

LAKE COUNTY PLANNING COMMISSION AND COUNTY COMMISSION MINUTES
JOINT MEETING
May 30, 2023

The Lake County Planning Commission and the Board of Lake County Commissioners held a joint meeting on May 30, 2023, at 9 a.m. in the commission room at the Lake County Courthouse.

PLANNING COMMISSION CALL TO ORDER AND ROLL CALL:

A quorum of the Planning Commission was not present at 9:00 a.m. Members present included Aaron Johnson and Adam Leighton. Planning Commissioner Johnson was invited to participate in an ex-officio capacity until a quorum was present.

COUNTY COMMISSION CALL TO ORDER AND ROLL CALL:

Chair Wollmann called the meeting to order at 9:14 a.m. Auditor Paula Barrick called roll call: Commissioners Corey Johnke, Adam Leighton, Deb Reinicke, Dennis Slaughter, and Kelli Wollmann all present. CAO/HRS Shelli Gust, SA Wendy Kloeppner, and First District Representatives Todd Kays and Luke Muller were also present.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was recited.

AGENDA APPROVED:

Motion by Reinicke, second by Leighton, to approve the joint planning commission and county commission agenda of May 30, 2023 with the removal of Carbon Dioxide Pipeline Ordinance and Regulations as the Commission does not want to move forward with an ordinance with the unknowns of too many issues. Motion carried.

First District advised Planning Commissioner Johnson that if a quorum of the Planning Commission was present that the Planning Commission could take action to place the removed item back on the agenda.

WORK SESSION / DISCUSSION ON PROPOSED CHANGES TO ZONING ORDINANCE #06-44, AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR LAKE COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND ALL AMENDMENTS THERETO, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 11-2, 1967 SDCL, AND AMENDMENTS THEREOF:

Todd Kays with First District picked up the work session beginning on page 59-187.

Kays advised that he would be giving a general overview of the sections in the ordinance, and then he would take questions about those individual sections. The boards reviewed the following articles: Article XI: Zoning Districts; Article XII: General Requirements; and Article XIII: Concentrated Animal Feeding Operations. The following is not an exhaustive list of every item discussed but provides a summary of those topics which received specific attention.

Article XI: Zoning Districts

The board reviewed Section 1101. "A" Agricultural District. There were questions and discussion about the following topics: whether campgrounds were listed as a specific use, whether commercial storage units could be allowed in the Ag District, what exceptions fall under height regulations; and whether the covenant/waiver section should apply to all farms vs. CAFOs.

The board reviewed Section 1102. "CI" Commercial/Industrial District. There were questions and discussion about the following topics: temporary seasonal fireworks stands, area regulations, and the zoning impact if an asphalt road were to be turned to a gravel road.

The board reviewed Section 1103." LP-1" Lake Park District 1. There were questions and discussion about the following topics: the additional uses that were added, the larger

dimensions allowed for unattached structures, the location of fence regulations in the ordinance, accessory structures with living quarters, the request to add more clarity to how shouses are defined, and the schedule of regulations.

The board reviewed Section 1104. "LP-2" Lake Park District 2. There were questions and discussion about the following topics: LP-2 being a closed district and the new language for leased single family development.

The board reviewed Section 1105. "LP-3" Lake Park District 3. There were no specific questions.

The board reviewed former Section 1106. Fences in LP1, LP2, LP3 which have been moved to a separate section under general regulations.

The board reviewed Section 1107. "TD" Town District. There was discussion about the new uses which have been added to this section.

The board reviewed Section 1109. "PD" Planned Development District. There were questions and discussion about whether this section had been utilized in the past and whether the current regulations were working, whether the county enforces covenants, and how those planned developments are typically structured by the developer.

The board reviewed Sections 1108. Natural Resources District, 1110. Aquifer Protection Overlay District, 1111. Corridor Preservation Overlay District, and 1112. Flood Damage Prevention Overlay District. There were no specific questions. First District advised that FEMA flood maps are being updated and the flood damage prevention overlay district section will need to be amended after that process has been completed.

A short break was taken.

PLANNING COMMISSION CALL TO ORDER AND ROLL CALL:

Additional Planning Commissioners joined the meeting via Zoom. Chair Johnson called the meeting to order. Zoning Officer Carrie Schiernbeck called roll call: Planning Commissioners Aaron Johnson and Adam Leighton were personally present. Planning Commissioners Roger Albertson, Daniel Hansen, and Alan Schaefer were present via Zoom. Planning Commissioner Jodi Ackerman was present intermittently via Zoom.

AGENDA APPROVED:

Chair Johnson requested that Planning Commissioners to reconsider the agenda and place Carbon Dioxide Pipeline Ordinance and Regulations back on the agenda. Motion by Hansen, second by Alberson to approve the agenda with Carbon Dioxide Pipeline Ordinance and Regulations added. Ayes: Johnson, Albertson, Hansen, Schaefer. Nay: Leighton. Absent: Ackerman. Motion carried.

WORK SESSION / DISCUSSION RESUMED:

Article XII: General Requirements

The boards reviewed this article. Kays advised the boards that many of the changes in this article were form over substance.

There were questions and discussion about the following topics: screening, vision clearance on corner lots, manufactured and modular homes, shelterbelts, extended home occupations, shouses, wind energy and decommissioning, wireless communication towers, the right to farm notice, adult uses, private wind energy systems, target ranges, sand gravel operations, setbacks, accessory uses, campgrounds, pipeline structures, agribusiness, fences, manufactured home park standards, and solar energy.

Article XIII: Concentrated Animal Feeding Operations

Kays advised the boards that there were substantive changes made to this article. There were questions and discussion about the following topics: changes to the way animal units are

defined to include headcounts, the number of animal units required for each class of CAFO, manure management plans, graduated minimum setbacks for different classes, and how nonconforming CAFOS can rebuild after a catastrophic incident.

Kays advised the boards again that they have the option to pass sections of the ordinance piecemeal or to pass the entire ordinance at once, and the general pros and cons of each option. Kays advised that he will take all of the feedback and make some changes to the draft. A new draft will be provided to CAO Gust. First District believes one additional meeting should be held to discuss the new draft before any action is taken. First District will send CAO Gust their availability and a meeting will then be scheduled with the two boards.

ADDITIONAL TOPICS FOR DISCUSSION PROPOSED BY PLANNING COMMISSIONERS OR COUNTY COMMISSIONERS

OPTIONS / ACTION ITEMS FOR STRUCTURE AND MEMBERSHIP OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, COUNTY COMMISSION; SDCL 11-2, 11-2-2, 11-2-3, 11-2-49, 11-2-50 (COUNTY COMMISSIONER KELLI WOLLMANN)

CAO Gust advised that Commissioner Wollmann had requested that First District outline the different ways that counties structure their boards. Kays advised that there are essentially 3 ways that it could be structure. The first option is that the County Commission wears all 3 hats – the Planning Commission, the Board of Adjustment, and the County Commission. Kays advised that approximately 5 of the counties in the First District that use this structure. The second option is that the Planning Commission could also sit as the Board of Adjustment, and that membership is different from the County Commission. There are approximately 5 counties in the First District that use this structure. The third option is that the Planning Commission has separate membership and reviews only plats, the comprehensive plan, and the ordinance, while the County Commission sits as the Board of Adjustment handles all variances and conditional uses. Kays advised that Lake County is an anomaly, currently having variances and conditional uses run through the Planning Commission to receive a nonbinding recommendation before they move forward to the Board of Adjustment. There was discussion about how the first option would remove procedural issues and make the process easier for the applicants. CAO Gust asked the boards to come back to the next meeting with their preference, as this would impact the way the administrative section of the ordinance is drafted.

CARBON DIOXIDE PIPELINE ORDINANCE AND REGULATIONS (PLANNING COMMISSIONER AARON JOHNSON)

Planning Commissioner Johnson provided two sample ordinances from Brown County and Moody County to the boards for consideration. Johnson also advised that Minnehaha County and Lincoln County were looking at ordinances. Johnson advised that protections could be put in place through an ordinance. Slaughter commented that there is a difference of opinion between the county's legal advice and pipeline opponents' legal advice. Johnson asked the board to get a second opinion from different legal counsel and stated they had a second opinion in the paper written by an attorney engaged through SDPAA. Johnson stated that opinion states that counties have the legal authority to determine location. Reinicke stated that she was on the fence but not interested in moving forward right now. Wollmann stated that counties are not in the business of regulating pipelines, that the federal government regulates pipelines, that this board does not have the knowledge to regulate pipelines, that they were elected by the people to do a job, that they had been advised by legal counsel, and that it is beyond the board's control. Hansen stated that the county needs to look at public protections, and that it would be a disservice to the public not to do so. Johnson stated that the federal government determines how a pipeline is built but it does not have any authority as to where a pipeline is built, and reiterated that the attorney hired by SDPAA says that counties may determine location.

Wollmann stated that the board needs to be objective, and that Johnson has lost all objectivity with regard to carbon dioxide pipeline issues. Wollmann stated she would like to see a motion that would put this subject to bed. Johnson addressed the minutes from the last meeting and asked SA Kloeppner whether she had contacted the county's insurance company about coverage. SA Kloeppner affirmed she had done so. Johnson wanted the information to be made public. SA Kloeppner declined. Reinicke questioned whether certain types of welders are just as dangerous as the pipeline. Wollmann reiterated that the federal government is equipped to make these decisions. Johnson stated that the most protection is needed for the county. Reinicke stated that they want to protect all of the county, but that this board does not want an ordinance and isn't ready to make a decision as the PUC hasn't even granted a permit yet. Johnson stated that if the permits are granted, it's too late. Johnke stated that not having an ordinance doesn't mean that the board doesn't care about the safety of Lake County residents. Slaughter referenced a public comment that was made to the board by Johnson at a previous meeting that the board was being Pontious Pilate, and that he didn't want to be called that. Wollmann stated that feelings and emotions shouldn't be a part of this discussion. Slaughter advised he was taking the legal advice of counsel and holding off on an ordinance. Reinicke stated she agreed with Slaughter. Johnke reiterated he would be recusing himself from a vote on this matter. Motion Reinicke, second Slaughter to postpone any action on a carbon dioxide pipeline ordinance and regulations. Ayes: Leighton, Reinicke, Slaughter, Wollmann. Recused: Johnke. Motion carried.

Ackerman asked how that impacts any further discussion by the Planning Commission. SA Kloeppner advised that with the directive from the Commission that any action on a carbon dioxide pipeline ordinance and regulations are postponed, the Planning Commission is precluded from sua sponte taking the matter up on its own, and it should not be added to Planning Commission agendas or discussed. SA Kloeppner advised that public comments may continue during the community comments portion of the meeting. Ackerman asked how that impacts applicants. CAO Gust advised that applicants may still apply for anything that is regulated by our zoning ordinance. But it was noted that there would be no agenda items relating to applications for permits/variances, etc., stemming from a pipeline that would come before the Planning Commission.

COMMUNITY COMMENTS:

Linda Rippentrop, Rita Brown, Betty Strom, and Lori Basler, representing themselves, each spoke as an opponent of the Summit Carbon Solutions pipeline. Charlie Scholl, representing himself, passed on making a public comment. Trevor Jones, representing Summit Carbon Solutions, passed on making a public comment.

ADJOURNMENT:

Motion by Leighton, second by Ackerman, to adjourn at 12:54 p.m. Motion carried. Motion by Reinicke, second by Slaughter, to adjourn at 12:55 p.m. Motion carried. The next regular meeting of the Planning Commission will be on Wednesday, June 14, 2023 at 8:00 a.m. The next regular meeting of the County Commission will be on Tuesday, June 6, 2023 at 9:00 a.m.

/s/Paula Barrick
Lake County Auditor

/s/Kelli Wollmann
Chair, Lake County Commission

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