

Codington County Planning Commission/Board of Adjustment Minutes

November 18, 2019

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on November 18, 2019 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Mark O'Neill, Rodney Klatt, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Amber Christenson, Linda Lindgren, Tyler Wilhelm, Mark Lennox, Kristi Mogen, Brock Heyduk, Anita Raml, Al Robish, Jeff DeVille, Miles Schumacher, Zach Peterson, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 9:00 am.

Motion by Johnson, second by Hanten, to approve the October 21, 2019 meeting minutes. Motion passed unanimously.

The order of the agenda will be changed to allow the variance requests by Brock Heyduk to be acted upon as the first item. Motion to approve by Hanten, second by Johnson. Motion passed unanimously.

Motion by Klatt, second by Hanten, to recess as the Planning Commission and convene as Board of Adjustment. Motion passed unanimously.

Motion by Hanten, second by Klatt, to approve two variance requests by Brock Heyduk for an existing farmstead exemption and minimum lot width. Property is owned by Richard and Linda Heyduk and located in N1352' E1406' including OL A in SE1/4, Section 30-T118N-R51W, Codington County, South Dakota, to be known upon platting as Brock Heyduk Addition located in SE1/4, Section 30-T118N-R51W. Muller reviewed Staff Report (attached). No one was presented to speak on this issue. Public hearing closed. Chairman Fox read the Findings of Fact. There were no objections or questions. Motion passed unanimously.

Mark O'Neill will act as Chair for this item; Fox will remain as a voting member. Attorney Zach Peterson acted as parliamentarian for the Appeal of the Decision of the Zoning Officer. Motion by Hanten, second by Johnson, to allow the Board of Adjustment to hear the Appeal of Decision of the Zoning Officer brought forth by appellant, Amber Christenson. Mr. Peterson introduced the appeal. On September 30, 2019, attorney Jared Gass on behalf of Amber Christenson submitted a letter to the Codington County Zoning Officer requesting issuance of a "Stop Order" as to Conditional Use Permit CU018-007 that was issued to Crowned Ridge LLC and Crowned Ridge II, LLC. On October 8, 2019, the Zoning Officer refusing to issue a "Stop Order." On October 29, 2019, a notice of appeal was filed with the Zoning Officer indicating that

his decision would be challenged through this administrative appeal. Notice of public hearing was published which brings it to today's hearing. A super-majority vote is required to overturn the request. Vice Chairman O'Neill opened the discussion for Amber Christenson to speak regarding her appeal. Ms. Christenson submitted 13 exhibits to the zoning office on Friday, November 15, 2019. She also distributed copies of those exhibits to the board members and reviewed the highlighted areas. In summary, she described that while the application for Conditional Use Permit was filed and issued to both Crowned Ridge I and Crowned Ridge II for a Wind Energy System; only Crowned Ridge I has received its applicable PUC permits over a portion of the project area. Therefore a stop order should be ordered until PUC permits for all activities over the entire project area in order to start construction. Miles Schumacher, attorney for Crowned Ridge Wind, gave testimony regarding requirements of permitting and feels his client has met all requirements set forth by the Board of Adjustment. Public testimony closed. Vice Chair O'Neill inquired whether construction was occurring outside the area permitted by PUC. Motion failed 0-5.

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

Motion by Klatt, second by O'Neill, to approve the Plat of Brock Heyduk Addition located in SE1/4 of Section 30-T118N-R51W. Motion passed unanimously.

Amber Christenson spoke during the Open Session reminding the Board of the Crowned Ridge infractions that she pointed out at last month's meeting were reviewed by Staff and additional fees have been collected.

Motion by Hanten, second by Klatt to enter into Executive Session. Motion by O'Neill, second by Klatt to exit Executive Session.

Motion to adjourn by Hanten, second by Klatt. Motion passed unanimously. Meeting adjourned at 9:56 am.

Respectfully Submitted,

Becky Goens, Secretary

**NOVEMBER 2019  
CODINGTON COUNTY PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 APPEAL OF DECISION OF THE ZONING OFFICER**

**Appellant: Amber Christensen by Jared Gass**

***Action Item – Appeal – Appeal of decision of the zoning officer***

- “Yes” vote overturns the decision of the zoning officer (issues “Stop Order”)
- “No” vote affirms the decision of the zoning officer (denies “Stop Order”)

**Request:** Reverse the Decision of the Zoning Officer to deny the issuance of a “Stop Order” upon all construction being conducted in accordance with the Conditional Use Permit issued by the Board of Adjustment on July 16, 2018 to Crowned Ridge LLC and Crowned Ridge II LLC

**Items included in the record:**

1. Findings of Fact: Conditional Use Permit granted July 16, 2018 to Crowned Ridge LLC and Crowned Ridge II LLC.
2. SDPUC Final Decision and Order Granting Permit to Construct Facility; Notice of Entry – EL19-003.
3. SDPUC Order Granting Joint Motion for Approval of Settlement Stipulation; Order Approving Settlement Stipulation and Order Granting Permit to Construct Transmission Facility; Notice of Entry – EL 17-050.
4. SDPUC Order Granting Joint Motion for Approval of Settlement Stipulation; Order Granting Permit to Construct a Transmission Line and Associated Facilities; Notice of Entry – EL18-019.
5. September 30, 2019 letter by Jared Gass on behalf of Amber Christensen requesting “Stop Order” upon all construction being conducted in accordance with the Conditional Use Permit issued by the Board of Adjustment on July 16, 2018 to Crowned Ridge LLC and Crowned Ridge II LLC be issued by the zoning officer.
6. October 8, 2019 letter by Zoning Officer refusing to issue “Stop Order.”
7. Notice of Appeal by Jared Gass on behalf of Amber Christensen.

**ITEM #2 (2) VARIANCES**

**Applicant: Brock Heyduk / Owner: Richard and Linda Heyduk**

**Property Description:** a five acre parcel in the N1352' S2153' E1406' INCLUDING OL A to be known upon platting as Brock Heyduk Addition in the Southeast Quarter of Section 30-T118N-R51W (Waverly Township)

**Action Items – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2). (Use one motion)**

- “Yes” vote (unless amended) approves the variance based upon findings determined by Board and subject to conditions recommended at the meeting by staff.
- “No” vote denies the variance

**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. The applicant seeks to split a portion of the farmstead from the rest of the 43-acre parcel as a residence on the farm.
2. Further, the existing property and proposed parcel contains a nonconforming lot of record (platted prior to the adoption of zoning in the county). However the existing house is not located upon the nonconforming lot of record.
3. The property was used as a base for farming operations prior to 1976 and has remained lived in.
4. 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.
5. Based upon site visit and review of department of equalization records it appears this site meets the definition of an existing farmstead.
6. 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 anecdotal information, records and site-visit has determined that this parcel is under contiguous ownership of an existing farmstead/residential site prior to November 26, 1976. If approved it should be done so on the condition that the applicant plat a lot of at least five (5) acres in accordance with the Codington County Subdivision Ordinance.

**CODINGTON COUNTY PLANNING COMMISSION**

**ISSUE #1 PLAT**

**Applicant:** Brock Heyduk / **Owner:** Richard and Linda Heyduk

**Property Description:** a five acre parcel in the N1352' S2153' E1406' INCLUDING OL A to be known upon platting as Brock Heyduk Addition in the Southeast Quarter of Section 30-T118N-R51W (Waverly Township)

**Zoning Designation:** A-Agricultural District

- Request:** Plat a minimum 5 acre lot as condition of receiving existing farmstead exemption.
- o "Yes" vote (unless amended) recommends approval of the plat by the County Commissioners subject to conditions recommended at the meeting by staff.
  - o "No" vote recommends denial of the plat by the County Commissioners

**ISSUE #2 OPEN/ADMINISTRATIVE REPORT**

**ISSUE #3 EXECUTIVE SESSION**