

Codington County Planning Commission/Board of Adjustment Minutes

December 16, 2019

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on December 16, 2019 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Charles Rossow, Mel Ries, 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, Terrence Pellman, Al Robish, Tom Nealon, Miles Schumacher, Tyler Wilhelm, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 9:08 am.

Motion by Hanten, second by Ries, to approve the November 18, 2019 meeting minutes. Motion passed unanimously.

Amber Christenson would like to speak in the Open portion of the meeting.

Motion by Hanten to approve the agenda, second by Rossow. Motion passed unanimously.

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

Attorney Zach Peterson acted as parliamentarian for the Appeal of the Decision of the Zoning Officer. Chairman Fox advised Ms. Christenson that her appeals will be acted upon individually.

Motion by Hanten, second by Klatt, to approve the first Appeal of Decision of the Zoning Officer brought forth by appellant, Amber Christenson. Fox introduced the appeal of the decision of the zoning officer that changing the Mw of some towers does not affect the status of the Conditional Use Permit (CUP) issued to Crowned Ridge Wind, LLC and Crowned Ridge Wind II, LLC (or ability to attain building permits.) Christenson reviewed some of the documents that were submitted with her Appeal Application. Attorney Miles Schumacher spoke on behalf of Crowned Ridge Wind, LLC and Crowned Ridge Wind II, LLC. Schumacher commented regarding the duties of the zoning officer per the language of the Codington County Zoning Ordinance as well as the height and Mw suggested during the application process and that there is no violation that would result in a stop order. Board member O'Neill asked Crowned Ridge Senior Project Manager, Tyler Wilhelm, if the tower height was changed from the CUP request on the 2.3 Mw towers. Wilhelm indicated the height did not increase from the tallest height requested of 485'. The PUC did not make changes to the application but Wilhelm indicated three different turbine technologies were listed in the PUC application. Motion failed

unanimously.

Motion by Johnson, second by Klatt, to approve the second Appeal of Decision of the Zoning Officer that the ability of Jay Haley to practice engineering in the State of South Dakota does not affect the status of the CUP issued to Crowned Ridge Wind, LLC and Crowned Ridge Wind II, LLC. Christenson indicates Mr. Haley is not a licensed engineer and was illegal in his representation. Schumacher indicates the time has passed to appeal the issuance of the CUP as that is Christenson's ultimate goal with this appeal request. Mr. Haley's entire career was an engineer, he was nearing retirement and did not pay the annual fee to continue his designation which remained listed on his documents. His engineering qualifications were not even needed in the work that he provided for this project. Motion failed unanimously.

Appeal #3 is the Appeal of decision of the zoning officer that construction prior to the issuance of building permit for an Operation and Maintenance Building was prior to construction upon the structure. Since this appeal was submitted, Zoning Officer Muller did find documentation indicating construction did begin prior to issuance of the building permit. Applicable administrative fees have since been paid by the applicant. Ms. Christenson and the Board of Adjustment were in agreement that this appeal is no longer an issue and no action will be taken.

Discussion was held regarding the appeal process and review of the newly created Appeal Application. Applicant's filing an appeal will be allowed 15 minutes to present their application. Three (3) minutes will be allowed for rebuttals.

Motion to adjourn by Hanten, second by Ries. Motion passed unanimously. Meeting adjourned at 10:27 am.

Respectfully Submitted,

Becky Goens, Secretary

DECEMBER 2019
CODINGTON COUNTY
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT

ITEM #1 APPEALS OF DECISION OF THE ZONING OFFICER

Appellant: Amber Christenson

Special Note from Chairman *Though filed in the same application, each appeal (see below) will be acted upon individually rather than lumped together in a single motion.*

Though subject to change, the chair plans the following procedure to be followed. The appellant will be given up to 10 minutes to describe each individual appeal/action below. Crowned Ridge LLC will be given up to 10 minutes to address each individual appeal/action below. The appellant will then be allowed an amount of time to be determined by the chair to address questions/points raised by Crowned Ridge LLC for each individual appeal/action below. The Board may ask questions of the appellant at this time. The Board will vote on the appeal at hand, then repeat the process for the next appeal/action.

Action Item – Appeal #1 – Appeal of decision of the zoning officer that changing the Mw of some towers does not affect the status of the Conditional Use Permit issued to Crowned Ridge Wind, LLC and Crowned Ridge Wind II, LLC [or ability to attain building permits.]

- “Yes” vote overturns the decision of the zoning officer (the board determines action necessary to comply with the zoning ordinance and conditional use permit.)
- “No” vote affirms the decision of the zoning officer (no further documentation or permits are necessary for the towers referenced.)

Appeal #2 – Appeal of decision of the zoning officer that the ability of Jay Healy to practice engineering in the State of South Dakota does not affect the status of the Conditional Use Permit issued to Crowned Ridge Wind, LLC and Crowned Ridge Wind II, LLC.

- “Yes” vote overturns the decision of the zoning officer (the board determines action necessary to comply with the zoning ordinance and conditional use permit.)
- “No” vote affirms the decision of the zoning officer (Conditional Use Permit remains unaffected.)

Appeal #3 – Appeal of decision of the zoning officer that construction prior to the issuance of building permit for an “Operation and Maintenance Building” was prior to construction upon the structure. [see zoning officer update below]

- **Zoning Officer Update** - December 9, 2019 the zoning officer determined building permit for the “Operation and Maintenance Building” had been issued on September 11, 2019 instead of *August 30, 2019* (as was referenced in the letter to Amber Christensen dated November 20, 2019.)
- Zoning officer sent a letter to Crowned Ridge and its contractor informing them that since construction was clearly visible on September 2, 2019 an administrative fee of \$1,154 is

required to be paid on or before December 16, 2019 due to construction prior to being granted building permit.

- No other remedies are available to the Board in reference to this appeal. (Action is moot.)
 - “Yes” vote overturns the decision of the zoning officer (requires applicant to pay administrative fee of \$1,154 for starting construction prior to permit.)
 - “No” vote affirms the decision of the zoning officer (Building Permit has been issued and the matter is resolved.)

Items included in the record:

1. Minutes from October 21, 2019 Board of Adjustment Meeting.
2. Letter from Zoning Officer to Appellant dated November 20, 2019 (includes determination(s) of the zoning officer).
3. Application for appeal and supporting documents by Appellant.
4. Letter from Zoning Officer to Appellant dated December 9, 2019 notifying the appellant of an error in reviewing her initial complaint and that Crowned Ridge/Blattner Energy has been notified that an administrative fee **is required** due to evidence of construction prior to September 11, 2019. (Permit issuance date was previously determined to be August 30, 2019.)

ISSUE #2 OPEN/ADMINISTRATIVE REPORT

ISSUE #3 EXECUTIVE SESSION