

BROOKINGS COUNTY DEVELOPMENT DIRECTOR
BROOKINGS CITY & COUNTY GOVERNMENT CENTER
520 3rd Street, Suite 200
BROOKINGS, SOUTH DAKOTA 57006
(605)-696-8350
ROBERT W. HILL
TELEPHONE (605) 696-8350
FAX (605) 696-8355
E-MAIL: zoning@brookingscountysd.gov

February 6th, 2018, 2018 Minutes

Brookings County Planning & Zoning Commission
February 6th, 2018, 2018 – 7:00 PM
Brookings City & County Government Center
310 Chambers

Chair Rochel called the meeting to order at 7:02 PM. Commission members present were: Lee Ann Pierce, Michael McHugh, Kimberly Elenkiwich, Darrell Nelson, Darrel Kleinjan, Terrell Spence, Randy Jensen and alternate board member Tom Davis. Absent were: Michael Vande Weerd and alternate board member Roger Erickson. Also in attendance State's Attorney Teree Nesvold and Luke Muller.

Chair Rochel read **agenda item # 2: Approval of minutes from January 2nd, 2018 meeting and January 18th, 2018 work session.** Terrell Spence moved to approve the January 2nd, 2018 meeting minutes. Lee Ann Pierce second. Kimberly Elenkiwich moved to approve the January 18th, 2018 work session minutes. Terrell Spence second. Chair Rochel called for a voice vote. 8-ayes and 0-nays, motion carried. (Eight members were seated at this time).

Chair Rochel read **agenda item # 3: Items to be added to agenda by commission members or staff.** No items were added.

Chair Rochel read **agenda item # 4: Invitation for citizen to schedule time on the commission agenda for an item not listed. Time limited to 5 minutes per person to address the board.** No one scheduled time to address the board.

Chair Rochel read **agenda item # 5: Approval of Agenda.** Lee Ann Pierce moved to approve the agenda. Darrell Nelson second. Chair Rochel called for a voice vote. 8-ayes and 0-nays, motion carried.

Chair Rochel stated, "We are now acting as the Brookings County Board of Adjustment" read the opening statement and **agenda item # 6: Administrative Appeal - filed by Jason Bowes of Bowes Construction, Inc. regarding the administrative decision made on December 5th, 2017 by Robert W. Hill, Development Director/Zoning Officer for Brookings County that Conditional Use Permit 2005cu019 ("A" Agricultural District Conditional Use # 4: Sand, gravel or quarry operation, mineral exploration and extraction) issued to L.G.**

Everist, Inc. on October 4th, 2005 by the Brookings County Planning and Zoning Commission, had not expired due to non-use. The property is described as: Lots 3 & 4 and the S1/2 of the NW1/4 of Section 5, T109N, R49W (Trenton Township). Lee Ann Pierce and Randy Jensen and alternate Tom Davis recused themselves. Chair Rochel noted that 6 (six) board members were seated and it would take 6 (six) affirmative votes to be approved, if 5 (five) affirmative votes it would be denied. Sander Morehead from Woods, Fuller, Shultz & Smith attorney for L.G. Everist come forward, identified himself and asked to confirm that 6 (six) votes in the affirmative would be needed to reverse that decision that had been made. Chair Rochel indicated that would be correct. Chair Rochel then asked if an attorney representing Mr. Bowes had any comments. Eric Rasmussen came forward introduced himself and noted a slight correction for the record. He stated, "It should be Bowes Peterson LLC, they are adjacent landowner to the property in question as opposed to Bowes Construction." He asked for further clarification of the board. Chair Rochel noted there are 9 (nine) members on the board, there were 8 present and there were 2 (two) alternates with 1 (one) being present. Chair Rochel further noted the present alternate indicated that he would also need to recuse himself from voting on the matter that would leave 6 (six) voting members. Mr. Rasmussen asked what options were available. Chair Rochel noted the item could be tabled to the next meeting and hopefully all 11 (eleven) members would be able to be present. He noted unknown conflicts had kept those absent from attending the meeting. Mr. Rasmussen indicated that they would prefer to wait until there would be the possibility of more than 6 (six) voting members present. Chair Rochel stated, "If one of the parties out of the 2 (two) wished to table it then I would encourage the board to agree with that." The board and attorneys discussed the options. Kimberly Elenkiwich clarified that 2 (two) members were absent 1 being an alternate thus the possible members able to vote if tabled and all 11 (eleven) were present, with 3 (three) recusing themselves would leave 8 (eight) voting members. Sanders Morehead stated that they were ready to proceed and be heard without the necessity of tabling. Chair Rochel asked for the boards thoughts. Board member Michael McHugh made a motion to table until the next month. Kimberly Elenkiwich second. Chair Rochel asked for additional discussion hearing none he called for a roll-call vote: McHugh-aye, Elenkiwich-aye, Nelson-aye, Kleinjan-aye, Spence-aye, Rochel-aye. 6-ayes, 0-nay, motion to table carried. Next month's meeting would be March 6th, 2018. Possible conflicts were noted with the date. Board member Elenkiwich noted that a special meeting could also be an option. Discussion over calendar dates took place, with the decision that the staff would contact each board member to determine a special meeting date when all could possibly be in attendance. A special meeting date would require that the item be advertised 10 days in advance. Luke Muller from First District and Mr. Hill noted that anyone that was in the audience that wanted to get notice of the date could leave contact information with the staff. Sander Morehead asked for a clarification if the CUP was in effect and valid. Mr. Hill stated, "It is suspended until a decision was made by the board." Noting it was per the zoning ordinance. Mr. Morehead asked for a copy of the portion of the ordinance that stated this. Mr. Hill directed

office manager Rae Lynn Maher to give Mr. Morehead a copy of the portion of the ordinance that related to issue at hand.

Alternate board member Tom Davis assumed a seat on the board at this time.

Chair Rochel read **agenda item # 7: Approval of Findings of Facts for denied variance – 2017var026 by Steve & Eileen Scherer.** Mr. Haugen presented the findings of facts and they were placed on file.

Chair Rochel stated, “We are now acting as the Brookings County Planning and Zoning Commission” read the opening statement and **agenda item # 8: 2018cu002: Brian Soehl on behalf of Vantek Communications has made an application, 2018cu002, to the Brookings County Planning and Zoning Commission for a conditional use. Article 11: Section 11.01: “A” Agricultural District, Conditional Use # 17: “Commercial radio & TV Tower”.** The property is described as: “NE1/4 SW1/4, N1/2 SE1/4 of Section 36, T112N, R49W (Argo Township)”. Darrell Nelson moved to approve the conditional use request. Randy Jensen second. Chair Rochel opened up for discussion and asked Mr. Haugen for his staff report. Mr. Haugen stated, “Brian Soehl on behalf of Vantek Communications has applied for a conditional use permit #17, to construct a new 180 feet tall guyed radio transmission tower to be located on a site leased from the current land owner.” Mr. Haugen noted: 1) tower would be located on the NE1/4 SW1/4, N1/2 SE1/4 Section 36 in Argo Township 2) The site would be approximately 3 miles north of the city of White on the west side of 478th Ave (Brookings County Highway 25). 3) Vantek Communications would be leasing antenna space on the tower for radio communication equipment. 4) A small 10’ x 12’ equipment building would be located adjacent to the tower and electrical utilities would run underground to the site. 5) Access to the tower would be provided through the existing building site located at 20183 487th Ave. 6) The tower would meet Federal Aviation Administration requirements for towers under 200 feet in height. 7) The tower would be located in an area that would minimize the loss of farm ground. 8) Letters were sent to the applicant, landowner, adjoining landowners, Argo Township Chairman and Clerk, and the Brookings County Highway Department. 9) Public notices had been published in the Brookings Register and White Tri-City Star. Mr. Haugen then presented a visual presentation of the site. Mr. Hill added that the tower would contain one antenna that Brookings County would lease for the northern towns (White, Bruce and Hendricks Fire Departments and Toronto and Astoria Fire Departments). It would be considered the northern tower. The towers current location needed to be moved and this was the location that was selected. He stated, “From the emergency management standpoint I recommend that this be approved based on Richard’s staff report and the needs of our emergency services.” Chair Rochel asked Mr. Soehl to come forward and address the board. The applicant identified himself as Brian Soehl with Vantek Communications and stated, “We currently have a tower north of town and are losing the lease on that land and are looking for another place to put up a tower. I came to an agreement with the landowner to possibly put up a tower.” Mr. Soehl noted: 1) some objections had come up with the neighbors of the landowner of the proposed location. 2) He had run out of options for a different location. 3) He

wanted to move forward with the CUP application and try to work with landowner and neighbors on specific site location on the proposed parcel. Chair Rochel asked Mr. Haugen for any knowledge on opposition. Mr. Haugen stated, "We had one adjoining landowner to the west that called on the phone and he was sent a staff report. No objections were received from that person. That was the only contact that we had regarding this application." Mr. Soehl stated, "My understanding is the objections are purely aesthetic, they wouldn't like to look at the tower." Board member Nelson asked if the tower would be lighted. Mr. Soehl stated, "No sir, any tower under 200 feet does not require lights by FAA regs." Chair Rochel opened up for more questions from the board. Board member Pierce stated, "I don't have any questions, I have a comment. This year I am chairing the E911 board that deals with emergency communications in Brookings County and being able to service that area of our county we need a tower somewhere and the aesthetics on this particular tower are not going to be anything that would be very detrimental to people. But, someone not having fire service or ambulance service because they can't get a call into dispatch or because their radios won't work in that area that would be very harmful to people. I would encourage everybody to vote in favor of this (permit)." Chair Rochel opened up to the audience. Mary Josko came forward and noted that she owned land north of the proposed tower site. Ms. Josko voiced concern for the aesthetics and maintaining the looks of the agricultural areas. Board members discussed: 1) concern of aesthetics vs. public safety 2) location of the tower being anywhere within the boundaries of the legal description for the parcel 3) moving forward with vote and if approved it would be up to the applicant if tower was built on the site or not. Mr. Soehl noted that he would give his card to Ms. Josko and work with her to see if they could come up with an agreement on a location on the site that would work for all parties. Chair Rochel asked for additional comments from the board, hearing none he asked Mr. Haugen to go over the findings of facts, with any additions, which are on file. Chair Rochel called for a roll-call vote: Pierce-aye, McHugh-aye, Elenkiwich-aye, Nelson-aye, Kleinjan-aye, Spence-aye, Jensen-aye, Rochel-aye, Davis-aye. 9-ayes, 0-nays, motion carried.

Chair Rochel read **agenda item # 9: The Brookings County Planning Commission will hold a public hearing on proposed changes to the Brookings County Zoning Ordinance 2015-03 which re-adopted the 1997 Revised Zoning Ordinance as amended. The proposed changes to the Brookings County Zoning Ordinance 2015-03 will repeal the following articles in the 1997 Revised Zoning Ordinance of Brookings County, as amended, - Article 5.00 - County Zoning Commission, Appeals, Variance and Conditional Uses.; Article 6.00 – Duties of County Zoning Officer, Board of County Commissioners and Courts on Matters of Appeal.; Article 7.00 – Enforcement.; Article 8.00 – Schedule of Fees, Charges and Expenses.; Article 10.00 – Amendments.; and replace said Articles with Article VI Administration-Chapter 6:01. General.; Chapter 6.02. Zoning Official.; Chapter 6.03. Planning and Zoning Commission.; Chapter 6.04. Board of Adjustment.; Chapter 6.05. Procedures for Conditional Uses, Variances, and Zoning Amendments.; and Chapter 6.06. Repeal of Conflicting Ordinances. A copy of the ordinance changes is available at the Brookings County**

Finance Office, Brookings County Zoning Office or online at: www.brookingscountysd.gov. Mr. Hill noted this was a public hearing and presented a brief report noting that this item was discussed in January (January 18th, 2018). He noted the County Commission asked that the item be brought back to the board to consider and discuss. Mr. Hill directed attention for consideration to page 13 under Article VI Administration item #10 (highlighted in yellow) regarding the transferability of conditional use permits. Mr. Hill noted anything in the section was open for discussion in the public hearing also. Chair Rochel opened the public hearing and asked board member Elenkiwich for comments regarding specifically item #10. Board member Elenkiwich lead a discussion on the pros/cons of transferability. Board reviewed wording and the agreed wording would be as follows: *10. A conditional use permit is transferable, subject to the new permittee signing a letter agreeing to the same terms of the previously issued letter(s) of assurance/Findings of Facts.* Chair Rochel closed the public hearing portion and asked for a motion to approve. Kimberly Elenkiwich made a motion to approve. Darrel Kleinjan second. Chair Rochel opened for discussion by the board. Board member Jensen asked Luke Muller from First District Association of Local Governments for his input on what area counties were doing in regards to wording. Mr. Muller noted that the wording was similar to the eleven counties that he works with and that generally it was considered on a use by use basis. Mr. Muller stated, "For the most part it is considered a permit to the property not the property owner. This is not across the board but generally speaking." Chair Rochel asked for additional comments from the board, hearing none called for a roll-call vote: McHugh-aye, Elenkiwich-aye, Nelson-aye, Kleinjan-aye, Davis-aye, Spence-aye, Jensen-aye, Pierce-aye, Rochel-aye. 9-ayes, 0-nays, motion carried. Mr. Haugen noted it would now move on to the County Commission and dates and times for the hearing would be set and relayed to board members.

Chair Rochel read **agenda item # 10: Consideration of Plats:** No plat to consider.

Chair Rochel read **agenda item # 11: Department Reports.** Chair Rochel asked Mr. Hill for his Directors report. Mr. Hill announced: 1) Animal waste being reportable to the Environmental Protection Agency (EPA) keeps coming up and right now it is suspended until May. The EPA will give us a final answer. We will keep an eye on how this ends. 2) Building codes will need to be looked at - 2015 building codes currently being used with 2018 in statute now. 3) Legislation underway in Pierre regarding Wind towers and decommissioning plans. Mr. Hill noted he would not be at the March 6th, 2018 meeting as he would be at a NACo Legislative Conference in Washington, DC. Mr. Haugen noted that work would continue on working on ordinances and that the Ag subcommittee would need to meet to address some questions from legal counsel and review/address graduated setbacks for larger CAFO's and mentioned that Mr. Muller would be assisting. Board member Pierce gave a brief report on what the Joint Jurisdiction Committee was working on – possible boundary and possible allowable conditional use changes. Luke Muller added additional comments related to review of uses in county, joint jurisdiction, city and proposed zoning ordinances and reported that First District was doing a drive by inventory – land use drive.

Board members noted that a variety of conflicts could possibly affect attendance at the scheduled March 6th, 2018. It was decided that the staff would call board members, review and establish a meeting date. Mr. Haugen noted that there would not be a work session on February 15th, 2018.

Chair Rochel asked if a ruling had been made regarding the Oak Lake Dairy. Teree Nesvold noted that the ruling was to be made by February 9th and if not done then in March.

Chair Rochel asked for a motion to adjourn. Kimberly Elenkiwich made a motion to adjourn the meeting, Terrell Spence second.

Chair Rochel adjourned the meeting at 8:39 PM.

Rae Lynn Maher
Brookings County
Development Department.