



GRANT COUNTY SOUTH DAKOTA  
PLANNING AND ZONING OFFICE  
210 East 5<sup>th</sup> Avenue  
Milbank, SD 57252-2499  
Phone: 605-432-7580  
Fax: 605-432-7515

**Amendment by Mach was made by motion of Leddy with a second by Adler at the meeting 1-13-2020 and carries 7-0 for adoption as underlined in the minutes.**

**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

**Members absent:**

**Others present:** Paul Letsche Al Robish Amber Christenson Kristi Mogen Tyler Wilhelm Terence Pellman Miles Schumacher Mike Nadolski Marty Buttke Bill Street Logan Karels Karen Davis James Davis Mark Reedstrom William Tostenson

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

**Meeting Date: Monday, December 9, 2019**

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

1. **Call Meeting of the Board of Adjustment to Order** at 4:02 pm.
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 Adler second by Spartz carries 7-0.  
Approval of Minutes: October 21, 2019 Motion by Hansen second by Mach carries 7-0.  
November 18, 2019- meeting cancelled
5. Disclosure of Conflicts/ Ex Parte Communication- announcement of recusal by Johnson and Hansen for the hearing of the complaint appeal.
6. Matters for Board discussion/ staff report
  - a) East River Electric CUP received a Motion to approve by Pillatzki second by Leddy and the Chair opened the hearing by inviting First District staff to introduce the CUP permit and provide information for consideration.  
Paul Letsche provided the applicant information as the land management staff to the owners East River Electric. The purpose of the rebuild is to provide improved radio and scada information in the substation for their cooperative owners. The FAA has given approval for zero hazard and they will be 116 feet from the road. The adjacent landowner has signed off that he is ok with the project and the letter has been provided for the hearing. Mach questioned the need for lighting on the tower- but the regulations are for 200 ft for light required.  
Chair Johnson called for proponent testimony 3 times with no one appearing and called opponent testimony 3 times with no one appearing. Johnson then closed the public portion of the hearing and allowed the board to ask questions and have discussion with no further questions coming from the board.  
At this time Luke Muller, First District staff read the items for the Findings of fact for the Conditional Use Permit. The board was in full agreement with the statements of the Findings and a motion to grant the CUP for East River Electric Substation with the conditions as presented had a roll call vote that was unanimous in approval. The findings of fact for the variance of the security fence installation with conditions were read and moved to motion of approval by Spartz with a second by Leddy and after a roll call vote this was also unanimously approved. The findings of fact for the variance of the distance of the side yard fence were read and a motion to approve the findings that were presented in summary and the conditions was made by Leddy with a second by Mach which carried after roll call unanimously.
  - b) Hearing of complaint appeal. Chair Johnson relinquished Chair position to Pillatzki at 4:30 pm to chair for this agenda item.

Pillatzki asked Attorney Zach Peterson to present the appeal and state the appropriate actions. Spartz made a motion to approve the denial stop order that had been presented by Zoning Officer Atyeo-Gortmaker and a second to the motion by Leddy.

Peterson then presented the facts in the matter: September 30, 2019 letter from Jared Gass on behalf of Allen Robish and Kristi Mogen alleging violations to the CUP for failure to secure all state and federal permits. October 16, 2019 letter from Zoning Officer of denial of the stop order. October 28, 2019 an appeal was filed by Jared Gass on Robish/Mogen behalf requesting an appeal to the Board of Adjustment.

Pillatzki called Mogen to the podium to present on behalf of Mogen and Robish complaint. Mogen asked for enforcement of the conditions of the CUP and requested an immediate cease and desist for all construction with a \$1000 per day fine for not meeting the conditions of the CUP. She has evidence of the excavation happening on 10-16-2019 and she acknowledged the September 30<sup>th</sup> letter that alleges Crowned Ridge Wind 1 & 2 had some of the PUC permits but remains in violation of the CUP because they had 2 names on the CUP permit and 2 permits at the PUC. The findings of fact #5 states ALL the required state and federal permits and this means all- not some and not half but ALL. She then paraphrased the October 16<sup>th</sup> letter from Zoning Office and highlighted the PUC pages that used different wording throughout the application with joint, together and joint applicants being used and believes this to make the local permits non-compliant.

PUC permit is current and pursuant but they are separated at the PUC and II was not named at the PUC. Mogen states she wants the PUC permit #2 to be consistent and jurisdiction for that comes from the Zoning Officer because in number 88 it states the combined application for the PUC. With that being the case it would be impossible to meet the requirements and they may say they have the PUC permit but they don't. Findings of Fact #5 doesn't say anything about joint for any or all turbines and II would not have their permit and the building should be enforced by stop order on the CUP. In the December 17, 2018 meeting they jointly presented the 1 CUP in Grant County and did 2 at PUC but she wants enforcement on all because there is no language in FOF #5 that denotes the joint CUP application and she wants the conditions enforced as if II is a separate entity who does not have permits.

Pillatzki called Attorney Miles Schumacher to the podium to present on the Crowned Ridge Wind I & II side of the appeal. He began by asking the board to rely on the truth and not the distortions being presented and not to abandon the common sense approach to what FOF #5 is.

First, the CUP is transferrable between entities but there is nothing that is owned by all of either entity and it is not wrong for the 2 entities to transfer within the 1 parent company or the 2 turbines that will be built as a part of the Crowned Ridge wind project in the future. All conceivable permits does not equal what is being presented as requirements of the PUC permits which has been granted. The PUC permit for CRWII which is pending at the PUC has no bearing on the construction of the CRWI building and they have no building happening which is not fully permitted. In the end FOF#5 with co applicants really has no bearing on each other and there is no restrictions on the split. There is no law for an all or nothing PUC permit and there is nothing in the PUC permit that can't grant the 2 entities under 1 permit at any level and there is no reason for a second PUC permit before the first one builds because it has no bearing.

The zoning officer is authorized to issue a stop order in the event of noncompliance but the ordinance is for may not shall and after investigation that is properly executed it MAY be issued. This is a non-punitive action for compliance steps to be taken and the PUC could step in for that place for those that are not yet built. He states they are and will be fully permitted and have the permits to work now and a stop order does not serve this type of purpose here at the PUC and it defies logic and would be unauthorized punitive damage.

The hearing was closed and board discussion ensued. Spartz asked Schumacher if the CRWII could transfer the unbuilt turbines to CRWI in the CUP and not need the PUC permit. And that could be correct but the PUC permit is still needed for the building of CRWII. Leddy asked if the 2 towers in CRWII that are proposed are part of a bigger project and how many turbines there would be with that project. The project has 88 turbines in entirety with only 2 in Grant County. Mach then asked Mogen if she knows for a fact that construction was going on in I and she stated yes. He then asked if CRI was the only one building and he was told yes- CRWII is at the PUC. CRWI Mogen stated was building prior to the permits issued. Mogen then stated she wants total compliance and asked to see the building permits. Leddy asked if the building permits had been issued for what CRW is building and they stated yes. Luke Muller excuses himself from the meeting at 5:10pm.

Leddy then points out there are 2 entities but CRWII will have only 2 turbines and is not yet building. Part of the T line is installed and that does not need a building permit. Separation of CUP and PUC permits is not an issue and besides that all the permits were issued. Spartz stated that it is a poor way of accomplishing the very thing they are going to accomplish with 2 permits when they could have been combined and applied for at the same time. But, he sees no reason to not agree with the investigation and the conclusions that Krista came to in her investigation. He then asked if CRW is missing any permits and Atyeo-Gortmaker replied that they have received documents proving the PUC has approved the state permits. The local zoning office does not handle the federal permitting but that is addressed at the PUC level and it is documented they are obtained as well. CRWII is not through the PUC at this time but is slated for a decision at the end of March.

Pillatzki finds it troubling that the 1 permit in Grant County included the CRWII permit for the 2 turbines and he feels it is haphazard in handling the permitting. Mach then asked if there was anything further that Robish and Mogen would have questions about and that he wanted to address everything and get it all out on the table at once to handle it here. Robish asked to see the building permit copies right now and the general response was that it was not on the agenda but could be addressed later. Mogen answered that she had not yet received the answers to complaint 2-6 that was presented in November to the Planning & Zoning Office. Atyeo-Gortmaker makes clear to the board that a discussion has not been dually noticed for the conversation to encompass local building permits or any of the other items that are currently under investigation that that conversation would need to be handled properly through the complaint process as laid out in ordinance.

Robish answers that he just wants this done right and Mogen follows up that she wants enforcement of the CUP. Atyeo-Gortmaker prompts Pillatzki that discussion of relevant items has come to a conclusion and the hearing needs to be moved on. Leddy calls the question.

Staff noted the motion on the table requires an affirmative vote yes to overturn the decision to not issue the stop order and a vote no would affirm the decision and uphold the decision of the zoning officer to not issue the stop order. State statute requires a 2/3 vote to overturn the decision to uphold the decision or overturn the decision.

Atyeo-Gortmaker calls the roll: Adler- no Leddy- no Mach-no Spartz-no McCulloch-no Weber-no and Pillatzki-yes. The 6 to 1 vote upon the motion upholds the decision of the Zoning Officer to not issue the stop order.

7. Open- Pillatzki requested Christenson to take her 5 minute speaking time for the open presentation. Christenson refused and requested Johnson to return before she asked her question during the open time. Atyeo-Gortmaker made clear the 5 minutes of time was to make a statement to the board without a debate or hearing. Johnson returned and Pillatzki relinquished Chair to her at 5:25 pm.

Amber Christenson- procedural question: When a meeting is called off what is the procedure? How do you get on the agenda? Who is contacted when a meeting is cancelled? Is that call made at closing time because that is when we sent the appeal? This led into a discussion of the phone call Johnson received that stated there was no business before the board and the meeting would not be necessary for November. Johnson agreed the meeting would not be necessary.

8. Address to the Board of Adjustment
9. Next meeting: 2nd Monday of each month, unless otherwise scheduled and published.
  - a. January 13, 2020
10. Executive Session (if necessary)
11. Adjourn as the Grant County Board of Adjustment Motion by Pillatzki second by Spartz carries 7-0.

Krista Atyeo-Gortmaker  
Planning and Zoning Officer  
Grant County