

7/30/2019

Please Sign In:

Tom Sturgeon, LCBHS
Laurie Brown
Ina Andeberg
Norma Weir
Carl F. O'Brien
Alexis Tracy
Susanne Sky
David Lias, Vermilion Plain Talk
Mark Wisneger
Mitch Peterson
Jungnick
Dutcher Ford
Michael Adams
Maddalena
Tom Pagnolucci
Sarahanna Bradley
Dore Strickland Johnson

Cindy Strudeman Joanson
Cindy Kirkley
Tom Cozyer
Lynn Rognstad
Rick Rognstad
Marianne Mack
Mary Mack
Lynn Riley
Hugh Britten
BRIAN GEVIK
LIZ HANSON
Richard Rognstad
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AFFIDAVIT OF PUBLICATION

PLAIN TALK

CLAY COUNTY AUDITOR
211 W MAIN ST #200
VERMILLION SD 57069

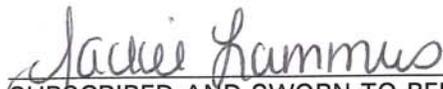
STATE OF SOUTH DAKOTA
COUNTY OF CLAY

JACKIE LAMMERS, BEING FIRST DULY SWORN ON OATH DEPOSES AND SAYS THAT (S)HE IS THE CLASSIFIED MANAGER OF YANKTON MEDIA INC, A CORPORATION, THE PRINTER AND THE PUBLISHER OF THE PLAIN TALK, A LEGAL WEEKLY NEWSPAPER PUBLISHED AND CIRCULATED IN THE CITY OF VERMILLION, SAID COUNTY AND STATE, AND ONE OF THE OFFICIAL NEWSPAPERS OF THE SAID COUNTY OF FACTS STATED IN THIS AFFIDAVIT; THAT THE ANNEXED PUBLIC NOTICE CLAY COUNTY

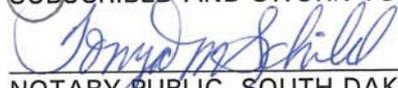
TAKEN FROM THE PAPER, IN WHICH IT WAS LAST PUBLISHED IN THE NEWSPAPER ON THE 19th DAY OF July, 2019 THAT THE FULL AMOUNT OF THE FEE CHARGED FOR THE PUBLICATION OF SAID NOTICE TO WIT \$12.08 ENSURES TO THE BENEFITS OF THE PUBLISHER OF SAID NEWSPAPER AND THAT NO AGREEMENT AND UNDERSTANDING FOR THE DIVISION THEREOF HAS BEEN MADE WITH ANY OTHER PERSON, AND THAT NO PART THEREOF HAS BEEN AGREED TO BE PAID TO ANY PERSON WHOMSOEVER.

PUBLISHED ON: 07/19/2019

FILED ON: 07/19/2019



SUBSCRIBED AND SWORN TO BEFORE ME THIS 19th DAY OF July, 2019



NOTARY PUBLIC, SOUTH DAKOTA
MY COMMISSION EXPIRES 08/19/2021

Ad text : PUBLIC NOTICE

Clay County Board of
Adjustment to Hold Public Hearing On Appeal of
Conditional Use Permit

Notice is hereby given that a Public Hearing will be held before the Clay County Board of Commissioners, acting as the Board of Adjustment, at 10:00 am on July 30, 2019 at the Clay County Courthouse to consider the following: An appeal by the Living River Group, Sierra Club of the approval by the Clay County Planning Commission of a Conditional Use permit granted to Travis Mockler for expansion of an Animal Feeding Operation from Small to Medium.

All interested persons are encouraged to attend this public hearing. Those interested persons not able to attend are invited and encouraged to send written comments before July 29, 2019 to the Clay County Zoning Administrator, 211 W. Main Street, Suite 203, Vermillion, SD, 57069.

Cynthia Aden

Zoning Administrator

Carri Crum

Clay County Auditor

Published once at the total approximate cost of \$12.08.

Published July 19, 2019.

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF CLAY)

Allyson M. Hill, being first duly sworn, on oath says the TRI-COUNTY NEWS is a WEEKLY newspaper published in IRENE in said County of CLAY, State of South Dakota; and that she is authorized to and does make this affidavit on behalf of said TRI-COUNTY NEWS; that affiant has personal knowledge of all facts stated in this affidavit; that said newspaper is a legal newspaper as defined by SDCL 17-2-2.1 through 17-2-2.4 inclusive as amended, has a bona fide circulation of at least two hundred copies WEEKLY, has been published in the English language within said county and has been admitted to the United States mail under the second class mailing privilege, for at last one year continuously next prior to the publication of the notice herein mentioned and was and is printed wholly or in part in an office maintained at said place of publication; that said notice, a printed copy of which taken from the paper in which the same was published is hereto attached and is made part of this affidavit, was published in said newspaper

1 time(s) as follows: that the first publication of said notice in said newspaper aforesaid was on Thursday the 18 day of July, 2019, and that the succeeding publications were severally on Thursday, the ___ day of ___, 2019; on Thursday, the ___ day of ___, 2019; on Thursday, the ___ day of ___, 2019; on Thursday, the ___ day of ___, 2019;

Affiant further says that the full amount of the fees charged for the publication of said notice inures to the benefit of the publishers of said newspaper; that no agreement of understanding for the division thereof has been made with any other person, that no part thereof has been agreed to be paid to any person whomsoever; and that the fees charged for the publication thereof are:

DOLLARS (\$ 9.87)

(x) Allyson M. Hill, Allyson M. Hill

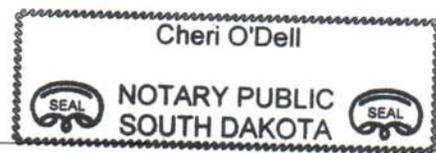
Subscribed and sworn to before me this 12 day of

August, 2019

Cheri O'Dell

Notary Public

My commission expires 03/12/2025.



PUBLIC NOTICE

Clay County Board of Adjustment to Hold Public Hearing On Appeal of Conditional Use Permit

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Cynthia Aden
Zoning Administrator
Carri Crum
Clay County Auditor

Published once at the total approximate cost of \$9.87

AFFIDAVIT OF PUBLICATION

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF CLAY)

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1 time(s) as follows: that the first publication of said notice in said newspaper aforesaid was on Thursday the 30 day of may, 2019, and that the succeeding publications were severally on Thursday, the ___ day of _____, 2019; on Thursday, the ___ day of _____, 2019; on Thursday, the ___ day of _____, 2019; on Thursday, the ___ day of _____, 2019;

Affiant further says that the full amount of the fees charged for the publication of said notice inures to the benefit of the publishers of said newspaper; that no agreement of understanding for the division thereof has been made with any other person, that no part therefore has been agreed to be paid to any person whomsoever; and that the fees charged for the publication thereof are:

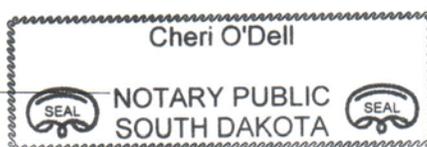
DOLLARS (\$ 10.17)

(x) Allyson M Hill, Allyson M. Hill

Subscribed and sworn to before me this 2nd day of

July, 2019

Cheri O'Dell
Notary Public
My commission expires 03/12/2025



PUBLIC NOTICE
Clay County Board of Adjustment to Hold Public Hearing On Appeal of Conditional Use Permit

Notice is hereby given that a Public Hearing will be held before the Clay County Board of Commissioners, acting as the Board of Adjustment, at 9:30 am on June 11, 2019 at the Clay County Courthouse to consider the following: An appeal by the Living River Group, Sierra Club of the approval by the Clay County Planning Commission of a Conditional Use permit granted to Travis Mockler for expansion of an Animal Feeding Operation from Small to Medium.

All interested persons are encouraged to attend this public hearing. Those interested persons not able to attend are invited and encouraged to send written comments before June 11, 2019 to the Clay County Zoning Administrator, 211 W. Main Street, Suite 203, Vermillion, SD, 57069.

Cynthia Aden
Zoning Administrator
Carri Crum
Clay County Auditor
Published once at the total approximate cost of \$10.17

July 30, 2019

The Board of County Commissioners met in regular session Tuesday, July 30, 2019 at 9:00 a.m. Members present: Travis Mockler, Phyllis Packard, Leo Powell, Micheal Manning, and Richard Hammond.

Powell moved, seconded by Packard and carried to approve the agenda.

Minutes of the July 9, 2019 and July 23, 2019 meetings were approved with a motion by Manning, seconded by Hammond and carried.

Weed Supervisor Dennis Ganschow met with the Board under Visitors to be Heard to discuss repair or trade-in of one of the department's Kubotas.

Highway Superintendent Rod Polley met with the Board to discuss highway matters. Hammond moved, seconded by Manning and carried to accept the low bid of \$2.324/gallon from Jerry's Service for ethanol blend fuel. Manning moved, seconded by Hammond and carried to accept the low bid of \$2.14/gallon from Jerry's Service for #2 diesel fuel.

Powell moved, seconded by Packard and carried to approve and authorize the Chairman to sign a Right-of-Way Application from Midco on 468 Ave. in Section 35E & 25W, T95N, R51W.

Powell moved, seconded by Packard and carried to approve and authorize the Chairman to sign a Right-of-Way Application from Vast Broadband on 306 St. in Section 18 & 19, T94N, R53W.

Polley discussed the 2020 budget request with the Board, including planned road and bridge projects for the next year and the future. He also discussed rip rap needed along the river due to the flooding and damage to roads also due to the flooding. Mockler and Polley discussed bidding fuel once a year vs. as-needed.

Lauren Hollenbeck, 4-H Educator, met with the Board to present the quarterly activity report and for the 2020 budget request. She also asked the commissioners to serve ice cream at the fair.

Dr. Stange of Lewis & Clark Behavioral Health Service met with the Board for the 2020 budget request.

Treasurer Rhonda Howe met with the Board for the 2020 budget request.

Emergency Management Director Layne Stewart met with the Board for the SLA Plan approval. Powell moved, seconded by Packard and carried to authorize the Chairman to sign the documents.

The Board called a brief recess.

At 10:05 a.m., Powell moved, seconded by Hammond and carried to adjourn and convene as Board of Adjustment. Vice-Chair Packard presided over the meeting. Mockler recused himself and sat in the audience.

Packard asked Mockler to review the building plans which were previously submitted. He stated the dimensions of the buildings and discussed that construction between the building options

would be similar (concrete apron on the front and the rest clay). The Board also reviewed manure setback maps provided by Zoning Administrator Cynthia Aden. Hammond asked if Mockler will use bed pack throughout the 5 buildings. Mockler said yes, and the bed pack will be corn stalks or straw. Mockler said the bed pack will stay through the life cycle of the hogs, but not for the cattle, which will cycle 1-2 times per year as the cattle do not leave. Hammond asked if the end walls will be enclosed. Mockler said hog buildings will have the potential to be enclosed with roll-up 14-foot wide doors, and buildings will be level grade. Hammond asked how wide the front apron will be. Mockler said the apron will be 12 or 16 feet by the length of the buildings, and the aprons will be fenced in. Hammond asked if there will be a 4-foot footing. Mockler said yes, there will be along all 4 sides, minus the gate and door location. Hammond asked if clay will be compacted. Mockler said clay will be compacted about 1 foot deep.

Packard asked Aden if all information requested was received. Aden said all information received was given to the Board, and she has nothing else.

Packard opened the meeting to public comment. Susanne Skyrn asked if the meeting is recorded. Auditor Carri Crum said meetings are not recorded. Skyrn asked if minutes are taken, to which Crum replied yes.

Skyrn addressed points of concern to the Living River Group, specifically items 1 a, c, d, e, and item 2 from Commissioner Hammond's recommendations at the previous public hearing on 6/11/19. She discussed a replacement zoning map and said she did not see any such map. Skyrn also referred to a flood plain map provided by Hammond. Regarding the location and design of manure containment, she said the map submitted did not have buildings or placement drawn to scale, and there was no location of manure containment and dead animal storage or outlined drainage ways. Skyrn said there were also no measurements showing 144 ft away from the slope to the river flood plain or valley. She referred to design and size of buildings and said there was no description of a pole shed, just a commercial brochure and Mockler's handwritten description. Skyrn felt the description was not adequate to describe how to control manure seepage. Skyrn referred to Item 2, manure application maps and said she did not receive maps. Auditor Crum apologized for not including maps when Skyrn requested the items submitted by Mockler, but Crum said the maps were submitted by Zoning Administrator Cynthia Aden via e-mail on 7/2/19, prior to Mockler's 7/9/19 deadline. Skyrn said there was no information about manure storage, so there is effectively no manure management plan.

Packard asked for a response to Item 1 from Aden. Aden said it's been obvious throughout process that we have different ways of looking at it, that there is not going to be any manure storage, so there are no manure management buildings.

A member of the audience asked about dead animals. Mockler said he could compost, burn, bury, or call a rendering truck to dispose of them. Skyrn asked where the dead animals will be located. Mockler said they can be located anywhere on his property per state law. Skyrn said they want to see the locations, and they do not want it running into the river.

Packard said they are discussing items submitted since the original appeal. Skyrn referred to a map that she said is insufficient. Manning said he did receive the map and went through it in

early in July. He said he is not concerned about dead animals as the rendering truck picks them up daily.

Packard asked the Board for any comments. Item G in paragraph 6 of the Planning Commission findings regarding disposal of dead animals was referred to, and Hammond said it was addressed, yet it didn't specify where temporary storage of dead animals would be. He said normally, in other places he has been, it would be in a location easy for the rendering company to access, typically near the road by the entrance to the property, often behind a square wooden fence to hide them. In looking at Mockler's property, Hammond said he would not be concerned about dead animal storage being near the slope leading to the flood plain. He said logistics are, and his judgement is, that Mockler will not be putting it there. Cindy Struckman-Johnson asked why commissioners are answering for Mockler. Packard replied she asked the Board for comments, and they are giving them. Hammond said he would like to address that he had seen an example of one map in early July, not all of them, until this morning. However, he was able to scan through them towards the end of the regular meeting and during break, and they looked to be in order to him.

Skyrm said there is no specification on a map of a location 144 feet away. Hammond said it was in his request, and it is hard to see on that particular map. He said he would prefer to see buildings 100 feet to the east, but that is because he thinks it would reduce the risk of any issues. However, distance to the neighboring residence could be another issue if the buildings were moved. Mockler said at the last meeting Packard clarified that the matter of the 144 feet said "may" instead of "shall." Hammond said that is correct, that they left some discretion for the 144 feet.

Cindy Kirkeby pointed out maps that show the site and said on one map the site looks adjacent to the road on the left, but on the other map it looks below, putting the cattle barn closer. Mockler said where it says the current site is, is existing cattle yards and pointed out the location for the proposed expansion. Hammond asked if Mockler intends to keep using existing feed lots, and Mockler said yes. Aden pointed out that the maps are two different things. The new maps are referring to manure management, and the new maps are not intending to match the old because they are addressing two different things. The manure management plan does not show the new site, and absolutely nothing has to do with 144 feet on either map. Caitlin Collier asked for clarification. Aden said it is manure management setbacks only on the new maps. Collier clarified it has nothing to do with new buildings. Aden said she is correct, that it addresses the setbacks in state law. Hammond said there are different setbacks from roadways, adjoining properties, etc. Collier said the map says, "River 200 feet." Hammond said within 200 feet it is not allowed to apply manure to the field. Packard said the red designates the 200 feet on the map. Hammond said that is one of the things that was debated when building the zoning regulations. Collier said in trying to look at the color map, and the black and white map, it makes it difficult in the sense that using the cattle yard as a cutoff point on both, and realizing that on one it is not drawn to scale, it's hard to tell because they don't seem to match up as far as pictures of the river, how far the proposed cattle barn is from what appears to be the water. Hammond said there is a wetland there. Packard pointed out the river on the map. Aden said the site is not in the flood

plain. Norma Wilson asked how far it is from the proposed cattle barn. Hammond and Mockler discussed the distance. Hammond said where it says site on the drawing is a general site, and the drawing misses a little, but it is not an error that is pertinent.

Dave Lias asked if setbacks are in red, and Aden said yes. Lias clarified that the maps are separate. The gray maps show the buildings, but the manure will stay in the buildings. Colored maps show where manure will eventually be spread. Mockler said yes.

Jerry Wilson said that speaking of coordination of maps, per Hammond's amendment, scale maps were to be provided, but there are no scale maps, only crudely drawn rectangles where buildings might be, and it is very relevant to coordinate the maps. Wilson sketched in buildings on Beacon maps, and it appears to him that they are on the gradient, the slope toward the drainageway that goes to the Vermillion River. Wilson said Mockler told them there will be no runoff, but he has minutes from January at which the land was rezoned from NRSC to AG land. Wilson read the minutes regarding a statement that the pasture will act as a filter. Wilson referred to pictures he took showing overgrazing and quoted Manning as saying the area is unique because the pasture acts as a natural filter. Wilson said it is B.S. because coordination of the 2 maps show it is in a drainageway, and there is no scale map. He said all one has to do is sketch on a topographical map. Wilson said for that reason alone it should not be approved. He also quoted Mockler about the group forcing him to build a state-of-the-art facility and said Hammond said he should build a facility to be proud of. Wilson said move the site to a safe location, or deny it because it cannot be safely built there, and the commissioners have a legal right and moral right to protect water. Wilson said if compared with a topographical map they are on the edge of the slope. Mockler presented the photos Wilson submitted at the 6/11/19 public hearing and asked who took them. Wilson said he took the photos, and Harry Freeman was with him. Mockler said it is not his pasture in the photograph. It is his neighbor's pasture. Mockler held up a photo of the end of 305 St., and said there was trespassing on private property involved in order for Wilson to have taken the photo he submitted. Wilson said he walked along right-of-way, but Mockler said there is no road and it is private property. Mockler said he does not control his neighbor's pasture. Wilson said there is no substantial grass between 305 St. and Mockler's pasture.

Powell said the Board of Adjustment is on a mission to address the appeal of Living River Group, and Packard said they are addressing requested documents only. Powell said a motion was made and passed with stipulations. Hammond said, with additions of items this morning, those have been met. As far as questions regarding the 144-foot setback, it was amended to "may," but in order to get the number of votes needed to get to the other issues resolved, he was willing to amend his recommendation at the 6/11/19 public hearing. Hammond said the request was not addressed, but in topographic maps he has, the building sites Mockler has, in comparing the map to the topographic maps, would be on flat land backed away from sloped ground by a relatively small amount, especially the 4 hog barns would be back 140 or more feet and the cattle barn is kind of on the edge. Hammond said he would feel more comfortable if the whole project could be east 50 feet or more. Packard asked Hammond again if he said the hog barns are fine but he would be more comfortable 50 feet to the east. Hammond said yes, but moving the cattle

barn would be encroaching on area needed to operate the hog barns. Mockler said it would cut expansion area, and he is trying to preserve farm ground as well. Powell asked if they should be following the ordinance, not what Hamond wants to see. Hammond said they would be following the ordinance.

An audience member said looking at the black and white map the drawing is not to scale of 295 feet and is longer than shown on the map, probably closer to runoff than shown. Hammond addressed Mockler and asked there is a shelter fence where the cattle barn would go. Mockler reviewed the map with him. Hammond said he has drawn it in on the contour map, and it is up on the flat land.

Collier said she realizes from over 30 years as an attorney, working with most of the Clerks of Court in the state, that as with the Clerk of Courts, people who work with the County want to help people who are making a request. She understands that desire to help people because things won't get done and they won't be doing their job unless that happens, but somewhere there has to be a line. She said she realizes they are dealing with a new ordinance and trying to make the way through, and there is already a concern about appearance. Collier said in the law she was always told the appearance of unethical behavior was a no, and for attorneys it often is, and it varies upon facts and situation, but the Chair of the County Commission is the first person asking and applying, and an employee that has appeared to be providing the things that need to be done. Collier said she appreciates Hammond's expertise, so she thinks someone who comes with expertise and they give it, they get what they get; Hammond can't stop being the knowledgeable person he is, but where does the line get crossed? If this is what anyone applying for any kind of permit would expect to receive that answers the question. If not, it is the question, she asks they consider going forward where the lines should be, and not trying to jump on Aden's back and say what are you doing? Direction for those lines has to come from above. Collier said she employed a lot of people in a lot of different areas, and if one of her employees had gotten an e-mail July 2nd and had not gotten it out until July 30th, she would have to ask why. Is it an e-mail lost in the pile, but what is the appearance? She said the Board of Adjustments is doing the best they can, and they understand that, in trying to deal with the new ordinance that has a lot of gray area. Powell said there needs to be no more long-winded people talking about themselves and appearances, that the hearing should get back to the facts. Collier said they would like to suggest the Board hear from the other person who is here to speak.

Skyrm said plans should be drawn to scale and shown in detail, that Hammond asked for scale maps showing location for each of the structures planned, and the map is not to scale and does not show things clearly. Why is it so hard to get an engineering firm to do a scale drawing where the buildings are going to be and where they are affecting the runoff? It is not acceptable to her. Hammond said the scale in the corner of the drawing is sufficient. A person can take a ruler and figure out where things are going to lay. He feels it is sufficient. It is a scale drawing, a photograph with scale, with features in correct relationship to each other. Using the scale in the corner, a person can determine distances. Skyrm said buildings are not drawn to scale or where manure is stored. Manning said manure is to be stored in the buildings. Packard said the group is

just arguing over the same points; the Board has already stated they feel those requirements have been met.

Mark Winegar asked, that the map is showing 4 swine buildings to hold 1,000, so where are the other 1,499 head? Mockler said that is not his plan right now. He is requesting a medium that goes to 2,499, but that does not mean he will feed 2,499. It just allows him to if he wants to in the future. Packard said it is an inappropriate question at this point. Wilson said the present plan is irrelevant because the permit is 2,499 hogs. Mockler said the permit is only for that site. If he is to build more, he would have to come back for another permit. State's Attorney Alexis Tracy agreed.

Mitch Peterson, an attorney at Davenport Evans, said he has worked in zoning for a decade and has been at trainings, one of which Mockler has been at. He estimated he has been at half of the Boards east of the river. In last decade, he said most Supreme Court decisions on zoning have been his case. Peterson said he wants to talk about the process of the ordinance and has heard things that are incorrect. He said Powell said setbacks are setbacks, and they can't deviate, but that is not true. He stated Mockler has the burden, that if he has not met the requirements, then they have to say no, even if he is a colleague. The Board has the power to say it's not the right site. That's why it's not the Zoning Administrator.

Peterson, quoted Section 1.03 of the zoning regulations, that the commissioners should consider and weigh public health and general welfare. He said under section 1.04 of the ordinance it shall be held at minimum requirements. He said the Board cannot look the other way if Mockler hasn't met something. Peterson said if there are conflicts between the ordinance and state law, the Board needs to hold to the strictest standard. He said when looking at the definition of conditional use permit, the planning commission may permit such use when specific provision is made in zoning district regulation. He said it means Mockler is eligible, not entitled. He also cited Article 11, conditional use permits, that the Planning Commission may authorize a conditional use permit, and it is an important distinction that highlights the power they have today, but they shall impose such conditions as appropriate to the comprehensive plan and health and welfare. He said Section 11.05, reiterates a third time that the Board has the discretion and power to say no. He said the Planning Commission must make written findings. He said the most important is subsection H regarding general compatibility to adjoining properties and other properties in the area. Peterson referred to section 3.07 regarding CAFOs. Manning said it is not a CAFO. Peterson said they need to think about that, and 3.07 governs both CAFOs and AFOs. He said under section F, the Planning Commission may impose, in addition to standards and requirements, additional conditions; the Planning Commission may adjust setbacks on a site-by-site basis. He said the Board has heard a lot of reasons to say no. If, on appeal by Mockler, the Board decides it's not the right project, a court cannot reverse it. Peterson said under section 3.07.3, the applicant shall obtain a letter from NRCS, but a letter is not on the record. If the letter is not there, it's not within the ordinance to say yes. Packard said it is an error of the ordinance because it is unattainable. State's Attorney Tracy cited severability within the ordinance itself. She said the County can't force another agency to comply with a request, and if they refuse, it puts the applicant in a situation where they cannot apply, so the County cannot require it due to

severability. Peterson said it is one thing that will be looked at by the court. Mockler said the NRCS did send a letter directing him to go to DENR. Mockler addressed the Board and said he hopes it is in the minutes that Peterson has now threatened the County with a lawsuit. If a permit is granted, Peterson will take the County to court.

Peterson said two or more operations within a mile commonly owned, they have to be considered together, that even with lower numbers they would be looked at in connection with one another. He said Mockler is at the upper limit on a medium, and one more of anything puts him at a large. Peterson cited South Dakota law and said the Board has authority to decide how they implement things, and they have two options: make it a large, or say the ordinances don't allow combination of species. State's Attorney Tracy said it is a point of clarification on a case-by-case basis, there is a reference under the chart that they may change setbacks. Peterson said to Tracy, "You interpret they may adjust, but which direction?" He said if Mockler hasn't met the burden, his plan might be smaller, but you don't get to come back again because you authorized him to go larger, and he only needs a building permit. He said the Board makes the decision for the entire community and asked what they want it to look like in the future when it's not Mockler. Peterson asked if the next person is not getting the same "Awe shucks, Pal," treatment how is that going to go? Packard said she takes offense at last comment. She said, "We have, on a constant basis, requested more from him because he is a commission member." Tracy said there has been a tone of personal attacks, and if there is an example of specific ways in which there is evidentiary value to support that comment, Peterson should cite examples. She said, "You lose credibility when making throwaway comments like that." Peterson said it is the whole notion of maxing out two mediums and looking the other way. Peterson said he said the fallback suggestion is to hold him to the large; there is no box into which his permit exists. Powell said when there is not a box this is a Conditional Use Permit, and we are agreeing to 999. Peterson said there is not a box for two species. Powell said we are not opening the door; a combination of two species is not in a box on the table. Packard said DENR considered them together, but they do not have them separate. Peterson said we are looking at a Clay County permit, not state permit. Mockler said if you want to combine species, then the ordinance needs to say animal units, but this group (referring to the Sierra Club) said whatever you do, do not change the table. Since the ordinance does not say animal units, they are not combined. Mockler said the way the ordinance is written he is a medium, not a large.

Aden said Mr. Mockler has met the burden of proof. The Planning Commission has approved it, and the permit was granted. The appeal was by Sierra Club, so they have the burden of proof. Aden said additional information was requested, and it has provided. The motion should be whether to accept or reject the Planning Commission's decision. Packard asked Tracy if it is appropriate to take time to review all of the information to make sure the Board feels strong enough to approve, disapprove, or amend. Tracy said one of the biggest things is the Board has to have a record that indicates findings and be clear in record about what is being amended. So when it was amended to include additional requirements, the Board has the information in front of them. Packard proposed to the board page numbers so they can refer specifically to make sure they have received everything they have requested. Manning asked Hammond if he is comfortable with everything Mockler submitted. Hammond said the only thing in the ordinance

that had not been put on the map was the dead animal area, but it was deemed to be not applicable in the Planning Commission deliberations. Mockler asked if it actually said where, that he knows it said what he would do with them, but wanted to clarify if it said where. Mockler said it will be a long way away from the flood plain because the truck has to get to it. He said he hates to have it along the road because it looks bad. Hammond said it ought to be close to the property entrance. Hammond said it was addressed and deemed not applicable, but he thought it should be addressed.

Sandy Pederson said she is having trouble deciding why the scale on the map is ok; it matters to her that the scale of the buildings is not to scale. She said she wants to see how big they are because the bigger they are the closer it's going to be to the slope. Hammond said they are approximately the right size as depicted, but the main thing is where they are in relation to other features on the map. He said important questions were answered, in his opinion.

Powell asked Packard if any commissioner, in good conscience, can make a ruling at all with threats of legal action, and said he wants to consult with the State's Attorney first. Packard asked if there is a motion. Powell moved to table the matter. Tracy said at some point in time action will have to be taken, and whether it will be appealed by either side, there is a due process explanation and procedure outlined to get from the Planning Commission to where they are now. Should any decision be appealed, there is a court process for that. The court is going to uphold it unless they believe the Board of Adjustment has made an erroneous application of requirements. Powell said he does not want to drag the County into litigation, so he wants to make the motion to table until the next meeting to give time for legal consultation. Packard said as Chair she feels a strong detailed review of what has been said and what has been received is in order. Collier asked if there will be a preparation of findings of fact. Tracy said that is why she has referenced the chart from the Planning Commission. Manning said he feels the public hearing should be closed because it's getting into the same stuff over and over, and now the Board needs to make a decision. Lias said he doesn't think they can do that in a public meeting. Packard said that's where the findings of fact come in. Tracy said the Board can review it individually and come back in a public meeting to review it as a group. Packard said she needs more time to look at the facts. Powell said he has reviewed the facts and is ready to make a decision, but wants to review with legal counsel because he does not want to drag County into a lawsuit.

Hammond said the dead animal site and the 144 foot move were two items he was concerned with. The matter of the 144 feet was a "may" not a "shall." He said he would be inclined to make a vote providing a spot was marked for dead animals and show the 5 buildings moved to the east 50 feet. Hammond said it is legitimate on a case-by-case basis to provide more stringent setbacks, to move the site away from the flood plain by 50-100 feet, his thought is it gets them firmly on level ground, and they would be doing their duty to address that concern by the appellant and himself. Hammond said that gets them to the point where they are within what ordinance allows them to do and compels them to do. Hammond asked if Mockler would agree to those two things. Tracy said they may make additional requirements, but there needs to be notation specifically on the map, and moving of the buildings is an additional requirement. She recommended additional time for new information, and the public comment should continue.

Wilson said he hopes they don't miss the forest for the trees. He said Hammond's additional suggestions were helpful but not complied with entirely, but he hopes they will keep in mind the issues raised by Peterson and will look at the two overriding questions (size large, not medium) and carefully review the ordinance, and the crucial question that the applicant said there will be no discharge to waters of the state. He asked the Board if they will be happy when water testing is done and there are different readings above and below the site. He said people will be allowed to do water testing because 305 St. is a right-of-way.

Mockler said Hammond should make a motion to include the 50 feet, not ask him about it. Mockler asked if he wants it 50 feet from the flood plain. Hammond said to move the entire footprint east 50 feet. Mockler said there has to be something solid to measure from. Hammond said measure off of the SW corner of the feedlot, where there is the "T" in the fence. Mockler said he has an idea of where he would put dead animals, and asked how that should be delineated. Hammond said it should be in the area not in the contours dipping into the floodplain. Hammond said an important part of the plan is dead animal storage area. Mockler asked if he wants to make the condition that it stays 200 feet from the top of the slope.

Hammond moved to amend with the provision of the site of the dead animal disposal area marked on a map and the moving of the 5 buildings an additional 50 feet due east, also documented on the map. Mockler asked if that needs to be done when it is staked out. Hammond said it can be provided on a 100-foot scale with a disposal marked as an "X" and the building sites drawn to scale. Manning asked when the area is staked out to document it. Manning seconded the motion. Skyrn asked for clarification on the map. Hammond discussed it. Vote of the Board: Hammond Aye, Manning Aye, Powell Aye, Packard Aye. Motion passed.

Tracy suggested page numbering the entire record because findings will need to come from documentation submitted to the Board. The Board will need findings for its reasoning for any appeal, and a decision is conditioned upon what's submitted. It is a matter of setting the next time for review of compliance. If Mockler submits something not in compliance with the request, then they will document it in the findings. Tracy said she wants a new map.

Peterson asked for a deadline, a date when the documents will be available for the public, and a hearing for public discussion on the new map. Manning said he doesn't want to review old stuff but offer public comment on new items. Wilson said the Board still has not responded to many of the comments such as can the Planning Commission legally approve something that has not met ordinance such as the NRCS letter and can they demonstrate through the ordinance that it can be a medium. Packard said at the present time it is appropriate to close the hearing, set a date for compliance with the amendment, and set a date for the next hearing.

Hammond moved to set the hearing for August 27, 2019 at 10:00 a.m., August 13, 2019 as the submission deadline for the information, and the documents be made available to the public by August 15, 2019 on the website. Motion seconded by Manning. All voted aye. Motion passed.

Struckman-Johnson asked that at the next hearing Mockler be the applicant, not to clarify Roberts Rules of Order for the Board as necessary.

At 12:35 p.m., Manning moved, seconded by Powell and carried to adjourn as Board of Adjustment and reconvene as Board of Clay County Commissioners. Chairman Mockler presided over the meeting.

Powell moved, seconded by Hammond and carried to authorize the following claims for payment. July Bills: (Payroll) Commissioners \$6,726.80; Auditor's Office \$4,999.28; Treasurer's Office \$14,342.62; States Attorney's Office \$18,046.13; Courthouse \$2,525.40; Director of Equalization \$8,223.74; Register of Deeds \$5,087.39; Veterans Office \$1,323.10; 24/7 \$1,679.53; Sheriff's Office \$29,847.32; Jail \$20,323.22; Emg Mgmt & Lepc \$3,387.40; Highway \$36,488.14; WIC Office \$2,602.01; Extension Office \$2,724.71; Weed Dept. \$7,736.55 and Zoning \$2,200.15 (Due to Other Government) State of SD Game Fish \$207.00; (Payroll Withholdings) Aflac \$770.19; Colonial Life \$616.38; Conseco/Washington \$24.45; Dearborn National \$229.95; Div of Child Support \$631.00; New York Life Insurance \$328.57; SD Retirement System \$26,502.44; SD Supplemental Retirement \$2,625.00; SDRS Roth 457(B) Plan \$1,035.00; United Way of Vermillion \$382.00; Vermillion Federal \$2,571.00 and Wellmark Blue Cross \$54,060.26; (Insurance Deductible Reimbursement) Husby, Tiffany \$500.00; (Other Insurance) SD Public Assurance Alliance \$1,029.93; (Professional Services and Fees) Avera University \$199.26; Butler Machinery Co. \$350.00; Empco, Inc. \$150.00; FedEx \$10.40; Lincoln County Treasurer \$668.06; Microfilm Imaging System \$1,200.00; Netsys Plus, Inc. \$773.75; Sioux Equipment \$56.95; Yankton Co Sheriff \$100.00; Yankton Co Treasurer \$240.00 and Yankton Medical Clinic \$282.76; (Other Professional Services) City of Vermillion \$70,509.52; Dakota Reporting Agency \$662.25 and Yankton Co Sheriff \$1,820.00; (Law Office) Blackburn & Stevens LLC \$578.91; Harmelink, Fox, Ravsb \$190.40; Johnson, Katie PLLC \$768.23; KCH Law \$156.60; Kruse Law Office \$197.15; McCulloch, James E \$3,547.40 and Peterson, Stuart, Klen \$6,566.53; (Mental Health) Dakotabilities \$360.00; Butler Machinery Co. \$217.90; Century Business Products \$30.00; Hollaway Const. Co. \$36,250.00; Olson's Pest Technicians \$80.00; Presto-X Company LLC \$59.00; Sioux Equipment \$340.00; Turner Plumbing Inc. \$122.11 and Yankton Transmission \$1,788.00; (Data Processing) Bureau of Administration \$48.75; Erickson Solutions \$1,895.25 and Microfilm Imaging System \$80.00; (Supplies & Materials) Bob Barker Co Inc. \$328.49; Brock White Company \$2,449.71; Brunick Service, Inc. \$300.00; Butler Machinery Co. \$14.08; Campbell Supply Co. \$139.30; Concrete Materials \$1,471.12; Coyote Enterprise LLC \$204.98; Diesel Machinery, Inc. \$8,125.00; Echo Electric Supply \$78.90; Graham Tire SF North \$493.68; Hollaway Const Co. \$2,435.34; Hollenbeck, Lauren \$35.20; Hy-Vee, Inc. \$107.47; I-State Truck Center \$68.36; Intoximeters, Inc. \$750.00; JCL Solutions \$494.38; Jerry's Chevrolet \$186.02; Jerry's Service \$8,564.21; L.G. Everist, Inc. \$3,645.41; Lawson Products, Inc. \$9.24; Layne's World, Inc. \$87.52; Midwest Ready Mix \$7,586.60; Pressing Matters \$208.80; Prochem Dynamics \$35.16; Quill Corporation \$225.24; SD Dept Of Trans \$7,294.22; Sign-Up LTD. \$47.00; Sioux Equipment \$2,049.25; Star Publishing \$28.30; Sanford Home \$358.19; Sturdevant's Auto Parts \$305.05; Syds Eastside Auto \$150.00; Tiger Corporation \$89.04; TrueNorth Steel \$65,893.44; Vermillion Ace Hardware \$49.41; Vermillion Ace Hardware \$7.67; Vermillion Ace Hardware \$49.99; One office Solutions \$462.80; Wood, Lisa \$94.00 and Yankton Janitorial Supplies \$839.70; (Travel and Conference) Pederson, Paul \$48.00 and SDSU Extension Service \$57.00; (Utilities) City of Vermillion \$2,779.11; Verizon Wireless \$69.04; Verizon Wireless Sheriff \$320.08; Verizon Wireless EMG

\$40.01; Verm/Clay Co. Landfill \$534.38 and Vermillion Garbage SVC \$236.00; (Payment) American Tire Distribution \$1,011.36; Brunick Service, Inc. \$183.90; Charlie's Bus Service \$160.00; Clay Co Conservation District \$6,250.00; SD Dept of Rev Anderson \$1,563.50; Herren-Graber, Krista \$562.00; Hy-Vee, Inc. \$4,440.56; Nutrien AG Solutions \$1,098.00; Quality Motors \$129.71; Walmart \$126.40; Collins, Blair \$55.04; Green, Kelly \$56.72; Hessman, Teresa \$71.00; Madsen, Larry \$50.00; Rolfes, Susan \$53.36; Vesely, Brian \$71.00; Zimmer, Allen \$50.00; Beyers, Erin \$50.00; Kribell, Bridget \$20.00; Kribell, Cindy \$46.04; Kribell, Tim \$20.00 and Johnson, Tricia \$41.00; (JDC/Special Eq.) Minnehaha County JDC \$7,820.00 and SD Assn of Co. Officials \$6,876.00; (Books) Thomson Reuters – West \$948.78; (Furniture and Minor Equipment) Thomson Reuters – West \$948.78; Canon \$209.96; Erickson Solutions \$8,471.86.

Powell moved, seconded by Packard and carried to adopt the 2020 Provisional Budget.

At 12:48 p.m., Packard moved, seconded by Powell and carried to enter an Executive Session for legal/contractual matters per SDCL 1-25-2.

At 1:00 p.m., Packard moved, seconded by Powell and carried to exit the Executive Session.

State's Attorney Tracy reviewed a letter regarding Lake Thompson and an issue from 2011 flooding. Lake Thompson is at record highs, and Clay County could be affected. Powell suggested that Tracy contact Jay Gilbertson. Tracy said historically the state water board established a maximum capacity, and that there should be continuing maintenance. Tracy received information from Mark Rath that there has been no maintenance, and an outlet cannot be dug deeper without authorization from the state's water board, which meets in October.

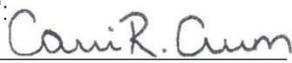
Mockler excused himself from the meeting at 1:33 p.m., and Vice-Chair Packard presided over the meeting.

At 1:34 p.m., Powell moved, seconded by Hammond and carried to enter an Executive Session for legal matters per SDCL 1-25-2.

At 1:57 p.m., Powell moved, seconded by Hammond and carried to exit the Executive Session.

At 1:58 p.m., Manning moved, seconded by Powell and carried to adjourn, and to reconvene at 9:00 a.m. on Tuesday, August 6, 2019.


Travis Mockler, Chairman
Board of County Commissioners

ATTEST: 
Carri R. Crum, County Auditor

#1 shows 4 hoop barns + Cattle barn

#2 shows 2 mod.f.ed open fronts
with manure holding area

6" walls with wood + metal roof
~~2~~ 4" concrete floor

FILED
IN THE OFFICE OF
CLAY COUNTY AUDITOR
AUG 16 2019
CARRI R. CRUM
COUNTY AUDITOR



X rendering pickup

soft

Hays

Compost

400 x 60
Cattle

#1





X ← center of pickup

↑
N

soft

manure
Holding

Hogs
60 x 300

○
Compost

manure
Holding

60 x 300

#2

05/16/2019