



GRANT COUNTY SOUTH DAKOTA  
PLANNING AND ZONING OFFICE

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### Minutes for the meeting of Grant County Planning Commission

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

**Alternates present:** Don Weber Jeff McCulloch

**Members absent:** Mark Leddy

**Others present:** Al Robish Brenna Gunderson Mark Mauersberger Doug Stengel Brent Wiethorn Linda Lindren Teresa Kaaz Kristi Mogen Fred Lundberg Kevin Krakow Bill Street Joelle Hicks Harlan Loeschke Amber Christenson Joan Strang Wayne Borgheiind Greg Wall Alice Moyer Ben Esh Kelly Owen Kathy Tyler Mark Lounsbery Derek Nelson Patricia Meyer Vincent Meyer Kevin Owen

### Agenda for the meeting of Grant County Planning Commission

Meeting Date: **May 14, 2018** **Meeting Time: 4:00 P.M.** **Court House Basement**

1. **Call Meeting of the Planning Commission to Order** by Chair Johnson at 4:25pm
2. Items to be added to agenda by Board Members or Staff- none
3. Invitation to address the Planning Commission
4. Approval of Agenda Motion by Pillatzki second by Mach carries 6-0.
5. Approval of Minutes:
  - a. Tuesday- April 17, 2018 Motion by Spartz second by Mach carries 6-0.
6. Plats
  - a. Benuel & Eva Esh, owners of Lot 6 of the plat entitled Lots 6&7, Ron Fenner Subdivision and Derek & Serena Wipf, owners of Lot 7 of the plat entitled Lots 6& 7, Ron Fenner Subdivision, located in the NE ¼ of Section 23, Township 120 North, Range 49 West of the 5<sup>th</sup> P.M., Grant County, South Dakota request the re-plat to Lots 1, 2 and 3 of Ron Fenner Second Subdivision that will vacate Lots 6&7. (Grant Center Township)

The Planning & Zoning Officer presented the plat and the reasons for the platting of the lots into the 3 lots and what would be sold between the families and what would be for sale in the end. The lots meet specifications for Grant County and were presented for approval. Motion by Pillatzki second by Spartz carries 6-0.

7. Public Forum on Grant County Wind Energy System Zoning Regulations.

Todd Kays and Luke Muller of First District began the forum with an introduction to procedure with a 3 hour time limit that the Planning Commission would listen to all the what's and why's of wind energy. Please refrain from repetition in comment by stating you are in agreement to certain items. Once the testimony has concluded the staff will consolidate and group the comments. If you have an email to add to the group formed for dissemination of information about wind energy and the meetings please write that on the form at the back desk. We expect the conclusion of these discussions to finish up around Labor Day. All written information needs to be sent to the courthouse atleast 1 week in advance so it can be forwarded to the public documentation site.

4:39 Kays opened the forum to public input:

Al Robish is a truck driver that witnessed ice flying off a turbine and onto a road in front of him. He googled it to see if that happened very often and was told "that happens once in awhile". Robish questioned the liability or responsibility if that ice would come off and hurt his car or his wife. He found Massachusetts has a warning for such a thing and most states require bonds before they build. He is not denying the rights he just wants them to be safe.

Greg Wall lives in Codington County but his mailbox is in Grant. He doesn't want wind to wreck the skyline or the value of his property. He feels he shouldn't have annoyances and the setback should be ¾

mile from homes. Talked with Codington County employee of wind turbine and they told him there is a 1640' safety zone and if he lived within that he would be evacuated if there was a danger and a non-participant should not have to do that. Shallow aquifer concerns for Grant County drinking water. In his area it is 8-12 ft deep and runs for 6 miles along the county line. If they place a 500 ft tower above that how far will they have to drill down to place the 400 yards of concrete and who is watching that. He feels the Db level at the property line should be 40 and flicker and shadow should never bother him. Lighting should be FAA lights that don't light up until aircraft are close so he doesn't have to buy special shades.

Joan Strang agrees with Greg and feels we don't know enough about the health risks. Silos were at 80 ft and these towers are 7 times that height. Codington did 4 times the height for the setback. She doesn't want to see one 1500 ft from her home.

Kristi Mogen Trespass zoning, health & PUC documents for the Crocker wind, Research from David Hessler for noise to be at 40 dBa @ ¾ mile to mitigate and not be using my property and Richard Janes says 35 dBa. The ordinance is vague so she referenced Sweetwater Wyoming, Top soil replacement is addressed. Enforcement has no teeth- if there is a tool left in the turbine who figures that out.

Teresa Kaaz wants night dBa to be under 30 and turned down because of the air pressure.

Amber Christensen lives on the border of Codington and Grant. She is concerned about the use of ROW for transmission lines and feeder lines without landowner negotiation and they are not a public utility. Safety zone of 1640 should be for roadway and it is 1 number but the safety manual for turbines need to be used for every kind. The height and the generator size was used for a 200 foot turbine and the 4.2 has never been used in South Dakota or Minnesota. Wildlife protection in California they shut down the wind towers for 4 months in the flyway during migration. Eagle nest on the maps are not accurate they have a large nest on Troy lake and that eagle hunts over her property. Setback by the world health organization is 1 mile. Decommissioning should have a bond before they start. Sound of the dBa at the property line agrees should be 30 at night. Flicker should never cross the property line and that can be pretty long at times through the year.

Wayne Borgheiink is a Vietnam veteran and suffers from fibromyalgia and chronic pain that is magnified 10 times by wind energy vibrations. He has PTSD and may stop to pick up a coin on the ground and think it is a road side bomb. Flicker bothers him because he fought for peace of mind. The setback from property line to the tower should be built 50-100 foot over encroachment property rights. In the Gulf of Mexico the turbines have sat 5 years idle and the oil is running out of the towers. In Arlington there are puddles of oil at the base of the turbines. Soil Specialists can tell where the wagon trains are because of compactions and these will decrease productivity. They will lose their rights and nothing will be able to live in the water. Moved to Waverly because he can't live in Watertown and he moved there for the healthy living and therapy and he earned that right by fighting for the country and the setback to the line needs to accommodate me for the blades and the flying ice. The environmental impact on health is said by the proponents that we are imagining it but the veterans of the government are being denied what they have fought a lifetime to prove and we need to support their cause. Worldwide the German's have suspended and the Australians don't do wind. We are not just dumb hicks here.

Linda Linnngren lives in Codington County in South Shore and believes we don't need green energy or to harvest the wind. But they are pushing and need to get it in because the people need the money from it. 3 miles away is an eagle nest and with the flicker and ground vibrations these species will be extinct. She wants a 2 mile setback for non-participants with a waiver to their property line. Fossilfuels are plenty to maintain and don't harm the environment. Do what is right and don't be fooled.

Mark Lounsbery is not an opponent of wind but urge you to consider the tremendous testimony and hear the concerns and consider them. There needs to be tremendous updating and he wants the Commission to observe and gather information because they are valid concerns.

Kathy Tyler got her hands on contracts and heard the horror stories of how the signatures were obtained. She has studied what was offered and read 1 that gave up the right to setbacks that overrode the County setback. Mortgage easements, bad actors, clauses for bad actors, selling the land and decommission bonds were not addressed and she wants the board to act as arbitrator. Todd Kays

interceded to ask for clarification that Tyler was asking the board to be arbitrator's and explained that was not a duty of the position and added the county rules supersede contracts.

Bill Street farmer, stated it would be hard to improve the testimony but believes the setback should be addressed like in another county that has towers at  $\frac{3}{4}$  mile. Kays intercedes that the Board of Adjustment did that and that was not an ordinance change. Believes taxes would save the county but after 5 years they go to the state. Out west there is a school that has wind but are in an opt out. If we are not bonding we are negligent. Lighting controlled off until the aircraft pass over is good. He advocates for a 1 mile setback from property line.

Mark Mauersberger states that an ordinance change would not affect their project but it could affect future phases and call those into question. He has 2 points: 1. All the information is submitted to the PUC for the experts who spend 6 intense months studying all of the information. Dakota Range win and the PUC are working through that process and listening to comments from landowners and experts. The intervenors study the validity of the claims and create conditions for them as a company going forward. 2. Brookings County has had wind farms for about 10 years and they are living and thriving with them.

Alice Moyer has Codington County land and feels wind is progress just like the Interstate road and ethanol plants and she says go for it. Why not produce our own energy instead of sending our kids to other countries to fight for oil.

Vince Meyer has lived here 45 years and thinks wind is fine but property owners should have rights too. There is no respect for property rights and will put a tower right on the line. Wind is good but still need coal. Wants to see respect to landowners without a tower and the money is not worth the hassle. Need a township road haul agreement for towers and equipment or they will drive over the corners at intersections and bend down the culverts. Todd Kays asked for clarification if this was a township thing or there is a template that would catch 90% for company and Meyer replied it should be an individual township thing. Meyer then began asking questions of others: What will happen when dismantling if they are not bonding, will Grant County be getting new or used turbines, Will the wind permits be sellable and will the landowners negotiate directly with the wind company. Mauersberger replied these are new Vestas and German wind farms are actually expanding and collocating solar and the government really doesn't negotiate the contracts on behalf of the landowners. Meyer recommends getting an attorney for contracts.

Mogen stated in Michigan and North Dakota they have evaluations of contracts. Kays pointed out the Michigan information was extension groups that made opinions and North Dakota did not change law but there is a one-sided memo that has been written.

Harlan Loeschke stated he was a 40 year employee at REA and a past Director and feels there is a federal mandate about more solar and wind so why fight it. Bismarck is a coal power plant and we have the dams with power allocation to the companies but we have to have progress. He used to get easements and there were some people that didn't want electricity or they wanted the transformer in the back yard so they didn't show people they had electricity in their home. But everyone already knew because they could see it. Solar and wind are coming and they are going to come and with all we use we need more for more demand. Let's work this out because it is coming.

Teresa Kaaz states that the PUC is hearing Ottertail power rate increase because of the new power transmission. Buffett speaks about the tax credits but the farms are not being built. Mark Mauersberger I have a question for you...If it would be ok to adhere to new setbacks why does the CUP in Codington County put a 500 foot tower within 1000 feet of her house at  $\frac{3}{4}$  mile.

Wayne Borgheiink stated the 30 year dependence has expired and leaves a hole in the ground.

Oklahoma schools have striking teachers so it is not good for education. Wisconsin is in court with wind where county increased in valuations were supposed to be money for education. The mining industry has a superfund for reclamation at zero cost to public. If you don't get money up front who pays. Well one to the next who owns the farm you need the money up front. Make a tower/day charge to build a superfund. Oil drips down the pedestal onto the berm around the tank when he was in the army in Pueblo they used drip pans so they didn't contaminate the water.

Kristi Mogen SD PUC Docket 17-055 for Crocker setbacks show property values devaluation is kinda true and Brookings is unscientific with the people that live in the turbines not being able to sell and we need to protect property values was among the testimony. 18-003 for Dakota Range for turbines and an agriculturally based county- that is why she moved here and she heard that when she called here before she moved. Wind changes farming for aerial sprayers, decreasing yields, soil ecology, no drones and decreasing property value which also decreases lease and rental incomes.

Amber Christensen wants road haul agreements for during construction and maintaining during operation and decommissioning.

Greg Wall states there is lots of good testimony and Commission has a hard job. There is new information and he asks about September questions for stopping the towers that are turning into builds. Building permits are all that is left. Codington County has a June 7 vote.

Kays answers the companies will use the rules at the time of issuance. September CUP use the rules that are in affect at that time. PUC has map and on May 15 anyone could apply for a permit under the existing rules. The County Commissioners were asked for a moratorium and voted 4:1 not to place one. A safety zone of 1640 feet on owner's property can be reduced to 1000 feet on owner property and the legality of such would fall to the State's Attorney. County maintains a minimum setback. Also, in Clark County the Board of Adjustment is the Commissioner's. Luke Muller clarified the applicant had placed the ¾ mile on themselves and the 1000 foot setback was not comfortable but it was built. The motion was made with the condition to the permit and will add to ordinance later. No change in setbacks but they need to know the rules. A denial may not be legally defensible and an application that is either approved or denied has recourse through the court. Greg Wall is aware there are some people that took all their land out of wind because they didn't want them to be 1000 feet from the front door.

Linda Linngren feels there is a cart before the horse and a change in the future needs to occur for a process that occurred in the past and an adoption needs to happen and the apps that are out there for county to wind need to be changed or else why are we here.

Kays answered with the county could be liable for takings and the moratorium was discussed at a meeting. These meetings are to continue that discussion over time and come to an agreeable end and in the end there will still be people unhappy. We are exploring all subjects dealing with wind energy and the State's Attorney would advise to move forward with the rules at the time of application.

Bill Street states there are 2 wind farms with CUP's already and a 3<sup>rd</sup> on its way. The Board of Adjustment could get a new CUP and should tell the outfit to wait. A moratorium is statute and the County Commissioners should do that.

Joan Strang said the Board of Adjustment gave permission and asked if it was for 500 foot setback. There are feedlots now that are 2000 or greater. You know the rules.

Mogen states they have a right to review the app at this time and Kays corrected her with a no, as that window has closed. The public has 30 days to take it to circuit court. Mogen then pointed out they had presented the 100 plus turbines and we will see less than 50 for a loss in tax revenue and that would be a change in CUP permit request. Kays again corrected her in saying the CUP is not a value based document or decision that is based upon values or numbers in that way.

Mark Mauersberger has explained the danger zone before and sent that information to First District already. In response to 21<sup>st</sup> for Teresa and Kristi the 1000 foot setback at the house is adhered to in Codington county as well as the regulations for sounds and shadow and they go to the 1300' mark prescribed for non-participants. The closest to "Teresa" in either county is 2000 feet. The road haul agreement had its meeting and the comment at the meeting was that it was more detailed than the county agreement. Wind companies vary and they work specific for each county. 150 megawatts is sold specifically to Walmart already. Apex Company and contract can compare to no one and will stand on its own merits. The PUC will address June 13 with evidence and ratification of their company.

Kelly Owen states the opponents agree and will give a letter to Krista. 2009 setbacks for a standard size tower is not best for a tower that has gone up in size.

Mark Lounsbery acknowledges the opportunity for them to get 3 more commissioner's to speak to a moratorium and give the county some breathing room if they are doing their job. The best time to plant a tree was 5 years ago and the second best is today.

Mike Mach asked if new wind could have conditions placed on it. Kays stated yes- but you want to be careful you are not legislating on the fly and making up as you go. That would be a mandate on an application that would force an agreement. The conditions have to have a basis for the increase and be legally defensible and without bias. It would turn into a discussion with the applicant and a negotiation that could force agreement.

Bob Spartz likened it to the annual meeting of his township to do no snow removal of secondary roads. They could do that and onus on the wind. He is interested in hearing from the Brookings Auditor to see what the tax income was and how that has changed for township county school.

Kays stated they will be gathering comments and topics into bite sized pieces there may be 5 things or more or less. Prepare to make recommendations to commissioners and wait for a public vote.

8. Open address to Planning Commission
9. Matters for Board Discussion/Staff Report
10. Next meetings:
  - a. Regular meeting: Monday- June 11, 2018 at 4 PM
11. Executive Session (if necessary)
  1. Adjourn as the Grant County Planning Commission Motion by Mach second by Pillatzki carries 6-0.

Krista Atyeo-Gortmaker  
Planning and Zoning Officer  
Grant County