



GRANT COUNTY SOUTH DAKOTA  
PLANNING AND ZONING OFFICE  
210 East 5<sup>th</sup> 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:** Mike Mach, Mark Leddy, Richard Hansen, Tom Pillatzki, Nancy Johnson, Jim Berg, John Seffrood

**Alternates present:** Don Weber

**Alternate absent:** Jeff McCulloch

**Others present** Butch Kaaz (\*), Judy Kaaz, Mark Lee (home extended business CUP), Mark Aslesen (\*), James Amdahl (\*), Edward Brennan, Marvin Amdahl (\*), Tim Waldner (Sunrise CUP), Brad Woerner (Sunrise CUP), Matt Korstjens (setback variance), Lance Heuer (\*), Todd Kays (First District, telephonically), Ellen Heine (Xcel Energy - ADLS CUP, telephonically), and Steve Berkner (Grant County Planning Commission officer)

\* Indicates person expressed interest in addressing the board during the meeting.

**Meeting Date and place: Tuesday, June 15<sup>th</sup>, 2021, In the courthouse basement meeting room and also by video conference.**

1. Leddy calls Meeting of the Board of Adjustment to Order at 4:11.
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)
  - Kays asks for public comments not related to the meeting agenda. None where given.
4. Approval of Agenda
  - Motion by Pillatzki to approve the Board of Adjustment agenda.
  - Seconded by Johnson.  
On a voice vote motion carries 7-0
5. Approval of minutes from April 12, 2021, meeting.
  - Motion by Mach.
  - Second by Berg.  
On a voice vote motion carries 7-0

6. Disclosure of Conflicts/ Ex Parte Communication.

- Kays discloses that he and Mark Aslesen are related, and they have had no recent contact or have discussed anything concerning any topics on the approved agenda.

7. Matters for Board discussion/ staff report.

7 a. Korstjens – Fifteen-foot side-lot variance setback request.

- Motion by Hansen to consider the variance request.
- Second by Mach

Kays presented the staff report stating that Korstjens was requesting a 15-foot side-lot variance setback to build an accessory garage on the western side of his lot due to a variety of existing conditions most notable his property's topography slopes significantly the further east his lot goes until it meets the Whetstone River.

Kays also stated that Korstjens had also provided a signed statement from the immediate landowner to the west, or the closest to the proposed building site, that they had no concerns if Korstjens was granted a 15-foot set-back variance.

Chairman Leddy opened the meeting for any public discussion.

Korstjens added that when he built his original driveway that the county highway department asked him to put his driveway approach as far west on his property to distance the driveway as far from the steep contoured land on the east side of his property which leaves him little room to build without having to move the driveway.

Leddy asks if anyone else had any comments to make concerning the Korstjens Variance requests and no one responded.

Leddy asks that Kays check if any online participants wanted to comment on the Korstjens Variance and again there was no response.

Leddy closes the public comment period of the Korstjens Variance request.

Leddy asks if there are any comments from the sitting Board of Adjustment members. Tom Pillatzki commented that the setback request was also within the same western set-back boundary of the furthest west corner of the existing house and its attached garage, and that the location of the accessory garage being proposed wasn't any closer to the west property line than already exists with his house.

With no further comments from the board Leddy asks Kays to read the Finding of Facts with no board member indicating that they didn't agree with them.

Leddy calls for the roll call vote for the Korstjens variance.

- The vote passes unanimously 7-0.

7 b. Lee – CUP for Extended Home Business (Federal Firearms License)

- Motion by Johnson to consider Conditional Use Permit request by Brandon Lee, dba, Lee's Guns, for a home business to sell firearms.
- Second by Pillatzki

Kays presented the staff report stating that a firearms business was allowed as a Home Extended Business within the county according to Section 1209 in the county's ordinances with a Conditional Use Permit.

In his closing comments Kays stated that the South Dakota State Constitution guarantees the right for its citizens to have a firearms business under special conditions which are put in motion once a permittee is granted a Federal Firearms License and that technically all that had to be done in Grant County was that a copy of the Federal Firearms License needed to be on file with the county when the Conditional Use Permit was actually issued.

Chairman Leddy opened the meeting asking for any public comments.

Mark Lee spoke on behalf of both his brother Brandon and himself that the Federal Firearms License was already issued and was in both of their names and that their intentions in their business plan was to sell a modest number of firearms while also working with groups like Pheasants Forever that help promote sustainable hunting in South Dakota.

Leddy asks again if there were any more public comments with no one responding.

Leddy asked a third time if anyone wanted to speak and also asked Kays to check if anyone using the online teleconference option was interested in speaking. Hearing none, Leddy closed the public comment part of the hearing.

Chairman Leddy asked for any comments from the board with Pillatzki repeating that a copy of the Federal Firearms License must be presented before the Conditional Use Permit be issued. Kays answered yes.

With there being no more comments or questions from the board Leddy called for the roll call vote for issuing the Conditional Use Permit for Lee's Guns.

- The roll call vote passes unanimously 7-0.

7 c. Xcel Energy – CUP for Aircraft Detection Lighting System tower.

- Motion by Berg to consider Conditional Use Permit request by Xcel Energy to install an Aircraft Detection Lighting System (ADLS) as part of Dakota Range I and II Wind Energy System.
- Second by Hansen

Kays presented the staff report going over the Conditional Use Permit stating that Grant County has permitted WES communication towers in the past and he finds no information in the application that concerns him based on past permits issued other than decommissioning of the structure if necessary should be tied to the rest of the Dakota Range I and II WES.

Kays also commented that the original CUP application for Dakota Range did not specify an ADLS tower as that technology was still in its infancy and that only recently has it matured to the point that it is now widely used.

Kay closes his presentation.

Nancy Johnson asks to be recused based on her being a board member for different wind energy systems. Alternate Don Weber sits in for Johnson.

Chairman Leddy opened the meeting asking for any public comments.

Xcel Energy's Ellen Heine announced via teleconference that she was available for any questions or comments if needed.

Leddy asks a second time for any public comment with no one speaking up.

Leddy closes the public comments part of the hearing asking the seated board members for their thoughts.

Don Weber asks if a recent plane crash near Highmore (SD) wind towers had an ADLS system and Kays responded that "no," that WES project did not have ADLS.

Kays also commented that the South Dakota Public Utilities Commission is behind the newest technology used in ADLS and that the feedback from local citizens located near WES project has been positive as the constant flashing red marker lights is usually considered bothersome. Kays closes his comments saying that the FCC and FAA are behind the technology.

Leddy asks for any further comments and there being none Kays reads the findings of facts where there is no dissent from the voting board members.

Leddy calls for the roll call vote and the motion passes 7-0.

Alternate board member Weber is replaced by board member Johnson.

7 d. Sunrise Colony – CUP request for a religious farm community (non-CAFO), a home extended welding and a repair shop, and a home extended concrete ready-mix plant. (All three requests to be considered in one public hearing presentation and voted on separately with the first motion being for a CUP for a religious farming community.)

- Motion by Mach to consider the Conditional Use Permit request for the proposed Sunrise Hutterian Colony
- Second by Hanson

Kays presented the staff report concerning the Conditional Use Permit applications complete with a sitemap of the proposed colony and their two home extended businesses to be located on 240 acres in Lura Township.

The site map also showed approximate locations of other temporary structures; 1) a “Temporary Kitchen/ Water Supply / Garden Supply” and 2), a “Temporary School,” all located near the northeast corner of the 240 acres where a majority of the permanent structures will eventually be built.

The sitemap also showed permanent structures including 27 single family dwellings, a “McDonald Barn” for under 50 Animal units, a “Church/Kitchen” building, a “Future School,” the “Welding / Mechanic Shop,” a “Utility Building, as well as a “Future Concrete Plant.”

Kays went over the application of the proposed religious colony and emphasized that they have indicated that a Concentrated Animal Feeding Operation (CAFO) is NOT in their future plans where the applications indicate they intend to also have a Welding and Repair Shop up and running within two years with the possibility of a Concrete Batch Plant up to eight years later.

The sitemap and notes in Kays’ presentation also showed approximately 8 acres of land on the west side of the 240 acres that was a former farmstead that also has a certified 140 foot deep “good well” that produces 13 gallons a minute.

The application, staff notes and sitemap showed that this area will be used for “temporary housing” and that the proposed colony has indicated that they would be using class B manufactured homes (mobile homes) while the permanent residence structures are being built. The well will provide water for the both the temporary and permanent structures as well.

In his report Kays said any commercial building or multi-dwelling structure would need to follow International Building Codes where single-family units would be exempt. Kays also stated that were required by law, statute and ordinance that licensed installers will have to be used.

While the primary access to the site is identified as 152<sup>nd</sup> Street, a county improved road, 454<sup>th</sup> Avenue is a township road, and haul road agreements may have to be in place if additional traffic caused by the proposed colony has any negative effects on those adjacent roads as they exist now.

During his presentation Kays makes reference to the proposed sitemap that was done by Stockwell Engineers stressing that the final drawing accepted for the location of all temporary and permanent structures, “would have to match fairly closely” where subtle changes would be allowed if minor location changes were needed to better accommodate unforeseen conditions.

Stockwell Engineers’ Brad Woerner said he was available for any questions that may come up about the proposed layout during the meeting and that amended final drawings would accompany the building permit application where all required federal, state and county regulations and setbacks would be followed.

Kays stated that normally granted CUPs dictate that all, “if not a significant amount of the building and construction phase of the project needs to be completed in 2 years”

and that the request to have up to 8 years to complete the concrete batch plant should probably be denied as it may set a bad precedent for future applications.

Chairman Leddy asked the presenters for Sunrise Colony if they had any additional comments to add before the meeting was open to public comments.

Tim Waldner, spokesperson and “overseer” for the proposed Sunrise Colony, said that the timeframe for completion of the colony would be similar to what happened with the Blue Sky colony (which is located on the eastern side of Grant County.) He also stated that the Sunrise Colony has nothing to do with the Blu Sky Colony.

Board member Pillatzki asked if and what type of assistance was Blue Sky giving the proposed Sunrise Colony and what similarities would there be between the two colonies. Waldner said that the proposed colony’s residence would be coming from the Spink County area.

Stockwell Engineers Woerner answered that the sanitary sewer system and lagoons would be similar which would meet SDDANR specifications. Woerner said that two lagoons will be built with the capacity for the first one to be for up to 100 people and the second smaller pond would be for up an additional 30 people if needed.

Woerner said that he did not anticipate any additional lagoon capacity needs for the cement plant once that is built. He also indicated that the welding shop once hooked into the lagoons would not be a problem for treatment either.

Woerner closed his comments saying that there might be other solutions for sanitary sewer for both buildings due to their elevations compared to the housing units which may have to be met by using separate septic tanks installed to state regulations.

Kays stated for the record that both permits and designs for the handling of both storm water and sanitary sewer systems would be necessary in the final application.

Woerner asked about what changes from the original site plan submitted for the CUP would constitute coming back to the board for approval and Kays answered that it would be up to the Planning Commission Officer to decide if those changes vary to much from the original plan. Kays said it would be best to keep any location changes to a minimum.

Leddy asks for public comments.

Mark Aslesen identified himself as a representative of Lura township and stated that they were concerned about any additional traffic, especially if it is related to the proposed cement batch plant, would have on the conditions of township road 454th Avenue as it is basically a 1-ton road. Any additional traffic above and beyond what is there now would need a “haul-road” agreement.

Butch Kaaz stated he had concerns about the timeline for the temporary housing to become permanent and how much water the colony thought they would be using as the well they have identified for water wasn’t enough for the amount of people planning to

live there, the McDonald Barn and planned business activities of a welding shop and a cement batch plant.

Kaaz was also concerned about the increase in (population density) and whether or not the colony residents would be inoculated against covid-19. Kays interrupted the Kaaz and stated that any public comments related to living and lifestyle choices were not allowed by Federal and State statutes and are not pertinent to the discussion at hand.

Marvin Amdahl identified himself as the neighbor directly to the west and “downstream” of the proposed colony and stated he had the following concerns.

- i) That would his land be able handle any additional water “runoff,”
- ii) Would the future cement batch plant be related to any future “unannounced” CAFO activity,
- iii) What would happen to the existing shelterbelt trees
- iv) “wear and tear” on the local roads as has been seen with other permits allowed for CAFO’s and windmills.
- v) Does the addition of a new “colony” add or subtract from the local economy,
- vi) Does limiting schooling to graduating in the eighth-grade help or hurt the local economy.
- vii) What are the true benefits to local sales and property tax revenues?

Jim Amdahl said that he was interested in knowing if any other colonies were interested in coming to the western part of Grant County and if considering the impact of all of those possible colonies shouldn’t be part of the conversation.

Lance Heuer said he was concerned about the proposed colonies actual water usage and what impact the colony’s wastewater might have on what he considered a shallow water aquifer in the area.

With no additional comments being made Leddy asked if there were any more people who wanted to speak. Leddy asked Kays to double check and see if anyone was logged into the meeting via teleconference and would they like to speak. No one responded even though Kays identified that one user was logged into the meeting.

Marvin Amdahl spoke up again that his biggest concern again was the additional water runoff that would make it to his land stating that none of the downstream culverts from the proposed “colony” are big enough to handle any more water without backing up unto his or other’s land.

With no additional comments Leddy asked a third time if anybody wanted to speak.

With no additional speakers asking to comment Leddy closed the public comment portion of the meeting and asked if the colony representatives, Tim Waldner – Sunrise Colony spokesperson and Brad Woerner – Stockwell Engineers, would like to speak and if they could respond to questions from the board.

Kays then specifically asked Woerner to address concerns about any possible additional runoff.

Woerner said that until the actual footprint of all the structures are finalized that they would not know that exact impact yet but he stated that in total with the roofs, roads and other hard surfaces to be installed together with the area of the sanitary lagoon and the grass and landscaping that would surround the building sites that the net additional runoff to leave the property will be minimal if any.

Woerner continued that the final site plan would address those conditions compared to the 100-year storm scenarios and will follow South Dakota State regulations were appropriate permits would be applied for so that the downstream impact is zero under those conditions.

Kays asked Woerner about water usage from the local aquifer and its impact on the immediate area. Woerner stated that his final application would address what amounts of water that will be needed by the proposed colony as well as what size the lagoons will have to be for the sanitary sewer. Woerner stated again that all necessary permits will be obtained as soon as possible.

Kays asked about the status of the existing shelterbelts where Woerner answered that the plan was to keep all of the shelter belts in "balance" to where they are now with trees being replaced as needed.

Kays questioned Woerner on usage of the township road on the west side of the property and would it be used for heavy traffic. Woerner responded that no it would only be used for light traffic and that the north road, 152<sup>nd</sup> Street, would be the primary road for ingress and egress. Woerner stated that haul-road agreements would be made if deemed necessary by local officials.

Kays asks Woerner if any upgrades would be made to downstream culverts or as part of any "haul-road" agreements and Woerner answered that those issues will be addressed once we have an idea what, "if any," additional runoff might be and said the proper state, county and township permits will be applied for if needed.

Kays asks about the timing for moving "temporary structures" off the site and Waldner answered that over time all "temporary structures" would be gone but not right away as it takes time to get everything done in the right order.

Kays asks that the permit says that the maximum number of residents could be 130 people and is that correct. Woerner verified that yes 130 people was the maximum.

Board member Nancy Johnson stated that natural runoff of the 240 acres site-plan flows directly into the Big Sioux River and that the sanitary lagoon might also possibly drain into the Big Sioux River as well. Woerner responded that the design they will have for the sanitary sewer lagoons will use evaporation as the only means for effluent to leave the lagoons and that that design will be approved by the State of South Dakota.

Johnson asked how long does that approval take. Woerner answered usually from two to three weeks, sometimes less.



Board member Tom Pillatzki asked if Stockwell will be performing any of the construction work related to proposed colony. Woerner answered “no” that they are only engineers who will be designing the project and doing some of the inspections as the project progresses.

Pillatzki also asked if any of the contractors involved in the construction of the project be licensed. Woerner said all required contractors will be licensed were required by the state.

Pillatzki also asked if during the construction of the sanitary sewer lagoons if the work will be inspected as it progresses. Woerner answered yes it will be inspected in ways similar to what happens during the constriction of CAFO lagoons.

Woerner added that during those phases a licensed engineer will be on site.

Board member John Seffrood asked why the McDonald Barn and cement batch plant is so far away from the eventual permanent housing. Waldner answered that they are considering moving them slightly already to better accommodate access by the residents.

County Commissioner and board member Mike Mach asked where all the residents would be coming from if they are not coming from the Blue Sky colony. Waldner answered the are mostly coming from Spink County.

Mach also asked how big are the sewage lagoons and what will they be lined with. Mach said he was concerned about their relation to the drainage ditches we see in the satellite photos. Woerner answered that clay will be used to line the lagoons as determined by the state permit and that there is no runoff or discharge from the lagoons with evaporation being the only way contents can leave the lagoon.

Mach asked if there would be monitoring wells to ensure that there is no seepage into the aquafer. Woerner answered that that would depend on the soil type identified in upcoming soil boring tests that will be evaluated by the state which would then help determine the exact specifications they will have to follow.

Kays added for the record that technically this area has not been identified as a shallow aquafer area and because of such it would not need any monitoring well for a domestic sanitary sewage lagoon.

Mach asks what the timeline would be for having the welding shop and cement batch plant open, Waldner responded as soon as possible for the welding shop, the cement plant will take a few years.

Mach also had question concerning what type of signage was planned for the colony and its businesses. Waldner responded that there will be some signage but that they would follow the county’s signage ordinance.

Leddy asked how many families would initially be living in the colony if permitted where Waldner answered that most likely 10 families would be there initially.

At this point in the meeting random questions were being asked from the public attending the meeting where the party asking the most questions was asked by Leddy to refrain from speaking as the public comment part of the meeting was over.

The party continued to talk and was asked by both Leddy and Kays to either be quite or they will be asked to leave the meeting which could include help from the Grant County Sheriff's department if needed.

The individual left the meeting.

Being no other comments Kays reminded the board that the three CUP applications are being consider separately during the meeting with the motion at hand being the one for a "Religious Farming Community" only.

Kays then went over the 10 recommended conditions to be required if the Conditional Use Permit passes for the Religious Farming Community.

1. Storm shelters: Temporary housing will have precast porch and ceilings for storm shelter. Oversized concrete slab with concrete anchors will be poured under each manufactured home with attachment points per manufacturer's and Stockton Engineer's specifications.
2. Separate conditional use permits are required for Extended Home Businesses
3. In order to operate any use not identified in the site plan provided in the conditional use application for Religious Farming Communities dated May 11, 2021, an amendment to this conditional use permit would be required.
4. All non-ag and non-single-family residential structures shall be constructed in accordance with the latest version of international building code.
5. Documentation of approval of plans for sanitary sewer provision by SDDENR shall be provided to the Zoning Officer prior to occupying any structures.
6. Access from a public road to this site may require a haul road agreement between the applicant and the appropriate road authority to be provided to the zoning officer prior to use of said access.
7. Main access to the planned community to be granted to 152<sup>nd</sup> Street located on the north side of the sitemap.
8. The existing East / West Shelter belt on the north side will be maintained as is, less the road access indicated in the site-plan and that all trees be replaced as needed.
9. That the planned Religious Farming Community secure all required Water Rights permits for the size "community" indicated in the site plan and during testimony if needed.

10. That the Religious Farming Community provide an engineered "Drainage Plan" that shows that the completed development of the land doesn't create any additional water runoff conditions for any downstream landowner.

With no comments if additional conditions should be added to permit Leddy asked Kays to read the "Finding of Facts" for the colony CUP. No descension was made by any board member during the reading.

Seffrood questioned how the county would handle pending site plan changes, Kays explained that structure location changes can be made but only slightly. Any major changes deemed by the Planning and Zoning Officer to exceed the original intent of the permit would need an additional CUP application.

Seffrood also was concerned about the size of the lagoon, or the number of people being allowed to use the lagoon not being in the "conditions" just read, and Kays said that testimony says that the maximum occupancy size of the colony will be between 120 and 130 people and the lagoon size, which is permitted by the State of South Dakota, will limit the amount of people allowed to live in the colony.

Leddy calls for a roll call vote which passes 6-1.

- Mach, Leddy, Hansen, Pillatzki, Johnson and Seffrood voting yes. Berg voting no.

Leddy asks for a motion to consider a "Home Extended Business" for a Welding and Repair shop.

- Mach is recognized as making a First.
- Johnson makes a second.

Kays moves on and reviews the permit request for the welding shop.

Kays said that the conditions for the welding repair shop home extended business CUP would be identical to the one recently done for Blue Sky Hutterian Colony where it was recently permitted.

1. A home extended business may not be changed to another home extended business except by the issuance of a separate conditional use permit.
2. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees or a number as determined by the Board of Adjustment.
3. Off-premise signage associated with the home extended business will be limited to South Dakota.  
Department of Transportation (SDDOT) commercial, directional signs, also known as "Blue Signs".
4. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premises sign. On-premise signage may be permitted by the Zoning Officer subject to the following:
  - a. A maximum of 16 square feet of sign area will be allowed.

5. No traffic shall be generated by such home extended business in greater volumes than would normally be expected in an agricultural neighborhood, and any need of parking generated by the conduct of such home extended business shall be provided off the street and other than in a required front yard.
6. No equipment or process shall be used in such home extended business which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
7. There will be no storage of junk on site.
8. The Conditional Use permit for the home extended business is not transferable.
9. Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use Permit. The Grant County Zoning Officer will determine violations. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.

Leddy asked the board if they had any questions.

Seffrood asked about the type of work would be done and Waldner said that primarily agriculture repairs including welding and some light manufacturing.

Mach asked about the timeline for completion of the “welding shop” and Kays responded that according to the permit the had up to two years to be substantially completed and that one-year extension could be made if more time was needed to be finished.

With no more comments or questions Leddy called for the vote which passes 6-1.

- Mach, Leddy, Hansen, Pillatzki, Johnson and Seffrood vote yes. Berg voting no.

Leddy then calls for a motion to discuss and consider a Home Extended Business for a “Concrete Batch Plant.”

- Motion by Hansen
- Second by Mach

Kays than went over the staff report saying that it was in the application that the “concrete batch plant” might take up to eight years to be completed and this was well beyond the normally allowed two years.

Kays also thought that the questions raised during the public comments hearing about a possible “water right” issue concerning the amount of water needed for a concrete batch plant hadn’t been addressed completely and due to the nature of the weight of concrete trucks that a well thought out haul road agreement needed to be added to the conditions as well.

Kays cautioned that there we legitimate reasons for the CUP to be turned down and if that happens the permittee would have to either seek an immediate appeal or wait one year to apply

again. Kays suggested that it was his opinion that the applicant consider withdrawing their requests until those type of questions could be answered and considered more thoroughly.

Leddy called for a short recess for the proposed colony's representatives to confer before discussion continued and a vote would be taken.

After a short recess Woerner said the colony would withdraw the permit application until a future date when the colony would have a better idea of the timeline for it to open as a business.

Leddy asked Hansen and then Mach if they want to rescind their first and second of the original motion where they both do.

The meeting proceeded to finish the rest of the approved agenda.

- 8 Open
  - No action
  
- 9 Address to the Board of Adjustment
  - No action
  
- 10 Next meeting set for Tuesday July 13, 2021
  
- 11 Executive Session to discuss legal issues (if necessary)
  - No action
  
- 12 Leddy asks for a motion to adjourn the meeting.
  - Mach is recognized as making a First.
  - Johnson seconds the motion.
    - Motion passes 7 - 0 by voice vote

Steve Berkner  
Planning and Zoning administrator  
Grant County