

Codington County Planning Commission/Board of Adjustment Minutes

February 22, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on February 22, 2016 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Mark O'Neill, Myron Johnson, Charles Rossow, Mel Ries, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Codington County Commissioner Brenda Hanten filled the vacant seat on the board.

Others present were Dennis Schmeling, Jeff Brink, Shane Waterman, John S., Todd Kays, Randy Winge, Lee Gabel, Lonnie Lowe, Tyler McElhany, and Becky Goens.

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

Motion by Johnson, second by Ries, to approve the January 19 meeting minutes. Motion passed unanimously.

Motion by Ries, second by Johnson, to approve both variances as requested by Thomas Tesch and Paul Schwanke. Tesch and Schwanke are requesting two variances from the minimum lot width and minimum lot area to create a minimum 5-acre lot at the site of an existing farmstead. Property is located in SW 25 acres of NW1/4, Section 13-T116N-R53W. Unfortunately, the public notice was incorrect as it stated Section 16. Due to the misprint, action cannot be taken. Motion by Johnson, second by Hanten, to table this item so that proper public notice can be made. Motion passed unanimously. This item will be re-published for a meeting date of March 7, 2016.

Motion by Hanten, second by Rossow, to approve the variance request by Lonnie Lowe as read by Staff (see attached Staff Report). Mr. Lowe is requesting to continue operating a gravel pit, with piles less than 65' from the right-of-way at property located in NE1/4 less E1/2 of E1/2 of NE1/4 & the E1/2 of W1/2 of E1/2 of NE1/4 & W1/2 of SW1/4 of SE1/4 of NE1/4 & S1/2 of SW1/4 of NW1/4 of SE1/4 of NE1/4 of Section 26-T119N-R51. Muller reviewed History/Issue per Staff Report (attached). Lowe indicated the existing piles will be removed as soon as it thaws. Motion passed unanimously subject to the following conditions:

- All piles located less than 65' from the 158th Street right-of-way will be removed and leveled to a grade and slope similar to that of the surrounding field on or before May 31, 2016.
- The applicant agrees to maintain financial responsibility for any additional maintenance or snow removal which may be a direct result of the piles located less than 65' from the 158th street right-of-way.

Motion by Hanten, second by Johnson, to approve the Conditional Use Permit request made by Lonnie Lowe as read by Staff. Mr. Lowe is requesting to operate a gravel pit at property located

in NE1/4 less E1/2 of E1/2 of NE1/4 & the E1/2 of W1/2 of E1/2 of NE1/4 & W1/2 of SW1/4 of SE1/4 of NE1/4 & S1/2 of SW1/4 of NW1/4 of SE1/4 of NE1/4 of Section 26-T119N-R51. The information presented earlier by Mr. Muller applies to this Permit request as well. Conditions to apply if approved will include:

- 1) Effective Date (carries forward condition of granting/denying variance):
 - a. Upon signing of the Letter of Assurance.
 - b. Subject to removal of the existing piles less than 65' from 158th street right-of-way on or before May 31, 2016.
- 2) General Requirements:
 - a. There will be no storage of oil or oil by-products on site. This is to include fueling sites.
 - b. There will be no storage of junk on site.
 - c. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer within 10 days of approval of this permit.
 - d. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, etc.
 - e. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
 - f. This conditional use permit does not authorize the use of this property for crushing of rock or mixing of asphalt/concrete.
- 3) Haul Road Agreements:
 - a. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of 158th Street from the site 464th Avenue as the primary haul road, and
 - b. All road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - c. Leola Township shall be responsible for all ordinary snow removal on its portion of 158th Street on the same basis as provided to the remainder of the Township. Any

additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.

- d. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road right-of-ways due to the result of the Grantor's operations (i.e. hauling of excavated materials). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.

4) Violation and Penalties:

- a. Applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.

Although the public portion of the meeting was closed, Chairman Fox asked Todd Kays, Director of First District of Local Governments, to provide input on previous actions of the Board and what the Board is allowed to do. Lowe indicates a Haul Road Agreement with the township has already been signed. He will bring a copy of said Agreement to the Codrington County Planning and Zoning Officer. Motion passed unanimously.

The Board will now be acting as the Planning Commission.

Muller presented a Plat of Fox Farm Addition in NW1/4, Section 1-T116N-R52W. Motion by Klatt, second by Ries, to recommend approval to the Board of County Commissioners. Motion approved unanimously.

Motion by Ries, second by O'Neill, to table action on the Plat of South Farm Homestead Addition. Motion passed unanimously.

Muller was contacted regarding a previous gravel pit permit issued May of 2015 to Clausen Construction, applicant, and Dave Hardie, owner. It has been our policy that if a Conditional Use Permit is issued, the Letter of Assurance (LOA) must be signed within 30 days. The reason for the 30-day policy is under statute, anyone has 30 days to appeal a decision in Circuit Court. If an appeal is made, we would like to see our records current and that is why we require signing the LOA within 30 days. The States Attorney's suggestion is to give notice to the applicant they have 30 days to sign this LOA or the Permit will be revoked and a new application will be required. Motion by Johnson, second by Ries, to direct the Zoning Officer to prepare a letter advising Mr. Hardie that the LOA needs to be signed within 30 days of this meeting or said Permit will be revoked. Motion passed unanimously.

Muller began discussion regarding Ordinance Amendment #63 (see attached Staff Report) regarding Agri-businesses in the Ag District. Following some discussion at the February meeting, it

was determined that performance standards needed to be listed. Agri-business activities would only be located on properties zoned Agriculture. They would not be issued on Commercial-zoned properties which specifically excludes Agri-business. Motion by Ries, second by O'Neill, to table action on this ordinance until the April 18 meeting. Motion passed unanimously.

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

Respectfully Submitted,

Becky Goens, Secretary

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

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

ITEM #2 CONDITIONAL USE PERMIT AND VARIANCE

Applicant/Property Owner: Lonnie Lowe

Property Description: NE1/4 less E1/2 of E1/2 of NE1/4 & the E1/2 of W1/2 of E1/2 of NE1/4 & W1/2 of SW1/4 of SE1/4 of NE1/4 & S1/2 of SW1/4 of NW1/4 of SE1/4 of NE1/4 of Section 26-T119N-R51 West of the 5th P.M., Codington County, South Dakota. (Leola Township)

Zoning Designation: A - Agricultural

Request: Mr. Lowe requests to continue operating a gravel pit, with piles less than 65' from the right-of-way.

History/Issue(s):

Specifics of Request:

1. Mr. Lowe has operated a gravel pit on the above described property since 2006
2. The site was originally permitted by SD DENR in 2006 and permit renewed after 2010. (Per SDDENR)
3. The site was never granted Conditional Use permit
4. Excavation is greater than 65' south of the 158th Street Right-of-Way, but some piles have been placed within the required setback.
 - a. Applicant has stated it is his intent to remove and spread the piles over the remainder of the field in the Spring.
5. The zoning officer was contacted by a Leola Township Supervisor inquiring whether Mr. Lowe had ever received a permit and how far from the right-of-way piles were required to be.
6. Mr. Lowe was instructed that a permit was required from the Board of Adjustment to operate his gravel pit, and application was made for this meeting.
7. The primary haul route is west from the gravel pit on 158th Street (Leola Township) to 464th Avenue (Codington County).

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The property is located over the shallow aquifer.
2. Drainage from the property runs northeastward and then north toward Round Lake.
3. No new structures, monitoring wells, or shelterbelts are proposed.
4. No haul road agreement with Leola Township has been provided at this time.
5. Reclamation is scheduled to occur upon completion of mining activities, at which time the topsoil will be returned with the intent to use the property for agricultural use. The topsoil will at that time be seeded with crops or grass.
6. Confirmation of gravel mining license for this site was issued verbally by SDDENR.
7. Codington County required bonding or assurance of funds for reclamation of gravel pits in certain instances in the past. No such requirement has been added since 2009.
8. The gravel pit is greater than 1,000 feet from the nearest residence.

Staff Recommendation

Variance – ***Piling of materials less than 65’ from 158th Street Right-of-Way:*** Staff recommends acting on the request for variance first. Action on this variance will affect conditions/consideration of the Conditional Use Permit. The Board may table the request, deny the request or approve the request.

If **approved**, the Board may use the following findings:

- The request is temporary in nature and the variance will expire upon the expiration of the conditional use permit.
- The Board has granted variances to allow piles closer to COUNTY ROADS where the applicant agreed to pay for increased snow removal if necessary.
- The Board of Adjustment would only consider variance to this section in unique cases as presented to the Board today.
- The intent of the Comprehensive Land Use Plan and Agricultural Zoning District will be met if the applicant agrees to the following conditions:
 - All piles located less than 65’ from the 158th Street Right-of-way will be removed and leveled to a grade and slope similar to that of the surrounding field on or before May 31, 2016.
 - The applicant agrees to maintain financial responsibility for any additional maintenance or snow removal which may be a direct result of the piles located less than 65’ from the 158th Street Right-of-way.

If **denied** the Board may use the following findings:

- Codington County has established minimum setbacks between gravel pits and rights-of-way.
- 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.
- 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.
- The Board of Adjustment is authorized to issue the subsequent Conditional Use Permit, provided, the applicant is required to remove any piles and level them to a grade and slope similar to that of the surrounding field prior to any further excavation or removal of previously mined materials.

Conditional Use Permit – ***Gravel Pits...*** 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 and Variances adopted March 17, 2014.
- B. The following use is listed in the A – Agricultural Zone and Zone C of the Aquifer Protection Overlay District of the Codington County Zoning Ordinance and (Ref: SDCL 11-2-17.3):

Sand, gravel or quarry operation; mineral exploration and extraction; rock crushers; and concrete and asphalt mixing plants (Ref: Zon. Ord. 3.04.02.4).

All Conditional Uses allowed in underlying districts, with the exception of those prohibited, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones. (Ref: Zon. Ord. 3.12.05.02.1)

- C. On or before February 5, 2016, Lonnie Lowe applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to authorize a gravel pit on his property described as:

NE1/4 less E1/2 of E1/2 of NE1/4 & the E1/2 of W1/2 of E1/2 of NE1/4 & W1/2 of SW1/4 of SE1/4 of NE1/4 & S1/2 of SW1/4 of NW1/4 of SE1/4 of NE1/4 of Section 26-T119N-R51 West of the 5th P.M., Codington County, South Dakota.

- D. That Gravel Pits (Ref: Zon. Ord. 3.04.02.4) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 3.04.02.4). Therefore The Board of Adjustment finds that it is empowered under Section 3.05.02.4 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 site has been granted a license to mine gravel from the South Dakota Department of Environment and Natural Resources and therefore meets said department’s requirements. (Ref: Zon. Ord. 3.04.02.4.a)
- F. The application, supporting documents, and testimony provided at this meeting satisfied the application requirements of Sections 3.04.02.4.b.i – v. of the Zoning Ordinance.
- G. The haul road designated for this site is one-half mile of 158th Street, east of 464th Avenue. An agreement regarding the maintenance of said portion of 158th Street is required prior to any further excavation or removal of materials or may be required as a condition of approval. (Ref: Zon. Ord. 3.04.02.4.b.vi.)
- H. Information presented at this hearing regarding how potential air, noise, and water pollution would be minimized was sufficient. (Ref: Zon. Ord. 3.04.02.4.b.vii.)
- I. The applicant’s plan for reclamation, including schedule; methods of returning topsoil and subsoil; methods of grading, backfilling, and contouring of mining sites; methods of waste management and disposal; and method of revegetation have been provided. (Ref: Zon. Ord. 3.04.02.4.b.viii.)
- J. In this case the Board finds no performance bond shall be necessary to carry out the sufficient reclamation of the property. (Ref: Zon. Ord. 3.04.02.4.b.ix.)
- K. The gravel pit is located on property greater than 1,000’ from the nearest residence. (Ref: Zon. Ord. 3.04.02.04.b.x)
- L. *The gravel pit will be located greater than 65’ from the 158th Street Right-of-way.* (Ref: Zon. Ord. 3.04.02.04.b.xi)
- M. In order to comply with the requirements of Section 4.05.01.6 and Section 3.04.02.4 of the Zoning Ordinance the Board of Adjustment prescribes the following conditions and safeguards in conformity with the Codington County Comprehensive Land Use Plan and Zoning Ordinance (Zon. Ord. 4.05.01.7) to be agreed to in the form of a “Letter of Assurance”:
 - 5) Effective Date (carries forward condition of granting/denying variance):
 - a.
 - 6) General Requirements:
 - a. There will be no storage of oil or oil by-products on site. This is to include fueling sites.
 - b. There will be no storage of junk on site.
 - c. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer within 10 days of approval of this permit.
 - d. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, etc.
 - e. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
 - f. This conditional use permit does not authorize the use of this property for crushing of rock or mixing of asphalt/concrete.

- 7) Haul Road Agreements:
- e. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of 158th Street from the site 464th Avenue as the primary haul road, and
 - f. All road work whether customary or extraordinary shall be done under the authority and supervision of the Township and meet its specifications. The work shall be done through the applicable contractor unless the Grantor receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - g. Leola Township shall be responsible for all ordinary snow removal on its portion of 158th Street on the same basis as provided to the remainder of the Township. Any additional snow removal deemed necessary for the Grantor to continue its operations is hereby authorized to be done at Grantor's expense.
 - h. The Grantor acknowledges that, to the extent already provided for by the law, and further acknowledges that it shall be responsible for any and all damages to applicable road authority roads or road right-of-ways due to the result of the Grantor's operations (i.e. hauling of excavated materials). Work will be done on the same basis as specified hereinabove. However, no unique standard or obligation not otherwise provided for by law is created by this acknowledgment.
- 8) Violation and Penalties:
- b. Applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 Plat

Applicant/Property Owner: Alfred Fox

Property Description: Plat of Fox Farm Addition in the NW1/4, Section 1-T116N-R52W, Codington County, South Dakota. (Sheridan Township)

Zoning Designation: A-Agricultural

Request: Create a 5 acre lot required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #2 Plat

Applicant/Property Owner: Theodore Tesch and Paul Schwanke

Property Description: Plat of South Farm Homestead Addition in the NW1/4, Section 13-T116N-R53W, Codington County, South Dakota. (Pelican Township)

Zoning Designation: A-Agricultural

Request: Create a 25 acre lot as required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #3 ORDINANCE AMENDMENT

Applicant: Directed by Planning Commission

Request: Define and allow certain “Agri-businesses” in the Ag District

History/Issues:

1. On December 21, 2015, the Planning Commission directed the zoning officer to draft an amendment to the zoning ordinance authorizing the a narrowly defined set of agribusinesses in the Agricultural District
2. The businesses are to include base of operations for commercial grain storage and the processing and subsequent sale of agricultural products raised by the farm owner at a site where they do not live.

ORDINANCE 63

AN ORDINANCE AMENDING ORDINANCE 30 AN ORDINANCE AMENDING ORDINANCE #15 AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR CODINGTON COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, PURSUANT TO SDCL 11-2, 1967, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND/OR ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that ARTICLE II DEFINITIONS, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended by adding the following definition:

Agribusiness activities. The use of land for the following commercial purposes related to raising, growing, processing, or storage of farm products: custom fertilizer/herbicide application, custom planting, custom harvesting, grain storage, or processing of products raised or grown by the landowner or operator.

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that Section 3.04.02 [Agricultural District] Conditional Uses, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended to add the following Conditional Use in the Agricultural District:

41. Agribusiness activities

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that ARTICLE V SUPPLEMENTAL REGULATIONS, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended by adding the following Chapter:

Chapter 5.33. Agribusiness Activities:

Section 5.33.01. Intent

Agribusiness activities include identified commercial activities involving the handling, storage, processing and shipping of farm products. Agribusiness activities are operated as a principle use on a property, and are not operated accessory to residential uses. may be operated as extended home occupations, when such activities are accessory to the residential use of the lot. The following commercial activities may be considered agribusiness activities if operated in accordance with the requirements contained in Section 5.33.02:

1. Custom fertilizer/herbicide application;
2. Custom planting;
3. Custom harvesting;
4. Grain storage;
5. Processing of products raised or grown by the landowner or operator.

Section 5.33.02. Requirements

1. Agribusiness activities must have access to a concrete or bituminous asphalt, or county gravel street.
2. Operators of agribusiness activities shall enter into and comply with a haul road agreement for the applicable streets if deemed necessary by the applicable road authority for the maintenance of identified haul routes attendant to the operation of the proposed business.
3. Lighting on the site shall be limited to downward directed lights or other lighting customarily used for agricultural operations.
4. The number, size, and illumination standards for signs shall be determined by the Board of Adjustment.
5. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
6. All vehicles and equipment stored outside shall be operable.
7. Permits for Agribusiness activities are specific to a single use listed in Section 5.33.01. An agribusiness activity may only be changed to another agribusiness activity if specifically authorized by the Board of Adjustment.
8. Permits for Agribusiness activities may be transferred, unless otherwise stated by the Board of Adjustment.

Section 5.33.03. Applications.

1. In addition to the following information, plans shall be drawn to scale and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this chapter and all other relevant laws, ordinances, rules and regulations. The Zoning Officer may waive the submission of plans if the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this chapter. The site plan shall contain the following:
 - a. The address of the property and the legal description.
 - b. The name of the project and/or business.
 - c. The scale and north arrow.
 - d. All existing and proposed buildings or additions.
 - e. Dimensions of all buildings.
 - f. Distance from all building lines to the property lines at the closest points.
 - g. Dimensions of all property lines.
 - h. Maximum number of employees expected to be employed at the site.
 - i. Hours of operation. (If it is expected that hours of operation will vary depending upon the season, the applicant should state minimum and maximum hours of operation and when those minimum and maximum hours are expected.)
 - j. Number and type of vehicles expected to use the site each day. (If it is expected that traffic will vary depending upon the season, the applicant should state minimum and maximum number of vehicles expected and when those minimum and maximum numbers are expected.)
 - k. Parking lots or spaces; designate each space, give dimensions of the lot, stalls and aisles (if applicable).
 - l. The landscaped setback and trees; indicate species of trees and material to be used for landscaping.
 - m. Name and location of all adjacent streets, alleys, waterways and other public places.
 - n. Names and locations of proposed haul roads.
 - o. Proposed grading and drainage pattern.
 - p. Proposed interior circulation pattern indicating the status of street ownership.
 - q. Phasing plan for development (if more than one phase is planned).
2. Approved plans shall not be changed, modified, or altered without authorization from the Board of Adjustment giving final approval, and all work shall be done in accordance with the approved plans.

ISSUE #7 Staff Report/Open

Gravel Pit Permit Expiration

ISSUE #8 Executive Session