The granting of a variance will not be of substantial detriment to adjacent property nor the character of the district. Occupied farmstead are all greater than 1,320 feet from the site. The intent of the Agriculture District is to preserve land best suited to agriculture uses.



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- D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposed of convenience, profit, and caprice. No convenience, profit or caprice was shown.
2. No variance shall be recommended for approval unless the Planning Commission finds the condition or situation of the property concerning or the intended use of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment of this ordinance. The requested variance can be recurring with special circumstances discussed in the findings.
3. A recommendation of approval concerning a variance from the terms of this ordinance shall not be founded by the Planning Commission unless and until:
- A. A written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings, in the same district; The property is demonstrating special conditions or circumstances regarding flood plain regulations and proposed proper siting to minimize impact.
- B. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; Previous variances of minimum Right of Way (ROW) Setback Requirement have been granted in Yankton County.
- C. The special conditions and circumstances do not result from the actions of the applicant; The special conditions and circumstances are not a result of the applicant.
- D. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district. Variance requests of this type (minimum Right of Way (ROW) Setback Requirement) have been recommended previously by the Planning Commission.
4. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance. No nonconforming uses of neighboring lands, structures, or buildings in this district, and no permitted or nonconforming use of lands, structures, or buildings in other districts were considered.
5. Notice of public hearing shall be given, as in Section 1803 (3-5). The applicant mailed letters of notification to property owners within a one-half mile radius of the proposed variance on May 31, 2017 (supported by affidavit), a legal notice was published on June 3, 2017 in the Yankton Daily Press and Dakotan and a notification sign was placed on the property on May 30, 2017.
6. The public hearing shall be held. Any party may appear in person or by agent or by attorney. A public meeting was held at 8:45 pm on October 9, 2018 in the Yankton County Government Center County Commission chambers. Planning Commission chairperson, Mike Welch, stated this hearing will follow the written protocol:

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Meeting Protocol

9-12-17

- The application is introduced by the chairperson.
- The P&Z staff provides application details and ordinance requirements.

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- Applicant presents application, provides any expert support.
- Proponents for application allowed 30 minutes.
- Opponents for application allowed 30 minutes.
- Applicant allowed 10 minutes rebuttal.
- Planning Commission closes public comment.
- Planning Commission discusses application, creates “finding of fact” and requests motion for action.

This a continuance from the September 26, 2018 public hearing.

The September 26, 2018 minutes: This was the time and place for discussion regarding application from Jay Cutts. Applicant is requesting a Conditional Use Permit to build a Class E 2400 head (960 AU Animal Units) pork (finisher swine over 55 pounds) production barn in an Agriculture District (AG) in Yankton County. The applicant is requesting a variance of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD.

Jay Cutts stated the application has met all Conditional Use Permit requirements for a Class E Animal Feeding Operation. The variance request of Minimum ROW Setback requirement from 330 feet to 150 feet and Minimum Property Line Setback requirement from 660 feet to 75 feet is the main concern in this application. Mr. Cutts explained his production property is in Mission Hill South Township which is in the Zone A Floodplain. Yankton County prohibits Animal Feeding Operations in established floodplains. The site is in the five (5) mile transportation buffer to supply these southern fields with the nutrient management plan. The site plan shows a barn location with the best setbacks from area residents and the Zone A Floodplain. The proposal is the same design as the almost completed facility north of this site.

Mr. Cutts stated Yankton County has granted many variances in the Mission Hill North Township. The most common variance is the Minimum Lot Requirement for residential farmsteads or acreages. This is not always meeting the intent of the Agriculture District “and to limit residential, commercial, and industrial development to those areas where they are best suited for reasons of practicality and service delivery.”

Proponents for the application were requested to present their comments:

Lynn Peterson, area businessman, stated the agriculture economy is currently in downturn. The Class E facilities provide an opportunity to diversify income and increase profitability of the corn produced in the area. Each barn is consuming one half section (320 acres) per year. The city of Yankton has several CAFO’s located near the community. The manure management is in place and is effectively implemented year after year. In 2012 Yankton County agriculture census was 10,000 head of swine, Sioux County, IA census was 1,100,000,000 head of swine. Yankton County has some room for expansion of pork production.

Mr. Peterson also discussed some comparisons regarding health concerns and Concentrated Animal Feeding Operations. A comparison between Sioux County, IA and Yankton County, SD shows little difference between the counties in regard to air quality and respiratory health issues.

Brad Hohn, MDS Manufacturing, stated the natural ventilated curtain barn are modern and provide many features a producer requires to be successful. Other barn designs are appropriate for producers based on weather conditions, topography, production type and many other factors. Mr. Holm also stated his experience with injection application of manure in a nutrient management program is the best choice for healthy soils.

Opponents for the application were requested to present their comments:

Milo Hanson, an adjacent landowner impacted by the 660 foot setback, request no variance for the application. Mr. Hanson stated the applicant has not provided sufficient hardship for his variance request.

Andrea Wittmayer, an adjacent landowner, stated her opposition to the variance request. She provided a letter (Exhibit #1).

Brandon Gramkow, an adjacent landowner, sated his opposition to the variance request. He provided a letter (Exhibit #2).

Patty Gramkow stated her opposition to variance and conditional use permit. She stated several things about campaign signs, a review of the CAFO School in Huron, SD, the Beresford SDSU research facility and the flood waters from this summer rain events (Exhibit #5).

Paige Heirigs, Mission Hill resident, stated his opposition to the variance and conditional use permit. He states chapter seven of the Comprehensive Plan and Section 105 of the Yankton County Zoning Ordinance. Mr. Heirigs states the curtain barns are not compatible with the public welfare because of the particulates and pathogens in the odor. Mr. Heirigs will not be able to enjoy his garden, his outdoor life will be diminished and his property value will diminish. The previous application was denied in January and this application should be denied.

Kristi Schultz, area resident, stated her opposition to the variance and conditional use permit. M. Schultz stated M. Peterson is not a doctor and feels the statistics will be worse if CAFO's are permitted in Yankton County. She also stated that manure is not organic until the feed and production practices are certified... deadly gases are ventilated from curtain barns...Attorney Mr. Peterson stated it is illegal to have variances along with conditional use permits...this application only benefits the producer...everything is the same as the January application...court costs will be incurred if this is approved...any future permits will require berms around the facility, performance bonds, enclosed barns with biofilters, buffer evergreen strips, electronic fences, ground water monitors, semi-annual inspections, shallow well monitoring, application training, no CAFO systems and no combining feeding operations or application fields.

Michael Welch admitted two letters to the record as opposition to the Conditional Use Permit and variance request. The letters were from David Nielsen (Exhibit #3) and LaRue Hanson (Exhibit #4).

A ten minute (10) rebuttal from the applicant, Mr. Cutts, stated the Agriculture District intent as provided in Article 5, Section 501...odor will always be present in Agriculture Districts...nutrient management plans are science based application systems to properly apply multiple elements beyond the N-P-K requirements with many micro nutrients included in the plan...the floodplain is on part of the property but the barn is not in the floodplain as provided in the site plan...animal production is a listed permitted principal use with conditions as listed in Section 519...town of Mission Hill has an open lagoon and no complaints...restated his property south of Mission Hill is in the floodplain and it is

prohibited...this is forty (40) acre field (1,320 feet by 1,320 feet) and it is very difficult to site a barn with the current six hundred sixty (660) foot and three hundred thirty (330) foot setback requirements.

The Planning Commission began discussion and Mr. Gudahl requested Brad Holm to discuss types of barns and the ventilation systems designs. Mr. Holm discussed curtain barns and tunnel air barns, dust control and animal health concerns.

Don Kettering stated the precedence for variances is to evaluate the neighbor property owners concerns regarding the applicant's request. It is evident the conditional use permit is not the issue but the variance is meeting resistance from adjacent property owners. The Planning Commission discussed the Marquardt conditional use permit and variance request. The applicant received a variance of three hundred thirty (330) feet to locate a barn from the adjacent property line. The discussion continued about the hardship of the topography and floodplain impact on the site plan. The Planning Commission discussed the application and asked for a continuance to allow the applicant to arrange the barn on the site plan to meet the adjacent property line setback (660 feet) and allow a 180 foot variance for the Right of Way setback requirements (330 feet).

The October 9, 2018 minutes: Jay Cutts stated he has a revised site plan which meets the Property Line Setback requirement with a Right of Way (ROW) variance to be out of the floodplain located on the property. The proposal is two curtain style barns as shown on site plan (Exhibit #3 & #3A).

Planning Commission chairman determined the application was a continuance from two weeks ago and public comment is currently recorded in video and written minutes. Mr. Welch referred the application to the commission for comment. The commission discussed the application and determined the current site plan meets the Property Line Setback requirement but the Right of Way (ROW) setback is 150 feet to remove the facility from the Zone A floodplain. The site plan needs to include the mortality bins before the building permit will be issued.

The Zoning Administrator received a letter from Janice Wahlers (Exhibit #18) and LaRue Hanson (Exhibit #19). The Zoning Administrator will enter them into the record.

No other comments, positive or negative, were received by the Zoning Administrator or presented at the public hearing.

7. The Planning Commission shall make findings that the requirements of this Section have been met by the applicant for a variance; the Commission shall further make a finding that the reasons set forth in the application justify the recommendations of granting the variance, and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; the Planning Commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

The Planning Commission further finds that the reasons set forth in the application and hearing does satisfy all requirements for this variance request.

8. In recommending approval of any variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this ordinance. The Planning Commission approves this request.
9. Under no circumstances shall the Planning Commission recommend granting a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district. The

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variance request of Minimum Right of Way (ROW) Setback Requirement is approved. The intent of the Agriculture District is to preserve land best suited to agriculture uses.

Action 10918M: Moved by Becker, second by Kretsinger to recommend approval of a variance of Minimum ROW Setback requirement from 330 feet to 150 feet in an Agriculture District (AG) in Yankton County. Said property is legally described as SE1/4, SE1/4, S19-T94N-R54W, hereinafter referred to as Volin Township, County of Yankton, State of South Dakota. The E911 address is TBA 307th Street, Mission Hill, SD.

By roll call vote, seven (7) members voted aye and one (1) member voted nay.

Motion carried.

The next agenda item is Accessory Structures in Yankton County. The Zoning Administrator, Pat Garrity, briefly discussed some thoughts and concepts regarding amendment changes for accessory structures in Rural Residential Districts. The discussion will continue at the November 13, 2018 meeting.

Public comment period.

Brendan Gramkow stated the Cutts application requires public discussion.

Kristi Schultz stated her disappointment with the Planning Commission not allowing public comment for the Cutts application.

Action 10918N: Moved by Kretsinger, seconded by Gudahl for adjournment.

By voice vote, all members present voted aye.

Motion carried.

**The next meeting of the Yankton County Planning Commission will be held at 7:00 P.M. Tuesday, November 13, 2018.**

Respectfully submitted:  
Patrick Garrity AICP  
Zoning Administrator