

(Draft)

SOUTH DAKOTA OPEN MEETINGS COMMISSION

MINUTES OF MEETING

May 5, 2015

Deadwood, South Dakota

Members participating: Emily Sovell, Sully County State's Attorney (Chair); John Steele, Aurora County State's Attorney; Kevin Krull, Meade County State's Attorney; Mark Reedstrom, Grant County State's Attorney; and Lisa Rothschadl, Bon Homme County State's Attorney. Steve Blair and Jenna McFarlane, Office of the Attorney General, assisted the Commission.

Chairwoman Emily Sovell called the meeting to order at 2:00 p.m. Mr. Reedstrom moved to approve the proposed agenda; Mr. Steele seconded. All members voted in favor of the motion to approve the proposed agenda.

The following is a summary (not verbatim) of the matters discussed.

November 21, 2014 minutes

Mr. Krull moved to approve the draft minutes of the November 21, 2014 meeting. Mr. Reedstrom seconded. All members voted in favor of the motion to approve the minutes.

In the Matter of Open Meeting Complaint 14-05 Imlay Township Board of Supervisors

Mr. Doug Albertson appeared as the Complainant. Attorney Michael Hickey appeared on behalf of the Imlay Township Board of Supervisors. Martha Whitcher, Clerk/Treasurer, and Julian Whitcher, Supervisor, of the Imlay Township Board of Supervisors, also appeared.

Mr. Albertson stated that on March 14, 2014, the Imlay Township Board held a meeting at which Mr. Albertson requested that two new auto gates (cattle gates) be installed on Bouquet Table Road. According to Mr. Albertson the Board told Albertson the new auto gates could be placed at Conata Ranch's expense. Mr. Albertson worked for Conata Ranch. The Board also indicated the Board needed time to research the specifications any auto gate must meet. On March 17, 2014, Imlay Township held another meeting at which Mr. Albertson was informed of the county requirements the auto gates must meet. The Board also informed Albertson that Conata Ranch would have to cede ownership of the gates to the Township, and that Monte Whitcher, Supervisor and

maintenance worker of Imlay Township, must be present to supervise the installation.

Mr. Albertson further stated that on June 22, 2014, the auto gates were installed by him and Monte Witcher, and that during the installation the Township's loader was used. Thereafter, early in July 2014, Mr. Albertson received a bill from the Board for installation of the auto gates totaling \$1,500.00. On August 22, 2014, Mr. Albertson called the Township Board Chair, Jim Witcher, to question how the amount of the installation bill was determined. According to Albertson, Mr. Witcher responded that the rate charged was what the Board agreed to. On September 11, 2014, Mr. Albertson sent a letter to the Board requesting a special meeting. A special Imlay Township Board meeting was held on November 17, 2014, at which the Board voted to remove the new auto gates and sell them to pay the unpaid bill for installation of the gates.

In summary, Mr. Albertson stated that he was not aware the Township Board would be charging \$300.00 per hour for the 5 hours of work performed by Monte Witcher. Mr. Albertson concluded that the rate was established by the Board outside of a properly noticed public meeting.

Mr. Hickey objected during Mr. Albertson's presentation asserting for the record that the Commission did not have jurisdiction over the amount billed by the Board for the auto gate installation.

Mr. Steele inquired of Mr. Albertson as to what specific violation of the open meeting laws the Board was alleged to have violated. Mr. Steele stated the Pennington County State's Attorney had concluded that Ms. Witcher, the Township Clerk, had based the billing rate on FEMA guidelines. Mr. Steele asked Mr. Albertson if he had reason to believe that was not how the rate was determined. Mr. Albertson stated there was no meeting held that he is aware of where the rate was formally determined.

Ms. Sovell asked Mr. Albertson if he was aware if there had historically been meetings discussing similar bills. Mr. Albertson responded by saying the Township had not previously done similar work.

Mr. Krull inquired of Mr. Albertson whether Jim Witcher indicated if the other Township Board members had voted for the rate charged for the auto gate installation. Mr. Albertson responded that Jim Witcher said "I'm one person."

Mr. Krull also inquired whether Martha Witcher was a voting member of the Board, and Mr. Albertson was unsure of her voting status.

Mr. Hickey, representing Imlay Township, started his presentation by noting the Commission is limited to reviewing potential violations of the state open

meetings laws. Mr. Hickey asserted that no such violations were before the Commission through Mr. Albertson's complaint.

Next, Mr. Hickey asserted that Mr. Albertson could not appear on behalf of Conata Ranch. Mr. Hickey stated that Mr. Albertson was not an attorney and thereby, according to state case law, could not represent Conata Ranch at the proceedings.

It was stated that Imlay Township held two properly noticed meetings where the potential installation of the auto gates was discussed. First, one meeting was held on March 14, and the second was held on March 17, 2014. Mr. Hickey indicated those meetings were properly noticed.

Further, according to Mr. Hickey, a lawsuit regarding the amount of the bill charged to Conata Ranch was pending before a court in Pennington County. Mr. Hickey asserted the authenticity or legality of the bill charged was not before the Commission.

Mr. Hickey stated that at no point did a quorum of the Imlay Township Board meet to discuss the amount of the bill submitted to Conata Ranch. According to Mr. Hickey, all meetings were properly noticed, and there had been no showing made that a meeting was held without proper notice. The calculation of the bill sent to Conata Ranch was a ministerial act carried out by the Township Clerk consistent with previous discussions of the Board.

Mr. Krull inquired of Ms. Whitcher whether she was involved in the discussion between Jim Whitcher and Mr. Albertson. Ms. Whitcher indicated she was not, but that Jim Whitcher did call her and discuss how she arrived at the total amount that was billed to Conata Ranch.

Ms. Sovell asked Ms. Whitcher if there was any subsequent meeting where a quorum of the Board met and discussed the bill that was sent to Conata Ranch. Ms. Whitcher indicated there was no such meeting; the billing had been discussed previously at the noticed meetings. Ms. Whitcher indicated the Board viewed the auto gate installation as "specialty work," and that it had been discussed that the total amount of the bill would be determined after it was known what Township equipment would be involved.

Ms. Rothschadl questioned Ms. Whitcher regarding the use of the FEMA guidelines to establish the hourly amount billed. Ms. Whitcher indicated that she called the County Auditor and the County Highway Department for advice. Ms. Whitcher felt the FEMA scale was a good resource to calculate the bill.

In rebuttal to the Township's presentation, Mr. Albertson stated he was simply following the process that had been explained to him regarding any grievance he had against Imlay Township.

The Commission went into deliberations. There was a discussion held among the Commission members regarding whether an individual who was not an attorney could represent an entity. Mr. Reedstrom indicated he felt the Commission did not need to reach that issue in that it was relatively undisputed from the evidence presented that no open meetings law violation occurred. Ms. Sovell agreed there was no violation. Mr. Steele and Ms. Rothschadl also agreed there was no violation.

Mr. Steele moved to find no violation against Imlay Township. Ms. Rothschadl seconded. Roll call was made and Ms. Rothschadl, Mr. Steele, Mr. Reedstrom, Ms. Sovell and Mr. Krull voted aye.

Steve Blair was directed to draft findings and conclusions for the board.

In the Matter of Open Meeting Complaint 14-01, Lincoln Township

The Commission considered the proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Mr. Krull made a motion to approve the Findings of Fact and Conclusions of Law which was seconded by Mr. Reedstrom. All members voted in favor of adopting the Findings and Conclusions. Roll call was made and Ms. Rothschadl, Mr. Reedstrom, Mr. Steele, Ms. Sovell and Mr. Krull voted aye.

In the Matter of Open Meeting Complaint 14-03, Freeman School Board

The Commission considered the proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Ms. Sovell stated she had read the comments of Mr. Chris Eisenbeis in respect to the proposed Findings and Conclusions and agreed with the way the Findings and Conclusions had been drafted. Mr. Reedstrom made a motion to approve the Findings of Fact and Conclusions of Law which was seconded by Ms. Rothschadl. Roll call was made and Ms. Rothschadl, Mr. Reedstrom, Ms. Sovell and Mr. Krull voted aye. Mr. Steele voted nay.

In the Matter of Open Meeting Complaint 14-04, Plankinton School Board

The Commission considered the proposed Findings of Fact and Conclusions of Law drafted in regards to this matter. Mr. Steele recused himself from consideration of the Findings and Conclusions. Mr. Reedstrom made a motion to approve the Findings Conclusions which was seconded by Mr. Krull. Roll call was made and Ms. Rothschadl, Mr. Reedstrom, Ms. Sovell and Mr. Krull voted aye. Mr. Steele abstained.

Preparation of the minutes.

A discussion was had regarding preparation of the minutes of the Commission's meetings. South Dakota statutes require the minutes to be posted within ten business days of the meeting. However, the statute allows any audio of the meeting to be posted within five days in lieu of posting of drafted minutes. Posting of any audio of the Commission's meetings was discussed, which would allow more time to be taken to prepare the draft minutes. Following the discussion of the Commission members it was decided that minutes would be prepared within the ten days unless it was necessary to post the audio in order to allow more time to prepare the minutes.

No motion was required.

2015 legislation

Mr. Blair brought to the attention of the Commission that House Bill 1125 was signed by the Governor and will become effective July 1. The bill revised State law to require the posting of a copy of a proposed agenda, in a visible, readable and accessible location at the principle office of the public body for at least an entire - continuous - twenty-four hours immediately preceding the noticed meeting.

Mr. Blair also noted that House Bill 1153 was brought to the Legislature but did not pass. The bill would have made it clear that boards and commissions should not discuss official business over email, text messaging, chat service, and other similar media.

No motion was required; this was an informational item.

Future legislation

Mr. Blair informed the Commission that if they had proposals for 2016 legislation regarding the open meeting laws the Attorney General would consider bringing that legislation on the Commission's behalf.

No motion was required; this was an informational item.

Potential revision to Open Meetings Pamphlet

Mr. Blair informed the Commission that the last update to the Open Meeting pamphlet was in 2013. All of the stake holders have been contacted and are in the process of submitting potential revisions to Mr. Blair. It was requested that if any of the Commission members believe any revisions need to be made they should submit those to Mr. Blair.

No motion was required; this was an informational item.

Adjournment.

A motion to adjourn was made by Mr. Steele, seconded by Mr. Reedstrom, at approximately 3:19 p.m. All voted in favor and the Commission adjourned.

Approved on _____, 2015.

Emily Sovell, Chairwoman
On behalf of the Open Meeting Commission

DRAFT



SRB

Attorney General

OCT -5 2015
38/652

OFFICE OF STATE'S ATTORNEY
Public Safety Center
1015 South Miller
Mitchell, South Dakota 57301-4230
Telephone No. (605) 995-8627
Fax No. (605) 995-8629

October 2, 2015

Marty J. Jackley
Office of Attorney General
1302 E. Hwy. 14 #1
Pierre, South Dakota 57501
Attn: Open Meetings Commission

Re: Alleged Open Meetings Law Violation

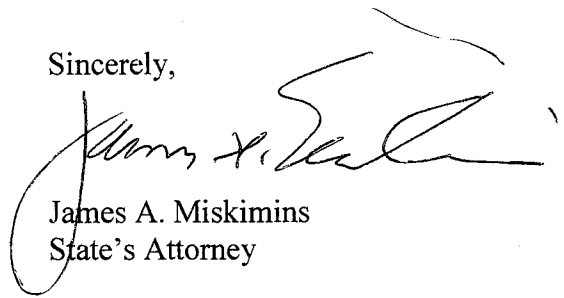
Dear Attorney General Jackley:

Enclosed please find a complaint from The Daily Republic of Mitchell, South Dakota relating to the City of Mitchell, South Dakota city council. Although the complaint is not in the form of a pleading, it alleges a violation of SDCL1-25-2, and is made under oath.

The enclosure is forwarded to the Open Meetings Commission for further action pursuant to SDCL 1-25-6(3). I am enclosing, for informational purposes, a copy of an article from the Daily Republic which summarizes the meeting in question and provides some background information that the commission may find to be helpful.

Thank you for your consideration. If the commission needs any further information, I will be happy to assist.

Sincerely,

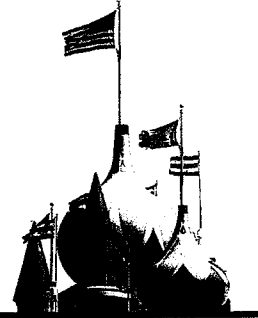


James A. Miskimins
State's Attorney

Enclosure

cc: Daily Republic
City of Mitchell

The Daily Republic



www.mitchellrepublic.com 120 S. Lawler • P.O. Box 1288 • Mitchell, SD 57301 • 605.996.5514 • Fax 605.996.7793

Jim Miskimins
1015 South Miller Ave.
Mitchell, SD 57301

Jim,

On Sept. 21 at a regular Mitchell City Council meeting, I observed the council enter a closed-door executive session to hear public input regarding the recent resignation of former Corn Palace Director Dan Sabers.

Although there was an executive session scheduled for the end of the meeting, the council pushed the session earlier up the agenda to hear concerns from citizens regarding the personnel matter.

Mayor Jerry Toomey said he was advised by Lisa K. Marso, an attorney based out of Sioux Falls, not to comment on Sabers' resignation. With the recommendation from Marso, the council agreed with Toomey.

The executive session was approved by six council members: Marty Barington, Randy Doescher, Dave Tronnes, Susan Tjarks, Steve Rice and Mel Olson. Two council members opposed the session: Dan Allen and Jeff Smith.

Mitchell resident Lamoine Torgerson, who attended the meeting along with approximately 60 to 80 other supporters of Sabers, asked the council if they could simply listen to the public input without receiving any reactive comments from the council. Torgerson also asked that the comments be made publicly.

The council considered this option, but ultimately decided to hear the comments in an executive session. One by one, citizens went before the council and mayor to share their concerns. According to Torgerson and Judy Anton, who spoke in the executive session, the council never responded to their comments and concerns.

During the session, myself and dozens of people were ushered into the lobby of City Hall to wait until the session concluded. No citizens were allowed to enter the session for approximately 20 minutes, which was followed by another 20 to 40 minutes of public comment.

Several people waiting in the lobby said they wished for the citizen input to be held in public session. I agree with their statements and believe based on what I saw that a law has been violated. The City Council went into executive session for a purpose not authorized by SDCL

1-25-2. I swear this, on behalf of The Daily Republic newspaper, a subsidiary of Forum Communications, to the best of my knowledge.

Evan Hendershot, Sept. 29, 2015

Melina Seppala

exp 4-15-20

Evan Hendershot



Members of the people included in the executive session

Jerry Toomey, Mayor
505 E. Second Ave.
Mitchell, S.D.
605-996-3109

Mel Olson, Ward 1
800 W. 10th Ave.
Mitchell, S.D.
605-996-1082

Steve Rice, Ward 1
1301 Palmer Place
Mitchell, S.D.
605-996-3078

Randy Doescher, Ward 2
517 E. Second Ave.
Mitchell, S.D.
605-996-8806

Dave Tronnes, Ward 2
400 E. Third Ave.
Mitchell, S.D.
605-996-7450

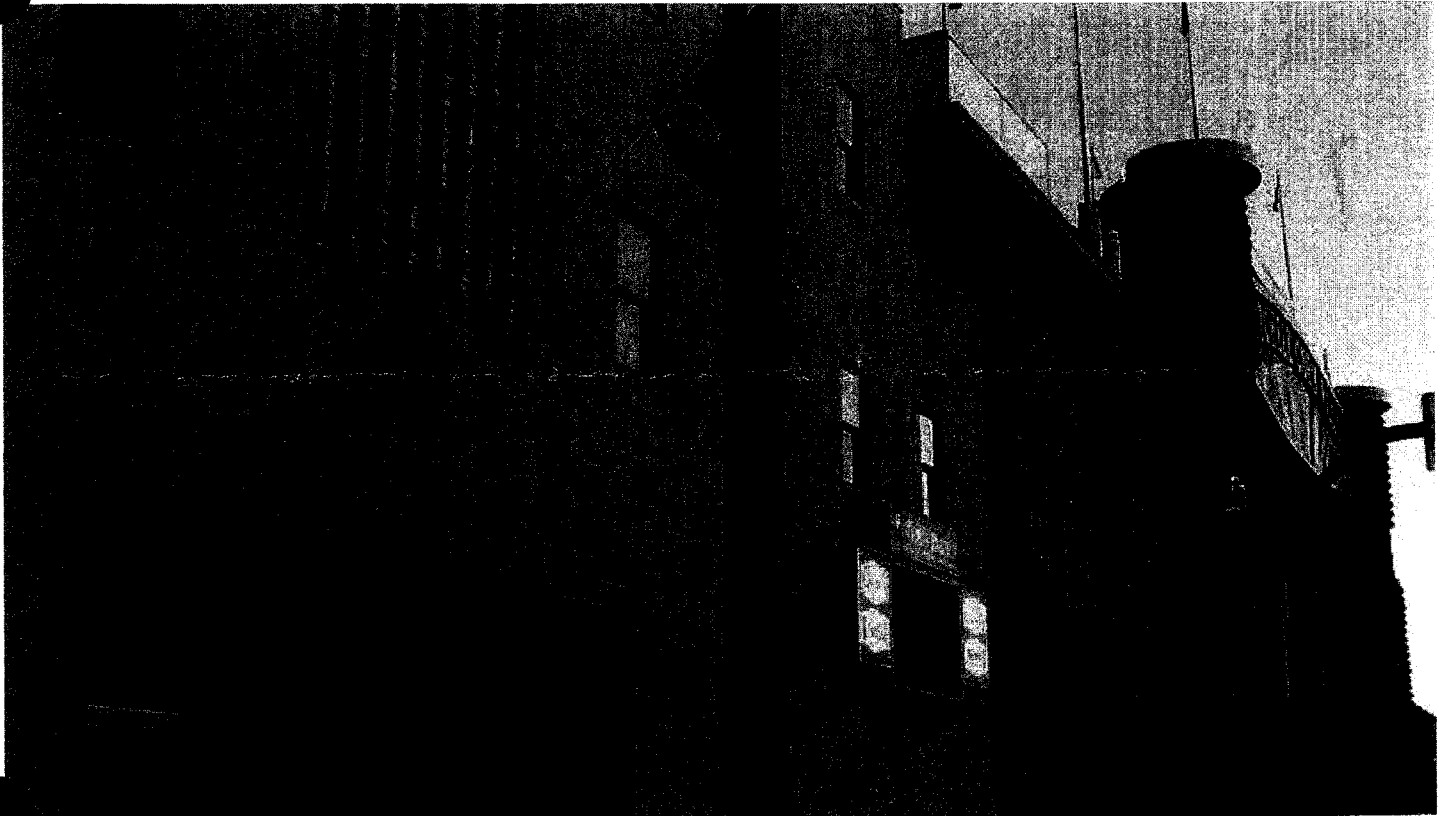
Marty Barington, Ward 3
427 E. 13th Ave.
Mitchell, S.D.
605-996-5278

Dan Allen, Ward 3
615 Fair Oaks Ave.

Mitchell, S.D.
605-996-7116

Jeff Smith, Ward 4, Council President
25 Arrowhead Pass
Mitchell, S.D.
605-996-6057

Susan Tjarks, Ward 4
1507 Pebble Beach Rd.
Mitchell, S.D.
605-630-3422



Meeting stirs controversy over open government

By Evan Hendershot on Sep 22, 2015 at 8:15 p.m.

An improvised executive session at Monday's City Council meeting highlighted a disconnect between some council members and Mitchell residents.

What started as a mass public showing of support for former Corn Palace Director Dan Sabers turned into a call for transparency in Mitchell's municipal government.

Initially, Sabers agreed to a verbal resignation, but has since sent a letter to the mayor in an attempt to revoke that resignation. Toomey confirmed the letter

was sent to the city by the Stiles, Papendick and Kiner law firm in Mitchell, but made no comment on how the city will proceed with the revoked resignation.

Mitchell resident Lamoine Torgerson spoke during the council's citizen input segment, which is held near the beginning of every council meeting. Torgerson approached the podium to show support for Sabers, but he was soon shut down by Toomey, who cited state laws and city policy to push any public comment on the personnel matter into an executive session.

An executive session is a meeting that is closed to the media and the public. South Dakota's open-meetings law contains five reasons a public body may choose to enter an executive session, one of which allows "for the sole purpose of" discussing the qualifications, competence, performance, character or fitness of any public employee or prospective public employee. State law does not permit any official action to be done in executive session.

On Monday night, the City Council decided to discuss matters about Sabers' resignation in executive session, citing the aforementioned statute. Council members allowed individual members of the public to enter Council Chambers one by one and express their concerns about the resignation.

But Torgerson, one of a handful of Mitchell residents who made their plea to the council, wasn't satisfied with the council's 6-2 vote to force citizens to express their concerns in an executive session.

"I understand that state law says you can't discuss personnel matters," Torgerson said Tuesday in an interview with The Daily Republic, "but the citizens of Mitchell should have been allowed input at that meeting to discuss at least our view of why we're supporting Dan Sabers."

Torgerson claims to have had discussions with Sabers about the events that led to his resignation, and isn't claiming Sabers was completely innocent of wrongdoing, but he felt Sabers' positive impact to the city outweighed the negatives.

After digging into the situation himself and speaking with Sabers, Torgerson hoped the mayor would clarify the reasoning behind the resignation. Torgerson was met with silence from the council and mayor.

"It's quite apparent that he's not being very transparent, not only with the public, but he's not very transparent with his council members," said Torgerson.

Toomey said he and the council sat silent while citizens cycled through to discuss their concerns with the alleged forced resignation of Sabers. Toomey said it was difficult at times not to respond to the distressed citizens and it may have been beneficial to share insight about the situation surrounding Sabers, but he claims he was bound to silence by state laws.

"I believe in transparency, and I've always said that, so if I could talk about it, I probably would," Toomey said. "I felt for myself it was kind of a detriment that I can't, because I'm obligated under both city procedure and state statute and policy."

Sabers has not returned several messages seeking comment on the matter by The Daily Republic.

Jeff McEntee, of Mitchell, was one of the citizens who, like Torgerson, spoke in front of the council in executive session.

"I was frustrated with the process Monday night," McEntee said Tuesday evening. "I think public input is just that. The public should have the opportunity to comment, and the city has to protect their interest. They don't have to comment, but they should have to listen to the group in a public setting."

Council weighs in

Before the 6-2 vote in favor of moving the executive session to the forefront of

the meeting, Council members Marty Barington and Susan Tjarks questioned why the council couldn't hear the citizen input without responding to any personnel matters.

Eventually, Barington and Tjarks supported the executive session to give the people in attendance a chance to speak, but fellow councilmen Dan Allen and Jeff Smith remained against holding the public comment portion in an executive session.

"As long as we did not respond to the comments that were made, then we would be within the letter of the law," Smith said.

Smith said he couldn't fault the other members of the council for supporting the decision to receive public comment in an executive session. Toomey said he asked Sioux Falls-based attorney Lisa K. Marso how to handle the situation before the meeting with the expectation that the council would receive citizen complaints on Monday night. He said Marso recommended the executive session.

At least two councilman agreed with Toomey's decision to exclude public comment from the open session. Councilmen Mel Olson and Dave Tronnes felt obligated to stick with the mayor due to state laws on personnel issues.

"It's what state law says," Olson said. "I cannot tell you the content of the comments, but I will say that the comments were not all in support of Mr. Sabers."

Olson said the executive session helps the council and citizens avoid slanderous statements on the employee or former employee.

Tronnes agreed with Toomey and Olson, questioning what other choice the city had in discussing a personnel issue.

"I think we followed what the legal team told the mayor to do," Tronnes said.

"We gave the opportunity for people to speak, plus kept the confidentiality that the city requires in mind."

"I don't know how you can have transparency when it comes to personnel matters," Tronnes said.

Although Tronnes, Smith and Toomey remained silent on the topics mentioned by individuals in executive session, Olson confirmed that at least one speaker was supportive of Sabers' resignation.

On Tuesday, Torgerson stuck to the stance he made Monday night.

"I certainly feel strongly that we should have been given some kind of answers that nobody got," Torgerson said. "And everybody left there perplexed and upset that we didn't get any answers."

Daily Republic taking a stand

Daily Republic Publisher Rory Palm and Editor Luke Hagen feel the City Council wrongfully used the executive session statute to close the public comment portion of the meeting.

"The Daily Republic has consulted a lawyer and is considering filing an open-meeting complaint," Hagen said. "City Council meetings should be a platform for the public to openly discuss and express their thoughts."

"In this instance, the City Council closed a public meeting by going into executive session to hear residents' complaints about the lack of transparency.

The irony would be amusing if it weren't so troubling."

The newspaper believes the statute does not allow for the council to discuss

qualifications, competence, performance, character or fitness of former city employees, such as Sabers, who submitted his resignation earlier this month.

Toomey disagrees with the newspaper's claims.

"We're not of the opinion that we violated any open meeting laws," Toomey said.

Executive session laws, the newspaper believes, also do not allow the City Council to hand-pick members of the public to have private conversations, without the media present, about an issue that members of the public attempted to speak about during the citizen input session. Executive session, the newspaper believes, is for the City Council to discuss personnel issues.

If The Daily Republic files an open-meeting complaint to Davison County State's Attorney Jim Miskimins, he will have three options: File criminal charges; forego criminal charges and forward the complaint to the state's Open Meetings Commission; or determine that the complaint has no merit and forward it for informational purposes to the state attorney general.

Evan Hendershot

ehendershot@mitchellrepublic.com

ADVERTISEMENT





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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 6, 2015

Stephanie Ellwein
City Administrator – City of Mitchell
612 North Main Street
Mitchell, SD 57301

Re: In the Matter of Open Meeting Complaint 2015-01, Mitchell City Council –
Davison County

Dear Ms. Ellwein,

I have received an open meetings complaint concerning the Mitchell City Council. The Complaint was signed by Evan Hendershot of the Mitchell Daily Republic. The Complaint was reviewed and forwarded to me, pursuant to SDCL 1-27-6(3), by Davison County State's Attorney James A. Miskimins. Enclosed is a copy of all the materials I have received.

If the Mitchell City Council wishes to file a response to the complaint, please send it to the above address on or before October 30, 2015. Please also send copies of any response to Mr. Hendershot (The Daily Republic, PO Box 1288, Mitchell, South Dakota 57301) and to State's Attorney Miskimins.

After I have received your response, all materials will be sent to the members of the Commission. The Commission meets periodically and has not yet scheduled its next meeting. The City Council will be asked to make a short presentation regarding the complaint at the meeting during which the complaint is considered. You may waive this presentation if you wish. You will be given further notice of the meeting date, location, and time once the meeting has been scheduled.

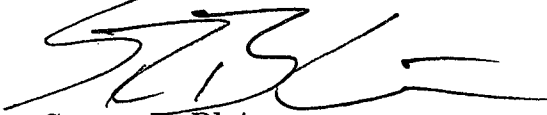
October 6, 2015

Re: In the Matter of Open Meeting Complaint 2015-01, Mitchell City Council – Davison County

Page 2

If you have any questions please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'SRB', with a horizontal line extending to the right.

Steven R. Blair

Assistant Attorney General

SRB/jm

Enclosures

Cc w/o Enclosures: Evan Hendershot, The Daily Republic
James A. Miskimins, Davison County State's Attorney





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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 6, 2015

The Daily Republic
ATTN: Evan Hendershot
PO Box 1288
Mitchell, SD 57301

Re: In the Matter of Open Meeting Complaint 2015-01, Mitchell City Council –
Davison County

Dear Mr. Hendershot:

This letter is to acknowledge receipt of an open meetings complaint filed by you against the Mitchell City Council. The complaint was forwarded to me by Davison County State's Attorney James A. Miskimins. A copy of the complaint materials have been submitted to the Mitchell City Council for their response. I have asked the City Council to file a response no later than October 30, 2015. I have also requested that the City Council mail you a copy of any response they file.

The Open Meetings Commission meets periodically and has not scheduled its next meeting. I will notify you of the date, time and location of the next Commission meeting. You will be asked to make a brief presentation regarding the complaint when the complaint is heard by the Commission. You may waive this presentation if you wish.

If you have any questions please don't hesitate to contact me.

Sincerely,



Steven R. Blair

Assistant Attorney General

SRB/jm

Cc: Stephanie Ellwien – Mitchell City Administrator on behalf of City Council
James A. Miskimins – Davison County States Attorney



NOV 02 2015

382571

CARL J. KOCH
City Attorney, City of Mitchell, SD
200 EAST 5TH AVENUE – P. O. BOX 546
Mitchell, South Dakota 57301
Office Phone (605) 996-6546
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Fax (605) 996-6548

October 30, 2015

Office of the Attorney General
1302 East Highway 14, suite 1
Pierre, SD 57501-8501
Attn: Open Meeting Commission

Re: In the Matter of the Open Meeting Complaint 2015-01, Mitchell city Council -
Davison County - Response of City of Mitchell SD.

Dear Atty Blair and members of the Open Meeting Commission:

The following constitutes the response of the City of Mitchell, SD to the above referenced complaint of violation of the open meeting law.

PRELIMINARY STATEMENT:

The appointed officer (employee) to whom this matter relates will be referred to as he “subject person”.

The large contingency of persons who appeared at the September 21, 2015, regular City Council meeting with the intention of speaking to the City Council publicly regarding the resignation of he subject person will be referred to as the “group”.

The Mayor and City Council of the City of Mitchell will sometimes be referred to as the “governing body”.

Attached to this response are several items which will be referenced in this response; including:

Attachment A, A-1 and A-2, consisting of the affidavit of the City Finance Officer re agenda and minutes of the regular city council meeting of September 21, 2015 (Attachment A being the affidavit of the Finance Officer, A-1 being the agenda for

that meeting, and A-2 being the minutes.

Attachment B, consisting of the body of the letter remitted to and received by the Mayor of the City (from the law firm of Stiles, Pappendick and Kiner) requesting withdrawal of the resignation previously made to the Mayor by the subject person.

Attachment C, e-mail of attorney Lisa Marso (the attorney retained by the S.D. Public Assurance Alliance Pool (risk sharing pool) on continuous retainer for the purpose of responding to Hotline inquiries from members of the risk sharing pool, including officer and agents of such members) on issues relating to personnel matters (e-mail of September 21, 2015 at 1:27 PM).

Attachment D, e-mail of Attorney Marso to Mayor (e-mail of September 22, 2015 at 11:44 AM).

Attachment E, article printed and distributed in Daily Republic newspaper (23 September, 2015, under article date of September 22, 2015 at 8:15 PM).

Attachment F, copy of page from Mitchell SD City Code of Ordinances wherein the position of the subject person is classified as an appointive officer position.

Attachment G, research memorandum of Boyce Law Firm forwarded by attorney Lisa Marso regarding the complaint of the Daily Republic. (attached in the form provided to me (redacted top) so as to avert any supposition that the materials produced were the result of research performed by me, which it was not).

Attachment H: statement of Mayor Toomey to public at opening of "citizens input" advising that governing body would not discuss personnel matters in open session.

Attachment I: Article from ABERDEEN NEWS reporting decision of Brown County Commissioners to hear citizen commentary on county employees in executive session only.

FACTS:

(As it has been related to me by the Asst. Attorney General that there exists no rule of procedure or fact finding by the Open Meeting Commission, the statement of facts are the facts as known to the City)

On or about the 10th day of September, 2015, the subject person gave to the Mayor of the City of Mitchell, SD, Jerry Toomey (hereafter "Mayor") his oral resignation from his appointive officer position of Corn Palace Director. On a day or so subsequent to September 15, 2015, the Mayor received by mail from the law firm of Stiles, Pappendick and Kiner, the letter of the subject person requesting permission to withdraw his previously

given verbal resignation (acknowledgment of the oral resignation is contained in Attachment B - first line of first paragraph).

Sometime prior to the date of September 21, 2015 (a regularly scheduled Mitchell City Council meeting (council meets 1st and 3rd Monday of each month) in conformance with the law) the Mayor received information that there was being organized, on behalf of the subject person, a large group of citizens who intended to come to the City Council meeting, and during the "citizen's input" portion of the agenda, advocate for the allowance of withdrawal of resignation by the subject person, and for his re-instatement. In other words, through force of numbers put political pressure on the governing body to re-instate the subject person in his prior appointed position as Corn Palace Director.

With this information, the Mayor contacted Attorney Lisa Marso, and explained to her the situation of which he had been informed; the response to which is shown at Attachment C.

On the evening of September, 21, at the time of the commencement of the City Council meeting (7:30 PM) as reported by the Daily Republic (Attachment E), the large group of citizens, (which may have numbered from 60 to 80 as reported by the Daily Republic - there was not room for all in the council chambers) filled the council meeting chambers of City Hall, as the Mayor had anticipated on account of having received prior information that such was going to occur. At the time as shown on the agenda (Attachment A-1) the mayor announced for the opening of "citizens input"; and proceeded state verbatim the statement shown on Attachment H and proceeded to further announce executive session for personnel matters was scheduled on the agenda to occur following the conclusion of all other business; and that members of the group who wished to discuss the personnel matters would at that time be heard by the City Council, one at a time. The Mayor estimated that the Council would enter executive session at or about the time of 9:00 P.M. (see Attachment H for verbatim statement of Mayor). At that time, Lamoine Torgerson stepped forward as the spokesman for the group, and stated that he and all others comprising the group believed that they had the right to discuss the matter of the resignation of the subject person City Council during the "citizens input" portion of the meeting which per the agenda was to occur near the commencement of the meeting with City Council in open session (paraphrased and re-stated - not intended to be actual words of the speaker); and should not be required to wait until the end portion of the meeting. Several persons, including the acting City Attorney, (i.e. this writer) cautioned the City against discussion of personnel matters in public. The acting City Attorney suggested that if the City Council wanted to accommodate the group in its stated demand to discuss the subject person at that time, without necessity of waiting until end portion of the meeting, that the executive session on the agenda, or at least the portion thereof relating directly to the subject matter which the group intended to address, could be moved up on the agenda such that matter could be handled in executive session immediately; and once completed, the City Council could proceed with the balance of the agenda in the order shown on Attachment A-1. This was done, as is shown by the minutes of the meeting (see Attachment A-2), and when those person who desired to discuss their position on the

particular personnel matter the City Council adjourned out of executive session, and the meeting proceeded to its conclusion per the published agenda. The council took no action on the matter discussed during executive session, either in executive session or in open session. The early adjournment to executive session to hear discussion on the matter work performance by, or the fitness (and/or unfitness) of the subject person for the particular appointive officer position was done purely for accommodation of the large group of citizens who had come for that particular purpose; as opposed to deferring and inconveniencing that entire large group for an hour to an hour and a half or so. All matters on the City Council agenda are scheduled for 7:30 PM, and matters on the agenda are addressed, usually in the order listed on the agenda, when the governing body gets to them. It was very clear from the statement of Lamoine Torgerson (later amplified by his apparent statement to the reporter for the Daily Republic) that he and the large group were present for the specific purpose of discussing the resignation of the subject person from his appointive office, and advocating that he be restored to that position.

DISCUSSION:

There exists no legal provision or requirement, in state law or city ordinance, for the City Council to have an item entitled "citizens input" on the agenda of any city council meeting. The inclusion of "citizens input" began in Mitchell around 1980, when then newly elected mayor Paul Tobin thought this to be a good idea, and directed that "citizens input" be included in the agenda, positioned prior to any other business to be addressed, for all regularly scheduled meetings, so as to allow citizens an opportunity to address the City Council on a matter of their concern. This practice has continued as a tradition through the present time. In no way does that entitle any person the right to discuss any particular matter during "citizens input, rather such is a matter of grace by the City Council. Typical of subject matter at "citizens input" would include a pothole in a street somewhere which for whatever reason had not been repaired, or the hours of operation of the landfill, and things of that nature. Never has a City Council in Mitchell discussed a matter of job performance or fitness (or unfitness) of any personnel in open session over the course of what is now approximately thirty (30) years of service as City Attorney in the City; and for the obvious reasons. There was at no time, particularly after the announcement by Lamoine Torgerson, any doubt as to the purpose for which the group was present.

Personnel issues are by their nature administrative actions - not subject to referendum (although whether a position is to be added or subtracted is according to the SD Supreme Court). The electors of the City Council elect the various members of the Council representing the various wards of the City, with the Mayor being elected at large, all in the ordinary course of the aldermanic form of municipal government, all as outlined and described in Title 9 of the South Dakota Codified laws. Once properly elected and qualified for office, each new council has the duty and obligation to govern; with certain duties reserved specifically for the Mayor. It is only the Mayor who has the right to offer a name in nomination for appointment to an appointive office for consideration (i.e. approval or disapproval) by the City Council (SDCL Chapter 9-14 sections 3 through 6),

which is done annually in the City; and it is only the Mayor who can terminate an appointive officer. In this case, the subject person resigned his office; and upon acknowledging in writing that he had so resigned, requested a withdrawal of that resignation. As SDCL 1-25-2(1) incorporates "prospective public officer" within the statutory language, the subject person, having requested withdrawal of his previously made resignation, placed himself squarely within the classification of a "prospective public officer"(see Attachment B). I am confident in representing to the Open Meeting Commission that the Mayor fully informed the City Council regarding the circumstances surrounding the matter, notwithstanding he was under no obligation to do so. Further, the request for withdrawal of the oral resignation was never withdrawn; nor did the subject person at any time provide the City any form of authorization to release information regarding his personnel record with the City or the circumstances under which he resigned. No informed person can argue that open meeting discussion of the job performance of, or fitness of, a public officer who resigned and then requested reinstatement (through withdrawal of previously made resignation) is appropriate. This position is not unique to the City of Mitchell; as the Brown County Commission did at its regular meeting of October 27 or 28 (typically county commissions meet on Tuesday - the news article shown at Attachment I is dated October 28) determined that it will not permit discussion of county personnel in regular session, and determined that such would be done only in executive session (see attachment I). No doubt that determination, due to its nature, was made with the advice of the Brown County States Attorney.

To the extent that the Daily Republic would argue that certain members of the group wanted to address the City Council on the subject matter of "transparency" and/or "accountability" separate and apart from the stated purpose of the group, all such subject matter began with the association of "transparency" and/or "accountability" in respect to the actions of the Mayor relating to the resignation of the subject person, and to support the subject person's quest for reinstatement; thereby intertwining the same with the matter of the resignation of the subject person. The reason for the group being there and what their intentions were was fully clarified by Lamoine Torgerson in his statements to the Mayor and City Council, and subsequently to the Daily Republic.

The Open Meeting Commission has made clear declaration that any given subject considered in isolation might not be a proper subject of executive session; but when mixed with employee or appointive officer job performance and/or fitness for the office, then executive session is proper. The Open Meeting Commission opined: "Although a matter standing alone should be considered in open session, when the facts are so intertwined with employee performance, those specific items as evidence of the performance are appropriately discussed as facts surrounding the performance issue. So long as the questions remains the performance of the employee, and not whether the item should be approved or disapproved, executive session is the proper venue" (OMC City of Lead (04-01)). In this case, as per the Daily Republic article (see Attachment E) Lamoine Torgerson (quote per the Daily Republic) stated that he did not come to the City Council meeting to speak of personnel matters, but that he came to support the subject person, prior

resignation notwithstanding. That is oxymoronic per se; and is equivalent of stating that the tire had gone flat while simultaneously stating that no air had escaped from the tire. In other words he claims to have come to discuss the subject person but not city personnel matters. There can be no doubt from the declarations of Lamoine Torgerson made to the Mayor and City Council that he and the group were there in force to discuss the personnel matter regarding the subject person. To the extent that any member of the group may have later claimed an intention of addressing the governing body on the subject of transparency and accountability separate from the personnel matter, or if the intentions of any person morphed to that position, it is undeniable that all such persons came with and under the organized umbrella of the group, whose stated intention was made clear to the governing body, and later to the newspaper (see Attachment E).

There can be no merit to the claim of the Daily Republic that the city government engineered a makeshift executive session. The agenda for the regular meeting City Council meeting of September 21, 2015 (Attachment A-1), explicitly provided that the City Council would adjourn to executive session for matters permitted by SDCL 1-25-2(1). No rule or law exists which prohibits advancing an item on the agenda to accommodate the needs of a person or persons interested in the item. This is no different than a judge permitting the defense to call a witness out of order, even if during plaintiff's case (like a doctor scheduled to perform surgery) in order to accommodate the need of that witness to be elsewhere when he would ordinarily have been called. So long as the executive session was published on the agenda with notice to the public at least 24 hours prior to the meeting, when during the meeting that item is addressed is immaterial and of no consequence. Attorney Marso's advice (see Attachments C and D) on how to handle that matter is good and proper legal advice from an expert in the field.

The question to the Mayor and City Council in respect to the group which came to the meeting to address the governing body on regarding the subject person (a personnel matter) was whether the demand of the group could be accommodated, and if so, how. I have already demonstrated in the reference City of Lead (supra) that executive session is the proper venue - which posits that open session regarding the performance or fitness of the performance of an employee (or officer) in respect to his or her duties is not the proper venue.

Lastly, in studying this matter, I submit (separate and apart from Attorney Marso's advice as to what constitutes "discussion" as that term is used in SDCL 1-25-2(1) - Attorney Marso's advice being complete in and of itself) that the legislature intended the meaning of that term "discussion" as used in the statute to be its ordinary meaning. As there seems to be no "legal" definition contrary to its ordinary meaning, it can be concluded that the legislature intended to the word "discussion" to be its ordinary meaning. A search in any dictionary, thesaurus, and/or the internet for definition and/or synonym for the word "discussion" will produce a list of synonyms as long as one's arm i.e. to talk, to comment etc. On the other hand, try to find an antonym to define what "discussion" is not. The closest I expect anyone will come will be under search for "opposite of discussion" - and

there is at least one such site, which defines the "opposite of discussion" as "silence". It would seem fundamental to representative government that if a group has a position they wish to relate to the local governing body, they should, if possible, be accommodated. The city government following Attorney Marso's advice accomplished that, without making the City governing body complicit to slander. It is a virtual and actual fact that no person or group of persons can know what any person who is given free reign at the podium might say. The Mayor cannot control what any person might say positively or negatively about the subject person. All that the Mayor can know in this situation is the expressed intention of the group to speak their minds on the subject matter of personnel. There is no allegation nor indication of any kind that the governing body did not in good faith listen to what the various members of the group who chose to avail themselves of the opportunity to relate their individual opinions, including supporting facts (at least as he/she believed such to be) to the governing body in the executive session. This necessarily imputes a fact finding function of the governing body. What consideration the listener or listeners (i.e. the governing body in this case) give to any citizen's statement is an entirely different matter, and solely within the province of the governing body (actually the Mayor in the case of an appointive officer).

Someone from the Daily Republic apparently rendered an opinion to the City Administrator claiming that only the Mayor and City Council were allowed to be present during executive session. That is not the case. No rule or law exists imposing or suggesting such a limitation. Were it so, no city council or school board could hear something as basic as a grievance from an employee, where the employee obviously must be present to present his or her case, with or without an attorney, and with the right to call witnesses to testify regarding factual matters in support of his or her grievance. Fact finding in any number of circumstances relating to personnel matters is an obvious and necessary function of the governing body, which ordinarily must be done in executive session.

I am fully confident that the Open Meeting Commission is well able to correlate the research provided by Attorney Marso (Attachment G) to the facts and allegations of this case, and will belabor the issue no further.

CONCLUSION:

To conclude, the complaint of the Daily Republic is fully without merit and ought be dismissed.

Respectfully submitted,


Carl J. Koch, Atty for City of Mitchell SD

AFFIDAVIT

State of South Dakota

SS

County of Davison

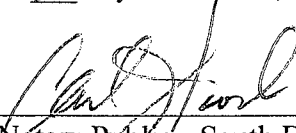
Michelle Bathke, being first duly sworn upon her oath, deposes and states:

1. She is the duly acting and appointed Finance Officer for the City of Mitchell, SD, and is the person responsible for maintaining all business and administrative records of the said City.
2. Attached hereto as Attachment 1, is a true and correct copy the published agenda for the regular Mitchell City Council meeting of September 21, 2015, as the record of the same exists within the . Said agenda was distributed to all news outlets withing the City of Mitchell SD not later than the date of September 17, 2015, in the ordinary course of practice of the City, and in conformance with the requirements of law.
3. Attached hereto as Attachment 2 is a true and correct copy of the official minutes of the regular meeting of the Mitchell SD City Council as the exist in the official record of the City regarding such minutes.
4. I have compared each of the the copies of the attachments hereto, i.e. (the agenda and minutes) with the original documents thereof, as the same are electronically stored in the official electronic storage records of the City of Mitchell, SD, and the said copies are in all respects true and correct.



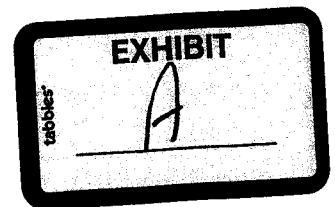
Michelle Bathke - Finance Officer

Subscribed and sworn to before me this 21st day of October, 2015.



Notary Public - South Dakota
My Commission Expires: 6/17/18

(seal)



City Council Agenda

City Council Chambers
612 North Main Street
Mitchell, SD 57301

September 21, 2015

p.1-3

1. **7:15 p.m. Traffic**
2. **7:30 p.m. CALL TO ORDER**
3. **PLEDGE OF ALLEGIANCE**
4. **INVOCATION** Wesleyan Church
5. **ROLL CALL**
6. **APPOINT CITY**
ATTORNEY: Mayor Jerry Toomey to recommend appointment of City Attorney
7. **OATH OF**
OFFICE: Mayor Jerry Toomey to issue Oath of Office to City Attorney Doug Papendick

8. **APPROVAL OF CONSENT AGENDA:** Items appearing on the Consent Agenda may be removed by a City Council member for discussion at the beginning of the formal agenda items.

p.4-15

- a. City Council Agenda
- b. Minutes from Prior Meeting:
 1. City Council Minutes September 8, 2015

p.16-18
p.19

- c. Committee Minutes:
 1. Planning Commission August 25, 2015
 2. Public Health & Safety September 8, 2015

p.20-25

- d. Department Reports:
 1. Finance (August)
 2. Police Department (August)
 3. Fire Department (July & August)
 4. Building Permits (August)
 5. Mitchell Regional Ambulance (July & August)
 6. Airport (August)

p.26

p.27-28

p.29

p.30-31

p.32

p.33-34

p.35

p.36-38

p.39-42

p.43

p.44

p.45-53

7. Airport Board (August)
8. Palace Transit (August)
9. Mitchell Public Library (July & August)
10. Mitchell Parks & Recreation (July & August)
11. Lake Mitchell Advisory Committee (June)
12. Lakeview Golf Course (August)
13. Water (August)

p.54

- e. Raffle Requests:
 1. Dakota Wesleyan University Volleyball with the drawing to be held on October 28, 2015



Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following through the switchboard at (605)995-8420 at least 24 hours prior to the meeting with requests for assistance: Finance Officer, Human Resource Officer or Director of Public Works.

City Council Agenda

City Council Chambers
612 North Main Street
Mitchell, SD 57301

- p.55 2. Mitchell Senior Center, LLC-dba James Valley Community Center with the drawing to be held on January 22, 2016
- p.56 3. Festival of Trees/Mitchell Area Safehouse with the drawing to be held on December 4th, 2015
- p.57 4. Mitchell Skills USA with the drawing to be held on October 19, 2015
- p.58-61 f. Approve Property Tax Abatements for 2012 Taxes Payable in 2013 as listed
g. Change Order to West Spruce Street Utilities Project #2013-1A to Robert Johnson Construction Company as follows:
- p.62-64 1. C.O. #2 increasing the contract amount by \$32,539.85 for water and sewer stub out in the intersection of Spruce and Wisconsin and adjust contract amount to \$189,415.75
- p.65 h. Set date of 10-05-15 for hearing on the application of Blarney's Sports Bar and Grill for a Special Event Malt Beverage and Wine License, located at the Highland Mall, Mitchell on December 4, 2015 for the Holiday Spirit
- p.65 i. Set date of 10-05-15 for hearing on the application of David Backlund Jr. dba ParTee Bar for a Special Event Liquor License, located at the Corn Palace and City Hall, Mitchell, on October 16th, 2015 for the Pheasant Forever Banquet
- p.66 j. Gas & Diesel Fuel Competitive Quotations
- p.67 k. Pay Estimates
l. Approve Bills, Payroll, Salary Adjustments and New Employee Hires and Authorize Payment of Recurring and Other Expenses in Advance as Approved by the Finance Officer

Motion to Approve, Request Public Comment, Roll Call

9. **CITIZENS INPUT:** If you need to address the Mayor and members of the City Council on an item that was not on the agenda, please come forward to the podium and state your name and your concern. Presentations are limited to three minutes. Items will be considered but no action will be taken at this time.
10. **COMMITTEE REPORT:** Entertain a motion to approve the Committee Report
- a. Traffic
11. **BOARD OF ADJUSTMENT:** Entertain a motion of the City Council to recess and sit as the board of adjustment
12. **SET DATE:** Entertain a motion to set date for 10-05-15 for Board of Adjustment Hearing as listed below:
- p.68-70 a. Hearing on the application of Laura Picek (applicant) Avera Queen of Peace (owner) for a conditional use permit for a family residential child care located at 1209 East 5th Avenue, legally described as Lot 4, Block 6, Gleeson's Addition, City of Mitchell, Davison County, South Dakota

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City Council Agenda

City Council Chambers

612 North Main Street

Mitchell, SD 57301

13. **HEARING:**
- p.71-78 a. On the application of Tara Volesky for a back yard variance of 10' vs. 25' and a front yard variance of 19.5' vs. 25' for construction of a 4 unit family dwelling located at 404 Homer Court, legally described as Lot 19, Tract 1, Wild Oak Golf Club Addition, City of Mitchell, Davison County, South Dakota
14. **RECONVENE AS CITY COUNCIL:** Entertain a motion for the Board of Adjustment to Adjourn and the City Council to Reconvene in Regular Session
- p.79 15. **SET DATE:** Election on Referendum Petition
- p.80-86 16. **ACTION ON RESOLUTION #3299:** A Plat of Lots 1 & 2 of R. L. Decker 1st Addition in the West ½ of the Southeast ¼ of Section 29, Township 103 North, Range 60 West of the 5th P.M., Davison County, South Dakota
- p.87-92 17. **ACTION ON RESOLUTION #3300:** A Plat of Lot 51 of Maui Farms 2nd Addition, a Subdivision of the Southeast ¼ of Section 31, Township 104 North, Range 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota
- p.93-94 18. **ACTION OF RESOLUTION #3301:** A Resolution Directing Offer of Sale of Surplus Real Property and Directing Notice of Offer to Abutting Landowners
- p.95-96 19. **ACTION ON RESOLUTION #3302:** A Resolution Setting Date for Public Sale of Surplus Real Property and Directing Publication of Notice of Public Sale
- p.97-101 20. **2nd READING & ADOPTION:** Ordinance #2523, 2016 Annual Appropriation Ordinance
- Motion to Approve, Request Public Comment, Roll Call**
- p.102-112 21. **1st READING:** Ordinance #2521, An Ordinance to amend BID #2 by Modification of District tabled from the August 17th, 2015 City Council meeting
- p.113-115 22. **1st READING:** Ordinance #2524, Supplemental Appropriation

Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following through the switchboard at (605)995-8420 at least 24 hours prior to the meeting with requests for assistance: Finance Officer, Human Resource Officer or Director of Public Works.

City Council Agenda

City Council Chambers
612 North Main Street
Mitchell, SD 57301

p.116-125 23. **ACTION TO APPROVE:** Engineering Agreement for the Lake Mitchell Fishing Pier

p.126-148 24. **ACTION TO APPROVE:** Capital Grant Funding agreement between Palace Transit and the South Dakota Department of Transportation

25. **EXECUTIVE SESSION:** Entertain a Motion for the City Council to Enter into Executive Session as:

PERMITTED BY SDCL 1-25-2 (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee.

26. **MOTION TO ADJOURN**

NEXT REGULAR COUNCIL MEETING DATE: Monday, October 5, 2015
COUNCIL AGENDA DEADLINE IS WEDNESDAY NOON PRIOR TO CITY COUNCIL MEETING

FOR COUNCIL INFORMATION:

p.149-150 Planning Commission Minutes-September 14th, 2015

Individuals with disabilities who require special assistance to take part in this meeting may contact one of the following through the switchboard at (605)995-8420 at least 24 hours prior to the meeting with requests for assistance: Finance Officer, Human Resource Officer or Director of Public Works.

REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
MITCHELL, SOUTH DAKOTA

September 21, 2015
7:30 P.M.

PRESENT: Dan Allen, Marty Barington, Randy Doescher, Mel Olson, Steve Rice,
Jeffrey Smith, Susan Tjarks, Dave Tronnes

ABSENT:

PRESIDING: Mayor Jerry Toomey

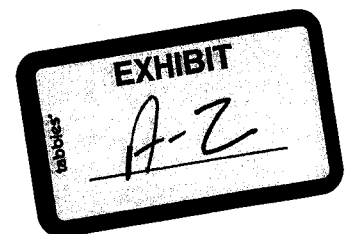
APPOINT CITY ATTORNEY:

Mayor Jerry Toomey tabled the appointment of the City Attorney to the next City Council meeting on October 5, 2015.

AGENDA:

Moved by Tjarks, seconded by Olson, to approve the following items on the consent agenda:

- a. City Council Agenda.
- b. Minutes from Prior Meeting:
 1. City Council Minutes September 8, 2015.
- c. Committee Minutes:
 1. Planning Commission August 25, 2015, and
 2. Public Health & Safety September 8, 2015.
- d. Department Reports:
 1. Finance (August),
 2. Police Department (August),
 3. Fire Department (July & August),
 4. Building Permits (August),
 5. Mitchell Regional Ambulance (July & August),
 6. Airport (August),
 7. Airport Board (August),
 8. Palace Transit (August),
 9. Mitchell Public Library (July & August),
 10. Mitchell Parks & Recreation (July & August),
 11. Lake Mitchell Advisory Committee (June),
 12. Lakeview Golf Course (August), and



13. Water (August).
- e. Raffle Requests:
1. Dakota Wesleyan University Volleyball with the drawing to be held on October 28, 2015,
 2. Mitchell Senior Center, LLC-dba James Valley Community Center with the drawing to be held on January 22, 2016,
 3. Festival of Trees/Mitchell Area Safehouse with the drawing to be held on December 4th. 2015, and
 4. Mitchell Skills USA with the drawing to be held on October 19, 2015.
- f. Approve Property Tax Abatements for 2012 Taxes Payable in 2013 as listed:
1. Abatement of taxes in the amount of \$862.22 to Robert Lee Hawk or Kelli M. Diehm, Lot 156 of Middle Border Estates for tax generated in the previous year to transfer the title or for relocation of mobile home.
- g. Change Order to West Spruce Street Utilities Project #2013-1A to Robert Johnson Construction Company as follows:
1. C.O. #2 increasing the contract amount by \$32,539.85 for water and sewer stub out in the intersection of Spruce and Wisconsin and adjust contract amount to \$189,415.75.
- h. Set date of 10-05-15 for hearing on the application of Blarney's Sports Bar and Grill for a Special Event Malt Beverage and Wine License, located at the Highland Mall, Mitchell on December 4, 2015 for the Holiday Spirit.
- i. Set date of 10-05-15 for hearing on the application of David Backlund Jr. dba ParTee Bar for a Special Event Liquor License, located at the Corn Palace and City Hall, Mitchell, on October 16th, 2015 for the Pheasant Forever Banquet.
- j. Gas & Diesel Fuel Competitive Quotations:

<u>Farmers Alliance</u>	<u>Requested Gallons</u>	<u>Bid Gallons</u>	<u>Price per Product</u>	<u>Total Bid</u>
On Road Diesel-#2	2,000	2,000	\$2.035	\$ 4,070.00
Unleaded Gas- 10% Ethanol	5,300	5,300	\$1.825	\$ 9,672.50
Unleaded Gas- No Ethanol	5,300	5,300	\$2.205	\$11,686.50
				Total: \$13,742.50

<u>Meyers Oil</u>	<u>Requested Gallons</u>	<u>Bid Gallons</u>	<u>Price per Product</u>	<u>Total Bid</u>
On Road Diesel-#2	2,000	2,000	\$2.0175	\$ 4,035.00
Unleaded Gas- 10% Ethanol	5,300	5,300	\$1.8350	\$ 9,725.50
Unleaded Gas- No Ethanol	5,300	-0-	-0-	\$ 0.00
				Total: \$13,760.50

<u>Country Pride Coop</u>	<u>Requested Gallons</u>	<u>Bid Gallons</u>	<u>Price per Product</u>	<u>Total Bid</u>
On Road Diesel-#2	2,000	2,000	\$2.00	\$ 4,000.00*
Unleaded Gas- 10% Ethanol	5,300	5,300	\$1.80	\$ 9,540.00*

Unleaded Gas- No Ethanol	5,300	5,300	\$2.17	\$11,501.00
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Total: \$13,540.00*

Country Pride Coop was the low bidder for the items marked with an asterisk.

k. Pay Estimates:

Pay Estimate #30 in the amount of \$1,413.05 for Corn Palace Renovation & Addition Project #2013-12 contracted to Meyer, Scherer & Rockcastle LTD,

Pay Estimate #17 in the amount of \$1,050.00 for Landfill Cell #3 Project #2014-17 contracted to Helms & Associates,

Pay Estimate #3 in the amount of \$3,963.44 for Rock Chips Project #2015-10 contracted to Spencer Quarries Inc.,

Pay Estimate #8 in the amount of \$19,703.80 for Curb & Gutter Hazardous & Miscellaneous Project #2015-14A contracted to Big "O" Concrete,

Pay Estimate #6 in the amount of \$25,435.98 for Paving & Overlay Project #2015-15 contracted to Commercial Asphalt,

Pay Estimate #2 in the amount of \$920.00 for Fire Department Tanker Project #2015-21 contracted to Midwest Fire Inc.

Pay Estimate #2 in the amount of \$19,782.25 for North Ohlman Storm Sewer Project #2015-24 contracted to Schoenfelder Construction,

Pay Estimate #4 in the amount of \$1,233.69 for Old Landfill Leachate Monitoring Project #2015-28 contracted to Leggette Brashears & Graham Inc., and

Pay Estimate #3 in the amount of \$324.87 for New Landfill Monitoring Project #2015-29 contracted to Leggette Brashears & Graham Inc.

l. Approve Bills, Payroll, Salary Adjustments and New Employee Hires and Authorize Payment of Recurring and Other Expenses in Advance as Approved by the Finance Officer

PAYROLL AUGUST 16, 2015 – AUGUST 29, 2015: City Council \$2,856.56, Mayor \$1,188.46, City Administrator \$4,038.48, Attorney \$2,311.58, Finance \$11,317.04, Human Resources \$2,857.60, Information Technology \$1,918.80, Police \$58,252.01, Traffic \$5,306.04, Fire \$42,833.37, Street \$24,192.89, Public Works \$19,159.95, Cemetery \$2,876.45, Animal Control \$1,900.40, Emergency Medical Services \$14,779.68, Library \$11,385.72, Recreation & Aquatics \$9,675.70, Recreation Center \$10,936.36, Sports Complexes \$8,528.82, Parks \$10,300.62, Supervision \$4,636.56, E-911 \$18,831.75, RSVP \$5,430.80, Palace Transit \$16,725.99, Nutrition \$1,081.89, Water \$6,000.86, Water Distribution \$4,766.23, Sewer \$11,232.45, Airport \$1,884.17, Waste Collection \$9,574.00,

Landfill \$8,191.42, Corn Palace Maintenance \$12,290.90, Corn Palace Decorating \$1,844.50, Corn Palace Shows \$8,909.72, Corn Palace Concessions \$4,586.39, Golf Course \$7,231.47.

SALARY ADJUSTMENTS:

PALACE TRANSIT: Kent Dicus-\$14.897.

PARK & RECREATION: Dillon Gamber-\$15.947, Matt Hayes-\$19.838.

SANITATION: Scott Phillips-\$16.702.

E-911: Crystal Schlimgen-\$19.377.

NEW HIRES:

RECREATION CENTER: Kacee Kopfmann-\$8.50.

CORN PALACE CONCESSIONS: Thelma Jean Larson-\$10.50.

WARRANTS: A & B Business Solutions, Contract-\$1,439.66; A-OX Welding Supply, Supplies-\$388.48; AAA Collections, Pre-Collection Letter-\$5.00; Adam & Heather Anderson, Refund-\$336.00; Adam Fenski, Boulevard Tree Program-\$200.00; AFLAC, Aflac Withholding-\$4,082.33; AFLAC Group, Aflac Critical Care-\$860.77; AFSCME Council 65, Union Dues-\$1,036.80; Agronomy Plus, Supplies-\$624.11; Al's Engraving, Supplies-\$7.80; Alignment X-Perts, Repairs-\$298.22; Ameripride Services, Supplies-\$265.97; Amperage, Professional Service-\$14,750.00; Aqua-Pure, Supplies-\$1,912.50; Avera Queen of Peace, Service-\$1,655.46; Bailey Metal Fabricators, Repairs-\$4,542.44; Baker & Taylor, Books-\$138.59; Berman, Books-\$200.00; Big O Concrete, 2015-14A P.E. #8-\$19,703.80; Blackstone Audio, Supplies-\$270.00; Book Systems, Supplies-\$505.00; Bound Tree Medical, Supplies-\$90.58; Break Time Portables, Rental-\$170.00; Brenda Schroeder, Repairs-\$93.00; Brig Steak House, Contract Services-\$4,045.00; Brock White, Supplies-\$1,875.95; Brown & Saenger, Supplies-\$931.83; C & B Operations, Parts-\$782.32; C & D Pedal Pulls, Contract Service-\$825.00; Campbell Supply, Supplies-\$624.46; Carquest Auto Parts, Parts-\$44.30; Centennial Carpet, Supplies-\$ 24,985.00; Center Point Large Print, Books-\$84.48; Central Electric, Utilities-\$10,056.35; Chad Cody, Reimbursement-\$100.00; Cherie Ramsdell, Contract Services-\$3,580.00; CHR Solutions, Utilities-\$3,205.06; Chuck's Paint & Blinds, Supplies-\$ 62.86; City Of Mitchell, Corn Palace Games-\$12,659.82; City Of Mitchell, Task Force-\$1,000.00; Coca Cola Bottling, Supplies-\$392.00; Commercial Asphalt, 2015-15 P.E. #6-\$25,435.98; Commercial Asphalt/Spencer Quarries, Supplies-\$8,879.65; Corn Palace, Supplies-\$240.00; Corn Palace Concessions, Supplies-\$28.00; Corporate Translation Services, Professional Services-\$26.29; Country Pride, Supplies-\$12,187.00; County Fair, Supplies-\$788.34; County Fair, Contract

Services-\$255.00; Daily Republic, Advertising-\$9,631.57; Dakota Landscaping & Irrigation, Repairs-\$180.00; Dakota Riggers & Tool Supplies, Parts-\$6.96; Dakota Supply Group, Parts-\$374.22; Danko Emergency Equipment, Parts-\$32.27; Darrington Water, Rental-\$77.80; Davison Conservation District, City Share Payment-\$3,050.00; Davison Rural Water Systems, Utilities-\$68.35; Daylight Donut, Rolls For Festival-\$19.42; Dependable Sanitation, Contract Services-\$19,880.00; Department of Social Services, Child Support-\$1,259.22; Domino's Pizza, Meals-\$49.46; Dakota Wesleyan University Women's Basketball, Garbage Pickup-\$2,000.00; Farm & Home Publishers, Books-\$87.20; Farmers Alliance, Supplies-\$1,072.75; Farmer-Bocken, Supplies-\$2,592.16; Fastenal, Parts-\$449.94; Findaway World, Supplies-\$646.45; First Dakota National Bank, Loan Payment-\$11,915.35; Gale, Books-\$1,473.89; GEI Works, Supplies-\$ 2,170.36; GF Advertising Services, Supplies-\$36.00; Graham Tire, Supplies-\$1,320.56; Grainger, Supplies-\$296.64; Great Lakes Higher Education, Travel-\$184.96; Grey House Publishing, Books-\$147.50; Hampton, Travel-\$687.70; Harve's Sport Shop, Supplies-\$158.55; Hawkins, Supplies-\$689.71; HD Supply Waterworks, Supplies-\$2,624.24; Heartland Paper Company, Supplies-\$51.34; Helms and Associates, 2014-17 P.E. #17-\$1,050.00; Henry Schein, Supplies-\$370.45; Hohn's Services, Service-\$75.00; Honda of Mitchell, Supplies-\$337.96; Ideag, Deposit-\$1,000.00; Ingram Library Services, Books-\$2,191.50; Integrity Transcription, Transcribing Service-\$799.20; Interstate Glass & Door, Repairs-\$145.61; Interstate Office Products, Supplies-\$111.65; Interstate Tire & Auto Center, Repair-\$15.00; James Valley Nursery, Parts-\$228.81; JCL Solutions-Janitors Closet, Supplies-\$162.30; JD Concrete Products, Supplies-\$495.00; JEBRO, Supplies-\$27,380.28; Jobshq, Advertising-\$207.26; John Deere Landscapes, Supplies-\$346.46; Johnson Controls, Service-\$3,544.50; Jones Supplies, Supplies-\$3,354.27; Ko's Pro Service, Repairs-\$97.23; KORN/KQRN Radio, Publishing-\$837.38; Krohmer Plumbing, Repairs-\$1,219.08; KWYR AM, Advertising-\$65.00; Lakeview Veterinary Clinic, Supply-\$1,299.00; Larry's I-90 Service, Supplies-\$493.72; Leggette Brashears & Graham, 2015-28 P.E. #4-\$1,558.56; Lifequest, Service-\$1,914.37; Lloyd Morrison, Reimbursement-\$350.00; Make It Mine Designs, Supplies-\$79.23; Maloney & Maloney, Professional Services-\$1,175.00; Marco, Repairs-\$17.74; Maudene Hohbach, Refund-\$565.60; MC&R Pools, Supplies-\$23,666.17; McFarland Supply, Parts-\$77.35; McGrath/North Attorneys, Professional Service-\$6,118.80; McLeod's Printing, Supplies-\$2,031.80; Mebius Nursery & Landscaping, Repairs-\$250.00; Medical Waste Transport, Professional Service-\$106.70; Menard's, Supplies-\$1,096.13; Meyer Scherer & Rockcastle, 2013-12 P.E. #30-\$1,413.05; Meyers Oil, Supplies-\$3,188.77; Michael J Koster, Travel-\$140.00; Michaels Fence & Supply, Supplies-\$105.87; Michelle Bathke, Travel-\$63.00; Mid States Audio, Repairs-\$3,720.00; Mid-American Research Chemicals, Supplies-\$244.00; Midcontinent Communication, Utilities-\$5,334.00; Midwest Fire & Safety, Recertification, \$478.50; Midwest Fire Equipment & Research, 2015-21 P.E. #2-\$920.00; Midwest Tire & Muffler, Supplies-\$529.18; Miscellaneous Vendor, Refund-\$376.21; Mitchell Area Chamber of Commerce, 2015 Funding-September-\$3,008.35; Mitchell Area Convention Visitors Bureau, 2015 Funding-

September-\$21,058.35; Mitchell Area Development, 2015 Funding-September-\$6,016.65; Mitchell Concrete Product, Supplies-\$252.94; Mitchell Iron & Supply, Parts-\$716.19; Mitchell Plumbing & Heating, Repairs-\$317.54; Mitchell School District, Utilities-\$1,382.38; Mitchell Skating & Hockey, May-Weed Cleanup-\$6,690.00; Mitchell Telecom, Utilities-\$62.51; Mitchell United Way, United Way Deductions-\$171.95; MJ Dalsin, Repairs-\$1,100.00; Morris Equipment, Parts-\$380.89; MPS, Books-\$357.67; Mount Vernon School District, Contract Services-\$13.20; Mueller Lumber, Supplies-\$2,023.10; Napa Auto Parts, Parts-\$320.99; Neve's Uniforms, Supplies-\$3,609.09; New Deal Tire, Supplies-\$3,658.00; North Central Seed, Supplies-\$465.00; Northwestern Energy & Communications, Utilities-\$38,513.34; O'Reilly Automotive, Supplies-\$21.80; Online Computer Library Center, Subscription-\$557.45; Olsen Auction Service, 2015 Surplus Auction-\$200.00; Omaha World-Herald, Advertising-\$283.40; Paulson Sheet Metal, Repairs-\$127.50; Penguin Random House, Supplies-\$165.00; People Scapes, Supplies-\$50.00; Pony Creek Steakhouse, Contract Services-\$1,433.25; Porta Pros, Rentals-\$3,930.00; Premier Pest Control, Contract Services-\$ 625.00; Pro-Build, Supplies-\$958.44; Qualified Presort, Mailing Service-\$509.72; Quality Books, Books-\$17.56; Ramada Mitchell, Travel-\$175.60; Randy Larson, Repairs-\$500.00; Recorded Books, Supplies-\$911.72; Rew's TV, Repair-\$70.00; Rexwinkel Concrete, Repair-\$3,010.21; Rita's Place, Contract Services-\$1,055.25; River Cities Public Transit, Utilities-\$204.00; Roger Wenzel Construction, Supplies-\$280.00; Ron's Saw Shop, Supplies-\$404.08; S & M Printing, Supplies-\$175.00; Saga Communications of South Dakota, Contract-\$ 2,476.00; Sage Publications, Books-\$215.33; Salem Special, Advertising-\$299.52; Santel Communications, Utilities-\$226.06; Satcom Global, Contract-\$42.75; Schoenfelder Construction, 2015-24 P.E. #2-\$19,782.25; Scott Supply, Parts-\$487.21; South Dakota Department of Public Safety, Teletype Service-\$3,090.00; South Dakota Department of Environment & Natural Resources, Garbage Fees-\$2,632.18; South Dakota Department of Health, Lab-\$356.00; South Dakota Municipal League, Travel-\$930.00; South Dakota Newspaper Services, Advertising-\$1,947.09; South Dakota One Call, Contract Services-\$228.90; South Dakota Retirement System, South Dakota Retirement Systems-\$43,546.63; South Dakota-Retirement Systems Special Pay Plan, Supplemental Retirement-\$3,571.66; South Dakota-Supplemental Roth 457, Roth 457 Contributions-\$350.00; South Dakota Parks & Recreation Association, Travel-\$1,350.00; Sheehan Mack Sales & Service, Parts-\$819.55; Sherwin-Williams, Supplies-\$281.02; Shopko Stores Operating, Supplies-\$13.49; Sioux Equipment, Supplies-\$356.17; Spencer Quarries, 2015-10 P.E. #3-\$3,963.44; Standard & Poor's, Book-\$498.51; Standard Insurance Company, Life Insurance Deduct-\$1,019.51; State Disbursement Unit, Child Support-\$200.00; Sturdevant's Auto Parts, Parts-\$1,391.31; Thomas L. Price, Professional Service-\$350.00; Thune True Value Hardware, Supplies-\$276.22; Ticketforce, Usage Fee-\$2,742.20; TK Electric, Repairs-\$45.96; Townsquare Media-Sioux Falls, Contract-\$1,956.00; Traffic Control, Parts-\$336.00; Turfwerks, Parts-\$439.08; Tyler Vetch, Reimbursement-\$203.70; United Way & Volunteer Service, Copies-\$2.15; United Parcel Service Store #4227, Shipping-\$143.86; Variety Foods,

Supplies-\$804.45; Vast Broadband, Utilities-\$52.95; Verizon Wireless, Utilities-\$3,278.15; Vern Eide Chevrolet Buick, Supplies-\$28.77; Walmart, Supplies-\$542.27; Wheelco Brake & Supply, Supplies-\$278.52; Wholesale Electronics, Supplies-\$45.10; Wright Brothers Aviation, Maintenance Contract-\$500.00; South Dakota State Treasurer, Sales Tax-\$16,236.19.

Members present voting aye: Allen, Barington, Doescher, Olson, Rice, Smith, Tjarks, Tronnes. Members present voting nay: none. Motion carried.

EXECUTIVE SESSION:

Moved by Olson, seconded by Tjarks, to go into executive session as permitted by SDCL 1-25-2 (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. Motion carried with Allen and Smith voting nay. Chair declared the board recessed out of executive session at 8:58 p.m. and the City Council to reconvene in regular session.

CITIZENS INPUT:

Councilmember Susan Tjarks congratulated Mitchell Chamber of Commerce staff on a great job hosting the Geico Hot Bike Tour on Main Street. It was noted that it was the "Best Stop" on the tour and Tjarks thanked all those involved for their time and effort.

Councilmember Susan Tjarks informed the City Council and the public concerning the increased gas prices. She noted that Mitchell is \$.41 higher than Sioux Falls and is concerned about the amount of sales tax dollars lost, due to those purchasing gas out of town.

COMMITTEE REPORT:

Traffic:

The Traffic Commission met on September 21, 2015 at 7:14 p.m. with the following items.

A request from Mel Weber for "No Parking" signage in front of his mailbox at 1500 South Duff was denied.

A request for a Crosswalk at 3rd and Sanborn was tabled until the December meeting.

A request from Hank Kor for North/South stop signs at 3rd and Lawler was approved.

A request from Amanda Hiles to place a stop signs at Douglas & South Main and Elm & South Main was approved.

The Traffic Commission approved closing the 600 Block of North Main in front of the Corn Palace for a POD Immunization Training on Tuesday October 13 from 1:30 p.m. to 8:00 p.m.

Moved by Allen, seconded by Doescher, to approve the committee report. Motion carried.

BOARD OF ADJUSTMENT:

Moved by Rice, seconded by Tronnes, for the City Council to recess and sit as the Board of Adjustment. Motion carried.

Moved by Rice, seconded by Olson, to set date for 10-05-2015 for Board of Adjustment Hearing as listed:

- a. Hearing on the application of Laura Picck (applicant) Avera Queen of Peace (owner) for a conditional use permit for a family residential child care located at 1209 East 5th Avenue, legally described as Lot 4, Block 6, Gleeson's Addition, City of Mitchell, Davison County, South Dakota.

Motion carried.

HEARING:

Discussion took place between the applicant Tara Volesky and the City Council regarding proposed changes on the application. Testimony was heard from those whom opposed the application of the proposed variances. Bob Sebert informed the City Council that they have changed their decision and approve of said application.

- a. It was advised that this is the date and time set for hearing on the application of Tara Volesky for a back yard variance of 10' vs. 25' and a front yard variance of 19.5' vs. 25' for construction of a 4 unit family dwelling located at 404 Homer Court, legally described as Lot 19, Tract 1, Wild Oak Golf Club Addition, City of Mitchell, Davison County, South Dakota. The Planning Commission denied approval of said application. Moved by Tjarks, seconded by Allen, to approve the original proposed of said application. Motion carried with Doescher voting nay.

Moved by Doescher, seconded by Olson, for the Board of Adjustment to adjourn and the City Council to reconvene in regular session. Motion carried.

SET DATE:

Moved by Olson, seconded by Doescher, to set the date of the Election on Referendum Petition on the General Election ballot in November of 2016. Discussion took place, Olson withdrew his motion.

Moved by Smith, seconded by Tjarks, to set the date of Tuesday, December 8, 2015 for the Election on Referendum Petition. Motion carried with Doescher, Olson and Tronnes voting nay.

RESOLUTIONS:

Moved by Allen, seconded by Tronnes, to adopt Resolution #3299, A Plat of Lots 1 & 2 of R. L. Decker 1st Addition in the West ½ of the Southeast ¼ of Section 29, Township 103 North, Range 60 West of the 5th P.M., Davison County, South Dakota, as follows:

**RESOLUTION #3299
RESOLUTION OF CITY COUNCIL**

WHEREAS, it appears that the City Planning Commission of the City of Mitchell, South Dakota, did duly consider and did recommend the approval and adoption of the hereinafter described plat, at its meeting held on the 14th day of September, 2015; and

WHEREAS, it appears from an examination of the plat of LOTS 1 & 2 of R. L. DECKER 1ST ADDITION IN THE WEST ½ OF THE SE ¼ OF SECTION 29, T 103 N. R 60 W OF THE 5TH P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Paul J. Reiland a duly licensed Land Surveyor in and for the State of South Dakota, that said plat is in accordance with the system of streets and alleys set forth in the Master Plan adopted by the City Planning Commission of the City of Mitchell, South Dakota, and that such plat has been prepared according to law;

THEREFORE, be it resolved by the City Council of Mitchell, South Dakota, that the plat of LOTS 1 & 2 of R. L. DECKER 1ST ADDITION IN THE WEST ½ OF THE SE ¼ OF SECTION 29, T 103 N, R 60 W OF THE 5TH P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Paul J. Reiland, be and the same is hereby approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried and resolution declared duly adopted.

Moved by Smith, seconded by Rice, to adopt Resolution #3300, A Plat of Lot 51 of Maui Farms 2nd Addition, a Subdivision of the Southeast ¼ of Section 31, Township 104 North, Range 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota, as follows:

**RESOLUTION #3300
RESOLUTION OF CITY COUNCIL**

WHEREAS, it appears that the City Planning Commission of the City of Mitchell, South Dakota, did duly consider and did recommend the approval and adoption of the hereinafter described plat, at its meeting held on the 14th day of September, 2015; and

WHEREAS, it appears from an examination of the plat of LOT 51 OF MAUI FARMS 2ND ADDITION, A SUBDIVISION OF THE SE ¼ OF SECTION 31, T 104 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA as prepared by Paul J. Reiland a duly licensed Land Surveyor in and for the State of South Dakota, that said plat is in accordance with the system of streets and alleys set forth in the Master Plan adopted by the City Planning Commission of the City of Mitchell, South Dakota, and that such plat has been prepared according to law;

THEREFORE, be it resolved by the City Council of Mitchell, South Dakota, that the plat of LOT 51 OF MAUI FARMS 2ND ADDITION, A SUBDIVISION OF THE SE ¼ OF SECTION 31, T 104 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA as prepared by Paul J. Reiland, be and the same is hereby approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried with Barington abstaining and resolution declared duly adopted.

Moved by Rice, seconded by Tronnes, to adopt Resolution #3301, A Resolution Directing Offer of Sale of Surplus Real Property and Directing Notice of Offer to Abutting Landowners as follows:

RESOLUTION NO. 3301

A RESOLUTION DIRECTING OFFER OF SALE OF SURPLUS REAL PROPERTY AND DIRECTING NOTICE OF OFFER TO ABUTTING LANDOWNERS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MITCHELL, SD AS FOLLOWS:

1. The real property previously declared surplus by prior resolution of the City Council and appraisal thereof having been made as required by law of the sum of \$50,000.00, the same being hereby approved, and described below, shall be offered for sale to abutting landowners in conformance with SDCL 6-13-5.1 by sealed bids, and such offer of sale shall state that the minimum price of sale of such property shall be not less than the sum of \$50,000.00, whether sale is to a single abutting owner or joint between abutting landowners, with the bid or bids for such property to be submitted in writing to the City Finance Officer not later than 1:30 P.M. on the 5th day of October, 2015, at which time the bids shall be opened as provided by law. The notice of offer of sale to abutting landowners shall recite that the sale shall be subject to confirmation by the Mitchell City Council, and that City reserves the absolute right to reject any or all bid(s).
2. The real property of the City to which this resolution relates is described as follows:

Lot R-3 of Depot Addition to the City of Mitchell, SD, Lying in the N1/2 of the SW1/4 of Section 22, T103N, R60W of the 5th P.M., City of Mitchell South Dakota.

Motion carried and resolution declared duly adopted.

Moved by Tjarks, seconded by Allen, to adopt Resolution #3302, A Resolution Setting Date for Public Sale of Surplus Real Property and Directing Publication of Notice of Public Sale, as follows:

RESOLUTION NO. 3302

A RESOLUTION SETTING DATE FOR PUBLIC SALE OF SURPLUS REAL PROPERTY AND DIRECTING PUBLICATION OF NOTICE OF PUBLIC SALE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MITCHELL, SD AS FOLLOWS:

1. The real property previously declared surplus by prior resolution of the City Council and appraisal thereof having been made as required by law, and described below, shall be offered for public sale by sealed bids, with the bids for such property to be submitted in writing to the City Finance Officer no later than 1:30 P.M. on the 5th day of October, 2015, at which time the bids shall be opened as provided by law.
2. The City Finance Officer shall cause notice of public sale of the surplus real property in the official newspaper of the City as provided by law. The notice shall recite that the sale shall be subject to confirmation by the Mitchell City Council. All proceedings shall be conducted according to law.
3. The real property of the City to which this resolution relates is described as follows:

Lot W-1B, a Subdivision of Lot W-1 in Lot H1 in the North ½ of the SE ¼ of Section 15, T103 N, R 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota.

Motion carried and resolution declared duly adopted.

ORDINANCES:

Moved by Olson, seconded by Barington, to place Ordinance #2523, 2016 Annual Appropriation Ordinance on second reading. Motion carried. Moved by Olson, seconded by Tronnes, to adopt Ordinance #2523.

Members present voting aye: Allen, Barington, Doescher, Olson, Rice, Smith, Tjarks, Tronnes. Members present voting nay: none. Motion carried and ordinance declared duly adopted.

This ordinance will be published separately from these proceedings.

Moved by Allen, seconded by Barington, to table first reading of Ordinance #2521, An Ordinance to amend BID #2 by Modification of District to the City Council meeting on December 21, 2015. Motion carried.

Moved by Doescher, seconded by Tronnes. to place Ordinance #2524, Supplemental Appropriation on first reading. Motion carried.

CONSIDER APPROVAL:

Moved by Allen, seconded by Tjarks, to approve and authorize the Mayor to sign the Engineering Agreement for the Lake Mitchell Fishing Pier located at the Sportsman Club with no price adjustment from SPN & Associates. Motion carried.

Moved by Tjarks, seconded by Rice, to approve and authorize the Mayor to sign the Capital Grant Funding agreement between Palace Transit and the South Dakota Department of Transportation in the amount of \$27,100.00 for two Palace Transit passenger buses. Motion carried.


EXECUTIVE SESSION:

Moved by Smith, seconded by Rice, to resume executive session as permitted by SDCL 1-25-2 (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee at 10:40 p.m. Motion carried. The Mayor declared the City Council out of executive session at 11:45 pm.

Moved by Olson, seconded by Smith, that due to the City Council passing the 2016 budget with designated funds for a full time City Attorney, that the City of Mitchell will now advertise and seek applications & encourage anyone interested to apply for the position that will be created effective January 1, 2016. Motion carried.

ADJOURN:

There being no further business to come before the meeting, it was moved by Olson and seconded by Smith to adjourn the meeting at 11:50 p.m. Motion carried.



Michelle Bathke
Finance Officer

Published once at the approximate cost of _____.

September 15, 2015

Honorable Jerry Toomey
Mayor of the City of Mitchell
City Hall
Mitchell, South Dakota 57301

Re: Revocation of Resignation relating to Dan Sabers

Dear Mayor Toomey:

Please consider this letter to be my notice to you that the oral resignation of my position as Corn Palace Director is withdrawn. I do not feel that I have done anything sufficiently wrong during my tenure in the position to warrant my resignation pursuant to your demand on September 10, 2015.

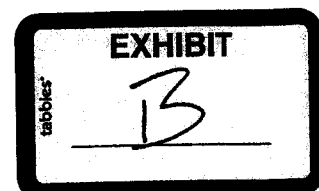
During our meeting on that date I asked you for a reason as to why you no longer wanted me to work for you, but you declined to give me a reason. I also advised you that I wanted to speak with an attorney about the demand for resignation or firing. You gave me ten minutes to decide. That was not fair or sufficient. In retrospect, I hereby decline to resign.

I am very much aware that you retain the right to fire me from the position. I hope that you will reconsider that action and allow me to continue to serve in my position, as I believe this dispute to be a serious misunderstanding. I refer to the letter that you provided to me as I was leaving. I will not get into detail about that here but I would be more than willing to discuss this in person with you and assure you that I have done and would do nothing to embarrass you or your family.

In summary, I have not signed any written resignation and will not. If I do not receive acknowledgment from you in some fashion, it is my intention to attend the city council meeting on Monday September 21, 2015 and advise them of this revocation of the oral resignation.

Please call me at 605-630-2060 to set a mutually agreeable time to meet and attempt to work this out. Thank you for your consideration.

Dan Sabers



From: Lisa Marso
Sent: Monday, September 21, 2015 1:27 PM
To: Jerry Toomey (jtoomey@cityofmitchell.org); 'Billie Kelly'; ckoch@mitchelltelecom.net
Subject: Sabers

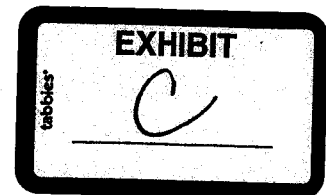
- 1.
- 2.
3. If members of the public want to talk to the Council about any employee, you tell them you will listen IN EXEC SESSION. You have the right to do all personnel matters in exec session. You bring them in one by one (they don't have the right to be there when others are talking). You don't discuss with them your decision; just take in the info. If they want to leave and go talk to the press they can do that. But they don't have the right to talk about personnel matters in public session.

4.

I am around if further questions.

Lisa K. Marso
Boyce Law Firm, L.L.P.
300 S Main Ave
P.O. Box 5015
Sioux Falls, SD 57117-5015
Phone: (605) 336-2424 or (605) 731-0209
Facsimile: (605) 334-0618
lkmarso@boycelaw.com
boycelaw.com

BOYCE
LAW FIRM L.L.P.



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From: Lisa Marso
Sent: Tuesday, September 22, 2015 11:44 AM
To: 'Stephanie Ellwein'; Jerry Toomey; Billie Kelly; Koch, Carl
Subject: RE: Daily Republic

From: Stephanie Ellwein [<mailto:sellwein@cityofmitchell.org>]
Sent: Tuesday, September 22, 2015 11:40 AM
To: Lisa Marso; Jerry Toomey; Billie Kelly; Koch, Carl
Subject: RE: Daily Republic

From: Lisa Marso [<mailto:LKMarso@boycelaw.com>]
Sent: Tuesday, September 22, 2015 10:14 AM
To: Stephanie Ellwein <sellwein@cityofmitchell.org>; Jerry Toomey <jtoomey@cityofmitchell.org>; Billie Kelly <bkelly@cityofmitchell.org>; Koch, Carl <ckoch@mitchelltelecom.net>
Subject: RE: Daily Republic

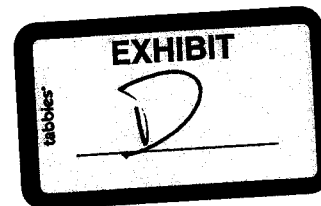
I do not agree that you violated state law, and there comments even seem to indicate we went into exec session to "discuss", which is what the statute addresses:

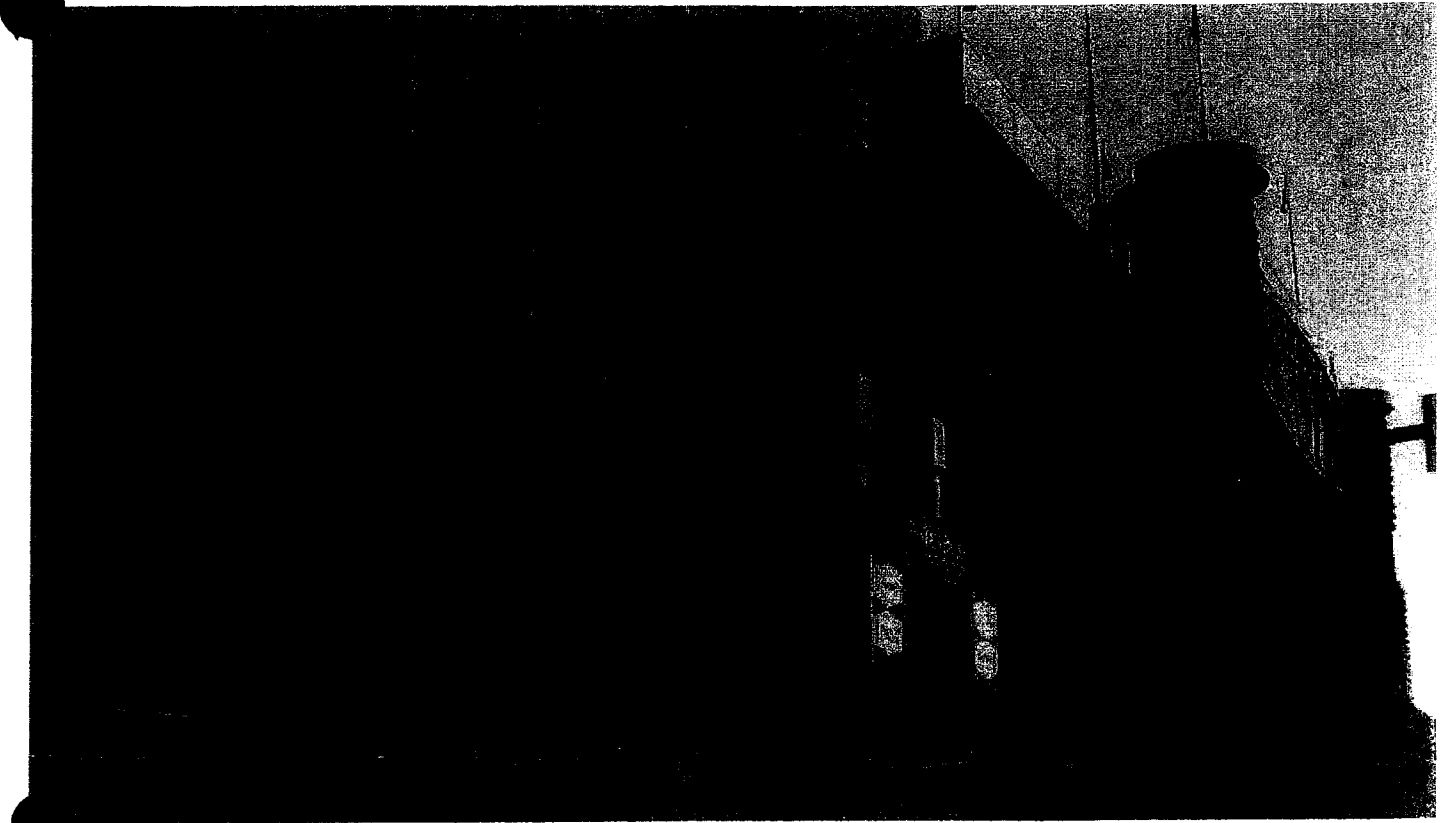
1-25-2 Executive or closed meetings may be held for the sole purposes of:

- (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractor;

We said to a person, "Tell me what you want" then they said, "XYZ", then we said "thank you". That's a discussion. The statute says "discussion" not limited to "deliberation"

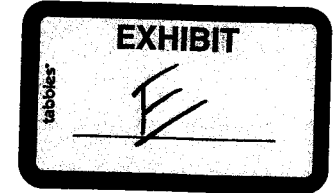
Lisa K. Marso
Boyce Law Firm, L.L.P.
300 S Main Ave
P.O. Box 5015
Sioux Falls, SD 57117-5015
Phone: (605) 336-2424 or (605) 731-0209
Facsimile: (605) 334-0618





Meeting stirs controversy over open government

By Evan Hendershot on Sep 22, 2015 at 8:15 p.m.



An improvised executive session at Monday's City Council meeting highlighted a disconnect between some council members and Mitchell residents.

What started as a mass public showing of support for former Corn Palace Director Dan Sabers turned into a call for transparency in Mitchell's municipal government.

Initially, Sabers agreed to a verbal resignation, but has since sent a letter to the mayor in an attempt to revoke that resignation. Toomey confirmed the letter

was sent to the city by the Stiles, Papendick and Kiner law firm in Mitchell, but made no comment on how the city will proceed with the revoked resignation.

Mitchell resident Lamoine Torgerson spoke during the council's citizen input segment, which is held near the beginning of every council meeting. Torgerson approached the podium to show support for Sabers, but he was soon shut down by Toomey, who cited state laws and city policy to push any public comment on the personnel matter into an executive session.

An executive session is a meeting that is closed to the media and the public. South Dakota's open-meetings law contains five reasons a public body may choose to enter an executive session, one of which allows "for the sole purpose of" discussing the qualifications, competence, performance, character or fitness of any public employee or prospective public employee. State law does not permit any official action to be done in executive session.

On Monday night, the City Council decided to discuss matters about Sabers' resignation in executive session, citing the aforementioned statute. Council members allowed individual members of the public to enter Council Chambers one by one and express their concerns about the resignation.

But Torgerson, one of a handful of Mitchell residents who made their plea to the council, wasn't satisfied with the council's 6-2 vote to force citizens to express their concerns in an executive session.

"I understand that state law says you can't discuss personnel matters," Torgerson said Tuesday in an interview with The Daily Republic, "but the citizens of Mitchell should have been allowed input at that meeting to discuss at least our view of why we're supporting Dan Sabers."

Torgerson claims to have had discussions with Sabers about the events that led to his resignation, and isn't claiming Sabers was completely innocent of wrongdoing, but he felt Sabers' positive impact to the city outweighed the negatives.

After digging into the situation himself and speaking with Sabers, Torgerson hoped the mayor would clarify the reasoning behind the resignation. Torgerson was met with silence from the council and mayor.

"It's quite apparent that he's not being very transparent, not only with the public, but he's not very transparent with his council members," said Torgerson.

Toomey said he and the council sat silent while citizens cycled through to discuss their concerns with the alleged forced resignation of Sabers. Toomey said it was difficult at times not to respond to the distressed citizens and it may have been beneficial to share insight about the situation surrounding Sabers, but he claims he was bound to silence by state laws.

"I believe in transparency, and I've always said that, so if I could talk about it, I probably would," Toomey said. "I felt for myself it was kind of a detriment that I can't, because I'm obligated under both city procedure and state statute and policy."

Sabers has not returned several messages seeking comment on the matter by The Daily Republic.

Jeff McEntee, of Mitchell, was one of the citizens who, like Torgerson, spoke in front of the council in executive session.

"I was frustrated with the process Monday night," McEntee said Tuesday evening. "I think public input is just that. The public should have the opportunity to comment, and the city has to protect their interest. They don't have to comment, but they should have to listen to the group in a public setting."

Council weighs in

Before the 6-2 vote in favor of moving the executive session to the forefront of

the meeting, Council members Marty Barington and Susan Tjarks questioned why the council couldn't hear the citizen input without responding to any personnel matters.

Eventually, Barington and Tjarks supported the executive session to give the people in attendance a chance to speak, but fellow councilmen Dan Allen and Jeff Smith remained against holding the public comment portion in an executive session.

"As long as we did not respond to the comments that were made, then we would be within the letter of the law," Smith said.

Smith said he couldn't fault the other members of the council for supporting the decision to receive public comment in an executive session. Toomey said he asked Sioux Falls-based attorney Lisa K. Marso how to handle the situation before the meeting with the expectation that the council would receive citizen complaints on Monday night. He said Marso recommended the executive session.

At least two councilman agreed with Toomey's decision to exclude public comment from the open session. Councilmen Mel Olson and Dave Tronnes felt obligated to stick with the mayor due to state laws on personnel issues.

"It's what state law says," Olson said. "I cannot tell you the content of the comments, but I will say that the comments were not all in support of Mr. Sabers."

Olson said the executive session helps the council and citizens avoid slanderous statements on the employee or former employee.

Tronnes agreed with Toomey and Olson, questioning what other choice the city had in discussing a personnel issue.

"I think we followed what the legal team told the mayor to do," Tronnes said.

"We gave the opportunity for people to speak, plus kept the confidentiality that the city requires in mind."

"I don't know how you can have transparency when it comes to personnel matters," Tronnes said.

Although Tronnes, Smith and Toomey remained silent on the topics mentioned by individuals in executive session, Olson confirmed that at least one speaker was supportive of Sabers' resignation.

On Tuesday, Torgerson stuck to the stance he made Monday night.

"I certainly feel strongly that we should have been given some kind of answers that nobody got," Torgerson said. "And everybody left there perplexed and upset that we didn't get any answers."

Daily Republic taking a stand

Daily Republic Publisher Rory Palm and Editor Luke Hagen feel the City Council wrongfully used the executive session statute to close the public comment portion of the meeting.

"The Daily Republic has consulted a lawyer and is considering filing an open-meeting complaint," Hagen said. "City Council meetings should be a platform for the public to openly discuss and express their thoughts.

"In this instance, the City Council closed a public meeting by going into executive session to hear residents' complaints about the lack of transparency.

irony would be amusing if it weren't so troubling."

The newspaper believes the statute does not allow for the council to discuss

qualifications, competence, performance, character or fitness of former city employees, such as Sabers, who submitted his resignation earlier this month.

Toomey disagrees with the newspaper's claims.

"We're not of the opinion that we violated any open meeting laws," Toomey said.

Executive session laws, the newspaper believes, also do not allow the City Council to hand-pick members of the public to have private conversations, without the media present, about an issue that members of the public attempted to speak about during the citizen input session. Executive session, the newspaper believes, is for the City Council to discuss personnel issues.

If The Daily Republic files an open-meeting complaint to Davison County State's Attorney Jim Miskimins, he will have three options: File criminal charges; forego criminal charges and forward the complaint to the state's Open Meetings Commission; or determine that the complaint has no merit and forward it for informational purposes to the state attorney general.

Evan Hendershot

ehendershot@mitchellrepublic.com

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CHAPTER 6
CITY OFFICIALS

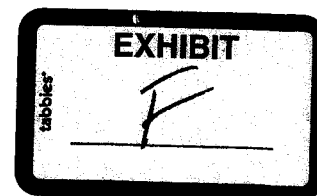
SECTION:

- 1-6-1: Appointment Provisions
 1-6-2: Executive Chain Of Command
 1-6-3: General Appeal Procedures

1-6-1: **APPOINTMENT PROVISIONS:**

- A. Appointive Officers And Positions: The following named offices and positions in the city shall be appointed positions, pursuant to South Dakota Codified Laws 9-14-1: city attorney, finance officer, director of public works, director of public safety, director of park and recreation, director of golf and cemetery, director of human resources, director of senior services and director of the Corn Palace. (Ord. 2367, 7-5-2011)
- B. Qualifications And Appointments:
1. The qualifying requirements for all appointive officers of the city shall be in accordance with the qualification requirements for appointment to office as the same are established and set out in the laws of the state, or as otherwise established by the city council¹. (1984 Code § 3-5; amd. 2005 Code)
 2. Each appointive officer shall be appointed by the mayor with the approval of the city council for a term of office of one year or until a successor is appointed and qualified. Any appointive officer may be removed from office and employment with the city as provided by the laws of the state.
- C. Oath And Bond: Before entering upon the duties of office, each appointive officer shall take and subscribe to an oath as prescribed

1. SDCL § 9-14-2 et seq.



MEMORANDUM

SUBJ: Legality of Executive Session to "Discuss" Personnel Matters

Question

You asked that I look at the notations to SDCL 1-25-2 as well as any applicable attorney general opinions or decisions by the South Dakota Open Meeting Commission on the question of the extent to which meetings may be closed to consider personnel matters.

Short Answer

Although I was unable to find any case law, attorney general opinions, or open meeting commission decisions dealing with the precise issue presented here, all the authorities support the idea that discussions regarding personnel matters are properly done in executive session. Any formal action taken as a result of those discussions must be done in an open, public session.

Authorities

Case Law

A review of the annotations to SDCL 1-25-2 revealed one decision related to the confidentiality of personnel issues. In *Wuest v. Winner School District 59-2*, a teacher questioned the constitutionality of the process used by the School Board to decide not to renew her contract. 2000 S.D. 42, 607 N.W.2d 912. Specifically, she argued that her due process rights were denied when she and her attorney were denied access to an executive session of the Board at which the Board made its initial decision not to renew her contract. The South Dakota Supreme Court disagreed:

Under SDCL 1-25-2, executive or closed meetings of public boards may be held to discuss the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. . . . There is no evidence in the record that the Board did anything during the executive session but receive the administrators' recommendations not to renew Linda's contract. The Board did not take any evidence against Linda from school officials at that time. Moreover, no facts or underlying reasons for the recommendations were given to the Board during the session, presumably so the Board would remain unbiased. As pointed out by the Board, it was necessary to receive these recommendations in order for it to have a logical basis for its initial resolution and the notice it would serve on Linda. . . . Linda was not denied due

EXHIBIT

G

tabbles

I have heard that there may be some citizens here tonight that would like to address the Council regarding personnel issues. Before we begin the Public Input session, I need to inform you that it is the policy of the City of Mitchell to address personnel issues only during Executive Session, NOT during the public meeting. However, if anyone wishes to address the Council you are more than welcome to attend the Executive Session after the regular meeting, and will have the opportunity to state your concerns at that time. We will have individuals address the Executive Session one person at a time. According to the way the Agenda looks, we should be starting our Executive Session around 9:00 p.m.

process rights because she was not allowed to participate in a meeting where nothing more happened than the receipt of the school administrators' recommendations. . . .

Although this case addresses an employee's due process rights, it does support the notion that discussion personnel matters in executive session is properly under SDCL 1-25-2. Importantly, the discussion related to the taking of testimony or other facts appears to be related the employee's due process concerns, rather than a violation of SDCL 1-25-2.

Attorney General Opinions

Further, a review of the annotations to SDCL 1-25-2 revealed one relevant attorney general opinion, which also supports the notion that discussion of personnel matters is properly done in closed executive session:

1989 S.D. Opp. Atty. Gen. 25: Meetings of search committees designed to screen applicants for positions announced by the Board of Regents may be legally closed to the press and public through the procedure set forth in SDCL 1-25-2. Further, communications or reports associated with such executive or closed sessions are likewise unavailable to the public.

Open Meeting Commission Decisions

Finally, at least three decisions by the South Dakota Open Meeting Commission are relevant:

City of Lead (04-01). Paul Hotsclaw filed a complaint with the Lawrence County State's Attorney. His complaint involved three items. The OMC found that while personnel matters are properly a matter of executive session, an executive session cannot be used to discuss reorganizing the functions of various divisions in the city. Second, any official action must be publicly noticed through the agenda process. Third, a meeting where the city considered whether a city employee had acted improperly was properly the subject of an executive session for personnel reasons:

Here, the City found itself with an order in excess of that approved, and that which could fall within the bid exception, and or of that which City personnel expected. Those facts were settled among city staff before the executive session occurred. Answering the question whether anything improper was done by city personnel in the incident is a valid subject of inquiry in Executive Session. When the personnel issue was resolved, and the City decided to complete the purchase of the equipment, the matter returned to open session. . . . Although a matter standing alone should be considered in open session, when the facts are so intertwined with employee performance, those specific items as evidence of the performance are appropriately discussed as facts surrounding the performance issue. So long as the question remains the performance of the employee, and not whether the item should be approved or disapproved, executive session is a proper venue. Here, the City was considering an employee's performance concerning the delivery of additional equipment. Thus, no violation occurred, and we find in favor of the City.

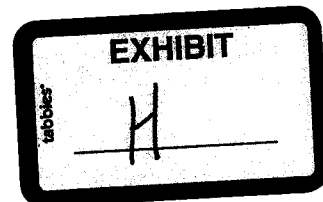
City of Faulkton (05-04). A complaint was filed with the Faulk County State's Attorney by C. Jody Moritz, a teacher. The school board went into executive session to address personnel issues, but did not take official action later in open session. The district asserted that no vote was taken; the Complainant claimed that a vote was taken privately in executive session and resulted in contract termination of teachers. The OMC held that no violation occurred since no vote was taken in executive session, and that the District otherwise properly discussed personnel matters in executive session.

City of Sioux Falls (12-01). A complaint was filed by the Sioux Falls Argus Leader with the Minnehaha County State's Attorney. The complaint claimed that the Sioux Falls City Council violated SDCL 1-25-2 by making a motion concerning a personnel matter that had been discussed in executive session. The motion was made publicly, but did not disclose the subject matter of the action being taken. Although the OMC issued a reprimand because the motion was not sufficiently specific, there was no question that the City Council properly discussed the personnel matter in executive session.

Because there have been concerns regarding accountability and insight into the resignation of Dan Sabers, I will respond by telling everyone that the City is not permitted to speak openly about personnel issues to the public. The City's commitment is to not discuss personnel matters in order to protect a person's privacy and to protect the City. I can assure each and every one of you that every member on the city council knows the reasons for Mr. Saber's resignation and support those reasons. We believe the city's stand on protecting a person's privacy is one of integrity rather than a lack of transparency.

There have been comments made regarding Gridlock, lack of transparency, and that there is zero communication between myself and the City Council. That is totally false and the City Council would support me on that statement. For anyone to say otherwise is irresponsible and is nothing more than an attempt to create a divisive atmosphere in the public eye.

I have always maintained an open door policy and I have always promoted transparency within the confinements of City Policy and State Law. If there is anyone wishing to speak to me one-on-one, you have that ability to do so, but when it comes to personnel issues, I am limited on what I can or cannot say. If I could give you more accountability and insight into Mr. Saber's resignation, I would.....but I can't, nor can the City Council. I have nothing more to say.....I think there is no need for further comment from anyone.



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Home News Local News

Brown County Commission limiting complaints against employees at meetings

Public's concerns will now only be heard in executive session

Posted Wednesday, October 28, 2015 2:00 am

By Shannon Marvel smarvel@aberdeennews.com | 2 comments



Posted on Oct 28, 2015 by Shannon Marvel

Brown County commissioners on Tuesday decided to prohibit citizens from expressing personnel concerns interpreted "to attack, condemn or accuse any Brown County employee." effective immediately.

The decision comes after several weeks of citizen criticisms of county Chief Information Officer Paul Sivertsen.

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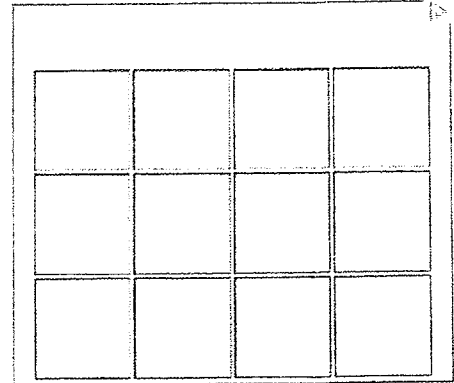
Posted in Local on Wednesday, October 28, 2015 2:00 am

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You May Like

Brown County Commission Response to Employee Grievance

The Brown County Commission would like to respond to concerns presented regarding the Brown County IT Department.

- **Department Head Salary-** We would urge anyone interested to thoroughly research the salaries of similar positions across the state at various levels. We feel we are paying the current IT Department Head a reasonable salary when taking into consideration the job description and responsibilities.
- **Double billing and check issues from 2012-**A full report by South Dakota Legislative Audit regarding this issue is on file for review by anyone interested in acquiring. This report can be obtained through the BC Auditor's office.
- **Fair Ticket Issues-** As with any new program, items of concern have been noted so they can be remedied for 2016. During the recap of the ticket sales and revenue, all tickets are accounted for and revenue matches tickets sold. It has been stated that the BC Treasurer is still waiting for reports regarding 2015 ticket sales. As of October 21, 2015, the BC Commission Chair verified that the Treasurer has closed the books on the 2015 BC Fair ticket sales, has presented her information to Legislative Audit, who expressed no concerns, and is not waiting for any additional information or reports.
- It was stated that a recent appearance at a Brown County Commission meeting had been deleted. Upon reviewing the proceedings, it was verified that nothing was deleted from any Commission meeting. As per policy, nothing can be deleted from any BC Commission meeting without a written request by either the Commission Assistant or any BC Commissioner. No such request has ever been made.
- Effective immediately, BC Commission meetings will no longer provide a public forum to attack, condemn or accuse any BC employee. If a concerned citizen has a personnel related issue, that issue will be

discussed in Executive Session and dealt with appropriately in open session when and if action is required. There should be a reasonable expectation by every BC employee that they should be able to report to work and do their job without fear of being publically chastised in an open meeting. BC will handle all personnel issues this way in the future. It is the responsibility of the BC Commission to listen to legitimate criticism of County Policy while at same time protecting our employees.

DRAFT



Atty Blair
States Atty
383353
Attorney General
NOV 23 2015

CARL J. KOCH

City Attorney, City of Mitchell, SD
200 EAST 5TH AVENUE - P. O. BOX 546
Mitchell, South Dakota 57301
Office Phone (605) 996-6546
Cell Phone (605) 999-6546
Fax (605) 996-6548

November 19, 2015

Jon E. Arneson, atty at law
123 South Main Avenue, Suite 202
Sioux Falls, SD 57104

RE: Open Meetings Commission (OMC) Complaint 2015-01 - Redactions from City of Mitchell submissions to Open Meeting Commission (via A.G. Office) and associated clarifications.

Dear Atty Arneson:

After due consideration I relate by this writing that the City does not waive its attorney client privilege regarding matters not related to or material to the decision of the Mitchell SD city government to go into executive session during its regular City Council meeting of September 21, 2015.

The redacted portions of Attachments C and D concern personnel matters related to the subject person, but are not related to the determination of the City government to go into executive session. I will, at the time of the hearing before the Open Meeting Commission (which based on information given to me by Asst. A. G. Blair - best knowledge he had at the time - will likely be sometime in December of 2015) have the un-redacted e-mails in my possession for in camera examination by the OMC should they grant what I assume will be a request by you for such review; and then the OMC can determine non-relevancy/non-materiality or alternatively relevancy/materiality, and (I would believe) be fully capable of making that determination; and will then further do as they find appropriate. I believe that the information provided in this paragraph is effectively the equivalent of, and provides the same information as, a rule 26 privilege log would were this a civil proceeding. As best I can tell, on information I have received from Asst A.G. Blair, there is no published protocol of rules by which the OMC operates, other than what they believe is proper under the circumstances. I have no reason to believe that the OMC would not generally follow what lawyers would generally understand to be acceptable

procedures.

Regarding your questions concerning Attachment H - the page (last page of Attachment H I believe) consisting of three (3) paragraphs,

- the first paragraph beginning with the words "Because there have been...."; and with the second paragraph beginning with the words " There have been comments...."; and the third paragraph beginning with the words "I have always...."

was never given (read) to the persons attending the September 21 meeting and was never publicly published or distributed in any way. The statement actually made by the mayor is the one paragraph statement (first page - and which should have been the only page) constituting Attachment H. The three paragraph statement (which was provided to me by the mayor's office and erroneously incorporated in Exhibit H) was the wrong document. The one paragraph statement (i.e. the correct Attachment H - the statement of the mayor actually made to persons in attendance at the opening of "Citizens Input" as that is described in the City's submission to OMC) had been reduced to writing by the mayor and read verbatim. The mayor was not able to locate that document. On that account, mayor directed that his statement be transcribed word for word from the tape record of the meeting - and that was done - and that is the actual statement made by the mayor at the meeting of September 21, 2015. That is why the different fonts which you mentioned in your letter. Anyone present at the meeting (like a reporter from the Daily Republic newspaper) will readily recognize the one paragraph statement as the Mayor's actual statement, and will readily recognize the three paragraph statement as not the statement made by the mayor.

Further in Attachment H are pages 2 and 3 of Exhibit G, which were erroneously placed within Attachment H. That should be readily apparent and obvious to the OMC and anyone else utilizing the City's submission for any purpose.

By copy of this letter to Asst. A.G. Blair, I am notifying the OMC of the errata in the submission of the City of Mitchell to OMC dated October 30, 2015.

I will pass on explaining the circumstances at the office copy machine which may have contributed to the confusions of getting the Attachments right and properly organized at mid P.M. on that Friday, the 30th of October, unless someone wants to know and specifically asks for further explanation. The snafu's were made and the corrections and errata are as noted in this letter - which describes the corrections necessary to correct the submissions of the City to accuracy.

ERRATA RECAP:

1. The three paragraph statement included in Attachment H is wholly erroneous and should be discarded and disregarded.
2. The last two (2) pages of the three page memo regarding prior determinations of the OMC appeared erroneously within Attachment H; and should be relocated behind the first page of that memo within Attachment G.

Sincerely

Carl J. Koch

cc: Office of the Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Attn: Open Meeting Commission

James Miskimmins, Dav. Co. States Atty.
By hand delivery: 11/19/15





OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

TTY (605) 773-6585

<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. MCGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 18, 2015

The Daily Republic
ATTN: Evan Hendershot
PO Box 1288
Mitchell, SD 57301

Carl J. Koch
Mitchell City Attorney
PO Box 546
Mitchell, SD 57301

Re: In the Matter of Open Meeting Complaint 2015-01, Mitchell City Council –
Davison County

Dear Mr. Hendershot & Mr. Koch,

Enclosed please find a Notice of Hearing regarding the above referenced open meetings complaint. Also enclosed, please find a courtesy copy of the proposed agenda for the Commission's December 16th meeting. As you can see from the agenda, presentations regarding complaints will begin at 1:00 p.m. central time or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,


Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure


STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN) OMC 2015-01
MEETINGS COMPLAINT AGAINST)
MITCHELL CITY COUNCIL -) NOTICE OF HEARING
DAVISON COUNTY)

TO: Evan Hendershot, Daily Republic, 120 S. Lawler, Post Office Box 1288,
Mitchell, South Dakota 57301, and Mitchell City Council through their
counsel of record, Carl J. Koch, Mitchell City Attorney, 200 East 5th Avenue,
Post Office Box 546, Mitchell, South Dakota 57301:

Please take notice that a hearing regarding the above referenced open
meetings complaint will be held before the South Dakota Open Meetings
Commission, at the Cedar Shore Resort – 1500 Shoreline Drive, Oacoma, South
Dakota, on Wednesday, December 16, 2015. Oral presentations regarding pending
complaints will commence at 1:00 P.M. central time, or as soon thereafter as
matters may be heard, and proceed in the order noted in the attached agenda.

Dated this 16th day of November, 2015.


Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA
FAULK COUNTY

TEL: (605) 598-4330
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811 MAIN ST.
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FAULKTON, SD 57438-0364

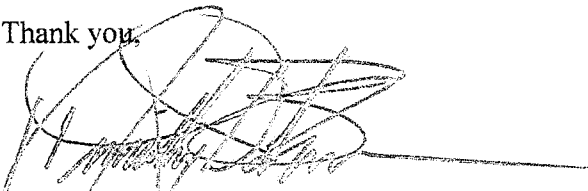
OFFICE OF THE STATES ATTORNEY
TIMOTHY D. BORMANN

To: SOUTH DAKOTA OPEN MEETING COMMISSION
ATTN: STEVE BLAIR
RE: COMPLAINT – ALTMAN / SULLY COUNTY
Date: OCTOBER 26, 2015

Based upon a conflict of interest of Sully County State's Attorney, Emily Sovell, I have reviewed the enclosed Complaint from Adam Altman against the Sully County Commissioners and Sully County Board of Adjustment. Although I cannot determine if an actual violation has occurred, the matter has enough merit to justify referral to the Open Meeting Commission for review.

In my capacity as State's Attorney, I am referring the matter to the Open Meeting Commission pursuant to SDCL 1-25-6(3).

Thank you,



Timothy D. Bormann,

Acting Sully County State's Attorney/

Faulk County State's Attorney

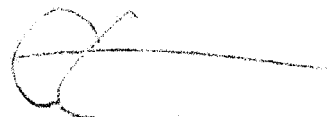
STATE OF SOUTH DAKOTA)
)SS
COUNTY OF BROWN)

COMPLAINT

Adam Altman, being first duly sworn upon his oath, complains and states as follows:

1. On or about February 3, 2015, the Sully County Planning and Zoning Commission held an official meeting public meeting.
2. On or about February 26, 2015, the Sully County Commission held a public meeting.
3. On or about March 24, 2015, the Sully County Commission held a public meeting.
4. On or about July 14, 2015 the Sully County Planning and Zoning Commission, sitting as the Board of Adjustment, held a public meeting.
5. The Sully County Planning and Zoning Commission, the Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment are all political subdivisions or a public body of a political subdivision pursuant SDCL §1-25-1; specifically, Sully County.
6. Sully County owns and operates *sullycounty.net*, which is Sully County's website.
7. At none of these meetings was a notice with a proposed agenda posted on *sullycounty.net*.
8. Accordingly, each of these meetings was held in violation of SDCL §1-25-1.1.
9. Attached hereto is a true and correct copy of a letter written by this complainant informing Sully County of their legal requirements.

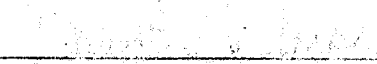
Dated this 12 day of August, 2015.



Adam Altman

Subscribed to and sworn before me this _____ day of _____, 2015.





Notary Public



LAW OFFICE OF
ADAM H. ALTMAN
PLLC

August 12, 2015

Ms. Emily Sovell
Sully County State's Attorney
PO Box 505
Onida, SD 57564-0505

Re: Open Meetings Complaint

Dear Emily:

Enclosed please find a complaint filed pursuant to SDCL §1-25-6 and SDCL §23A-2-1. Given your position, I ask that you proceed under SDCL §1-25-6.1(4) and refer the matter to another state's attorney or to the attorney general for action pursuant to SDCL §1-25-6. Please let me know if you have any questions.

Sincerely,

Adam Altman

Enc: Complaint

cc. Mr. Guthmiller, et al.


STATE OF SOUTH DAKOTA)
)SS
COUNTY OF BROWN)

COMPLAINT

Adam Altman, being first duly sworn upon his oath, complains and states as follows:

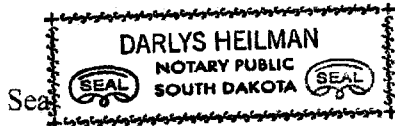
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2. On or about February 26, 2015, the Sully County Commission held a public meeting.
3. On or about March 24, 2015, the Sully County Commission held a public meeting.
4. On or about July 14, 2015 the Sully County Planning and Zoning Commission, sitting as the Board of Adjustment, held a public meeting.
5. The Sully County Planning and Zoning Commission, the Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment are all political subdivisions or a public body of a political subdivision pursuant SDCL §1-25-1; specifically, Sully County.
6. Sully County owns and operates *sullycounty.net*, which is Sully County's website.
7. At none of these meetings was a notice with a proposed agenda posted on *sullycounty.net*.
8. Accordingly, each of these meetings was held in violation of SDCL §1-25-1.1.
9. Attached hereto is a true and correct copy of a letter written by this complainant informing Sully County of their legal requirements.

Dated this 12 day of August, 2015.



Adam Altman

Subscribed to and sworn before me this 24 day of August, 2015.




Notary Public



LAW OFFICE OF
ADAM H. ALTMAN
P.L.L.C.

February 26, 2015

Mr. William Floyd, Chairman
Sully County Commission
PO Box 265
Onida, SD 57564-0265

Via electronic mail to: *SullyAUD@venturecomm.net*

Re: Special County Commission Meeting for February 26, 2015

Dear Chairman Floyd:

I note that the Sully County Commission has purported to schedule a special meeting today for the purpose of considering an ordinance rezoning certain real property. Unfortunately, you have failed to meet the requirements of South Dakota's open meetings laws. Pursuant to SDCL §1-25-1.1, notices and agendas of all meetings must "be posted on the public body's website...if such a website exists." A thorough search of *sullycounty.net* reveals (1) that it is the official website of Sully County, South Dakota, and (2) that it contains no notice of today's meeting.

Consequently, holding a meeting today would violate SDCL §1-25-1.1, which constitutes a class 2 misdemeanor, the penalty for which is up to 30 days in jail, a fine of up to \$500, or both.

I suggest you conduct yourself accordingly.

Sincerely,

Adam Altman

cc. Commission
Auditor McGee
Ms. Sovell
Pierre Capitol Journal
Onida Watchman



Office of the Sully County Sheriff

700 Ash Avenue - Onida, South Dakota 57564

Case CR-15-0045

Printed on October 15, 2015

Status Active
Report Type Investigations
Primary Officer Bill Stahl
Reported At 08/14/15 12:55
Incident Date 02/03/15 08:00 - 07/14/15 22:00
Incident Code All Other
Location Onida, SD 57564
Beat City of Onida

Disposition Under Investigation
Dispo Date/Time 08/28/15 15:05
Disposition Comments

Case Comments

Primary Narrative By Bill Stahl, 10/15/15 15:37

On or about August 14, 2015, Sully County Sheriff Bill Stahl and I, Sully County Deputy Sheriff Curt Olson, were notified by the Sully County States Attorney, Emily Sovell, that there was an "Open Meetings" complaint filed against Sully County. SA Sovell asked Sheriff Stahl to investigate this matter on behalf of the Open Meetings Commission.

On or about August 28, 2015, statements regarding this complaint were received from Sully County Planning and Zoning Administrator, Janet Schmahl, and Sully County Auditor, Susan Lamb.

CK15-0045



LAW OFFICE OF
ADAM H. ALTMAN
P.C.

August 12, 2015

Ms. Emily Sovell
Sully County State's Attorney
PO Box 505
Onida, SD 57564-0505

Re: Open Meetings Complaint

Dear Emily:

Enclosed please find a complaint filed pursuant to SDCL §1-25-6 and SDCL §23A-2-1. Given your position, I ask that you proceed under SDCL §1-25-6.1(4) and refer the matter to another state's attorney or to the attorney general for action pursuant to SDCL §1-25-6. Please let me know if you have any questions.

Sincerely,

Adam Altman

Enc: Complaint

cc. Mr. Guthmiller, et al.

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF BROWN)

COMPLAINT

Adam Altman, being first duly sworn upon his oath, complains and states as follows:

1. On or about February 3, 2015, the Sully County Planning and Zoning Commission held an official meeting public meeting.
2. On or about February 26, 2015, the Sully County Commission held a public meeting.
3. On or about March 24, 2015, the Sully County Commission held a public meeting.
4. On or about July 14, 2015 the Sully County Planning and Zoning Commission, sitting as the Board of Adjustment, held a public meeting.
5. The Sully County Planning and Zoning Commission, the Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment are all political subdivisions or a public body of a political subdivision pursuant SDCL §1-25-1; specifically, Sully County.
6. Sully County owns and operates *sullycounty.net*, which is Sully County's website.
7. At none of these meetings was a notice with a proposed agenda posted on *sullycounty.net*.
8. Accordingly, each of these meetings was held in violation of SDCL §1-25-1.1.
9. Attached hereto is a true and correct copy of a letter written by this complainant informing Sully County of their legal requirements.

Dated this 12 day of August, 2015.



Adam Altman

Subscribed to and sworn before me this _____ day of _____, 2015.



Notary Public



LAW OFFICE OF
ADAM H. ALTMAN

February 26, 2015

Mr. William Floyd, Chairman
Sully County Commission
PO Box 265
Onida, SD 57564-0265

Via electronic mail to: *SullyAUD@venturecomm.net*

Re: Special County Commission Meeting for February 26, 2015

Dear Chairman Floyd:

I note that the Sully County Commission has purported to schedule a special meeting today for the purpose of considering an ordinance rezoning certain real property. Unfortunately, you have failed to meet the requirements of South Dakota's open meetings laws. Pursuant to SDCL §1-25-1.1, notices and agendas of all meetings must "be posted on the public body's website...if such a website exists." A thorough search of *sullycounty.net* reveals (1) that it is the official website of Sully County, South Dakota, and (2) that it contains no notice of today's meeting.

Consequently, holding a meeting today would violate SDCL §1-25-1.1, which constitutes a class 2 misdemeanor, the penalty for which is up to 30 days in jail, a fine of up to \$500, or both.

I suggest you conduct yourself accordingly.

Sincerely,

Adam Altman

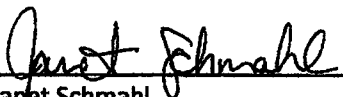
cc. Commission
Auditor McGee
Ms. Sovell
Pierre Capitol Journal
Onida Watchman

I, Janet Schmahl, in my capacity as Sully County Planning and Zoning Administrator, do hereby make the following statement dated August 25, 2015:

Sully County Planning and Zoning Commission meeting held on July 14, 2015

- I received a Conditional Use Permit application at the Planning and Zoning Office in the Sully Courthouse on June 17, 2015.
- The Chairman of the Sully County Board of Adjustment called for a public hearing regarding the Conditional Use Permit request at a special meeting of the Planning and Zoning Commission scheduled on July 14, 2015.
- I created a Notice of Hearing of Conditional Use Permit on June 17, 2015. ***Attachment A***
- I prepared and mailed Notice letters to all owners of property within 200 feet of the proposed Conditional Use, as well as other property owners deemed to have a material interest in the matter on June 24, 2015. ***Attachment B***
- The Notice of Hearing of Conditional Use Permit was published in the June 25, 2015, edition of the Onida Watchman. ***Attachment C***
- I created an Agenda for the July 14, 2015, special meeting of the Sully County Planning and Zoning Commission on July 7, 2015. ***Attachment D***
- On July 10, 2015, copies of the Agenda were posted on the bulletin board outside of the Sully County Auditor's Office, in the front entry of the Sully County Courthouse where it is visible to the public 24 hours a day, and in the Planning and Zoning Office.
- The Agenda was not posted to *sullycounty.net* as the website has not been declared the official website of Sully County, Planning and Zoning Agendas have never in the past (to my knowledge) been posted on *sullycounty.net*, and *sullycounty.net* is not regularly updated or maintained.
- A disclaimer on *sullycounty.net* reads as follows: "Disclaimer: This website is not regularly updated or maintained and has not been adopted as the official website for Sully County, South Dakota. For information regarding upcoming meetings, please contact the Sully County Auditor's Office." ***Attachment E***
- At the special meeting on July 14, 2015, the Planning and Zoning Commission, sitting as the Board of Adjustment, held a public hearing at which proponents and opponents of the Conditional Use Permit application were allowed to speak, and on that date motioned to table the matter and continue deliberations at the next meeting.
- I recorded minutes from the July 14, 2015, meeting and prepared unapproved proceedings which were published in the July 30, 2015, edition of the Onida Watchman ***Attachment F***
- The July 14, 2015, minutes were approved by the Sully County Planning and Zoning Commission and the Sully County Board of Adjustment on August 4, 2015, and filed in the Planning and Zoning Office on that same date. ***Attachment G***

Respectfully submitted,


Janet Schmahl
Sully County, South Dakota
Planning and Zoning Administrator

**NOTICE OF HEARING
CONDITIONAL USE PERMIT**

NOTICE IS HEREBY GIVEN that the Sully County Planning and Zoning Commission, acting as Board of Adjustment, will hold a public hearing at 1:30 PM (CT) on Tuesday, July 14, 2015, or as soon thereafter as the matter may be heard, at the Phoenix Center, 117 S Main Street, Onida, SD 57564, to consider the following matter:

2015-23-CU: Application of Walter Wendland (Ring-Neck Energy & Feed, LLC) for approval of a Conditional Use Permit to allow the construction and operation of an ethanol plant on property legally described as "A 42.5 acre (more or less) tract of land described as the E1/2NE1/4 lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota."

Written comments and exhibits that are legibly printed and signed may be delivered in person to the Sully County Courthouse or mailed to the Sully County Planning and Zoning Administrator, PO Box 265, Onida, SD 57564, by Friday, July 10, 2015, at 5:00 PM for consideration in this matter. Copies of submitted materials are to be provided for each of the five Board members by the submitter. Written comments and exhibits not received by July 10, 2015, will not be considered.

Testimony may be offered at the public hearing if the person to offer testimony fills out a speaker card at the time of the hearing. When called to speak, the person offering testimony must clearly identify themselves to the Board of Adjustment and address testimony solely to the Board. Each speaker will be allowed five minutes to offer testimony, and at the conclusion, the speaker will return to their seat. Speakers may choose to "pass" when called to testify, and will subsequently forfeit any speaking time.

If special accommodations are necessary, please notify the Sully County Planning and Zoning Administrator at (605) 258-2575 at least 24 hours prior to the scheduled hearing.

Dated this 17th day of June, 2015.

Sully County Planning and Zoning Commission
Glynnes Sargent, Chairman
Janet Schmahl, Administrator

Notice letters sent to the following on June 24, 2015:

- Shane Anderson
215 E Prospect Ave
Pierre SD 57501-2530
- William D Spears
PO Box 428
Pierre SD 57501-0428
- George & Julie Winters
c/o William D Spears
PO Box 428
Pierre SD 57501-0428
- Travis & Melissa Shaffer
Cone Ag Properties LLC
PO Box 1136
Pierre SD 57501-1136
- Rapid City Pierre & Eastern Railroad Inc
200 Meridian Centre Suite 300
Rochester NY 14618-3972
- CHS Inc
PO Box 64089
Saint Paul MN 55164-0089
- Vance S Huse
Vance S Huse Revocable Trust
PO Box 161
Onida SD 57564-0161
- Vetter Family Trust
31032 179th St
Onida SD 57564-6206
- Wesley M Brick
PO Box 264
Onida SD 57564-0264
- Clark & Lisa Guthmiller
800 Redwood Ave
Onida SD 57564-2123
- Steve Hyde
Steve Hyde Living Trust
18580 Hyde Pl
Onida SD 57564-6902
- David & Kimberly Jensen
1003 S 8th St
Onida SD 57564-2139
- Lee & Kristin Kinney
PO Box 563
Onida SD 57564-0563
- Daniel Leonard
PO Box 954
Onida SD 57564-0954
- Jean & Daniel McComsey
PO Box 496
Onida SD 57564-0496
- Oahe Grain Corporation
PO Box 244
Onida SD 57564-0244
- Todd & Tanya Yackley
PO Box 321
Onida SD 57564-0321
- Theron Stephens
PO Box 952
Onida SD 57564-0952
- Carol Jean Stephens
PO Box 952
Onida SD 57564-0952
- James Thibodeau
902 Redwood Ave
Onida SD 57564-2131
- Patrick & Tacea Voorhees
PO Box 122
Onida SD 57564-0122

- Warren & Sherri Wilson
1002 Redwood Ave
Onida SD 57564-2101

- Kaleen M Wolforth
1001 S 11th St
Onida SD 57564-2162

- Larry & Karen Wilcox
Larry Wilcox Trust, Karen Wilcox Trust
1006 S 8th St
Onida SD 57564-2103

- Bryan & Lynette Murphy
1011 S 8th St
Onida SD 57564-2139

SECTION 101 ADVERTISEMENT FOR BIDS

Notice is hereby given that sealed bids will be received for the "Ash Avenue Onid Seaboard Crack Leveeing - I/E Project" at the Onida County Courthouse, 700 Ash Avenue, Onida, South Dakota. Bids will be received by the Onida County Auditor at the Onida County Courthouse, Onida, South Dakota until 2:00 PM on July 2, 2015 and thereafter will be opened publicly and read aloud.

Digital copies of the Bidding Documents are available on-line for downloading for a fee of \$20.00. These documents may be obtained by contacting the project manager, "The Seaboard" and by entering "Seaboard Project Number 15000022" in the "Search Projects" page. For questions and fee information, please contact the project manager, David D. Clark, at 505-293-9830 or via e-mail at david@seaboard.com. The Bidding Documents will be available for a fee of \$20.00 per set. The Bidding and awarding documents may also be examined at the Onid Seaboard Engineering Office, located at 408 E. Colman, Pierre, SD 57501. Any technical questions may be directed to John Fiedler at 605-224-4351.

- The project is generally consist of the following approximate quantities:
 - 132 Ton - 30-40 in. of 10:1.5 Aggregate
 - 20 Ton - AD 1500 Asphalt for Surface Treatment
 - 133 Ton - Type 1B Cover Aggregate
 - 14 Ton - Polymer Modified Asphalt/Mastic Crack Leveeing
 - 1400 in - Asphalt Concrete Data Sealing
 - 3 Ton - Sand and Fog Seal
 - 20 Galons - Pavement Marking Paint, Yellow
 - 13 Galons - Pavement Marking Paint, Yellow
 - Flagging, Traffic Conical and other miscellaneous items.

Each bid will be submitted on the basis of the following:

- 20 Ton - AD 1500 Asphalt for Surface Treatment
- 133 Ton - Type 1B Cover Aggregate
- 14 Ton - Polymer Modified Asphalt/Mastic Crack Leveeing
- 1400 in - Asphalt Concrete Data Sealing
- 3 Ton - Sand and Fog Seal
- 20 Galons - Pavement Marking Paint, Yellow
- 13 Galons - Pavement Marking Paint, Yellow
- Flagging, Traffic Conical and other miscellaneous items.

or the basis of a cash payment for work. Bids will be opened in a sealed envelope clearly labeled "BID ENCLOSED" Ash Avenue Crack Seal & Crack Leveeing Project" sent to Onida County Auditor, Onida, South Dakota 57504-0066. Each bid must contain a 2% security in the form of a certified check, cashier's check, or a letter of credit for 10% of the amount bid, such check is to be certified or issued by either a state or a national bank and made payable to the entity or on file thereof a bid bond for ten percent (10%) of the amount of the bid. Such bond to be issued by a surety company to be licensed in the State of South Dakota and to be approved by the Onida County Auditor as a guaranty that such contractor will complete the project in accordance with the terms of the bidding and bid in case order be awarded the contract (SDCL 8-10-10).

No bid will be read or considered unless received in full, complete, with the above provisions as to the bid security, and any other information submitted or requested and returned to the Auditor immediately.

The OWNER retains the right to reject any or all of the bids submitted and to waive any informality in any bid and to hold all bids for a period not to exceed thirty (30) days from the date of opening.

The work on this advertising advertisement upon a date to be specified by the OWNER, notices of award are to be given to the successful bidder ten (10) days in advance of the start of construction. The Contractor will be required to commence construction no later than August 10th and in an approved sequence complete the project within 90 calendar days of the notice to proceed but no later than September 30th, 2015.

By order of the Onida County Commissioners:

William Floy, Chairman
Dated this 23rd day of June, 2015.

Published June 26 and July 2, 2015 at the total approximate cost of \$50.00. -26

UNAPPROVED SULLY COUNTY PLANNING AND ZONING COMMISSION PROCEEDINGS JUNE 17, 2015

CALL TO ORDER: The regular meeting of the Onida County Planning and Zoning Commission was held on June 17, 2015, at 9:00 am by the Chairman, Glynis Sargent, with members Mike Dierks, Joe Warner, Fred McQuiston, and County Commissioner Jerry Bergquist in attendance at the Onida County Courthouse.

APPROVAL OF MINUTES: A motion was made by Glynis and seconded by Glynis to approve the minutes of May 5, 2015, as written. The motion passed unanimously.

ACTION ITEMS: A bid of Blocks 1 - 46, Kingston Addition to the Onida Cemetery, a Supervisor of the CEBA of Section 2, Township 14 North, Range 10 West was reviewed by the Commission. A motion was made by McQuiston and seconded by Warner to recommend to the Onida County Board of Commissioners that the bid of Blocks 1 - 46, Kingston Addition to the Onid Cemetery be approved. The motion passed unanimously.

OTHER BUSINESS: A. Onida County State's Attorney, Emily Sovell updated the Commission on new legislation effective July 1, 2015.

B. The next regular meeting was set for July 7, 2015, at 7:30 am at the Onida County Courthouse and a Conditional Use Permit hearing was scheduled for July 14, 2015, at 1:30 pm at the Phoenix Center.

C. Guidelines for evidence submission and speakers offering testimony at the Conditional Use Permit hearing to be held on July 14, 2015, were implemented.

D. The intent of working on the Onida County Fee Schedule regarding the fee for Building Permits indicating a total construction cost of \$50,000 or up was clarified at the request of Administrator Janet Schmalz.

ADJOURNMENT: There being no further business a motion was made by McQuiston and seconded by Glynis to adjourn the meeting. The motion passed unanimously. Meeting adjourned.

Respectfully submitted,
Janet Schmalz
Administrator
Sully County Planning and Zoning

Published June 25, 2015 at the total approximate cost of \$20.00. -26

NOTICE OF HEARING CONDITIONAL USE PERMIT

NOTICE IS HEREBY GIVEN that the Onida County Planning and Zoning Commission acting as Board of Adjustment will hold a public hearing at 1:30 PM (1:00 PM Tuesday, July 14, 2015, or as soon thereafter as the matter may be heard at the Phoenix Center, 110 S. Main Street, Onida, SD 57564, to consider the following matter:

2015-23-CU: Application of Water Wetland (Ring-Necked Energy & Fuel, LLC) for approval of a Conditional Use Permit to allow the construction and operation of an alternative plant or facility, equity developed at 4425 acre in or over less tract of land described as the B1 ONE-1/4 Acre East of the Fairbank Right of Way or Section 34, Township 14 North, Range 10 West of the S. 1/4, Onida County, South Dakota.

Interested parties are welcome to submit written comments to the Onida County Planning and Zoning Administrator, advance of the hearing or orally at the hearing. If special accommodations are necessary, please notify the Administrator at 605-259-2375 at least 24 hours prior to the scheduled hearing.

Dated this 17th day of June, 2015.

Sully County Planning and Zoning Commission
Glynis Sargent, Chairman
Janet Schmalz, Administrator

Published June 25, 2015 at the total approximate cost of \$10.00. -25

NOTICE OF HEARING CONDITIONAL USE PERMIT

NOTICE IS HEREBY GIVEN that the Onida County Planning and Zoning Commission acting as Board of Adjustment will hold a public hearing at 7:30 AM (7:00 AM Tuesday, July 7, 2015, or as soon thereafter as the matter may be heard at the Commissioners Meeting Room, located in the basement of the Onida County Courthouse, 700 Ash Avenue, Onida, SD 57564, to consider the following matter:

2015-24-CU: Application of Donna J. Johnson for approval of a Conditional Use Permit to allow the operation of a bed and breakfast on property located at 17840 Quantum Place, legally described as the NW 1/4 of the SE 1/4 of Section 4, Township 10 North, Range 30 West of the S. 1/4.

All interested parties are welcome to submit written comments to the Onida County Planning and Zoning Administrator, advance of the hearing or orally at the hearing. If special accommodations are necessary, please notify the Administrator at 605-259-2375 at least 24 hours prior to the scheduled hearing.

Dated this 17th day of June, 2015.

Sully County Planning and Zoning Commission
Glynis Sargent, Chairman
Janet Schmalz, Administrator

Published June 25, 2015 at the total approximate cost of \$10.00. -25

UNAPPROVED SULLY COUNTY BOARD OF COMMISSIONERS SPECIAL MEETING JUNE 17, 2015

The Board of Sully County Commissioners held a special meeting on Tues. June 17, 2015. Chairman Bill Floyd called the meeting to order. Other members present were Jerry Richards, Joe Rangan, Jerry Pulman & Beverly Zabriskie. Absent: None. Also present was State's Attorney Emily Sovell.

COMMOGR: The Board considered the 2015 Special Election. Election results are as follows:

Sully Co. Zoning Ordinance No. 2015-1 Amending Sully Co. Zoning Ordinance Section 4-201, Legally Described Parcels for Agriculture District 5

Yes	530
No	142

All interested parties are welcome to submit written comments to the Onida County Planning and Zoning Administrator, advance of the hearing or orally at the hearing. If special accommodations are necessary, please notify the Administrator at 605-259-2375 at least 24 hours prior to the scheduled hearing.

Dated this 17th day of June, 2015.

Sully County Planning and Zoning Commission
Glynis Sargent, Chairman
Janet Schmalz, Administrator

Published June 25, 2015 at the total approximate cost of \$11.00. -26

Award-winning poet to read her work in Pierre

Award-winning poet, Deborah Chambliss, will read her work in Pierre on Tuesday, June 23, at 7:00 PM. Chambliss will be reading her poetry and signing copies at the Onid Library, 101 S. Pierre St., and at the Onid CDE at the Cultural Heritage Center, 900 Colman Dr.

Chambliss will be reading her work at the Onid Library, 101 S. Pierre St., and at the Onid CDE at the Cultural Heritage Center, 900 Colman Dr. She will be reading her poetry and signing copies.

Chambliss will be reading her work at the Onid Library, 101 S. Pierre St., and at the Onid CDE at the Cultural Heritage Center, 900 Colman Dr. She will be reading her poetry and signing copies.

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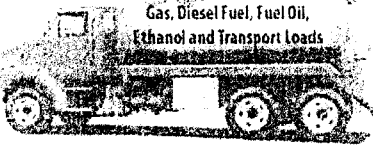
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Need Brochures? Business Cards?
We can help! Call us at the Onida Watchman for your printing needs! Call at 259-2375.

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Gary Ray
1007 Wells Avenue
Box 1003 Pierre, SD 57501
Office 605-224-4123 or 1-800-988-0704
garyray@midwestbrokers.com



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SULLY COUNTY PLANNING AND ZONING COMMISSION

D

GLYNNE SARGENT
MICHAEL OWENS
R. JOE WARNER
FRED MCQUISTION
JERRY RICHARDS



PO BOX 265
700 ASH AVENUE
ONIDA SD 57564
605.258.2575
sullygis@venturecomm.net

AGENDA

July 14, 2015 – 1:30 PM

Phoenix Center – 117 S Main St, Onida, SD 57564

1. CALL TO ORDER

~~ CONVENE AS BOARD OF ADJUSTMENT ~~

2. NEW BUSINESS

A. CONDITIONAL USE PERMIT 2015-23-CU TO ALLOW THE CONSTRUCTION AND OPERATION OF AN ETHANOL PLANT TO PRODUCE ETHANOL, DISTILLER GRAIN AND CORN OIL

Legal Description: A 42.5 acre (more or less) tract of land described as the East half of the Northeast quarter (E1/2NE1/4) lying East of the railroad right of way of Section 14,

Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota

Location: Onida Township near the intersection of 305th Avenue and 186th Street

Petitioner/Owner: Walter Wendland/Ring-Neck Energy and Feed, LLC

Parcel Size: 42.50 Acres

~~ ADJOURN AS BOARD OF ADJUSTMENT ~~

3. ADJOURNMENT

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Planning and Zoning Commission Meeting. Agenda items listed may be considered out of sequence.

[Welcome](#)

[Blog](#)

[Commission](#)

[Offices](#)

[Employment](#)

[Bids](#)

[What Else](#)

[Contact](#)

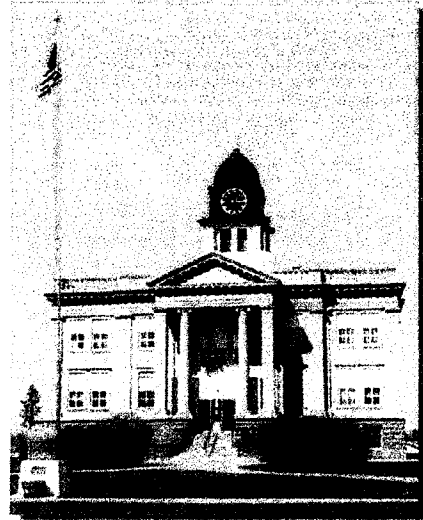
Welcome

Sully County, South Dakota, organized in 1883, is located in central South Dakota, thirty miles north from South Dakota's State Capital, Pierre. The county is named after General Alfred Sully, who built Fort Sully near the Missouri River. Sully County has two communities, Agar and Onida. Onida is the County Seat and this is where the courthouse is located.

Population (2010 Census): 1,373
Total Area: 1,070 Square Miles

Disclaimer: This website is not regularly updated or maintained and has not been adopted as the official website for Sully County, South Dakota. For information regarding upcoming meetings, please contact the Sully County Auditor's Office.

Latest Blog Posts:



Public Notices

Search past legal notices at www.sdpublicnotices.com

UNAPPROVED SULLY COUNTY PLANNING AND ZONING COMMISSION PROCEEDINGS JULY 14, 2015

CALL TO ORDER: A special meeting of the Sully County Planning and Zoning Commission was brought to order on July 14, 2015, at 1:30 p.m. by Chairman Glynnes Sargent, with members Mike Owens, Joe Warner, Fred McQuiston and County Commissioner Jerry Richards in attendance at the Phoenix Center, 117 S Main Street, Onida, SD 57564. A motion was made by Warner and seconded by McQuiston to convene as the Sully County Board of Adjustment. The motion passed unanimously.

NEW BUSINESS: Application for Conditional Use Permit 2015-23-CU by Walter Wendland (Ring-Neck Energy & Feed, LLC) to allow the construction and operation of an ethanol plant to produce ethanol, distiller grain and corn oil on property legally described as the East half of the Northeast quarter (E1/2NE1/4) lying East of the railroad right-of-way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota, containing 42.5 acres, more or less.

A motion was made by Richards and seconded by Owens to enter Exhibits 1 and 2 into the record. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

A motion was made by Owens and seconded by Warner to enter the Sully County Comprehensive Plan and the Sully County Zoning Ordinances into the record. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

A motion was made by Warner and seconded by McQuiston to enter the Notice of Hearing and list of notice letter recipients into the record. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

Attorney Adam Altman presented a procedural objection, citing SDCL 1-25-1.1. Advice regarding the matter was presented to the Board by State's Attorney Emily Sovell. A motion was made by McQuiston and seconded by Richards to proceed with evidence. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

Altman presented a procedural objection, citing SDCL 11-2-54. Advice regarding the matter was presented to the Board by Sovell. Owens stated that he had no bias, but did not want to be a source of contention or problem for the Board, so voluntarily recused himself and left the Board's table.

Altman presented a procedural objection, citing SDCL 11-2-54. Advice regarding the matter was presented to the Board by Sovell. A motion was made by Richards

and seconded by McQuiston to proceed with evidence. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

Altman presented a procedural objection, citing SDCL 11-2-17.3. Advice regarding the matter was presented to the Board by Sovell. A motion was made by Warner and seconded by McQuiston to proceed with evidence. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

Craig Smith, attorney representing the applicant, was granted one hour to present testimony to the Board. Smith called witnesses Walter Wendland and Shane Anderson to testify.

Adam Altman, attorney representing Clark Guthmiller, Dick Hyde, Steve Hyde, Dan Leonard, Jim Thibodeau, Larry Wilcox and Warren Wilson, was granted one hour to present testimony to the Board.

Individuals who submitted speaker cards were granted five minutes to present testimony to the Board. Cecil Richter, Todd Yackley, Patrick Voorhes, Tim Luken and Janet Wendland all spoke in support of approval of Conditional Use Permit 2015-23-CU. Smith and Altman were each granted fifteen minutes for rebuttal statements.

A motion was made by McQuiston and seconded by Richards to close all evidence and enter deliberations. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

The Board entered deliberations.

A motion was made by Warner and seconded by McQuiston to table Conditional Use Permit 2015-23-CU and continue deliberations at the next meeting. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

The next meeting was scheduled for July 20, 2015, at 8:00 a.m. in the Commissioners' Meeting Room located at the Sully County Courthouse.

A motion was made by McQuiston and seconded by Warner to adjourn as the Sully County Board of Adjustment. The motion passed unanimously.

ADJOURNMENT: There being no further business, a motion was made by Richards and seconded by McQuiston to adjourn the meeting. The motion passed unanimously. Meeting adjourned.

Respectfully submitted, Janet Schmahel Administrator Sully County Planning and Zoning. Published July 30, 2015 at the total approximate cost of \$47.91. -31-

LOCAL PUBLIC notices are online at www.sdpublicnotices.com, along with all South Dakota legal notices. It's a free, searchable, service provided by South Dakota Newspapers.

UNAPPROVED SULLY COUNTY PLANNING AND ZONING COMMISSION PROCEEDINGS JULY 20, 2015

CALL TO ORDER: A special meeting of the Sully County Planning and Zoning Commission was brought to order on July 20, 2015, at 6:00 a.m. by Chairman Glynnes Sargent, with members Joe Warner, Fred McQuiston and County Commissioner Jerry Richards in attendance at the Sully County Courthouse. Member absent was Mike Owens.

APPROVAL OF MINUTES: A motion was made by Richards and seconded by Warner to approve the meeting minutes of July 7, 2015, as written. The motion passed unanimously.

A motion was made by Warner and seconded by McQuiston to convene as the Sully County Board of Adjustment. The motion passed unanimously.

NEW BUSINESS: Tabled from July 14, 2015, Agenda. Application for Conditional Use Permit 2015-23-CU by Walter Wendland (Ring-Neck Energy & Feed, LLC) to allow the construction and operation of an ethanol plant to produce ethanol, distiller grain and corn oil on property legally described as the East half of the Northeast quarter (E1/2NE1/4) lying East of the railroad right-of-way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota, containing 42.5 acres, more or less.

The Board entered deliberations.

A motion was made by Richards and seconded by McQuiston to approve Conditional Use Permit 2015-23-CU with the following conditions:

a. Applicant must obtain the necessary environmental and regulatory permits and licenses, including Federal and State permits necessary to legally conduct Applicant's business, including but not limited to permits/licenses regulating: air quality, drinking water, ground water, water discharge, storm water and/or water rights permits and licenses within Applicant submission marked as Exhibit 2, Section 14.

b. Applicant shall comply with State, Local and Federal Laws for construction of an ethanol plant.

c. Applicant shall adhere to highest standards established by Law - State, Local and Federal.

d. Applicant shall keep within its site design the earthen berm of approximately four feet (4') in height, with a line of trees with an approximate height of four to six feet (4-6')

e. Applicant shall refrain from any opposition to a recommendation to the Sully County Commission that it adopt a reduced speed limit near the site.

f. Road Construction and Maintenance:

1. Applicant shall remain responsible either individually or through cooperation with the County in any combination of the funding sources set forth in Exhibit 2, Section 10, so as to ensure the Sully County budget is protected from the estimated \$1.2 million cost for road paving and to account for the truck traffic of 188th Street from US Highway 83 east to 305th Avenue, and then south to Applicant's site entrance (ex 1.2 miles). In the event that funding sources

described in Exhibit 2, Section 10 are insufficient or unobtainable, Applicant shall bear that responsibility.

2. Applicant shall not object to any recommendation to Sully County Commissioners that there be a prohibition to through truck traffic on 305th Avenue from the northerly boundary of the intersection of 188th Street to southerly intersection of Ash Avenue/185th Street.

3. Future Maintenance: That Applicant shall enter a road maintenance agreement with the Sully County Commissioners for future maintenance of 188th Street from US Highway 83 east to 305th Avenue; and then south to Applicant's site entrance to pay for chip sealing and crack sealing and general maintenance, based upon Department of Transportation (DOT) recommendations and the quantity of truck traffic to and from Applicant's facility. Said agreement shall be updated between Applicant and County every twenty-four (24) months following initial construction of the road.

A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens absent/recused. The motion passed unanimously.

A motion was made by McQuiston and seconded by Warner to adopt the Findings of Fact and Conclusions of Law as attached hereto. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens absent/recused. The motion passed unanimously.

State of South Dakota County of Sully Sully County Board of Adjustment In re: Ring-Neck Energy & Feed, LLC Application for Conditional Use Permit Applicant: Walter Wendland Company, Ring-Neck Energy & Feed, LLC Applicants

The above-captioned matter, having been properly set for hearing, was heard by the Sully County Board of Adjustment on July 14, 2015, calling to Order at 1:30 pm with the following Board Members present: Mike Owens, Glynnes Sargent, Fred McQuiston, Joe Warner and Jerry Richards. Owens recused prior to submission of evidence, but the remainder of the Board, having heard testimony and evidence, finds and concludes as follows:

FINDINGS OF FACT

1. On June 17, 2015, Ring-Neck Energy & Feed, LLC by Walter Wendland, (Applicants) made application for a Conditional Use Permit to construct and operate an ethanol plant to produce ethanol, distiller grain and corn oil.

2. That application is made pursuant to Sully County Zoning Ordinances Section 4-105, which authorizes Conditional Use Permits (CUPs) to be sought within Agricultural District A as defined by zoning ordinance for, among other things, commercial crop processing plants.

3. Applicant's site is located within Agricultural District A.

4. Adjacent property owners were notified of the CUP application and hearing: 5. On June 24, 2015, the County Planning and Zoning Administrator mailed notice of the hearing to all owners of property within two hundred feet (200') of the proposed site, as well as to other property owners deemed to have had any material interest.

6. The Notice of Hearing was published once, no

less than ten days prior to the Board of Adjustment hearing, in a newspaper of general circulation in the area affected, that publication being the Onida Watchman.

7. A hearing was held on July 14, 2015. All evidence was accepted on July 14, 2015.

8. Deliberations ensued on July 14, 2015; however, the matter was tabled and deliberation continued at the Board meeting on July 20, 2015.

9. Attorney Adam Altman appeared on behalf of opposing land owners: Dick Hyde, Steve Hyde, Clark Guthmiller, Warren Wilson, Dan Leonard, Jim Thibodeau, and Larry Wilcox.

10. Attorney Craig Smith represented the Applicants.

11. The Sully County Board of Adjustment (the Board) provided supporters and opposition the opportunity to testify and present evidence.

12. Rules of the meeting were presented to the attorneys and public. Applicant's attorney was granted one hour to present; opposing land owners' attorney was granted one hour to present; Witness proffer or testimony utilized by counsel counted against counsel's hour. Attorneys were provided 15 minutes to conclude after all comments. Members of the public who signed up to speak were provided a 5 minute time limit.

13. A number of motions were made to the Board by Adam Altman prior to evidence being presented by either side. 14. Altman asserted that the Board would be acting illegally in light of the fact that the hearing notice was not on the Sully County Website. State's Attorney Emily Sovell recited the fact that Sully County had never adopted an official website; did not have employees available to regularly update or facilitate changes on any website. The Website that contains some Sully County information has a disclaimer stating: "Disclaimer: This website is not regularly updated or maintained and has not been adopted as the official website for Sully County, South Dakota. For information regarding upcoming meetings, please contact the Sully County Auditor's Office." This disclaimer was posted prior to any notices for the hearing at issue herein. The Board motioned to proceed with evidence.

15. Altman asserted the Board had illegal procedure and substantive zoning ordinances and motioned to have the meeting stopped. The Board motioned to proceed with evidence.

16. Altman motioned that Board Member Mike Owens recuse himself. Owens reported that he did not deem himself to have any grounds for recusal, but did not want to be a source of contention or problem for the Board, and voluntarily recused himself and left the Board's table.

17. Those in favor of the CUP testified and provided evidence that the use sought by the CUP was appropriate for the subject property; provided information regarding: positive economic impact; transportation and access relating to the proximity to US Highway and proximity to nearby railroad and infrastructure; nearness to agribusinesses, such as Genex Harvest States Elevator, Oahe Grain Elevator and adjacently located Cone Ag Properties, LLC (Cone Ag).

18. The Board heard evidence and testimony relating to the issues of environmental impact, truck traffic, dust, noise and odor.

19. The Board is authorized to grant CUPs after a finding by the Board that their mode of conduct and location will not hinder the enjoyment and use of nearby properties and will not disrupt the appropriate use of land and resources of the county. Sully County Zoning Ordinance Section 4-105; 20. The Board specifically finds that the mode of conduct will not hinder the enjoyment and use of nearby properties and will not disrupt the appropriate use of land and resources of the county;

21. Conditional uses are those which are not allowed in the district as a matter of right, but which are "permitted under findings of the board that under the particular circumstances present, such use is in harmony with the principal permitted uses of the district. Allowable conditional uses are specifically listed under the district regulations. Uses not so listed shall not be allowed as conditional uses." Sully County Zoning Ordinances Section 1-102;

22. Under the particular circumstances present, the use of the subject property for processing of corn into oil, distiller grain and ethanol is "in harmony" with the principal permitted uses of the district;

23. Applicant's submission clearly shows surrounding properties around applicant's site to include: farmland, some residences located within an agricultural district; railroad track siding; tracks connecting to grain elevators to the north; and chemical and fertilizer plants;

24. Altman asserted that the proximity of the proposed ethanol plant to Onida City limits approximately 1/4 mile away, and some housing development on the outskirts of Onida City limits, should prohibit construction, referencing many of the factors in number 18, infra environmental impact, truck traffic, dust, noise and odor;

25. The Board accepted into evidence Opposition Submittal Clark Guthmiller, Et Al, from Attorney Adam Altman, Exhibit 1. The Board reviewed the submittal;

26. The Board accepted into evidence Applicant's submission entitled Ring-Neck Energy & Feed Conditional Use Permit, Exhibit 2. The Board reviewed the submittal;

27. Applicants addressed: a. Transportation and access to the proposed facility, highlighting railcar access to minimize truck traffic; facility access from County road;

b. Utility service via natural gas and electrical suppliers;

c. Accommodations for water and waste water;

d. Necessary state and federal permits;

e. Technological advances minimizing emissions and environmental impact, preserving health and safety of rural and city residents within Sully County;

28. Applicants provided preliminary diagrams addressing:

a. Access

b. Off street parking and loading areas for trucks and railcars

c. Screening and buffering to address aesthetic and environmental concerns

d. General compatibility with adjacent and nearby agricultural and agribusiness properties;

29. The positive economic impact upon the County was reviewed by Applicants, who highlighted job creation; home building potential; increased tax base; and increased population.

Continued on next page

MINUTES
SULLY COUNTY PLANNING AND ZONING COMMISSION
JULY 14, 2015

CALL TO ORDER: A special meeting of the Sully County Planning and Zoning Commission was brought to order on July 14, 2015, at 1:30 p.m. by Chairman Glynnes Sargent, with members Mike Owens, Joe Warner, Fred McQuiston and County Commissioner Jerry Richards in attendance at the Phoenix Center, 117 S Main Street, Onida, SD 57564.

A motion was made by Warner and seconded by McQuiston to convene as the Sully County Board of Adjustment. The motion passed unanimously.

NEW BUSINESS: Application for **Conditional Use Permit 2015-23-CU** by Walter Wendland (Ring-Neck Energy & Feed, LLC) to allow the construction and operation of an ethanol plant to produce ethanol, distiller grain and corn oil on property legally described as the East half of the Northeast quarter (E1/2NE1/4) lying East of the railroad right of way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota, containing 42.5 acres, more or less.

A motion was made by Richards and seconded by Owens to enter Exhibits 1 and 2 into the record. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

A motion was made by Owens and seconded by Warner to enter the Sully County Comprehensive Plan and the Sully County Zoning Ordinances into the record. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

A motion was made by Warner and seconded by McQuiston to enter the Notice of Hearing and list of notice letter recipients into the record. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

Attorney Adam Altman presented a procedural objection, citing SDCL 1-25-1.1. Advisement regarding the matter was presented to the Board by State's Attorney Emily Sovell. A motion was made by McQuiston and seconded by Richards to proceed with evidence. A roll call vote showed Sargent, Owens, Warner, McQuiston and Richards voting Aye. The motion passed unanimously.

Altman presented a procedural objection, citing perceived bias by Owens due to his position on the Oahe Grain Board of Directors. Advisement regarding the matter was presented to the Board by Sovell. Owens stated that he had no bias, but did not want to be a source of contention or problem for the Board, so voluntarily recused himself and left the Board's table.

Altman presented a procedural objection, citing SDCL 11-2-54. Advisement regarding the matter was presented to the Board by Sovell. A motion was made by Richards and seconded by McQuiston to proceed with evidence. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

Altman presented a procedural objection, citing SDCL 11-2-17.3. Advisement regarding the matter was presented to the Board by Sovell. A motion was made by Warner and seconded by McQuiston to proceed with evidence. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

Craig Smith, attorney representing the applicant, was granted one hour to present testimony to the Board. Smith called witnesses Walter Wendland and Shane Anderson to testify.

Adam Altman, attorney representing Clark Guthmiller, Dick Hyde, Steve Hyde, Dan Leonard, Jim Thibodeau, Larry Wilcox and Warren Wilson, was granted one hour to present testimony to the Board.

Individuals who submitted speaker cards were granted five minutes to present testimony to the Board. Cecil Richter, Todd Yackley, Patrick Voorhees, Tim Luken and Janet Wendland all spoke in support of approval of Conditional Use Permit 2015-23-CU.

Smith and Altman were each granted fifteen minutes for rebuttal statements.

A motion was made by McQuiston and seconded by Richards to close all evidence and enter deliberations. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

The Board entered deliberations.

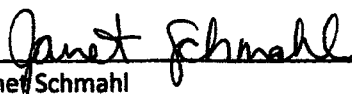
A motion was made by Warner and seconded by McQuiston to table Conditional Use Permit 2015-23-CU and continue deliberations at the next meeting. A roll call vote showed Sargent, Warner, McQuiston and Richards voting Aye, with Owens recused. The motion passed unanimously.

The next meeting was scheduled for July 20, 2015, at 8:00 a.m. in the Commissioners' Meeting Room located at the Sully County Courthouse.


A motion was made by McQuiston and seconded by Warner to adjourn as the Sully County Board of Adjustment. The motion passed unanimously.

ADJOURNMENT: There being no further business, a motion was made by Richards and seconded by McQuiston to adjourn the meeting. The motion passed unanimously. Meeting adjourned.

Respectfully submitted,



Janet Schmahl
Administrator



Glynnis Sargent
Chairman

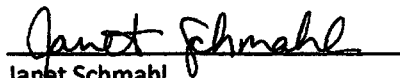
Date Approved 8/4/2015

I, Janet Schmahl, in my capacity as Sully County Planning and Zoning Administrator, do hereby make the following statement dated August 25, 2015:

Sully County Planning and Zoning Commission meeting held on February 3, 2015

- I received a petition at the Planning and Zoning Office in the Sully County Courthouse requesting a change in zoning on January 14, 2015.
- The Planning and Zoning Commission Chairman called for a public hearing regarding the zoning change at the next regular Planning and Zoning Commission meeting on February 3, 2015.
- I provided a list of abutting landowners, as well as a list of non-abutting landowners deemed to have a material interest in the matter, to the petitioning landowner on January 14, 2015.
- I created a Public Notice of Zoning Change Hearing on January 15, 2015. *Attachment A*
- I received a Certificate of Mailing from the attorney for the petitioning landowner at the Planning and Zoning Office on January 16, 2015. *Attachments B & C*
- The Public Notice of Zoning Change Hearing was published in the January 22, 2015, edition of the Onida Watchman. *Attachment D*
- I created an Agenda for the February 3, 2015, regular meeting of the Sully County Planning and Zoning Commission on January 26, 2015. *Attachment E*
- On January 27, 2015, copies of the Agenda were posted on the bulletin board outside of the Sully County Auditor's Office, in the front entry of the Sully County Courthouse where it is visible to the public 24 hours a day, and in the Planning and Zoning Office.
- The Agenda was not posted to *sullycounty.net* as the website has not been declared the official website of Sully County, Planning and Zoning Agendas have never in the past (to my knowledge) been posted on *sullycounty.net*, and *sullycounty.net* is not regularly updated or maintained.
- At the regular meeting on February 3, 2015, the Planning and Zoning Commission held a public hearing at which proponents and opponents of the zoning change petition were allowed to speak, and on that date made a recommendation to the Board of Sully County Commissioners that the petition requesting a change in zoning be adopted.
- I recorded minutes from the February 3, 2015, meeting and prepared unapproved proceedings which were published in the February 12, 2015, edition of the Onida Watchman *Attachment F*
- The February 3, 2015, minutes were approved by the Sully County Planning and Zoning Commission on March 17, 2015, and filed in the Planning and Zoning Office on that same date. *Attachment G*

Respectfully submitted,



Janet Schmahl
Sully County, South Dakota
Planning and Zoning Administrator

**PUBLIC NOTICE
ZONING CHANGE HEARING**

The Sully County Planning and Zoning Commission will hold a public hearing at 1:30 PM (CT) on Tuesday, February 3, 2015, or as soon thereafter as the matter may be heard, at the Phoenix Center, 117 S Main Street, Onida, SD 57564, to consider the following:

A request to change the zoning classification for the property legally described as "A 42.5 acre (more or less) tract of land described as the E½NE¼ lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota" from Agricultural District B to Agricultural District A.

Petitioner: Oahe Grain Corporation
 PO Box 244
 Onida SD 57564

All interested parties are welcome to give written or oral comments. If special accommodations are necessary, please notify the Sully County Planning and Zoning Administrator at (605) 258-2575 at least 24 hours prior to the scheduled meeting.

Dated this 15th day of January, 2015.

Sully County Planning and Zoning Commission
Glynnes Sargent, Chairman

CERTIFICATE OF MAILING

The undersigned, Craig E. Smith, attorney for Oahe Grain, Inc., hereby certifies that on the 16th day of January, 2015, a true and correct copy of the Notice of Public Hearing, attached hereto was mailed by certified first class mail, postage prepaid, to:

Abutting land owners:

Shane Anderson
PO Box 912
Onida SD 57564-0912

Rapid City, Pierre & Eastern Railroad, Inc.
200 Meridian Centre Blvd Ste 300
Rochester NY 14618-3972

Shane Anderson
3D Excavation
215 East Prospect Ave
Pierre, SD 57501-2530

William D Spears
PO Box 428
Pierre SD 57501-0428

Cone Ag Properties, LLC
Travis & Melissa Shaffer
PO Box 1136
Pierre SD 57501-1136

James Thibodeau
902 Redwood Ave
Onida SD 57564-2131

Clark E & Lisa M Guthmiller
800 Redwood Ave
Onida SD 57564-2123

Vetter Family Trust
31032 179th St
Onida SD 57564-6206

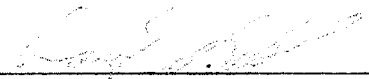
Vance S Huse Revocable Trust
Vance S Huse Trustee
PO Box 161
Onida SD 57564-0161

Warren & Sherri Wilson
1002 Redwood Ave
Onida SD 57564-2101

George W & Julie Winters
c/o William D Spears
PO Box 428
Pierre SD 57501-0428

Dated this 16th day of January, 2015.

NEUMAYR & SMITH

By: 
Craig E. Smith
Attorney for Oahe Grain, Inc.
P. O. Box 205, 105 N. Exene
Gettysburg, South Dakota 57442

CERTIFICATE OF MAILING

The undersigned, Craig E. Smith, attorney for Oahe Grain, Inc., hereby certifies that on the 16th day of January, 2015, a true and correct copy of the Notice of Public Hearing, attached hereto was mailed by certified first class mail, postage prepaid, to:

Non-abutting land owners in close proximity:

Wesley M Brick
PO Box 264
Onida SD 57564-0264

Bryan & Lynette Murphy
1011 S 8th St
Onida, SD 57564-2139

Steve Hyde Living Trust Steve Hyde
Trustee
18580 Hyde Pl
Onida SD 57564-6902

Theron Stephens
PO Box 952
Onida SD 57564-0952

David A & Kimberly A Jensen
1003 S 8th St
Onida SD 57564-2139

Patrick & Tacea Voorhees
PO Box 122
Onida SD 57564-0122

Lee & Kristin Kinney
PO Box 563
Onida SD 57564-0563

Larry Wilcox Trust
Karen Wilcox Trust
1006 S 8th St
Onida SD 57564-2103

Daniel Leonard
PO Box 954
Onida SD 57564-0954

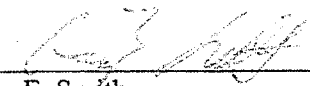
Kaleen M Wolforth
1001 S 11th St
Onida SD 57564-2162

Jean & Daniel McComsey
PO Box 496
Onida SD 57564-0496

Todd & Tanya Yackley
PO Box 321
Onida SD 57564-0321

Dated this 16th day of January, 2015.

NEUMAYR & SMITH

By: 
Craig E. Smith
Attorney for Oahe Grain, Inc.
P. O. Box 205, 105 N. Exene
Gettysburg, South Dakota 57442

Chargers record stands at 2-4

Five weeks into the 1915 basketball season, Chargers Head Coach Brian White says his team has competed well. "We've played six games to this point. We have two wins and four losses, and we've played extremely high level of competition and have competed very well. With the injuries and some of the hardships this group has gone through early in the season, and with that record, we're still here for us in our district because we've played such difficult opponents, we're hopeful at the end of the season will pay dividends for this team."

The Chargers fell short in their last of six road

games in Miller on Thursday, losing to the Mustangs 58-36.

The first quarter saw Hayden Whittle, Scott Souther, Cody Nelson, and Dominic Yackley contributing to the Chargers 9 points, with Hayden's points coming on two free throws, and Cody's on a 3 pointer. Dominic put up another 2 and Cody a 2 and a 3 in the second to bring the score at the half to 30-16 Miller.

In the third, Scott put up two more buckets, and Cody sank another 3 pointer. Brent Keller made a field goal and a free throw. The combined effort resulted in a score of 10 points to Miller's 15.

The Chargers netted 5 points in the fourth from a pair of 2's from Scott, a 2 from Cody, and a 2 from Green Hoyer.

Cody was the Chargers' lead scorer with 13, followed by Scott with 10. Dominic brought home 4 points, Brent 3, and Hayden and Green 2 each. The Chargers were 69 percent from the free throw line.

The boys will next face Hitchcock/Tulare in double header action starting at 4:30 p.m. in Onida this Friday.

	SE	Miller
Qtr1	9	13
Qtr2	7	17
Qtr3	10	18
Qtr4	8	10
Total	34	58

Girls JV squad victorious over Timber Lake and Miller

The Sully District Chargers girls basketball team met the JV squad from Timber Lake on the same court last Tuesday. The two scoring contests was a preview of the varsity match which followed.

	SE	TL
Qtr1	7	7
Qtr2	8	8
Qtr3	9	2
Qtr4	9	13
Total	33	30

In the second, the Chargers were 6-8 in free throws, with Kristen adding a 7 point first goal and later Hekker's 3.

Six points in the third came on buckets from Olivia Keesen, Lauren, and Lucy. In the fourth, Rachel and Mindy put up 3's, and Lauren and Brooklyn Bradford put up 2's. Maranda Archer and Brooklyn each scored a free throw to bring the team's fourth quarter points to 12.

	SE	Miller
Qtr1	20	8
Qtr2	17	4
Qtr3	6	2
Qtr4	12	7
Total	49	21

The Chargers' score of 33 total points on 11 free throws for a total of 35 points on the night. With 24 field throw attempts, the Chargers were at less than 50 percent from the charity stripe.

Lauren Whittle made nearly half of the team's points with 15. She was followed by Maranda Archer with 8, Mindy Barnes with 6, and Rachel Guthmiller

with 6. Against Miller, the squad again offered a preview of the varsity matchup, defeating Miller by a 41-16 margin.

Nine of the Chargers' 20 first quarter points came from Mindy Barnes, on three 3-pointers. Rachel Guthmiller scored two field goals, one of which was a 3-pointer to add five points to the first quarter score. Ashley Johnson, Lauren Whittle, and Kristen Seek added 2 points apiece.

GFP Commission adopts changes

Use of hounds when hunting mountain lions outside the Black Hills

The South Dakota Game Fish and Parks (GFP) Commission adopted a proposal originating from a petition received from the South Dakota Houndsman Association to allow the use of hounds for hunting mountain lions outside of the Black Hills Park Protection District. This new rule allows resident hunters to use hounds to pursue mountain lions westward on private land only with permission of the landowner or lessee, however hunters may continue on School and Public Lands or Bureau of Land Management lands if the pursuit originates on private property.

Licensed hunters are not allowed to harvest one mountain lion during a season and they are not allowed to harvest a lion with a spotted coat. Licensed hunters must accompany the dog handler when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

This new rule will not be effective until 20 days after filed with the Secretary of State's Office.

Commission proposes aquatic invasive species rules

The South Dakota Game Fish and Parks (GFP) Commission proposed several rules to prevent the introduction and slow the spread of existing populations of aquatic invasive species in the state.

One rule proposal would allow conservation officers to require the removal of vegetation and all aquatic invasive species from a boat and trailer, and to require all drain plugs and related devices be opened or removed from boats when being transported. Exceptions would be for entering and exiting the water, emergency response vehicles, and live wells while on lands owned, leased, controlled or managed by the Department or other government entities adjacent to the water.

Another part of the proposal would give the Department Secretary the authority to declare a body of water an aquatic invasive species containment water, describe the conditions that would necessitate this action and outline restrictions in place for that water to reduce or slow the

NOTICE OF PUBLIC HEARING ON APPLICATION FOR TRANSFER OF ALCOHOLIC BEVERAGE LICENSE

NOTICE IS HEREBY GIVEN THAT the Board of County Commissioners in and for the County of Sully in the City of Onida, South Dakota on the 3rd day of February, 2015 at the hour of 11:00 AM in the Commissioners room at the County Courthouse, will meet in session to consider the following application for the transfer of Retail off sale Malt Beverage License to operate outside a municipality for the 2014-2015 licensing period which has been presented to the Board of County Commissioners and is on file in the County Auditor's Office.

Transfer from MTCM Corporation dba The Corner to Cousins Corner Inc dba The Corner PO Box 903 Onida SD 57564.

NOTICE IS FURTHER GIVEN THAT any person, persons or their attorneys may appear at and schedule public hearing and present objections to the above application if any objections there be.

Dated at Onida, South Dakota this 20th day of January, 2015.

Patty McGee Sully County Auditor
Published January 22, 2015 at a total approximate cost of \$12.28. -4

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NOTICE OF VACANCY MUNICIPALITY OF ONIDA

The following offices will become vacant due to the expiration of the present term of office of the elective officers:

Ward I- 2 year term Don Goddard
Ward II- 2 year term Bob Porter
Ward III- 2 year term Linda Knox
Mayor- 2 year term Gary Wickersham

Circulation of nominating petitions may begin on January 30, 2015 and petitions may be filed in the office of the Finance Officer located at 117 South Main between the hours of 8 a.m. and 5 p.m. (CST) no later than the 27th day of February, 2015.

Ronda Hiller
City Finance Officer
Published 1-15-2015 and 1-22-2015 at a total approximate cost of \$14.74. 3-4

NOTICE OF BIDS AIRPORT LIABILITY INSURANCE CITY OF ONIDA

The City of Onida is asking for bids on Liability Insurance for the Onida Airport.

Bids will be opened at the February 2, 2015 City Council Meeting at 8:00 p.m.

For more information call the Onida City Office at 605-258-2441.

Ronda Hiller
Finance Officer
City of Onida
Published January 15th and 22, 2015 at a total approximate cost of \$9.82. 3-4

PUBLIC NOTICE ZONING CHANGE HEARING

The Sully County Planning and Zoning Commission will hold a public hearing at 1:30 PM (CST) on Tuesday, February 3, 2015, or as soon thereafter as the matter may be heard at the Phoenix Center 117 S Main Street, Onida, SD 57564, to consider the following:

A request to change the zoning classification for the property legally described as A 42.5 acre (more or less) tract of land described as the E1/4NE1/4 lying East of the Railroad Right of Way of Section 14 Township 114 North Range 77 West of the 5th P.M. Sully County, South Dakota, from Agricultural District B to Agricultural District A.

Petitioner: Oahe Grain Corporation
PO Box 244
Onida SD 57564

All interested parties are welcome to give written or oral comments. If special accommodations are necessary please notify the Sully County Planning and Zoning Administrator at (605) 258-2575 at least 24 hours prior to the scheduled meeting.

Dated this 15th day of January, 2015.

Sully County Planning and Zoning Commission
Glynnes Sargent, Chairman
Published January 22, 2015 at a total approximate cost of \$12.28. -4

NOTICE OF BIDS LIABILITY INSURANCE CITY OF ONIDA

The City of Onida is asking for bids on Liability Insurance for the City of Onida S.D.

Bids will be opened at the February 2, 2015 City Council meeting at 8:00 p.m.

For more information, call the Onida City Office at 605-258-2441.

Ronda Hiller
Finance Officer
City of Onida
Published January 15th and 22, 2015 at a total approximate cost of \$9.32. 3-4

commission/default.aspx. Written comments on proposals can be sent to 523 E. Capitol Ave., Pierre, S.D. 57501, or emailed to wildinfo@state.sd.us. To be included in the public record, comments must be received by 12 p.m. CST on March 5, and have your full name and city of residence.

Licenses for special buck season

The South Dakota Game Fish and Parks (GFP) Commission adopted the number of 2015 special buck licenses.

The number of resident licenses available for the West River deer season is 500. There are also 500 nonresident licenses avail-

able for West River. The number of resident-only licenses for the East River deer season is 550.

For more information on this hunting season please visit: <http://gfp.sd.gov/hunting/big-game/deer/special-buck.aspx>

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SULLY COUNTY PLANNING AND ZONING COMMISSION

GLYNNE SARGENT
MICHAEL OWENS
R. JOE WARNER
FRED MCQUISTION
JERRY RICHARDS



PO BOX 265
700 ASH AVENUE
ONIDA SD 57564
605.258.2575
sullygis@venturecomm.net

AGENDA

February 3, 2015 – 11:00 AM
Sully County Courthouse/Phoenix Center

1. CALL TO ORDER

2. APPROVAL OF MINUTES – December 30, 2014

3. ACTION ITEMS

A. **PLAT OF THOMAS TRACT 1, A SUBDIVISION OF THE SW1/4 OF SECTION 23,
TOWNSHIP 114 NORTH, RANGE 79 WEST**

Location: Okobojo Township near the intersection of 291st Avenue and 188th Street

Petitioner/Owner: Thomas Ranch

Parcel Size: 26.71 Acres

B. **PLAT OF LEESMAN TRACT 1, A SUBDIVISION OF THE NW1/4 OF SECTION 22,
TOWNSHIP 113 NORTH, RANGE 75 WEST**

Location: Lake Township near the intersection of 315th Avenue and 193rd Street

Petitioner/Owner: Rickey and Barbara Leesman

Parcel Size: 122.0 Acres

4. OTHER BUSINESS

A. Report on Permit Fee totals for 2014

B. Discuss date and time for next meeting

C. Explanation of process for zoning change hearing

D. Any other matters to come before the Commission

**** Meeting relocated to Phoenix Center, 117 S Main St, Onida, SD, 57564 – 1:30 PM ****

5. NEW BUSINESS

A. PETITION TO REZONE A PARCEL OF LAND FROM "AGRICULTURE DISTRICT B" TO "AGRICULTURE DISTRICT A"

Legal Description: A 42.5 acre (more or less) tract of land described as the E1/2NE1/4 lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota

Location: Onida Township near the intersection of 305th Avenue and 182nd Street

Petitioner/Owner: Oahe Grain Corporation

Parcel Size: 42.5 Acres

6. ADJOURNMENT

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Planning and Zoning Commission Meeting. Agenda items listed may be considered out of sequence.

MINUTES
SULLY COUNTY PLANNING AND ZONING COMMISSION
February 3, 2015

CALL TO ORDER: The regular meeting of the Sully County Planning and Zoning Commission was brought to order on February 3, 2015, at 11:00 a.m. by Chairman Glynn Sargent, with members Mike Owens, Joe Warner, and Fred McQuiston in attendance at the Sully County Courthouse. Member absent was County Commissioner Jerry Richards.

APPROVAL OF MINUTES: A motion was made by Warner and seconded by McQuiston to approve the meeting minutes of December 30, 2014, as written. The motion passed unanimously.

ACTION ITEMS:

A. A plat of **Thomas Tract 1**, a subdivision of the SW1/4 of Section 23, Township 114 North, Range 79 West was reviewed by the Commission. A motion was made by McQuiston and seconded by Warner to recommend to the Board of Sully County Commissioners that the plat of Thomas Tract 1 be approved. The motion passed unanimously.

B. A plat of **Leesman Tract 1**, a subdivision of the NW1/4 of Section 22, Township 113 North, Range 75 West was reviewed by the Commission. A motion was made by Warner and seconded by Owens to recommend to the Board of Sully County Commissioners that the plat of Leesman Tract 1 be approved. The motion passed unanimously.

OTHER BUSINESS:

A. Administrator Janet Schmahl gave a report on the permit and application fee totals that have been collected since the fee schedule became effective on March 1, 2014.

B. Possible dates for the next regular meeting were discussed, with a tentative meeting date set for April 7, 2015.

C. Commission members were provided with the written comments submitted as exhibits prior to the zoning change hearing scheduled for 1:30 p.m. The Planning and Zoning Commission then joined the Board of County Commissioners in the Commissioners' Meeting Room for a presentation by Sully County State's Attorney Emily Sovell on the required procedure for the zoning change petition submitted by Oahe Grain Corporation.

A motion was made by Owens and seconded by Warner to break for lunch and reconvene at the Phoenix Center, 117 S Main St, Onida, SD, at 1:30 p.m. for the zoning change hearing. The motion passed unanimously.

Chairman Glynn Sargent brought the regular meeting of the Sully County Planning and Zoning Commission to order at 1:30 p.m. at the Phoenix Center, with members Mike Owens, Joe Warner, Fred McQuiston and County Commissioner Jerry Richards in attendance. A motion was made by Warner and seconded by Owens to reconvene the Planning and Zoning Commission meeting. The motion passed unanimously.

NEW BUSINESS: Petition for a change in zoning from Agriculture District B to Agriculture District A on the property legally described as "A 42.5 acre (more or less) tract of land described as the E1/2NE1/4 lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota" submitted by Oahe Grain Corporation.

Sully County State's Attorney Emily Sovell explained to those in attendance the zoning change process. Sargent invited Craig Smith, attorney for the petitioner, to speak for up to one total hour regarding the requested zoning change. Smith emphasized that Oahe Grain Corporation's request for a zoning change is to offer a better market for their shareholders by developing the property for agricultural purposes. Sargent explained that those who had filled out speaker cards would be called to the podium to speak for a maximum of five minutes and invited testimony. Clark Guthmiller spoke in opposition to the property as the site of a proposed ethanol plant, expressing concerns about traffic and particulate matter near a residential area. Tim Luken and Kent Kinkler both spoke as proponents of the zoning change, citing railroad infrastructure and future expansion as positives. Pat Voorhees expressed the desire to see potential structures on the property evaluated on a case by case basis. Milt Handcock spoke in favor of the proposed change for the future of the agriculture industry. Brian Ring supported the zoning change in order to provide development options for the future.

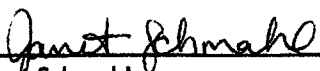
Sargent offered Smith the opportunity to give rebuttal testimony. Smith reiterated the importance of agricultural development and the importance of the assets available in the community. Chris Schwarc urged the Commission to make the zoning change so that future opportunities aren't lost. Ed Eller expressed concern over "dead zones" of land that might be created without the zoning change. Walt Wendland stated that the proposed ethanol plant is required to have the best available technology to eliminate emissions.

Sargent invited Smith to make a final statement. Smith asked that the zoning be changed as proposed. Being no further testimony, a motion was made by Owens and seconded by Richards to conclude the presentation of evidence. The motion passed unanimously.

The Planning and Zoning Commission reviewed exhibits 1-9 and deliberated the evidence presented. A motion was made by Owens and seconded by Warner to recommend to the Board of Sully County Commissioners that the petition to change the zoning of the parcel of land described as "A 42.5 acre (more or less) tract of land described as the E1/2NE1/4 lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota" submitted by Oahe Grain Corporation be adopted and to amend Section 4-201 of the Sully County Zoning Ordinances to except out that legal description. Sargent asked for a roll call vote on the motion. Owens – Aye, Warner – Aye, McQuiston – Aye, Richards – Aye. The motion passed unanimously.

ADJOURNMENT: There being no further business, a motion was made by McQuiston and seconded by Owens to adjourn the meeting. The motion passed unanimously. Meeting adjourned.

Respectfully submitted,



Janet Schmahl
Administrator



Glynnés Sargent
Chairman

Date Approved 3/17/2015

Susan B. Lamb
Sully County Auditor

Information regarding Sully County Commissioners' special meeting held on February 26, 2015

I prepared an agenda for the special meeting. *(Copy attached)*

I then emailed or mailed the agenda to the Sully County Commissioners and States Attorney.

I posted the agenda on the bulletin board outside of the Sully County Auditor's office as well as in the front entry of the Sully County courthouse which is visible to the public 24 hours a day.

Copies of the agenda were also on display on the counter in the Sully County Auditor's office.

Following the meeting, the minutes were prepared from the meeting and emailed or mailed them to the Sully County Commissioners and States Attorney.

I then sent the minutes by email to the Onida Watchman, which was designated as the official newspaper at the January 6, 2015, Sully County Commissioners' meeting. These minutes were then published in the March 5, 2015 edition of the Onida Watchman. *(Copy attached)*

Minutes were also kept on file in the Sully County Auditor's office.

Information regarding Sully County Commissioners' meeting held on March 24, 2015

I prepared an agenda for the special meeting. *(Copy attached.)*

I then emailed or mailed the agenda to the Sully County Commissioners and States Attorney.

I posted the agenda on the bulletin board outside of the Sully County Auditor's office as well as in the front entry of the Sully County courthouse which is visible to the public 24 hours a day.

Copies of the agenda were also on display on the counter in the Sully County Auditor's office.

Following the meeting, the minutes were prepared from the meeting and mailed or emailed them to the Sully County Commissioners and States Attorney.

I then sent the minutes by email to the Onida Watchman, which was designated as the official newspaper at the January 6, 2015, Sully County Commissioners' meeting. These minutes were then published in the April 2, 2015 edition of the Onida Watchman. *(Copy attached)*

Minutes were also kept on file in the Sully County Auditor's office.

Website Information

To the best of my knowledge when the sullycounty.net website was first created there were agendas and minutes posted on it for a short period of time. However, following numerous issues with being unable to access and update the information, posting was discontinued. Following the February 26, 2015, Special Meeting, a disclaimer was placed on the website stating that it would not be regularly updated or maintained.

*Susan B. Lamb
Aug 26, 2015*

Public Notices

Legal notices protect your right to know

UNAPPROVED PROCEEDINGS OF SULLY COUNTY BOARD OF COMMISSIONERS January 6, 2015

The Board of Sully County Commissioners held the first regular meeting in 2015 on Tues Jan 6, 2015 at 8:30 AM with members William Floyd, Jerry Richards, Judith Pullman, Beverly Zebroski & Joe Fanger present. Absent: none.

Clerk of Court Nola LaRosh gave the oath of office to re-elected Commissioners William Floyd, Comr Dist 1, Judith Pullman, Comr Dist 3 & Joe Fanger, Comr Dist 5, Bill Stani, Sheriff & Peggy Johnson, Register of Deeds.

ORGANIZATION OF BOARD: The next item of business was the selection of Chairman and Vice-Chairman for 2015. Aud McGee called for a motion for Chmn of the Board for 2015. Comr Fanger nominated William Floyd to serve as Chmn. Second: Zebroski. Unanimous vote aye. Chmn Floyd called for a motion for Vice Chmn. Moved by Fanger, to nominate Pullman as Vice Chmn. Comr Zebroski, moved to nominate Richards as Vice Chmn. Moved by Fanger, seconded by Floyd that nominations cease. Unanimous vote aye. Vote held on nominations. Comr Richards was elected as Vice Chmn.

LEGAL: States Atiny Sovell met with the Bd regarding legal issues. Aud McGee noted that there was no contact from Alan Gross about the mtg time scheduled with the Bd regarding an application for an approach permit.

APPOINTMENTS: Bd appointments were reviewed. Moved by Fanger, seconded by Pullman to make the following appointments. Unanimous vote aye. Library Bd- Mary Jean Lohmeim to a 3 yr term; 4-H Advisory Bd -Michelle Kleven & Jane Brehe to a 1 yr terms; Weed & Pest-Curt Rodewig to a 3 yr term & Comr Fanger to a 1 yr term; Planning & Zoning-Glynnes Sargent to a 5 yr term & Comr Richards to a 1 yr term; Mental Illness Bd-Susan Lamb-3 yr term; County Fair-Comr Zebroski to a 1 yr term; County Airport-Comr Richards to a 1 yr term; Health Ins-Comr Floyd & Susan Lamb 1 yr terms; Railroad Authority-Comr Floyd to a 1 yr term; Central SD Enhancement Dist-Comr Zebroski & Pullman to 1 yr terms; Legislative Contact-Comr Floyd to a 1 yr term & Personnel Policy Handbook Committee to a 1 yr term-Comr Fanger & Comr Pullman. Rory Mennenger, J J Schall; Susan Lamb & Terry Wolfarth.

RESOLUTION 2015-1: Moved by Pullman, seconded by Richards to approve Resolution 2015-1 regarding burial assistance. Unanimous vote aye.
RESOLUTION 2015-1 BURIAL AND FUNERAL ASSISTANCE
For those County residents who die in a state of indigence or who are otherwise qualified under SDCL 28-17
BE IT RESOLVED Sully County shall allow burial and funeral expenses as follows:
1. Funeral--- 3000.00
2. Liner if required--- Included in funeral cost
3. Cremation--- 2000.00
4. No mileage allowed
Any requests for County burial assistance shall be made

prior to the services, whenever practical. It shall be the duty of the Commissioner in whose district the decedent had established residency to determine if the resident was indigent at the time of death if it is not possible for the entire Board to meet prior to the time of the interment.

BE IT RESOLVED that the Sully County Commissioners will follow all guidelines set out in Sully County's Welfare Guidelines for burial assistance as per Appendix D of the Welfare Guidelines for Sully County.

BE IT FURTHER RESOLVED, these amounts shall be for the year 2015.

Commissioner Zebroski moved to adopt the resolution and Commissioner Richards seconded the motion.

VOTING AYE
s/Judy Pullman
s/Joe Fanger
s/Jerry B Richards
s/Beverly Zebroski
s/William Floyd
VOTING NAY None
ABSENT AND NOT VOTING None

Motion passed and resolution adopted this 6th day of January, 2015.

ATTEST: (Seal)
s/Patty McGee
Patty McGee, Auditor

RESOLUTION 2015-2: Moved by Fanger, seconded by Pullman to approve Resolution 2015-2. Unanimous vote aye.
RESOLUTION 2015-2 CLAIMS

WHEREAS certain entities require the payment of funds by the 15th day of each month or payment within a certain time frame

WHEREAS many of these claims are received after the Board of Commissioners' monthly meeting and

WHEREAS interest or a penalty might apply if these claims are not paid within the specified time,
NOW THEREFORE BE IT RESOLVED the County Auditor is hereby given the authority to pay such claims without the Commissioners' approval providing the claims are presented at the next regular meeting of the Board of County Commissioners.

Commissioner Fanger moved to adopt the resolution and Commissioner Pullman seconded the motion.

VOTING AYE
s/Beverly Zebroski
s/Jerry B Richards
s/Judy Pullman
s/Joe Fanger
s/William Floyd
VOTING NAY None
ABSENT AND NOT VOTING None

Motion passed and resolution adopted this 6th day of January, 2015.

ATTEST: (Seal)
s/Patty McGee
Patty McGee, Auditor

RESOLUTION 2015-3: Moved by Pullman, seconded by Zebroski to adopt Resolution 2015-3, a resolution for travel & conference. Motion carried 4-1 with Fanger casting the nay vote.

RESOLUTION 2015-3 TRAVEL & CONFERENCE
WHEREAS County Commissioners, County Highway Superintendents, County Auditors, County Treasurers, Registers of Deeds, State's Attorneys, Sheriffs, County Assessing Officers and County Coroners are hereby authorized to attend educational conferences, meetings and conventions held and conducted within or with-

out the State of South Dakota pertaining to the betterment and advancement of County government per statute SDCL 7-7-25, and

WHEREAS it is necessary that a resolution be passed authorizing attendance of such meetings and payment of expenditures to said meetings and workshops, and

WHEREAS the Sully County Board of Commissioners set the mileage and conference expense for the county offices,

NOW THEREFORE BE IT RESOLVED Sully County will pay up to \$20.00 per day for meals. Meals are reimbursed at \$5.00 for breakfast (leaving before 5:30 AM), \$9.00 for lunch (leaving before 11:30 AM), and \$12.00 for dinner (leaving before 5:30 PM-returning after 8:00 PM). No meals will be paid for meetings attended in Onida. Mileage will be set at 37 cents per mile, which follows state rate. Motel rooms will be paid at actual cost.

BE IT FURTHER RESOLVED this resolution becomes effective immediately and voids all prior actions.
Commissioner Pullman moved to adopt the resolution and Commissioner Zebroski seconded the motion.

VOTING AYE
s/Beverly Zebroski
s/Joe Fanger
s/Jerry B Richards
s/Judy Pullman
s/William Floyd
VOTING NAY None
ABSENT AND NOT VOTING None

Motion passed and resolution adopted this 6th day of January, 2015.
ATTEST: (Seal)
s/Patty McGee
Patty McGee, Auditor

PRORATED INTEREST POLICY: Moved by Zebroski, seconded by Fanger to adopt a policy to prorate interest earned to Co funds with a 1000.00 or more balance on a monthly basis in 2015 which is more accurate for the interest to each fund instead of prorating it at year end. Unanimous vote aye.

OFFICIAL NEWSPAPER: Moved by Richards, seconded by Fanger to designate the Onida Watchman as the official newspaper for Sully Co in 2015. Unanimous vote aye.
OFFICIAL PLACES OF SALE IN 2015: Moved by Zebroski, seconded by Pullman to designate the front steps of the Ctse, the Onida Co Shop, the Agar Shop & the Floyd Shop as official places of sale for Sully Co. Unanimous vote aye.

DEPARTMENT PURCHASE POLICY: There being no change from 2014 it was moved by Fanger, seconded by Zebroski that prior approval is needed from the Board of Co Commissioners in 2015 by the Dept Head, for the purchase of any item costing 1500.00 or more by the Highway Dept & any item 500.00 or more by all other depts. Unanimous vote aye.
BANK DEPOSITORIES: Moved by Richards, seconded by Floyd to designate BankWest & Sunrise Bank as official depositories for Sully County in 2015. Unanimous vote aye.

FEES: Moved by Pullman, seconded by Fanger to adopt a policy for all fees collected by each Co Dept to be remitted to the County Treasurer on or before the 10th day of each succeeding month with a copy of the record of all fees collected for the calendar month. Unanimous vote aye.
BROSZ ENGINEERING: Scott Schweitzer, PE, met with the Bd to discuss the bridge over Medicine Knoll. Highway Supt Wolfarth was also in attendance. This bridge is up

for replacement in 2016. Schweitzer answered questions the Bd had regarding the bridge replacement re costs associated with the replacement, the bridge program & other options the Bd may have regarding this bridge. Bd advised Schweitzer to go ahead with the hydraulics engineering for the bridge replacement.

HIGHWAY: Highway Supt Wolfarth went over misc highway business with the Bd. Supt Wolfarth noted that all highway employees will be attending the mandatory MSHAW mtg in Pierre Jan 7th at the Ramkota in Pierre.

WEED & PEST: Paula Barber, Weed & Pest Supervisor, met with the Bd to discuss relocating the Weed & Pest office. Custodian, Sheila Ring was also present. Barber advised the Bd that she would like to relocate the Weed & Pest office to the Ctse. Several space options available at the Ctse were discussed. Bd approved Barber's request & advised her to work with custodian Sheila Ring. Barber also gave the Bd an update regarding the prairie dog control done in Dec.

CLAIMS: Moved by Fanger, seconded by Pullman to approve the following claims. Unanimous vote aye. A & B Business, Inc 92.86 Supl, Ager Town 264.00 Util, AT&T Mobility 50.09 Util, Barber Farm Service Inc 49.97 Supl, Butler Machine Co Inc 841.36 Supl, Capital One Bank 2592.12 Supl & Equip, Central SD Enhancement Dist 5396.96 Dues, Century Business Products Inc 188.74 Supl, Connecting Point/Ultra Inc 419.00 Repr & Maint, Digital-Ally 4620.00 Equip, Don's Food Center 31.30 Supl, Farnam Genuine Parts, Inc 71.16 Supl, Bill Floyd 75.00 Rent, Galls, LLC 199.99 Supl, Innams Water Technologies 58.60 Rent & Supt, JC Office Supplies 12.64 Supl, Kansas State Bank 36422.99 Lease Pmt, Lamb Chevrolet & Implement, Inc 402.14 Repr & Maint, Lamb Discount Supply 361.82 Supl, Matheo Bender & Co Inc 66.04 Supl, Mid-Dakota Rural Water System 74.00 Util, Missourri River Tourism 500.00 Approp, NACO-Natl Assoc of Counties 450.00 2015 Dues, Disbursing Officer Crane Div 600.00 Rent, PCS Mobile 859.32 Equip, Running Farms & Fleet 70.95 Supl, SD Assoc of Assessing Officers 55.00 Dues, SD Assoc of Co Commissioners 692.22 Dues, SD Assoc of Co Highway Supt 225.00 T&C, SD Public Assurance Alliance 40004.06 Ins, SD Sheriffs Association 391.19 Dues, SD States Atiny Association 631.00 Dues, SDML Workers' Compensation Fund 25600.00 Work Comp, Servalt Uniform/Linen Co 158.68 Rent, State Treasurer 600.00 Prof Serv, Tyler Technologies 3420.78 Prof Serv, Vanguard Appraisals, Inc 5160.00 Prof Serv, Verizon Wireless 507.13 Util, Western Communications Inc 827.20 Equip, Repr & Maint, Zuercher Technology 21874.13 Prof Serv.

INTERGOVERNMENTAL CONTRACT: The Bd gave authorization to Chmn Floyd to sign an intergovernmental contract for the South Dakota Public Assurance Alliance to form a local government risk pool for Co Ins.

GENERAL FUND CASH BALANCE REPORT: Aud McGee presented the General Fund Surplus Analysis for the Co as of Dec, 2014 for Bd review. The unreserved, undesignated fund balance, in the general fund may not exceed forty percent of the total amount of all general fund

appropriations contained in the budget for the next fiscal yr. Sully Co's analysis as of Dec 31, 2014 shows a 20.87% fund balance percentage. Moved by Zebroski, seconded by Fanger to approve the report. Unanimous vote aye.

AUDITORS ACCOUNT WITH THE TREASURER AS OF 12/31/14

Cash on Hand	500.00
Checks on Hand	5,709.44
NSF Checks	0
Cash Items	0
Sunrise Bank Dakota NOW	2,036.19
Sunrise Bank Dakota MMDA	1,232,931.49
BankWest Checking	4,598.46
BankWest MMDA	1,524.79
INVESTMENTS	
Sunrise Bank Dakota	1,098,063.08
BankWest	
Total Cash Balance	2,345,383.44
Total Assets in Custody of County as of 12/31/14	1,878,175.25
County Amount	82,281.59
Amounts Held For Other Gov	
Amounts Held For Others	384,926.60
Total Assets	2,345,383.44

ADJOURNMENT: There being no further business, Chairman Floyd declared the mtg adjourned.
Patty McGee, Sully County Auditor
Approved
Signed by: William Floyd, Chairman
Published January 15th, 2015 at a total approximate cost of \$118.42. -3

MID-DAKOTA RURAL WATER SYSTEM, INC.

Miller, South Dakota
C462430-05
DATE 1/12/15

CATEGORICAL EXCLUSION DETERMINATION

FOR THE PROPOSED PROJECT WITHIN THE MID-DAKOTA RURAL WATER SYSTEM, INC. DISTRIBUTION SYSTEM, SOUTH DAKOTA

The South Dakota Department of Environment and Natural Resources (DENR) conducted a review of a proposal for the Mid-Dakota Rural Water System for a project to install an automatic meter reading and water management system.

The project involves installation of a meter transmission unit (MTU) on existing water meters. Antennas will be constructed throughout the service area or installed on existing water towers to collect the meter readings transmitted by radio signal from the MTUs and relay the readings to the base station located at the Mid-Dakota office. This project will increase efficiency and allow closer monitoring of the system.

The Mid-Dakota Rural Water System, Inc. was awarded a \$2,535,000 Drinking Water State Revolving Fund (SRF) loan on January 8, 2015. The loan has a rate of 3 percent and a term of up to 15 years. Repayment of the SRF loan will be with Mid-Dakota Rural Water System revenues. Current rates are \$66.65 per month based on 7,000 gallons of water usage.

Listed below are the reasons for granting a categorical exclusion:

1. The project involves replacement of flow monitoring equipment within the developed portion of the Mid-Dakota Rural Water System.

2. No comments requiring mitigative action were received from the South Dakota State Historic Preservation Office, South Dakota Department of Game, Fish and Parks, United

States Department of Interior, United States Army Corps of Engineers, Natural Resource Conservation Service, or through the public participation process.

The proposed action does not involve any serious local objections nor does it meet any of the criteria for not granting a categorical exclusion as specified in [Section 6.505(c) (i) through (iii) of 40 CFR Part 6, Subpart E].

The planning area is located within the Mid-Dakota Rural Water System. The meter reading and water management system project will not affect any historical or archaeological resources. The flow monitoring equipment and management system should have no adverse effects on plant life or wildlife. No other environmentally sensitive issues have been identified in the planning of this project.

The review process did not indicate that significant environmental impacts would result from the proposed projects. Consequently, a preliminary decision not to prepare an EIS has been made. This action is taken on the basis of a careful review of the engineering report, environmental information documents, correspondence with responsible governmental agencies and other supporting data which are on file at the Division of Financial and Technical Assistance, Water and Waste Funding Program, DENR, Pierre, South Dakota, and are available for public scrutiny at the Mid-Dakota Rural Water System office in Miller, South Dakota.

Comments supporting or disagreeing with this decision may be submitted for consideration by DENR after publication of the Categorical Exclusion Determination. After reviewing the comments received, DENR will make a final decision. Michael Perlovich, Administrator
Water and Waste Funding Program
Published once at an approximate cost of \$34.12. -3

SPECIAL MEETING CITY OF ONIDA 01/07/2015

The Onida City Council met on January 7th, 2015 at 7:00 p.m. to interview applicants for the City of Onida's open position. The meeting was called to order by Mayor Gary Wickersham presiding. Present at Roll Call: Barbara Rilling, Maria Mosiman, Bob Porter and Don Goddard.

Two candidates were interviewed for the job position. After interviews were completed, motion was made by Mosiman seconded by Porter to hire Isaac LaLonde at a starting wage of \$12.00 an hour plus health insurance and retirement. Roll Call: All ayes. Motion carried.

Also discussed was garbage collection for Buhler Farms and LaRosh Farms. The decision made was that we will pick up garbage at the cost of \$69.50 per dumpster plus \$4.00 per mile in which the mileage charge will be split between the two farms at 2/3 to Buhler and 1/3 to LaRosh. Garbage will be picked up on an on call basis from either party at which time, all dumpsters will be emptied.

Motion to adjourn meeting at 8:10 p.m. made by Rilling seconded by Mosiman. All ayes. Motion carried.

Gary Wickersham, Mayor
Ronda Hiller, Finance Officer
Published January 15th, 2015 at the total approximate cost of \$11.30. -3

**SULLY COUNTY BOARD OF COMMISSIONERS
PROPOSED SPECIAL MEETING AGENDA
FEBRUARY 26, 2015
9:30 AM**

**COMMISSIONERS MEETING ROOM
SULLY COUNTY COURTHOUSE**

**Bill Floyd, Chairman
Beverly Zebroski, Commissioner
Joe Fanger, Commissioner**

**Jerry Richards, Vice Chairman
Judy Pullman, Commissioner**

9:30 AM Call meeting to order

9:30 AM Emily Sovell, States Attorney
Legal matters

9:30 AM Review recommendation from Planning & Zoning Board for zoning change
going from agriculture district B to agriculture district A – Oahe Grain petition

9:45 AM Striping agreement

10:00 AM Adjournment

Sully County fully subscribes to the Americans with Disabilities Act. If you desire to attend this public meeting and are in need of special accommodations, please notify the County Auditor's office at least twenty-four (24) hours prior to the day of the meeting so that appropriate services are available. For more information call 605-258-2541.

Sully County Citizens wanting to discuss or express concerns to the Commission on any issue not on the agenda can do so by calling the Auditor's office to schedule a suitable time on the agenda calendar. Action by the Board will not be taken at the meeting on any issue that is not on the agenda

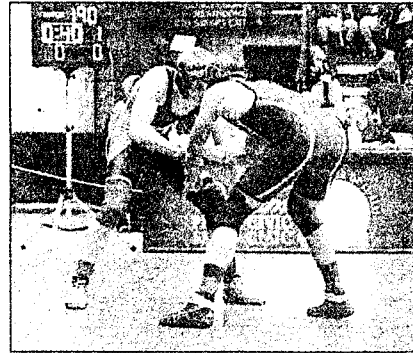
Wrestlers gain experience at State B tourney

Sully Buttes advanced two wrestlers from regional competition to the State B Wrestling Tournament last Friday - Saturday in Rapid City. The Chargers competed this weekend against the best wrestlers in the state. We brought two wrestlers, but neither placed at the tournament. Both of our wrestlers had tough draws and the experience that these two wrestlers gained is invaluable. I am excited that both of these wrestlers will be back next year and I am excited to use the state tournament as momentum to train hard in the off season and reach for higher goals next year.

In 138 pound wrestler Brady Hill's first bout, he was pinned by Kyle Fowler of Elk Point Jefferson at 1:12. Brady pinned his first wrestle back opponent, Alex Dulje of Sioux Valley at 3:53, but lost his third

match to Dawson Semmler of Parkston by major decision 10-2, and was eliminated from the tournament.

Taking on opponents in the 170 pound bracket, Travis Hill was pinned in his first match by Wes Dvorak of Parkston at 6:26.



Travis Hill, left

Travis fell to Cooper Baboun of Redfield-Doland by decision 8-4, and was eliminated from the tournament.

"Looking back on the season, we had many wrestlers step up this year and improve throughout the season. We had new faces in the room and we had challenges to overcome everyday with sickness and injuries. The wrestlers did a great job persevering



Brady Hill, right



Coaches Fergen and Meyer

through the long season and they are excited for last year. We're all looking forward to working out in the new wrestling room next year, and another year

of growing as a team. We will miss Cordell Ring next year; I am proud of how much he improved in the past two years."

Every wrestler on the team had the most variety wins in a season in their wrestling careers by the time the year was over which is an amazing accomplishment.

Public Notices

Search past legal notices at www.sdpublicnotices.com

UNAPPROVED SULLY COUNTY BOARD OF COMMISSIONERS SPECIAL MEETING FEBRUARY 26, 2015

The Board of Sully County Commissioners held a special mtg on Thurs, Feb 26, 2015. Chairman Bill Floyd called the meeting to order. Other members present: Jerry Richards, Judy Pullman & Beverly Zebroski. Joe Fanger joined the mtg by telephone. Also in attendance were Warren Wilson, Tim Luken, Mark Barber, Ed Eller, Craig Smith, Clark Guttmiller, Marleen Tilberg, Greg Lorenz, Lance Nixon, Patty McGee, Susan Lamb, Janet Schmahl-GIS/Planning & Zoning Director, & Emily Sovell, Sully County States Attorney.

Sovell read aloud a letter received by the Auditor's office addressed to the Chairman of the Board alleging that the County failed to meet the requirement of posting the mtg notice for the February 26th mtg on a county website. The letter was received approximately one hour before the mtg. Sovell explained that SDCL 1-25-1.1 requires posting of public notices on a public body's website only if such a website exists. The following factors were discussed and considered: The County does not have a website that is regularly updated; there is a website that lists county office contact information, ordinance information and other data, which was created by an employee of the sheriff's office outside of his role with the sheriff's department, the website is not stated anywhere as an official website for the County; the website has not been updated or maintained at the direction of any County official; the notices for the current mtg were properly published in the newspaper and the agenda was posted in more than one conspicuous location for the public to see inside of and outside of the courthouse, Marleen Tilberg, Editor of the Onida Watchman, reported that the mtg notice was posted on SDpublicnotices.com; No County website has been updated in many months and the County Commissioners have no recollection of designating an official website.

Chmn Floyd asked for a motion regarding continuation or discontinuation of the special mtg. Motion by Pullman to proceed with the mtg pursuant to the posted agenda, seconded by Zebroski. All members voting aye. Motion carried.

The Commissioners next addressed the pending recommendation from the Sully County Planning and Zoning Commission. State's Attorney Sovell explained that, pursuant to SDCL section 11-2-30, the Board of County Commissioners shall by ordinance or resolution, whichever is applicable, either adopt or reject the change or modification recommended. All members of the Board of County Commissioners reported attendance at the previous hearing before the Planning & Zoning Commission. The Commissioners reviewed the exhibits presented at that hearing. Zoning Administrator Schmahl reviewed the information and exhibits presented to the Zoning Commission with the Board of Commissioners.

Motion by Richards, seconded by Fanger to adopt the recommendation set forth by the Sully County Planning Commission regarding the Petition from Oahe Grain Corporation to change the existing zoning ordinances transferring from Agricultural District B into Agricultural District A the following described parcel of land:

A 42.5 acre (more or less) tract of land described as the E1/2NE1/4 lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota.

Roll call vote: Richards-aye, Pullman-aye, Fanger-aye, Zebroski-aye, Floyd-aye. Motion carried.

Motion by Richards, Seconded by Fanger to conduct a First Reading of the Ordinance Change to Section 4-201 of the Sully County Zoning Ordinance. Roll call vote: Richards-aye, Pullman-aye, Fanger-aye, Zebroski-aye, Floyd-aye. Motion carried.

Sully County Zoning Ordinance Section 4-201 (Proposed Change **bold and underscored below**) (All other language is as currently stated within Section 4-201)

Legal boundary descrip-

tions for Agriculture District B. One mile corridor on each side of State Highway 83, one mile from the city limits of the municipalities of Onida and Agar, with the exception of A 42.5 acre (more or less) tract of land described as the E1/2NE1/4 lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota. Section 1 thru 36 in Llewellyn Park 113-80; Sections - 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24 in Llewellyn Park 113-81; Sections - 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 in Grandview 114-80; Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 in Grandview 114-81; Sections - 5, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34 in Pearl 115-79; Sections - 1 thru 36 in Fairbank 115-80; Sections - 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34 in Troy 115-79; Sections - 25, 35, 36 in Troy 116-80; Section - 3, 4, 5, 6, 30, 31 in Okobajo 114-79.

After the Board of Commissioners presented the first reading, a public hearing and potential second reading date was set for March 24, 2015 at the Phoenix Center at 7:00 pm.

Clark Guttmiller discussed a discrepancy between the official transcript and unapproved minutes of the Sully County Planning & Zoning mtg held on February 3, 2015. He requested clarification regarding the omissions described at the hearing before the Planning and Zoning Commission.

A striping agreement for 2015 with the State for 26 miles of county road at a cost of \$16,276.13 to the county was discussed. Motion by Pullman, Seconded by Zebroski to sign agreement. Roll call vote: Fanger-aye, Zebroski-aye, Floyd-aye, Richards-aye, Pullman-aye. Motion carried.

ADJOURNMENT. There being no further business, Chmn Floyd declared the mtg adjourned.

Patty McGee, Sully County Auditor

Published once at the total approximate cost of \$53.07

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Philip, SD 605-859-2636	Wayne, NE 402-375-3325
Bloomfield, NE 402-373-4449	

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**SULLY COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
FEBRUARY 26, 2015**

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Sovell read aloud a letter received by the Auditor's office addressed to the Chairman of the Board alleging that the County failed to meet the requirement of posting the mtg notice for the February 26th mtg on a county website. The letter was received approximately one hour before the mtg. Sovell explained that SDCL 1-25-1.1 requires posting of public notices on a public body's website only if such a website exists. The following factors were discussed and considered: The County does not have a website that is regularly updated; there is a website that lists county office contact information, ordinance information and other data, which was created by an employee of the sheriff's office outside of his role with the sheriff's department; the website is not stated anywhere as an official website for the County; the website has not been updated or maintained at the direction of any County official; the notices for the current mtg were properly published in the newspaper and the agenda was posted in more than one conspicuous location for the public to see inside of and outside of the courthouse; Marileen Tilberg, Editor of the Onida Watchman, reported that the mtg notice was posted on SDpublicnotices.com; No County website has been updated in many months and the County Commissioners have no recollection of designating an official website.

Chmn Floyd asked for a motion regarding continuation or discontinuation of the special mtg. Motion by Pullman to proceed with the mtg pursuant to the posted agenda, seconded by Zebroski. All members voting aye. Motion carried.

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Roll call vote: Richards-aye, Pullman-aye, Fanger-aye, Zebroski-aye, Floyd-aye
Motion carried.

Motion by Richards, Second by Fanger to conduct a First Reading of the Ordinance Change to Section 4-201 of the Sully County Zoning Ordinance. Roll call vote: Richards-aye, Pullman-aye, Fanger-aye, Zebroski-aye, Floyd-aye. Motion carried.

Sully County Zoning Ordinance Section 4-201

(Proposed Change:

Bold and underscored below:)

(All other language is as currently stated within Section 4-201)

Legal boundary descriptions for Agriculture District B. One mile corridor on each side of State Highway 83, one mile from the city limits of the municipalities of Onida and Agar, **with the exception of A 42.5 acre (more or less) tract of land described as the E½NE¼ lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota**; Section 1 thru 36 in Llewellyn Park 113-80; Sections – 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24 in Llewellyn Park 113-81; Sections – 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 in Grandview 114-80; Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 in Grandview 114-81; Sections – 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34 in Pearl 115-79; Sections – 1 thru 36 in Fairbank 115-80; Sections – 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34 in Troy 116-79; Sections – 25, 35, 36 in Troy 116-80; Section – 3, 4, 5, 6, 30, 31 in Okobojo 114-79

First Reading: February 26, 2015

Second Reading: _____

Effective Date: _____

Cost of Publication: _____

After the Board of Commissioners presented the first reading, a public hearing and potential second reading date was set for March 24, 2015 at the Phoenix Center at 7:00 pm.

Clark Guthmiller discussed a discrepancy between the official transcript and unapproved minutes of the Sully County Planning & Zoning mtg held on February 3, 2015. He requested clarification regarding the omissions described at the hearing before the Planning and Zoning Commission.

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ADJOURNMENT: There being no further business, Chmn Floyd declared the mtg adjourned.

Patty McGee, Sully County Auditor

Approved

Signed by: William Floyd, Chairman

SULLY COUNTY BOARD OF COMMISSIONERS

PROPOSED SPECIAL MEETING AGENDA

MARCH 24, 2015

7:00 PM

PHOENIX CENTER

ONIDA, SD

Bill Floyd, Chairman
Beverly Zebroski, Commissioner
Joe Fanger, Commissioner

Jerry Richards, Vice Chairman
Judy Pullman, Commissioner

7:00 PM

Call meeting to order

7:05 PM

Emily Sovell, States Attorney
Motion to Adopt Meeting Rules

7:10 PM

Public Hearing

7:55 PM

2nd Reading of Rezoning

8:00 PM

Adjournment

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Public Notices

Search past legal notices at www.sdpublicnotices.com

NOTICE OF VACANCY MUNICIPALITY OF BLUNT

The following offices will become vacant due to the expiration of the present term of office of the elected or appointed officer.

- Alderman, Ward I, 2-year term
- Alderman, Ward II, 2-year term
- Alderman, Ward III, 2-year term

Circulation of nominating petitions may begin on April 7, 2015 and petitions may be filed in the office of the Finance Officer located at City Hall, 208 N. Main Street, not later than the 9th day of May, 2015 at 5:00 pm ct.

Rachel Comes
Finance Officer
Published March 26 & April 2, 2015 at total approximate cost of \$13.75

NOTICE OF RESPONSIBILITY TO CONTROL NOXIOUS WEEDS AND DECLARED PESTS

NOTICE IS HEREBY GIVEN this 8th day of March, 2015 pursuant to SDCL 38-22 as amended to all owners, occupants, agents and public officials in charge of lands in Sully County, South Dakota, that they are responsible for the suppression, control, and eradication of noxious weeds and declared pest infestations that may exist on such lands.

Chemical, biological, and/or cultural control methods used for the suppression, control and eradication of noxious weed and declared pest infestations shall be those approved for such purposes by the Sully County Weed and Pest supervisor, county agricultural extension agent or the South Dakota State University Experiment Stations

Upon failure to observe this notice, the county weed and pest board is required to proceed pursuant to the law and have the noxious weeds or declared pests destroyed by such methods as they may find necessary, the expense of which shall constitute a lien and be entered as a tax against the land, and be collected as other real estate taxes are collected, or by other means as provided by law

Plant and animals designated as being noxious weeds and declared pests in the State of South Dakota and Sully County are Leafy Spurge, Salt Cedar, Perennial Sow Thistle, Russian Knapweed, Hoary Cress, Canada Thistle, and Purple Loosestrife, Wormwood Sage, and Prairie Dogs

NOTICE TO LANDOWNERS

The Sully County Weed & Pest Board hereby gives notice that county road right-of-ways (R.O.W.) will be sprayed for noxious weed control. Any landowner with land bordering a county road R.O.W. who does not want the road R.O.W. sprayed should notify Paula Barber, Sully County Weed & Pest Supervisor at P.O. Box 265, Onida, SD in writing giving a legal description of the land bordering the road R.O.W. and the landowner's plan for noxious weed control on that roadside

Paula Barber, Sully County Weed & Pest Supervisor
Published two weeks at total approximate cost of \$13.66

NOTICE IS HEREBY GIVEN that upon establishing probable cause to believe a noxious weed or declared pest infestation exists upon any property in Sully County, a representative of Sully County Weed and Pest Control Board will enter upon said property for the purpose of inspecting and confirming that such infestation actually exists.

Paula J Barber
Sully County Weed & Pest Supervisor
Published two weeks at total approximate cost of \$32.92

NOTICE OF APPLICATION NO. 8093-3

Notice is given that Harry Thomas, 18439 Capri Place, Harrold SD 57536, has filed an application for a water permit to irrigate 40 new acres. Water Permit No. 6425-3 and Water Right Nos. 1381-3 and 1927-3 appropriate 2.89 cubic feet of water per second from two wells completed into the Highmore Blunt Aquifer (42 feet deep) located in the NW 1/4 SW 1/4 and the SE 1/4 NW 1/4 Section 4-T114N-R74W for irrigation of 244 acres located in portions of the S 1/2 of Section 33-T115N-R74W and N 1/2 Section 4-T114N-R74W. This application proposes to irrigate 40 new acres located in the S 1/2 SW 1/4 Section 33-T115N-R74W and N 1/2 NW 1/4 Section 4-T114N-R74W. No increase in the diversion rate is authorized by this application.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 8093-3 because 1) unappropriated water is available, 2) existing rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest. In accordance with SDCL 46-2A-23, the Chief Engineer will act on this application, as recommended, unless a petition is filed opposing the application or the applicant files a petition contesting the Chief Engineer's recommendation. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Any person interested in opposing or supporting this application or recommendation must file a written petition with BOTH the applicant and Chief Engineer. The applicant must file a

petition if contesting the Chief Engineer's recommendation. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501 (605-773-3352) and the applicant's mailing address is given above. A petition filed by either an interested person or the applicant must be filed by April 13, 2015.

The petition may be informal, but must include a statement describing the petitioner's interest in the application, the petitioner's reasons for opposing or supporting the application, and the signature and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained. Information concerning this application is available at <http://denr.sd.gov/public>. Contact Eric Gronlund at the above Water Rights Program address to request copies of information pertaining to this application. Steven M. Pirner, Secretary, Department of Environment and Natural Resources
Published once at the total approximate cost of \$25.36

NOTICE TO CREDITORS

STATE OF SOUTH DAKOTA)
COUNTY OF SULLY)
IN CIRCUIT COURT)
SS)
SIXTH JUDICIAL CIRCUIT)
PRO 15-2)
ESTATE OF BONNAFAYE)
FINLEY)
DECEASED.

Notice is given that on February 2, 2015, MICHELE GANSCHOW, whose address is 1801 Bristol Place, Pierre, South Dakota, was appointed as personal representative of the Estate of Bonnafaye Finley. Creditors of decedent must file their claims within four months after the date of first publication of this notice or their claims may be barred.

Claims may be filed with the personal representative or may be filed with the clerk and a copy of the claim mailed to the personal representative.

Dated this 13th day of March, 2015
MICHELE GANSCHOW
1801 Bristol Place
Pierre, SD 57501
(605) 224-9525
Sully County Clerk of Courts
PO Box 186
Onida, SD 57564
Attorney for Estate
Kimberly A. Mortenson
Mortenson Law Offices
PO Box 190
Fort Pierre, SD 57532
605-223-9040

NOTICE OF HEARING CONDITIONAL USE PERMIT

The City of Onida will hold a hearing on April 8th, 2015 at approximately 8:00 p.m. concerning the Conditional Use Permit by B & D LLC and the conversion of the front part of their building into an apartment located on Lots 5 and 6, Block 2, Original Town, 109 South Main Street, Onida, Sully County, South Dakota.

Any persons having questions or concerns on this matter are requested to attend this meeting.

Roncha Miller
Finance Officer
City of Onida
Published March 26 & April 2, 2015 at a total approximate cost of \$12.26

SULLY COUNTY BOARD OF COMMISSIONERS SPECIAL MEETING MARCH 24, 2015

The Board of Sully County Commissioners held a special mtg on Tues, Mar 24, 2015. Chairman Bill Floyd called the meeting to order. Other members present: Jerry Richards, Judy Pullman, Joe Fanger & Beverly Zebroski

Motion by Richards, seconded by Zebroski to approve meeting rules limiting counsel for the Petitioner and Landowners to 30 minutes and all other speakers to three minutes each. Motion carried. Craig Smith, attorney for Oabe Grain, requested that the commissioners approve the petition to rezone the designated tract of land.

Adam Altman, attorney representing some homeowners, asked Chmn Floyd to adjourn the mtg because the agenda was not listed on a county website. Chmn Floyd reminded Altman that SDCL 1-25-11 requires posting of public notices on a public body's website only if such an official website exists, however the County does not have a website that is regularly updated. There is a website that lists county office contact information, ordinance information and other data, which was created by an employee of the sheriff's office outside of his role with the sheriff's department; the website is not stated anywhere as an official website for the County; the website has not been updated or maintained at the direction of any County official; the notices for the current mtg were properly published in the newspaper and the agenda was posted in more than one conspicuous location for the public to see inside of and outside of the courthouse. Chmn Floyd also reminded Altman that Marileen Tilberg, Editor of the Onida Watchman, had reported at the prior mtg that notice was posted on SD-publicnotices.com. No County website has been updated in many months and the County Commissioners have no recollection of designating an official website.

Chmn Floyd asked for a motion to proceed with the special mtg. Motion by Richards to proceed with the mtg pursuant to the posted agenda, seconded by Fanger. All members voting aye. Motion carried. Attorney Altman continued with information on behalf of his clients. Following public input board discussion was held. Chmn Floyd asked for a motion to adopt the zoning changes as

requested. Motion by Zebroski, seconded by Richards. Roll call vote: Fanger-aye, Richards-aye, Zebroski-aye, Pullman-aye, Floyd-aye. Motion carried. States Attorney Sovell conducted the Second Reading of the Ordinance Change to Section 4-201.

Sully County Zoning Ordinance Section 4-201 (Proposed Change: **Bold and underscored** below.)

(All other language is as currently stated within Section 4-201)

Legal boundary descriptions for Agriculture District B, One mile corridor on each side of State Highway 83, one mile from the city limits of the municipalities of Onida and Ager, **with the exception of A 42.5 acre (more or less) tract of land (described as the FVNEY living East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota. Section 1 thru 36 in Llewellyn Park 113-8C. Sections - 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24 in Llewellyn Park 113-8C. Sections - 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 in Grandview 114-8C. Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 26, 28, 30, 31, 32, 33, 34, in Troy 116-79. Sections - 25, 35, 36 in Troy 116-80. Section - 3, 4, 5, 6, 30, 31 in Okobjo 114-79.**

Effective Date Apr 22, 2015. The bd was addressed by Brian Ring on behalf of the Onida Fire Dept requesting a burn ban be implemented immediately. Moved by Richards, seconded by Pullman to approve an emergency burn ban. Unanimous vote aye.

RESOLUTION 2015-8 A RESOLUTION TO PROVIDE FOR TEMPORARY EMERGENCY REGULATION OF FIRE HAZARDS IN SULLY COUNTY

Be it Resolved, that pursuant to SDCL 7-8-20 (18), Sully County does hereby enact this resolution to insure public safety on an emergency basis, effective immediately, and impose a ban on all open burning and fireworks except for charcoal or petroleum fueled grills used for preparing food.

This burn ban applies to any person or entity in Sully County outside of any municipality.

Further Resolved, that Sully County declares an emergency and this resolution shall be in effect immediately in order to protect the peace, health and safety of the citizens of Sully County.

Motion passed and Resolution 2015-8 adopted this 24th day of March, 2015.

By: William Floyd, Chairman
Susan Lamb, Sully Co Auditor
ADJOURNMENT: There being no further business, Chmn Floyd declared the mtg adjourned.
Susan Lamb, Sully County Auditor
Approved
Signed by William Floyd, Chairman
Published April 2, 2015 at the total approximate cost of \$46.68.

Shepherd SEED COMPANY
ONIDA, SOUTH DAKOTA

GIVE US A CALL FOR ALL YOUR HIGH GALLON FERTILIZER & CHEMICAL APPLICATION NEEDS
605-280-9058

SULLY COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
MARCH 24, 2015

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Chmn Floyd asked for a motion to proceed with the special mtg. Motion by Richards to proceed with the mtg pursuant to the posted agenda, seconded by Fanger. All members voting aye. Motion carried. Attorney Altman continued with information on behalf of his clients. Following public input board discussion was held. Chmn Floyd asked for a motion to adopt the zoning changes as requested. Motion by Zebroski, seconded by Richards. Roll call vote: Fanger-aye, Richards-aye, Zebroski-aye, Pullman-aye, Floyd-aye. Motion carried.

States Attorney Sovell conducted the Second Reading of the Ordinance Change to Section 4-201:

Sully County Zoning Ordinance Section 4-201

(Proposed Change:

and underscored below:)

(All other language is as currently stated within Section 4-201)

Legal boundary descriptions for Agriculture District B. One mile corridor on each side of State Highway 83, one mile from the city limits of the municipalities of Onida and Agar, **with the exception of A 42.5 acre (more or less) tract of land described as the E½NE¼ lying East of the Railroad Right of Way of Section 14, Township 114 North, Range 77 West of the 5th P.M., Sully County, South Dakota**; Section 1 thru 36 in Llewellyn Park 113-80; Sections – 1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24 in Llewellyn Park 113-81; Sections – 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 in Grandview 114-80; Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 in Grandview 114-81; Sections – 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34 in Pearl 115-79; Sections – 1 thru 36 in Fairbank 115-80; Sections – 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30,

31, 32, 33, 34 in Troy 116-79; Sections – 25, 35, 36 in Troy 116-80; Section – 3, 4, 5, 6, 30, 31
in Okobojo 114-79
Effective Date April 22, 2015

The bd was addressed by Brian Ring on behalf of the Onida Fire Dept requesting a burn ban be implemented immediately. Moved by Richards, seconded by Pullman to approve an emergency burn ban. Unanimous vote aye.

RESOLUTION 2015-8

A RESOLUTION TO PROVIDE FOR TEMPORARY EMERGENCY REGULATION OF FIRE HAZARDS IN SULLY COUNTY

Be it Resolved, that pursuant to SDCL 7-8-20 (18), Sully County does hereby enact this resolution to insure public safety on an emergency basis, effective immediately, and impose a ban on all open burning and fireworks except for charcoal or petroleum fueled grills used for preparing food.

This burn ban applies to any person or entity in Sully County outside of any municipality.

Further Resolved, that Sully County declares an emergency and this resolution shall be in effect immediately in order to protect the peace, health and safety of the citizens of Sully County.

Motion passed and Resolution 2015-8 adopted this 24th day of March, 2015.

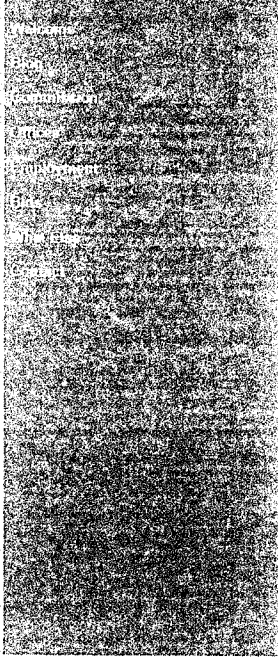
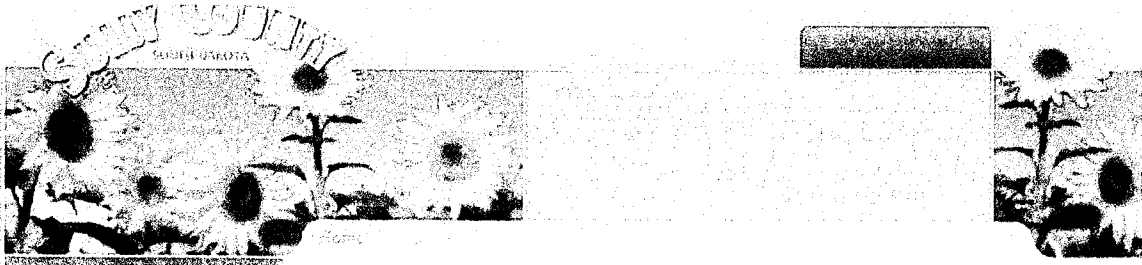
By:s/William Floyd, Chairman
Susan Lamb, Sully Co Auditor

ADJOURNMENT: There being no further business, Chmn Floyd declared the mtg adjourned.

Susan Lamb, Sully County Auditor

Approved

Signed by: William Floyd, Chairman



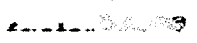
Welcome

Sully County, South Dakota, organized in 1893 is located in central South Dakota, thirty miles north from South Dakota's State Capital, Pierre. The county is named after General Alfred Sully, who built Fort Sully near the Missouri River. Sully County has two communities, Agar and Onida. Onida is the County Seat and this is where the courthouse is located.

Population (2010 Census) 1,373
Total Area: 1,070 Square Miles

Disclaimer: This website is not regularly updated or maintained and has not been adopted as the official website for Sully County, South Dakota. For information regarding upcoming meetings, please contact the Sully County Auditor's Office.

Latest Blog Posts:







OFFICE OF ATTORNEY GENERAL

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<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 28, 2015

Jack Hieb
Attorney at Law
PO Box 1030
Aberdeen, SD 57402

Re: In the Matter of Open Meeting Complaint 2015-02, Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment

Dear Mr. Hieb,

I have received an open meetings complaint concerning the Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment. The Complaint was signed by Adam Altman. The Complaint was reviewed and forwarded to me, pursuant to SDCL 1-27-6(3), by Acting Sully County State's Attorney / Faulk County State's Attorney Timothy D. Bormann. Enclosed is a copy of all the materials I have received.

I have been informed that you are representing Sully County in this matter. If the County wishes to file a response to the complaint, please send it to the above address on or before November 30, 2015. Please also send copies of any response to Mr. Altman (Law Office of Adam H. Altman, 404 S. Lincoln Street, # L2, Aberdeen, South Dakota 57401) and to State's Attorney Bormann.

After I have received your response, all materials will be sent to the members of the Commission. The Commission has scheduled its next meeting for the afternoon of December 16, 2015, in Chamberlain. The County will be asked to make a short presentation regarding the complaint at this meeting. You may waive this

October 28, 2015


Re: In the Matter of Open Meeting Complaint 2015-02

Page 2

presentation if you wish. You will be given further notice of the location of the meeting once it has been settled upon.

If you have any questions please don't hesitate to contact me.

Sincerely,



Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosures

Cc w/o Enclosures: Adam Altman, Attorney at Law
Timothy D. Bormann – Acting Sully County State's
Attorney/Faulk County State's Attorney





OFFICE OF ATTORNEY GENERAL

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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 28, 2015

Adam H. Altman
Law Office of Adam H. Altman
404 S. Lincoln Street, #L2
Aberdeen, SD 57401

Re: In the Matter of Open Meeting Complaint 2015-02, Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment

Dear Mr. Altman,

This letter is to acknowledge receipt of an open meetings complaint filed by you against Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment. The complaint was forwarded to me by Acting Sully County State's Attorney/Faulk County State's Attorney, Timothy D. Bormann. A copy of the complaint materials have been submitted to the above-named entities for their response. I have asked the County to file their response no later than November 30, 2015. I have also requested that the County mail you a copy of any response they file.

The Open Meetings Commission has scheduled its next meeting for the afternoon of December 16, 2015, in Chamberlain. I will notify you of the location once one is settled upon. You will be asked to make a brief presentation regarding the complaint when the complaint is heard by the Commission. You may waive this presentation if you wish.

October 28, 2015
Re: In the Matter of Open Meeting Complaint 2015-02
Page 2

If you have any questions please don't hesitate to contact me.

Sincerely,



Steven R. Blair
Assistant Attorney General

SRB/jm

Enclosure

Cc: Jack Hieb – Attorney for Sully County Commissions
Timothy D. Bormann – Acting Sully County State's Attorney/Faulk County
State's Attorney





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MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 18, 2015

Adam H. Altman
Law Office of Adam H. Altman
404 S. Lincoln Street, #L2
Aberdeen, SD 57401

Jack Hieb
Attorney at Law
PO Box 1030
Aberdeen, SD 57402

Re: In the Matter of Open Meeting Complaint 2015-02, Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment

Dear Mr. Altman & Mr. Hieb,

Enclosed please find a Notice of Hearing regarding the above referenced open meetings complaint. Also enclosed, please find a courtesy copy of the proposed agenda for the Commission's December 16th meeting. As you can see from the agenda, presentations regarding complaints will begin at 1:00 p.m. central time or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,


Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

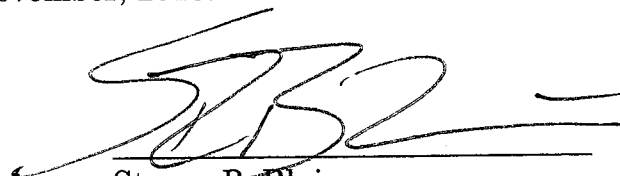
STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2015-02
MEETINGS COMPLAINT AGAINST)	
SULLY COUNTY PLANNING AND)	NOTICE OF HEARING
ZONING COMMISSION, SULLY)	
COUNTY COMMISSION, AND THE)	
SULLY COUNTY PLANNING AND)	
ZONING COMMISSION SITTING AS)	
THE BOARD OF ADJUSTMENT –)	
SULLY COUNTY)	

TO: Adam Altman, Attorney at Law, 404 S. Lincoln Street, #L2, Aberdeen, South Dakota 57401, and Sully County Planning and Zoning Commission, Sully County Commission, and the Sully County Planning and Zoning Commission sitting as the Board of Adjustment, through their counsel of record, Jack Hieb, Attorney at Law, Post Office Box 1030, Aberdeen, South Dakota 57402:

Please take notice that a hearing regarding the above referenced open meetings complaint will be held before the South Dakota Open Meetings Commission, at the Cedar Shore Resort – 1500 Shoreline Drive, Oacoma, South Dakota, on Wednesday, December 16, 2015. Oral presentations regarding pending complaints will commence at 1:00 P.M. central time, or soon thereafter as matters may be heard, and proceed in the order noted in the attached agenda.

Dated this 18th day of November, 2015.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215



383456
Attorney General
NOV 25 2015

LAW OFFICES

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SOUTH DAKOTA
57402-1030

ROY A. WISE
WILLIAM K. SAUCK, JR.
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER

E-MAIL: jhieb@rwwsh.com

DWIGHT CAMPBELL (1887 - 1964)
STANLEY R. VOAS (1909 -1972)
JAMES A. WYLY (1939 - 2009)
LLOYD C. RICHARDSON, JR. (1924 - 2012)
RICHARD L. RUSSMAN (1967 - 2014)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

November 23, 2015

Mr. Steven R. Blair
Attorney General's Office
1302 East Highway 14, #1
Pierre, SD 57501

Dear Mr. Blair:

Re: In the Matter of Open Meeting Complaint 2015-02,
Sully County Planning and Zoning Commission, Sully
County Commission, and Sully County Planning and
Zoning Commission sitting as the Board of
Adjustment

I have been hired to represent the Sully County entities named above with reference to Attorney Altman's open meetings complaint. I am in receipt of your October 28, 2015 letter and its enclosures. This letter is intended as Sully County's response to the complaint.

The starting point in considering the complaints made against the Sully County entities is the applicable statutes governing this matter. Under SDCL 1-25-1, a "public body of a political subdivision means any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other agency of the state, which is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law." (Emphasis added.) Mr. Altman alleges that the Sully County entities violated SDCL 1-25-1.1, which requires the posting of public notice for at least 24 continuous hours before any meeting, and provides that "[t]he notice shall also be posted on the public body's website upon dissemination of the notice, if such a website exists." (Emphasis added.)

Pg. 2

To: Steven Blair

Date: 11/23/15

Mr. Altman's complaint is directed at three separate public bodies: the Sully County Commission, the Sully County Planning and Zoning Commission, and the Sully County Board of Adjustment. See e.g. Armstrong v. Turner Cty. Bd. of Adjustment, 2009 SD 81, ¶ 17, 772 N.W.2d 643, 649 ("Technically, under the law, each entity - the board of county commissioners, the planning and zoning commission, and the board of adjustment - has a different statutory function with different statutory responsibilities and powers in regard to land use and regulation."); Bechen v. Moody Cty. Bd. of Comm'rs, 2005 SD 93, ¶ 11, 703 N.W.2d 662, 665 (Board of Adjustment is "a separate legal entity with its own distinct powers and responsibilities under state law"). Mr. Altman's Complaint refers to four public meetings:

1. February 3, 2015, Sully County Planning and Zoning Commission meeting.
2. February 26, 2015, Sully County Commission meeting.
3. March 24, 2015, Sully County Commission meeting.
4. July 14, 2015, Sully County Board of Adjustment meeting.

Mr. Altman refers to *sullycounty.net* as "Sully County's website." However, he makes no contention that either the Planning and Zoning Commission or the Board of Adjustment - which are each separate public bodies - have their own website. In point of fact, they do not. Since neither entity maintained a website at any relevant time, SDCL 1-25-1.1 did not require the posting of an online notice regarding the February 3, 2015 Planning and Zoning Meeting or the July 14, 2015 Board of Adjustment meeting.

Assuming *arguendo* the Planning and Zoning Commission and Board of Adjustment are treated as the same public body as the Sully County Commission, there are other reasons that the County should not be found in violation of SDCL 1-25-1.1. Contrary to paragraph 6 of the Complaint, Sully County does not operate *sullycounty.net* as its official website. This was discussed at the special meeting of Sully County Commission on February 26, 2015. The minutes from that meeting are attached to Sully County Auditor Susan Lamb's written statement, and state the following:

Pg. 3

To: Steven Blair

Date: 11/23/15

Sovell read aloud a letter received by the Auditor's office addressed to the Chairman of the Board alleging that the County failed to meet the requirement of posting the mtg notice for the February 26th mtg on a county website. The letter was received approximately one hour before the mtg. Sovell explained that SDCL 1-25-1.1 requires posting of public notices on a public body's website only if such a website exists. The following factors were discussed and considered: The County does not have a website that is regularly updated; there is a website that lists county office contact information, ordinance information and other data, which was created by an employee of the sheriff's office outside of his role with the sheriff's department; the website is not stated anywhere as an official website for the County; the website has not been updated or maintained at the direction of any County official; the notices for the current mtg were properly published in the newspaper and the agenda was posted in more than one conspicuous location for the public to see inside of and outside of the courthouse; Marileen Tilberg, Editor of the Onida Watchman, reported that the mtg notice was posted on Sdpublicnotices.com; No County website has been updated in many months and the County Commissioners have no recollection of designating an official website.

After the February 26, 2015 special meeting, a disclaimer was placed on *sullycounty.net*, which reads as follows:

Disclaimer: This website is not regularly updated or maintained and has not been adopted as the official website for Sully County, South Dakota. For information regarding upcoming meetings, please contact the Sully County Auditor's Office.

Sully County has never adopted *sullycounty.net*. It clearly advised the public that it never adopted *sullycounty.net* and that the website was not regularly updated.

Further, with respect to each meeting listed in Mr. Altman's complaint, the Sully County entities endeavored to provide lawful notice. This table illustrates the efforts undertaken by the Sully County Planning and Zoning Administrator and the Sully County Auditor to provide notice of the meetings:

Entity	Date of Meeting	Notice Provided
Planning and Zoning Commission	Feb. 3, 2015	<ul style="list-style-type: none"> • Planning and Zoning Administrator furnished a list of abutting landowners to petitioning landowner on January 14, 2015; on January 16, 2015, the notice of hearing was mailed to the abutting landowners • Public Notice of Zoning Change Hearing published in January 22, 2015 Onida Watchman • Agenda for meeting concerning zoning change posted on the bulletin board outside of the Sully County Auditor's office and in the Planning and Zoning Office
County Commission	Feb. 26, 2015	<ul style="list-style-type: none"> • Auditor posted the agenda on the bulletin board outside of the Sully County Auditor's office as well as in the front entry of the Sully County Courthouse, which is visible to the public 24 hours a day • Copies of the agenda were on display on the counter in the Sully County Auditor's office
County Commission	March 24, 2015	<ul style="list-style-type: none"> • Auditor posted the agenda on the bulletin board outside of the Sully County Auditor's office as well as in the front entry of the Sully County Courthouse, which is visible to the public 24 hours a day • Copies of the agenda were on display on the counter in the Sully County Auditor's office

Pg. 5

To: Steven Blair

Date: 11/23/15

Board of Adjustment	July 14, 2015	<ul style="list-style-type: none"> • Planning and Zoning Administrator mailed a notice of hearing to all owners of property within 200' of the proposed conditional use, as well as others having a material interest, on June 24, 2015 • Notice of Hearing of Conditional Use Permit was published in the June 25, 2015 edition of Onida Watchman • Agenda for hearing on Conditional Use Permit posted on the the bulletin board outside of the Sully County Auditor's office, in the front entry of the courthouse, and in the Planning and Zoning Office
---------------------	---------------	---

The purpose of South Dakota's open meeting laws is "to prohibit actions being taken at secret meetings where it is impossible for the interested public to become fully informed and to detect improper influences." Olson v. Cass, 349 N.W.2d 435, 437 (S.D. 1984). The purpose of notice requirements, in any context, is merely to afford an opportunity to be heard. See e.g. Madison v. Clarke, 288 N.W.2d 312, 313 (S.D. 1980).

There was nothing secretive about the four meetings identified in the complaint. Each meeting was open to the public and attended by members of the public. Minutes were published following each meeting. Based upon the minutes and other file contents, it is clear that Mr. Altman was on actual notice of three of these meetings. He wrote a letter prior to the February 26, 2015 county commission meeting. He appeared at the March 24, 2015 county commission meeting. He appeared at the July 15, 2015 hearing and presented argument on behalf of his clients, at length.

There is absolutely no basis for Mr. Altman to claim that the purpose of the open meetings laws was frustrated based upon the failure to post a notice online on a website that is not even maintained by Sully County. The Complaint should be dismissed without further action by the Open Meeting Commission.

Best regards.

Sincerely,



Jack H. Hieb

JHH/kkt





OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 30, 2015

Jack H. Hieb
Richardson, Wylie, Wise, Sauck & Hieb, LLP
P.O. Box 1030
One Court Street
Aberdeen, SD 57401

Re: Matter of Open Meetings Commission Complaint 2015-02, Sully County Planning and Zoning Commission, Sully County Commission, and Sully Board of Adjustment

Dear Mr. Hieb:

I am in receipt of your response on behalf of the above named Sully County governmental entities to the Open Meetings Complaint filed by Mr. Altman. A copy of your response will be sent to Mr. Altman and Acting States Attorney Bormann. Also, copies of your response will be provided to the Commission members for their consideration.

As part of your response you requested that the complaint be "dismissed without further action by the Open Meeting[s] Commission." According to SDCL 1-25-7, when the Commission receives a referral from a state's attorney the Commission "shall examine the complaint" and "shall issue a written determination" as to whether the conduct complained of violates the provisions of SDCL ch. 1-25. Having received a referral from the Acting Sully County States Attorney it is not possible for the Commission to dismiss the complaint.

As per the Notices that were recently mailed to you and Mr. Altman, the Commission will take up this matter on December 16, 2015, at approximately 1:00 p.m. in Oacoma, South Dakota.

If you have any questions please don't hesitate to contact me.

Sincerely,



Steven R. Blair
Assistant Attorney General

SRB/jm

cc: Adam Altman
Tim Bormann

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	FINDINGS OF FACT,
MEETINGS COMPLAINT 2014-05;)	CONCLUSIONS OF LAW AND
IMLAY TOWNSHIP BOARD OF)	DECISION
SUPERVISORS)	

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on May 5, 2015. Doug Albertson, Complainant, appeared in person and without the assistance of legal counsel. The Imlay Township Board of Supervisors, Respondent, was represented by legal counsel Michael Hickey. Martha Whitcher, Township Clerk/Treasurer, and Julian Whitcher, Township Supervisor, were also personally present. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Based upon the materials submitted and the arguments of the parties, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that Imlay Township is a township located in Pennington County, South Dakota, and has been organized and operated according to applicable provisions of South Dakota Codified Law.
2. The Commission also takes official notice that the Imlay Township Board of Supervisors is a public body elected pursuant to applicable provisions of state law to govern Imlay Township.

3. On November 25, 2014, Mr. Doug Albertson submitted an open meetings complaint to the Pennington County State's Attorney regarding the Imlay Township Board of Supervisors.

4. On December 10, 2014, Pennington County State's Attorney Mark Vargo forwarded the complaint to the Commission pursuant to SDCL 1-25-6(3).

5. On March 4 or 5, 2014, the Imlay Township Board held its annual meeting. The parties do not dispute this meeting was properly noticed and open to the public.

6. At this meeting, Mr. Albertson requested on behalf of Conata Ranch that two auto gates (cattle gates) on Bouquet Table Road be replaced. The Township Board informed Albertson the auto gates could be replaced at Conata Ranch's expense, installation of the gates would be performed by Township officials, and once installed the auto gates would become the property of the Township.

7. On March 17, 2014, the Township Board again met. The parties do not dispute this meeting was also properly noticed and open to the public.

8. At the March 17 meeting, the Township Board voted to approve the work necessary to install the auto gates. The minutes from the meeting indicate the gates were to be installed at the expense of Conata Ranch, and once installed the gates would become the property of Imlay Township. The minutes also indicate the Township maintenance person was to install the gates.

9. The auto gates were installed on June 21-22, 2014 by Mr. Alberston and Monte Whitcher, Township Supervisor and maintenance person. Township equipment was used in the installation of the auto gates.

10. In July 2014, Mr. Albertson received a bill totaling \$1,500.00 from Imlay Township. The bill was sent by Martha Whitcher, Township Clerk, and indicated the bill was for five hours of machine and operator time billed at \$300.00 per hour.

11. On August 22, 2014, Mr. Albertson contacted Township Board Chair Jim Whitcher by telephone to inquire how the bill received by Conata Ranch was calculated. According to Mr. Albertson, Jim Whitcher ultimately responded that he was only one person. Jim Whitcher did not testify at the hearing before the Commission.

12. Mr. Albertson alleged in bringing his complaint that sometime after the installation of the auto gates on Bouquet Table Road the Township Board met and established, or approved of, the amount billed to Conata Ranch. This alleged meeting, if it occurred, would not have been properly noticed to the public.

13. The Township Board asserted at the hearing before the Commission that Martha Whitcher calculated the bill for Conata Ranch on her own initiative by reference to FEMA guidelines. The Township Board stated that a meeting of a quorum of the Township Board where the Conata Ranch bill was discussed or adopted did not occur.

14. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

CONCLUSIONS OF LAW

1. The Imlay Township Board of Supervisors, as the governing body of Imlay Township, Pennington County, South Dakota, is a public body subject to the open meeting requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. The Commission concludes insufficient evidence exists in the record before the Commission to establish that a quorum of the Imlay Township Board of Supervisors met to discuss or take official action of the body outside of a properly noticed meeting.

3. Based upon the materials in the record and the testimony presented at the hearing of this matter, the Commission concludes the Imlay Township Board of Supervisors did not violate the South Dakota Open Meetings Laws in relation to establishing the amount billed to Conata Ranch for installation of the auto gates on Bouquet Table Road.

4. Any Conclusion of Law more appropriately labeled as a Finding of Fact is hereby re-designated as such and incorporated above therein.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota Open Meetings Commission hereby determines the Imlay Township Board of Supervisors did not violate the South Dakota Open Meetings Laws in regards to the facts and allegations raised by the Complaint filed in this matter.

Decision entered by Commissioners **Sovell** (Chair), **Krull**, **Reedstrom**, **Rothschadl**, & **Steele**.