

Monday November 20, 2017

The Deuel County Zoning Board met on Monday November 20, 2017, at 6:30 P.M., in the Commissioners' room of the Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Mike Dahl, Gary Jaeger, Paul Brandt, and Kevin DeBoer. Also present were States Attorney John Knight and Zoning Officer Jodi Theisen.

Chairman Dennis Kanengieter called the meeting to order. The minutes from the October 10, 2017, were discussed.

Motion by Dahl, seconded by Brandt, to approve the October 10, 2017, minutes. All voted in favor and motion carried.

Motion by Brandt, seconded by DeBoer, to approve the November 20, 2017, Agenda. All voted in favor and motion carried.

- 1) Richard Nuytten and James Vlaminck came to the board to talk about a complaint the Zoning Board received about a gravel boat ramp and possible erosion into the lake. Nuytten stated that he has owned the property for 23 years and the gravel boat ramp has always been there. Brandt was wondering if they could come up with a solution to help stop the gravel being washed into the lake. The board suggested river rock or larger rock that would not wash down into the lake during a rain. The board suggested filling the rut that is going towards the lake as soon as possible to stop any more erosion. Nuytten and Vlaminck stated that they would work on the ramp in the spring and haul in some more aggregate rock to help stop the erosion.
- 2) Gary Nelson came and talked to the board about his campers at Lake Cochrane. Nelson stated that he was granted a Special Exception in 2008 for a private campground for three campers. He was under the understanding that this permit was good until he sold his lots because the Special Exception is non-transferrable. The board stated they have had a lot of questions and complaints about campers in the Lake Park District. This Special Exception was before the concerns and before the stated limited time frame for the private campgrounds. The board stated that this Special Exception is valid until they sell their lots. The Zoning Board also received a complaint about the refrigerator and other clutter that was left after the campers were removed for the fall. Nelson stated that, yes, he leaves the refrigerator on the lot in the winter. Nelson stated that he will remove the refrigerator and the clutter on the lots this fall.
- 3) Motion by Brandt, seconded by Jaeger, to table the Plat of Block 1 Streich Addition in the S1/2SW1/4 Section 19-113-49, Blom Township, until they

apply for a variance to allow existing buildings to have less than 150' front yard, existing buildings less than 50' from the side and back lot line in a Commercial Zoned District. The board also had concerns about the new plat line going through the middle of the existing bins. All voted in favor and motion carried.

- 4) Mickey Mix applied for a Special Exception Permit & Variance. The request, if granted, would permit the applicant to use the following property: Lots 12-13-17-15 & Lots 12A & 13A of Severson Bay in Gov Lot 5 in the NE1/4 of Section 5-114-47, Lake Cochrane, Norden Township to replace old storage shed with a new 12' x 12' storage that is within 10 feet of the side property line in a Lake Park District. Mix stated via phone that he forgot about getting a building permit and he didn't realize that he needed a Special Exception Permit and Variance Permit also. Mix stated that he was going to replace the siding, but later realized that he should replace the whole shed. The existing pad he used is 8 feet and 2 inches from the side property line and he is more than 50 feet from the high water mark and more than 30 feet from the edge of the road. The board asked Mix if the adjoining property owner was aware of the new shed and if they are ok with the construction and if Mix could get a letter from the adjoining neighbor. Mix stated that the neighbor is ok and will call them and get a letter. Motion DeBoer, seconded by Dahl to grant a Special Exception and Variance to replace old storage shed with a new 12' x 12' storage that is 8 feet and 2 inches from side property line with written permission from the adjoining property owner in a Lake Park District on Lots 12-13-17-15 & Lots 12A & 13A of Severson Bay in Gov Lot 5 in the NE1/4 of Section 5-114-47, Lake Cochrane, Norden Township. All voted in favor and motion carried. The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h), of the ordinance.
- a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Applicant has pre-existing access to the property and proposed structures, and there is no issue with automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.
 - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and properties generally in the district: Does not apply.

- c. Utilities, with reference to locations, availability, and compatibility: Does not apply.
 - d. Screening and buffering with reference to type, dimensions, and character: Applicants have adequate screening and buffering.
 - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: Does not apply.
 - f. Required yards and other open spaces: Applicant has adequate yard and other open spaces.
 - g. General compatibility with adjacent properties and other property: The applicant's proposed use is generally compatible with the adjacent properties and other properties in the Lake Park District.
 - h. Refuse and service areas, with particular reference to the items in (a) and (b) above: Does not apply.
- 5) Jesse Bermel, a representative of Heartland Wind, LLC, applied for a Special Exception Permit. The request, if granted, would permit the applicant to use the following property which is owned by Bryon & Sheila Monnier: the SE1/4 of Section 6-113-48, Scandinavia Township. To erect a wind anemometer tower which is used to collect wind data in an AG zoned district. Bermel, via phone, stated that the tower will be 180 feet tall and will be 221 feet from the road right-of-way which is more than the ordinance requires. The Board asked the time line of these anemometer towers. Bermel stated when production of the wind towers begin they will remove these anemometer towers; he is thinking 6 months up to 2 years. Motion Jaeger, seconded by Dahl, to grant a Special Exception to erect a wind anemometer tower which is used to collect wind data in an AG Zoned District on the following property which is owned by Bryon & Sheila Monnier: the SE1/4 of Section 6-113-48, Scandinavia Township. All voted in favor and motion carried. The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h), of the ordinance.
- a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Does not apply.
 - b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and properties generally in the district: Does not apply.

- c. Utilities, with reference to locations, availability, and compatibility: Applicant has adequate utilities.
 - d. Screening and buffering with reference to type, dimensions, and character: Does not apply.
 - e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: Does not apply.
 - f. Required yards and other open spaces: Applicant has adequate yard and other open spaces.
 - g. General compatibility with adjacent properties and other property: The applicant's proposed use is generally compatible with the adjacent properties and other properties in the Ag Zoned District.
 - h. Refuse and service areas, with particular reference to the items in (a) and (b) above: Does not apply.
- 6) Stone's Conservation Acres LLP applied for a Special Exception. The request, if granted, would permit the applicant to use the following property: NE1/4 Less Block 1 Hunt Sub Section 34-116-48, Glenwood Township to build and operate an airplane landing strip for private use in an Ag Zoned District. William Stone stated he has run a hunting business for the last 32 years and he would like to have this airstrip for hunters to land on. Stone stated that this would be a convenience for him instead of running to Clear Lake, Canby, and sometimes they land on Lake Cochrane and he has to go and pick them up. This way the hunters could land and he would have a vehicle waiting for them and they could start hunting right away. Stone stated that H-D had overhead lines along his property and now they buried them so he thought about doing an airstrip. Stone stated that he applied for a permit through the FAA and has received approval. The airstrip would be 1100 feet long and they would need about 15 feet to above the airstrip to clear the road and the end of the airstrip. The Board questioned the distance from John Homan's airstrip. Stone stated that that airstrip is 4 miles away from this site. Wade Redlin asked why Stone couldn't use that airstrip. Stone stated that Homan usually has his gates locked and it would be an inconvenience for him to go and get the hunters and that is why he would like his own. Brandt stated that while the board is looking at the best interest of the area, he also stated that in order to get unrestricted access to the airspace over his neighbor's property he would have to secure those rights from the adjacent property owners.

Steve Overby stated that he was in favor of the airstrip and the board should not discriminate. Arnie Krause was wondering what the set back

distance a wind tower would have to be from an airstrip. The board stated that they couldn't find a set back; however in order to get unrestricted access to the airspace over his neighbor's property Stone would have to secure those rights from the adjacent property owners. There were some concerns from the public if the air rights of the adjacent neighbors are still available for Stone to secure them or not. Another concern from the public: does this limit the adjacent property owners from building a structure or a wind tower on their land. The board stated no, they could build a bin, grain leg, or wind tower on their property if they are within the ordinance setbacks and the pilots would have to adapt to the obstacles. Jaeger asked the width of the airstrip. Stone stated 318' in width but will only use about 75'. Kanengieter and DeBoer had concerns about the set back from the county road to the east. There is a hill to the north and the line of site is a concern. The airstrip will be sitting east and west, so the board suggested that the airplanes could only take off toward the west and this would help with the line of site with traffic. Motion by Dahl, seconded by Jaeger, to grant the Special Exception to build and operate an airplane landing strip for private use with the limitation that planes can only take off to the west in an Ag Zoned District located in the NE1/4 Less Block 1 Hunt Sub Section 34-116-48, Glenwood Township. Kanengieter called a roll call vote: Dahl-yes, Jaeger-yes, DeBoer-no, Brandt-yes, Kanengieter-yes. Motion carried. The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h), of the ordinance.

a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Applicant has preexisting access to the property and proposed structures, and there is no issue with automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.

b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and properties generally in the district: Does not apply.

c. Utilities, with reference to locations, availability, and compatibility: Does not apply.

- d. Screening and buffering with reference to type, dimensions, and character: Does not apply.
- e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: Does not apply.
- f. Required yards and other open spaces: Applicant has adequate yard and other open spaces.
- g. General compatibility with adjacent properties and other property: The applicant's proposed use is generally compatible with the adjacent properties and other properties in the Ag Zoned District.
- h. Refuse and service areas, with particular reference to the items in (a) and (b) above: Does not apply.
- 7) William Bork & Jon Bork applied for a Variance Permit. The request, if granted, would permit the applicant to use the following property: S1/2 Section 6-117-47, Antelope Valley Township, Deuel County, South Dakota to move in an older 24D x 16H Bin within 150' from the road right-of-way in an AG Zoned District. Bork stated that he wanted the bin behind the existing bin to stay in line. Motion by DeBoer, seconded by Brandt, to approve the Variance to move in an older 24D x 16H Bin 127 feet from the road right-of-way in an AG Zoned District. All voted in favor and motion carried. The findings for this Variance are the bin will not cause a safety or snow problem. The existing bins are closer to the road right-of-way.
- 8) Michael Crinion, one of the owners of Sherman Dairy and Global Dairy, applied for a special exception on SW1/4 Less Shannon Addition in Section 21-113-50 for Class "A" CAFO which is 7486 animal units for 4850 head of mature cattle and 550 head of calves. In 2010 Sherman Dairy which is owned by Michael Crinion and Arjan Blok purchased the above described property. Sherman Dairy has part ownership in Global Dairy which is located right beside this parcel of land. The Deuel County Zoning Board previously suggested that they combine these two CAFO's because the dairies have asked for variances for buildings and one building is on land owned by both entities. Crinion stated their long term goal was to have these two entities combined at one point in time. They would like to increase the two existing CAFO's for future growth. Crinion stated that they take pride in having their dairies clean and tidy. Crinion stated he had talked to the surrounding neighbors within 1/2 mile and have letters of approval from them and Estelline business owners. He has 12 signed

letters of approval. Crinion stated that they have enough manure acres. Kanengieter asked about the manure application agreement and the period of time for these agreements. Crinion stated that they are usually good up to 5 years and they are automatically renewed unless the property owner sends a letter to be removed from the manure management plan. Crinion stated they currently apply 20 million gallons on their manure management acres.

Dahl mention in the application that there are plans for another dairy and freestall barn. This would take the place of the current dry cow barn on Sherman Dairies land. Dahl question why increase the application now and not down the line. Crinion stated that they will be at the max number of animal units in the spring of 2018 and would like some room to expand and not be over their limit. Crinion stated they would apply now and then come in for building permits in the future if they expand. They might not expand as it depends on milk prices. Crinion also stated they have their own private wells which are located south of the dairy on Nystrom's land.

The board went through the nutrient management plan, manure management and operation plan, fly and odor control. Crinion stated that they have a flume system for manure management and cross ventilation, so they don't have a lot of flies in the barn. They use a rendering truck for disposal.

Dale Roth stated his concerns about the expansion and opposes the expansion. Roth stated that more animals will produce more manure which means a potential danger for the lagoons leaking. Roth is concerned with the possibility of water quality and contamination of the creeks, rivers, and water table. He was concerned about Rusty Brandsrud who owns land near the dairy. Crinion stated that they follow the state permit requirements with the manure application. Crinion stated that water quality and contamination are very important to them also because they, too, need the water.

Ben Stout and Dan Endres who are involved in the Dairy Industry stated that they are in favor of the expansion for the economic growth this dairy would produce and does produce. Tim Thompson, Seth Evenson, and Thad Krause are local farmers and residents that are in favor of the expansion of the CAFO. They stated that it will help the economy of the local smaller farmers. Jody Kuper with Valley Queen states Crinion runs a tight ship and is a very a good manager. He is in favor of the expansion. Kuper stated that 35 years ago when he started at Valley Queen there were 450 producers and now there are only 45 producers. Mat Hotzler with H-D stated that they are in favor of the expansion. Hotzler stated that

the six largest dairies in the area provided 10% of the kilowatt hours usage toward H-D and they are in favor for the economic development.

Amber & Rusty Brandsrud and their family live north of the dairy and have concerns about the shallow aquifer, the water table, and the possibility of contamination to the water source. They provided pictures of a manure pumping pipe lying across a creek near their house and a picture of runoff on top of a ridge that was about 300 feet from a creek. Crinion stated that he was also concerned about the pipe across the creek and has not hired that company again. The runoff was where they turn around in the field and it didn't get incorporated in; however, they were far enough away from the creek than DENR requires. Brandsruds stated that they would like to be good neighbors and they don't have any complaints about the dairy. They just want to make sure the water quality is protected for them and for the future. Tanya Svec had concerns also with the expansion with more traffic on Hwy 28, the water quality, and property values. Linda Svec showed concerns about the water table and the possibility of water pollution.

Dahl stated that the Town of Estelline had to test the water in town because of high nutrients. The high nitrates were caused by the elevator, so water pollution can be caused by numerous factors.

Motion Brandt, seconded by Dahl, to grant the combination of Sherman Dairy and Global Dairy to a Class "A" CAFO up to 7486 animal units with the conditions they apply and receive a State Class "A" CAFO Permit. Kanengieter called for roll call vote: Jaeger-yes, Dahl-yes, Brandt-yes, Kanengieter-yes and DeBoer-yes, and motion carried. The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h), of the ordinance.

a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Applicant has preexisting access to the property and proposed structures, and there is no issue with automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.

b. Off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and

properties generally in the district: Applicant has adequate off-street parking and loading areas.

c. Utilities, with reference to locations, availability, and compatibility: Applicant has adequate utilities.

d. Screening and buffering with reference to type, dimensions, and character: Applicant has adequate screening with trees planted to east and south, and the existing grove to the west.

e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: Does not apply.

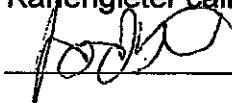
f. Required yards and other open spaces: Applicant has adequate yard and other open spaces.

g. General compatibility with adjacent properties and other property: The applicant's proposed use is generally compatible with the adjacent properties and other properties in the Ag Zoned District.

h. Refuse and service areas, with particular reference to the items in (a) and (b) above: Applicant uses a rendering service and have a nutrient management plan and manure management plan.

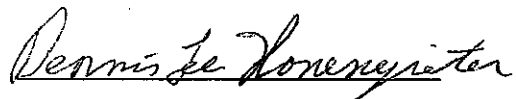
9) Board discuss the pending lawsuit.

Kanengieter called the meeting.



Jodi Theisen

Zoning Officer



Dennis Kanengieter

Chairman, Zoning Board