

Codington County Planning Commission/Board of Adjustment Minutes

December 19, 2016

The Codington County Planning Commission/Board of Adjustment, and Codington County Commissioners, met in a special joint session at 9:00 am., Tuesday, December 19, 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, Brenda Hanten, Rodney Klatt, Mel Ries, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer). Chairman Fox presiding. Roll call for the County Commissioners was taken. Commissioners present were: Lee Gabel, Tyler McElhany, Myron Johnson, Elmer Brinkman, and Brenda Hanten; Chairman Brinkman presiding.

Others present were Jim Czech, Cindy Brugman, Elmer Kruger, Elmer Brinkman, Tyler McElhany, Lee Gabel, Patrick McCann, Jerome Haider, and Becky Goens.

Commissioner Brinkman (Chairperson Brinkman) called the meeting of the Codington County Board of Commissioners to order. Motion by Hanten, second by McElhany, to approve the County Commission portion of the agenda; all present voted aye; motion carried.

Planning Commissioner Fox (Chairman Fox) called the meeting of the Codington County Planning Commission to order.

Chairman Fox called the Joint Meeting of the Codington County Board of Commissioners and the Codington County Planning Commission to order.

Chairman Fox noted that he, the State's Attorney, and Chairperson of the County Commissioners had instructed the Zoning Officer to place Ordinance #65 on the agenda for this joint meeting.

Chairman Fox asked for a motion from the Planning Commission to recommend approval, and allow for discussion and public hearing. Motion by O'Neill, second by Klatt, to recommend approval of Ordinance #65, an ordinance amending Ordinance, #15, an ordinance establishing comprehensive zoning regulations for Codington County, 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. A new Official Zoning Map is also included as part of Ordinance #65. Chairman Fox turned to States Attorney Patrick McCann, to briefly describe the court decision that brought the need for the adoption of Ordinance #65. The States Attorney noted a court decision that determined Ordinance #30 was not properly adopted due to an additional public hearing that was not noticed. The States Attorney recommends adoption of Ordinance #65 which will re-adopt all zoning related ordinances beginning with Ordinance #16 through #64. Chairman Fox asked

Zoning Officer Muller some of the things that have changed since Ordinance #15. Muller responded indicating since ordinance #15 there have been 24 ordinances rezoning property and 13 ordinances amending policy, including Ordinance #30 which was a major update of the ordinance, and in 2012 the county updated the Land Use Plan to ensure the land use plan was reflected in the current ordinance. In each case these amendments were adopted to reflect past policies and accommodate land uses not already addressed after the Planning Commission requested staff and/or 1st District to review and present the history and potential ramifications of those rules. Muller read a letter from FEMA regarding the ramifications if the ordinance is not properly adopted (letter attached).

Chairman Fox advised the audience there will be a time limit of five (5) minutes for each speaker. Chairman Fox, on behalf of the Planning Commission, opened the hearing to the public at this time. Chairperson Brinkman, on behalf of the County Commissioners, opened the hearing to public at this time on behalf of the Board of County Commissioners. Elmer Krueger addressed the board stating two points: verification of the meeting being recorded and due to the amount of items covered in the ordinance, suggests each Section be gone through individually. No one else came forward to speak on this issue. Chairman Fox closed the public hearing of the Planning Commission at this time. Chairperson Brinkman closed the public hearing of the County Commissioners at this time on behalf of the County Commissioners.

Chairman Fox asked for individual input from each Planning Commission Board Member on this agenda item:

- Chairman Fox – was concerned about the notification from FEMA. Approximately 25 residents currently have NFIP insurance but this would also apply to disaster funding per the referenced letter. Fox would not want to be responsible for residents' loans being withdrawn. In addition, if there was another flood event, he does not want to be a part of this community's inability to apply for disaster aid. The approval of Ordinance #65 is also a recommendation of Codrington County States Attorney.
- Mark O'Neill – Agrees with Bob Fox. With regard to past ordinances, the Board did diligence on passing those ordinances and sees this as following the States Attorney's advice.
- Charles Rossow – Also agrees with Fox and O'Neill; and would like to follow the recommendations of the States Attorney.
- Rodney Klatt – Does not want to interfere with FEMA and the ability for aid.
- Mel Ries – agrees with all previous statements by board members.

- Myron Johnson – The board has been following the ordinance since 2001 until this glitch was found. He does not want to put anyone in the flood plain in jeopardy of losing their flood insurance or loans. He does want to see the county lose out on government funding and wants decisions made appropriately.
- Brenda Hanten – Is in support of re-adopting this ordinance based on the recommendation of our States Attorney and so the Board can continue business as usual.

Chairperson Brinkman asked for individual input from each Commissioner on this agenda item:

- Lee Gabel – agrees to the need to re-adopt this ordinance. He would like to make clear that at the last hearing there was discussion about possibly amending some ordinance guidelines and approving this ordinance does not affect any future discussions with respect to that hearing, this action allows the Planning Commission the ability to continue to operate. He would like to see a Table of Contents included in the ordinance due to the amount of items within the ordinance.
- Tyler McElhany – Believes following the advice of the States Attorney is the right thing to do. It makes good sense as the content of the ordinance was not in question but rather a result of a procedural issue.
- Elmer Brinkman – Verified a Joint Jurisdictional Ordinance recently adopted will not be affected by the actions of the board today and does not require any additional hearings by this board or the City. It may be a possibility in time but needs further research. Brinkman also confirmed the purpose for this action is due to a procedural error which is being contested in court. It may even be determined by the Supreme Court that Codington County did adopt the original ordinance correctly but a lengthy time frame in waiting for the decision could delay the Planning Commission from issuing permits for county residents. He supports the States Attorney's recommendation.

Chairman Fox confirmed the meeting and public hearing was properly noticed in the paper. Muller confirmed the proper notification. The first reading of the Board of County Commissioners will follow the Planning Commission vote. The second reading and an additional opportunity for testimony is scheduled for Tuesday, December 27 at 9:00 am in the Codington County Court House.

Muller indicated the board may review these ordinances in the following year but for the public's reference. Chairman Fox affirmed that though not the subject of this meeting, it is the intent over the next year to review the ordinance in detail.

Chairman Fox asked for a roll call of the Planning Commission board members. Motion on Ordinance #65 passed unanimously.

Chairperson Elmer Brinkman, asked Zoning Officer, Luke Muller, to give the first reading of Ordinance #65 to comply with County Commissioner's responsibility. The Zoning Officer gave the first reading. Chairperson Brinkman noted the 2nd reading, public hearing, and action on proposed Ordinance #65 will take place at the December 27 meeting of the Codington County Commissioners at 9:00 a.m., in the Codington County Courthouse, Commission Chambers.

Motion by Hanten, second by Rossow, to recommend approval to the Board of County Commissioners the plat of Czech Second Addition in the Northeast Quarter of Section 34-T116N-R52W. This plat redraws lot lines of 3 nonconforming lots of record, required as a condition of variance on November 21, 2016. Motion passed unanimously. The Board of County Commissioners will take action at their December 27 meeting on the aforementioned plat.

Motion by Hanten, second by O'Neill, to adjourn as the Codington County Planning and Zoning Board. Motion passed unanimously.

There being no further business to come before the Board a motion was made by Johnson, second by McElhany, to adjourn at 9:37 a.m., until 9:00 a.m., Tuesday, December 20, 2016; all present voted aye; motion carried.

ATTEST:

Cindy Brugman

Codington County Auditor

Codington County does not discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of service.

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

**DECEMBER 2016
CODINGTON COUNTY
JOINT MEETING OF
PLANNING COMMISSION AND BOARD OF COUNTY COMMISSIONERS
STAFF REPORT**

MONDAY – DECEMBER 19, 2016 – 9:00 a.m.

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 ORDINANCE AMENDMENT

Request:

Re-adopt ALL zoning related ordinances from Ordinance #16 thru Ordinance #64.

Action Items – 1. Joint Public Hearing of Planning Commission and County Commissioners

- 1. Recommendation of Approval for County Commissioners.**
- 2. 1st Reading of Ordinance #65 by County Commissioners**

History/Issue(s):

1. The county became aware of Judge Means' decision which ruled that allowing a second public hearing in front of the County Commissioners (without notice) during the adoption of Ordinance #30 rendered its adoption improper. That decision referenced no objection to the adoption of Ordinance #15.
2. It is expected appeals will be filed regarding this decision.
3. The County has adopted numerous zoning ordinance amendments since Ordinance #15, and cannot confidently attest that a process similar to that of Ordinance #30 was or was not followed for most of them.
4. This ordinance will re-adopt the zoning ordinance(s) as they have been administered and amended for the last 10 years.
5. It is necessary to re-adopt these ordinances to know exactly what rules apply to applicants for building permits.
6. The title of Ordinance #65 is as follows:

ORDINANCE NO. 65

ORDINANCE 65, 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.

ISSUE #2 Plat

Applicant/Property Owner: James Czech

Property Description: Czech Second Addition in the Northeast Quarter of Section 34, Township 116 North, Range 52 West of the 5th P.M., Codington County, South Dakota.

(Sheridan Township)

Zoning Designation: A-Agricultural

Request: Redraw lot lines of 3 nonconforming lots of record, required as a condition of variance on November 21, 2016.

- Action Item –**
- 1. Planning Commission - Recommendation of Plat approval to County Commissioners.**
 - 2. County Commission – Approval of Plat by County Commission subject to authorization of access by Township.**

ISSUE #3 Executive Session



FEMA

R8-Mitigation

December 16, 2016

Mr. Luke Muller
Codington County Zoning Office
1910 West Kemp
Watertown, South Dakota, 57201

Re: Adoption and Enforcement of Flood Damage Prevention Ordinance

Dear Mr. Muller:

For a community to participate in the National Flood Insurance Program (NFIP), the community must adopt and enforce floodplain management regulations and a flood damage prevention ordinance that meet or exceed the minimum NFIP standards and requirements. These standards are intended to prevent loss of life and property, as well as economic and social hardship that result from flooding.

Codington County has been a participating community within the NFIP since February 1, 1986. During this time, over \$300,000 of insurance claims have been paid out to residents within the County. There currently 25 residents that currently have NFIP insurance which provides over \$7,000,000 of coverage.

If Codington County elects not to enact or enforce a flood damage prevention ordinance, the County will be suspended from the NFIP. As such, no

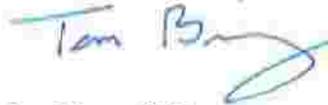
1. No resident will be able to purchase a flood insurance policy.
2. Existing flood insurance policies will not be renewed.
3. No Federal grants or loans for development may be made in identified flood hazard areas under programs administered by Federal agencies such as HUD, EPA, and SBA;
4. No Federal disaster assistance may be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
5. No Federal mortgage insurance or loan guarantees may be provided in identified flood hazard areas. This includes policies written by FHA, VA, and others.
6. Federally insured or regulated lending institutions, such as banks and credit unions, must notify applicants seeking loans for insurable buildings in flood hazard areas that there is a flood hazard and that the property is not eligible for Federal disaster relief.

Mr. Luke Muller
December 16, 2016
Page 2

I strongly encourage that Codington County maintains a flood damage prevention ordinance and enforce the requirements within the ordinance. The ramifications if the County does not are severe. By withdrawing or being suspended from the NFIP, the County will leave their residents at risk increasing the potential of loss of life, property and economic stability if a disaster were to occur.

If you have any questions or concerns regarding the NFIP and management of the floodplain, please do not hesitate to reach out. You may contact me at 303-235-4802.

Sincerely,

A handwritten signature in blue ink that reads "Tom Birney". The signature is fluid and cursive, with a long, sweeping underline.

Tom Birney, CFM
Natural Hazards Specialist
FEMA Region VIII, Mitigation Division

cc:
Mr. Marc Macy – SD State NFIP Coordinator