

**December 12, 2022 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – December 12, 2022 – 6:00 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 John Knight to discuss the replat of Joyce Grong and Barbara Fluttum properties at Lake Cochrane.

ITEM #2 VARIANCE

Applicant: Hollywood Feeders LLC

Owners: Chad A Olsen & Pamela J Olsen Trust Agreement, Sandra Balbach Trust Daniel Rhody Trust

Property Description: N1/2 of Section 17-113-49, Blom Township, Deuel County, South Dakota.

Action Item – to Section 1304.06 CAFO Requirements Setback and Separation Distance

Zoning Designation: AG - Agricultural

Request: The applicant requesting to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640’ from two unregistered wells.

History/Issue(s):

1. Hollywood Feeders LLC, is requesting to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640’ from two unregistered wells.
2. The proposed expansion of the CAFO will be located within the 2,640 feet of unregistered wells to the north. Albert Moore’s unregistered wells to the north, are approximately 929.4’ and 1,084.5’ from the existing CAFO barns. Variance is not required from Mr. Lenning’s unregistered well as a variance was previously granted with no maximum number of animals and the proposed expansion will not get any closer to Mr. Lenning’s well to the south. Hollywood Feeders was also granted a variance from Mr. Albert Moore’s two unregistered wells to the north; however, the expansion will be closer than previously approved to. The closest feature of the proposed facility would be approximately 439’ and approximately 555’ from Mr. Moore’s wells.
3. The Board of Adjustment have previously required a waiver or a letter to construct a Class A CAFO within one-half mile of an existing residence:
 - a. An non-occupied residence (Albert Moore) is located less than 1/2 mile from the existing CAFO site to the north side of the section for which a permit for a Class A CAFO was granted in 2009.
 - b. On July 13, 2009 Gary Balbach was granted a special exception to expand from a Class B CAFO to Class A CAFO up to 3,499 animal units with the following conditions unannounced inspections will be done in 6 month intervals for at least two years, no manure application within 600 feet from Albert Moore’s property line: submit to the board an updated Manure Management Plan, including maps of each field with specifically defined spreading areas, and extend the manure holding capacity from 323 days to 365 days.
 - c. On August 17, 2009 a variance was issued to build a 80’ x 990’ cattle barn at least that is closer than 2,640 feet from 1 private well south and 2 private wells north of the site which meets zoning requirements. There was a motion to expand from Class B CAFO to a Class A CAFO up to 3,499 animal units. There was discussion about the wells but no motion was found in the

- July 13, 2009 minutes of the meeting. The motion to expand a Class B CAFO to Class A CAFO up to 3,499 animal units was approved.
- d. The expansion will be closer to the north wells (Albert Moore) which would be approximately 439' and approximately 555' (well sites) versus the south well (Tory & Betsy Lenning).
 - e. The Board has a history of granting variances for residences, where the neighbors sign the waiver or a letter. However, the neighbor to the north (Albert Moore) has signed a waiver to allow the CAFO to expand closer than 2640' from the private well and mobile home.
 - f. The zoning ordinance allows for a decrease of setback where an improvement to manure handling facilities is being proposed from past practices at an existing site.

4. As of the date of this report staff the office has received no correspondence regarding the expansion (road and smell):

Staff recommendation:

Variance Permit: to expand their Class "A" Concentrated Animal Feeding Operation with less than 2,640' from three unregistered wells. The expansion will be closer to the north wells (Albert Moore) which would be approximately 439' and approximately 555' (existing wells) versus the south well (Tory & Betsy Lenning). There was knowledge of a variance for the original CAFO and expansions in the past were granted from the three wells. With the condition that they have a waiver from the property owner to the north which is Albert Moore. The Board may postpone the request, deny the request or approve the request

ITEM #3 VARIANCE

Applicant: Hollywood Feeders LLC

Owners: Chad A Olsen & Pamela J Olsen Trust Agreement, Sandra Balbach Trust Daniel Rhody Trust

Property Description: N1/2 of Section 17-113-49, Blom Township, Deuel County, South Dakota.

Action Item – to Section 1304.06 CAFO Requirements Setback and Separation Distance

Zoning Designation: AG - Agricultural

Request: The applicant requesting to expand their Class "A" Concentrated Animal Feeding Operation with less than 2,640' from the established residences.

History/Issue(s):

1. Hollywood Feeders LLC, is requesting to expand their Class "A" Concentrated Animal Feeding Operation with less than 2,640' from the established residences.
2. The proposed expansion of the CAFO will be located within approximately 570' from the Daniel Rhody (who is on the application).
3. The County requires a waiver or a letter construct a Class A CAFO within one-half mile of an existing residence:
 - a. Daniel Rhody have provided a letter that they are willing to waive the setback requirements and give permission to expand the existing facility (CAFO) on the proposed location that is within ½ mile of the residence.
 - b. The Board has a history of granting variances where the neighbors sign the waiver or a letter.
4. As of the date of this report staff has received no correspondence regarding this request:

Staff recommendation:

Variance Permit: Dwelling less than ½ mile from expansion of existing CAFO since the affect residences have signed a letter waiving the setback requirements and give permission for the expansion. The Board may postpone the request, deny the request or approve the request

ITEM #4 SPECIAL EXCEPTION

Applicant: Hollywood Feeders LLC

Owners: Chad A Olsen & Pamela J Olsen Trust Agreement, Sandra Balbach Trust Daniel Rhody Trust

Property Description: N1/2 of Section 17-113-49, Blom Township, Deuel County, South Dakota.

Action Items – Special Exceptions ((Section 1101.03 (8)) Article XIII - (Section 1300) – Concentrated Animal Feeding Operation Regulations

Zoning Designation: AG – Agricultural

Request: To apply for a Special Exception Permit to expand its Class “A” Concentrated Animal Feeding Operation (CAFO from 3,499 animal units to 13,585 animal units which is 9,500 mature cattle) which is a new dairy facility in the Ag District.

History/Issue(s):

Specifics of Request

Specifics of Request:

1. Hollywood Feeders LLC is seeking to expand its Class “A” Concentrated Animal Feeding Operation (CAFO from 3,499 animal units to 13,585 animal units, of which are 9,500 mature cattle) which is a new dairy facility in the Ag District.
 - a. The site described NW1/4 of Section 17-113-49, Blom Township, Deuel County, South Dakota; the N1/2NW1/4 is owned by Chad A Olsen & Pamela J Olsen Trust Agreement & the S1/2NW1/4 is owned by Sandra Balbach Trust. The NE1/4 of Section 17-113-49, Blom Township, Deuel County, South Dakota; the N1/2NW1/4 is owned by Daniel Rhody Living Trust and the plan is to have the N1/2 under the ownership of Hollywood Feeders LLC at a later date.
 - b. They have applied for a variance to expand their Class “A” Concentrated Animal Feeding Operation less than 2,640’ from two unregistered wells. The expansion will be closer to the north wells (Albert Moore) which would be approximately 439’ and approximately 555’ (existing wells) versus the south well (Tory & Betsy Lenning which is not needed since the expansion is not with the setback).
 - c. They have applied for a variance to have the expansion of the existing CAFO within 1/2 mile setback for a Class A CAFO from any existing residences (which is approximately 570’ from Daniel Rhody).
 - d. Manure management was provided by Central Crop Consulting.
 - e. Feed sources/storage and nutrient management provided by Central Crop Consulting.
2. Soil borings preformed in the past indicated that some of the soils from previous manure management expansion have glacial till soils and that the aquifer is not present at the extent of the site.
3. The new proposed components are not located in the FEMA floodplain
4. The improvements consist of:
 - a. Construction of shop, commodity barn, hay barn, feed pad, feed pad runoff holding pond, solids building, stacking pad, four stormwater basins, large dairy freestall barn, milk center (parlor), four manure storage ponds.
 - b. Digester System, proposed separator building, covered pond to the north of the CAFO.

5. The main haul route for the CAFO includes 473rd Ave to the west. This road is maintained by Blom Township. They will have other haul roads for transportation of feed and manure and the roads are maintained by Blom Township and Deuel County.

Ordinance regarding this request:

1. The applicant will be submitting the current nutrient management plan to Deuel County for review decision of this Board.
2. The applicant will be submitting a full engineering packet to the Deuel County Zoning Office before any construction begins, that which will be approved by the SDDANR.
3. The Board shall consider the following in determining whether the proposed CAFO will create a significant contribution of pollution:
 - a. Size of feeding operation and amount of manure reaching waters of the state
 - i. Historically the Board has relied in the determination of SDDANR in reference to this question since waters of the state are under their jurisdiction.
 - ii. Historically the Board has relied in the determination of SDDANR in reference to this question since waters of the state are under their jurisdiction and this is a component of the State General Permit review.
4. A nutrient management plan is required.
 - a. Nutrient management plan has been prepared by a licensed Agronomist and submitted.
 - b. Fields in the nutrient management plan are expected to change (per the applicant and based upon the zoning ordinance.)
 - c. The agronomist certifies that the land currently used for spreading is sufficient for spreading the manure generated.
5. A manure management plan is required
 - a. The applicant's agronomist and engineer prepared the manure management plan. It included:
 - i. A site plan
 - ii. Operation procedures and maintenance of manure facilities for proposed facility.
 - iii. Final as-built plans will be submitted to the zoning officer following review by SDDANR.
 - iv. Plans specify records on manure application will be kept and will document that acceptable manure and nutrient management practices have been followed.
6. A Management plan for fly and odor control.
 - a. Completed –
 - i. Operational plans for manure collection storage, treatment are expected to be updated and implemented
 - ii. Applicants will temporarily store the mortalities in an enclosed structure prior to rendering.
 - iii. No new trees are proposed with the new facilities, however, there is adequate space for shelterbelt plantings.
 - iv. They will contact the adjoining neighbors prior to land applying. It is the intent to avoid spreading manure on weekends, holidays, and evenings on warm days.
 - v. Evaluate and utilize new application technology as it becomes available.
7. The site is greater than the suggested separation distances for Churches, Businesses, Commercially Zoned Areas, Town Districts, Incorporated Municipalities, other than the operator, and lakes and streams classified as fisheries.
8. Setbacks for this CAFO that is being applied as Class A setback. The proposed CAFO is located more than 1/2 of a mile from the existing residences with a variance and a letter from the residences. The proposed expansion of the CAFO will be located within the 2,640 feet unregistered wells to the north not the south. Albert Moore's unregistered wells to the north, are approximately 439' and approximately 555' from the proposed manure storage ponds. Tory Lenning's unregistered well to the south, is approximately 1950' from the existing manure pond that was approved 9-30-19 for SEP for the existing manure modification (compositing).
9. The proposed facilities meet the minimum setbacks from rights-of-way.
10. Review of Specifications and nutrient management plan by Deuel County Board of Adjustment.

- a. Applicant is required to keep and maintain records of fields to receive manure, utilize adequate acres for the spreading of manure in accordance with state general permit standards, and adhere to minimum manure application setbacks.
11. The zoning office has received no concerns by mail some verbal about the expansion of Hollywood Feeders LLC about the smell and the roads.
12. The zoning office has received complaints in the past about manure handling which was filed with the DANR.
13. The zoning office also has received complaints in the past about road issues.
14. All information required of the applicant in Section 1302 was provided.
15. Information on soils, shallow aquifers, wellhead protection areas and floodplain was provided.
16. Staff notified Blom Township, in charge of maintenance of other haul roads.
17. Staff notified Brookings-Deuel Rural Water of the request. (Rural Water Supplier.)
18. Staff notified SDDENR, East Dakota Water Development District, and Sioux Rural Water of the request
19. The zoning office notified owners of property within two-miles of the site (approximately 71 letters).

Staff Recommendation

Special Exception: The board, utilizing one motion could approve, deny or table the special exception request. If approved the Board may use the following findings:

- That this expansion will not adversely affect the public interest.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM # 5 PLAT

Applicant/Owner: Eilers Farm, LLC

Property Description: Eilers Addition in NW1/4 of the Section 8, Township 117 North, Range 48 West of the 5th P.M., Deuel County, South Dakota.

Request: Plat a 21.6 acres irregular shaped parcel for estate purposes.

Action Item –Plat approval.