

## Codington County Planning Commission/Board of Adjustment Minutes

April 16, 2018

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on April 16, 2018 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Myron Johnson, Charles Rossow, Brenda Hanten, Mel Ries, Mark O'Neill, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Dan Kaaz, Patrick Lynch, Teresa Kaaz, Greg Wall, Jim Comes, Joyce Comes, Amber Christenson, Kevin Krakow, Terence Pellman, Jon Hansen, Tyler Wilhelm, Chris Ollson, Rose Steen, Jim Beskow, George Holborn, Mark Comes, Dennis Garvey, Jamie Dolen, Ken Larson, Kerry Jorgenson, Melissa Lynch, Paul Johnson, Bridget Johnson, Diane Redlin, Kelly Owen, Michael Christians, Elmer Kruger, Kathy Tyler, John Johnson, Kristi Mogen, Jeff Bryce, Mark Mauersberger, Ruby Holborn, Charlotte Sturm, Tim Lindgren, Linda Lindgren, Lee Gabel, Patrick Adams, Dan Seurer, Angeline Spartz, Charlie Waterman, Joel Koustrup, Jeff DeVille, and Becky Goens.

Chairman Fox brought the meeting of the Planning Commission to order at 6:00 pm.

Chairman Fox reminded the audience to sign the attendance sheet and indicate if you wish to speak during the meeting. Meeting rules were read by Chairman Fox. There will be a three minute time limit for any member of the public wishing to speak regarding Ordinance #68.

Motion by Ries, second by Klatt, to recommend approval of Ordinance #68, Wind Energy Systems, as presented by Staff. Muller advised the audience about the process that led to the draft of the Wind Energy Systems ordinance which included previous meetings, surveys, research, etc. To the knowledge of staff, this draft contains the most restrictive noise level ordinance in the state. Other portions are consistent with other county ordinances while the setbacks vary. Listed setbacks in the draft were reviewed which have been increased from the current ordinance #65. Those choosing to address the board include:

1. Patrick Lynch – Spoke regarding setbacks of noise/dBA.
2. Teresa Kaaz – Addressed property values and setbacks.
3. Greg Wall – Inquired about clean-up of oil leaks, fire and medical response, is there any structure taller than 500' in the county now, transmission lines over right-of-ways.
4. Amber Christensen – Spoke about the peace, quiet, and views of country living. Would like to see increased setbacks.
5. Rose Steen – Believes wind towers can be a good thing in our county.
6. Dennis Garvey – Concerned about setbacks from non-participating landowners and would like to see it extended.

7. Jamie Dolen – Although he takes a neutral position, he would like to see an increased setback (3 miles) from lakes, specifically Punished Women’s Lake near South Shore.
8. Ken Larson – He was a county commissioner when this was discussed many years ago. He feels any future ordinance decisions should be deferred until after the June 5 county commission elections.
9. Melissa Lynch – Addressed the view in the country, ice shed/throw, human wellbeing and environmental effects.
10. Paul Johnson – Questions about transmission line setbacks and indicates the towers are too big and noisy; and South Dakota will not benefit from the energy produced by them.
11. Bridget Johnson – Has concerns about effects on the environment and decommissioning.
12. Diane Redlin – Does not want to see neighbors fighting and would like to find a fair compromise. Suggested increased setbacks for non-participating landowners. Also has concerns about property values and flicker.
13. Michael Christians – Encourages the board to review wording in Section 9 and to determine if this ordinance is enforceable.
14. Dan Kaaz – Several concerns such as decommissioning, flicker, and noise. Patrick Lynch handed out a document which contained questions posed by many in opposition and reference material.
15. Linda Lindgren – Has concerns about migrating birds, country view, wildlife, and setbacks.
16. Tyler Wilhelm – Indicates NextEra is committed to meeting or exceeding the wind energy ordinance that will be set by this board. Increased setbacks from Town Districts will require a change in their plan but will make it work. If a one mile setback was applied to every single non-participating landowner it would be extremely detrimental to the project.
17. Chris Ollson – Mr. Ollson holds Ph.D. in Environmental Health. He did previously submit a 19-page scientific report with references. The project proposed does provide the protection of public health, safety, and welfare of Codington County residents.
18. George Holborn – Sited Section 3.06.04, line items 1 and 5 in the Industrial District of the ordinance regarding noise and vibration.
19. Kathy Tyler – She reviewed some of the contract language.
20. Kristi Mogen – Has concerns about setbacks, contract language, flicker and its effects on her child with epilepsy. Recommends 2 mile setback with a waiver.

Motion by Ries, second by Hanten, to table the discussion on Ordinance #68 until the end of the meeting. Motion passed unanimously.

Motion by Johnson, second by Klatt, to recess the Planning Commission. Motion passed unanimously.

Fox brought to order the Codington County Board of Adjustment.

Motion by Johnson, second by Hanten, to approve the March 12, 2018 meeting minutes. Fox recommended a slight change on page 4. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve the March 19, 2018 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by O'Neill, to amend the December 18, 2017 meeting minutes to remove the word "not" from the last paragraph on page 2. Motion passed unanimously.

Motion by Hanten, second by Johnson, to approve two variance requests by Joe Waldner. The requests include an existing farmstead exemption and minimum lot width variance on property in N233' and S317' of N550' of W410' of SE1/4, Section 22-T119N-R52W. Muller reviewed Staff Report (attached). No one was present to speak on this issue. Public hearing closed. Payment has not been received. Motion by Klatt, second by Hanten, to table this item until the end of the meeting in case Mr. Waldner shows up.

Motion by Hanten, second by Johnson, to recess the Board of Adjustment. Motion passed unanimously.

Chairman Fox called to order the Planning Commission.

Motion by Ries, second by Rossow, to recommend approval of the Plat of Henrichs Addition in SE1/4 of Section 4-T119N-R51W. The Henrichs seek to plat an approximate 5 acre lot as required by an Existing Farmstead Exemption granted in 2017. Motion passed unanimously.

Motion by Hanten, second by Rossow, with no objection to remove Ordinance #68 discussion from the table. Additional persons wishing to speak regarding Ordinance #68 include:

1. Elmer Kruger – Would like to see the Board table their decision for further research as this is a new venture for Codington County. Would like setbacks increased. Mr. Kruger questioned wording used in Section 5.22.03.9.b Site Restoration regarding permit expiration. He would also like to see the Financial Assurance years increased.
2. Kelly Owen – Would like to see this item tabled and then apply a moratorium on wind energy systems.
3. Angeline Spartz – She feels there are "pros" to wind towers as well. They are a green energy source that does not pollute itself, good source of energy located in the U.S., renewable source, farmers benefitting financially, and tax breaks. Neighbors can also complain about yard lights too bright. Wind towers are not louder than grain dryers. This

is a good thing for our county. Not all views are perfect in the country.

4. Lee Gabel – Would like to see a change in Table 5.22.03.2 setbacks for towers over 500' to read 1,500' plus 4' instead of 2.5'.

No one else requested to speak on this topic. Public hearing closed.

Questions were raised during the public hearing which were addressed. 1) Oil leak clean up responsibilities – requirements will have to be met by DENR and would ultimately fall back onto the source of the oil being leaked, starting with the wind company or whoever is in charge of maintaining the tower. 2) Emergency service response – An Operations and Maintenance Team will be on site at construction/inception and will provide emergency training to local responders. Local responders will be on site only to be sure the fire would not spread to surrounding properties or land. 3) Regarding existing structures over 500' already existing in the county is unknown; however, a radio tower does exist northeast of Waverly that is 485' tall. 4) Ordinance does allow transmission lines over the right of way although encouraged to be placed on private property. 5) Chairman Fox responded to a comment that the board knew about a wind tower project being constructed. The board did not know if a wind tower project would be built and does not know if one will be built in the future. There have been other large operations such as CAFO's, potato plant, homes, etc. in which permits were issued and nothing was built. 6) Height of transmission lines proposed with the Crowned Ridge project are unknown; however could be 120'-140'. Over 40 miles of transmission lines have been sited to date, all of which are proposed on private lands. 6) Wildlife and migrating bird patterns have been researched and would be held accountable in the event of bird strike on a tower. Surveys are conducted so that migration patterns, etc. are not impacted. 7) Link between well-being and natural environment – Per Dr. Ollson, a number of surveys and studies have been conducted on the impact of wind towers and well-being and overall quality of life. These studies indicate there has been no decrease in quality of life. There have been complaints in which follow up is conducted. As a result of valid complaints, towers will be repaired or can be shut down. A timeline of complaint and response time is not addressed in the ordinance. 8) There are no setbacks on transmission lines on any project in the county. 9) Increasing setbacks – some other counties have adopted new ordinances which allow for increased setbacks than what they had previously. Some are more restrictive and some are less but as a whole, they are similar. 10) Complaint timeframe regarding flicker – the wind company would be contacted, verify timeframe and if is consistent with what was anticipated, monitor if flicker is within the range of specified timeframe, and reported to the board for further action. 11) Vestas safety zone is 1,640' which is related to a safety perimeter in the case of fire or collapse. 12) Codrington County's proposed noise setback is the most restrictive in the state. Per Dr. Ollson, this could potentially apply a setback of 1,200-

1,500' from the property line as that is where the noise setback is measured. 13) Wind towers, worldwide, have been operating for over 20 years. 14) Oil quantity in one tower is in the range of 300 gallons and is contained within the gear box. 15) Section 5.22.03.12.a The words "constructive interference" should be removed as the noise level being measured should be specific to noise created by the wind tower turbine and not ambient noise. 16) Regarding 5.22.03.13.a and the permissive language of "may allow for greater amount..." This is permissive on purpose to allow less if they want to rather than have to. 17) Infra sound is a very low frequency that cannot be heard, then becomes low frequency noise which can be heard, and then an audible sound which is the 50dBA. Infra sound does not affect pets. Other sounds such as fans, air conditioners, etc. contribute to infra sound. Infra sound can cause health effects but has to be at high levels such as produced in a lab. 18) Clarification was provided on the description of Town District and all Other Districts as listed in Table 5.22.03.2. 19) Decommissioning shall begin within eight months of expiration and be completed in 18 months. 20) Financial Assurance will be dealt with at the time an application is presented to the Board. 21) The Agricultural District is not as restrictive as the Industrial District. Allowances are different as well. 22) Flicker studies are provided at time of application. 23) The estimated 30 hours of flicker was determined by prior research provided by wind companies. 24) Information was provided to Codington County Zoning Office by the Brookings County Department of Equalization and Emergency Management stating they have not received any complaints regarding health issues related to wind towers and that there is also no evidence of decreased property values related to wind towers in Brookings County. A study was conducted in 2015 on found only one property that decreased in value but was not specifically tied to a wind tower. 25) Board member Hanten would like to see ice shed/throw addressed. Per Dr. Ollson, a report was previously submitted and with the setback proposed, ice throw potential is very low. 26) Bond requirement after ten years helps to replace anything that may have broken down in that time.

Chairman Fox inquired about contract language. Developers attempt to place in appropriate spots and work with the landowners in placement and access. Said contract does state landowner "may" endure flicker, noise, etc. Total agreeance is their goal. It is not NextEra's intent to release contracts if the landowner changes their mind as it affects the entire wind tower plan. There are special exceptions that do allow for contract release. An attorney representing NextEra Energy states there is a state statute that a landowner has to be advised by a wind developer to not sign a contract presented to them for at least ten (10) days. This allows the landowner time to review the contract and seek legal assistance if they so choose.

Board member Rossow asked for additional information on flicker. Per Dr. Ollson, flicker is dependent on many things such as direction of blades, direction of winds, time of day, angle

of sun, and location of tower. The estimated 30 hours a year equals to less than one-half percent of daylight hours in the year. When it does occur, it generally will only occur for a few minutes at a time.

Board member Hanten inquired about wind tower operations and the percent of time they will be running. Wilhelm indicate hopefully as much as possible but a percentage is not available. Instances where the blades will not run may include high wind speeds and low wind speed.

Muller inquired about mechanisms available to reduce ice buildup on the blades to prevent ice shed/throw. Some manufacturers do offer a heating package on the blade and some don't. The intention of the larger setback proposed and if the turbines do accumulate ice, typically there are low wind speeds and the turbines can shut themselves down. The turbines are monitored 24 hours a day, 7 days a week from a remote, off site location. If monitoring shows vibration on the turbines, they are shut down. They will not be turned back on until the ice is off the blades. Dr. Ollson noted that the setbacks included in ordinance from right-of-way, property lines, and structures meet or exceed recommendations of GE manufacturers information.

Discussion was held regarding specifically increasing the setbacks from South Shore and Punished Woman's Lake. No board members suggested increased setbacks.

Motion by Johnson, second by Ries, to amend Section 12.a. Noise level to remove the wording "including constructive interference" and to include the word "level" in place of effects. The purpose of this removal is so the noise level measured is solely generated by the wind tower system and does not include other environmental noise. Motion on the amendment passed unanimously.

Muller addressed the policy of the board as a result of a past legal case. The policy of the board for any public hearing is if there is any written documentation to be distributed must be submitted to the Zoning Office the Friday before the hearing/meeting if it is intended for the Board to review them prior to making a decision. This policy is also included in public notices. The packet of information presented at this meeting by Mr. Lynch was included in the record and will be forwarded to the Board of County Commissioners accordingly.

Motion on Ordinance #68, Wind Energy Systems as presented with the amendment, passed unanimously. The public hearing for this item will occur during the second reading by the Board of County Commissioners. It is potentially being scheduled for May 8, 2018. The first reading will be May 1 although public comment is not allowed at that time.

Motion by Johnson, second by Rossow, to adjourn Planning Commission. Motion passed unanimously.

Chairman Fox re-convened the Board of Adjustment.

Motion by Johnson, second by Ries, to remove Joe Waldner variance applications from the table. Motion passed unanimously. Waldner did submit a building permit fee in the amount of \$254.00 that can be applied to the variance application fees of \$195.01. It was the decision of the board to accept this check as payment for the variance application fees for purposes of avoiding another meeting and public notice which would incur additional fees for the applicant. Motion passed unanimously.

Motion to adjourn by Hanten, second by O'Neill. Motion passed unanimously. Meeting adjourned at 10:00 p.m.

Respectfully Submitted,

Becky Goens, Secretary

**APRIL 2018  
CODINGTON COUNTY PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**MONDAY – APRIL 16, 2018 – 6:00 p.m.**

**ISSUE #1 Ordinance Amendment**

**Initiated by Planning Commission**

**Action Item – Recommendation of approval of Ordinance Amending the Zoning Ordinance:**

**Summary:** This is the version of the Wind Energy Systems Regulations, based upon the determination of the Planning Commission during a work sessions held in February and March relating to this matter.

**Ordinance #68**

AN ORDINANCE ENTITLED, AN ORDINANCE AMENDING ARTICLE II DEFINITIONS AND CHAPTER 5.22 (WIND ENERGY SYSTEMS) OF ARTICLE V GENERAL REQUIREMENTS OF 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 Owners: Michael and Linda Henrichs**

**Property Description:** Plat of Henrichs Addition in the SE1/4 of Section 4-T119N-R51W, in the County of Codington, South Dakota. (Leola Township)

**Zoning Designation:** A-Agricultural District

**Request:** The Henrichs seek to plat a ~5 acre lot as required by Existing Farmstead Exemption granted in 2017.

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 (2) VARIANCES**

**Applicant/Owner: Joe Waldner**

**Property Description:** N233' and S317' of N550' of W410' of SE1/4 in Section 22-T119N-R52W, Codington County, South Dakota. (Germantown Township)

**Action Items – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b),**



**minimum lot width (3.04.03.2).**

**Zoning Designation:** Agricultural

**Request:** The applicant seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), to retain building rights on property with an existing farmstead.

**History/Issue(s):**

1. Mr. Waldner seeks to retain building rights at the site of the existing farmstead located on the above property.
2. The property was used as a base for farming operations prior to 1976 and is still lived in.
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 **(Variance) –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.