



# First District News

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## First District Welcomes Payton Schafers

Hi, my name is Payton Schafers and I am a new Planner/Economic Development Officer at First District. I grew up in the southern part of the state in the small town of Tripp, SD. After graduating from high school in 2015, I attended South Dakota State University where I majored in Landscape Architecture and Horticulture. I loved my time at SDSU and was fortunate to receive many unique study abroad opportunities, in places such as San Francisco and Italy.



My interest in planning piqued after taking a City Planning class my junior year. A specific project that intrigued me was how to increase walkability in rural communities. The following year I was hired to assist with teaching the class as we took on the much larger communities of Sioux Falls and Harrisburg for a similar project. After I graduated in May of 2019, my professor and I were selected to present our project work at the Environmental Design Research Association conference in Brooklyn, NY.

Before graduation, I accepted a community assistance fellowship with the National Park Service working out of their Midwest Regional Office in Omaha, NE, which I began shortly after returning from New York. In this position, I worked with city, state, and tribal governments to design recreational areas and trails throughout communities. I thoroughly enjoyed working with NPS, but when I found an open position with First District, I was grateful for a chance to move back to South Dakota to be closer to my family and fiancé.

In my spare time, I enjoy hiking, camping, snow skiing, and practically anything else that gets me outdoors. However, I have many exciting events coming up this year that will keep me very busy. Currently, I am in the process of training for my second half marathon and planning for my wedding this fall. I am very excited to become a part of the First District staff and look forward to assisting South Dakota communities in a new way.

**GO GREEN! If you would like the Newsletter emailed to you, please email [suzie@1stdistrict.org](mailto:suzie@1stdistrict.org)**

## MY THOUGHTS...

By: Todd A. Kays



As I pen this article, the South Dakota Legislature is nearing its last regular legislative day for the 2020 session. Every year the Legislature deals with legislation that has some level of impact on local units of government. This year was no different. Let's look at some of those planning and zoning bills.

**HB 1120** was a bill put forward by the SD Municipal League as response to an Attorney General's opinion regarding whether elected 2<sup>nd</sup> and 3<sup>rd</sup> class Town Board members could also serve as members of the Planning & Zoning Commission. The bill was passed legitimizing what has been common practice in most small communities across the State.

**HB 1226** was a repeat bill from the 2019 legislative session which was killed in committee last year. This year, the bill made it out of committee but failed to pass out of the house on a 25-42 vote. HB 1226 would have extended the time required for the legal implementation of resolutions and ordinances adopted by a county or city. Current State law allows petitioners 20 days after publication of the resolution/ordinance to petition for a referendum. The proposed law would have extended that time frame by an additional 15 days for communities and 30 days for communities.

**HB 1260** was a bill related to Tax Increment Financing. The bill adds a requirement in determining the tax increment base of the district. The language now requires that, "the application shall be accompanied by a detailed parcel list of the included legal descriptions, property ownership, and valuation as provided by the director of equalization office of the affected corresponding county." The bill is currently awaiting the Governor's signature.

Probably the planning and zoning bill that has received the most attention is **SB 157**. At present SB 157 has passed the full Senate and the House State Affairs Committee. It is scheduled for House floor debate in the next few days. If passed by the House, the Governor is expected to sign the bill.

The bill has been described in many ways. Pro-development. Anti-local control. Pro-local control.... In my opinion, SB 157 is a bill that primarily deals with County Zoning processes as they relate to conditional use permits, special use permits and appeals. Being that our office assists all eleven county members of the District with Zoning Policy development and administration, I thought I would take the opportunity to describe what actual changes will occur for County Boards of Adjustment (BOA).

The most significant change affecting First District County BOAs is that going forward all conditional use permits will be approved by a simple majority of those members present and voting. So, if you have a 5-member board - 3 votes are required to pass, a 7-member board - 4 votes, a 9-member board - 5 votes. There have been some concerns that if for example a county had a 5-person board and only 3 of those board members were present to vote, 2 votes could then pass a conditional use permit. There are two easy fixes to address those concerns: 1. State Law allows counties to appoint up to 2 alternates to the BOA. This would help ensure that there would be adequate BOA membership present. 2. The other recommended change would be to set the minimum number of BOA members required to constitute a quorum. For example, a 5-member board would need 4 members present to establish a quorum. Thereby needing 3 votes to issue the CUP. Both techniques are used by counties throughout the District. It should also be noted that SB 157 **does not** change the requirement that in order to get a variance or have an appeal from a zoning officer's decision granted, the BOA would still need to have 2/3 of the full membership of the entire BOA to vote in favor of the variance or appeal. The bill also defines when a CUP expires – All CUPs will be valid for "2 years following completion of any final appeal of the decision". Finally, CUP applicants will be protected from those individuals that attempt to thwart a CUP application by constructing a home, well, etc. within a prescribed setback after the submission of a CUP application but before a BOA hearing.

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The bill addresses special permitted uses (SPU). SPUs are like “permitted uses” except they have additional specific requirements for the zoning officer to review. SB 157 states that if you utilize special permitted uses, the zoning officer is required to issue the permit, if all the boxes are checked. Further, there is no BOA review or participation in the issuance of the SPU permit. Long story short - if your county does not have special permitted uses in your ordinance, this section of the bill doesn’t impact your county. If you want to adopt SPUs, your county will need to amend your zoning ordinances.

The remainder of the bill deals with “legal” issues such as “who is an aggrieved person” - basically who has standing to sue or appeal a decision of the BOA; Establishing a 21-day period to appeal zoning officer’s decisions to issue or deny permits to the BOA; Awarding reasonable fees/costs to

counties that prevail in actions brought against the BOA; Requiring the appellant to pay for any transcript costs; and Requiring counties to respond within 30 days of the filing of a writ of certiorari.

Finally, in no way does SB 157 dictate to counties “what” land uses they may regulate or “how” the county chooses to regulate those specific land uses. It does specify that once the county determines the “what and how” to regulate, the administrative decision to issue a CUP is by simple majority.

If approved and signed by the Governor, each First District County will need to amend some of their administrative sections of their ordinances. As always, we will be happy to assist you in those endeavors. Please contact Luke, Tom, or myself if you have questions.

## Recreation Trails Program Grant Available

South Dakota State Parks announced that applications are being accepted for grants from the Recreation Trails Program (RTP). The grants will be available for trail projects sponsored by municipalities, counties, state parks, federal land management agencies or tribal governments. The Recreational Trails Program provides partial reimbursement for approved trail projects. Eligible projects include construction of new public trails, rehabilitation of existing public trails, development of trail-related facilities and educational programs that relate to recreational trails. The application deadline for RTP is Friday, April 17, 2020. If you are interested in the application process or more information about RTP visit <https://gfp.sd.gov/userdocs/docs/rtp-application.doc> or contact Greg.

## First District Governing Body Meeting



The next First District Governing Body meeting will be on Tuesday, March 24<sup>th</sup> at 5 p.m. at our new office located at 418 18th Ave NE, Watertown. The highlight will be a presentation from Toby Morris on Tax Increment Financing (TIF). We also will be giving tours of our new office building. Hope to see you there.

## Save the Date! GOED Conference

The Governor’s Office of Economic Development (GOED) Conference is scheduled for April 21st in Rapid City. For complete information, please visit <http://www.sdreadytopartner.com/annual-conference.html>



