



GRANT COUNTY SOUTH DAKOTA
PLANNING AND ZONING OFFICE
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12/17/2018 Minutes for the meeting of Grant County Board of Adjustment

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

Alternates present: Jeff McCulloch Don Weber

Members absent:

Others present: Krista Atyeo-Gortmaker – Planning and Zoning Officer, Todd Kays-Staff, Luke Muller-Staff, Kevin Owen, Philip Taecker, Joeline Hicks, George Holborn, Garry Ehlebracht, Chris Giesen, Amber Christianson, Wayne Borgheiinck, Robert O’Neal, Mark Mauersberger, Clark Mastel, Mollie Smith, Brenna Gunderson, Judy Hunt, Shirley Robish, Al Bobish, Jim Wohlleber, Richard Pike, Diane Pike, Brett Sumner, Marvin Amdahl, Teresa Homan, John Homan, Amy Tuttle, Wade Bauer, Alysha Johnson, Bob Lund, Rita Lund, Mark Lounsbery, William Bucklin, Levi Waddell, Tellus Waddell, Allen Amdahl, Warren Berg, Don Devoe, Dave Page, Bobbie Bohlen, Marty Buttke, Jason Rierden, Terrence Peltier, Roger Hansen, Blake Sime, Paul Nelson, Dana Johnson, Richard Fish, Denise Hyatt, Sean Hyatt, Ruby Holborn, Amy Rall, Colleen Pearson, Greg Pearson, John Leiferman, Sharon Leiferman, Bridget Johnson, Teresa Kaaz, Daniel Kaaz, Deb Hemmer, Larin Bunde, Chuck Wollschlager, David Stengel, Josh Akers, Kurt Renther, Bill Street, Dustin Nelson, Derek Nelson, Bert Loehrer, William Tostenson, Tracy Rosenberg, Shirley Wiese, Kenny Wiese, Kathy Tyler, Dewey Zemlicka, Etahn Fish, Rodney Smith, Rita Louisiana, Steph Hansen, Michael Crawford, Sally Jo Sorenson, Doug Buri, Kevin Krakow, Jared Krakow, Roger Angerhofer, Bill Street, Joan Street, Kylie Mogen, Sylvia Anne Marchetti, Jennifer Kolbeck, Jon Henslin, Jeff Kurtz, Nichole Bury, Jerry Bury, Frank Eccles, Tim Lindgren, Linda Lindgren, Kristi Mogen, Craig Wiste, Ashley Dummann, Vince Meyer, Jon Wold, Tim Gapp, Jamie Gentile, Steve Kane, Tyler Wilhelm, Sam Massey, Sarah Sappinan, Miles Schumacher, Chriss Ollson, Anthnoy Schrader, Patrick Adams, David Lau, Allen Richardt, Joel Koustrup, Ferdy Zirbel, Dennis Schamley, Karen Kasperson

Meeting Date: December 17, 2018 Meeting Time: 4:00 P.M. Court House Basement

1. **Call Meeting of the Board of Adjustment to Order** by Chair Johnson at 4:20 pm – Chair notes that First District Staff will be participating in the meeting and will provide
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). Kristi Mogen - Concerning an email sent to the Board on the morning of December 17, 2018
4. **Approval of Agenda** Motion by Adler second by Mach, Motion approved unanimously
5. **Approval of Minutes** Motion by Mach, second by Spartz, Motion approved unanimously
 - a. November 13, 2018

6. **Disclosure of Conflicts/Ex Parte Communication**

Chairperson Johnson asked for disclosure regarding Conflicts of Interest and Ex-Parte Contacts. Chairperson Johnson disclosed that she was part of Dakota Range 1 and 2 projects as a participating landowner. But with the Dakota Range III project she has no conflict of interest and will be participating in the Dakota Range III request. Commissioner Leddy stated that he would need to recuse himself from the Dakota Range III LLC Wind project due to a conflict of interest. Commissioner Johnson and Hansen acknowledged that they would need to excuse themselves from the Motion to reconsider Agenda Item as it was a continuance from last month's meeting where they recused themselves.

DRAFT

7. States Attorney Address:

States Attorney Mark Reedstrom addressed the Board outlining their duties as board members, conflicts of interest and ex-parte communications. He focused his comments highlighting the differences between legislative and quasi-judicial actions and the distinction between planning commission and board of adjustment decisions. He also identified several examples of conflicts of interest and ex-parte communication and how best to disclose those issues/events.

8. Conditional use permits Pursuant to Section 1101.03.22 and Section 1211)

- To operate a 151.2 MW Wind Energy System with up to 22 wind turbines, 1 substation, up to 1 operation and maintenance building, up to 2 permanent meteorological towers; associated accessory roads, collection lines, and associated facilities; and
- To construct an approximate 8-mile 345 kV feeder line from the Dakota Range III project substation to the Ottetail Power Switchyard

on certain property situated in Blooming Valley, Farmington, Lura and Mazeppa Townships

Leddy Recused himself and was replaced by Alternate Don Weber

Johnson called for a motion to approve the CUP permit for Crowned Ridge I & II, LLC as presented. Motion by Pillatzke, second by mach to approve.

Luke Muller, Staff, presented the staff report. Muller presented the expectations of the ordinance and stated that the CUP has met all requirements.

Applicant was provided 10 minutes to present the application. Mark Maursberger, Senior Project Developer, gave an overview of the project,

Johnson opened the public hearing to proponent testimony by stating 3 minutes would be given to anyone who had signed up on the list to address the board.

Kays, acting as Parliamentarian, called the names of individuals identifying themselves as project proponent:

Bobbi Bohlen Milbank– Spoke on behalf of Grant County Development Corporation – GCDC was in support of the project.

William Bucklin Lura Township- Thinks wind is clean energy and supported the project

Levi Waddell N of Marvin- Thinks wind is safe and is building a house in the area – supports project

Tellus Waddell N of Marvin- Agrees with Levi Waddell testimony

John Leiferman - Brookings County Resident, has wind towers, lives near them, has no complaints – been good for schools – supports 100%

Sharon Leiferman- Brookings County Resident – Noise and flicker is not a problem – taxes from wind has saved her Township where she is the clerk
Agrees with Levi Waddell testimony

Joel Koustrop Codington County- Doesn't think it would be fair to add or change rules in the middle of the road – Supports the project

Ferdy Zirbel Summit- Believes that the project will support Summit School

Karen Kaspersen- 17257 460th Ave Watertown- spoke in support.

Richard Pike Summit- Spoke in favor – thinks it will help support schools

Diane Pike Summit- Spoke in favor – thinks it will help support schools

Brent Sumner Summit- Spoke in favor

Dustin Nelson Farmington Township- Spoke in favor – Agrees with Levi Waddell

Bert Loehrer Milbank- Spoke in favor – Good for the climate, Good for unlocking Carbon

Frank Eccles Summit- Spoke in favor – Town Board President - Would be good for Summit

Tim Gapp Summit- Spoke in favor –

Chris Olson Canada- Spoke in favor

The following marked an intent to address the board as a proponent during the public hearing. When their name was called, they stated “No Comment” or were there to answer questions of the applicant. They included: Marvin Amdahl, Dan Johnson, Richard Fish, Jim Wohlleber, Nicole Bury,

Johnson called for opponent testimony. Kays called the names of individuals identifying themselves as project opponent:

Kathy Tyler Big Stone City- States that she is not necessarily an opponent but the board needs to think about the neighbors

Kevin Owen-46845 SD Hwy 20 Stockholm spoke against the project. Further believes that some board members have conflicts of interest

Bill Street-15761 477th Ave – Concerned with property rights – doesn't agree with States Attorney - feels the height of the tower is excessive and basis for denial. Would recommend a larger setback with waiver

Amy Raul Goodwin- Against the project. Should reduce noise from 50 dB to 45 dB – ANSI standard is 35 dB at night

John Homan Watertown-Against the project. Believes that the some board members have conflict of interest – feels board should mandate ADLS Lighting

Teresa Kaaz- 15610 459th Ave South Shore – States Nancy Johnson has a conflict of interest

Amber Christenson- 16217 466th Ave Strandburg – The board should postpone the action. Believes attaching conditions increasing setback to ¾ mile should be done for safety. Board should exercise discretion.

Kristi Mogen 15160 471st Ave Twin Brooks requests that the applicant wait until WES ordinance is updated. Believes sound and flicker maps are guesstimates. Economics of project will not be as great as identified. Noted that it should be denied based upon impacts to health, safety and welfare. Recommends 2-mile setback with waiver. Project negatively impacts non-participants property rights.

Vince Meyer Revillo– Believes that board members have conflicts of interest – neighbors have rights too.

The following marked an intent to address the board as an opponent during the public hearing. When their name was called, they stated “No Comment” or were there to answer questions of the applicant. They included: Phil Taecker, Teresa Homan

Kays asked for comments regarding Dakota Range III Power Transmission Line request.

Vince Meyer Revillo- Had a transmission line 30 years ago – You get used to them – but difficult to farm around them.

Richard Pike (Address) – Talked about WAPA line – stated there are no problems with that line and should be no problems with this line

Amber Christenson- 16217 466th Ave Strandburg – Asked if the transmission was already built – it was clarified that the transmission line referenced previously was the WAPA line.

Joel Koustrop Summit– Spoke in favor

Ashley Dumman Summit– Spoke in favor

Johnson closed the public hearing and asked the applicant to address questions raised during the public hearing.

Kays and Muller asked questions of the Applicant (Mark Mauersberger answered) on behalf of the Board.

- Applicant stated that the location of power lines have been identified.
- Applicant stated they will use active and passive measures to mitigate ice throw

- Applicant stated they will work with FAA regarding ADLS lighting and will adhere to FAA regs
- Applicant stated that Commissioner Johnson does not have a contract with the company of Dakota Range III. Further Dakota Range and (Dakota Range 1 & 2) are only related by name but are 2 separate companies and 2 separate project
- Applicant stated that they talked to landowners within 1 mile of turbine sites
- Applicant then laid out process for remaining for obtaining PUC permits

Commissioner Mach asked about and requiring \$5,000/tower/year for 30 years. Kays stated that the ordinance requires that after 10 years a financial plan needs be established. At the time of writing the staff report the proposed regulations identified a possible \$5,000/tower/year for 30 years. Kays further stated that the decommissioning plan in the as presented would nearly equal that amount. Applicant stated they just don't want to be double billed if PUC requires a similar amount.

Commissioner Pillatzki asked if the applicant had used bonding before – Applicant stated that in the Dakota Range I and II projects the PUC allowed the Utility Company that purchased the project to establish a financial instrument that satisfied the PUC requirement for decommissioning and expected the same to happen in this situation as well. Applicant further stated that the contracts with landowners require the wind farm owner to pay for decommissioning.

Johnson asked about the location of operation and maintenance buildings – Applicant stated that there are a couple of locations identified. Johnson also asked about the Dakota Range 1 and 2 projects were not included in the application regarding other wind projects in the area -

Commissioner Spartz asked about hub height and diameter of towers in Appendix 19 – Wanted to confirm actual height of towers to be constructed Applicant stated the maximum height would be 591'. – Kays stated that the application is limited to 591' - any tower higher than 591' would require a new application.

Board discussion. Johnson asked Staff to read questions to establish the findings of fact for the motion. Board found that the application met the Standard Findings approved in the Board's Bylaws. Board agreed that the applicant satisfied the questions asked by Muller provided that the following conditions be added:

1. Haul road agreements need to be executed not less than 30 days prior to construction. Motion approved unanimously.
2. Haul Road Agreement language needs to include provision that the adjoining landowners be notified of road closures at least 2 days prior to road closure. Motion approved unanimously.
3. Conditions identified in the Staff Report should be included in letter of assurance
4. Applicant is to construct wind towers and meet flicker and noise thresholds in accordance with the application as presented
5. Applicant is to provide an updated proposed area map showing Dakota Range 1 and 2 projects

Spartz and Pillatzki further stated that they were not certain that, even with the conditions assigned, that the public health, safety and welfare would still not be impacted.

Motion to amend the motion to include conditions as prescribed in the discussion and findings – Motion by Mach seconded by Spartz. Motion unanimously approved.

Motion by Pillatzki, seconded by Weber to postpone action until after the Board of County Commissioners have their 2nd reading of the proposed ordinance, Weber agrees – After discussion - Motion fails on 3 to 4 vote with Adler, Mach, Johnson and Hansen voting no.

Johnson asked for further discussion, seeing none the roll was called and motion to approve passed 6 to 1, Pillatzki voting no.

Johnson entertained Motion to approve Electric Transmission Feeder Line as requested by Dakota Range III. Motion by Mach seconded by Hansen.

Muller read questions for the findings of fact. Board agreed that the applicant satisfied the questions asked by Muller provided that the – Conditions as described in Staff report should be incorporated

9. Conditional use permits Pursuant to Section 1101.03.22 and Section 1211)

Johnson announced that she and Hansen would be recusing themselves from this item. Johnson then called for a five-minute recess.

Tom Pillatzki reconvened the Board at approximately 7:40 p.m.

Weber and Jeff McCulloch took Hansen and Johnson's place on the Board. Leddy also returned to the Board.

Muller provides an overview of what a motion to reconsider is and the vote threshold to approve the motion.

Leddy moves to reconsider the motion to postpone. Seconded by Mach. Leddy stated that after last month's motion to postpone the Crowned Ridge Wind Energy System project, he now believes that there is no reason to delay action and the board should move forward one way or another. Weber stated that he feels the board was legislating at the November 13, 2019 meeting Pillatzki states that he feels that there is sufficient reasoning to increase setbacks to protect health, safety and welfare. After discussion motion to reconsider the motion is approved 5-2 with Pillatzki and Weber voting nay.

Leddy moves to strike the ¾ mile setback from residents with a waiver that was approved in November and replace it with a requirement that the applicant will adhere to the minimum setbacks described in the application. Motion seconded by Mach. Leddy feels the action to increase setback exceeds their authority. Mach concurs and feels that ¾ mile was more than what the work group even proposed. Pillatzki felt the Ordinance work group was a closed process. McCulloch says the rules are what they. Spartz says that we are stuck after we already approved Dakota Range III. Weber states that the application meets what the proposed regulations may look like. After discussion motion to remove ¾ mile setback from residents with a waiver requirement approved on a 6-1 vote with Pillatzki voting nay.

Motion to amend by requiring applicant to construct towers that comply or comport with the application as presented. Motion by Weber, Second by Spartz. Motion unanimously approved.

Johnson asks for further discussion, seeing none roll call on the motion to approve as amended.

Amendments include:

1. Haul road agreements need to be executed not less than 30 days prior to construction. Motion approved unanimously.
2. Haul Road Agreement language needs to include provision that the adjoining landowners be notified of road closures at least 2 days prior to road closure. Motion approved unanimously.
3. Conditions identified in the Staff Report should be included in letter of assurance
4. Applicant is to construct wind towers and meet flicker and noise thresholds in accordance with the application as presented

Motion as amended passed 6 to 1, Pillatzki voting no.

10. **Open address to the Board of Adjustment**-none

11. **Public Address** – Kristi Mogen read a letter that she had emailed today addressed to Karen Layher, Mark Reedstrom, Krista Atyeo-Gortmaker, Nancy Johnson, and Tom Pillatzke. The letter addressed minutes of previously meetings and posting of minutes on websites, perceived conflict of interest of Grant Planning Commission/Board of Adjustment members; and public hearing notices and written comments. The letter further asked to have the December 17, 2018 BOA meeting postponed.

12. **Matters for Board discussion/ staff report**- none

13. **Next meeting**: tentatively set for January 14, 2019, 4 p.m. 2nd Monday of each month, unless otherwise scheduled and published.

14. **Executive Session (if necessary)** none

15. **Adjourn as the Grant County Board of Adjustment** Motion by Adler second by Spartz. Motion passed unanimously

Krista Atyeo-Gortmaker, Planning and Zoning Officer, Grant County