

Codington County Planning Commission/Board of Adjustment Minutes

May 16, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on May 16, 2016 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Mark O'Neill, Myron Johnson, Mel Ries, Charles Rossow, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Vincent Cordell, John Knight, Van Schwinger, Jim Lloyd, Juliane Lloyd, Brian Comes, Lonnie Knutson, Todd Kays, Chad Voelsch, Dawn Voelsch, Gary Voelsch, Kenneth Schwinger, Jeff DeVille, Jim Thyen, Lee Gabel, Dan Crisler, and Becky Goens.

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

Codington County Commissioners Brenda Hanten and Tyler McElhany filled the vacant seats on the board.

Motion by O'Neill, second by McElhany, to approve the April 16, 2016 minutes. Motion passed unanimously.

Motion by Johnson, second by Rossow, to approve the March 21, 2016 minutes. Motion passed unanimously.

Motion by Hanten, second by Rossow, to approve two variance requests by Kenneth Schwinger for property located on a 10-acre parcel in SE1/4, Section 7-T119N-R52W, former Sisseton-Wahpeton Reservation. Mr. Schwinger is requesting variances for an existing farmstead exemption and minimum lot width for purposes of retaining residential building rights at the site of an existing farmstead. Muller reviewed Staff Report (attached). Van Schwinger, son of Kenneth Schwinger, indicated his parents intend to sell the building site so as to move to town but keep the farmland for income purposes. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve two variance requests by Eileen Lindner for property located in E1/2 of E1/2 less H-1, Section 28-T117N-R51W. Mrs. Lindner is requesting variances for an existing farmstead exemption and minimum lot width for purposes of retaining residential building rights at the site of an existing farmstead. A parcel of 17 acres is being considered. Todd Kays, son-in-law of Mrs. Lindner, spoke on behalf of the applicant. Staff would recommend the applicant plat the property and sign a Letter of Assurance agreeing that the 35-acre building right would belong to the proposed 17-acre newly platted parcel, containing the farmstead exemption. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve a variance request by Brian Comes to allow a third house within the same quarter-quarter section on his property located in NE1/4 less W200' of E960' of N400' and less S412' of N1052.5' of E280' in Section 32-T118N-R51W. Muller reviewed

Staff Report Specifics (attached). Staff recommends approval based upon the findings listed in Staff Report (attached). Comes plans to either reside in a camper or with family in Watertown while the new home is being constructed. Motion passed unanimously.

Motion by McElhany, second by Ries, to approve both variance requests by Vincent Cordell subject to conditions set forth by Staff. Cordell would like to construct an accessory structure and temporarily reside in it prior to a primary, single-family residence being built. Property is located in Schuelke's 1st Addition in SW1/4 of SE1/4, Section 26-T116N-R52W. Muller reviewed Staff Report History/Issue (attached). Cordell's intention is to construct an accessory building/garage to store his household items while a residence is being constructed. Cordell would like to construct his shed/garage less than the required 25' from the west property line. Muller advised the board that a setback variance was not applied for or noticed and the board cannot grant this variance at this time. The only issues before the board at this meeting is to construct a building that would meet the required setback of 25'. Board Member Fox indicated the setback request of 15' was not publicly noticed. Cordell is unclear as to where the property line is. Fox advised Cordell he cannot build closer than 25' to the property line or a variance would be required if he chose to build closer. Muller indicated the board does not have a history of granting side yard variances very often; therefore Cordell was advised to plan on constructing no closer than 25'. Dawn Voelsch, adjoining landowner's daughter-in-law, inquired about the 25' setback, length of time in which Cordell has to construct a home, regulations on the type of home, and the amount of items currently being stored on site. The type of home he can build would include a modular, manufactured, double-wide on foundation, moved-in, or constructed. Per Muller, items stored on site would be regulated by the nuisance ordinance and will be discussed with the States Attorney's office. Cordell will be placing a septic tank on site. Thomas Redwing, adjoining landowner, asked the property be surveyed. Motion by McElhany, second by Ries, to amend the original motion to include the property must be surveyed. Motion on the amendment passed unanimously. Motion including amendment now contains the following conditions:

- a. Property must be surveyed.
- b. Building permit is required prior to the commencement of construction activities.
- c. Applicant shall obtain building permit for a single family residence not less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure.
- d. Upon completion of the new residence, the living quarters shall be removed from the accessory structure.
- e. If the building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure, or extension of this variance

is not applied to, the Board of Adjustment will forward the matter with no further action to the Codington County State's Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance.

Motion on original motion, to include the amendment, passed unanimously.

Motion by Johnson, second by McElhany, to approve the Conditional Use Permit request by Dakota Range Wind, LLC subject to the conditions presented by Staff. This is a request to install a temporary meteorological tower for purposes of studying wind characteristics. Property is owned by Coletta Buchholz and located in NE1/4 of NW1/4, Section 35-T119N-R52W. Muller reviewed Staff Report (attached). Conditions applied to the proposed variance would include:

- 1) Grantor shall submit with building permit application a written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
- 2) Grantor shall submit with building permit application a written statement from an engineer(s) or the project architect that the construction of the proposed meteorological tower shall comply with the 2015 version of the International Building Code.
- 3) The proposed meteorological tower shall meet or exceed all requirements of the Federal Aviation Administration (FAA) and South Dakota Department of Transportation- Aeronautics Commission with regard to transmission of signals, height, marking, and registration of the Tower. If compliance is not necessary, documentation from the applicable agency shall be provided to the Zoning Officer and kept with this application.
- 4) The Grantor further agrees to notify the following entities of the location (legal description) and height of the anemometer tower via certified mail:
 - a. Wilbur-Ellis Air LLC
45149 152nd Street
Summit, SD 57266-5112
 - b. Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201
 - a. Scott Thompson
Thompson Farm Air
PO BOX 308
Estelline, SD 57234
 - b. Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

Motion passed unanimously.

Per conditions read by Staff, motion by Hanten, second by McElhany, to approve the Conditional Use Permit request for a rubble site on property owned by James Thyen and located in W1/2 of W1/2, Section 4-T117N-R51W. Muller reviewed Staff Report (attached). Conditions applied to the proposed request would include:

1) Effective Date:

- a. Signing of the Letter of Assurance

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 prior to any excavation on the site.
- d. If a mining permit is not required from SDDENR, documentation from SDDENR that such a permit is not required shall be submitted to the zoning officer prior to excavation of the site.
- e. 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.
- f. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- g. 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 462nd Avenue from the site to 165th Street 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. 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.

Mr. Thyen indicates he was contacted by the contractor of the new Waverly School looking for a place to bury the brick and mortar items from the school and extract soil for the project as well. The fill will be donated by Thyen's. Once buried, the hole will contain a minimum of 3' black dirt on top. Thyen's will take care of the Haul Road Agreement, blading, and the stock pile will be seeded. Johnson inquired about the Haul Road Agreement and what would happen to other construction material to include windows, electrical wiring, and especially asbestos. The items mentioned by Johnson must be monitored by DENR. Per Thyen, the contractor will separate the disposal items – iron will be scrapped with the remaining items that cannot be buried will be going to the Landfill accordingly. Asbestos will be cleared before rubble is removed. Motion passed 6-1.

Per conditions read by Staff, motion by Hanten, second by McElhany, to approve the Conditional Use Permit request by James Thyen to extract soil from rubble site on property located in W1/2 of W1/2, Section 4-T117N-R51W. Muller reviewed Staff Report (attached). Conditions to be attached to this Conditional Use Permit would include:

1) Effective Date:

- a. Signing of the Letter of Assurance

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 prior to any excavation on the site.
- d. If a mining permit is not required from SDDENR, documentation from SDDENR that such a permit is not required shall be submitted to the zoning officer prior to excavation of the site.
- e. 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.

- f. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- g. 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 462nd Avenue from the site to 165th Street 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. 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.

Motion passed unanimously.

Motion by O'Neill, second by Rossow, to recommend approval to the board of county commissioners Sioux Rural Water's plat of Replat of Tower "G" Tract in SE1/4 of SE1/4, Section 21-T117N-R51W. Motion passed unanimously.

Motion by Rossow, second by O'Neill, to recommend approval to the board of county commissioners Don Flisrand's Plat of Flisrand Addition in NE1/4, Section 23-T119N-R54W. Motion passed unanimously.

Motion Ries, second by O'Neill, to recommend approval to the board of county commissioners Eileen Lindner's Plat of Lindner Addition in NE1/4, Section 28-T117N-R51W. Motion passed unanimously.

Motion by Ries, second by O'Neill, to recommend approval to the board of county commissioners Robert Boettcher's Plat of Boeder Addition in NE1/4, Section 20-T118N-R52W. Motion passed unanimously.

Discussion was held regarding a potential rezoning of a portion of Rauville Township from Agriculture to Town District. The board advised First District to continue research and to refine the definitions that may be included in such District.

Discussion was held regarding county-wide Concentrated Animal Feeding Operation (CAFO) setbacks. A map was shown by First District of Local Governments which was recently presented at a meeting of the Lake Kampeska Water Development.

Motion to adjourn by Hanten, second by O'Neill. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

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

MONDAY – MAY 16, 2016 – 7:30 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ISSUE #1 (2) VARIANCES

Applicant/Owner: Kenneth Schwinger

Property Description: 10-acre parcel in SE1/4, Section 7-T119N-R52W of former Sisseton-Wahpeton Reservation, Codington County, South Dakota. (Dexter Township)

Zoning Designation: Agricultural

Action Item – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2)

Request: Mr. Schwinger seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption) to create a minimum 5 acre lot at the site of an existing farmstead.

History/Issue(s):

1. Mr. Schwinger will be splitting off the buildings site on the above described property which was used as a base for farming operations prior to 1976.
2. The applicant seeks to plat a parcel greater than 5 acres but less than 35 acres.
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.
 - A. The applicant plat a parcel with a minimum 5-acre lot according to the County's subdivision regulations.
 - B. The applicant sign and record a letter of assurance agreeing to:
 - 1) As a condition of obtaining a variance to establish an Existing Farmstead exemption on property described as Southeast Quarter, Section 7-T119N-R52W, of the former Sisseton Wahpeton Reservation, Codington County, South Dakota, the Grantors, their heirs, successors, and assigns acknowledge that the existing farmstead, minimum five (5) acre, residential building right is assigned to the ___-acre parcel in Southeast Quarter, Section 7-T119N-R52W, of the former Sisseton Wahpeton Reservation, Codington County, South Dakota, which upon platting, will be known as: Plat of _____ Addition in Southeast Quarter, Section 7-T119N-R52W, of the former Sisseton Wahpeton Reservation, Codington County, South Dakota.

- 2) The Grantors, their heirs, successors, and assigns further hereby agree that subsequent residential development in the Southeast Quarter, Section 7-T119N-R52W, of the former Sisseton Wahpeton Reservation, Codington County, South Dakota less Plat of _____ Addition, shall only be allowed upon parcels of thirty-five (35) acres unless and until changes are made to the Codington County Zoning Ordinance allowing for such residential development on less than thirty-five acres. Residential development to be defined as a “dwelling” per the Codington County Zoning Ordinance.

ISSUE #2 (2) VARIANCES

Applicant/Owner: Eileen Lindner

Property Description: E1/2 of E1/2 less H-1, Section 28-T117N-R51W, Codington County, South Dakota. (Kranzburg (N) Township)

Zoning Designation: Agricultural

Action Item – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2)

Request: Mrs. Lindner seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption) to create a minimum 5 acre lot at the site of an existing farmstead.

History/Issue(s):

1. Mrs. Lindner will be splitting off the buildings site on the above described property which was used as a base for farming operations prior to 1976.
2. The applicant seeks to plat a parcel greater than 5 acres but less than 35 acres.
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.
 - a. The site contained an occupied residence which was a part of a farming operation on and before October 26, 1976
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.
 - A. The applicant plat a parcel with a minimum 5-acre lot according to the County’s subdivision regulations.
 - B. The applicant sign and record a letter of assurance agreeing to:
 - 1) As a condition of obtaining a variance to establish an Existing Farmstead exemption on property described as East Half of the East Half less H-1, Section 28-T117N-R51W, Codington County, South Dakota, the Grantors, their heirs, successors, and assigns acknowledge that the existing farmstead, minimum five (5) acre, residential building right is assigned to the ___-acre parcel in East Half of the East Half less H-1, Section 28-T117N-R51W, Codington County, South Dakota, which upon platting, will be known as: Plat of _____ Addition in East Half of the East Half less H-1, Section 28-T117N-R51W, Codington County, South Dakota.

- 2) The Grantors, their heirs, successors, and assigns further hereby agree that subsequent residential development in the East Half of the East Half less H-1, Section 28-T117N-R51W, Codington County, South Dakota less Plat of _____ Addition, shall only be allowed upon parcels of thirty-five (35) acres unless and until changes are made to the Codington County Zoning Ordinance allowing for such residential development on less than thirty-five acres. Residential development to be defined as a “dwelling” per the Codington County Zoning Ordinance.

ISSUE #3 (2) VARIANCES

Applicant/Owner: Brian and Lisa Comes

Property Description: NE1/4 less W200' of E960' of N400' and less S412' of N1052.5' of E280' in Section 32-T118N-R51W, Codington County, South Dakota. (Waverly Township)

Zoning Designation: Agricultural

Action Item – Variance – Density per Quarter-Quarter Section (3.04.01.2)

Request: The Comes' seek an existing farmstead exemption to allow more than one residence associated with a farming operation at the site of an existing farmstead.

History/Issue(s):

Specifics of Request/Property:

1. Brian and Lisa live at the site of the farmstead.
2. Permit History:
 - a. Chad Comes/House/03-21-01*
 - i. Required farmstead exemption – Bud issued permit without.
 - ii. **Variance Issued (1st ever Bud-ism) 06-20-05*
 - b. James and Joyce Comes/2nd House/04-28-04
 - i. Existing Farmstead granted to allow second home on legal description
 - ii. Subsequent transfer triggered platting
 - c. Comes Farm/Hay Shed/06-03-05
 - i. Variance to setback from Town District granted 5-16-05
 - ii. Conditional Use Permit for Class 3 CAFO granted 5-16-05
 - d. Greg and Ann Richter/Pole Shed/04-12-06
 - e. Brian Comes/Grain Bin/09-16-09
 - f. Brian Comes/Pole Barn/09-17-10
3. Currently 4 houses are located in the Northeast Quarter of the Northeast Quarter of Section 32.
 - a. Greg and Anita Richter
 - b. James and Joyce Comes
 - c. Brian and Lisa Comes
 - d. Original Farmstead house
4. Brian and Lisa intend to replace their house with a new house.

Ordinance and Board Policy regarding this request:

1. These residences are located at the site of an existing farmstead and have been granted an existing farmstead exemption.
 - a. The condition of approval was that subsequent transfer of either house requires platting of the property to create a unique legal description for both James and Brian's homes.

2. The Board has allowed more than 2 residences associated with an existing farmstead before where:
 - a. The site had been granted a Conditional Use Permit for a CAFO.
 - b. The site was the location of an existing farmstead.
 - c. The maximum number of residences would not exceed the number of building rights per contiguously owned quarter-quarter section.
 - d. The applicant agreed to transfer applicable building rights from each quarter-quarter section to each respective house.
3. The above conditions were deemed to keep the intent of the agricultural district in tact while granting similar requests.

Staff Summary and Recommendation:

1. Summary: The Comes' have received the farmstead exemption to allow 2 houses on the above legally described property, and variance to allow the creation of a lot that was later sold to Greg Richter. No variance has been granted authorizing more than 1 residence per quarter-quarter. The Board's action today would authorize building permits to be issued for up to 4 residences in the same quarter-quarter section. This action would be similar to past actions of the Board of Adjustment subject to certain conditions. It is the intent that the Comes' (and Richters) would not need to come back before this Board to obtain future residential building permits provided the conditions contained herein are met.
2. Staff recommendation –***More than one residence per quarter-quarter***- Approve request based upon the following findings:
 - A. The lot does contain at least five acres which meets the terms of the Ordinance.
 - B. The Zoning Officer after review of records and site-visit has determined that this lot was associated with an existing farmstead/residential site prior to October 26, 1976.
 - C. The site was granted an existing farmstead exemption on 4/19/04 to allow two residences provided both houses were occupied by employees of the farm or family members of the farm owner or operator; and that the property be platted if transferred in the future.
 - D. The site was granted a Conditional Use Permit for a Class 3 CAFO on 5/16/05.
 - E. The existing farmstead is held under contiguous ownership with the NW, SE, and SW Quarters of the Northeast Quarter of this section.
 - F. The existing and total proposed density of development in the NE1/4 of the NE1/4 is 4 residences which is equal to 1 residence per quarter-quarter section.
 - G. The Board of Adjustment would only consider approving variances which meet the same unique criteria as this application.
 - H. In order to ensure compliance with the intent and purpose of the Comprehensive Land Use Plan and Agricultural District of the Codrington County Zoning Ordinance the applicant agrees to sign a letter of assurance agreeing to the following conditions:
 - 1) Grantor agrees to plat a minimum 35 acre legal description around the residences occupied at this time by James Comes and Brian Comes if at any point in the future ownership of said residence transfers.
 - 2) Granter agrees to transfer residential building rights associated with the northwest quarter, southwest quarter, and southeast quarter to the portion of the northeast quarter held in common ownership with the aforementioned quarter-quarter sections. No residential development will be allowed on the NW1/4 of the NE1/4, the SW1/4 of the NE1/4, or the SE1/4 of the NE1/4 as long as 4 residences are located in the NE1/4 of the NE1/4.
 - 3) If at some point one of the residences in the NE1/4 of the NE1/4 is removed, the applicant may file paperwork specifying which quarter-quarter section may be authorized for residential development instead of the removed residence.

ISSUE #4 (2) VARIANCES

Applicant/Property Owner: Vince Cordell

Property Description: Schuelke's 1st Addition in SW1/4 of SE1/4, Section 26-T116N-R53W, Codington County, South Dakota. (Pelican Township)

Zoning Designation: A – Agricultural District

Action Items: Accessory Structure without a primary Structure (5.14.2), temporarily allow an accessory structure as a residence (5.14.4)

Request: The applicant requests to construct a shed and occupy it until a home can be completed.

History/Issue(s):

1. Codington County Zoning Ordinance requires all accessory structures to be located on the same lot as a primary structure – in this case – a single family residential structure.
2. The Cordell's own the above described nonconforming lot of record.
3. The Cordell's propose to construct a shed on site and occupy it prior to constructing a single-family residence, in addition to using it for the storage of personal vehicles and equipment related to the construction of the house.
4. The Board has a history of granting variances to allow an accessory structure prior to building a house and occupying it, provided the applicant agree to get a building permit for a new house on the same lot within one year. The board has allowed up to one extension of one year on these requests as well.
5. Staff Summary: Based upon past practices and the land use plan, the Board is warranted in granting the request.
6. Staff Recommendation – ***Variance to allow accessory structure without a primary structure:*** Staff recommends approval of the request to allow the construction of an accessory structure before construction of a primary structure (house) on the above described property. Should the Board approve the request, approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions:
 - a. Building permit is required prior to the commencement of construction activities.
 - b. Applicant shall obtain building permit for a single family residence not less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure.
 - c. Upon completion of the new residence, the living quarters shall be removed from the accessory structure.
 - d. If a building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure, or extension of this variance is not applied to, the Board of Adjustment will forward the matter with no further action to the Codington County State's Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance

ISSUE #5 CONDITIONAL USE PERMIT

Applicant: Dakota Range Wind, LLC (DRW)

Property Owner: Coletta Buchholz

Property Description: NE1/4 of NW1/4, Section 35-T119N-R52W, Codington County, South Dakota. (Germantown Township)

Zoning Designation: A - Agricultural

Action Item – Conditional Use Permit – Telecommunications Tower (3.04.02.15).

Request: DRW proposes to erect a 198’ guyed wire meteorological tower.

History/Issue(s):

Specifics of Request:

1. DRW is working to secure permitting for the 198’ guyed meteorological tower to record wind data.
2. The applicant has obtained an easement from the property owner for the construction of this and larger wind towers. (Larger wind towers are not a part of this request.)

Ordinance, Comprehensive Land Use Plan and other regulations regarding this request:

1. Most of the regulations in Section 5.24 are written for television, radio, and cell towers. Sections 5.24.02.2 and 5.24.05 – 5.24.11 do not apply.
2. Since the tower is greater than 100’ in height, the following setbacks apply (which are met with this application):
 - a. Distance from existing off-site residences, business and public buildings **is greater than** one thousand (1,000) feet. Distance from on-site or lessor’s residence **is greater than** five hundred (500) feet.
 - b. Distance from public right-of-way **is greater than** the height of the tower.
 - c. Distance from any property line **is greater than** the height of the tower.
3. Since the Tower is greater than 150’ in height, consistent with 5.24.02.1 and 5.24.12 the Board needs to determine that:
 - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
 - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - c. In addition, the board may include conditions on the site where the tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

For reference, Section 5.24.12.1 describes multiple items for a contractor to provide for consideration of “site plan development modifications.” The only portion not specifically outlined by the applicant is 5.24.12.1.a.iv which would require the applicant to identify “all other parcels that the tower could be located, attempts by the applicant to... [collocate]” Since the only limiting factor is the actual height being 196’ no difference between this or any other property (aside from setbacks) would be relevant, nor would it be practical to collocate an anemometer tower on an existing telecommunications tower.

Given that the applicant exceeds the required setbacks and the proposed structure is located on an otherwise vacant quarter section it appears most adverse impacts are mitigated by the property’s relative “remoteness”.

4. It should be noted that South Dakota Codified Law 50-9-13 regulates the marking of anemometer towers such as this. The law is enforced by the South Dakota Department of Transportation – Aeronautics Commission. It requires (for reference only):
 - c. alternating orange and white painting
 - d. orange “balls” to be placed on the guyed wires
5. Towers less than 200’ in height do not require lights per FAA regulations.
6. Since towers less than 200’ in height do not require specific markings from FAA and SDDOT, in the past, the Board has required those constructing towers to notify, via certified mail, certain airports of the construction of such towers.
 - a. It should be noted the last 4 similar towers were constructed, voluntarily, to the above standards.
7. Non commercial structures, according to state law are required to meet the latest edition of the International Building Code. The Codington County Zoning Ordinance also requires written confirmation from the project engineer that the structure will be structurally sound.
8. As of the date of this report staff has received no objections regarding this request.

Staff recommendation:

Conditional Use Permit: Telecommunications Tower (Meteorological Tower). The Board may table the request, deny the request, or approve the Conditional Use Permit(s). The Zoning Officer recommends approval based upon 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 of the Codington County Zoning Ordinance: Telecommunications Towers (Ref: Zon. Ord. 3.04.02.15).
- C. On or before May 2, 2016 Dakota Range Wind applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to construct a 198’ guyed Meteorological Tower on property owned by Coletta Buchholz described as: NE1/4 of NW1/4, Section 35-T119N-R52W, Codington County, South Dakota.
- D. That Telecommunications towers (Ref: Zon. Ord. 3.04.02.15) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 5.24). Therefore The Board of Adjustment finds that it is empowered under Section 3.04.02.15 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 proposed tower will be greater than 150’ in height. (Ref. Zon. Ord. 5.24.02.1 & 5.24.03.1)
- F. The tower will be constructed greater than one thousand (1,000) feet from any existing off-site residences, businesses, and public buildings. No on-site residences are located on the above parcel. (Ref. Zon. Ord 5.24.03.2.a)
- G. The tower will be constructed greater than one hundred ninety-six (196) feet from the nearest right of way. (Ref. Zon. Ord 5.24.03.2.b)
- H. The tower will be constructed greater than one hundred ninety-six (196) feet from the nearest property line. (Ref. Zon. Ord 5.24.03.2.c)
- I. The tower will be designed and certified to be structurally sound and, at minimum, in conformance with the Building Code [as established by SDCL]. The tower shall be fixed to land. (Ref. Zon. Ord. 5.24.04.1)
- J. Since the tower is to be used by the owner to relay information specifically for the use of this business and not for any transmission of television, radio, or cellular (public) purposes, Sections 5.24.02.2. and 5.24.05 – 5.24.13 do not apply, except that Section 5.24.12 applies due to the height of the tower exceeding 150’.
- K. The sole purpose of the construction of this tower is to collect wind data and not otherwise to provide telecommunications signals it would be impractical to require collocation of this tower

with another tower; and that the sole reason for requiring additional criteria for site plan development modifications per Section 5.24.2.1 is the height of the tower exceeding would lead yield the same result on any property meeting setbacks, Section 5.24.12.1.a.iv is considered satisfied.

- L. Due to the ability of the applicant to exceed the required setbacks, the location of no “on-site residences”, and satisfaction of other conditions attached by the Board of Adjustment it has been determined by the Board that the proposed tower:
 - 1) Will be compatible with and not adversely impact the character and integrity of surrounding properties (Ref. Zon. Ord 5.24.12.1.b.i.); and
 - 2) Off-site or on-site conditions exist which mitigate the only adverse impacts, created by the [height of the tower] (Ref. Zon. Ord 5.24.12.1.b.ii.); and
 - 3) In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification (Ref. Zon. Ord 5.24.12.1.b.iii.).
- M. The applicant is expected to comply with all applicable state and federal regulations regarding the construction of towers and transmission of radio signals.
- N. SDDOT and FAA may not have specific regulations regarding the construction and marking of towers less than 100’ in height.
- O. The findings contained herein combined with the findings of the Board contained in the motion to approve the conditional use permit serve as the Official Findings of Fact referenced in Section 4.05.01.6. The zoning officer is hereby authorized to prepare and issue the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.
- P. In order to comply with the requirements of Section 4.05.01.6 and Chapter 5.24 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 adhered to:
 - 5) Grantor shall submit with building permit application a written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - 6) Grantor shall submit with building permit application a written statement from an engineer(s) or the project architect that the construction of the proposed meteorological tower shall comply with the 2015 version of the International Building Code.
 - 7) The proposed meteorological tower shall meet or exceed all requirements of the Federal Aviation Administration (FAA) and South Dakota Department of Transportation- Aeronautics Commission with regard to transmission of signals, height, marking, and registration of the Tower. If compliance is not necessary, documentation from the applicable agency shall be provided to the Zoning Officer and kept with this application.
 - 8) The Grantor further agrees to notify the following entities of the location (legal description) and height of the anemometer tower via certified mail:
 - c. Wilbur-Ellis Air LLC
45149 152nd Street
Summit, SD 57266-5112
 - d. Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201
 - e. Scott Thompson
Thompson Farm Air
PO BOX 308

Estelline, SD 57234
f. Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

ITEM #6 CONDITIONAL USE PERMIT AND VARIANCE

Applicant/Property Owner: James Thyen, Dan Thyen

Property Description: W1/2 of W1/2 Section 4-T117N-R51 West of the 5th P.M., Codington County, South Dakota. (Waverly Township)

Zoning Designation: A - Agricultural

Action Items – Conditional Use Permit – Rubble Site (3.04.02.29), Borrow Pit (3.04.02.4).

Request: The Thyen's request to continue operating a gravel pit, with piles less than 65' from the right-of-way.

History/Issue(s):

Specifics of Request:

1. The Thyen's request to excavate an area to bury a portion of the demolished materials from Waverly School.
2. The materials will then be buried.
3. The proposed area of excavation is greater than 65' from any right of way and greater than 25 feet from any property line.
4. The Thyen's propose to allow the contractor of the project to use soil excavated from the site as payment for the project.
5. The project is expected to be completed in the fall of 2016.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Zoning Ordinance requires a conditional use permit for "Rubble sites [regulated by the SDDENR]"
 - a. Based upon conversation with DENR – "clean materials" ie brick and stone may be hauled to the site and buried without permit from DENR. Other materials such as siding, fixtures, windows, doors, etc. would require DENR permit.
 - b. Thyen's have not decided if it is intended to take more than brick or stone to the site but would like the option if approved to do so by DENR.
2. Although borrow pits are not necessarily listed as a conditional use in the Agricultural District, the county has historically issued permits for sites "mining" soil to be "sold" for fill to another entity. (South By-Pass/Wess, McNames)
3. Requirements for mining sand and gravel have been applied to borrow pits such as this.
4. No new structures, monitoring wells, or shelterbelts are proposed.
5. No haul road agreement with Leola Township has been provided at this time.
6. Reclamation is scheduled to occur upon completion of hauling materials to this site (by this fall), 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.
7. Applicant has contacted DENR to verify whether a mining permit is necessary. If a mining permit is required by DENR, documentation of said permit shall be required prior to starting mining. If it

is not required, documentation that such permit is not required shall be provided to the zoning officer.

8. 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.
9. The borrow pit is greater than 1,000 feet from the nearest residence.

Staff Recommendation

Conditional Use Permit – **Gravel Pits (Borrow Pit)...** 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 of the Codington County Zoning Ordinance and (Ref: SDCL 11-2-17.3):
Rubble sites, composting sites, waste tire sites, restricted use sites, and other sites governed by the South Dakota Department of Environment and Natural Resources permits for solid waste. (Ref: Zon. Ord. 3.04.02.29).
- C. On or before May 2, 2016, James Thyen applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to authorize a gravel pit on his property described as:
W1/2 of W1/2 Section 4-T117N-R51 West of the 5th P.M., Codington County, South Dakota.
- D. That Rubble Sites... (Ref: Zon. Ord. 3.04.02.29) 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 applicant is authorized by the South Dakota Department of Environment and Natural Resources (SDDENR) to bury brick and concrete on the above referenced property without obtaining a “Construction and Demolition Debris Site” Permit. (Ref: Zon. Ord. 3.04.02.29)
- F. If items other than brick and concrete are proposed to be buried on site, a SDDENR “Construction and Demolition Debris Site Permit is required. (Ref: Zon. Ord. 3.04.02.29)
- G. In order to comply with the requirements of Section 4.05.01.6 and Section 3.04.02.29 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”:
 - 1) General Requirements:
 - a. If a Construction and Demolition Debris Site Permit is not required, the applicant is required to present documentation from SDDENR that such a permit is not required, prior to any loads being hauled to the site.
 - b. If a Construction and Demolition Debris Site Permit is required, the applicant is required to present documentation from SDDENR that such a permit has been issued, prior to any loads being hauled to the site.
 - c. Applicant is required to abide by conditions of any permits issued by SDDENR and any other rules restricting activity on the site.
 - 2) 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.

Conditional Use Permit – **Gravel Pits (Borrow Pit)...** 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 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).
- C. On or before May 2, 2016, James Thyen applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to authorize a gravel pit on his property described as:
 - W1/2 of W1/2 Section 4-T117N-R51 West of the 5th P.M., Codington County, South Dakota.
- D. That Gravel Pits (Borrow 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 mile of 462nd Avenue, south of 165th Street. An agreement regarding the maintenance of said portion of 462nd Avenue 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 borrow pit is located on property greater than 1,000’ from the nearest residence. (Ref: Zon. Ord. 3.04.02.04.b.x)
- L. The borrow pit will be located greater than 65’ from any 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:
 - a. Signing of the Letter of Assurance
 - 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 prior to any excavation on the site.
 - d. If a mining permit is not required from SDDENR, documentation from SDDENR that such a permit is not required shall be submitted to the zoning officer prior to excavation of the site.

- e. 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.
 - f. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
 - g. 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:
- d. The Grantor shall be responsible for any costs associated with extraordinary maintenance and graveling on the portion of 462nd Avenue from the site to 165th Street as the primary haul road, and;
 - e. 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.
 - f. 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: Sioux Rural Water/Leon Mack

Property Description: Replat of Tower "G" Tract in the Southeast Quarter of the Southeast Quarter of Section 32-T117N-R51W, Codington County, South Dakota (Kranzburg Township)

Zoning Designation: A-Agricultural

Request: Create a 1 acre lot required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #2 Plat

Applicant/Property Owner: Don Flisrand

Property Description: Plat of Flisrand Addition in the Northeast Quarter of Section 23-T119N-

R54W, Codington County, South Dakota. (Dexter Township

Zoning Designation: A-Agricultural

Request: Create a 7 acre lot required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #3 Plat

Applicant/Property Owner: Eileen Lindner

Property Description: Plat of Lindner Addition in the Northeast Quarter of Section 28-T117N-R51W, Codington County, South Dakota. (Kranzburg Township)

Zoning Designation: A-Agricultural

Request: Create a 17 acre lot required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #4 Plat

Applicant/Property Owner: Robert Boettcher

Property Description: Plat of Boeder Addition in the Northeast Quarter of Section 20-T118N-R52W, Codington County, South Dakota. (Rauville Township)

Zoning Designation: A-Agricultural

Request: Create 3 lots, one with less than 35 acres two with more than 35 acres.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #5 Staff Report/Open

Town District Rezoning Discussion (Rauville)
County-wide CAFO Setback Map

ISSUE #6 Executive Session