

Codington County Planning Commission/Board of Adjustment Minutes

July 12, 2021

The Codington County Board of Adjustment met for a special meeting on July 12, 2021 via teleconference and at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Mel Ries, Mark O'Neill, Bob Fox, Alex Kahnke, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Jason VerSteeg, Vent Wallace, Lonnie Lowe, and Becky Goens.

Bob Fox brought the Board of Adjustment meeting to order at 9:01 am.

Motion by O'Neill, second by Johnson, to approve the agenda. Motion passed unanimously.

Motion by Johnson, second by Hanten, to approve the Conditional use Permit request by Duinick, Inc. Duinick is requesting to operate temporary asphalt mixing and rock crushing on property owned by Lonnie Lowe and located in NE1/4, except the E1/2 of E1/2 of NE1/4 and E1/2 of W1/2 of E1/2 of NE1/4 and W1/2 of SW1/4 of SE1/4 of NE1/4 and S1/2 of SW1/4 of NW1/4 of SE1/4 of NE1/4, Section 26-T119N-R51W. Muller reviewed Staff Report (attached). If approved, the applicant would be required to sign a Letter of Assurance agreeing to the following conditions:

- The applicant is only allowed to crush gravel thirty (30) days per year. Notice shall be provided to the County Zoning Officer at least five (5) days before crushing activities are to begin. A log noting the days of crushing activities shall be kept by the applicant and available to Codington County Zoning Officer upon request. Hours of operation (including crushing) shall only be allowed to operate Monday through Friday, 6 a.m. to 9 p.m.; Saturday 6 a.m. to noon.
- The Board of Adjustment may allow more days of crushing in any given year, provided proper application is made.
- An asphalt batch plant may be operated from July 12, 2021 through December 31, 2021.

Motion by Johnson, second by Hanten, to amend the conditions on the Letter of Assurance as follows:

- The applicant is only allowed to crush gravel 120 days per year. Notice shall be provided to the County Zoning Officer at least five (5) days before crushing activities are to begin. A log noting the days of crushing activities shall be kept by the applicant and available to Codington County Zoning Officer upon request. Hours of operation of rock crushing shall only be allowed to operate six days a week from 6:00 am to 9:00 pm.

- The number of days and operation may be reviewed on an annual basis if substantiated complaints are received by the Zoning Officer.
- The Board of Adjustment may allow more days of crushing in any given year, provided proper application is made.
- An asphalt batch plant may be operated from July 12, 2021 through December 31, 2021.

Motion on the amendment passed unanimously. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion on the request, with amendments, passed unanimously.

Motion by Johnson, second by Ries, to approve the Conditional Use Permit request made by Fisher Sand and Gravel Company to extract minerals on property owned by Lonnie Lowe located in NW1/4, Section 27-T119N-R51W. Muller reviewed Staff Report (attached). If approved the application must sign a Letter of Assurance agreeing to the following conditions:

1) Effective Date:

- a. Immediately

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 screening of materials, but neither the crushing of rock nor mixing of asphalt or concrete on site.

3) Haul Road Agreements:

- a. Applicant shall provide a haul road agreement for the use of 158<sup>th</sup> Street for hauling materials prior to excavation of materials. If no agreement is required by the Leola 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.

Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion to adjourn made by Hanten, second by Johnson. Motion passed unanimously. Meeting adjourned at 10:03 am.

Respectfully Submitted, Becky Goens

**JULY 2021 (SPECIAL MEETING)  
CODINGTON COUNTY BOARD OF ADJUSTMENT  
STAFF REPORT**

**ITEM #1 CONDITIONAL USE PERMIT**

**Applicant: Duininck, Inc. (by: Jason Ver Steeg)**

**Property Owner: Larry (Lonnie) Lowe**

**Property Description:** NE1/4 less E1/2 of E1/2 of NE1/4 & the E1/2 of W1/2 of E1/2 of NE1/4 & W1/2 of SW1/4 of SE1/4 of NE1/4 & S1/2 of SW1/4 of NW1/4 of SE1/4 of NE1/4 of Section 26-T119N-R51 West of the 5th P.M., Codington County, South Dakota. (Leola Township)

**Conditional Use – Asphalt Batch Plant and Rock Crusher (3.04.02.4)**

**Zoning Designation:** A – Agricultural

**Request:** Duininck requests temporary batch plant and rock crusher in a previously permitted gravel pit.

**History/Issue(s):**

**Specifics of Request:**

1. Lonnie Lowe was granted a Conditional Use Permit to operate a gravel pit on the above property on February 22, 2016.
  - a. The permit was required due to complaints about haul roads leading to the site.
  - b. The permit **specifically prohibited rock crushers and batch plants.**
  - c. The prohibition was based solely on the intent to authorize the operation at the time (crushing and asphalt mixing was not occurring at the time).
2. Duininck will temporarily operate the batch plant.
3. Fischer Sand and Gravel will operate the rock crusher and mix gravel for a road project.
4. The property accesses a gravel Leola Township road (158<sup>th</sup> Street) for half mile. Traffic then travels on 464<sup>th</sup> Avenue to the project site.
5. The client for the gravel project is working with the township (Leola) to update the haul road agreement.
6. The batch plant and crusher are proposed to be placed greater than 65' from the right of way.
7. The crushing and mixing on this property is expected to be complete before this winter.
8. The pit owner requests that the gravel pit permit be updated to allow rock crushing for future projects with re-applying for conditional use permit.

**Ordinance and Comprehensive Land Use Plan regarding this request:**

1. The Comprehensive Land Use Plan lists considerations for Gravel Pits on page 63.
2. Aside from the temporary batch plant and rock crusher, no new structures, monitoring wells, or shelterbelts are proposed.
3. As previously noted, a haul road agreement is on file for the use of 158<sup>th</sup> Street for this pit. It is not expected that significant changes to the agreement will be necessary.
4. Mining is expected to continue on this site after the project completes. No changes to the original reclamation plan are expected.
5. The property line of the nearest residence is over 2,400 feet away (1,000 feet required.)
6. All structures are proposed to be greater than 65' from any right of way.
7. No other aspects of the original permit are expected to be affected by this request.

Staff Summary and Recommendation:

Regardless of the decision on the rock crushing and temporary batch plant, the original gravel pit permit will remain in tact.

Conditional Use Permit – **Rock Crushing and Asphalt Batch Plant** The Board may postpone the request, deny the request or approve the request. If approved staff recommends adding the following conditions be agreed to the letter of assurance for the gravel pit permitted on February 22, 2016:

- The applicant is only allowed to crush gravel thirty (30) days per year. Notice shall be provided to the County Zoning Officer at least five (5) days before crushing activities are to begin. A log noting the days of crushing activities shall be kept by the applicant and available to Codington County Zoning Officer upon request. Hours of operation (including crushing) shall only be allowed to operate Monday through Friday, 6 a.m. to 9 p.m.; Saturday 6 a.m. to noon.
- The Board of Adjustment may allow more days of crushing in any given year, provided proper application is made.
- An asphalt batch plant may be operated from July 12, 2021 through December 31, 2021.

**ITEM #2 CONDITIONAL USE PERMIT**

**Applicant: Fisher Sand and Gravel Company**

**Property Owner: Larry (Lonnie) Lowe**

**Property Description:** N1/2 of Section 28-T119N-R51 West of the 5th P.M., Codington County, South Dakota. (Leola Township)

**Action Items –**

- **Conditional Use – Mineral Extraction (3.04.02.4)**

**Zoning Designation:** A – Agricultural

**Request:** Fisher Sand and Gravel requests to mine clay and topsoil.

**History/Issue(s):**

Specifics of Request:

1. The applicant has an agreement with Mr. Lowe to topsoil/clay from the above described parcel.
  - a. The ordinance treats mining clay and other soil the same as mining gravel. (Mineral extraction)
2. The current proposal is to mine approximately 10 acres for a specific project and reclaim/regrade the property upon completion.
3. All mining activities are proposed greater than 65' from the right-of-way and greater than 25' from any interior property line.
4. The property accesses a gravel Leola Township road (158<sup>th</sup> Street) for 1.5 miles.
  - a. Soil mined from this site will be mixed with gravel/rock in a mine approximately 1.5 miles east of the site.

5. The client for the gravel project is working with the township (Leola) to update the haul road agreement for an existing gravel pit to include this mile of road in the existing Haul Road Agreement.

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. At the time of this report an updated haul road agreement was not established. 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 property line of the nearest residence is over 2,400 feet away (There is no required separation distance for mineral extraction.)
6. All mining is proposed to be greater than 65' from any right of way.
7. 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 (east to west) 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.
8. 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 – **Mineral Extraction...** 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 does not authorize the screening of materials, but neither the crushing of rock nor mixing of asphalt or concrete on site.

6) Haul Road Agreements:

- f. Applicant shall provide a haul road agreement for the use of 158<sup>th</sup> Street for hauling materials prior to excavation of materials. If no agreement is required by the Leola 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 taken 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.