



GRANT COUNTY SOUTH DAKOTA  
PLANNING AND ZONING OFFICE  
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Minutes for the meeting of Grant County Planning and Zoning/Board of Adjustment.

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

**Alternates present:**

**Members absent:** Gary Lindeman Tom Pillatzki

**Others present:**

Meeting Date: Monday, January 9, 2017

**Meeting Time: 4:00 P.M.**

1. Call Meeting to Order
2. Reading of Grant County Board of Adjustment Procedural and Rules of Conduct
3. Approval of Minutes: November 8, 2016 Mach asked for a retraction and correction of a section of minutes presented for approval as he does not remember making such statements. "Mach stated he drives by the system often and doesn't seem to be smelling and he has asked truck drivers that come to his business that may be more sensitive and they answer they don't smell it or even notice it most of the time. This is production and it is part of life. We can mitigate but can't eliminate."

'To be corrected as: Mach stated he drives by the system often and does seem to be smelling. This is production and it is part of life. We can mitigate but can't eliminate.'

December 5, 2016- No meeting

December 20, 2016- Joint Hearing

Motion was made by Mach to accept the minutes as written and corrected with Hansen seconding carries 5-0.

4. Plat Approvals
  - a. Jerry & Nichole Bury of J&N Rentals, LLC, owners have requested the Plat of Lot 1 of Bury Mobile Home addition located in the NE1/4 of Section 27, Township 120 North Range 48 West of the 5<sup>th</sup> P.M., Grant County, South Dakota. (Alban Township) Motion by Adler second by Mach carries 5-0.
  - b. Marion Larsen, owner request the plat of the SW1/4 of the SW1/4 of Section 19, Township 121 North, Range 46 West of the 5<sup>th</sup> P.M., Grant County, South Dakota (Big Stone Township) Motion by Hansen second by Adler carries 5-0.
  - c. Zubke Enterprises, Jerry & Donna Zubke, owners, request the plat of Lot 1 Zubke Enterprises Addition, located in the NE1/4SE1/4, Government Lots 2&3 of Section 24, Township 121 North, Range 48 West of the 5<sup>th</sup> P.M., Grant County, South Dakota. (Melrose Township) Motion by Mach second by Spartz carries 5-0.
5. Conditional Use/Variance Requests/Rezoning
6. New Business
  - a. Kathy Tyler complaint

Discussion amongst the board with Nancy Johnson bringing the complaint to the table and acknowledging that this was the same complaint they had heard and dealt with several times before. Mach asked if the cost effective and most effective was differentiated. Atyeo-Gortmaker stated that was when Mark Reedstrom was here for several meetings he said there really isn't a difference and what it boils down to is whether the applicant met the conditions or whether they need to have their permit revoked. A poll was taken with all the board agreeing the permit should not be revoked so there wasn't anything done with the complaint. The condition is a condition with both Teton being summoned several times and discussion with Capp's and Tyler's and the decision was made to not do anything.

Johnson reads the original condition placed upon the applicant was for them to engage in discussion and the only word change would be most effective and cost effective. Atyeo-Gortmaker followed up with the statements made at the original

meeting by Stengel who brought up the fact that it needed to be cost effective. Johnson addresses Tyler about what she was hoping to gain from the complaint and Tyler again states “most effective and cost effective are basically two different things and anyone who has gone through construction knows that. Most effective is not necessarily cost effective. We produced evidence and that is a whole nother story. What it boils down to is there is to me a breach of protocol and honesty for what was transferred from the minutes to the findings of fact and that was never ever discussed or a motion in any minutes.”

Atyeo-Gortmaker states the reason for this is because they were conditions placed on the permit not something you change after the permit has been given to the applicant. Tyler states “that is my problem, the wrong permit was given- no not the wrong permit just the wrong findings of fact were given or included in the permit and that has been brought up but never been addressed.”

So the question that has been brought up over a time frame of maybe a year and a half were cost effective versus most effective and have we breeched that; we have brought in Dr Erin Cortus who stated she had discussions with Teton and designed the most effective biofilter and Mrs Tyler had actually brought to us the research that she had done when the facility was being built that these were most effective. It is kind of a blending of things but a discussion had been made and the decision that is before you is whether you pull the permit based upon unfulfilled obligations of your conditions. Tyler states she is not asking whether they are being fulfilled but it is interesting that Dr Cortus is brought up because if she would have known she would have brought the emails to her that state these are not the most effective biofilters. Johnson states but they are effective and Tyler replies we are now getting into semantics’ with cost effective and effective. Johnson states that is part of the discussion these biofilters are so new that going to the shelf for good better and best isn’t an option. Tyler answers ah, but I have issue with that also but I am not prepared to have that discussion. Biofilters, if you go down to the SDSU research site South of Sioux Falls on campus you can look at them on a much smaller barn with no whiff coming out. Johnson states we can’t get into a discussion on biofilters and Tyler agreed. The complaint has to do with the wording- what are the options: we already agreed they met the conditions of their permit I don’t know what else we are supposed to do.

Adler stated he feels we are nitpicking over wording they are doing their best with SDSU’s help. Tyler disagreed stating they were not doing the best they can as they put in the cheapest biofilters they possibly could and biofilters can cost a lot of money. And she asked Adler if he would put in the most effective furnace or a most cost effective furnace or generator stating that Cost effective to me is what you can afford and what you are willing to pay and most effective is not even what you are looking at. Johnson states they may not be very much different and can be both cost effective and effective and Tyler states that isn’t what the motion was at the meeting.

Tyler states, you go back to the findings of fact and you change the findings of fact to be most effective instead of most cost effective and this was brought up right away and it was glossed over and it is time to be changed to the way it is supposed to be.

Hansen wishes for an attorney- she has a point maybe good or not- but the attorney should decide. Atyeo-Gortmaker reminded the board the State’s Attorney had been with them at several meetings and advised them they had choices and at this point it should be civil litigation. The Board doesn’t have make any changes. The discussion at the hearing was cost effectiveness and Mrs Tyler did her presentation about effectiveness at the hearing and at subsequent meetings with Dr Cortus she presented the wood chips fill being an effective biofilter and this information was recommended and used by the board. Tyler states she is the only one to have ever asked Dr Cortus about effectiveness but that is not the discussion today. The discussion today is you know...if you want to get an attorney involved you can get an attorney involved I have spent so much on this already that is isn’t going to matter. Atyeo-Gortmaker tells the board an attorney isn’t going to make a recommendation on that what you have here, this is a civil matter of what you feel is most effective versus cost effective. What you as the board do is make sure they are doing the best they can with those conditions and they were

presented to you several times by both sides all the discussions held both cost effective and most effective in those discussions. Tyler states it isn't a matter of semantics it is a matter of procedure and honesty. We are looking at a motion made to do this and this was done instead.

Spartz says obviously somewhere along the lines we have 2 different forms and this is a big difference. This can be a big difference or it can be exactly the same and somewhere someone messed up because they are not the same. I don't know how you correct when the motion was made and passed and then what was signed was something totally different. Whoever wrote this up – it is different. If there is a big difference she has the right to sue the board because there is an error there.

Hansen states there is something wrong here but we can't do anything here we need an attorney. Mach makes a motion to table the discussion until next meeting until we have the State's Attorney come in and talk to us and tell us which way to go. Tyler states she will be contacting her attorney before that time also and you will have him here or a letter stating what we feel needs to be done. Mach states the attorneys can go back and forth. Second by Spartz carries 5-0.

b. Light Industrial Agribusiness ordinance review and recommendation

Introduction to the ordinance and background information for the necessity of having this added to the ordinance in this format. This would minimize the need for rezoning within the county for smaller industrial facilities that are agriculturally based and use agricultural products within the agricultural zone. Not a farm and may not be living there but are a classification as a home extended occupation.

This cannot be done with an administrative form because it can be subjective but if they are in black and white they are the rules that everyone has to adhere to and it treats everyone the same. When you create an ordinance it governs everyone and it is much more difficult to write an ordinance for what may come in 20 years than it is to rewrite something that you have to fix. But, you can't govern for everything you may not see coming either, whatever you recommend for adoption needs to be the best for Grant County as a whole.

7. Old Business

- a. Adoption of ordinance 2016-01A done on December 29, 2016
- b. Administrative form completions

8. Next meetings:

- a. Reorganization was held at this time with nomination of Nancy Johnson to Chair by Richard Hansen with Adler motioning nominations cease. All those in favor carries 5-0 and Johnson is appointed to be Chair of the P&Z Board. Motion by Hansen to nominate Tom Pillatzki for position of Vice-Chair Adler motioned for nominations to cease and all those in favor carried 5-0 to name Pillatzki Vice-Chair.
- b. Regular meeting: February 14, 2017- it will now be 2<sup>nd</sup> Monday of the month at 4 pm which is going to be Monday, February 13, 2017 at 4 pm.

9. Adjournment Motion by Mach second by Spartz carries 5-0 at 5:40

Krista Atyeo-Gortmaker  
Planning and Zoning Officer  
Grant County