



GRANT COUNTY SOUTH DAKOTA  
PLANNING AND ZONING OFFICE  
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## Minutes for the meeting of Grant County Board of Adjustment

**Members present:** Tom Adler Mike Mach Mark Leddy Richard Hansen Tom Pillatzki Nancy Johnson Bob Spartz

**Alternates present:** Don Weber Jeff McCulloch

**Members absent:**

**Others present:** Carol Rose Larry Schmidt Al Robish Amber Christenson Kristi Mogen Tyler Wilhelm Terence Pellman Miles Schumacher Mike Nadolski Logan Karels Mark Reedstrom William Tostenson Linda Lindgren David Lau Robert Campbell Tim Lindgren Peter Mogen Vince Meyer Larry Wojahn Pam Wojahn Todd Kuefler Zach Pederson Todd Kays Payton Schafers

Agenda for the meeting of Grant County Board of Adjustment/Planning Commission.

**Meeting Date: Monday, January 13, 2020**

**Meeting Time: 4:00 P.M. Court House Courtroom**

1. **Call Meeting of the Board of Adjustment to Order** at 4:03 pm by Chair Johnson
2. Items to be added to agenda by Board Members or Staff- none
3. Invitation for citizens to schedule time on the Board of Adjustment Agenda for an item not listed. (5 minutes maximum time)
4. Approval of Agenda motion by Hansen seconded by Mach carries 7-0.  
Approval of Minutes: December 14, 2019 motion by Leddy second by Adler with amendment created by Mach that carries 7-0.
5. Disclosure of Conflicts/ Ex Parte Communication  
Johnson reports that she and Hansen will recuse for the appeal because of their interest in Next Era project. Pillatzki reports that he received a letter at his home from Amber Christensen. Kays has him turn it over to the Planning & Zoning Officer and Spartz reported he had received one as well. It will now be received by the P&Z office and on public record in the office.
6. Matters for Board discussion/ staff report
  - a. A Conditional Use Permit, CUP11202019, Pursuant to Section 1101.03.17: Conditional Uses in the "A" Agricultural Zoning District #17 - Seasonal Retail Stand including fireworks stand - the applicant, Carol Rose, is requesting a conditional use permit to operate a temporary fireworks stand on the following legal description: HEGGE SUB DIVISION A REPLAT OF SEALY HEIGHTS IN GOVT LOT 5 LOT 10 of the 5<sup>th</sup> p.m. Grant County, South Dakota.

With a motion by Spartz to approve the CUP with a second by Leddy Johnson opens the public hearing by asking Staff Kays to read the staff report for the introduction of the CUP permit and he reports the fireworks stand to be a permitted conditional use in this zone. Kays receives and reports 2 letters received in the P&Z office by the deadline which shows Todd Kuefler in favor and Larry and Pam Wojahn opposed.

Applicant, Carol Rose addressed the board by stating she owns Lots 7-8-9-10. They propose to sell fireworks from a locked temporary structure to be located on Lot 9. She plans to work with Dixie Fireworks and to be open from 7 am to 8/9 pm. Leddy asked about parking and the reply was they will allow parking on the grass lot with the possibility of a horseshoe driveway installed. Pillatzki asked if the other homeowners would still be able to have fireworks. Kays stated that anyone can shoot fireworks on their property in this zone, but State law requires no smoking or flames within 250 feet of the firework storage/sales structure. This would not be the neighbors concern but applicants. Rose reports, initially, they were going to build on to an existing structure, but they decided upon a container to get it to the furthest point away.

Johnson opens the public hearing.

Larry Schmidt stated the fire pits at the neighbor's houses would have to be on the vacant lots for the flames to be too close.

Robert Campbell- submitted written letter after he read it for the board. Letter generally stated that Cambell did not support the applicant's request. Leddy asked if there were private covenants on the Hegge Subdivision and he was not aware of any as they do their own snow removal.

Todd Kuefler- Has no issue for the 9 days of sales as there could be worse things. He also states there is not a homeowner's association, or a covenant and he was not aware of any other easements.

Johnson called for anyone else to submit proponent or opponent testimony 3 times. No additional testimony. Johnson closed public hearing.

Rose was called upon to answer questions. Rose states they don't live there all the time. They have purchased a Bobcat for anyone to borrow to do the snow removal and this year they put in a snow fence for the Subdivision. There was a frost boil issue that they fixed themselves last spring. They have lived there about 2 years and purchased the 5 lots from 1 person and have chosen not to sell the lots for further housing because the like the trees and wildlife.

In further discussion Rose explained the private drive would not be used and the 65 ft back for parking on the grass would not be a problem. Kays then read the standard findings and other findings and conditions. Mach stated in a small community is hard to see parties split and wants them to work together and solve the issues together. Leddy asked for clarification of the CUP for 1 year issuance- it was reported that after the July 2020 season, if no complaints are filed with the Planning & Zoning office the Officer will issue a permanent CUP for the fireworks stand or it will come back to the board if there are issues.

Motion by Hansen and second by Spartz to amend the motion to state the conditions of hours to be 7 am to 9 pm and conditions listed in the staff report which carries 7-0. After roll call vote a unanimous approval was recorded.

- b. An appeal by Allen Robish and Kristi Mogen of the following decisions of the Zoning Officer: The Zoning Officer declined to issue a "Stop Order" and four (4) other alleged matters of the CUP (Section 803 of the Grant County Zoning Ordinance) on work associated with the Conditional Use Permit CUP08172018 granted to Crowned Ridge LLC, and Crowned Ridge II LLC by the Grant County Board of Adjustment on December 17, 2018.

At 4:48 pm Johnson and Hansen recused, and Weber and McCulloch were seated at the table. Pillatzki assumes the position of Chair for the hearing and Zach Pederson gives a general overview of the complaints. Pillatzki stated that the complaints would be handled one at a time with the appellants presenting their appeal.

Mogen asked for Mach to be removed from the Board of Adjustment because he is employed by Ottetail and there is an interconnection agreement for NextEra power to Ottetail. Mach stated his opinion of dislike for wind energy and chose not to recuse. The board then was given 3 opportunities to vote to have Mach removed from the Board and no one felt inclined to remove Mach from the board. Mogen then asked the board to change the order of the presentation of appeals to #3-#2-#5-#4 which Pillatzki agreed to.

Appeal Hearing of Complaint Number 3: Allen Robish took the podium to present the absence of a land lease allegation of the Thompsons. Mogen stated the required affidavit for easement was not attained and presented an email chain and asked for the revocation of permit.

Miles Schumacher, representing Next Era, spoke generally to all 4 complaints by stating the Zoning Officer was on point and no allegations or permit violations or SDCL violations have occurred but this is a back-door attempt of an appeal. In the right time it could have been a motion to reconsider or an appeal to circuit court, but a revocation is not in the legal means. It is not part of the remedy of ordinance to revoke a permit and the board doesn't have that authority without a current violation that then would have time to be corrected and after a failure to correct or a refusal an injunction could be sought. This PUC approved project is completely built and without violation and has no basis for remedy.

In rebuttal Mogen stated Kays had noted a revocation by Krista could be done, otherwise the board is saying fraud is acceptable. She further question if the board was allowing the deception for these things that were not known at time of appeal. She uses the analogy that if these were credit card charges there would be criminal charges and jail time for the deception that has occurred.

Board discussion: Adler asked if Thompsons received a turbine. Wilhelm answered it was for an underground line only and it was rerouted, and the property was not used. There was no physical entry to the property in question as the mistake on the map was discovered and resolved in a timely manner. Mach asked if the PUC had heard this in public testimony. Wilhelm stated yes and they approved the alternate routing. Leddy stated there were no towers here only a collection line upon review of his map from the CUP. Spartz asked if it was part of project in May 9, 2019 letter and there was a back and forth for the CUP. Weber pointed out that the signed letters were signed "Thompson" not "Thompson jr.". Schumacher pointed out that this was an inherited project from Geronimo, and they discovered it months after the CUP, but it was not fraud. Pillatzki called for further discussion and hearing none- closed the hearing.

Kays states that the proper motion would be for a motion to approve the appellant's request. Further, that a yes vote would support the appellant's request for complaint #3 and that a no vote would be a vote to uphold the Zoning Officer's not to revoke the Permit. Mach made the motion and McCulloch seconded and a roll call vote was conducted. Leddy-No Adler-No Mach-No McCulloch-No Weber-No Spartz-No Pillatzki-Yes. On a vote of 1 yes, 6 no the decision of the Zoning Officer is upheld.

Appeal Hearing of Complaint Number 2: At 5:20 pm Allen Robish took the podium to state a 485' turbine was approved per specifications but the building permit for #120 was for a 2.3 mw tower with a 90-meter hub height. He further stated that the CUP application and the application and the building permit do not match. Mogen presented handouts showing the model number in the pictures. She talked to the on-site construction workers and sent this information to the PUC on December 30<sup>th</sup>. The blades are also bigger- She stated that she believes if someone asked for a building permit for an 8x10 shed and built a mega shed that would also be considered fraud.

Miles Schumacher said the appellant's testimony relating to this complaint was also presented to the PUC by Mogen. Schumacher stated that while the shipping model states 2.7 mw. It is actually a 2.3mw. A 2-mw platform can be made to be a 2.0mw, 2.3mw or a 2.7mw version. Shipping labels are different than as built. He presented a statement from GE for the record and a picture showing the actual nameplate. They are fully compliant and have no violations because the county did not permit or restrict the location or turbines for capacity.

Spartz asked if this would make the tower taller. Wilhelm replied that a 1.7 with an 80' hub height is no longer used but the original CUP setback would have been sized to the largest size available. Weber wanted to know what assurances there were that tower wouldn't be used to generate 2.7mw. Schumacher stated the guts aren't built to generate 2.7mw.

Mogen rebuttal says these are 2.7mw capable machines and they ordered them in March 2018 under contract. She further states Schumacher is deceiving the board.

Board discussion: Mach asked if PUC has heard this and stopped it? Mach was told that the PUC heard this issue on December 30, 2019 and chose not to stop it. Pillatzki asked for more questions and heard none. Kays states that the proper motion would be for a motion to approve the appellant's request. Further that a yes vote would support the appellant's request for complaint #2 and that a no vote would be a vote to uphold the Zoning Officer's not to revoke the Permit. Motion by Leddy second by Spartz for a roll call of: Leddy-No Adler-No Mach-No McCulloch-No Weber-Yes Spartz-Yes Pillatzki-Yes. On a vote of 3 yes, 4 no, the decision of the Zoning Officer is upheld.

Appeal Hearing of Complaint Number 5: At 5:50 pm Mogen stated Jay Haley who signed his name as a PE was not licensed to do so and feels it is illegal representation that showed the calculations that were used and the misrepresentation is not the truth based upon the ISO 9613 which was applied wrong.

Schumacher states the PUC has ruled addressed this issue as it was presented in other dockets and the PUC independent expert disagreed with Mogen. Further, Grant County has no requirement for sound study or tools but at the PUC level they have accepted the Haley models. Haley is a leading authority around the world and no credentials are required to provide these reports but a lapse in the PE signatures does not negate the findings and there are no violations that exist. This is another illegal attempt at a backdoor appeal and PUC has accepted this even after the arguments made by Mogen.

Mogen rebuttal argues that Commissioner Hansen of the PUC had a dissenting vote, but this is for this board to decide here. Haley didn't have to put the PE on his signature but that added weight to his report and .3 attenuation usage has had complaints filed because it is fraud.

Board discussion: Spartz asked who checks the flicker and sound. There is an independent analyst hired to monitor this and the blade attachments need to be installed to verify these levels. McCulloch asked if the .3 and .5 factor has anything really to do with Haley and if the waiver will change this. Schumacher says the .3 in the winter was ruled ok at PUC and the LNTE attachments will be in place this summer. Weber asked if they were already working with the PUC and have independent sound studies in action and the answer is yes. Pillatzki is amazed the credentials of Haley were not checked by NextEra. Schumacher replied he is a consultant not an employee and again the PE is not a requirement for the work Haley does. Leddy points out the benefit of actual measurements in this project versus modeling and that would not be lost in whether there was a PE credential or not. Pillatzki called for further discussion and hearing none asked Kays to state the motion.

Kays states that the proper motion would be for a motion to approve the appellant's request. Further that a yes vote would support the appellant's request for complaint #5 and that a no vote would be a vote to uphold the Zoning Officer's not to revoke the Permit. Motion by Leddy and seconded by Weber was roll called: Leddy-No Adler-Yes Mach-No McCulloch-No Weber-Yes Spartz-Yes Pillatzki-Yes. On a vote of 4 yes, 3 no, the decision of the Zoning Officer is upheld.

Appeal Hearing of Complaint Number 4: At 6:14 pm Mogen states it was all about the money. Where is that revenue now that the project is downsized and deferred? Where is the money for the new school because the interconnection is too much and the transmission costs are too high? We were going to make a lot of money here and people are building houses on that money that they aren't going to get now. ND runs businesses out based on her allegations of Chesapeake in the oil fields. She is stunned and if she gets a building permit for an 8x10 shed and builds a mega shop what will you do? This sets a precedence and she thinks the permit should be revoked because only 18 of the 67 turbines are going to be put up.

Wilhelm spoke about the interconnect agreements. The developer they purchased another project from didn't have a power purchase agreement and the time and money resources will not be committed without a plan of return. NextEra have agreements that are deferred but not gone. Interconnect studies will be available at the end of the quarter and the line of sight will be online. A developer wants to build but they can't build if their power can't be sold.

Spartz clarified there is no room on the system for the power and Wilhelm stated they are still trying to get running and an additional 200 mw site is still proposed. Schumacher commented there is no ordinance over the permit or state statute requiring to construct the maximum number of towers and the Zoning Officer made the correct statement.

Board Discussion: Weber asked if they have not had a profit and loss statement for the last 3 years. No. Pillatzki asked if model #1 was done by an engineer 10 years ago. Wilhelm said yes but it was not him at that time. Mach asked about interconnect agreements and the possibility of getting one and Wilhelm stated that is a mutual agreement and the money is spent in operations.

Mogen's rebuttal was that the concrete shortage was what caused the delay to main street Milbank even though they had their own batch plant and that was in the newspaper. Pillatzki asked Kays to state the motion.

Kays states that the proper motion would be for a motion to approve the appellant's request. Further that a yes vote would support the appellant's request for complaint #4 and that a no vote would be a vote to uphold the Zoning Officer's not to revoke the Permit. A motion by Spartz and second by Mach for a roll call vote: Leddy-No Adler-No Mach-No McCulloch-No Weber-No Spartz-No Pillatzki-Yes. On a vote of 1 yes, 6 no, the decision of the Zoning Officer is upheld.

#### 7. Open address to the Board of Adjustment

Linda Lindgren- pass

Amber Christensen - Board should change the Wind Energy System Ordinance to include infrasound. Leddy asked if she lived in Grant County – Christensen said no.

Allen Robish- submitted complaints and doesn't want people to believe the Zoning Officer. These things are let to slide, and the voting shows it. Reply came Dec 9, 2019 and was dated November. 2 week wait. Kristi and Allen are stonewalled and not truthful with the Attorney and State's Attorney.

Kristi Mogen- pass

Mach asked if there were 1 or 2 letters from Christensen

8. Next meeting: 2nd Monday of each month, unless otherwise scheduled and published.
  - a. February 10, 2020
9. Executive Session (if necessary)
10. Adjourn as the Grant County Board of Adjustment with a motion by Mach and second by Weber carrying 7-0.

Krista Atyeo-Gortmaker  
Planning and Zoning Officer  
Grant County