



GRANT COUNTY SOUTH DAKOTA

PLANNING AND ZONING OFFICE

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Minutes for the meeting of Grant County Planning and Zoning/Board of Adjustment.

**Members present:** Nancy Johnson Lorelei Brandt Mike Mach Tom Pillatzki Tom Adler Gary Lindeman-by phone

**Alternates present:** Val Cameron Dave Kruger

**Members absent:** Richard Hansen

**Others present:** Jim DeVaal Keith Welberg Lois Welberg Roger Loeschke Ann Loeschke Pat Meyer Vince Meyer Dan Scoblic Denise Scoblic Shirley Wiese Kenny Wiese Clayton Whiting Gail Whiting Raymond Beutler Roger Loeschke Melbourne McCrea Orgene McCrea Dan Scoblic Denise Scoblic Gene Rickard Debra Hemmer David Durand Joan Durand Ed Duncan Dar Duncan Jim DeVaal Jerry Zubke Arlene Fonder Ann Fonder Matthew Fonder Roger Hopkins Kari Hopkins Bobbie Bohlen Mark Leddy Bill Street Norma Kruger Rodney Thaden Tim Wollschlager Kate Capp LeRoy Capp Stephanie Schumacher Milt Stengel Dan Tyler Tim Tyler Bob Capp Kristi Mogen Gerald Thaden Richard Pike Diane Pike Deverne Rickard Richard Domagala Val Rademacher Loretta Pillatzki Bob Hicks Matt Loeschke Ann Loeschke Todd Kays Mark Reedstrom Clayton Tucholke Doug Stengel Marty Buttke

Minutes for the meeting of Grant County Planning and Zoning/Board of Adjustment.

Meeting Date: Tuesday, February 9, 2016 **Meeting Time: 6:30 P.M.**

1. Call Meeting to Order @ 6:30 by Chair Nancy Johnson
2. Reading of Grant County Board of Adjustment Procedural and Rules of Conduct
3. Approval of Minutes:
  - a. Tuesday, January 12, 2016 Motion by Brandt second by Mach carries 7-0.
4. Plat Approvals
  - a. Phyllis F Henze Revocable Trust & Gwen Henze Barnhart, fka Gwen Henze Nicholas, owners, request the plat of Government Lots 3, 4, NE1/4-SW1/4 & SE1/4-SW1/4 of Section 30 Township 120 North, Range 48 West of the 5<sup>th</sup> PM, Grant County, South Dakota to become Lots 1&2 of Henze Farm Addition. (Alban Township) Motion by Mach second by Pillatzki carries 7-0.
  - b. David E Durand & Joan L. Durand, owners, request the replat of Lot 5A&B, Country Vista Subdivision, located in the SE1/4 of Section 33 Township 121 North, Range 47 West of the 5<sup>th</sup> PM, Grant County, South Dakota and Lot 13 Koopman's Addition, a subdivision of Lot 3, Koopman's Addition, to the county of Grant located in the S1/2 of the SE1/4, Section 33, Township 121 North, Range 47 West of the 5<sup>th</sup> PM Grant County, South Dakota. (Big Stone Township) Motion by Adler second by Cameron carries 7-0.  
This plat vacates Lot5 on the Plat of Lots 1-9, Country vista sub, SE1/4 33-121-47 & Lot 13 on plat of Lot 13 Koopman's Addn in S1/2 SE1/4 33-121-47
5. Conditional Use/Variance Requests/Rezoning
6. New Business
  - a. Complaint regarding Teton, LLC pig numbers  
A discussion was led by P&Z Officer with the board about moving ahead with a complaint lodged upon the Teton, LLC facility questioning the number of pigs on site to be in compliance with their permit. They believe the numbers presented at the hearing would produce 6040 pigs over the 140,000 permitted. Todd Kays interjected that would need to be in any given 45 day period and could be represented by high numbers and low numbers throughout that time with an average of permitted numbers being within range. Adler questioned if this would be a peak time that it may be over and sometimes the number would be under the permitted allotment and would that be OK? Kays pointed out that – yes this is entirely within the scope of how farming operations work and any given day animal numbers could be high or low but in the end the numbers will be within the permit. Kays gave suggestions for the board on how to proceed for an audit.  
Atyeo-Gortmaker explained that under direction of the State's Attorney she had begun the investigation to seek consultants or other avenues to prove the animal numbers at the facility and reported to the board there are several options within the area that would be credible resources and who could offer their opinions and expertise for the research in this complaint. 3 emails were sent regarding this complaint to the State Veterinarian who made recommendations, DENR who made recommendations and contacts and SDSU Swine Production who also made recommendations. It was reported that the average consultant would cost around \$2500 to do the research, travel and presentation for the board and the board could also elect to send their own representative with the consultant to document the visit. DENR alerted to the fact that a form would be due to their offices on March 28 that documents the number of animals within the facility over the course of 1 year, this would be a public document and could be requested by the P&Z Office. Lastly, a local vet could add credibility and also the records that would be kept under regular management practices at the facility, these are not public records and may not be supplied to the P&Z but it could be requested after consultation with the State's Attorney.  
Motion by Pillatzki and second by Adler to have P&Z Officer present 2-3 quotes from consultants and local veterinarians who could work on behalf of P&Z Board from the suggestions given in the 3 emails already returned from State Officials. Motion by Brandt to request the DENR affidavit of public record to present at next meeting with a second by Pillatzki carries 7-0.
7. Old Business
8. Unfinished Business
  - a. Ordinance Review: 1<sup>st</sup> District- Todd Kays

- i. Meeting March 12, 2015 5:30 pm.
- ii. Meeting April 1, 2015 5:00 pm.
- iii. Meeting April 22, 2015 5:00 pm.
- iv. Meeting May 27, 2015 5:00 pm.
- v. Meeting June 17, 2015 5:00 pm.
- vi. Meeting July 20, 2015 5:00 pm.
- vii. Meeting August 31, 2015 5:00 pm.
- viii. Meeting September 29, 2015 4:30 pm.
- ix. Meeting October 14, 2015 4:30 pm.
- x. Meeting November 4, 2015 4:30 pm.
- xi. Meeting January 5, 2016 5:30 pm.
- xii. Meeting January 19, 2016 5:30 pm.
- xiii. Joint Public Hearing February 9, 2016 7 pm.

The Public hearing was opened by Chair Nancy Johnson. A count was made for 12 people that had signed in and made the indication that they would like to address the board. Mathematically for the 90 minute hearing each person was to get 8 minutes to speak. Kays called the name of each person to the mic and kept the time.

Kate Capp- Concern was 1306.02 having too much liability for 1 person and facilities of this size were going to affect the community with only the adjoining landowners being notified.

Tim Tyler- Issue with 1306.02 didn't feel 1 person should be empowered or required to ok cafo of that size- it wouldn't be prudent. Reading the applications is tedious and boring and they always push up against the grey areas. Proofreading is difficult and it wouldn't be a fun job. More people seeing it would expose problems with more eyes.

Kristi Mogen- Moved here because the industry moved into their neighborhood with methane, oil, gas, chemicals used for cleaning and they were in a 2 mile radius. This community has worked hard on documenting wells, liners and learning but the cost of the proof for a business should not be put on the community. She has made 10 million \$\$ decisions for companies and she knows about people and 1 person making decisions is a huge problem for people to love with industrial ag. She personally thinks the numbers are low but she acknowledges the long road.

Deverne Rickard- A lot of thoughts prior to this meeting have gone into this- thank you for considering us. Township clerk he realizes there are 2 weeks of manuring in the township and the CAFO that is there is no problem but the un concern for the ecoli that was off the charts is an issue. Litigation potential for Indian Creek and Big Sioux to Watertown could still be an issue. Water tests are done often but if they contain something what do we do then? He hates dissension and unfairness and bullying. There were some that felt they were not considered or thought of- thank you for the meetings to hear us. He considers himself a mediator and has acted as such for the assessor presentation a few years back.

Keith Welberg- Page 17- Overhead 1304.1 7<sup>th</sup> item 250ft private well to 1000ft like public. Increase number of CAFO animals and he feels lagoons will be deeper and bigger too.

Vince Meyer- He feels 1306.02 Special use permit should be taken down to 999 and under. Grant County Zoning Officer should have no authority to grant with a checklist because this was a big decision that should be made by the board. Page 17- 1<sup>st</sup> 2 should be over 350-699 set at ½ mile, next 5 set at ¾ mile and last should be 1 mile and who would measure that.

Val Rademacher- Remarks on hogs and odor from a letter he received from a family in Mitchell and he hears similar reports from North of Milbank. There are less and less farms in Grant County which gives more space and ¾ mile is a step in the right direction. If he lives close he will attest that it is a strong and stifling smell and he would want more than a ½ mile separation. Loretta Pillatzki- Agrees with Val Rademacher there is a trend of fewer people living on the farm when a family member dies the site goes available. The P&Z would have places available the trend is abandoning farm sites. Good neighbors are concerned about your welfare and lifestyle- they are getting to their 70's and are retiring and moving to town. 1-2 mile back is wanted by all but 1 and it is good to do. The CAFO's have a lot of money to buy and put it anywhere. The fuss in Grant County just shows they are not treated fairly and whose concerns should matter. All of a sudden CAFO's change my lifestyle they pollute water and then what happens. If it fails, what recourse is there as a citizen? You are my neighbors the citizens of Grant County. Most CAFO owners are not in state and leave the county strapped. Make them have a retainer of 10% which would cover the \$15 million destruction to the roads and bridges and keep out of litigation. It should be no financial burden to the county. CAFO Biofilters are guaranteed to work.

Bill Street- Table 1301.1 Animal Units for hogs- he assumes sows and their litters in 1 category would assume as .4. Todd Kays clarified that the type of operation and animal units which are used by DENR are the same and would categorize them as over or under 55 pounds. Bill then goes on to suggest using the animal unit for cattle to consider the sow and litter as 1 unit as a milk cow because of their manure potency. There is a proposal for 9000 in North Dakota now and he wants to hold that down. Do something to research the odor because we don't want to be peppered with them in Grant County and he agrees with Loretta they should be bonded in case of bankruptcy because when that barn is obsolete who will take care of it. He spoke with Neil Conda from DENR and he said the county can use animal numbers and comingle to the use of animal units.

Mark Leddy- Began by thanking the Board for their time. His concern is 1304.1 Setbacks should be kept at a minimum and the most common concern is hogs. He would suggest striking the 7000 number and leave at 5000 and above to be at a mile, anything less would be excessive. Rural sites might be opening but that is happening very slowly. He feels documenting wells is a good addition as it shows there is a concern for water and would get the undocumented and unmaintained water pollution that would be bad for all of us and the hazards would be documented. Pollution to the aquifer is a larger issue for the wells that are out there and it decreases the property rights significantly for the livestock developers.

Kari Hopkins- Date and plan of SDCL 11-2 reading of the comprehensive plans. She agrees individual farms are larger and the right to farm laws make it legal and reasonable. Commissioners protect the big money and get pollution and road damage. Studies have shown cleanup and road costs and need to be watched for direct property value loss. We need to limit and cap the size allowed because 5000 sows is huge. Pipestone Systems has 8 million gallons of manure each year. CAFO's don't protect animal use of antibiotics and is bad for animal health. Chickens and turkeys aren't healthy with the barns that have to be closed and kept empty for a year. Keep the health of the people with the increased setbacks. Well

documentations are good and should be the same as the city. Clay county uses animal head not units wants to be dairy friends and keep out hogs. Do the research and don't damage the beauty of our area.

Roger Loeschke- Darn near a year working on this. 8847 au is 437000 chickens is more than 85 billion in proposal and he thinks there should be only 3 categories. Combine D&E and ABC. Odor for pigs and cows is different. He raised 500 hogs and he worked for Souza's with 1500 cows and his yard stunk.

Ken Wiese- Not going to reiterate the problems. 1306 was covered well. Observation is there is a choice for deleting and in decreasing D&E numbers. What is written up is a step in the right direction and he would like it to be more severe. Setback issues for p 17 C causes heartburn 1000-1999 for cattle works and for hogs chickens and turkeys it is too short. Animal Units consider manure produced and not odor or dust. Odor contained and stored is gas and sewage. Dust carries the smell and biofilters eliminate odor and work if installed correctly. Cattle don't have dust of the chickens turkeys and hogs. Control dust is 1 fix or increase the C to ½ mile. 999 is family operations and 7000 too restrictive and is a huge animal units. 5 years ago Kilborn township dairy would have been 10720 Animal Units and this becomes 75 semis per day. Do the math for the manure of cows times the number and find that it should not be taken lightly and should be lowered to be careful. Bonding a cafo in the area or a road haul agreement and why can't that be done in the County so it is the responsibility of the CAFO's. At this time it was called for further testimony and the opportunity to speak if they have changed their mind and wish to add to the testimony that has all ready been given.

Deverne Rickard- When the other CAFO dairy was built they agreed with the township they would use 81 for hauling dirt. They deviated from that and caused damage to the roads that some people didn't like. People started fighting and wanted to have a brawl but it didn't take into consideration there was corn harvest that was damaging the roads. He just went to the dairy and had them go back to 81 for hauling and they did.

Discussion was closed to the hearing portion and opened up just for the boards to ask clarification questions and have discussion among themselves.

Clayton Tucholke- Bonding had been done in the county but there was a change made to ordinance that increase 5 acres minimum to 80 acres owned for CAFO operation to protect the county. Mach questioned if this was enough land to guarantee restitution. Kays observed there were many conversations about making and selling bonds but it may not be an instrument that could be offered. It could be that an indemnity fund at the state that could cover liability insurance at \$1 million.

Doug Stengel asked about small operations and whether they would be signed off by the Zoning Officer and whether that could propose a liability. Over 1000 AU should be a CUP and 999 and below should be a permitted use and ABC would be CUP. Lori Brandt asked about changes 1306.02 1a and if changes could be made to remove special use and all the cross references. Kays clarified the process and what would be removed and the processes used in the Letter of Assurances and that would be kept for those under 1000. Nancy Johnson asked if vested operations would be allowed to grow of if they would come before the board for CUP. Kays clarified that those which are existing but don't meet 975 animals or a B or New CAFO's would be non-conforming and have to have a hearing. When he and Luke drove the county there were 330 locations that were considered CAFO. 700 to 1200 BOA boxes to check with setbacks not considered. Vesting is going to be work for the board. There will be about 130 operations that will not be compliant and those requests will inundate the office. At this time about 15-20 applications can be seen each year and the special permitted uses would cut down on the workload.

Mach asked about the health issues and speculated that would be difficult to put into ordinance. Reedstrom stated that would be tough to regulate and to set up what would be reasonable especially with HIPPA laws. It may be hard to document and regulate and when this information to be made evident. Is this something that comes up at the hearing and if it is asthma or an allergy would a setback really be the basis for the pathogen. How would it be measured and would the perceived health issue warrant protection and could it be handled even handedly. If it is asthma do you request a Dr. release for proof but in the end will you be able to measure it or regulate it.

Reedstrom cautioned that the interest in the land should not be overlooked and there may not be absolute harmony or zero conflict. Government should not be the remedy for neighbor conflict and the government needs to make a clear beginning and end as the regulators. It is not the responsibility of this board to over reach and be the experts there are remedies for neighbor issues to sue each other and prove the impact of land use and prove a private nuisance and claim damages through the court.

Clayton Tucholke explained his opinion that hogs are bad and treating them the same as a milk cow he would not oppose. Kays explained the current rational with the state numbers of animal units equaling the size of your operations so the head and animal units is consistent with the DENR numbering system. It is consistent with the head count to manure content. If you were to differentiate these items you may get into trouble with standing because you would be treating them differently and if you treat pigs differently than cows you must have a rational basis to do so. Treated the same for emissions in South Dakota, emissions in South Dakota are not regulated like Minnesota who have standards. Also, pointed out that there would be a need for costly measuring tools and nose police. Cows and pigs are married at the hip and changing the setbacks based upon emissions of either hydrogen sulfide or ammonia would lead to entirely different regulations.

Tom Pillatzki asked if the fertilizer content would be the same from a cow to a pig per volume and content. Tom agreed with the commissioner's comment for private wells to be set as the same as city wells at 1000 foot setback versus 250 feet with a liner. Supreme Court justice comment was ½ mile does not make due consideration of wells that are closer for whether they should have different setbacks and wells on site actually have no regulations but we are concerned for the ones further away. Pillatzki pointed out that the concern was not entirely environmental but actually deprivation of water resources. 250 feet is the length of 2 football fields at 500 feet he would feel better with the clay liner but why is this liner not required to the onsite wells. He would also like to simplify the setbacks that are ½ mile now for everything and set 2000-3500 at ¾ mile to established residences.

xiv. Action items AMENDMENTS TO ORDINANCE 2016-01 APPROVED BY THE GRANT COUNTY PLANNING COMMISSION AFTER NOTICED PUBLIC HEARING ON FEBRUARY 9, 2016

**Amendment 1A** by Lori Brandt and seconded by Tom Adler which carried unanimously to Delete Section 1306 and references thereto, with the exception of Section 1306.04 and apply Section 1306.04 to permitted use CAFO's ~~Section 1306. Permitted Special Use Regulations for Concentrated Animal Feeding Operations Section 1306.01. General.~~

~~1. Permitted special use permits involve land use actions governed by standards and approval criteria that generally require the exercise of limited discretion. Impacts associated with the land use action may require imposition of conditions of approval to minimize those impacts and to ensure compliance with this Ordinance. Any Permitted Special Use approved by the Zoning Officer shall conform to the standards for such uses as set forth below. These standards shall be construed to be the minimum requirements for any of the permitted special use permit and the Zoning Officer may require additional requirements.~~

~~Section 1306.02. Concentrated Animal Feeding Operation Permitted Special Use Standards~~

- ~~1. A Permitted Special Use Permit for Concentrated Animal Feeding Operation(s) shall comply with the following:~~
  - ~~a. A Permitted Special Use Permit may only be granted for Class C Concentrated Animal Feeding Operations (1,000 to 1,999 animal units);~~
  - ~~b. The Concentrated Animal Feeding Operation site meets all setback requirements in Article XIII, Section 1304.6.~~
  - ~~c. The Concentrated Animal Feeding Operation will comply with Section 1105 Aquifer Protection Overlay District regulations.~~
  - ~~d. The applicant shall obtain a South Dakota Department of Environment and Natural Resources "General Permit" prior to the issuance of a County Permitted Special Use Permit. Said "General Permit" shall serve as meeting the requirements of the Nutrient Management Plan and Manure Management Plan standards identified in Section 1304.3 and Section 1304.4.~~
  - ~~e. The applicant shall observe manure application setbacks per 1304.9.~~
  - ~~f. The applicant shall provide a management plan for fly and odor control consistent with the standards found in Section 1304.5.~~
  - ~~g. The applicant shall obtain a haul road agreement with the applicable road authority for construction and maintenance of roads associated with the Concentrated Animal Feeding Operation. Unless otherwise agreed to between the Road Authority and the applicant, at Grant County requires, at a minimum, the applicant to abide by the haul road agreement terms found in Grant County Resolution #2014 36~~
  - ~~h. The applicant and the Board of Adjustment's designee shall sign a letter of assurance as prescribed in Section 1306.04.~~

~~Section 1306.04. Procedures for approval of Permitted Special Use Permit~~

- ~~1. The Permitted Special Use procedure is an administrative review process, where the Zoning Officer shall have the power to review an application for conformance with the applicable standards and approval criteria and issue a Permitted Special Use permit. Requests for permitted special uses may be granted if it has been determined that the prescribed conditions for a specific use have been met or assurance has been provided that the conditions will be met. If any of the performance standards cannot be met, the proposed permitted special use will be considered a conditional use. A Permitted Special Use Permit shall not be granted unless and until:~~
  - ~~a. A written application for a permitted special use is submitted, indicating the section of this Ordinance under which the permitted special use is sought and stating the grounds on which it is requested.~~
  - ~~b. The Zoning Officer shall review the application for conformance with Article XIII.~~
  - ~~c. The Zoning Officer shall provide written notice of the proposed Permitted Special Use Permit request to all landowners within the required setback (Table 1304.1)~~
  - ~~d. If it is determined that additional conditions and safeguards are required by the Zoning Officer for the approval of the Permitted Special Use Permit in conformity with this regulation, or the applicant fails to meet any of the prescribed conditions and safeguards; the Zoning Officer shall determine that the application is not in conformance with Article XIII and appropriate Permitted Special Use Standards (Section 1306.02). The application may then be considered by the Board of Adjustment as a Conditional Use permit (see Article V).~~
  - ~~e. If the Zoning Officer determines that the application is in conformance with Article XIII, the Zoning Officer shall make written findings certifying compliance with the specific standards governing Permitted Special Use Permits (Section 1306.02) and that satisfactory provisions and arrangements have been made concerning the prescribed conditions for the Permitted Special Use Permit (Section 1306.04). The Zoning Officer shall then issue the Permitted Special Use Permit subject to the applicant and designee of the Board of Adjustment signing the letter of assurance per Section 1306.04.~~
  - ~~f. The Zoning Officer shall report the issuance of the Permitted Special Use Permit to the Board of Adjustment at a regularly scheduled meeting where the Board's designee will sign the letter of assurance.~~
  - ~~g. The Zoning Officer shall then issue any other associated building/use permits.~~
  - ~~h. The Zoning Officer may refer any application for a permitted special use to the Board of Adjustment.~~

~~Section 1306.041. Permitted Special Use Letter of Assurance~~

~~As a requirement of Section 1306.02 **1304.10.e**, the following letter of assurance is to be signed by the applicant and Designee of the Grant County Board of Adjustment prior to the issuance of any Permitted Special Use **Class E Concentrated Animal Feeding Operation** Permit.~~

~~Prepared by:~~

~~Grant County Zoning Officer~~

~~Address~~

~~Milbank, SD 57252~~

Permitted Special Use Letter of Assurance

A Permitted Special Use Permit has been granted by the Grant County Zoning Officer to (Applicant Name) to operate a Class **E** Concentrated Animal Feeding Operation on property owned by (Applicant Name).

Property Location: \_\_\_\_\_

Permitted Special Use Standards and Conditions to be placed upon the Permitted Special Use Permit for a Class **E** Concentrated Animal Feeding Operation issued by the Grant County Zoning Officer on (date).

- ~~1. This Permitted Special Use Permit authorizes the use of the above described property for a Class **E** Concentrated Animal Feeding Operation consisting of (number animal units and species of animal)~~
- ~~2. The Concentrated Animal Feeding Operation site will comply with all setback requirements found in Article XIII, Section 1304.6 of the Grant County Zoning Ordinance.~~
- ~~3. The Concentrated Animal Feeding Operation will comply with all requirements of Section 1105 "Aquifer Protection Overlay District" of the Grant County Zoning Ordinance.~~
- ~~4. The applicant shall obtain a South Dakota Department of Environment and Natural Resources "General Permit" prior to the issuance of a County Permitted Special Use Permit and any associated building/use permits. Said "General Permit" shall serve as meeting the requirements of the Nutrient Management Plan and Manure Management Plan standards in Section 1304.3 and Section 1304.4 of the Grant County Zoning Ordinance.~~

- ~~5-4~~ The applicant shall comply with the South Dakota Department of Environment and Natural Resources or Natural Resources Conservation Services Nutrient Management Plan and Manure Management Plan.
- ~~6-5~~ The applicant shall provide updated information regarding the Nutrient Management Plan and Manure Management Plan upon request of the Zoning Officer.
- ~~7-6~~ The applicant shall comply with all manure application setbacks per found in Section 1304.9 of the Grant County Zoning Ordinance.
- ~~8-7~~ The applicant shall provide and comply with a management plan for fly and odor control consistent Section 1304.5.
- ~~9-8~~ The applicant shall obtain a haul road agreement with the applicable road authority for construction and maintenance of roads associated with the Concentrated Animal Feeding Operation. Unless otherwise agreed to between the Road Authority and the applicant, at Grant County requires, at a minimum, the applicant to abide by the haul road agreement terms found Grant County Resolution #2014-36.
- ~~10-9~~ The ~~Permitted Special Use~~ Permit is transferable. Subsequent owners/operators will be required to agree to the terms of this permit.
- ~~11-10~~ The applicant may be required to forfeit the ~~Permitted Special Use~~ Permit in the event there are either
- Violations of the ~~Permitted Special Use~~ Permit or other Grant County Zoning regulations or
  - Failure of the manure management facility.
- ~~12-11~~ Violation of the terms of this ~~Permitted Special Use~~ Permit will be determined by the Grant County Zoning Officer.
- The first violation substantiated by the Zoning Officer of this ~~Permitted Special Use~~ Permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one (1) calendar year of the previous violation may result in a review of the validity of the ~~Permitted Special Use~~ Permit and potential revocation of said permit. A third violation within one (1) calendar year of the initial violation may result in revocation of the ~~Permitted Special Use~~ Permit and cessation of all CAFO operations within forty-five days (45) of notice of revocation.
  - The applicant may make appeal from the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment to the Grant County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
  - Failure to comply with the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment may be deemed a separate violation.

IN WITNESS WHEREOF, Grant County and the Grantor(s) have executed this ~~Conditional Use Permit~~ Letter of Assurance.

\_\_\_\_\_  
Applicant (Grantor)

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Grant County Board of Adjustment

STATE OF SOUTH DAKOTA

SS:

COUNTY OF GRANT

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by (Applicant), Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF SOUTH DAKOTA

SS:

COUNTY OF GRANT

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, representing Grant County as the ~~Chairman~~ **Chairperson** of the Grant County Board of Adjustment.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

~~Section 259a. Permitted Special Use. A permitted special use is a use of buildings or land which are acceptable in a particular zoning district, provided the use is consistent with all conditions and standards set forth for the particular "permitted special use", together with any other conditions and standards set forth within Section 1306 of the Grant County Zoning Ordinance. The issuance of a permitted special use permit is administrative in nature.~~

**Section 1303. Concentrated Animal Feeding Operation Permit Requirements**

Owners of Class A, Class B, Class C, Class D, and Class E Concentrated Animal Feeding Operations are required to complete, where applicable, a building permit, ~~permitted special use permit~~ and/or conditional use permit application as follows:

**Section 1304. Concentrated Animal Feeding Operation Control Requirements**

**2. State General Permit**

- Class A, Class B, Class C Concentrated Animal Feeding Operations shall obtain a State General Permit pertaining to the animal species of the Concentrated Animal Feeding Operation. A County conditional use permit ~~or permitted special use permit~~ may be approved conditioned upon receiving a State General Permit. The issuance of a State General Permit satisfies the county's requirements for an approved nutrient management plan and manure management plan.

**Section 1304.10e**

- Conditional Use Permit applicants will be required to file a letter of assurances as required by the Board of Adjustment. **Class E Concentrated Animal feeding operations are required to sign the letter of assurance as provided in Section 1306.01.** The letter of assurances will be prepared by the zoning officer and/or Board of Adjustment and signed by both the applicant and the Board of Adjustment's designee. The permit for the concentrated animal feeding operation is based upon compliance with the regulations herein, and associated letter of assurances. Any violation of these regulations or non-compliance with the letter of assurances shall be cause for revoking a permit. If a violation of these regulations or non-compliance with the letter of assurance occurs, permit holders will be notified by registered mail and a hearing before the Board of Adjustment will be held concerning status of the permit. The Board of Adjustment shall either revoke the permit or set a time line for compliance. If compliance is not met, the permit shall be revoked and the permit holder ordered to cease operations.

~~Section 1101.03. Permitted Special Uses.~~

~~1. Class C, Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article XIII.)~~

**Section 1101.03 Conditional Uses**

~~5. Reserved. Class C Concentrated Animal Feeding Operations that do not meet Concentrated Animal Feeding Operation Permitted Special Use Standards Section 1306.02~~

10. Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations. (See Concentrated Animal Feeding Operations, Article XIII.)

**Section 1101.067. Access.**

**Section 1101.078. Easements/Waivers.**

**Amendment 1B** made by Val Cameron with a second by Mike Mach to **Amend Section 291 – Definition of Well**

Section 291. Well, Established. A water producing well that is either registered with the State of South Dakota or has well logs on file with the South Dakota Department of Environment and Natural Resources or has been used for more than one wee for water production on a quarterly basis with the past two (2) years as established by sworn affidavit and filed as a miscellaneous document with the Grant County Register of Deeds. The motion carried unanimously.

**Amendment 1C** motion by Mike Mach second by Val Cameron to **Amend Table 1304.1 by changing setback from a private well from 250’ to 500’** which carried 6-0. Tom Adler absent for vote.

**Table 1304.1**  
**Minimum Setbacks\* ^^**

Number of Animal Units	Less than 350 Animal Units	350 to 699 Animal Units	700 to 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to 3,499 Animal Units	3,500 to 4,999 Animal Units	5,000 to 6,999 Animal Units	Over 7,000 Animal Units
Established Residences	660 feet	1,320 feet	1,980 feet	2,640 feet	3,300 feet	3,630 feet	3,960 feet	5,280 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	2,640 feet	2,640 feet	3,960 feet	3,960 feet	3,960 feet	5,280 feet
Incorporated Municipality Limits	2,640 feet	2,640 feet	2,640 feet	2,640 feet	3,960 feet	3,960 feet	3,960 feet	5,280 feet
Established Private Water Well***	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet	<u>250</u> <u>500</u> feet
Existing Public Water Well	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	2,640 feet
Lakes and Streams classified as Fisheries as identified by the State	200 feet	200 feet	200 feet	500 feet	500 feet	500 feet	500 feet	500 feet
Federal, State & County Road ROW								
Confinement	200 feet	200 feet	200 feet	300 feet	300 feet	300 feet	300 feet	300 feet
Open Lot	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet
Township Road ROW								
Confinement	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
Open Lot	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet	50 feet

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

^^ The Board of Adjustment may utilize Section 1304.7 and 1304.8 to increase or decrease the required setback.

\*\*\* Setback does not apply to the wells of the CAFO operator. The 250 foot setback will be applied when monitoring wells are utilized and when an impervious liner is used in conjunction with an earthen storage basin or lagoon. In the event monitoring wells and impervious liners are not utilized with the manure management facility the setback from established private wells, not to include the CAFO operator, shall be two thousand six hundred forty (2,640) feet.

**Amendment 1D** motion by Nancy Johnson second by Lori Brandt **Change 1304.8a.i.c by replacing three thousand with two thousand**

c) Amend and approve the request for less than ~~three~~ **two** thousand (~~32,000~~) animal units based upon 1304.8.a.ii. Unanimous vote.

**Amendment 1E** Motion to amend 1304.8.a.iii to increase from 1,000 to 2,500 by Val Cameron seconded by Nancy Johnson – motion failed with Adler Johnson and Cameron voting Yes and Brandt, Lindeman, Mach and Pillatzki voting No.

**Amendment 1F** Motion to amend Table 1304.1 by deleting over 7,000 animal units column by Nancy Johnson second by Tom Adler – motion failed on a vote of 3 Yes from Johnson Adler and Cameron to 4 no Mach Lindeman Pillatzki and Brandt.

**Amendment 1G** by Tom Pillatzki second by Gary Lindeman to Amend Table 1304.01 by increasing setback from established residences to 3,960 feet for CAFOs over 2,000 animal units but less than 7,000 animal units with votes of Yes from Adler Brandt Lindeman Mach Pillatzki and Cameron voting No was Johnson.

Table 1304.1  
Minimum Setbacks\* ^^

Number of Animal Units	Less than 350 Animal Units	350 to 699 Animal Units	700 to 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to <del>3,499</del> <b>6,999</b> Animal Units	<del>3,500 to 4,999</del> Animal Units	<del>5,000 to 6,999</del> Animal Units	Over 7,000 Animal Units
Established Residences	660 feet	1,320 feet	1,980 feet	2,640 feet	<del>3,300 feet</del> <b>3,960 feet</b>	<del>3,630 feet</del>	<del>3,960 feet</del>	5,280 feet
Churches, Businesses and Commercially Zoned Areas	2,640 feet	2,640 feet	2,640 feet	2,640 feet	3,960 feet	<del>3,960 feet</del>	<del>3,960 feet</del>	5,280 feet
Incorporated Municipality Limits	2,640 feet	2,640 feet	2,640 feet	2,640 feet	3,960 feet	<del>3,960 feet</del>	<del>3,960 feet</del>	5,280 feet
Established Private Water Well***	250 feet	250 feet	250 feet	250 feet	250 feet	<del>250 feet</del>	<del>250 feet</del>	250 feet
Existing Public Water Well	1,000 feet	1,000 feet	1,000 feet	1,000 feet	1,000 feet	<del>1,000 feet</del>	<del>1,000 feet</del>	2,640 feet
Lakes and Streams classified as Fisheries as identified by the State	200 feet	200 feet	200 feet	500 feet	500 feet	<del>500 feet</del>	<del>500 feet</del>	500 feet
Federal, State & County Road ROW								
Confinement	200 feet	200 feet	200 feet	300 feet	300 feet	<del>300 feet</del>	<del>300 feet</del>	300 feet
Open Lot	50 feet	50 feet	50 feet	50 feet	50 feet	<del>50 feet</del>	<del>50 feet</del>	50 feet
Township Road ROW								
Confinement	150 feet	150 feet	150 feet	150 feet	150 feet	<del>150 feet</del>	<del>150 feet</del>	150 feet
Open Lot	50 feet	50 feet	50 feet	50 feet	50 feet	<del>50 feet</del>	<del>50 feet</del>	50 feet

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

^^ The Board of Adjustment may utilize Section 1304.7 and 1304.8 to increase or decrease the required setback.

\*\*\* Setback does not apply to the wells of the CAFO operator. The 250 foot setback will be applied when monitoring wells are utilized and when an impervious liner is used in conjunction with an earthen storage basin or lagoon. In the event monitoring wells and impervious liners are not utilized with the manure management facility the setback from established private wells, not to include the CAFO operator, shall be two thousand six hundred forty (2,640) feet.

**Amendment 1H to Amend Section 235b** by eliminating term “non-seasonal” from definition by Gary Lindeman second by Nancy Johnson Section 235b. Established Residence. A ~~non-seasonal~~ dwelling established before the siting of a new concentrated animal feeding operation or the expansion of an existing concentrated animal feeding operation. Motion carries unanimously.

**Motion for Planning Commission Recommendation for Ordinance 2016-01** Be it resolved that after holding a required public hearing, the Grant County Planning Commission recommends to the Grant County Board of County Commission that they approve and adopt Ordinance 2016-01, as amended by the Planning Commission. Motion by Lori Brandt second by Mike Mach carries unanimously.

9. Next meetings:
  - a. Regular meeting: Tuesday, March 8, 2016 4:30 pm
10. Adjournment Motion by Mach second by Pillatzki

Krista Atyeo-Gortmaker  
Planning and Zoning Officer  
Grant County