

December 9, 2011

STATE OF SOUTH DAKOTA

OPEN MEETING COMMISSION

IN THE MATTER OF OPEN MEETING)	FINDINGS OF FACT,
COMPLAINT 11-01, CITY OF)	CONCLUSIONS OF LAW
PARKSTON, PARKSTON BOARD OF)	AND REPRIMAND
ADJUSTMENT, PARKSTON PLANNING)	
AND ZONING COMMISSION)	

FINDINGS OF FACT

1. Petitioner James Weiss has alleged three violations of the South Dakota Open Meetings Laws: (1) failure on the part of the Parkston Planning & Zoning Commission to provide proper public notice of their February 11, 2010, regular meeting as is required by SDCL 1-25-1.1; (2) failure on the part of the Parkston Planning & Zoning Commission to provide proper public notice of the attendance of a quorum at the November 9, 2010, meeting of the Parkston Board of Adjustment as is required by SDCL 1-25-1.1; and (3) improper use of executive or closed meeting, in violation of SDCL 1-25-2, by the Parkston City Council sitting as the Parkston Board of Adjustment pursuant to SDCL 11-4-24.

2. The City of Parkston, its Planning & Zoning Commission and City Council, convened as the Board of Adjustment, pursuant to SDCL 11-4-24, and constitute a political subdivision of the State of South Dakota as referred to in SDCL 1-25-1.

3. As political subdivisions of the State of South Dakota, the provisions of SDCL 1-25-1.1 apply to the City Parkston Planning & Zoning Commission and

the City of Parkston City Council, meeting as the Board of Adjustment, pursuant to SDCL 11-4-24.

4. A quorum of the Planning & Zoning Commission met, in a regular meeting, on the evening of February 11, 2010, to consider the building permit application of Joanne Weiss and James Weiss. The meeting was not a special or rescheduled meeting.

5. No public notice of the February 11, 2010 meeting of the Planning & Zoning Commission was posted twenty-four (24) hours before the meeting.

6. Weiss was personally aware of the meeting and its time and location. The Parkston Area Development Corporation, another interested party to the business conducted during the February 11, 2010, Planning & Zoning Commission meeting was also aware of the meeting and its time and location.

7. The Planning & Zoning Commission denied Weiss' application for a building permit and Weiss appealed the denial to the Parkston Board Adjustment pursuant to SDCL 11-4-17.

8. A quorum of the Parkston City Council convened as the Board of Adjustment pursuant to SDCL 11-4-24 and met in regular meeting on November 9, 2010 to hear Weiss' appeal of the Planning & Zoning Commission's denial of a building permit application.

9. The November 9 meeting was properly noticed pursuant to SDCL 1-25-1.1. Weiss as well as individuals who are members of the Planning & Zoning Commission were in attendance at the November 9 meeting and provided comment on Weiss' building permit appeal. A quorum of Planning & Zoning

Commission members were present at the November 9 Board of Adjustment meeting.

10. During the November 9 meeting, following public discussion in which Weiss and Weiss' legal counsel were permitted to comment on the building permit appeal pending before the Board of Adjustment, a motion was made and carried for the Board of Adjustment to enter into executive session.

11. Upon approval of the motion to enter into executive session, Parkston mayor, serving as chairman of the Board of Adjustment, invited those members of the Parkston Planning & Zoning Commission who were present at the Board of Adjustment meeting into the executive session of the Board of Adjustment.

12. In executive session, and while members of the Planning & Zoning Commission members were present, the Board of Adjustment discussed Weiss' building permit appeal and the rationale for the eventual upholding of the Planning & Zoning Commission's denial of Weiss' building permit.

13. In light of the foregoing Findings of Fact, the Open Meeting Commission makes the following:

CONCLUSIONS OF LAW

1. The City of Parkston and its Planning & Zoning Commission and City Council, sitting as its Board of Adjustment pursuant to SDCL 11-4-24, are entities subject to the provisions of the Open Meetings Law found at SDCL Chapter 1-25.

2. Pursuant to SDCL 1-25-1.1, the Parkston Planning & Zoning Commission is required to prepare and post notice of its regular meetings, with a

proposed agenda, at least twenty-four (24) hours prior to any meeting where a quorum will be present and official business will be discussed.

3. The meeting held by the Parkston Planning & Zoning Commission on February 11, 2010, was a regular meeting of the body; however, required public notice of the meeting was not posted.

4. Notice to those members of the public who have an interest in the business conducted by the Planning & Zoning Commission at the February 11, 2010, meeting was not sufficient as notice to the public as a whole is required by SDCL 1-25-1.1.

5. The presence of good faith, the lack of intent, and the lack of damages do not bear on the decision in this matter. The statutory requirements of SDCL 1-25-1 and SDCL 1-25-1.1 do not allow for inclusion of those considerations.

6. A quorum of the Parkston Board of Adjustment met at a meeting, properly noticed pursuant to SDCL 1-25.1.1, on November 9, 2010.

7. Members of the Planning & Zoning Commission were permitted, pursuant to SDCL 1-25-1, to provide information or attend the official meeting of the Board of Adjustment.

8. Pursuant to SDCL 1-25-2(3), executive or closed meeting may be held for consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation.

9. The Board of Adjustment went beyond the scope of SDCL 1-25-2(3) in discussing the rationale for denying Weiss' building permit in executive session

that did not constitute consulting legal counsel or reviewing communications from legal counsel about proposed or pending litigation.

10. Inviting the Planning & Zoning Commission members into executive session exceeded the scope of providing information or attending the official meeting of the Board of Adjustment as is allowed by SDCL 1-25-1.

11. The lack of public notice by the Parkston Planning & Zoning Commission for their February 11, 2010, regular meeting and the improper use of executive or closed meeting by the Parkston Board of Adjustment at its November 9, 2010, meeting constitute violations of SDCL 1-25-1.1 and SDCL 1-25-2, respectively and are hereby subject to a public reprimand.

REPRIMAND

The City of Parkston Planning & Zoning Commission and the Parkston Board of Adjustment are hereby publicly reprimanded.

Issued by Commissioners Reedstrom (Chairman), Brenner, Rothschadl, and Sovell. Commissioner Steele abstained, having been absent the day of the OMC hearing.