

JULY 18, 2023 – GENERAL MEETING

Meeting called to order by Chairman Sutton at 8:45 A.M. in the Commission Chambers, Courthouse Annex, Brown County, SD. Present were Commissioners Dennert, Fjeldheim, Wiese, Gage, and Sutton. Commissioner Fjeldheim led the Pledge of Allegiance.

APPROVAL OF AGENDA:

Commissioner Dennert moved to approve the agenda, seconded by Wiese. All members present voting aye. Motion carried.

OPPORTUNITY FOR PUBLIC COMMENT:

Jared Bossly shared with the Commission about Green Methanol as an alternative to CO2 pipelines. Cargill has started working with University of Illinois to produce this green methanol, which can be used in most diesel motors and not hooked up to any pipelines. Bossly feels that Summit convinced our farmer own ethanol plants that CO2 is a waste product so going to do them a favor by sequestering it underground. If it makes it cheaper in California it will raise the prices of Ethanol here and people will stop using it if higher than regular unleaded. He believes Summit plans to monopolize this by getting their hands on the CO2. By doing the green methanol the CO2 can be done in house, trucked or railed away, and not take anyone's farmland, not taking up economic development along highways and this is safer. Jared just wanted to make the Commissioners aware of this other option and possible economic development for the County.

Dennis Feickert commented that Summit Carbon Solutions did a sponsorship last year to the Brown County Fair and again this year they are offering a sponsorship and he feels that it wrong and sets a bad example for the County. Jared Bossly added that they are suing the County then sponsoring the Brown County Fair, he feels is a slap in the face.

RESOLUTION #33-22 – MORATORIUM

Chairman Sutton shared that Moratorium is set to expire tomorrow (July 19th) and by advice from the State's Attorney the Moratorium was put in place to give the County the opportunity to review and possibly change our Ordinances to be in line with what the County was expecting any pipeline to comply with. The County did do what the Moratorium allowed us to do, reviewed the Ordinances, made some changes to the Ordinances, held numerous public meetings for public input and on what was being done and what the pipelines need to comply with. State's Attorney advises to let it expire because it has done what it was meant to do. Dennis Wells asked if anything has changed for safety issues because this was prompted by a pipeline accident, at this time they are working on it but won't be done until November 2024 so feels need to wait to have safeguards in place by Federal Government. Jerry Streckfuss commented that we changed the Ordinances, but they haven't done any good because the pipeline has told him they don't need to follow the 1500 ft. setback as stated in the Ordinance because they follow the Petroleum rules, even though they are moving CO2, and the two houses on Jerry's property the pipeline is to be 107 ft. from one and 187 ft. from the other. Jared Bossly also feels that there is no reason to take this off either, because FEMSA is still working on this and there is no high-pressure Carbon Pipeline like this, Summits easements state that you can't plant a tree or build within a 1000 ft. of the pipeline, but they can put it closer than that to homes or our farm buildings. He's been thinking about adding a couple barns to his place depending on if the kids want to come back and run the farm but if they put in the pipeline, he won't be able to do this and decrease the Economic Development. He feels the Moratorium should stay on until there are Federal Guidelines put in place or at the minimum until PUC makes their decisions. Dennis Feickert also stated to keep the moratorium on until the PUC hearings in September. Chad Ellsworth stated that some conflicts of interest were exposed with the incident on Jared's property, he feels moratorium should be extended, because conflicts need to be addressed and asked the Commission to do a Roll Call Vote on refusal on conflicts of interest before they vote. Craig Schaunaman asked about putting a new moratorium in place at least until the PUC hearings and they act or until FEMSA guidelines in November 2024. He recommends a new moratorium would be to keep the County Residents safe but wait until FEMSA guidelines because we have our Ordinances in place. Commissioner Dennert asked for input on whether to extend the moratorium because as stated we did what it was intended to do with the Ordinance to protect the County with the 1500 setback, but keep in mind it may weaken the chance of the Ordinance being upheld in court. He feels that by extending the moratorium it sends a clear message to the PUC as to where the County stands. Chad Ellsworth shared that Navigator has a motion to preempt all the Ordinances is at the PUC now, which will be used as a precedence with Summit, so he feels we should extend the moratorium. Commissioner Gage shared that Summit came after Minnehaha & Brown County for their setbacks and they want to preempt those, which are at the PUC, and we put the moratorium on to look at our Ordinances. The 1500 ft. setback was enacted through our Planning & Zoning Commission in 2021, early 2022 is when it was enacted after all the processes, so it was before the moratorium was created. Gage commented that he feels the current moratorium needs to expire so we can fight for the setback alone, legally & financially towards this. Chairman Sutton questioned Ross Aldentaler, State's Attorney Deputy as far as letting the current moratorium expire and writing a new moratorium what would be better. Ross stated they've never

looked into see if a new moratorium would be effective or valid but Commissioner Fjeldheim shared that he visited with outside council that has assisted with this issue, that attorney feels that our original moratorium was to establish an Ordinance for setbacks and he feels we would be in violation by extending that moratorium, question on a new moratorium the attorney feels they'd be in violation of State Code but haven't researched it. Commissioner Gage questioned Ross on pipelines having to go through Planning & Zoning for Conditional Use Permits can they do a stipulation that has to be approved by the PUC, after some discussion the Planning & Zoning Board could do a stipulation or deny the permit. Freddie Robinson questioned that if the County lets the moratorium expire, he is afraid it will send a message that its weak but Commissioner Wiese shared that the moratoriums purpose is to pause the applications and give the County time to review their regulations and we have done that with the Ordinance, a few minor changes were made but we stuck to the 1500 ft. setback; Planning & Zoning has the authority through compatible use permits. Wiese further stated that there is a possibility of a new moratorium if you have cause standing and a different purpose for it, but they need to see the language because it will be picked apart and will need to consider the ramifications. Dennis Feickert stated that Summit has already ignored the setback that is in the County Ordinance and at in meeting in Redfield it was shared that the PUC would be the enforcer and wanted to know if that is the case. Wiese commented that the PUC would have the authority if they rule on that, that the Ordinances are null in void and can be ignored, which he feels is a dangerous thing for the PUC to do, but as it stands right now if you have the 1500 ft. separation from this pipeline you can do the application and if it is less than the 1500 ft. setback those that would be effected will need to sign off and giving permission for it to go through. Dennis Feickert suggested that the County should file a lawsuit since Summit is not following the setback/Ordinance. Janet Hedges questioned if the moratorium covered rules and regulations or just Ordinances, Ross shared that we have both, we have the moratorium and we passed an Ordinance. Janet feels that the rules and regulations is more of a broad base, not just an Ordinance but Ross stated that it is up to the governing board. Ross shared we can weigh in with the PUC, but it is out of our control. Commissioner Dennert commented that it's obvious that Summit doesn't intend to follow the setbacks, but we know this Ordinance will be heard before the PUC, probably be heard before a Judge somewhere and we don't know what that ruling will be but if upheld by the PUC and courts, the County has every intention to enforce this Ordinance. Regarding the moratorium, Dennert feels that we should enact a new moratorium to extend until all the regulations are set by FEMSA, PUC, etc. if the legal implications can be met and it helps the Planning & Zoning Board and sends a message, also. Commissioner Wiese reiterated that it would recognize rulings to come based on further studies and the impact it would have on our Ordinance – he would be in favor of that but would also want to review it ahead of time to make sure that it is targeting this issue. Commissioner Fjeldheim stated there are so many different variables that so not sure what we should do, let the current one expire and try to do a new one. Chairman Sutton said the new moratorium wouldn't be to stop it but delay it until the PUC has met and made their determination. Commissioner Dennert made a motion to extend the current moratorium for 30 days with the intent to establish a new moratorium, Wiese seconded for discussion. After further discussion Chairman Sutton called for a roll call vote: Dennert-aye; Fjeldheim-nay; Wiese-nay; Gage-nay; Sutton-nay. Motion failed. The moratorium will expire at midnight on Wednesday, July 19, 2023. Commission directed Ross Aldentaler from State's Attorney office to see if we can do a new moratorium, Ross asked for Commission assistance - Commissioners Gage and Dennert will work with Ross if the County can do a new moratorium. Commission is in support of Landowner's Rights in Brown County and will do there best that everyone is treated fairly.

EMINENT DOMAIN:

Commissioner Dennert brought the following Resolution:

RESOLUTION #27-23

A RESOLUTION IN SUPPORT OF EMINENT DOMAIN REFORM

WHEREAS, the Fifth Amendment to the United States Constitution states that “Nor shall private property be taken for *public use*, without just compensation.” *U.S. Const. Amend. V. (emphasis added)*.

WHEREAS, the South Dakota State Constitution provides that “Private property shall not be taken for *public use*, or damaged, without just compensation[.]” *SD CONST Art. 6 §13 (emphasis added)*.

WHEREAS, the omission of “private use” from these laws implies a complete prohibition on the taking of private property for non-public purposes.

WHEREAS, On July 6, 2023, hundreds of citizens held a rally in Pierre in support of revisions to South Dakota eminent domain law, culminating with approximately 2,000 signatures in support of eminent domain reform.

WHEREAS, the Brown County Board of Commissioners is in support of the Constitutional rights of property owners.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Brown County Commissioners is in support of the Governor and Legislature revising South Dakota law to eliminate the taking of private property for non-public use.

Dated this 18th day of July 2023.

Seconded by Commissioner Wiese. Roll call vote: Dennert-aye; Fjeldheim-aye; Wiese-aye, Gage-aye, Sutton-aye. Resolution adopted.

SPECIAL MALT BEVERAGE LICENSE HEARING:

Moved by Commissioner Fjeldheim, seconded by Wiese to approve and authorize Chairman Sutton to sign the application for Special Malt Beverage for SD Snow Queen Festival, Aberdeen, SD on July 29, 2023, for Bands, Brews & BBQ at the Club House on the Brown County Fairgrounds. All members present voted aye. Motion carried.

ORDINANCE #247 – FIRST READING:

Moved by Commissioner Wiese, seconded by Gage to approve the First Reading of Proposed Ordinance #247. Applicant Toby Doeden requesting to rezone from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) to bring this parcel into compliance for its current use: The North 333' of Outlot 3, "Levey's Outlots" and the East ½ of the South ½ of Outlot 2, "Levey's Outlots" in the SE ¼ of Section 24-T123N-R65W of the 5th P.M., Brown County, South Dakota (13371 382nd Ave., Mercier Twp.). All members present voting aye. Motion carried.

ORDINANCE #248 – FIRST READING:

Moved by Commissioner Wiese, seconded by Fjeldheim to approve the First Reading of Proposed Ordinance #248. Applicants Joel & Kimberly Carda requesting to rezone from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) to bring this parcel into compliance for its current use: Lot 2, Block 2, "Moulton's First Subdivision: in the SE ¼ of Section 2-T122N-R64W of the 5th P.M., Brown County, South Dakota (13671 387th Ave., Warner Twp.). All members present voting aye. Motion carried.

ORDINANCE #249 – FIRST READING:

Moved by Commissioner Fjeldheim, seconded by Wiese to approve the First Reading of Proposed Ordinance #249. Applicant Erik Nolte requesting to rezone from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) to bring this parcel into compliance for its current use: Lot 1, "North Ten" in the SW ¼ of Section 13 & the SE ¼ of Section 14-T124N-R64W of the 5th P.M., Brown County, South Dakota (12676 387th Ave., Lincoln Twp.). All members present voting aye. Motion carried.

ORDINANCE #250 – FIRST READING:

Moved by Commissioner Gage, seconded by Wiese to approve the First Reading of Proposed Ordinance #250. Applicant Barry Winkler requesting to rezone from Agriculture Preservation District (AG-P) to Mini-Agriculture District (M-AG) to bring this parcel into compliance for its current use: Outlot C, "Engel Subdivision" in the NE ¼ of Section 18-T124N-R63W, except Sulzle Outlots A & B, of the 5th P.M., Brown County, South Dakota (12643 389th Ave., Ordway Twp.). All members present voting aye. Motion carried.

PLANNING & ZONING BOARD APPOINTMENT:

Scott Bader, Planning & Zoning (P & Z) Director informed the Commission that Darwin Bettman has resigned from the P & Z Board after 15 years of service. The Board recognized him with a plaque at the June meeting. Scott asked the Commission to approve Carrie Weisenburger, who has been the alternate, to fill the vacancy on the P&Z Board; then they will need to find a new alternate. Chairman Sutton wanted to publicly thank Darwin Bettman for his years of service on the Planning & Zoning Board. Moved by Commissioner Fjeldheim, seconded by Wiese to approve Carrie Weisenburger to replace Darwin Bettman on the Planning & Zoning Board. All members present voting aye. Motion carried.

GOSSMAN UPDATE:

Stacy Gossman had a prior engagement so was not able to wait for his time today so will reschedule for next week.

FEDERAL LOCAL BRIDGE PROGRAM – HIGHWAY DEPT. UPDATE:

Dirk Rogers, Highway Superintendent informed the Commission that Bridge #85, #143 and #148 will not qualify for the Federal Local Bridge Program but is going to contact DOT to discuss further on ones that are possibly functionally obsolete and look for some other bridges to put into the program.

Dirk gave a Department Update: They are putting the final touches on Rd. 5; will come back to finish the North 6 miles coming up to 10 on 16; Elm Lake Rd. is moving along; they are mowing and had a new truck driver start on Monday.

Commissioner Fjeldheim asked about the intersection of Co. Rd. 10 & 9, where you go to Westport if the blade could come by and straighten the gravel in the holes on the road. Commissioner Dennert informed that 2 miles East of Jct. Co. Rd. 9 & 14 it is washboard conditions.

MINUTES:

Moved by Commissioner Wiese, seconded by Dennert to approve the General Meeting minutes of July 11, 2023. All members present voting aye. Motion carried.

CLAIMS:

Moved by Commissioner Fjeldheim, seconded by Wiese to approve the following claims/payroll:

Claims: Professional Fees: Brick's TV and Appliance \$2,022.00; Certified Languages International LLC \$783.73; Christy Griffin-Serr Law Office \$7,211.64; Cogley Law Office, Prof LLC \$7,211.64; Dean Schaefer Court Reporting \$258.00; Dependable Sanitation, Inc \$36,236.60; IMEG Corp \$13,799.84; Jerald M. McNeary \$7,211.64; Jeremy Lund-Siegel Barnett & Schutz, LLP \$7,211.64; John Noyes-Bantz, Gosch & Cremer \$7,211.64; Kuck Law Office \$7,211.64; Lewis & Clark BHS \$823.00; LexisNexis Risk Data Mgt, LLC \$200.00; Lucy Lewno \$150.00; Mark Katterhagen \$12.00; Sanford Health Occupational Medicine \$702.00; Sanford Health \$2,374.00; Taliaferro Law Firm, PC \$7,211.64; Valerie J. Larson \$12.00; Yankton County Sheriff's Office \$50.00; Yellowstone County Sheriff's Office \$75.00. Publishing: Chesterman Communications, Inc \$3,000.00; GateHouse Media South Dakota Holdings, Inc \$808.88; Hub City Radio \$4,000.00. Repairs & Maintenance: Century Business Products \$88.89; Day County Treasurer \$1,766.99; Diesel Machinery, Inc \$11,910.98; EcoLab Pest Elimination Division \$272.74; Foerster Testing Limited \$1,690.00; Gary's Auto Body & Accessories \$265.07; Graham Tire Inc \$16,055.84; K & S Plumbing, Inc \$779.76; Meister Mowing LLC \$1,030.00; Montgomery's Furniture Inc \$34,731.85; North 281 Auto \$420.00; Olson's Pest Technicians \$595.00; Pierson Ford Lincoln, Inc \$674.90; Pomp's Tire Service, Inc \$1,110.00; Safety Service \$329.50; Sewer Duck, Inc \$85.00; Steven Lust Automotive \$261.03; Transource Truck & Equipment \$1,470.23; Woodman Refrigeration, Inc \$408.16. Supplies: AASLH-American Assoc for State & Local History \$168.00; Advance Auto Parts \$1,308.61; Agtegra Cooperative \$11,124.01; Avera LTC Pharmacy Aberdeen \$1,337.54; Bimbo Foods USA, Inc \$1,101.04; Century Business Products \$1,054.18; Charm-Tex, Inc \$339.30; Cole Paper Inc \$686.86; Dakota Electronics \$540.00; Dakota Oil \$1,976.42; Diesel Machinery, Inc \$2,795.52; East Side Jersey Dairy Inc \$1,080.45; Geffdog Designs \$1,070.30; Graham Tire Inc \$59.92; House of Glass \$355.97; Knight Towing and Recovery \$466.00; LabSource, Inc \$634.57; Lien Transportation Company \$39,938.15; Linde Gas & Equipment Inc. \$307.71; Lucy Lewno \$6.60; McKesson Medical-Surgical Government Solutions \$878.22; Menards \$724.87; Midstates Group \$150.00; Midwest Alarm Fire & Security Systems \$279.26; NVC \$27.06; Pantorium Cleaners Inc \$56.00; Performance Oil \$63.71; PharmChem, Inc \$447.30; Pierson Ford Lincoln, Inc \$267.84; Pomp's Tire Service, Inc \$481.32; Runnings \$1,078.43; Sewer Duck, Inc \$389.00; SHI International Corp \$178.10; Thomson Reuters-West Payment Center \$2,198.60; Titan Machinery \$50.00; Transource Truck & Equipment \$1,901.38; Tri State Water \$153.75. Travel & Conference: Aaron Walberg \$177.20; Brandon Black \$118.32; Joe Kraft \$263.20. Utilities: CenturyLink \$62.16; City of Aberdeen Treasurer \$2,467.87; City of Hecla \$128.96; Dependable Sanitation, Inc \$348.00; James Valley Telecommunications \$209.10; Northern Electric \$630.99; Northwestern Energy \$98.62; NVC \$3,875.93; Verizon Wireless \$4,090.03. Others: SD Dept of Labor and Regulation \$3,279.85; SD Dept of Revenue & Regulations \$7,554.30.

Payroll: Commission \$4,615.41; Auditor \$11,227.40; Treasurer \$16,494.80; SA \$28,978.18; Maintenance \$8,560.82; DOE \$15,617.46; ROD \$9,932.80; VSO \$4,254.09; GIS \$2,643.52; IT \$5,992.04; HR \$4,698.75; Sheriff \$51,539.22; Jail \$73,449.83; Coroner \$627.99; Ct. Security \$7,243.96; JDC/HD \$33,049.10; Welfare \$2,336.49; DPM \$12,013.99; Parks/Fairgrounds \$7,046.26; Fair \$4,921.10; 4-H \$1,410.05; W&P \$5,790.94; P&Z \$8,082.60; Hwy. \$46,039.19; Dispatch \$58,053.92; EM \$5,017.01; 24/7 \$2,883.99; Landfill \$15,805.55; Meal Benefits \$264.00; FICA \$26,665.21; Medicare \$6,236.20; Discovery_HSA \$1,535.10. All members present voting aye. Motion carried.

HR REPORT:

Moved by Commissioner Dennert, seconded by Gage to approve the following Human Resource Report submitted by Human Resources Director, Allison Tunheim:

- Acknowledge employment ending for Danny Caraballo-Velez, Brown County JDC Detention Officer, FT; effective July 11, 2023. Request to fill.
- Approve hiring John Peterson as Brown County Highway Truck Driver, FT; starting wage \$20.67/hour; effective July 17, 2023.

All members present voting aye. Motion carried.

TRAVEL REQUESTS:

Moved by Commissioner Fjeldheim, seconded by Gage to approve the following Travel Requests: Patricia Kendall, DPM to attend SD Non-profit Capacity Building Fundraising School in Sioux Falls, SD from Aug. 2-4, 2023; Lynn

Heupel & Janel Hettich, Auditor's Office to attend the SDACES Conference in Chamberlain on Aug. 17, 2023. All members present voting aye. Motion carried.

LOTTERY PERMIT:

Moved by Commissioner Fjeldheim, seconded by Gage to approve and authorize Chairman Sutton to sign application, submitted by SPURS Therapeutic Riding Center for a lottery to be held December 15th or whenever all the tickets are sold. All members present voting aye. Motion carried.

FIREWORKS PERMIT:

Moved by Commissioner Dennert, seconded by Wiese to approve and authorize Chairman Sutton to sign the Fireworks Display Permit for Richmond Lake Association for makeup date of July 21, 2023, to be held at Edwards Preserve – Richmond Lake. All members present voting aye. Motion carried.

SPECIAL EVENT LIQUOR LICENSE PERMIT HEARING: Moved by Commission Wiese, seconded by Gage to authorize advertising public hearing for the following Special Liquor License Permits: *Boys & Girls Club of Aberdeen Area* for Grandstand Concessions to be held at the Brown County Fair – SW ¼ of Sec 1-T123N-R64W, Brown County, SD on August 8, 2023 (Special License effective August 14-20, 2023); *SPURS Therapeutic Riding Center* for Barn Dance & Benefit Auction to be held at SPURS – SPURS 2nd Addition, NW ¼ Sec 6-T123N-R63W on August 8, 2023 (Special License effective September 16, 2023). All members present voting aye. Motion carried.

OTHER BUSINESS:

Commissioner Gage shared a letter from Dana Nichols recognizing Aaron Walberg, VSO Officer, for his assistance with VA Claims. Gage commented that he wanted to share this to not only highlight what Aaron does in the VSO but to get the word out for Veteran's need to reach out, also. Chairman Sutton shared the VSO Officer from Day County gave a report of the effectiveness and the critical role they play for our Veteran's.

Representative Carl Perry, complimented Commissioner Wiese and Dirk Rogers, Highway Superintendent for attending the STIP DOT Meeting last week and represented the County well. Mr. Perry wanted to inform the Commission that there is a petition go out for Special Legislative Session for Land Rights – this will show who supports the landowner's and who doesn't.

EXECUTIVE SESSION:

Moved by Commissioner Gage, seconded by Dennert to go into Executive Session for Legal per SDCL 1-25-2. All members present voting aye. Motion carried. The Chairman declared the executive session closed with no action taken.

ADJOURNMENT:

Moved by Commissioner Fjeldheim, seconded by Wiese to adjourn the Brown County Commission meeting at 11:08 a.m. All members present voting aye. Motion carried.

Lynn Heupel, Brown County Auditor

Published July 26, 2023, at the total approximate cost of \$_____ and may be viewed free of charge at

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