

Codington County/City of Watertown
Joint Planning Commission/Joint Board of Adjustment Minutes
June 26, 2023

The Codington County/City of Watertown Joint Planning Commission/Board of Adjustment met on June 26, 2023 at the Codington County Extension Complex. Members of the Joint Planning Commission/Board of Adjustment participating were: Mark O'Neill, Brenda Hanten, Liam Culhane, Blake Dahle, Myron Johnson, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present: Blaine Martian, Vince Foley, Patty Foley, William Howard, Andrew Nielson, Scott Henricks, Val Jaspers, Brian Stoltenburg, Carl Tesch, Travis Tesch, David Swanson, Judy Swanson, Danial Meseberg, Tom Olson, Lorie Endres, Richard DeBerg, Jeremy Hermoe, Jessica Hermoe, Phillip R., Curt Hlavacek, Mitch Koehn, Randy Schweer, Chad Frevert, Cassi Frevert, Jody Femrite, Todd Kays, Scott Riteschke, Jim Keimig, Amy Keimig, Jeff Popham, Dave Eide, John Aus, Jerae Wire, Brad Meier, Scott Martens, Larry Olson, Sally Olson, Brian Friedrichsen, and Becky Goens.

Chair Hanten brought the meeting of the Joint Board of Adjustment to order at 7:36 pm.

Motion by Dahle, second by Culhane, to approve the minutes of the March 27, 2023 meeting. Motion passed unanimously.

Motion by Culhane, second by Dahle, to approve the agenda as stated by Staff. Motion passed unanimously.

Motion by Culhane, second by Dahle, to recess the City of Watertown/Codington County Board of Adjustment. Motion passed unanimously.

Motion by Culhane, second by Dahle, to reconvene the City of Watertown/Codington County Board of Adjustment. Motion passed unanimously.

Chair Hanten advised the Boards and audience that the TJ Farms, LLC enforcement discussion will be handled jointly rather than repeating information. No outside testimony is allowed. The hearing is between the permit holder and the Board. Muller provided information on the enforcement, update, and process on this Concentrated Animal Feeding Operation (CAFO) permit. Muller reviewed Staff Report (attached). Jeff Popham, owner of TJ Farms; Mitchell Koehn, attorney for TJ Livestock; and Brian Friedrichsen, Engineer for the containment system, spoke. Brian addressed the violations in order, staff recommendations, followed by corrective action. Motion by Dahle, second by Culhane, to add the condition that manure spread must be incorporated within 48 hours, no stockpiling. Motion passed unanimously.

Motion by Dahle, second by Culhane, agree with Staff that all violations within the Joint Jurisdiction area are violations of the ordinance. Motion passed unanimously.

Motion by Culhane, second by Dahle, to approve the request by East River Electric to construct approximately 9.5 miles of electrical transmission lines in Elmira and Sheridan Townships

as displayed on the map (see attached Staff Report). Muller reviewed Staff Report (attached). Jerae Wire spoke on behalf of East River Electric's Conditional Use Permit request.

Elmira township supervisor, Bryan Stoltenburg, is not opposed to new poles/lines as they are needed but does not want to see them in the rights-of-way on township roads, he is opposing the route chosen by East River Electric Cooperative (EREC). Elmira Township would like to see an alternate route such as county or state highway whereas the right-of-way is larger.

Proponents speaking: Dave Eide, manager of Codington-Clark Electric, is in favor of EREC's Conditional Use Permit requests.

Opponents speaking:

- Tom Olson questions why the new route needs to be on smaller, township rights-of-way; and has concerns about safety or emergency assistance while erecting the new poles/lines.
- Lorie Endres concern is the setbacks from residences and indicates the pole will be within the setback requirement to her home. Would like to see the route moved to old Highway 81 and not on the township roads.
- Doug Brandriet, represented by attorney Mitchell Koehn, doesn't feel the notice was received in time for due process and indicates portions of the planned route is in floodways. The new route runs through the city/county Comprehensive Land Use Plan area. Also has concerns about safety. Additional homes and the new ice arena are being constructed within this route plan.
- Vince Foley states replacement makes sense but disagrees with the new proposed route due to floodways. In an outage, their crews will be trying to fix lines whereas there is no road due to high water. Certified engineering drawings should be provided before construction of new poles is allowed in the floodways.
- Brian Stoltenburg (landowner) states one section has city gas, two fiber optic lines, and a rural water line. Now a transmission line is to be placed and there is no room in the ditch.
- Carl Tesch opposes the route. He also owns a building on the National Historic Register.
- Travis Tesch opposes the route as well.
- Jody Femrite recommends not approving the project; setbacks should be required and feels there could be a better route.
- Brad Meier inquired about the location of the pole on his road.

No one else opted to speak. Public meeting was closed.

Applicant indicated there would be less traffic on township roads than on highway roads and only one spot was available to cross the interstate. A letter was provided from SHPO regarding the historic building, and it was verified there would no adverse effect on the structure. Part of the environmental review includes coordination with US Fish and Wildlife; Game, Fish and Parks; review of flood maps, numerous state and federal agencies and then submit their package to RUS. It was verified by Staff the applicant is speaking under oath. The applicant has experience working within

rights-of-way that are 66' which have consisted of fiber optic lines, etc. Lines are not simply replaced on existing poles because the facilities (poles) and hardware are old which may cause reliability issues. The applicant has system operations with GPS locators on all vehicles and can dispatch the appropriate 911 source for emergency assistance. Notice to landowners and general public was provided per Codington County ordinance. A portion of the route was changed to avoid city population. Contractor agreements are in place for road clearance during winter outages and have equipment that can move over ice, snow, and water. Old poles and lines contain joint use with Municipal Utilities who will make improvements and continue to use. Other poles not being used will be removed. Poles on old Highway 81 will be removed entirely and patched with backfill. The Zone A floodplain area only requires indication of elevation level. No pole is listed in a floodway, only in the 100-year flood plan. Areas inundated with obvious flooding situations will have culverts installed to aid support of the underground foundations. The route was reviewed many times with input from some people. There were roadblocks, vacated easements, public rights-of-way, crossing the interstate, etc. that provided challenges when determining the route.

Motion passed 4-1.

Motion to adjourn made by Culhane, second by Dahle. Motion passed unanimously. Meeting adjourned at 10:48 pm.

Respectfully Submitted,

Becky Goens

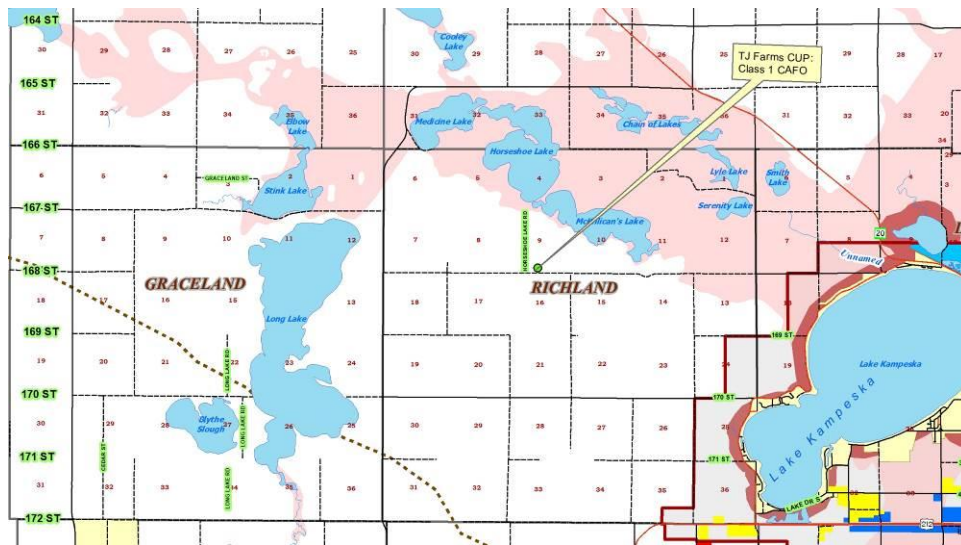
**JUNE 2023
CODINGTON COUNTY/CITY OF WATERTOWN
JOINT BOARD OF ADJUSTMENT STAFF REPORT**

**JOINT MEETING – CODINGTON COUNTY AND CODINGTON COUNTY/CITY OF WATERTOWN
JOINT BOARD OF ADJUSTMENT**

ITEM #1: Administrative Action: Consider corrective actions, a timeline for compliance, and/or revocation of a permit

Permittee: TJ Farms, LLC

Property Description: SE1/4 and the W1/2 of the SW1/4 of Section 9-T117N-R54W, Codington County, South Dakota. (Richland Township).



Permit Held – Conditional Use Permit – Class 1 CAFO (Beef/Open Lot) up to 10,000 head/animal units (September 20, 2020)

Process/Duties of the Board

- At this meeting it is the duty of the Board to establish corrective actions, determine a timeline for compliance, and consider whether revocation of the permit is effective. The Zoning Officer also asks to consider whether a formal complaint should be forwarded to SDDANR on behalf of the Boards of Adjustment.

Details:

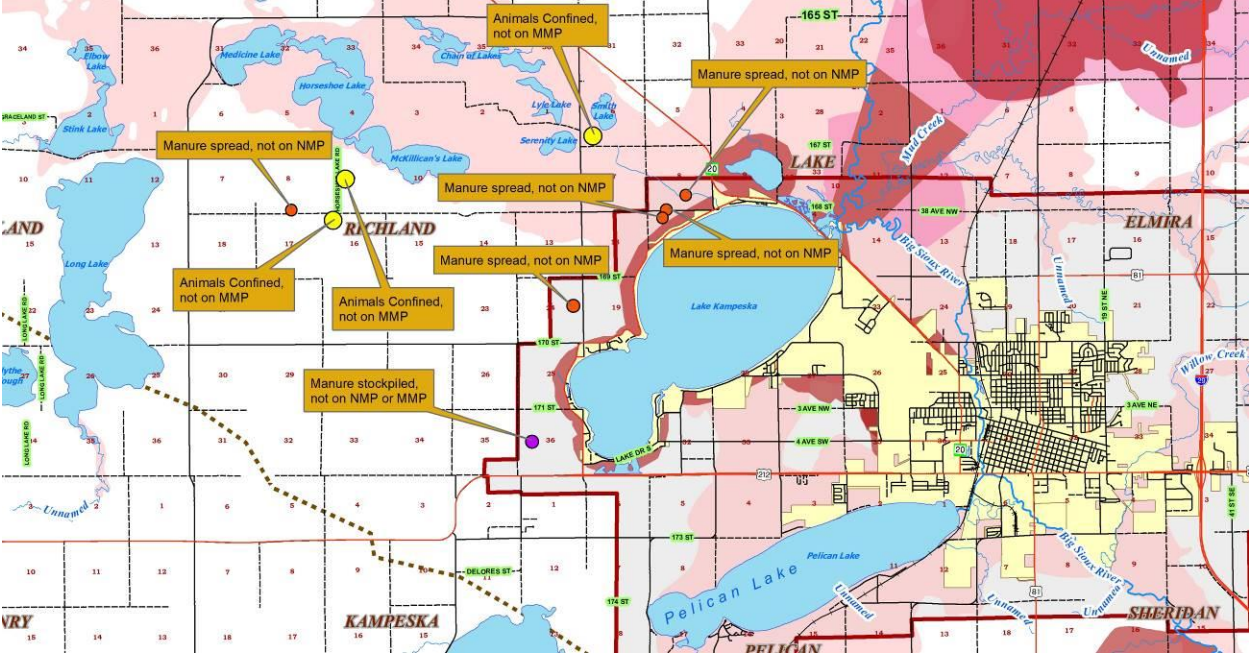
1. Prior to a site visit on May 4, 2023 the zoning officer became aware that greater than 49 head of beef cattle owned by TJ Farms were being fed at a site that met the county's definition of a CAFO on property owned by William Howard described as: The South 1,988 Feet of the Southwest Quarter, less highway right-of-way, and the South half of the West Half of the West Half of the Northwest Quarter of the Southeast Quarter all in Section 6, Township 117 North, Range 53 West of the 5th Prime Meridian, Codington County, South Dakota.

a. County/Joint Area Definition of a CAFO:

- **Concentrated Animal Feeding Operation.** A Concentrated Animal Feeding Operation is defined as a lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of forty-five (45) days or more during any twelve (12)

month period, and where crops, vegetation, forage growth, or post harvest residues are not sustained over any portion of the lot or facility. Two (2) or more animal feeding operations under common ownership are single animal operation if they adjoin each other, or if they use a common area, or if they use a common area or system for disposal of manure.

- 2. Mr. Howard and TJ Farms complied with the order to remove the cattle from the site within the prescribed time frame.
- 3. As a result of the violation the zoning officer reviewed properties owned by Mr. Howard and TJ Farms to determine whether further violations were occurring. At that time 25 violations of the permit/county zoning ordinance/joint zoning ordinance were found. [see attached letter].
- 4. The legal descriptions of houses are not within 1,000' of the legal description proposed here.
- 5. On May 22nd it was found that manure was being stockpiled by TJ Farms on property which was not included in the approved nutrient management plan for TJ Farms described as: South Half of the Northwest Quarter of Section 36, Township 117 North, Range 54 West, Codington County, South Dakota.
 - a. That field was subsequently added to the nutrient management plan for TJ Farms and the manure was spread and/or hauled away before May 31.



Staff Recommendation for corrective actions:

- Forward all violations as an official complaint to South Dakota Department of Agriculture and Natural Resources.
- Order water testing of all water bodies identified on the below map (red dots), within legally described property upon which animals have been confined in a manner which meets the county's definition of a CAFO. (Seeking compliance with SDDANR standards for the applicable water body.)



- Annual Testing of any water body within the legal description in which animals associated with this permit are confined.
- No stockpiling of manure off-site (off the site permitted for the CAFO) for greater than 2 days before spreading.
- Reduction in herd size to _____, by November 1, 2023.
 - Consideration of expanding herd size by the Board of Adjustment June 2024 based upon compliance with conditions established by the County, County/City, and SDDANR.
 - The Board of Adjustment reserves the right to further reduce herd size and add conditions pending compliance with these conditions and results of water testing.

Regarding spreading of manure too close to or in locations where the applicant was not permitted to do so:

- The County and/or City reserve the right to prosecute Mr. Popham and the landowners of the applicable field for each violation.
- Corrective action on these items would include removal of manure or incorporation. At this point in the growing season, the manure has been incorporated, so no further action should be required.
 - Staff recommends a condition be added that any manure spread within the joint jurisdiction area be incorporated or injected within 48 hours of exemptions being applied to the field, with no winter or fall application.

ITEM #2 CONDITIONAL USE

Applicant: Jerae Wire on behalf of East River Electric Power Coop.

Property Description: certain property situated in Elmira and Sheridan Townships as displayed in the below map.

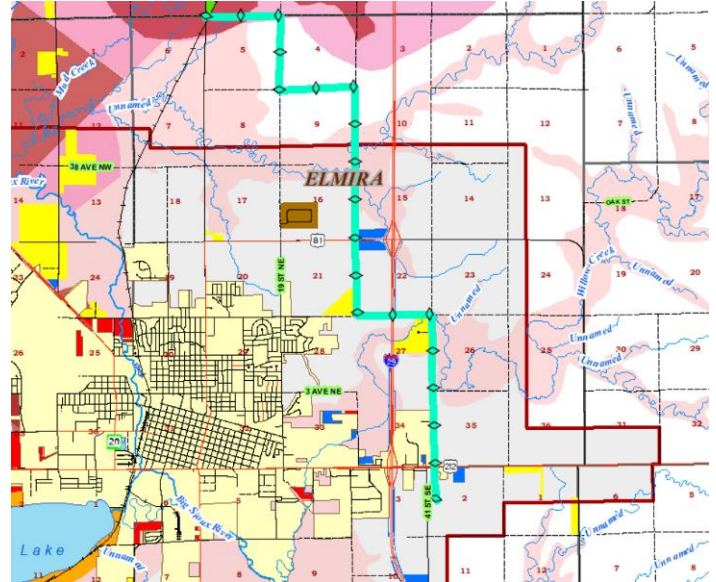
Action Item – Conditional Use Permit – Public utility and public service structure... (3.04.02.11)

Zoning Designation: Agricultural District

Request: East River seeks to construct approximately 9.5 miles of electrical transmission lines from WAPA to Rauville.

History/Issue(s):

Specifics of Property/Request:

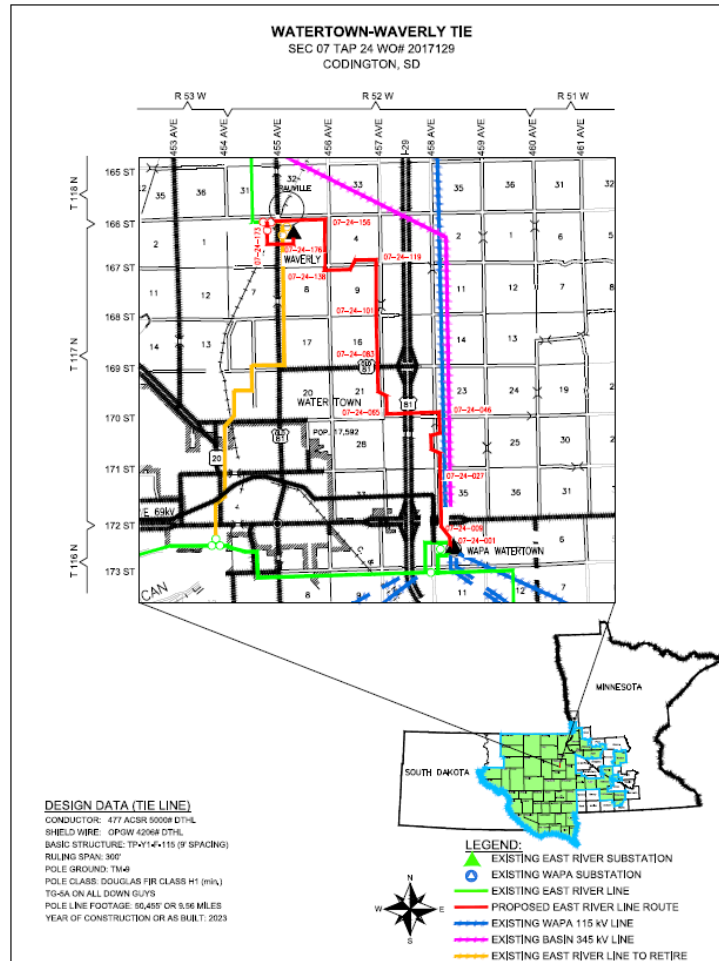


1. East River currently operates a transmission line which was constructed in 1952 from south of the intersection of SD HWY 20 and US HWY 212 to Rauville (about 7 miles).
 - a. This location route is being retired and replaced by the proposed new line from WAPA to Rauville.
 - b. The line is being replaced due to age, technology, possible conversion to 115kV line, and to move the line out areas where it is in the middle of private property/ or potholes.
 - c. Other routes were considered previously, however the route with the fewest turns resulted in the need to elevate an existing major transmission line.
2. Most of the construction can be completed without an outage.
3. Pole type will vary depending on whether location is in right-of-way or easement.
4. The telecommunications tower will be used exclusively for East River's private purposes and will not be used as a commercial cell tower.
5. The project will run a line across the road from buildings listed on the National Historic Register for Architecture.
6. Application included construction cross sections for the span of the project.
7. The route does cross a growth area for the City of Watertown, however this project is intended to retire several miles of lines in existing developed and growth areas for the City of Watertown.

Ordinance and Comprehensive Land Use Plan regarding this request:

- *Conditional Use Permit*

1. SDCL 47-21-66 allows for the construction and maintenance of transmission lines by electrical coops (such as East River) along and across public roads and streets.
2. The comprehensive land use plan encourages lowest public expenditures necessary to maintain utility networks in the county, and encourages clustering of non-ag uses to limit the amount of intrusion/removal of land from agricultural production.
3. The intent of the Ag District, and land use plan is to reserve land in the Ag District for agricultural uses.



4. No specific requirements are listed for public utilities such as this structure. Regarding the general requirements of the Zoning Ordinance with reference to conditional use in addition to:
 - a. Setbacks have not historically been applied to transmission lines or poles due to the above referenced pre-emption in state law.
 - b. The use is a listed use and therefore is “generally compatible” to other uses within the district according to the zoning ordinance.
 - c. No new access locations are requested.
 - d. No septic systems/sanitary sewer is proposed, nor necessary. There is no expected need for trash services.
 - e. No fencing is requested or expected.
 - f. No signs other than safety signs are proposed with this request.
5. According to SDCL1-19A-11.1, prior to start of a project adjacent to a property on the National Historic Register, the State Historic Preservation Office needs to review the project to determine whether the project will “encroach, damage, or destroy” the site.
 - a. The project has been submitted to the State Historic Preservation Office in reference to the route. At the time of this report, no comments were made regarding Zech historic site

by the office other than that architecturally preserved sites are less apt to require the same scrutiny in maintaining the scenic aesthetic as certain other sites (such as historic districts, grasslands, etc).

6. The Codington County highway superintendent sent a copy of his agreement with East River for construction of this project.

Staff Recommendation:

Staff Recommendation: Conditional Use Permit – **Public Utility and Public Service Structure:** The Board may postpone the request, deny the request or approve the request. If approved, the staff recommends, at a minimum, the applicant adhere to any agreements or licensure required by the applicable road authority(ies); and the applicant should consider recommendations of the South Dakota State Historical Preservation Office in constructing this project. Staff finds no grounds for denial of this permit in accordance with the zoning ordinance.