



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

Minutes for the meeting of Grant County Board of Adjustment

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

Alternates present: Don Weber Jeff McCulloch

Members absent:

Others present: Krista Atyeo-Gortmaker – Staff, Todd Kays – Staff, Luke Muller – Staff; Kristi Mogen Amber Christenson Kevin Owen Tyler Wilhelm Jamie Gentile Ken Damerow Paul C Larson

Meeting Date: Monday, February 11, 2019

Meeting Time: 4:00 P.M. Court House Basement

1. **Call Meeting of the Board of Adjustment to Order by** Chair Johnson at 3:58 pm.
2. Items to be added to agenda by Board Members or Staff- none to add.
3. Invitation for citizens to schedule time on the Board of Adjustment Agenda for an item not listed. (5 minutes maximum time) Kristi Mogen- Board of Adjustment rules of the board
4. Approval of Agenda by Mach second by Pillatzki. Motion carries 7-0.
5. Approval of Minutes: Motion by Adler to accept the changes second by Spartz carries 7-0.
 - a. December 17, 2018-correction by amendment
 - i. Page 1- Item 1. as attached and noted by underscore addition
 - ii. Page 2- Item 8. as attached and noted by strike out and correction
 - b. January 14, 2019 Motion by Mach to accept with second by Leddy carries 7-0.
6. Disclosure of Conflicts/ Ex Parte Communication
Nancy Johnson recuses herself from the following agenda item as she is a landowner in a project owned by NextEra. Tom Pillatzki takes over as chair to the board.
Richard Hanson recuses himself as a landowner in the project as well.
Jeff McCulloch and Don Weber were seated at the table.
7. Public hearing to consider in full or in part a request to amend a condition of approval of the following Conditional Use Permits CUP02082017A & CUP02082017B, pursuant to Section 1101.03.22 Conditional Uses – Wind Energy System Granted on March 13, 2017 to property situated in Osceola, Mazeppa, Madison, Twin Brooks, Stockholm and Vernon East/West Townships. The applicants, Cattle Ridge Wind, LLC; Parent Company: NextEra Energy Resources, LLC are requesting to change the expiration date of the permits issued by the Grant County Board of Adjustment to Cattle Ridge Wind, LLC. The permits are scheduled to expire on March 13, 2019 due to inactivity from their original approval date. Applicant is requesting an extension of previously issued permits to March 13, 2020.

Mach made a motion to approve the extension request as appeared in the agenda with a second by Adler.

Luke Muller, Staff, presented the staff report. Staff report provided a history of the permits previously issued, the request to extend and specific sections of the ordinance that pertained to the request. Specific to Sections 504.6 and 1211.03.13, Muller explained to the Board that they would need to determine which section of the ordinance superseded the other.

Pillatzki opens the hearing by calling the applicant to provide an overview of the request. Developer, Tyler Wilhelm stated that a series of unforeseen events and timelines led them to the request for extension. Wilhelm stated that they acquired the previous permits from Geronimo in November 2017 and determined that the original Cattle Ridge permit needed to be reengineered to accommodate their regional plan. They also decided to defer implementing the original permits until the County had finished its updates to the Wind Energy System regulations. He further stated that their Cattle Ridge development plan would not consist of the original 127 turbines as proposed but would now be relegated to 25 turbines.

Pillatzki called for proponents to address the Board. Kays read names of those in attendance which did designate proponent or opponent on the sign in sheet. None chose to address the board.

Pillatzki then called for opponents to address the board with a 3- minute time limit. Kays called the names as they appeared on the sign in sheets.

Amber Christenson- Strandburg- Christensen questioned whether or not the applicant had acquired Cattle Ridge. She also inquired about the size of the project and number of acres; which rules were to be applied to the request; and further recommended that the request be denied and the applicant to reapply under the new WES rules. She also believes that Mark Leddy and Mike Mach are biased regarding this project.

Kristi Mogen-Twin Brooks Mogen stated that Nancy Johnson voted on this original application. Further reiterated her email dated 2-4-19 asking for a postponement. She feels that the change in the project should require a socio-economic study. She also inquired to the height of the proposed towers. She recommends a new permit be required. She feels, based upon SDCL11-20-17.3, the board acted beyond its over their authority. She also questions the transmission line 115kV versus 345kV and quotes SDCL 49.41b.2.1.

Kevin Owen-Stockholm- provided a general review of letter prepared by his attorney and was further part of the written record of the meeting. He believes Section 1211.03.13 is specific for the Wind and it says "shall" which means have to and makes void the permit if substantial construction has not happened. Further stated that he appreciates the number of turbines being reduced.

Pillatzki closed the public portion of the hearing noting all were asked again if they wished to address the board. Hearing no one Kays presented the questions to NextEra's Wilhelm. The first question related to what it would be mean for the project if the request was denied. Wilhelm stated that they had made application with PUC and expected a decision in 6 months and that if this extension was approved and barring any legal challenges and no further delays in subsequent hearings, they would be ready to go in 4 months.

Pillatzki asked if they would reapply. Wilhelm replied that it is the uncertainty of postponing and risk the board may put upon them, but they had no issue with coming back. As far as the previously issued permits and what a new permit application would like – Wilhelm state that there would fewer towers, turbines height would remain the same and there would be fewer miles of transmission line.

Pillatzki asked for clarification of the townships that were listed in earlier testimony and the T-line footprint comparison.

Pillatzki then closed the public hearing and entered into board discussion. Weber asked about the PUC permit that was given in June 2018 and was determined to be a different project. Pillatzki asked Kays what was asked and who gave advice to adhere to specific WES rules. Kays replied that the State's Attorney provided legal advice to Staff during its development of the staff report. Pillatzki followed up with a question regarding the consequences of adhering to the general rule versus a specific rule and potential for lawsuit. Kays explained that the risk of being sued or not should not be the basis for a decision. He further stated that the Board needs to determine whether a general or specific rule takes precedence.

Weber questioned why the applicant had waited so long. Wilhelm explained that there were 3 ordinance changes in 3 counties, and they needed to wait to see what the impact would be on the design of the regional project. Leddy asked if this Cattle Ridge portion was part of the overall regional plan. Wilhelm said yes and offered to create a map showing all of the areas of the project in different counties. Kays clarified with questions of Nextera for Crowned Ridge 1 & 2 if that was

around 152 megawatts and the 32 locations in that project with Cattle Ridge around 152 megawatts and now 27 locations for turbines. Leddy then asked if they were to file a new permit the information would be done, and all the information would be available, and Wilhelm agreed that it would be relatively the same, but the new ordinance would be referenced in the reports.

Kays read questions for the development of findings of fact.

Board determines that the Section 504.6 supersedes Section 1211.03.13.

Kays restated the motion to approve the request to extend the permits, previously issued on 3-13-2017, from 3-13-19 to 3-13-2020. 1 vote yes (Adler) and 6 votes no the motion for extension is denied.

8. Open

9. Address to the Board of Adjustment

Kristi Mogen states the Transmission lines are not part of the ordinance and feeder lines within the permit should not be permitted. Application received today should not be permitted by the WES ordinance. She further recommends that the Board amend their bylaws to include information contained in SDCL11-2-17.3; and to further cite the comprehensive plan and Sections 103 and 104 of the zoning ordinance in making decisions – which she believes is not being done – this prompted a response by Leddy “In your opinion” with Mogen stating “Yes, in my judgement”

10. Matters for Board discussion/ staff report

11. Next meeting: 2nd Monday of each month, unless otherwise scheduled and published.

12. Executive Session (if necessary)

13. Adjourn as the Grant County Board of Adjustment

Krista Atyeo-Gortmaker
Planning and Zoning Officer
Grant County