

April 9, 2019

HAND COUNTY COMMISSION

Acting as Board of Commissioners, Board of Equalization, Consolidated Board of Equalization and Zoning Boards.

MILLER, SOUTH DAKOTA

The Hand County Board of Commissioners convened at 7:03 P.M. on Tuesday, April 9th, 2019. Members present were Chairman J.D. Wangness, Commissioners: Greg Palmer and Jim Jones. Luke Wernsmann arrived late and Gib Rodgers was excused.

Auditor DeBoer informed the commission that the plat review for Strasburg Addition (Track 1) was not in order and could be removed from the agenda.

DeBoer reported that only one appeal had been received and it was revoked prior to the meeting. That being, Harlan Douglass on a parcel of ground in St. Lawrence Township. Equalization Director Augspurger was not aware of any other appeals.

DeBoer administered Oaths to Commissioners Palmer, Wangness, Jones and Wernsmann (who arrived a couple minutes late) for the purpose of acting as board members for both the County Equalization Board and Consolidated Equalization Board.

The board discussed the process of equalization given that a member from the school district and from the city of Miller was not present. It was concluded that this had happened previously and the members present still held the meetings.

Wernsmann moved and Jones second to declare a recess as the board of commissioners and convene as the County Equalization Board.

Augspurger, provided the board with a written report entitled, "2019 COUNTY BOARD" The report said that "Ag land values increased 6.78% on non-crop soils and had no change on crop soils." It also reported, "County wide average increase was less than 1%". The report also stated, "Township Board Minutes were reviewed. No changes were requested". Under other board actions, it was noted that three new applications for property tax exemption were requested (list provided). Additionally, it reported that 12 qualified for the tax freeze request and four qualified for the veteran's exemption. Augspurger also reported that total valuations for Hand County in 2019, before factoring for tax purposes, is \$1,794,580,911. Growth in 2019 is \$6,079,801.

It was moved by Jones, second by Palmer to accept the report of the assessor regarding equalization issues, and close out the books. All presented voted in favor thereof.

After some discussion, the conclusion was that the Consolidated Board of Equalization could meet, since there were no appeals, even without representation from the city and the school. It was moved by Jones, second by Wernsmann to adjourn as the County Equalization Board and convene as the Consolidated Equalization Board.

Augspurger presented the consolidated board with a report which read as follows: "2019 Consolidated Board Owner Occupied Tawn A Zubke-Lesnar 318 E 6th St Miller SD 57362 Record # 8097 Lot 3 & the E 5' of Lot 4 Block 25 North Addition and Record # 8098 E 30' of the W 45' of Lot 4 Block 25 North Addition We received the owner occupied form after March 1, 2019. This is eligible for owner occupied status" The report also stated, "Assessed value needs to be corrected Record #7442 Brandon J & Kendra L Gortmaker 118 E 6th Av Miller SD 57362 Assessed Value \$173,024 We increased house values 10% that were built after 1950. This value was not increased County Board Value should be \$191,628"

Jones moved, Wernsmann seconded, to grant owner occupied status to Zubke-Lesnar and to correct the record on the Gortmaker property. All present voted in favor thereof.

Augspurger also offered his report entitled "2019 CONSOLIDATED BOARD" which read, "Total valuation for Miller City for 2019, before factoring for tax purposes, is 82,884,156. Total growth for 2019 is 781,321"

Wernsmann moved, seconded by Palmer to adjourn as the Consolidated Board of Equalization and reconvene as the board of commissioners. Wangness then asked if anyone in the gallery had a comment from the gallery. No comments were offered. The commissioners recessed for eight minutes at 7:22 P.M.

During the recess, Jan Kittleson provided the commissioners with a letter from Hand County Publishing requesting the commission and auditor supply her business "...The Miller Press with an agenda and materials related to the open meeting agenda items" citing SDCL 1-25-1.1 and 1-27-1.16.

During the recess, copies of the current WES document were distributed to those who requested it.

It was moved by Jones, seconded by Wernsmann, to adjourn as the board of Commissioners and reconvene as the Zoning Board.

Chairman Wangsness explained that the board was present to review the Wind Energy ordinance proposal and that in doing so, to get it moved up to the county commission for adoption. Wangsness said at present, this is a recommendation to the commission. Wangsness asked Jones to explain the proposal and its recent changes.

Jones explained the product was a compromise and that he recognizes that no one is happy with a compromised product. Jones pointed out that some will believe portions to be “over regulated” while others will believe portions are “under regulated, under regulation”.

Jones described the following changes: The Public Utilities Commission (PUC) does not require general liability insurance from anyone requesting a permit to establish a Wind Energy System (WES). The current version of the WES also does not contain the requirement for insurance. Jones explained that Hand County does not place this requirement on any business operating in the county and that the consensus of the board was to remain neutral on that requirement. Jones did offer that a project’s lender most likely requires insurance to protect their interests but after the lender is satisfied financially, continued insurance may be an issue. Language, if included, may contain a statement of continued liability (post lender obligation) and reporting requirements to the office of the assessor. Jones spoke about how the requirement may be redundant as the WES may have obligations to others in their operation to provide such coverages. Jones then discussed “flicker” or “shadow flicker” and how the current WES document does not contain language about it. Jones offered a suggestion that flicker be regulated for both participating and non-participating residents to 30 hours per year unless waived in writing but “A non-participating resident may not waive the flicker requirement”.

Jones then touched on definitions of occupied residence. Suggestions might include adding language to allow for occupancy during any part of the two previous years. This allows for temporary vacancy of the property. Work continue to renovate this definition.

Another topic was the placement of “feeder lines”. In particular the difference in placing feeder lines in the public right of ways versus on private property and the appearance of a requirement for them to be on public property. The new language would allow for lines to be placed on either private or public properties.

Aviation lighting was also addressed by Jones. The question of whether ADLS is a brand name caused an issue. It was discussed that ADLS is an acronym for Aviation Detected Lighting System and goes by other brand names and therefor its use in the ordinance does not infringe on other, similar products. It was also noted that a bill in the legislature requires the system for WES erected after July 2019.

Discussion followed about how the lighting system is monitored to ensure that it works and that aircraft are appropriately warned. The ADLS system uses radar type technology to detect aircraft miles away and then light up the WES as the aircraft enters and remains in the airspace. If the system fails, the default setting is “all-on”. It was questioned if the local ordinance could require inspection reports to be filed with regularity to ensure the protective systems are in place and being monitored. It was suggested that maybe the PUC could place enforcement procedures upon the WES for this issue. Scout (Sweetland WES) representative Mark Wengierski stated that FAA requirements dictate the lighting requirements and that outages are reported to aircraft / pilots via a “Notice to Airman” or “NOTAM”. It appeared that the downtime of the light(s) is based on operator compliance and ability to change out the defective light. The FAA standard is anything 200’ or greater. The current Hand County WES statement is for 140 foot towers or greater. It was also noted that the FAA lighting requirement is for a percentage of structures to be lit, even if all structures have lighting equipment. Current Hand County WES policy would require lighting on all structures over 140 feet.

Jones then directed the group to the discussion on decommissioning of towers. In particular the 120 day post construction notification to the county. Jones offered that the commission is not qualified to determine if a decommission plan is sufficient given what may be in play in 20 years when (or whenever) the structures are no longer useful and to be decommissioned. Jones maintained that someone qualified would have to be employed/consulted to determine if the plan meets the needs at the time of decommissioning. There was disagreement between members of the gallery and the board regarding the plan to have the decommissioning plan prior to construction versus 120 post construction. Wengierski

offered that the plan offered post-construction would address all final aspects of the project versus projections made prior to construction. Wangsness offered that a general outline of the decommissioning plan could be made ahead of construction and refinements could be used post-construction. The mechanism for enforcement would be criminal prosecution for non-compliance of the final ordinance. This discussion then turned to financial impacts of failed decommissioning, federal tax credits, and PUC questioning of the use of \$5000 per tower escrow investment specific to decommissioning. The building permit fee for erecting the tower (building permit) was reported at \$0.50 per thousand of cost. An estimated \$200,000 tower base and structure (the turbine is not real estate), according to zoning director Augspurger, would cost \$100. The board reiterated that the tax revenue to the county, not the building permit fee, would cover costs to ensure compliance of decommissioning guidelines.

Jones then directed the discussion to the setback distances. The previous requests to consider a two-mile setback, were in the boards' opinion, as spoken by Jones, as "unrealistic". Jones offered that to have a two mile setback would be a message to the WES industry that Hand County does not want wind energy industry development. Jones also touched on the medical issues some attribute to the person's proximity to the wind tower / wind turbine. Jones said the board was willing to "explore" medical waiver setback but after discussion as a board, it was not a topic they were prepared to bring forward in ordinance. Another aspect previously discussed was a "restricted covenant" between neighbors who were in agreement to prohibit WES activities on those properties. The proposed ordinance would not prohibit parties from entering into such agreements / restricted covenants. Jones offered that a two mile setback would effectively close Hand County to wind development. Gallery member, Dean Lockner, disagreed and asserted that a WES who seeks waivers would have ample opportunity to develop. Wengierski (Scout Energy) disagreed and offered that the two mile set back would send a message to the industry that Hand County is closed to development. Wengierski also offered that family dynamics can come to play with who has the right to intrude upon another and visa-versa. This led into a discussion about sound intrusion and long term versus short term noise generation. The conclusion, as spoken by Wangsness, was that the zoning board had settled on a ½ mile setback distance recommendation for the ordinance. Wangsness continued to offer that the tax benefit to the county through development of industry lessens the demands on property owners to offset expenses through property taxation.

Gallery member Renae Morog questioned Wangsness in an assertion that previously, Wangsness had said that anything greater than a one-mile set back would prohibit him from getting wind towers on his property. Wangsness agreed and Morog accused him of having a conflict of interest in legislating the WES. Gallery member Tom Morog added that "...when you are making decisions about how the law is implemented...then it is a conflict of interest." Wangsness asserted that his description of the impact of the larger set back distance was an example that applies other land owners in the county who could be adversely effected by the increased distance.

Jones offered a summary of the steps which led up to this meeting. Jones spoke about the length of time that it took for the county to create a wind ordinance. Jones sited the opposition to the creation of the wind ordinance had left them without one when Sweetland came to develop their project. Jones asserted that the ordinance, whether created to the satisfaction of all, must be enacted so at least some regulation is in place rather than being caught without it when the next developer approaches. Gallery member Renae Morog countered that "a lot" of progress had been made and that she does not oppose wind energy but she is "...opposed to having the flicker, the lights, the sound, next to my farm. I would appreciate if I could have had a mile, two mile set back..." and if wanted people could have had a lessor setback.

Gallery member Deb Bonebright spoke about her families desire to move back here but not live in an "industrial park". Bonebright favored a two mile set back.

Tom Morog spoke to the board about a compromise and how blanket legislation does not cover all aspects of an issue and that possible solutions could come from "mediation or arbitration" where a land owner could negotiate a compromise. Wangsness offered that covenants had spoken about previously.

Gallery member Phil Testerman suggested the board communicate with the neighboring counties to form some consistency in the region. Testerman also spoke about his visit to the coal power plant at Big Stone City. Testerman questioned the desire someone would have living ½ mile from that plant. Wangsness explained the county had looked at other locations when formulating their plan. Wangsness also reiterated that a two-mile set back equates to a "closed sign" for developers.

Gallery member Jan Kittelson spoke about her visits to the Big Stone City area and that it wasn't as bad as Testerman eluded to. Kittelson also reported on living in Spirit Lake Iowa where two wind charger are erected in the community on school property and provide power to the school. Kittelson said that very expensive homes are built right under the turbines, but noted they are not as big.

Wangsness then steered the gathering to the public comment period. Wangsness offered each speaker three minutes in which to offer their comments.

Jim Iverson asked if the 1320 foot setback for participating residents, ½ mile for non-participating residents. Iverson then addressed the Scout representatives about their assertion they would lose 18 towers if the setback were increased to ½ mile. Iverson asserted he used Scout's information and found it inaccurate and accused the board of only listening to the industry.

Eleanor Iverson asked to be skipped.

Deb Bonebright read her presentation aloud. Bonebright spoke about Sweetland's efforts starting in 2016 and how the project size is much larger than the Ree Heights project. Bonebright never imaging living in an industrial park with the adverse sights and sounds. Bonebright provided photographs of their view with towers at various distances between ¼, ½ and 1 mile. Bonebright urged the participant's setback be ½ mile with right of waiver. Non-participating parties to 1.5 mile. Bonebright offered that one person's property rights should infringe on another's ability to enjoy their land. Bonebright also asked that turbines be no more than seven rotor diameters from each other and to establish a decommission plan and that no flicker be on any home, regardless of time. Bonebright offered a written statement from her husband, Brian.

Candice Lockner asked if anyone had been under a wind turbine. Lockner offered an illustration of the scale between a person and the tower structure. Lockner spoke about the health impacts that some may have as a result of being exposed to the towers. Lockner also commented on the perceived conflict of interest that board member Gib Rodgers has as well as that of JD Wangsness.

Dean Lockner advocated that it should be about respect and property rights. Using land to make money but also for enjoyment. Lockner also spoke about legal issues that need to be resolved, namely the Scout company digging without legal authority to do so. And again in 2018 digging into roadways. Lockner said Scout has an issue with doing what they want. Lockner asked about the WES document that as presented but not provided to the public for inspection.

Rena Morog spoke about the agenda originally was short and didn't allow for people to speak and then after some research the agenda changed to allow people to speak. Auditor DeBoer took responsibility for the two agendas and sited that he alone created the agendas. Morog again brought up the disparity between being told there was discussion and then there was no time allowed for discussion. Morog also pointed out that Scout Energy was not on the original agenda but was allow to speak and that she would have appreciated notice as she, Jan Kittelson and Deb Bonebright did not see them listed and that if they are given a time, that time is when they are up so others can attend. Morog said it gives the wrong impression to people. Candice Lockner added that DeBoer knew they were coming and it was not put on the agenda. DeBoer said he put them on the agenda when he had not.

Tom Morog asked about the opportunity for the mechanism of mediation being present in the ordinance so that it doesn't exclude it. Morog said he shouldn't have to pay to keep someone from building next to him. Morog reiterated that arbitration or mediation should be in the ordinance.

Nora Riemann offered that the setback was too small and encourage it be increased.

Teresa Lichty asked if the wind tower companies set aside money for decommissioning. It was offered that \$5000 per year is set into escrow with the PUC for decommissioning. Wangsness added that the local ordinance does not have the language so it is not conflict with the PUC. Lichty asked for clarification about the setback distances between participating and non-participating residents and tip height boundary on neighboring properties.

Rena Morog offered a comment from her conversation with the Hyde County auditor and how new construction is impacted by the setback distances. Candice Lockner added that it is called "trespass zoning".

Auditor DeBoer then offered an apology to Candice Lockner after looking at the published agendas and find Sweetland was not on them. Rena Morog added that she thought the auditor was trying to deceive them by not putting it on the agenda and "throwing them under the bus".

Mark Wengierski offered his thanks for the board's efforts.

Jones moved with Wernsmann second to submit the Wind Energy Systems document to the county commission. All present voted in favor thereof. Wangsness

Palmer moved, Jones second to adjourn the zoning board and reconvene as the board of commissioners.

Wangsness asked for a time to discuss the formatting the ordinance for adoption. Jones explained he and the states attorney suggested presenting the formatted document to the commissioners, not for a 1st reading but for review by the commission, and then offer a timeline for readings and hearings. Jones suggested the review be on May 7th, 2019. Jones reiterated that it is not a first reading, only a review.

10:45 to 11:00 A.M. was reserved for the review.

Jones moved, Palmer seconded to adjourn. Wangsness declared the meeting adjourned. The meeting adjourned at 9:38 P.M.

The next regular commission meeting of the will be held Tuesday, May 7, at 9:30 a.m.

James D. Wangsness, Chairman
Hand County Board of Commissioners

(Attest)

Doug DeBoer, Hand County Auditor

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