



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 from the meetings of Grant County Board of Adjustments May 13th, 2024

Board of Adjustment members present: Nancy Johnson, Mark Leddy (via Zoom), Steve Spors, James Berg, John Seffrood, and County Commissioner Mike Mach.

Alternate(s) present: Jeff McCulloch and Don Weber.

Board of Adjustment members absent: Tom Pillatzki

Others present: Kris Koch (Otter Tail Power Company), Ryan Januszewski (Otter Tail Power Company), Greg Grimes, Evan Grong (Valley Queen), Kevin Souza (Victory II Dairy), Kirk Phinney, Luke Henrich, Jim Carlson, John Storsteen, Todd Kays (First District), and Steve Berkner (Grant County Planning Commission Officer.)

Meeting Date: Monday, May 13th, 2024

Meeting Time: 4:00 P.M. In-person in Courthouse Community Room.

1. Vice-Chairwoman Johnson calls the Board of Adjustment meeting to order at 4:06.
2. Johnson seats alternates McCulloch to sit in for Pillatzki who is absent.
3. Johnson asks if any member has anything to add to the agenda with none being offered.
4. Johnson makes an invitation for anyone present wanting to speak prior to the meeting starting with an item not on the agenda with no one responding.
5. Johnson asks for a motion to approve the agenda where a typo was corrected in the date references the Meeting Notes be changed from April 13th to April 15th. Mach makes the motion with Spors making the second. Motion passes 7-0.
6. Johnson asks for a motion to approve the Board of Adjustment minutes as submitted from the April 15th, 2024, Board of Adjustment meeting which was made by McCulloch with Berg making the second. Motion passes 7-0.
7. Johnson asks if any seated board member if they think they need to recuse themselves from any discussion topics or voting items on an agenda were Johnson announced that she was a

landowner located within the proposed transmission line route for the Otter Tail Milbank Area Reliability Project Conditional Use Permit and that she would not vote on its outcome.

Mach, a retired Otter Tail Employee, asked if he also needed to recuse himself where Kays, acting as parliamentarian, responded that if Mach had no financial gain related to the outcome of the Otter Tail CUP that he would not have to recuse himself. Mach said he had no financial gain at stake.

8. Johnson calls for a motion to be made to consider Conditional Use Permit, CUP04082024, Pursuant to Section 1101.03.14: Conditional Uses in the "A" Agricultural Zoning District #14 – "Water pumping stations, elevated tanks and similar essential public utilities and service structures" - the applicant, Otter Tail Power Company is requesting a conditional use permit to upgrade the existing substations and the existing 41.6kV transmission line with a new 115kV line.

Motion made by Spors with a second made by Leddy.

Kays began his staff report for CUP03212024 saying that Otter Tail Power Company was seeking a Conditional Use Permit (CUP) for updating and expanding their electrical utility transmission lines and substations providing power to the City of Milbank area where they would be upgrading that service to 115kV from the current 41.6kV.

As part of the CUP request for the project named by Ottertail as the Milbank Area Reliability Project (MARF), Ottertail would work in two separate stages known as Phase 1 and Phase 2.

Phase 1 of MARF would be primarily replacing and updating the current 41.6kV transmission line that runs from the Otter Tail powerplant near Big Stone City, that was originally installed in the late 1980s, where a majority of those transmission lines runs parallel to and between US Highway 12 and the Burlington Northern Santa Fe rail line to existing Otter Tail substations in and near Milbank.

Phase 2 of MARF will be connecting Otter Tail's Milbank electrical utility service area to a breaker station located directly east of Milbank in Minnesota where 8 miles of new transmission lines will be erected and installed within the county before entering Minnesota.

According to Kays the CUP application provided by Ottertail for MARF said Phase 1 would be completed by the end of 2024, where Phase 2 would be completed sometime by the end of 2026 unless unseen delays occurred.

Kays ended his staff report saying that two areas of concern for any transmission line project seeking a CUP was that the permittee provided proof that all landowner easements prior to construction of each phase and that necessary road haul agreements be arraigned with the county if needed.

After opening the public hearing for the Otter Tail MARP Conditional Use Permit Johnson invited Otter Tail representatives Kris Koch and Ryan Januszewski to make any additional comments about the project where Koch gave a brief PowerPoint presentation going over in more detail the timeline and actual work to be done in both phases of the MARP project.

At the conclusion of Koch's Power Point presentation Johnson asked three separate times for questions from the public concerning the proposed transmission line project as well as comments in "support of" or "in opposition" to granting the CUP.

Jim Carlson asked a general question about more clarification of the distance from the road rights-of-way (ROW) that pole structures would be located and also concerns that the route map shown for Phase 2 was crossing his property where he had not been contacted directly by anybody from Otter Tail that they were seeking a possible easement from him.

With no more questions or comments from the public hearing Johnson closed the public hearing giving Otter Tail a chance to answer Carlson's questions on where poles would be located where Koch said that transmission line poles would be offset by 5' to 7' on private property from any road ROW or fence and that an access easement of 50' would be sought from the participating landowner, that would include the 5' to 7' setback, so powerline crews could work on installing and maintaining the transmission line.

Kays answered the question concerning signed easements and other participation agreements between landowners and a utility seeking those easements saying that they are often not completed before a CUP is granted but that an absolute requirement of the CUP would be that that all easements and participation agreements have to be completed prior to work on any particular construction site location of any phase begins.

Kays added that a caveat to that approach is that if the basic general route indicated on the CUP application is not always the exact route eventually negotiated with landowners, where a few minor changes would be accepted normally within a section, but that if there were extensive route changes the CUP now being considered would have to be amended.

With no more public comments concerning the proposed two phases of MARP Johnson closed the public hearing, inviting discussion between board members.

Seffrood asked the question of why powerline poles had to be so close to the property line, 5' to 7', where in some cases it might make more sense to a landowner that the power poles stay 20' or more from the property line so farming equipment could work better around the poles.

Januszewski answered that those specific details can often be worked out with each individual landowner where the 5' distance is the closets poles will be to any ROW or fence line but that those type of requested changes can also cause a new route to be considered. Januszewski added that spanning distances between poles can be varied as well if an absolute need arises.

Leddy asked for more information on the impact to the reliability of power for the City of Milbank with the MARP update where Koch responded that the current 41.6 kV infrastructure in place being updated by Phase 1 was already nearing capacity and that the current physical transmission lines structures, wire and equipment feeding electrical power to the Otter Tail Milbank service area were near the end of their life expectancy.

Koch continued saying that once Phase 2 is completed electrical power to Ottertail's Milbank service area would have power available from an additional transmission line source adding reliability to the electrical delivery system if needed.

Weber asked if there was a chance of putting the transmission lines underground where Januszewski answered that type of design was significantly more expensive to initially install and to maintain if there is a problem. Koch added that in some areas there may be a need for relocating other existing overhead utilities where they may be moved underground if needed.

With no meaningful discussion Johnson asked for any amendments to the original motion where none was offered. Johnson then asked Kays to read the Findings of Fact which contained the following conditions.

- A. The Applicant is to provide proof of easements prior to construction at any given site;
- B. The Applicant is to provide copies of Haul Road Agreements with affected road authorities prior to construction. Grant County requires the Grantor to abide by the following terms to be included in the Agreement:
 - i. Unless otherwise agreed upon between the Applicant and the Road Authority, the Applicant shall be responsible for any costs associated with extraordinary maintenance on the portion of affected roads during the construction and the proposed use.
 - ii. Unless otherwise agreed upon between the Applicant and the Road Authority, all road work, whether customary or extraordinary, shall be done under the authority and supervision of the Road Authority and meet their specifications. The work shall be done

- through the applicable contractor, unless the Applicant receives prior authorization from the Road Authority, to conduct its own repairs or maintenance.
- C. 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.
 - D. The Conditional Use Permit will expire on December 31, 2026 if Phase I and Phase II of the project is not substantially complete, thereby requiring application for permit extension.

After recusing herself from the voting Johnson calls for a voice vote for granting the CUP to Otter Tail Power Company for Phase 1 and Phase 2 of the Milbank Area Reliability Project which passed 6-0.

9) Johnson calls for a motion to be made to consider a Conditional Use Permit, CUP03212024, Pursuant to Section 1101.03.10: Conditional Uses in the "A" Agricultural Zoning District #10 – "Class A, Class B, Class C, and Class D Concentrated Animal Feeding Operations" - the applicant, Kevin Souza on behalf of Victory Farms is requesting an amendment to a previously issued conditional use permit to allow an expansion from 5,500 mature dairy cows (7,865 animal units) to 7,150 mature dairy cows (10,225 animal units).

Motion made by Mach with a second made by Seffrood.

Kays began his staff report for CUP03212024 saying that the Victory II Dairy, which was permitted in 2014, was seeking to expand their mature dairy herd size from 5,500 to 7,150 where an increase in those numbers, 30%, would require the dairy operation to follow the new setback requirement to a non-participating occupied residence, adopted in 2016, of 1-mile instead of 1/2-mile which was the setback to a non-participating occupied residence requirement in 2014 when Victory II dairy was originally granted a CUP.

Kays said that according to the current CAFO Ordinance that the Board of Adjustment could decrease any setback based on a set of four circumstances listed in the ordinance in 1304.08.b.,

b. Considerations To Decrease Setbacks and Separation Distances [Ord. 2004-1, Rev. 2016-01]

The Board of Adjustment may reduce minimum setback/separation distances of any new or existing Concentrated Animal Feeding Operation proposing to expand based upon any or all of the following considerations:

- i. Review of the operation of the Concentrated Animal Feeding Operation as it pertains to the type of manure handling system and manure application methods to be used.

ii. Due to the type of manure handling and management of the CAFO little or no impact on adjacent property is expected. The use of Bio-filters, neoprene lagoon covers, and/or methane digesters are examples of improvements which may result in the reduction of recommended setbacks and separation distances. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation requirements.

iii. Due to topography and/or prevailing wind direction little or no impact on adjacent property is expected. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation requirements.

iv. By limiting the proposed expansion to specific number of animal units no adverse impacts are expected. The South Dakota Odor Footprint Tool or other instrument developed and/or accepted by South Dakota State University and the Board of Adjustment may be utilized to determine the need to decrease setback and/or separation requirements.

Kays said that applying 1304.08.b to reduce any CAFO setback relied heavily on the use of the South Dakota Odor Footprint Tool (SDOFT) , an analytical formula developed by South Dakota State University used to determine the odor impact of specific animal CAFO types by quantifying their manure holding facility size, the size of the feedlot or barn, and applying the type of technologies used to reduce the impact of odors from those two footprints.

Kays said that Victory II had provided a signed report from a South Dakota licensed Professional Engineer, Dakota Environmental, Inc., which used the SDOFT as required by the county's CAFO Ordinance, to show that the impact of the addition of a methane digester in late 2023 to the dairy would reduce the odor footprint of the proposed expansion of mature dairy cows from 5,500 to 7,150 to be nearly the same size than what the diaries original odor footprint with 5,500 cows prior to the digester becoming operational. Kays added that according to the scientific report the only exception was that that the odor footprint was slightly larger to the north of the diary but wouldn't affect any existing residences.

Kays stressed that the Board of Adjustment should carefully consider the outcome of the CUP request to allow the decrease in a CAFO setback with the consideration of the SDOFT as it relates to the impact of the addition of digester where it would most likely set a precedence going forward that the use of a methane digester, or any other current or other future technology that reduces odor, can be used to reduce CAFO setbacks which will no doubt open that decision to possibly be challenged in court.

In closing his staff report Kays again went over the outcome of the Dakota Environmental report which stated that by using the SDOFT the odor footprint of the Victory II dairy, which was originally permitted as a CAFO in 2014 and as off 2022 permitted to have 5,500 mature dairy cows when no digester existed at the dairy, that with the use of a newly installed digester that became operational in the Fall of 2023, that its calculated odor footprint with up to 7,150 mature dairy cows would be nearly the same with 5,500 cows and no digester only increasing slightly in size and only to the north where no residence homes would be affected.

Johnson then opened the public hearing inviting Victory II operations manager Kevin Souza to speak where Souza said that the dairy had already been approved to have 7,150 mature dairy cows by the South Dakota Department of Agriculture and Natural Resources (SDDANR) based on the diaries existing lagoon size and existing available acres to apply manure on neighboring fields in the Fall.

Souza also said that the diary has no plans on making the lagoons any larger and that the only structural addition they would have to make if permitted would be the addition of a slightly larger free-stall area to house the additional dairy cows.

Johnson then asked three times for comments in “support” of the motion where Valley Queen’s Evan Grong spoke in support of the Victory II dairy’s request saying it was Valley Quen’s opinion that Victory II ran a model dairy and often use them as an example as how a diary should operate where it was their opinion that they go above and beyond what they need to do to run a clean dairy.

With no more comments in support of granting the CUP Johnson asked three times for comments in opposition to the motion where Greg Grimes stated that he lived just half a mile west of the Victory II dairy and that odor models being used were not accurate as he said his household has often suffered from strong odors from the dairy and that past conditions assigned to the diary, primarily that they required shelterbelts around the perimeter, were never planted around the dairy and those that were planted on the west side are either missing or have not been maintained.

Grimes said that the addition of the digester will probably help as long as it’s working properly but the already required, or conditioned, shelterbelts should also have to be finished as well as they should have to cover their lagoons.

With no more public comments Johnson closed the public hearing asking for board discussion where John Seffrood spoke about the differences between covered lagoons and digesters.

Seffrood said they are both designed to collect methane before it is released into the atmosphere, which is good for the environment as methane is a greenhouse gas. The difference is the covered lagoon flares the methane they collect at the dairy site where a digester collects the methane where it is later burned as a heating fuel.

Seffrood, who has experience with owning a dairy CAFO for 20 years, as well as working with other local dairies, continued saying even though they both remove methane from entering directly into the atmosphere, they also both produce higher concentrations of sulfur and ammonia gasses in that process, which is what smells about a CAFO. According to Seffrood the difference is that a digester can capture, treat, and remove both the sulfur and ammonia gasses where the covered lagoon process vents those gases on site and are mostly untreated.

In closing his comments Seffrood also said he wanted to make a point that even though the CAFO Ordinance said that the use of the SDOFT was relevant to decreasing or increasing a CAFO's setback, as defined in the last three of the four reasons described in 1308.08.b that item the first reason listed said that reviewing the CAFOs history of operations in dealing with their manure management practices can also be used alone because the ordinance says "any" one of the four items listed can be considered in decreasing or increasing a CAFO setback.

In closing his comments Seffrood said the fact there have been no serious complaints about Victory II's past odor footprint, along with the addition of a methane digester that also significantly reduces odors, should be enough by themselves to grant a decreased setback even without using the Odor Footprint Tool.

Kays answered Seafood's last comment emphasizing that a signed SDOFT report by a registered South Dakota Professional Engineer that states as per sections "ii, iii and/or iv" of 1308.08.b that the addition of a working digester has a peer reviewed scientific modeling outcome that says it reduces a CAFO's odor footprint and would be easier to defended in court if it came to that, where item "i" alone would be harder to defend as its mostly based on a process of review which is ultimately and opinion of the Board of Adjustment.

Kays said another thing to consider is with the use of the outcome of specifically using the SDOFT the Board of Adjustment could be setting a precedence going forward that that is a reliable minimum standard even though there are other supporting reasons to grant a decrease, or to increase, a setback distance.

Mark Leddy commented that to him the lagoon not increasing in size is biggest key, and that with the addition of a digester that has signed report that with the digester the odor footprint was not actually increasing with the addition of animal units, it would be hard not to grant the permit since that path is so clearly defined in the CAFO Ordinance when considering decreasing a setback.

Spors commented that he thought it was important that a working digester be conditioned in the new CUP where after a short discussion it was decided other possible “future unknown technologies” that could contribute to equally reducing orders similar to a working digester be conditioned also if the CUP is granted.

Johnson commented that not all CAFO technologies are good at reducing an odor footprint where with the current technology of adding cross ventilation can increase the presence of odors downwind.

The board in principle generally agreed with Grimes’ premise that if Shelterbelts were required in the original CUP granted in 2014, along with any other conditions, that they should still be required with the new permit where Berkner was asked to retrieve that information from the original 2014 CUP.

Upon returning with the notes from the 2014 meeting Berkner read the conditions tied to the original CUP where the only two conditions required of the Victory II CAFO site was “dust control on 160th Street in front of the dairy, and a shelterbelt needed to be planted along the west side of the dairy,” the side closest to Grimes residence.

With no more meaningful discussion Kays was asked to read the Finding of Facts for the Conditional Use Permit for Victory Farms granting the operation of a CAFO with no more than 10,225 animal units, or 7,150 mature dairy cows, which contained the following conditions.

- a. Conditional Use Permit becomes effective upon issuance of State General Permit by South Dakota Department of Agriculture and Natural Resources
- b. The conditional use permit shall expire one (1) year from the date upon which it becomes effective if no actual construction has commenced at the time of the conditional use permit’s expiration date. Upon written request to the Board of Adjustment and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use may be granted by the Board of Adjustment.
- c. If a decision by the Board of Adjustment to grant a conditional use permit is appealed to circuit court the conditional use permit that was granted does not expire for a period of two (2) years following completion of any final appeal of the decision.

- d. The applicant may apply for an extension of this permit if the requirements of b or c. above cannot be met.
- e. The Conditional Use Permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.

2) General Requirements:

- a. This Conditional Use Permit authorizes the use of this property for a Concentrated Animal Feeding Operation (Dairy) consisting of up to ten thousand two hundred twenty-five (10,225) animal units. Expansion over ten thousand two hundred twenty-five (10,225) animal units will require a new conditional use permit and compliance with setback regulations in effect at the time of a new application.
 - i. In no case shall it be implied that this permit authorizes greater than to ten thousand two hundred twenty-five (10,225) animal units.
- b. The applicant agrees to comply with the SDDANR approved nutrient management plan and manure management and operation plan.
- c. The applicant agrees to comply with the County Flood Plain regulations.
- d. The applicant agrees to comply with the County-approved fly and odor management plan.
- e. Prior to stocking additional animal units, documentation of SDDANR approval of minimum manure storage plan and nutrient management plan shall be submitted to the Zoning Officer.
 - i. The conditional use shall be in effect only as long as sufficient land specified for spreading purposes is available for such purposes and other provisions of the permit are adhered to.
- f. Applicant shall provide updated information regarding fields included in the nutrient management plans upon request by the Zoning Officer.
- g. Haul road agreement with Grant County and/or Vernon Township (Road Authorities) shall be provided for the use of 160th Street and 480th Avenue as the primary haul routes. Unless otherwise agreed to between the Road Authorities the applicant, Grant County requires the Grantor to abide by the following terms to be included in the Agreement:
 - i. Unless otherwise agreed upon between the Applicant and the Road Authority, the Applicant shall be responsible for any costs associated with extraordinary maintenance on the portion of 480th Avenue and 160st Street used during the construction and the proposed use.
 - ii. Unless otherwise agreed upon between the Applicant and the Road Authority, all road work, whether customary or extraordinary shall be done under the authority and supervision of the County and meet their specifications. The work shall be done through the applicable contractor unless the Applicant receives prior authorization from the Road Authority, to conduct its own repairs or maintenance.

- iii. The Road Authority shall be responsible for all ordinary snow removal on 476 Avenue on the same basis as provided to the remainder of the roads maintained by the Road Authority. Any additional snow removal deemed necessary for the Applicant to continue its operations is hereby authorized to be done at Applicant's expense.
- iv. In the event the haul road agreements hereinbefore described are not executed, the Applicant, his heirs, assigns or successors in interest of the Applicant agree that all of the terms and conditions of Item "g" are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "g".
- h. The Applicant shall comply with established minimum manure application setbacks when spreading manure generated from the CAFO.
- i. The Applicant shall plant a shelterbelt on the western boundary of the dairy. The western most row of trees shall be coniferous trees with a spacing of thirty (30) feet between the base of each tree. Said Coniferous trees shall be a minimum of four (4) foot tall at the time of planting. Applicant will inspect and improve existing deciduous tree shelterbelt on western boundary of the property by removing any and all dead trees and replacing said trees. Applicant will maintain coniferous and deciduous shelterbelts for the duration of the conditional use permit and will replace dead trees in the same fashion identified herein.
- j. The applicant will control dust in front of resident locations during construction and at all times afterwards will control dust on 160th Street, seasonally as necessary.
- k. The applicant will utilize digesters or other technology approved by the Board of Adjustment for the duration of the Conditional Use Permit.
- l. Violation of the terms of this conditional use permit will be determined by the Grant County Zoning Officer.
 - i. The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period-of-time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all feeder operations within forty-five days (45) of notice of revocation.
 - ii. The applicant may make appeal from the decision of the Zoning Officer to the Grant County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
 - iii. Failure to comply with the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment may be deemed a separate violation.

At the conclusion of the reading of the Finding of Facts Johnson called for the voice vote which passed 7-0

11) At 6:05 with no more action needed on agenda items Johnson calls for a vote to adjourn. That motion was made by McCulloch and seconded by Berg and passes 7-0.

DRAFT