

August 31, 2021

The Grant County Commission met in special session at 8 AM with Commissioners Buttke, Mach, Stengel, Street and Tostenson present. Chairman Tostenson called the meeting to order with a quorum present. Motion by Buttke and seconded by Stengel to approve the agenda. Motion carried 5-0.

Staff member present was States Attorney Jackson Schwandt. Attending by video conference was Todd Kays from First District. There were not any members of the public present in person or through teleconference.

Joint Hearing: A joint public hearing was held with the Planning Commission. Those members present from the Planning Commission were Mark Leddy, Mike Mach, John Seffrood, Nancy Johnson, Richard Hansen, Tom Pillatzki, and James Berg. Don Weber and Jeff McCulloch, the PC alternates were in attendance. The purpose of the joint hearing was to hear public testimony on proposed Ordinance 2021-03, an ordinance to amend specified sections of the zoning ordinance regarding cannabis, establishment of permits and/or licenses.

Chairman Tostenson opened the joint public hearing on behalf of the Board of County Commissioners and asked for a motion and a second to approve Ordinance 2021-03. Motion by Street and seconded by Buttke to approve Ordinance 2021-03, an ordinance to amend specified sections of the zoning ordinance regarding cannabis, establishment of permits and/or licenses.

Planning Commission Chairman Mark Leddy asked States Attorney Schwandt and Todd Kays, Executive Director of First District to provide an overview of the ordinance.

Kays explained IM 26 approved medical cannabis in the 2020 election. Last spring a temporary ordinance was drafted for local governments to adopt while the South Dakota Department of Health defined the rules, regulations, and guidelines for medical marijuana production, dispensing and use in the State. These rules and regulations are set to be effective in early October. The planning districts with legal counsel for SDPAA wrote model regulations for the counties and cities to use to regulate medical cannabis. The proposed ordinance allows for one dispensary in the unincorporated area of the County. The proposed ordinance does not allow for cultivation, manufacturing or testing facilities. A State permit and a local permit would be required and applied for at the same time. States Attorney

Schwandt reiterated the proposed ordinance must allow for a dispensary in the rural area of the County and municipalities may also approve a dispensary.

The public hearing was opened by Planning Commission Chairman Leddy and County Commission Chairman Tostenson.

With no members of the public offering any comments, Leddy closed the public portion of the joint hearing. Chairman Tostenson closed the public portion of the joint hearing for the County Commissioners.

Planning Commission Chairman Leddy stated now is the time for the two boards to begin their discussion.

P & Z member Mach asked if the dispensary could be located anywhere in the unincorporated areas of the County. Kays responded the ordinance lists the location site to be in a commercial/industrial zone or the applicant would need to request the land to be rezoned.

Chairman Tostenson asked what the ramifications would be if the Commission did not act on this ordinance. Kays responded the current zoning regulations allow for cultivation, manufacturing, and testing within the ag zone. SA Schwandt responded if there is not an ordinance, there could be an unlimited number of dispensaries.

A question was asked on the process, if more than one person applies for a permit. Kays responded the State has a scoring system in place for selecting one permit.

Commissioner Street asked if the ordinance allows for one manufacturing, one cultivation, and one testing facility in addition to the dispensary. The answer is no, only one dispensary is permitted for the unincorporated area of the County.

P & Z member Mach asked if the number of dispensaries or the setback to schools could be changed. Kays responded yes, as it depends on the land use plan. Distance from a school is defined as a State approved school.

P & Z Chairman Leddy remarked the voters approved medical cannabis and asked if the ordinance has any restrictions from what the voters approved. Kays responded no.

Commission Stengel asked if the ordinance affects tribal land. Kays responded no, as tribal land is a sovereign nation.

P & Z member Seffrood offered a comment. The vote is the direct result of democracy and as board members we now must deal with implementing the ordinance. This is a civic lesson on direct democracy. This concluded the discussion.

The Planning Commission approved a motion to send Ordinance 2021-03 to the County Commission as presented.

Chairman Tostenson stated the Board of County Commissioners will now have the first reading by title of Ordinance 2021-03 by title only with the Auditor reading the title. Auditor Layher read the title: Ordinance 2021-03, **AN ORDINANCE ENTITLED, AN ORDINANCE TO AMEND SECTION 1102 “COMMERCIAL / INDUSTRIAL DISTRICT”, SECTION 1102.02, “PERMITTED USES”, ARTICLE III “ESTABLISHMENT OF DISTRICTS”, ARTICLE XII, “GENERAL REGULATIONS; AND ARTICLE II, DEFINITIONS, ADOPTED BY ORDINANCE 2004-01, AS AMENDED, OF THE ZONING ORDINANCE OF GRANT COUNTY.**

Motion by Mach and seconded by Stengel to acknowledge the first reading of Ordinance 2021-03 by title only and to set September 7 at 10 AM for the second reading. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. The ordinance will be available at the Auditor’s office and the County’s website.

Chairman Tostenson called for public comment for any items not listed on the agenda. There was none.

Licensing Hearing: The purpose of this hearing was to hear public testimony on proposed Ordinance 2021-04, an ordinance creating licensing provisions for cannabis establishments within the unincorporated area of Grant County.

Chairman Tostenson opened the public hearing on behalf of the Board of County Commissioners and asked for a motion and a second to approve Ordinance 2021-04. Motion by Street and seconded by Buttke to approve Ordinance 2021-04, An Ordinance Creating Licensing Provisions for Cannabis Establishments Within the Unincorporated Area of Grant County.

Chairman Tostenson asked States Attorney Schwandt and Todd Kays, Executive Director of First District to provide an overview of the licensing ordinance.

Todd Kays stated 2021-04 is a companion ordinance to the ordinance recommended by the Planning Commission. The license is approved by the County Commission in a similar fashion like a liquor license. The applicant will need a County license and a State license. The proposed ordinance describes the application process, states one dispensary is allowed in the rural area of the County, states the license is good for one year, has a section on suspension and revocation processes, lists the hours and days of operation and states the license is nontransferable.

States Attorney Schwandt asked for clarification on multiple applications for the one dispensary license as listed in the proposed ordinance. All the applicants would receive local approval. The State scoring system will determine the successful State license holder. The County would reimburse \$2,500.00 of the fee collected at the County level to the unsuccessful applicants.

Chairman Tostenson called for public comment three times. There were not any members of the public present or via teleconference. Chairman Tostenson closed the public hearing and asked for Commission discussion.

Commissioner Mach stated Milbank approved two dispensaries and asked if the County Ordinance could be changed for more dispensaries or the fee increased. Kays responded the law reads the local fee should be a reasonable fee. That is determined by the Commission. The State permit is \$5,000 per year. He suggested in the future to take the fee out of the ordinance and list it on the fee schedule adopted each January.

Commissioner Street asked if the dispensary number should match to the number of the commercial industrial site locations. Kays responded that would be a high number of permits, especially if the applicant requests rezoning of a parcel of land.

Commissioner Mach asked if Amendment A is upheld, can medical and recreation cannabis be in the same building. The rules define what can be housed in the same building divided by a separation wall. The rules are not written for recreational cannabis.

Commissioner Buttke questioned if a person with a medical card can purchase from any dispensary. States Attorney Schwandt responded that each card holder will need to list on their card two dispensaries they will purchase from.

Chairman Tostenson asked about the process to move the fee from the ordinance to the fee approval schedule. The ordinance section would need to be opened, a

hearing held and two readings of the new language moving the fee to the fee schedule.

Commissioner Buttke asked if a pharmacy can apply to be a dispensary. Yes, but not if connected to medical facility.

Auditor Layher reported the County only has six parcels designated as tribal trust land. States Attorney Jackson stated the County's ordinance does not pertain to tribal trust land.

Final comments: Cannabis rules and ordinances will evolve as the laws change over the next years. How will purchasing of recreational cannabis be controlled? In favor of medical cannabis but concerned that recreational use will affect employee retention. Need to look at cannabis as economic growth issue. Questioned if the State rules should have been more streamlined.

After Commission discussion, Chairman Tostenson stated the Board of County Commissioners will now have the first reading by title of Ordinance 2021-04 by title only with the Auditor reading the title. Auditor Layher read the title: Ordinance 2021-04, An Ordinance Creating Licensing Provisions for Cannabis Establishments Within the Unincorporated Area of Grant County.

Motion by Stengel and seconded by Mach to acknowledge the first reading of Ordinance 2021-04 by title only and to set September 7 at 10 AM for the second reading. Chairman Tostenson called for a roll call vote. Buttke aye, Street aye, Stengel aye, Mach aye and Tostenson aye. Motion carried 5-0. The ordinance will be available at the Auditor's office and the County's website.

Culvert Project Bid: The bid opening for the box culvert project 26-320-053 by DeVaal's were opened on August 25. There were four bids received as follows: Prahm Construction, Slayton MN: \$683,248.50; SFC Civil Constructors, Sioux Falls, SD: \$713,985.25; Swingen Construction, Grand Forks, ND; \$717,777.00; BX Civil & Construction, Dell Rapids, SD: \$725,000.00. Motion by Commissioner Stengel and seconded by Commissioner Buttke to approve the contract with Prahm Construction in the amount of \$683,248.50 for box culvert project 26-320-053. Motion carried 5-0. This is a BIG grant award with an 80/20 split. The SDDOT will need to concur with the bid.

Executive Session: Motion by Stengel and seconded by Mach to enter executive session at 9:20 AM for the purpose of a personnel issue pursuant to SDCL 1-25-2 (1). Motion carried 5-0. Auditor Layher was present. Chairman Tostenson declared the meeting open to the public at 9:46 AM. No action was taken because of the executive session.

It is the policy of Grant County, South Dakota, not to discriminate against the handicapped in employment or the provision of service.

The next scheduled meeting dates will be September 7 and 21 and October 5 and 19, 2021, at 8 AM. Motion by Stengel and seconded by Buttke to adjourn the meeting. Motion carried 5-0. Meeting adjourned.

Karen M. Layher, Grant County Auditor

William J. Tostenson, Chairman, Grant County Commission