

Codington County/City of Watertown
Joint Planning Commission/Joint Board of Adjustment Minutes

February 22, 2016

The Codington County/City of Watertown Planning Commission/Joint Board of Adjustment met for their first meeting on February 22, 2016 at the Codington County Extension Complex. Members of the Joint Planning Commission/Joint Board of Adjustment present were: Bob Fox, Mark O'Neill, Brenda Hanten, Dennis Arnold, Pat Shriver, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Myron Johnson, Charles Rossow, Rodney Klatt, Mel Ries, Brooke Muhlack, Dennis Schmeling, Jeff Brink, Shane Waterman, John S., Todd Kays, Randy Winge, Lee Gabel, Lonnie Lowe, Greg Endres, Tyler McElhany, and Becky Goens.

Chairman Fox brought the meeting of the Joint Board of Adjustment to order.

Motion by Hanten, second by Shriver, to approve the November 23 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by O'Neill, to nominate Bob Fox as 2016 Chairman. Motion for nominations to cease made by Hanten. Motion passed unanimously.

Motion by Arnold, second by Hanten, to nominate Pat Shriver as 2016 Vice Chairman. Motion for nominations to cease made by Arnold, second by Hanten. Motion passed unanimously.

Motion by Hanten, second by Arnold, to approve three variance requests by Alfred Fox on property located at W1/2 less ROW and less deeded portions (includes S1133' of W692') in NW1/4, Section 1-T116N-R52W as read by Staff. Mr. Fox would like to create a 5-acre building site at the location of an existing farmstead exemption along with variances from minimum lot width and minimum lot area. Muller read History/Issue from Staff Report (attached). A Letter of Assurance is to be signed by the applicant agreeing to the following conditions:

- A. The applicant plat a parcel with a minimum 5-acre lot according to the County's subdivision regulations.
- B. Mark and Alfred Fox sign a letter of assurance transferring the 5 acre building right to the parcel to be created and agreeing that the existing residence on the remainder of the quarter section will be required to have a minimum of 35 acres.

Motion passed unanimously.

Motion by Hanten, second by Shriver, to approve the variance request made by Knife River, LLC as read by Staff (see attached Staff Report). Knife River is looking to temporarily operate a concrete batch plant on property less than 1,000' from the nearest resident at property owned by Greg Endres and located in Lots 3 & 4 of Endres East Addition and the S1/2 of the WN1/4 of Section 2-T116N-R52W. Muller reviewed Staff Report (attached). Brooke Muhlack, Environmental Manager

for Knife River, indicates there will not be rock crushing on this site. Motion passed unanimously subject to written consent of all five (5) residences within 1000' of the proposed temporary concrete batch plant being obtained and evidence of such presented to the Zoning Officer prior to the use of the property in any manner described within this application.

Motion by Hanten, second by Shriver, to approve the Conditional Use Permit request made by Knife River, LLC as read by Staff (see attached Staff Report). Knife River is requesting to operate a temporary concrete mixing plant on property owned by Greg Endres and located in Lots 3 & 4 of Endres East Addition and the S1/2 of the WN1/4 of Section 2-T116N-R52W. Motion passed unanimously subject to written consent of all five (5) residences within 1000' of the proposed temporary concrete batch plant being obtained and evidence of such presented to the Zoning Officer prior to the use of the property in any manner described within this application.

Motion to adjourn by Hanten, second by Arnold. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

**FEBRUARY 2016
CODINGTON COUNTY/CITY OF WATERTOWN
JOINT PLANNING COMMISSION/ JOINT BOARD OF ADJUSTMENT
STAFF REPORT**

MONDAY – February 22, 2016 – 9:00 a.m.

CODINGTON COUNTY/CITY OF WATERTOWN JOINT BOARD OF ADJUSTMENT

ITEM #1: ELECTION OF OFFICERS

ITEM #2 (3) VARIANCES

Applicant/Owner: Alfred Fox

Property Description: W1/2 less right-of-way & less deeded portions (includes S1133' of W692') in NW1/4, Section 1-T116N-R52W, Codington County, South Dakota. (Sheridan Township)

Zoning Designation: Agricultural

Request: Mr. Fox seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), and maximum residential density per quarter-quarter to create a 5 acre building site at the location of an existing farmstead.

History/Issue(s):

1. The property is used as a base for farming operations and has been since prior to 1976.
2. Mr. Fox seeks to sell approximately 5 acres in the same quarter-quarter section as the existing farmstead to his son.
3. Codington County's Zoning Ordinance does allow for variance from the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead which contains at least five acres and thereby affording building rights.
4. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
5. Staff recommendation – ***Existing Farmstead Exemption and variance to Minimum Lot Width-*** Approve request because 1) The lot does contain at least five acres which meets the terms of the Ordinance. 2) The Zoning Officer after review of records and site-visit has determined that this parcel was used as an existing farmstead/residential site prior to October 26, 1976 subject to the following conditions:
 - A. The applicant plat a parcel with a minimum 5-acre lot according to the County's subdivision regulations.
 - B. Mark and Alfred Fox sign a letter of assurance transferring the 5 acre building right to the parcel to be created and agreeing that the existing residence on the remainder of the quarter section will be required to have a minimum of 35 acres.

Action Item – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.1), minimum lot width (3.04.03.2), residential density per quarter-quarter section (3.04.01.2).

ITEM #3 CONDITIONAL USE PERMIT AND VARIANCE

Applicant: Knife River LLC

Property Owner: Greg Endres

Property Description: Lots 3 & 4 of Endres East Addition and the S1/2 of the NW1/4 of Section 2-116-52, Codington County, South Dakota. (Sheridan Township)

Zoning Designation: A - Agricultural

Request: Knife River seeks to temporarily operate a concrete batch plant on property less than 1,000' from the nearest residence.

History/Issue(s):

Specifics of Request:

1. Knife River will be working on US HWY 212 east of Watertown from July 15 – September 30 (weather permitting.)
2. Knife River seeks to use the above described site for crushing, piling and mixing concrete during the project.
3. Site prep is expected to start in April and clean-up/restoration should conclude before December.
4. Access will be located at existing cul-de-sac (43rd Street).
5. Hours of operation will be sun-up until 7:00 pm.
6. Best management practices will include: Site entrance tracking control, dust mitigation, perimeter berm, vegetative buffer strip, perimeter silt fence if needed, inlet protection if needed, and other practices as needed. (per applicant.)

Ordinance and Comprehensive Land Use Plan regarding this request (not already addressed):

1. The property is not located over the shallow aquifer.
2. Only structures proposed will be temporary for the duration of the project (July – Sept)
3. Notice of SDDENR Notice of Intent and General Permit have been received.
4. As a state highway project the activities will be monitored by the state.
5. Rock crushers/mixing plants are required to be greater than 1,000' from the subject property line to the nearest residence.
 - a. Codington County has only issued variance to this section where either written or verbal consent (at the meeting) was granted from the residences within 1,000' of the subject property (dating back to 2009.)
 - b. Five residences are located within 1,000' of the subject property.
 - c. As of the date of this report, no consent has been received.
6. All piles and the mixing plant are proposed to be greater than 65 feet from right-of-way and greater than 25' from other property lines.
7. Applicant has an agreement to maintain 43rd Street and will be maintaining the stretch US HWY 212 being worked on.
8. Applicant proposes to hold outreach meetings for general public and neighbors to voice concerns over noise, dust, etc. (As they did on the West 212 Project)
9. Major environmental impacts needing to be addressed by the applicant are those addressed in the review of the DENR General Permit, unless otherwise specifically stated.
10. Applicant has provided a plan for reclamation of the site.
11. Codington County has not typically required bonding or assurance of funds for reclamation of temporary batch plant sites.

Staff Recommendation

Variance – ***Setback between applicant’s property line and nearest residences (5 residences):*** Staff recommends acting on the request for variance first. If the variance is denied, the Board is not authorized to issue the subsequent conditional use request. The Board may table the request, deny the request or approve the request.

If **approved**, (and consent of all 5 residences within 1,000’ is provided) the Board may use the following findings for approval:

- The request is temporary in nature and the variance will expire upon the expiration of the conditional use permit.
- Consent of all five (5) residences within 1,000’ of the proposed temporary concrete batch plant was obtained.
- The Joint Board of Adjustment would only consider variance to this section in unique cases as presented to the Board today.

If **approved**, (and consent of all 5 residences within 1,000’ is not provided) the Board may use the following findings for approval:

- The request is temporary in nature and the variance will expire upon the expiration of the conditional use permit.
- Written consent of all five (5) residences within 1,000’ of the proposed temporary concrete batch plant shall be obtained and evidence of such shall be presented to the zoning officer prior to the use of the property in any manner described within this application.
- The Joint Board of Adjustment would only consider variance to this section in unique cases as presented to the Board today.

If consent of all 5 residences within 1,000’ is not provided the Board **deny** the request using the following findings for denial:

- The City of Watertown and Codington County have established minimum setbacks between the property lines of concrete mixing plants and existing residences for the protection of the health, safety and welfare of the residents within the Joint Jurisdiction Area and the City of Watertown.
- Consent of owners of all five (5) residences within the required setback area of 1,000’ from the proposed temporary concrete batch plant was not obtained.
- Therefore, granting the variance request would confer on the applicant special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
- Further, no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district.

Conditional Use Permit – ***...Concrete and Asphalt Mixing Plants (Temporary Concrete Batch Plant):*** The Board may table the request, deny the request or approve the request. If approved, the Board may use findings based upon the comprehensive land use plan, zoning ordinance and testimony heard at this meeting:

- A. Standard Findings of Fact for Conditional Uses adopted November 23, 2015.
- B. The following use is listed in the A – Agricultural Land District of the City of Watertown/Codington County Joint Jurisdiction Zoning Ordinance (Ref: SDCL 11-2-17.3):
...Concrete Mixing Plant (Ref: Zon. Ord. 3.04.02.4).
- C. On or before February 8, 2016, Knife River LLC applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to operate a temporary concrete batch plant on property described as: Lots 3 & 4 of Endres East Addition and the S1/2 of the NW1/4 of Section 2-116-52, Codington County, South Dakota. (Sheridan Township)

- D. That Temporary Concrete Batch Plants (Ref: Zon. Ord. 3.04.02.4) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 5.26). Therefore the Joint Board of Adjustment finds that it is empowered under Section 3.05.02.8 of the Zoning Ordinance to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest. (Ref: Zon. Ord. 4.05.01.5)
- E. The application and supporting documents provided satisfied the application requirements of Section 5.26.01.1. of the Zoning Ordinance
- F. Documentation of the SD DENR General Permit and SD DENR Notice of Intent indicate the site meets the requirements of the State Department of Environment and Natural Resources. (Ref. Zon. Ord. 5.26.02.1)
- G. The State of South Dakota is responsible for any monitoring or inspection of the site to ensure compliance with its applicable rules and regulations. (Ref. Zon. Ord. 5.26.02.2)
- H. On February 22, 2016, the City of Watertown/Codington County Joint Board of Adjustment granted variance to temporarily allow this concrete batch plant to be located on a legal description less than 1,000' from five (5) residences. (Ref. Zon. Ord. 5.26.03.1)
- I. No mixing plants, piles or other structures will be constructed less than 65' from any right-of-way. (Ref. Zon. Ord. 5.26.03.2)
- J. No mixing plants, piles or other structures will be constructed less than 25' from any side or rear property line. (Ref. Zon. Ord. 5.26.03.3)
- K. The applicant has an agreement with SD Department of Transportation to reconstruct the road which it will directly access (US HWY 212). (Ref. Zon. Ord. 5.26.04.1)
- L. The applicant has provided information (hours of operation, berm, and outreach meetings) regarding how potential noise pollution will be minimized. (Ref. Zon. Ord. 5.26.04.2)
- M. The applicant has sufficiently described potential environmental impacts and plans to address environmental impacts. (Berms, silt fence, grading, dust traps, dust control.) (Ref. Zon. Ord. 5.26.04.3)
- N. The applicant provided a plan for reclaiming the land to cropland prior to October 1. (Ref. Zon. Ord. 5.26.04.4)
- O. The City of Watertown/Codington County Joint Board of Adjustment finds that there is no need to require a bond for the reclamation of the proposed site. (Ref. Zon. Ord. 5.26.04.5)
- P. No mining or excavation other than the site preparation described in the application for conditional use permit and variance by the applicant is authorized by this conditional use permit. (Ref. Zon. Ord. 5.26.04.6 and 5.26.04.8)
- Q. In order to comply with the requirements of Section 4.05.01.6 and Chapter 5.26 of the City of Watertown/Codington County Joint Jurisdiction Zoning Ordinance, the Joint Board of Adjustment prescribes the following conditions and safeguards in conformity with the Joint Jurisdiction Area Comprehensive Land Use Plans and Zoning Ordinance (Zon. Ord. 4.05.01.7) to be agreed to in the form of a "Letter of Assurance" (Ref. Zon. Ord. 4.05.01.10):
 - a. Dust control measures shall be utilized for the rock crushing and truck traffic associated with the operations on the above described property.
 - b. Operations and reclamation of the sites (including removal of all piles and machinery associated with the project) are to be completed on or before December 1, 2016, at which point the permit will automatically expire.
 - c. If reclamation or operations are unable to be completed on or before the above prescribed date, the Board may extend the expiration of the permit.
 - d. Grantor agrees that evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of mining and milling activities.
 - e. Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use permit. Violations will be determined by the Codington

County Zoning Officer. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.

Action Items: Conditional Use – Temporary Concrete Batch Plant (3.04.02.4)