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April 5th, 2016 Minutes

Brookings County Planning & Zoning Commission
April 5th, 2016 – 8:00 PM
Brookings City & County Government Center
310 Chambers

Chair Robbins called the meeting to order at 8:01 PM. Commission members present were: Lee Ann Pierce, Robert Rochel, Kimberly Elenkiwich, Darrell Nelson, Terrell Spence, Laurie Nichols, Randy Jensen, and alternate board members Tom Davis and Roger Erickson. Darrel Kleinjan was absent.

Chair Robbins read **agenda item # 1: Approval of minutes from March 1st, 2016 meeting.** Darrell Nelson moved to approve the minutes Roger Erickson second. Chair Robbins called for a voice vote. 9-ayes and 0-nays, motion carried.

Chair Robbins read **agenda item # 2: Items to be added to agenda by commission members or staff.** No items were added by commission members or staff.

Chair Robbins read **agenda item # 3: Invitation for citizen to schedule time on the commission agenda for an item not listed. Time limited to 5 minutes per person to address the board.** No one scheduled time to address the board.

Chair Robbins read **agenda item # 4: Approval of Agenda.** Terrell Spence moved to approve the agenda. Laurie Nichols second. Chair Robbins called for a voice vote. 9-ayes and 0-nays, motion carried.

Chair Robbins stated, "We are now acting as the Brookings County Planning and Zoning Commission" read the opening statement and **agenda item # 5. 2016cu003: Kodiak Pork RE, LLC by Barry R. Kerkaert has made an application, 2016cu003, to the Brookings County Planning and Zoning Commission for a conditional use. Article 11: Section 11.01: "A" Agricultural District: Conditional Use Permit # 11: Class A, B, C and D Concentrated Animal Feeding Operation. The property is described as: "SE1/4 Section 3, T109N, R48W (Parnell Township)".** Randy Jensen moved to approve the conditional use request. Robert Rochel second. Chair Robbins opened up for discussion and asked Mr. Haugen for his staff report. Mr. Haugen

stated, "The applicant is Kodiak Pork RE, LLC by Barry Kerkaert. The land owners are David and Sandra Diedrich. They are applying for a Conditional Use for a Class "A" Swine CAFO for a maximum head of 7,224 head of swine greater than 55 pounds and 640 head of swine less than 55 pounds, equaling 3,500 animal units. The breakdown is: 936 farrowing sows, 5,328 gestating sows/bred gilts, 640 replacement gilts less than 55 pounds and 640 replacement gilts greater than 55 pounds equaling a total of 7,864 head of swine. They have stated the facility will be a swine breeding, gestation, farrowing, and nursery facility, with the feeder pigs moved out at 15 pounds, only the selected replacement gilt piglets will be kept on site for breeding stock replacements. The animals will be housed in 3 separate building: the gilt development unit, gestation unit and farrowing unit. The building will be connected with alleyways between the structures, which will be used for moving the animals from one building to another, with center alley having a load out facility." Mr. Haugen noted: 1) Engineers report by Todd Van Maanen of Stockwell Engineers was included with the application and contained all the information required per the zoning ordinance. 2) Site visit was made and would meet all set-back requirements. 3) A shelterbelt plan and permission slip/shelterbelt waiver and purchase agreement are on file. 4) Site is not located in Zone "A" (Well head protection area) or Zone "B" (shallow/surficial aquifer) and was noted in the engineer's report. 5) Applicant is part of Pipestone Systems based in Pipestone, MN. 6) Road agreement with Parnell Township received and on file. Chair Robbins asked applicant and/or representatives to come forward and address the board. The applicant, Dr. Barry Kerkaert introduced himself and his engineer Todd Van Maanen. Todd Van Maanen presented a power point presentation describing the confinement project, going over the requirements required to meet the current zoning ordinance Article 22: Section 22.01. Chair Robbins opened up for questions from the board. Board members Pierce, Nelson, Rochel, Nichols and Jensen asked questions regarding: private wells, directional flow of any surface run-off, details of manure handling with distances of 1-2 miles mentioned, odor control and traffic. Mr. Haugen also noted that the Brookings County Highway Superintendent, Dick Birk was given a copy of the staff report and had no objections to the application. Chair Robbins opened up the public hearing portion. No one came forward. Chair Robbins closed the public portion and asked for further questions or comments from the board. Board member Rochel stated, "The reason this board probably doesn't have a lot of questions is because we received an extensive Engineering report and we have spent a lot of time studying this." Board members Nelson, Elenkiwich, Spence, Nichols and Rochel asked additional questions regarding: pest and rodent control, feed source, possible future growth plans at the site, nutrient management plan, length records are archived, any concerns or complaints from neighbors, and shelterbelt purpose. Chair Robbins asked for additional comments from the board, hearing none he asked Mr. Haugen to go over the findings of the facts, with any additions, which are on file. Chair Robbins called for a roll-call vote: Rochel-aye, Nelson-aye, Erickson-aye, Nichols-aye, Spence-aye, Jensen-aye, Elenkiwich-aye, Pierce-aye, Robbins- aye. 9-ayes, 0-nays, motion carried.

Mr. Hill addressed the board and audience and recognized the SDSU Swine students and Dr. Robert Thaler that were in attendance at the meeting. He welcomed and thanked them on behalf of the Brookings County Commission for taking the time to attend the meeting.

Chair Robbins stated, "We are now acting as the Brookings County Board of Adjustment", read the opening statement and **agenda item # 6. Appeal of 2016cu002: request by Scott Underwood regarding the issuing of Conditional Use Permit 2016cu002 on March 1st, 2016 by the Brookings County Planning and Zoning Commission.** Chair Robbins read, "appealing on the grounds that: 1) *Testimony about cost savings of \$300,000 by construction of building with uncovered lagoon versus under building storage of manure should not have been allowed or considered by board. There is nothing in Zoning Ordinances that allows board to consider costs associated with construction. Voting was prejudice by testimony.* 2). *By attaching the Conditional Use requirement of injection of manure as a best management practice the board did not consider the current best management practice for that same manure stored in a uncovered lagoon which is no longer considered a best management practice in the swine industry in the upper Midwest.* 3.) *No consideration was considered for the citizens of the colony themselves. They have a church, a school, a cafeteria which are public meeting places in their community which will be located about 400 yard from the uncovered lagoon.*" Laurie Nichols moved to approval appeal request. Kimberly Elenkiwich second. Chair Robbins then opened up for discussion and asked Mr. Hill for his staff report. Mr. Hill's report contained the following comments: 1.) During a conditional use hearing the staff contends that since there is nothing in the ordinances prohibiting the cost of construction then it is permissible. This was a conditional use permit application, not a variance, so costs are allowed in the discussion and have been discussed in previous conditional use permit hearing on various subjects. 2.) In reference to best management practice - in the zoning ordinance on page 22.00-2. The staff contends that the Planning Commission used the Best Management Practices as defined in the Brookings County Ordinance page 22-2 in their review which stated the following: "Best Management Practices (BMP) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMP's also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, waste or manure stockpiles, or drainage from raw material storage." The Brookings county Planning Commission carefully heard the Conditional Use Permit application and followed zoning ordinance and considered several items that are include in the Findings of Facts for 2016cu002. 3.) All standards listed on pages 22.00-17 to 22.00-19 were met during the review of the conditional use permit review. Chair asked the board for questions from the board. Hearing none Chair opened the public hearing portion noting a time limit of 5 minutes per person. Chair Robbins called appellant forward. Appellant identified himself as Scott Underwood and noted concerns: 1) Swine operation with an open lagoon within 400-500 yards of 100 people. 2) Close to a neighbor that raises hogs,

worry of disease being spread either by air or traffic. 3) Doesn't think the site location is ideal for an open storage facility. 4) Odor concerns. 5) Need to attach a special condition that manure must be injected. Chair Robbins opened for comments from other supports of the appeal. The following member of the audience came forward and addressed the board: 1) Alan Nelson noted he was a close neighbor to the proposed site and still had questions with the open lagoon, concern with smell and the threat of airborne disease. 2) Catherine Carter presented the board members with a handout and expressed concern with the Topeka shiner and the location of the proposed facility in relation to Deer Creek, and environmental concerns regarding the open pit. 3) Bryon Ramlo wanted it noted that he was not for this and had concerns with odor, composting, and the type of development. 4) Bill Gibbons questioned cost considerations, current common manure management storage practices and expressed concern for the youth of the colony. Hearing no other opposition Chair Robbins asked for further questions from the board, hearing none he called CAFO applicants forward. Brian Friedrichsen the project Engineer and Jim Stahl from Norfeld Colony introduced themselves. Mr. Stahl stated, "Regarding the lagoon, Brian has the number here vs. a deep pit. We need to establish enterprise for our future generation and we have willing young guys interested in raising pigs. We have 98 members. The pond area will be fenced in and no children are allowed in the area." Mr. Stahl described the voting process that takes place on the Colony and noted that all members agreed and signed off on the project. Brian Friedrichsen asked the board if they had any questions. Board member Pierce asked, "It is my understanding that the South Dakota DENR takes the position that neither a lagoon nor a pit is the best management practice, but either one is acceptable. Is that correct?" Mr. Friedrichsen replied, "That is correct." Chair Robbins asked if the board had any more questions or comments, hearing none allowed Mr. Friedrichsen to add any additional comments. Mr. Friedrichsen addressed the comments regarding: 1) Topeka shiner 2) New permit and changing rules regarding manure application near noted streams. 3) Lagoons vs. Pit storage. 4) Odor management tool. Those that spoke in favor were: Rein Landman, Rusty Antonen and Neil Dobson from Impact Solution Inc. Mr. Dobson presented a short presentation regarding a product that can be used to enhance the natural value of lagoon manure. Chair Robbins asked if the board had any additional questions. Board member Nelson addressed a question to Mr. Friedrichsen regarding possibility of a field in the nutrient management plan already being used under another plan. Mr. Friedrichsen noted that DENR reviews and no overlapping usage would be allowed. Board member Spence wanted to address the odor map and the fact that it was introduced after the public portion. Board member Pierce noted that additional material is often added later. Mr. Hill added, "Our zoning ordinance does not address the odor footprint, it doesn't require an odor footprint for a conditional use to be heard." Chair Robbins opened up for rebuttal from the appellant. Mr. Underwood came forward and voiced concern of the odor of the area, the site being selected for convenience not that it was selected as the best site. Chair Robbins asked the applicant forward for final comments. Mr. Stahl noted that they had hired the injection of manure for seven

years, they now have their own equipment and the manure is in fact injected. Chair Robbins closed the public hearing portion and opened up for deliberation of the board. Chair Robbins clarified that a yes vote would allow the appeal process to move forward and a no vote would deny the appeal. Chair Robbins asked for further questions or comments from the board, hearing none Chair Robbins asked for a roll-call vote: Nelson-nay, Nichols-aye, Spence-aye, Jensen-nay Elenkiwich-nay, Erickson-nay, Rochel-nay, Pierce-nay, Robbins-nay. 2-ayes, 7-nays, motion denied. Mr. Hill noted that the staff would prepare a document and then it would be published in the legal newspaper as the final record of this meeting.

Chair Robbins noted the time concern and that board would continue on. Chair Robbins then removed himself from the board at this time due to conflict of interest. Vice Chair Elenkiwich assumed chair role and alternate board member Tom Davis took his position on the board. Chair Elenkiwich then read **agenda item # 7. 2016var003: Chad Shultz has made an application, 2016var003, to the Brookings County Board of Adjustment for a variance. Article 11.00: Section 11.01 "A" Agricultural District: Area Regulation # 2: Front Yard: The minimum depth of the front yard shall be one hundred (100) feet. A corner lot will have two front yards. The property is described as: "N 528' of S 1596' of E 420' of SE1/4 of Section 33, T112N, R51W (Preston Township)" ~ located at 20177 463rd Ave, Bruce, SD 57220.** Darrell Nelson moved to approve the variance request. Roger Erickson second. Chair Elenkiwich opened for discussion and asked Mr. Haugen for his staff report. Mr. Haugen stated, "Mr. Shultz has applied for a front yard variance to build a 30 foot x 60 foot hoop barn, 88 feet from the center of 463rd Ave (Preston Township road). A variance of 45 feet. The required setback distance is 133 feet from the center of the road. The house and outbuilding meet the setback requirements. The proposed site area is level, the land to the south and west of the residence drops off significantly to the west. There is a 7 foot drop from East to West. Telephone and waterlines along with existing buildings, livestock pens and the shelterbelt limit his building locations. The applicant has spoken to the township and has a letter stating they have no objection to the request." Chair Elenkiwich asked Mr. Shultz to address the board. Mr. Shultz stated, "One correction is that it is a 36 foot x 60 foot hoop barn. My consideration was the land erosion and the steepness of the grade." Board member Nichols asked for clarification of the grade. Mr. Shultz and Mr. Haugen used photos to describe the location issues. Chair Elenkiwich noted her appreciation that he had went to the township board, discussed it with them and that they had granted their approval to his project. Chair Elenkiwich asked for further questions from the board. Board member Davis asked, "Will there be any livestock pens out toward the road?" Mr. Shultz stated, "No, this is just to be used for storage." Chair Elenkiwich opened up for discussion from the audience, hearing none she asked for further discussion from the board, hearing none she asked Mr. Haugen to go over the finding of the facts, with any additions, which are on file. Chair Elenkiwich called for a roll-call vote: Erickson-aye, Nichols-aye, Spence-aye, Jensen-aye, Davis-aye, Nelson-aye, Rochel-aye, Pierce-aye, Elenkiwich-aye. 9-ayes, 0-nays, motion carried.

Alternate board member Tom Davis removed himself from the board at this time and Chair Robbins returned, Co-chair Elenkiwich resumed her seat.

Chair Robbins read **agenda item # 8: 2016var004: Harris Hoistad has made an application, 2016var004, to the Brookings County Board of Adjustment for a variance. Article 13.00: Section 13.01: "LP" Lake-Park District: Density, Area and Yard Regulation (Lake Front). The property is described as: "Lot 11 Wacek Beach in NW ¼ Section 3, T112N, R52W (Laketon Township)" -- located at 294 SE Lake Dr., Estelline, SD 57234.** Robert Rochel moved to approve the variance request. Terrell Spence second. Chair Robbins opened up for discussion and asked Mr. Haugen for his staff report. Mr. Haugen stated, "Mr. Harris has applied for a lake front variance on Lake Poinsett. They have an existing cabin and want to build a 30 foot wide x 60 foot addition with a 12 foot x 30 foot attached deck. It would be 42 feet 4 inches from the high watermark, a variance of 32 feet 6 inches. The current residence is 99 feet from the high watermark to the existing deck. The proposed addition would meet the side setbacks of 8 feet. The property is not in the floodplain and the elevation of the property is 5 feet 2 inches above the high watermark. The deck addition would be farther back than the residence on either side. Wacek Beach was platted in 1967 prior to the zoning ordinance. Hardships would be the shape and size of the lot and the lots were platted before the zoning ordinance was adopted." Chair Robbins asked Mr. Hoistad to address the board. Mr. Hoistad stated, "We purchased the property 11 years ago and built a small cabin in the back with the intention that as we neared retirement age we would add a home to the front. Once we retire we would live out their on a full-time basis. We would be behind our neighbors as far as the location of the addition and deck. We had no issues in the 2010-2011 floods." Chair opened up for discussion from the board. Board member Nelson asked a question regarding ice movement and wind. Mr. Hoistad noted that in the 11 years they have owned the property they have had no issues. Board member Pierce asked, "You built the cabin that is currently there?" Mr. Hoistad stated, "Correct, my wife and I built that." Board member Pierce noted, "The 75 foot setback is not just for the protection of the homeowner but is for the protection of the lake and I encouraged the other commission members to keep that in mind. You kind of made a decision when you put that cabin way back there, to limit the amount of room that you had to build in." Mr. Hoistad replied, "The current cabin that we have there is built according to the current setback from the center of the road. We are as far back from the lake now with the current cabin as we can be and meet the setback on the back side as well as on the sides." Board member Pierce stated, "I don't mind giving a variance on the back end where it is the road as that is not an environmental issue, but it's that front end for the protection of the lake that always concerns me and the is why we have the 75 foot setback, to protect the lake." Chair Robbins asked for further comments from the board, hearing none he opened up to the audience. Hearing none he asked the board for further questions or comments. Board member Nichols asked for clarification and a review of the site and the setbacks. Site and setbacks were review with septic

system noted as an issue in designing of the addition. Chair Robbins asked for additional comments from the board, hearing none he asked Mr. Haugen to go over the findings of facts, with any additions, which are on file. Chair Robbins called for a roll-call vote: Spence-aye, Jensen-nay, Elenkiwich-nay, Pierce-nay, Rochel-nay, Nelson-aye, Nichols-nay, Robbins-aye, Erickson-aye. 4-ayes, 5-nays, motion failed.

Chair Robbins stated, "We are now acting as the Brookings County Planning and Zoning Commission" read the opening statement and **agenda item # 9. Consideration of Plats: a. 2016plat001: "Plat of Block 1; Lots 1-5 in Block 1; and Block 2 of Pearson-Overby Addition an addition in Govt. Lot 4 of Section 22, T112N, R47W of the 5th P.M., Brookings County, South Dakota."** Darrell Nelson moved to approve the final plat. Kimberly Elenkiwich second. Chair Robbins opened up for discussion and asked Mr. Haugen for his staff report. Mr. Haugen stated, "Mr. Pearson has applied for a final plat of Block 1 Lots 1-5 and Block 1 & Block 2 of Pearson-Overby Addition. The preliminary was approved March 1st, 2016. It meets all the Lake Park zoning requirements and all the lots meet the setback requirements. The rest of the lots in Block 1 will be platted as they are sold. They meet the 20,000 square foot requirement and meet the non-lake front set back requirement of 50 foot front, 50 foot rear and 8 foot side." Chair Robbins opened up for questions from the board. Board members Nichols asked to clarify what was being approved at this time. Chair Robbins asked the applicant to come forward and address the board. Mr. Pearson stated, "I have lots 1-5 that I am going to plat and in the future if I sell more they will be mirrored of lots 4 & 5 all the way to the end for people to build a house or garage on." Mr. Pearson noted that he had purchase agreements on lots 1 thru 3 for the back lots of the cabins. Chair Robbins asked for additional comments from the board, seeing none he called for a roll-call vote: Nichols-aye, Spence-aye, Jensen-aye, Pierce-aye, Rochel-aye, Nelson-aye, Elenkiwich-aye, Erickson-aye, Robbins-aye. 9-ayes and 0-nays, motion carried.

Chair Robbins stated, "We are now acting as the Brookings County Board of Adjustment", read the opening statement and **agenda item # 10. 2016var005: Greg Pearson has made an application, 2016var005, to the Brookings County Board of Adjustment for a variance. Article 13.00: Section 13.01: "LP" Lake-Park District: Density, Area and Yard Regulation (Non-Lake Front). The property is described as: "Lot 1 in Block 1 of Pearson-Overby Addition an addition in Govt Lot 4 of Section 22, T112N, R47W of the 5th P.M., Brookings County, South Dakota (Lake Hendricks Township)."** Laurie Nichols moved to approve the variance request. Roger Erickson second. Chair Robbins opened up for discussion and asked Mr. Haugen for his staff report. Mr. Haugen stated, "Mr. Pearson has applied for a variance on Lot 1 of Block 1 on the plat that was just approved. He has applied to reverse the non-lake front rear and side setbacks to build an accessory building on. The accessory building will meet the Lake Park zoning size requirements." Mr. Haugen then described and showed the changes that were being requested using the map that Mr. Pearson had submitted in his application. Mr. Haugen noted the county's definition of a rear yard according to the Brookings County Zoning Ordinance. He also noted

that Mr. Pearson was also asking for a 35 foot front yard set-back instead of the required 50 foot. Mr. Haugen stated, "Looking back in the past history, the Board of Adjustment has not had any requests like this in the past so we have no history of board actions. It has been brought up that when we update the zoning ordinance that we look at possibly changing the definition of the rear yard to clarify that, but right now the red outline area is our current zoning setbacks." Board members discussed: 1) Possible use of the lots. 2) Possible request for similar requests on other lots in the area. 3) Why the need for an additional variance request on the front yard? 4) Why it initially was platted in such a way that this became an issue? Mr. Pearson's replies to the questions: 1) "I have purchase agreements for lots 1-3, I am buying lot 1 for myself, lot 2 the purchaser would build a garage on. The lots will be adjacent to the homeowners to the north." 2) "Lot 3 would be the only other one that could ask for a similar request. That will be based on how they choose to face their garage." 3) "The reason I want a 35 foot setback is, as of right now the road is 20 feet from the edge of the property. So the property pins are actually 20 feet from the actual road, so my driveway before I can even put a building would be 70 feet from the edge of the road. Because the setback goes from the edge of your property. I would like to be 55 feet from the edge of the road." 4) "No other way to plat it, the lot (Lot 1) is a 3/4-acre lot, the definition is where it is hanging me up, I want the same setbacks to the neighbor to the north. Because of your definition I am restricted on what I can build on." Board member Jensen directed a question to Luke Muller from First District, asking if this was a common issue in other counties. Luke Muller stated, "Thanks for asking, I went through our ordinances in the eleven counties that we work with, I have spoken with the applicant and the zoning office here. I went thru several months ago who has a similar definition and who doesn't in terms of counties. From counties it is a mixed bag. I would say half of the eleven counties we work will have the same definition that you do. The question about do we see a lot of them get a variance to switch these. In some cases they do although they are typically on lots that have already had development occur on them. Usually we see them on plats that have already been developed and not typically on new lots." Mr. Hill added into the discussion that the Lot in question is not a 'Takings'. The lot is buildable, a structure can be put on that location. Mr. Haugen noted that Lake Dreams (Preston Mettler and Jim Breckenridge) had emailed the office and were not in favor of the variance request. Chair Robbins asked for additional questions or comments from the board, seeing none he asked for additional questions or comments from the audience. Hearing none he directed back to the board. Board member Rochel stated, "Mr. Chairman I think this commission is uncomfortable moving or approving this as is, and if this is denied he doesn't have much option. He can't come back for six months. I am uncomfortable with this and setting precedence in going forward." Board members discussed concerns with the request. The board discussed options to further review this request or withdraw it with the applicant. Laurie Nichols moved to table the variance request for one month to the May 3rd, 2016 meeting. Robert Rochel second. Chair Robbins called for a voice vote. 9-ayes and 0-nays, motion carried.

Chair Robbins then read **agenda item # 11: Department Reports**. Chair Robbins asked Mr. Hill for his Directors report. Mr. Hill stated, "We would like to thank Dr. Nichols for her service and the County Commission would like to thank her as well. There is still 7 months left in her term and we need someone from her area to replace her." Mr. Hill then directed commission members to the hand-out he provided them and noted that it would be the format of the zoning ordinance and that staff would be working on taking the existing zoning ordinance and putting it into the new format. He also noted that at next month's meeting a plan for updating the ordinance would be on the agenda.

Terrell Spence moved to adjourn the meeting. Laurie Nichols second. Chair Robbins adjourned the meeting at 11:10 PM.

Rae Lynn Maher
Brookings County
Development Department.