

Codington County Planning Commission/Board of Adjustment Minutes

August 17, 2020

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on August 17, 2020 via teleconference. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Mel Ries, 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 Patrick Lynch, Craig Flemming, Kristi Kohl, Jeff DeVille, Lee Gabel, Vent Wallace, Alex Kahnke, Michael Johnson, Nancy Johnson, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 7:37 pm.

Motion by Hanten, second by Klatt, to approve the July 20, 2020 meeting minutes. Motion passed unanimously.

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

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

Motion by Johnson, second by Hanten, to approve two variance requests by Patrick and Melissa Lynch for a minimum lot width and an existing farmstead exemption on property in N1960' of NE1/4 in Section 13-T118N-R52W. Muller reviewed Staff Report (attached). Public hearing closed. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Johnson, second by Klatt, to approve two variance requests by Michael Barrett for a minimum lot width and an existing farmstead exemption on property in NW1/4, Section 25-T118N-R53W to be known upon platting as Barrett Addition in NW1/4, Section 25-T118N-R53W. Muller reviewed Staff Report (attached). Public hearing closed. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve Craig Flemming's variance request for Erection of more than one principal structure on a lot. Property is in Schwinger Addition in SE1/4, Section 7-T119N-R52W. Flemming would like to construct a new home while keeping the existing home on site until construction is complete. If approved, applicant will be required to sign a Letter of Assurance agreeing to remove the existing residential structure from this property within one year of taking occupancy of the new home. Kristi Kohl indicates she and Flemming will be purchasing the adjoining pasture for a combined total of approximately 100 acres. The existing mobile home has been sold and will be removed quickly upon completion of the new home. Public hearing closed. Chairman Fox read the Findings of Fact. There were no

questions or objections. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve a Conditional Use Permit required by Fisher Sand and Gravel Company to mine gravel on property owned by Michael Johnson and located in SE1/4, Section 9-T119N-R52W. Muller reviewed Staff Report (attached). Product will be used for the Dakota Range Wind project. If approved, the applicant will be required to sign a Letter of Assurance agreeing to the following conditions:

1) Effective Date:

- a. Signing of the Letter of Assurance

2) General Requirements:

- a. There will be no storage of junk on site.
- b. 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 the excavation of material from this property.
- c. 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.
- d. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- e. Not more than 10 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
- f. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.

3) Haul Road Agreements:

- a. Applicant shall provide a haul road agreement for the use of 457th Avenue for hauling materials prior to excavation of materials. If no agreement is required by the Germantown Township Board, documentation of such decision is required.
- b. If it is found trucks using this mine are utilizing any of these roadways prior to the above agreements being filed with the zoning office, all mining activities will be ordered to Cease and Desist until such agreements are filed.
- c. Grantor will be required to control dust generated from operation of the mine and traffic from this mine on the above haul roads.
- d. If complaints are received and substantiated by the zoning office regarding dust generated by operation of the mine and traffic from this mine on the

above haul roads the Grantor will be notified and shall implement necessary actions to control dust immediately.

- e. If necessary actions are not take within twenty-four (24) hours of notification of the Grantor by the Zoning Officer, all mining activities will be required to cease and desist until such measures have been taken.

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.

With regard to the Haul Road Agreement, there has been discussion about this being included in the wind farm's Haul Road Agreement. The applicant would need to provide documentation if this is the case. Board member Fox confirmed with Mr. Wallace that the 65' setback refers to stacking of piles, etc. as well as mining. Nancy Johnson spoke to the integrity of Fisher Sand and Gravel Company. Public hearing closed. Hours of operation are intended to be Monday through Friday, 5:00 am to 7:00 pm, approximately a 60 hour week, 5 days a week. They are expected to be there for 4-6 weeks. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

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

Commissioner Brenda Hanten brought the meeting of the Codington County Commissioners to order. Motion by Johnson, second by Gabel, to approve the agenda. Motion passed unanimously.

Chairman Fox presented the Plat of Barrett Addition in NW1/4 of Section 25-T118N-R53W, Codington County, South Dakota. Motion by O'Neill, second by Klatt, to recommend approve to the Board of County Commissioners. Public hearing closed. Motion passed unanimously.

Motion by Commissioner Gabel to postpone action on this item until August 31 when a full Board of County Commissioners can vote. Second by Johnson. Motion to postpone this item passed unanimously.

Motion by Johnson to recommend approval of Ordinance #71 to the Board of County Commissioners, second by O'Neill. Muller presented Ordinance 71, Solar Energy Systems. Chairman Fox opened the Joint (County Commission and Planning commission) public hearing. Seeing no members of the public to address the Board, he closed the public hearing. First reading will be Tuesday, August 25 at the Board of County Commissioners meeting. Muller reviewed Ordinance (attached). Muller is unaware as to what type of noise, if any, the solar

energy panels would produce. Motion to recommend approval passed unanimously.

Motion by Commission Johnson, second by Commissioner Gabel, to adjourn the Board of County Commissioners meeting. Motion passed unanimously.

Motion by Klatt, second by Ries, to reconvene jointly the Board of Adjustment and Planning Commission. Motion passed unanimously.

Motion to adjourn by Hanten, second by Ries. Motion passed unanimously. Meeting adjourned at 9:11 pm.

Respectfully Submitted,

Becky Goens, Secretary

**AUGUST 2020
CODINGTON COUNTY
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT**

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 (2) VARIANCES

Applicant/Owner: Melissa and Patrick Lynch

Property Description: N1960' of E1780' of NE1/4 in Section 13-T118N-R52W, Codington County, South Dakota. (Rauville Township)

Action Items – Variances – Existing farmstead exemption/minimum lot area (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. and Mrs. Lynch purchased this 80 acre parcel property in 2015. It was initially subdivided from the quarter section in 2001.
2. The applicant seeks to retain building rights at the site of the existing farmstead located on the above property. This request is being made for financing purposes.
3. The property was used as a base for farming operations prior to October 1976.
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. The parcel contains an existing farmstead as defined by the Zoning Ordinance.
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/Board of Adjustment 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 October 26, 1976. Approval of this variance will be consistent with the intent of the Zoning Ordinance and Comprehensive Land Use Plan, provided a plat, consistent with the Codington County Subdivision Ordinance with a minimum of five (5) acres is submitted.

ITEM #2 (2) VARIANCES

Applicant/Owner: Michael and Christina Barrett

Property Description: NW1/4 of Section 25-T118N-R53W to be known upon platting as Barrett Addition in NW1/4 of Section 25-T118N-R53W, Codington County, South Dakota. (Rauville Township)

Action Items – Variances – Existing farmstead exemption/minimum lot area (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. The Barrett's own and farm this property, but have removed the agricultural structures from this site.
2. The applicant seeks to retain building rights at the specified five acre site of the existing farmstead located on the above property. This request is being made to facilitate the transfer of the house to the next generation of the family.
3. The property was used as a base for farming operations prior to October 1976.
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. The parcel contains an existing farmstead as defined by the Zoning Ordinance.
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/Board of Adjustment 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 October 26, 1976. Approval of this variance will be consistent with the intent of the Zoning Ordinance and Comprehensive Land Use Plan, provided a plat, consistent with the Codington County Subdivision Ordinance with a minimum of five (5) acres is submitted.

ITEM #3 VARIANCE

Applicant: Craig Flemming

Property Description Schwinger Addition in SE1/4 of Section 7-T119N-R52W, Codington County, South Dakota. (Dexter Township)

Action Item – Variance – more than one principal structure per lot (5.20)

Zoning Designation: A – Agricultural District

Request: Mr. Flemming seeks to construct a new home while keeping their existing home on site until construction is complete.

History/Issue(s):

1. Mr. Flemming proposes to remove the existing manufactured home immediately after constructing a new house.
2. Regarding the second home, the zoning ordinance specifies that only one principal structure (in this case, a house) can be located on a single lot.
3. In the past, the Board has granted variance to temporarily allow more than one residence on a site provided the applicant agree to remove the existing house. Historically, one of the two houses has been required to be removed within one year of occupying the new residence.
4. **Staff recommendation – Variance to temporarily allow two principal structures on the same lot-** Staff recommends approval of the variance for 2 principal structures subject to the

applicant signing a letter of assurance agreeing to remove the existing residential structure from the above-described parcel within one year of taking occupancy of the new home.

ITEM #1 CONDITIONAL USE PERMIT

Applicant: Fisher Sand and Gravel Company / Property Owner: Michael Johnson

Property Description: SE1/4 of Section 9-T119N-R52 West of the 5th P.M., Codington County, South Dakota. (Germantown Township)

Zoning Designation: A – Agricultural

Request: Fisher Sand and Gravel requests to operate a gravel pit with rock crusher.

History/Issue(s):

Specifics of Request:

1. The applicant has an agreement with the Johnsons to mine gravel on the above described parcel.
2. The current proposal is to mine approximately 10 acres, but to leave the permit active if they intend to mine more of the property in the future.
3. All mining activities are proposed greater than 65' from the right-of-way and greater than 25' from any interior property line unless shared with the owner of this parcel.
4. The property accesses a gravel Germantown Township road (457th Ave). Traffic will travel south to/from SD HWY 20 approximately 1.5 miles.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Comprehensive Land Use Plan lists considerations for Gravel Pits on page 63.
2. No new structures, monitoring wells, or shelterbelts are proposed.
3. The applicant did not provide haul road agreements for this site with Germantown Township. In previous instances agreements for construction of wind towers have included maintenance during mining as well. Applicant will be required to demonstrate haul road agreement with the township, or documentation by the road authority that such agreement has been made prior to commencement of mining.
4. Reclamation for this project is scheduled to occur upon completion of mining activities, at which time the topsoil will be returned with the intent to use the property for agricultural use/grassland. The topsoil will at that time be seeded with crops or grass.
5. The applicant will have a bond with the state for reclamation of the site. Staff has become aware that counties no longer have the authority to require bonds for reclamation of gravel pits (state law).
6. The nearest residence is over 1,800 feet away (1,000 feet required.)
7. All mining is proposed to be greater than 65' from any right of way.
8. Land Use plan states that: "Drainage patterns... require a case by case consideration of stormwater/pollution control measures." AND "Appropriate extraction setbacks will be imposed".
 - a. A drainageway does run through the area to be drained, however it is not designated as a "blue line." The intent is not to alter, impede, or divert water around the property.
9. With recent permits the Board has specified an amount of acres which may remain unclaimed until completion of the mining. This mine proposes to disturb only 10 acres.

Staff Summary and Recommendation:

Approval of this permit constitutes acknowledgement by the board that the applicant has provided adequate information along with information available to the Board through the zoning office, has provided required information for a permit application and that the applicant proposes to meet specified requirements of the ordinance.

Conditional Use Permit – **Gravel Pits...** The Board may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

2) Effective Date:

- a. Signing of the Letter of Assurance

5) General Requirements:

- a. There will be no storage of junk on site.
- b. 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 the excavation of material from this property.
- c. 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.
- d. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- e. Not more than 10 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
- f. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.

6) Haul Road Agreements:

- f. Applicant shall provide a haul road agreement for the use of 457th Avenue for hauling materials prior to excavation of materials. If no agreement is required by the Germantown Township Board, documentation of such decision is required.
- g. If it is found trucks using this mine are utilizing any of these roadways prior to the above agreements being filed with the zoning office, all mining activities will be ordered to Cease and Desist until such agreements are filed.
- h. Grantor will be required to control dust generated from operation of the mine and traffic from this mine on the above haul roads.
- i. If complaints are received and substantiated by the zoning office regarding dust generated by operation of the mine and traffic from this mine on the above haul roads the Grantor will be notified and shall implement necessary actions to control dust immediately.
- j. If necessary actions are not take within twenty-four (24) hours of notification of the Grantor by the Zoning Officer, all mining activities will be required to cease and desist until such measures have been taken.

7) 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 JOINT COUNTY COMMISSION AND PLANNING COMMISSION

ITEM #1 PLAT

Applicant/Owner: Michael Barrett

Property Description: a portion of the NW1/4 of Section 25-T118N-R53W to be known upon platting as *Barrett Addition in NW1/4 of Section 25-T118N-R53W, Codington County, South Dakota.* (Rauville Township)

Action Items – Plat approval.

Zoning Designation: Agricultural

Request: Applicants seek to plat a 5 acre parcel required as a condition of granting existing farmstead exemption.

ISSUE #2 Ordinance Amendment

Initiated by Planning Commission

Action Item – Public Hearing; Recommendation of approval of Ordinance Amending the

Zoning Ordinance; 1st Reading:

Summary: The Planning Commission met in work sessions over the past several months to consider allowing solar energy systems in the ag district with specific regulations.

Ordinance #71

AN ORDINANCE ENTITLED, AN ORDINANCE AMENDING ARTICLE II DEFINITIONS, CHAPTER 3.04 AGRICULTURAL DISTRICT OF ARTICLE III DISTRICT REGULATIONS, AND ADDING CHAPTER 5.33 SOLAR ENERGY SYSTEMS (SES) OF ARTICLE V GENERAL PROVISIONS, 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 #3 OPEN/ADMINISTRATIVE REPORT

ISSUE #4 EXECUTIVE SESSION (if Necessary)

Amend That Article II Definitions to include the following new definitions:

Array/Solar Array: Is the collection of two or more connected solar modules or panels.

Decommissioning: To return the property to its pre-installation state or better as approved in the decommissioning plan.

Ground-Mount: A solar energy system mounted on a rack or pole that rests or is attached to the ground.

Photovoltaic System: An active solar energy system that converts solar energy directly into electricity.

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System (SES): A commercial facility that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST), or other conversion technology, for the primary purpose of wholesale sales of generated electricity. A SES is the principal land use for the parcel on which it is located. A SES site may include an array of devices, or structural design features, the purpose of which is to provide for generation of electricity, the collection, storage and distribution of solar energy.

Amend Article III District Regulations to add the following use:

Section 3.04.02 Conditional Use [Agricultural District]

42. Solar Energy Systems (SES). (See Chapter 5.33)

Amend Article V Supplemental Regulations to include the following new Chapter:

Chapter 5.33. Solar Energy Systems (SES)

Section 5.33.01. Purpose.

The purpose of this Section is to facilitate the construction, installation, operation and decommission of Solar Energy Systems in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands and other sensitive lands. This ordinance will not impede personal or business solar collector development for the primary use of self-sustaining energy. This ordinance is not intended to replace safety, health or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not nullify any provisions of local, state or federal law.

Section 5.33.02. Private Solar Energy System (PSES).

PSES shall be permitted as an accessory use and shall meet the requirements of the zoning district. A PSES shall be for a single use commercial or residential structure and used primarily for on-site consumption of power.

Section 5.33.03. Permitting.

1. No SES shall be erected, built, or constructed without a conditional use permit having been approved by the Board of Adjustment.
2. Application(s) for SES Conditional Use Permits shall be accompanied by:
 - a. Site plan as required by 5.33.05 (4)
 - b. Boundaries of the site proposed for SES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - c. Map of easements for SES, if applicable.
 - d. Affidavit attesting that necessary easement agreements with landowners have been obtained, if applicable.
 - e. Aviation/Airport protection if required. See 5.33.05 (6)
 - f. The fencing and gates required to be around the exterior perimeter. See 5.33.05 (8)
 - g. The storm water pollution and prevention plan. See 5.33.04 (1)
 - h. The decommissioning plan. See 5.33.06
 - i. Weed/Grass control plan 1 See 5.33.05 (12)
 - j. Haul roads identified. See 5.33.05 (13)
 - k. Project schedule
 - l. Any other factors relevant to the proposed system.
3. All copies of the plan must be submitted, signed and sealed by an engineer.
4. The Board of Adjustment may require an independent engineer, chosen by the County, to review plans at the petitioner's expense. Findings by the independent engineering firm are to be submitted to the Board of Adjustment.

Section 5.33.04. Compliance.

1. All SES are subject to the State of South Dakota Storm Water Management regulations, erosion and sediment control provisions if adopted and National Pollutant Discharge Elimination System (NPDES) permit requirements, if applicable.
2. The Board of Adjustment may provide for a final site inspection before the facility is authorized to become operational.
3. An emergency contact name and phone number must be posted at the point of access on all SES sites.
4. The permit holder will allow the County, or its Authorized Agent (appointed by the County), access to the property within one (1) day of an inspection request by the County. In the event of an emergency, the County, or its Authorized Agent, has the right to access the premises.
5. All SES shall meet or exceed applicable standards and regulations of any state or federal agency.

Section 5.33.05. General Provisions for Solar Energy Systems.

Ground-mount solar energy, designed for providing energy to off-site uses or export to the wholesale market, are permitted under the following standards:

1. **Ground Cover and Buffer Areas.** Ground-mount systems shall be maintained. Topsoils shall not be removed during development, unless part of a remediation effort. Soils shall be planted to and maintained in perennial vegetation to prevent erosion, manage run off and build soil. It is required that any crops planted follow all federal and state laws protecting endangered species. This will also include pollinators such as bees. Foundations, gravel or compacted soils are considered impervious. Ground-mount systems shall be exempt from impervious surface calculations if the soil under the collector is not compacted and maintained in vegetation, including any access or service roads. A minimum thirty (30) foot managed vegetative buffer shall always be present and maintained around the perimeter of the site.
2. **Foundations.** A qualified engineer shall certify that the foundation and design of the solar panels racking and support is within accepted professional standards, given local soil and climate conditions.
3. **Power and Communication Lines.** Power and communication lines running between banks of solar panels are allowed. Power and communication lines running between banks of solar panels and to nearby electric substations or interconnections with buildings may be required to be buried underground. Exemptions may be granted in instances where the natural landscape interferes with the ability to bury lines, or distance makes undergrounding infeasible.
4. **Site Plan Required.** A detailed site plan for both existing and proposed conditions must be submitted, showing location of all solar arrays, other structures, property lines, rights-of-way, service roads, floodplains, wetlands and other protected natural resources, topography, electric equipment, and all other characteristics requested by the Board of Adjustment.
5. **Setbacks.** Projects including multiple, adjoining properties as part of the project plan, need not adhere to setbacks at point of connection between the adjoining properties. Solar panels will be kept at least five hundred (500) feet from a residence. Exception: The Board of Adjustment may allow setback/separation distances to be less than the established distance identified, if the applicant obtains waivers from all dwellings and owners of property within the separation distance. If approved, such agreement is to be recorded and filed with the County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.
 - a. Every SES shall observe a minimum rear and side yard setback of thirty (30) feet.
 - b. Every SES shall meet the minimum front yard setback of the applicable zoning district.
 - c. Every SES shall be setback at least one hundred (100) feet from the highwater mark of any lake, stream or river.
6. **Aviation/Airport Protection:** If required by state or federal agencies the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.

7. Glare: All solar energy systems shall minimize glare from affecting adjacent or nearby properties. Measures to minimize glare include selective placement of the system, screening on the north side of the solar array, modifying the orientation of the system, reducing use of the reflector system, or other remedies that limit glare.
8. Safety Fencing/Gates and Locks.
 - a. All SES shall be fenced around the exterior of the SES with a fence at least six (6) feet in height.
 - b. All fencing and gates shall be constructed to substantially lessen the likelihood of entry into a SES by unauthorized individuals.
 - c. All gates to the fences of all SES shall be equipped with locks and shall always remained locked except for those times when the owner and/or operator, or their respective agents is/are using the gate for ingress and/or egress or is/are otherwise present and monitoring the SES.
 - d. The fencing and gates shall be maintained in serviceable condition. Failure to maintain the fencing or gates required hereunder shall constitute a violation of this ordinance.
 - e. The fencing and gate requirements specified hereunder shall continue notwithstanding the fact that a SES is no longer operational and/or falls into disuse unless and until the SES is properly decommissioned.
 - f. Fences are exempt from Section 1616.03 and may further be constructed on property and right-of-way lines.
9. Maximum height: Solar panel arrays shall be no more than twenty (20) feet in height, not including power lines.
10. Lighting: If lighting is provided at the project site, lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel.
11. Outdoor Storage: Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the solar farm shall be allowed.
12. Weed/Grass Control Plan: The applicant shall submit an acceptable weed/grass control plan for property inside and outside the fenced area for the entire property. The operating company or successor during the operation of the SES shall adhere to the approved weed/grass control plan.
13. Roads.
 - a. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used during the construction of the SES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the SES. Where practical, all-weather roads shall be used to deliver cement, solar collectors and components, and all other heavy components to and from the site.
 - b. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having

jurisdiction over approved haul roads for construction of the SES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and SES components. The permittees shall notify the County of such arrangements upon request of the County.

- c. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.
- d. Control of Dust. The permittees shall utilize reasonable measures and practices of construction to control dust.

14. Permit Expiration. Unless otherwise determined by the BOA, the permit shall become void if no substantial construction has been completed within three (3) years of issuance.

Section 5.33.06. Decommissioning/Restoration/Abandonment.

- 1. Cost Responsibility. The owner or operator of a SES is responsible for all costs associated with decommissioning the SES facility and any associated facilities.
- 2. Decommissioning Plan. At least thirty (30) days prior to construction, the applicant shall file a decommissioning plan for Board of Adjustment approval in accordance with the requirements of paragraphs (2), (3) and (4) below. The plan shall include an acceptable financial assurance plan which estimates the decommissioning cost and a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
- 3. Financial Assurance. The Board of Adjustment shall require a performance bond, surety bond, escrow account, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the SES facility. The financial assurance plan is subject to the following provisions:
 - a. A decommissioning account is to be funded by the project owner annually at a rate of two thousand five hundred dollars (\$2,500) per megawatt of installed DC capacity per year for the first 30 years, commencing no later than the commercial operation date.
 - b. The Board of Adjustment may allow a decreased annual payment, if the Board of Adjustment determines the full rate as identified in the financial assurance plan is not necessary to cover costs of decommissioning.
 - c. All interest earned by any financial assurance account remains in the account.
 - d. A financial assurances statement is to be provided upon request to the administrative official.
 - e. The financial assurance plan follows ownership of the SES. The Board of Adjustment may allow current and subsequent SES owners to request a change in the type of financial assurance instrument to be utilized.
 - f. The financial assurances are not subject to foreclosure, lien, judgment, or bankruptcy.

- g. Beginning in year ten (10) following the beginning of operation and each fifth year thereafter, the SES owner shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing the Board of Adjustment may change the annual financial assurance funding rate to more closely match the estimated amount needed for decommissioning.
 - h. Funds from the financial assurances are to be paid to the SES owner at the time of decommissioning. Said funds are to be paid as decommissioning costs are incurred and paid for by the SES owner.
 - i. If the SES owner fails to execute the decommissioning requirement, the funds are payable to the landowner as the landowner incurs and pays decommissioning costs.
 - j. In the event the South Dakota Public Utilities Commission requires a Decommissioning Plan which includes a financial instrument to decommission to be filed with the State. The county may waive its required financial instrument.
4. Site Restoration. The decommissioning of the SES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the SES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the SES. The permittees shall have the obligation to dismantle and remove from the site all solar collectors and components, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen (18) months after expiration.
5. Failure to Decommission. If the SES owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond or other forms of final assurances. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a SES facility.