



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 Planning and Zoning/Board of Adjustment.

Members present: Nancy Johnson Tom Pillatzki Gary Lindeman Mike Mach Tom Adler
Richard Hansen

Alternates present: Val Cameron

Members absent:

Others present: Kate Capp, Tim Tyler, Kathy Tyler, Steve Scoblic, Carol Tyler, LeRoy Capp, Dan Scoblic, John Hicks, Pauline Hicks, Irene McCulloch, Roger McCulloch, Stephen Fonder, Kyle Schwenn, Tammy Mikkelson, Gregory Kassung, Denise Scoblic, Daniel Bogenreif, Lynette Pillatzki, Doug Stengel, Karen Layher, Mark Reestrom, Dick Skoog, Mary Skoog

Minutes for the meeting of Grant County Planning and Zoning/Board of Adjustment.

Meeting Date: Tuesday, October 11, 2016 8:30 PM

1. Call Meeting to Order by Chair Johnson at 4:35 PM
2. Reading of Grant County Board of Adjustment Procedural and Rules of Conduct
3. Approval of Minutes: Tuesday, September 13, 2016 Motion by Lindeman second by Adler carries 7-0.
Tuesday, September 20, 2016 Motion by Mach second by Pillatzki carries 7-0.
4. Plat Approvals
 - a. Robert & Joel Hicks, John & Debra Hicks, Catherine & Howard Cleveland each 1/3 joint tenants with right of survivorship request the plat of Lot 1 and Lot 2 of J&P Hicks Addition in the SW1/4 of Section 20, Township 121 North, Range 48 West of the 5th P.M., Grant County, South Dakota. (Melrose Township) Motion by Adler second by Hansen carries 7-0.
 - b. Dale & Mary Skoog, owners request the plat Lot A Aaron Skoog 2nd Sub in the SW1/4 of Section 8, Township 119 North, Range 48 West of the 5th P.M. Grant County, South Dakota. (Vernon Township) Motion by Mach second by Cameron carries 7-0.
5. Conditional Use/Variance Requests/Rezoning
 - a. Permit No. VAR09192016, Kyle Schweer, Owner in Lot 1 Schweers Subdivision in SW ¼ of Section 27, Township 120, Range 48 of the 5th Principal Meridian, Grant County, South Dakota. (Alban Township) The request, if granted, would, allow the placement of storage shed to be placed 112 feet from center of road on 481st and within 30 feet from North property line to be in line with the house. Motion by Hansen second by Lindeman carries 7-0.
 - b. Permit No. VAR09262016A, Greg Kassung, Owner in NW1/4 Ex Lot1 Kassung subdivision in NW1/4 of Section 35, Township 121, Range 49 of the 5th Principal Meridian, Grant County, South Dakota. (Kilborn Township) The request, if granted, would, allow the placement of storage shed to be placed 120 feet from center of road of 471st Ave to allow space within building site and staying out of the flood plain. Motion by Mach second by Cameron carries 7-0.
6. New Business
 - a. Lorelie Brandt resignation
 - b. Kate/LeRoy Capp odor complaint submittal
Began complaint process with reading of the minutes from the meeting 1 year ago. Mach reflected upon whether they are working the best, what they are doing and could they do something different. Lineman asked if they are changing the chips. Johnson stated the purpose of the board is to decide whether the conditions were met and that had been voted upon. Pillatzki felt differently about the purpose that they would address the standards and they had met the conditions and that passed. He thought it was

necessary to revisit the maintaining of air quality and improving that. Doug Stengel interjected that it was his understanding it was going to be given a year to start working and given a chance to get established.

Kate Capp took the floor to offer an explanation of letter. She stated the odor was not getting better and that it stunk 33% of the time and it was affecting her daily life. She felt that if the intake air was being filtered the phase 1 exhaust fans should be too but not just on the nursery as designed.

The January 14, 2013 minutes read most effective and highlighted the emails from Cortus in which she felt Dr Cortus did not feel it was most effective because of the empty bed contact time. She felt wood chips were not the most effective and when she went back to Dr Nicolai's recommendations he stated it needed wood chip compost. She felt garden hoses to water were not good enough and asked the requirement of plumbing sprinklers for consistent moisture for microorganisms to be added. She also asked the board to consider requiring additive to the manure pit and sited a 200 page document to which she handed out an excerpt for the board.

Johnson stated the board could not add new conditions and Reedstrom followed up with that comment as well and continued. One year ago the board heard the same complaint that they weren't complying and it was the most effective and you heard all that 1 year ago. The board tabled the decision and talked to experts and had many discussions and voted 5 to 2 that they had not violated their conditions. On this issue, you ruled against Tyler and Capp and this has already been decided and it is race judicata to see the same complaint 1 year later. You ruled upon the complaint and chose not to defer the issue at hand.

Hansen asked if the woodchips are filled to the top and they are caring for the biofilter if it would eliminate the smell or do they just have a biofilter. Reedstrom reiterated this is the same discussion and ultimately another complaint on the same issue and you are ruling on the same issue now. You can reopen and take action on the permit to revoke their permit. But, how would you decide 1 year ago they met the conditions and now 1 year later is that different? The conditions haven't changed- this is not a decision on whether it smells or not or whether it smells bad or not. The issue is biofilters and did they meet the requirements.

Pillatzki pointed out they need to comply with standards and they should revisit and asked for the minutes of the October 2015 meeting to be read again. Lindeman pointed out it states effective filter and have they met the condition. Pillatzki asked if that was a trial period and they can scrutinize and reassess to see if they accomplished anything and if it is working. Johnson pointed out SDSU experts designed and they were installed according to the oversight of Dr Cortus with an audit system. How could that be in violation? Do we have Krista investigate that? Maybe the most effective isn't very effective. Reedstrom states that 1 year ago the motion should have been more artfully phrased to speak to the true intentions for today.

Mach says if it is a condition to contain smell that it should do what it is expected. A pond and a liner installation that goes to heck after 2 years should be addressed.

Reedstrom clarified that the board can require a liner to go in and that satisfies the condition if it fails it is outside the scope of the authority and it falls to DENR. Scoblic asked if it should be maintained and Reedstrom stated his thoughts would be that in issuing permits with conditions the board should be very careful to create the conditions as written for the permittee to comply with. Smell and level of effectiveness can be argued forever.

Adler states there needs to be a balance for living and producers and it is a state of the art facility but it doesn't mean we should shut it down. Discussion about abiding by the conditions, having a representative from the County on site and a review of the audit sheets can be requested. Pillatzki asked if they could put in a better Biofilter but has leverage been lost and all that is left is to pull the permit. The issue is complying not did they do it and in the end all we can do is ask them to put in a better Biofilter.

Reedstrom stated the P&Z Board is not the end all and be all and that since statehood neighbors that have issues with noisy dirty or smelly use the common remedy to sue their neighbor for the nuisance. This is a cause of action and a person to person

disagreement in which the authority does not lie with the issuing board that made a decision based upon the criterion in law of ordinance and conditions that was specific for the applicant to follow. The board is not the police or the farming police.

Johnson directed a question to the complainant if they had talked to them to which the reply was they had not. Reedstrom redirected with farmers dealing with this all the time and it is a civil suit. Capp questioned if they were fulfilling the terms with the phase 1 fans all but the nursery. She had documented that wood chips were not the right compound and what about all the phase 1 fans why only partial and not all the fans with 6% being flushed. Scoblic retorted the ruling was made in error by the board.

Johnson directed if the board would be asking for the administrator to conduct an investigation of the complainants and report back to the board. Pillatzki stated that the professor didn't think these were the most effective biofilters and Johnson answered that they were required to consult with SDSU, which they did and it was not our place or theirs to measure effectiveness just to build the most effective at the time according to their design.

Mach made a motion to have Administrator invite Kerkaert to the meeting in November and that motion was seconded by Pillatzki.

- c. Planner's Conference

Attendance to the meeting in Sioux Falls was taken with Johnson being the only board member expressing interest in attending Wednesday only session.
7. Old Business
 - a. Unfinished Business Administrative forms information and review

A discussion of the intent of the ordinance change was held to prepare for making changes that would be least intrusive to small producers without using a variance to get around the rules in place and allowing those who are currently farming in this capacity to be granted a permit. It is the consensus that the ordinance change was not for the small producers but for all and the vesting would not burden them with a setback. As discussion kicked off there were thoughts about manure amount differences between pigs and cows and how an odor footprint would consider these differences between 1500 pigs and 750 cows and that 80 acres isn't the problem. If people vest it relaxes the setback and actually gives a variance to the neighbor and that is kind of based upon the percentage of 80 acres as compared to 40 acres where people will have fewer animal units for the size of the land and setback. Board consensus looks to keeping the vesting but increasing the number to 1000 animal units as the general permit now requires in South Dakota and not requiring a nutrient management, manure management or odor and fly plan for those under 1000 and there would need to be new language. Also new language for those that are vested and under 80 acres to be grandfathered in some manner.
 - b. Review of ordinance 2016-01
 - i. Special meeting October 18, 2016 at 5:00 pm
8. Next meetings:
 - a. Regular meeting: November 8, 2016 4:30 pm
9. Adjournment

Krista Atyeo-Gortmaker
Planning and Zoning Officer
Grant County