

Wednesday May 8, 2019

The Deuel County Zoning Board met on Wednesday May 8, 2019 at 6:00 P.M., at the Clear Lake Community Center in Clear Lake. Those present were members Dennis Kanengieter, Steve Rhody, Paul Brandt, Judith Homan, and Gary DeJong. Also present were Attorneys Jack H. Hieb and Zachary W. Peterson and Luke Muller, First District Association of Local Governments.

The Chairman Kanengieter stated that there are sign sheets in the back of the room for pro and con to speak.

Chairman Dennis Kanengieter called the meeting to order.

Motion by Rhody, seconded by Brandt to appoint Gary DeJong and Judith Homan on the board for this meeting. All voted in favor and motion carried.

The Chairman Kanengieter stated the invitation for people to speak will have a limit of five minutes and that was decided by the Chairman.

Motion by DeJong, seconded by Rhody to approve the agenda. All voted in favor and motion carried.

Hieb stated that there was an appeal that was filed and request for a stay. Hieb and Peterson stated that they don't believe the issues raised in that appeal are appealable issue under the stature that's cited, and so action taken on those. They also don't believe that the appeal was timely in relation to the issues that are raised in it. So the email that Hieb sent to the response to email appeal to have it part of the record and that it will be part of return to writ if there's an appeal of those.

The chairman Kanengieter asked the board if they have been engaged in conversation regarding applications outside the meeting which pre-disposed or in your estimation may be perceived to have pre-disposed you to a certain decision. No one stated anything anything so the answer is no.

Muller asked the board if anyone on the board – this is as far as disclosure of potential conflicts of interest, relationship to the applicant, or ex parte communication, and that is, has anyone, any member on this board engaged in conversation regarding these applications outside the meeting which pre-disposed or in your estimation may be perceived to have pre-disposed you to a certain decision? No board members said anything so the silence is a no. Muller asked the board if they may have any relationship with any applicant or anyone providing testimony that may be received to pre-dispose you to a certain decision and whether you feel it will. In the case of today's meeting it would be relevant if you have any wind easements with this applicant. Muller asked the board if they have any other potential conflicts of interest that you can think of that you'd like to disclose. Brandt stated he has an easement with a Met Tower with NextEra. Kanengieter stated that he does have a contract with a power line company that's going to be

putting a power line across his quarter it involves Flying Cow Wind tower project over in Minnesota. Brandt & Kanengieter stated that they can make an unbiased decision. The board voted to deem that either member should be disqualified from voting a vote –yes means that they shouldn't be able to vote a no- vote means that they have the right to vote as a board members; DeJong –no, Rhody –no, Homan-no, Brandt-no, Kanengieter-no. Basis of the vote all of the board members will be staying on the board.

Motion by Rhody, seconded by Brandt to approve the WES application and to have discussion on the application. Muller stated that there has been a Special Exception application for Deuel Harvest North Wind Farm. The property in the project is Antelope Valley, Portland, Lowe, Altamont, Glenwood and Herrick Townships. It is in an agricultural zone, and portions are located over the Zone B of the Shallow Aquifer Protection District. The company requests to operate a 310.1 megawatt Wind Energy System with up to 112 wind turbines, 7 additional alternate tower sites, meteorological towers, aircraft detection lighting sensor towers, associated electrical transmission lines, substation, construction and maintenance structures, and other accessory uses. Invenergy has defined a project area that includes approximately 41,740 leased acres in the above townships for wind towers and electrical transmission lines. In addition to the wind towers, the project includes gravel access roads to the turbines, buried electric collection lines and communication cables, and operation and maintenance building, project substation to interconnection station, and overhead feeder line connection the project substation to the interconnection substation, up to three aircraft detection lighting towers, up to four permanent MET towers, and temporary construction areas and facilities. This information is all in the staff report that was given to the board members and there are some located on the back table for the public to look at. The company will have to get haul road agreements with the local townships and the county and to provide a name and number for a person to contact if there are any questions. The proposed tower locations meet or exceed existing setback for the Lake Park District which was measured from the Lake Park District boundaries of the lakes listed in the ordinance. It also meets the setbacks for offsite uses, participating residences, property lines and rights of way as far as the information that they provided. Invenergy also plan on employing aircraft detection lighting systems as is evidenced, or at least equipping the farm to be able to do so if deemed allowable by the FAA, and that's evidenced by the willingness to put up the ADLS Towers, the Aircraft Detection Lighting Towers.

The applicant had a similar application about a 1 ½ year ago. From that application, the applicant removed 42 towers. The applicant has agreed to meet with the PUC, they have suggested in some other cases as far as decommissioning the site restoration account, \$5,000 per year per tower up to 30 years. PUC does evaluate the efficiency of that account; they've agreed to do that. Muller stated that he did review the noise and flicker report and there are 122 nonparticipation residences within the study, there are 29 receptors with a decibel level exceeding 40 decibels that would be nonparticipation. The highest is 44.9 the maximum is 45 decibels that would be allowed, so nothing does exceed that 45 decibels. The applicant stated the flicker will not exceed 30 in one year at any residence. There are 6 receptors expected to experience over 25 hours of flicker per year. However 27 hours is the highest. All 6 of those

that will experience over 25 hours in one year are participation residences. The highest nonparticipating receptor would be 22 hours.

Muller stated that there was an error in the first application submitted they omitted Antelope Valley and they corrected that and they added some testimony from the PUC. The applicant does agree to submit a decommissioning plan, and obtain and submit haul road agreements as required. They agree to meet state and federal permitting requirements with regard to interference in communication. As far as the staff summary and recommendation, the applicant has provided documentation of its ability to meet the requirements of the zoning ordinance in reference to this proposed wind energy system. The board may attach conditions to this request provided there is a logical reason to do so. Any conditions recommended by staff are primarily in reference to continuing obligations of the applicant from zoning ordinances and similar conditions as were applied to previous permits. Suggested conditions would be that the application would become effective upon issuance of a permit by the South Dakota Public Utilities Commission. This permit would expire if no substantial construction described within the application has occurred within 3 years of issuance of this permit, which would be on or May 8th, 2022. The special exception permit is transferable. Subsequent owners or operators shall agree to the same conditions described. The general requirements conditions, that were stated earlier, and would carry forward are, no discharge of industrial processed wastewater and how much petroleum can be stored on site and the need of secondary containments over the shallow aquifer. The grantor shall provide the zoning office updated local contact information of plant supervisor authority to implement dust control or other necessary enforcement of the conditions of this permit. The applicant agrees to meet requirements of Section 1215 of the Deuel County ordinance in reference to remaining obligations including, but not limited to, the submittal of haul road agreements, submittal of decommissioning plan, final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of bond for abandonment and decommissioning.

Muller stated in case of violation, the violation of the terms of this Special Exception would be determined by the County Zoning Officer. The first violation substantiated by the Zoning Officer would result in a notification letter stating the violation and the prescribed period of time to remove the violation. The second violation occurring within on calendar year of the previous one would result in a review of the validity of the Special Exception Permit and potential revocation of the permit. A third violation within one calendar year of the initial violation may result in the revocation of the Special Exception Permit and cessation of all Wind Energy System of all operations of the wind tower that's causing the problem it would reflect back on the entire project, but again, if we're talking about one tower, it's specific to that one tower. So that one tower that is creaky does not shut down the whole project. It's in reference to that tower.

The applicant may make appeal from the decision of the Zoning Officer or other agent of the Deuel County Board of Adjustment to the Deuel County Board of Adjustment. The applicant would need to file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer would need to transmit the information based on the appeal and then that would

need to be taken within 30 days. And the applicant, if they disagree, or another party, could appeal that decision of this Board of Adjustment to Circuit Court. Failure to comply with the decision of the Zoning Officer or other agent of Deuel County Board of Adjustment would be deemed as a separate violation. Muller stated that if they go out and tell them to knock off whatever it is they need to knock off and they don't do it, that's two strikes, not one.\

Michael Svedeman, with Invenergy, the project manager of Deuel Harvest North Wind Farm project gave a power point presentation about the project. Svedeman stated that they Invenergy are a leading privately held global developer and operator of sustainable energy solutions. What means is wind, solar, battery storage, natural gas are projects around the globe, primarily in the U.S. that they work on developing. They have developed 145 projects over 22,600 megawatts. A year ago when they gave this presentation that number was 105, so that just shows significant growth in the last year alone of 39 projects and over 6600 megawatts showing that, you know that they are committed to the communities that there in and have been successful, responsible developers across the country. They have received a recent award from the American Wind Energy Association for excellence in operations that they have won 3 times.

Svedeman stated the project Deuel Harvest North, will have up to 310.1 megawatts and up to 112 wind turbines and 7 alternate towers. The project is located in Portland, Loew, Antelope Valley, Altamont, Glenwood and Herrick Townships. It will contain access road, underground collection lines, fiber optic cable, ADLS Towers, O & M Building, Project Substation, the feeder line, permanent MET Towers, and temporary construction areas. There will be one additional interconnection switching station that will be built by the owner of that transmission line, and where that is done is where we will connect the project. The project area is north and east of Lake Alice where the primary turbines locations are to be. They are anticipating approximately 400 jobs for a 1 year to 1 ½ years, approximately 15 full time operations jobs, 88 acres total will be taken out of production for the project (access roads and turbine foundations), more than 150 million direct economic benefits over the life of the project, assuming a 30 year life. They have supplied a \$30,000 per year scholarship to the Deuel School for the life of the project. Deuel County will receive \$365,000 every year to add to their tax base, the local townships will get \$155,000 every year for the life of the project it will be divided up per township and the number of turbines in that township.

South Dakota is one of the windiest states in this area and Deuel County is one of the windiest counties in the state. There was a new transmission line built a couple of years ago that the turbines will connect to. They opened an office in Clear Lake about in 2015 and have been around the area conducting meetings, they are going thru the PUC application process now. They have donated to various clubs and organizations in the the community. They have done studies in the multiple years of large and small bird use surveys. They have also done bat and archeological studies.

They would like to state that Section 1215 lists many various requirements and they have provided information within their application to show that those requirements have been met.

That includes the distances from the Lake Park Districts at Lake Cochrane, Lake Alice and Bullhead Lake, and as well as the distances from the towns. We have asked for an interpretation of the ordinance as a part of granting the special exceptions permit, and that's the interpretation of the ordinance to be -- to address the Lake Alice lake park setback, the definition of a business, as well as the six-month time frame required in the ordinance to apply, so we have asked the board to make an interpretation on that. They are also asking for wind energy systems as well, the building permit application prior to construction will also determine and confirm final compliance and that all the requirements of the ordinance are met.

Svedeman as stated that the aquifer protection overlay zone which lists certain requirements that we've touched on that need to be met in order to determine compliance of our application, which has been demonstrated in Section 6.2 of that application. I will note that that applies specifically to Zone B within the aquifer protection overlay district which wasn't covered on the slide earlier, but it is specifically Zone B. Svedeman also stated that they brought Dr. Jeff Ellenbogen, Mr. Mike MaRous, and Mr. Ben Dowell as a doctor, property values expert, and an aviation pilot talking about aviation air space and constraints. To the extent you have any questions of them specifically; they are here to answer any questions you may have regarding health, property values, or air space.

Kanengieter stated at this time he is going to open it up to the public to come up and speak, and Luke Muller is going to kind of handle that for us and then you're going five minutes. Muller restated the rules and they are we will be calling -- when we start, we'll call proponents up first. He will be calling them by name as were listed on this sheet. You'll have up to five minutes to address the board. If you're still going at that point, myself or Kanengieter will ask you to summarize your remaining points and sit down, hopefully in 10 to 15 seconds. We'll be as respectful as we can to try and cap things up. Please avoid repetitive testimony and stick to testimony relevant to how this application does or does not relate to the ordinance itself. Once all the names have been read, we'll allow anyone that did not sign up but has not spoken up to a minute to address the board, so if there's someone that didn't sign up that missed the chance, we want to make sure they get a chance to talk. It will probably only be a minute. After proponent testimony, Muller will call up opponents and neutral parties. The same rules will apply for opponents as they did for proponents. We'll keep a log of questions, Muller will, the chair will be writing down, and the the board will be writing down questions as well. We'll be asking the applicant those questions at the conclusion of the public hearing.

Muller stated once opponent testimony is completed, the chairman will close the public hearing and we'll start asking questions.

First Proponent:

Dennis Evenson - Stated that we don't have a lot of industrial development like other areas, this will help our ag community and it is complying with the ag district.

Ron Tvedt – Stated that it's what the landowners want for jobs and economic development, lets capture the resource like other states.

Doyle Thompson – Stated it is a great opportunity for economic development and it will help with schools, townships, county and state.

Mary Ann Knopp – Stated everything is going to benefit from the wind farms for instance the roads.

Cody Kenyon – Stated the economic development and the revenue to the community and the potential jobs.

Bill Jordt – Stated that his family is for the project.

Will Kruse – Stated they did research and looked a multiple studies about human health, animals welfare and was for the project.

Roy Negard – Stated that this project has the best interest for Deuel County, with jobs, tax base, economic development, and school's scholarships.

Steve Hansen – Stated he is a land owner will not get a tower but is in support of renewable resources and the economic revenue the wind farm has provided in the southern part of Deuel County and how this project will benefit townships.

Clark Rogness – Stated he is favor it will help pay the taxes.

Lyndon Limberg – Stated he is in favor of the wind towers and that wind towers are not a new concept, and percentage the electrical power from dams and the percentage from turbines.

Dennis Everson on behalf of Deuel County Ag Development – State that this organization is supportive of the ag community and wind power projects.

Opponent:

Craig Magedanz – Stated the tax dollars might not be any extra because of the extra services that will be required. Another concern is the noise from the turbines and the eagles' nest near Lake Alice and hope it was not identified on the proposed map.

Heath Stone – Stated the ordinance states the set back is from Lake Alice and not the Lake Park District. Another concern is the definition of business and his families hunting business.

Will Stone – Stated the proper time hasn't elapsed, the placement of the turbines from business like theirs, safety zone for turbines for ice, and property rights.

Jacob Beulter – Stated his concerns about the Senate Bill 15 and the power to be in the county and local government not the PUC.

Nancy Henslin - Stated her concerns were about the eagle's nest by Lake Alice and the buffered of 2 miles and the surveys that the wind company has performed.

Jon Henslin – Stated his concerns about the extra sites availability use them and remove the sites by the eagles nest. Other concern that he had were the aircraft lighting system, the property value guarantees, and property values.

Jennifer Kolbeck - Stated she moved to Deuel County because of the uniqueness and now it is threatened by the giant industrial monstrosities. Another concern is the wildlife welfare, fire risk, pollutants, property values, and the quality of living.

Joe Uckert – Stated he was concerned about the 6 month waiting period for Invenergy to reapply.

Jerry Schake – Stated he works at a property that makes a lot of noise and the the wildlife are content with the noise. He stated that the wind company has be always honest with him when he asked a question.

George Holborn – Stated he would like Commissioner Homan if she could clear up a rumor about whether her, her family members, or a trust has or in the past currently hold any wind leases.

Kanengieter closed the public hearing and they will take a 10 minute break.

Kanengieter called the meeting back into order. Muller asked Homan if she has any wind easements. Homan stated my mother which is 86 years old and she handles her own business. Homan stated that her mother handles her own business and it is none of her business I don't know if she has one, two or a half of one. The board voted to deem that member Homan should be disqualified from voting a vote –yes means that they shouldn't be able to vote a no- vote means that they have the right to vote as a board members; DeJong –no, Rhody –no, Brandt-no, Kanengieter-no. Basis of the vote Homan will be staying on the board.

DeJong asked Invenergy questions about the aircraft detection lighting topics, how the measure the noise is it an average over a week or month, the decommission and site restoration, tiling the cable in and you cut a drainage tile will that be repaired right away, how they feel about offering the property value guarantee, the building permit application process, and Svedeman or a Invenergy representative addressed these questions.

Rhody asked questions about the noise and the decibels for Invenergy, the eagles nest, and property values Svedeman or an Invenergy representative addressed these questions.

Brandt asked questions about how the ordinance doesn't deal with eagles nest, compounding effect of multiple towers, property value agreements, fire, ice buildup, and the decibels Svedeman addressed these questions.

Brandt asked does the setting of the individual towers get done at a later date and then we address where those towers are in relationship to an existing eagle's nest. Muller stated what you have before you is the special exception permit to authorize the use of the property. Once you do approve the permit, what you're doing, the special exception, what you're doing is you are authorizing the zoning officer to issue building permits as long as they are in conformance with the zoning ordinance and do not exceed some rule that you set out as a part of that permit. So you are in effect saying, zoning officer, if they meet the terms of the ordinance, you can issue that permit. You are right in that you don't have a setback listed in your ordinance from an eagle's nest, so there is no setback she's going to be looking at from eagles' nests unless there was something listed specifically by this board. Heib stated what we'll advise the board is that there is no ordinance on the books that would protect eagle nests, so if you want -- if the board desires to do that as part of issuing this permit, they would have to make it a condition to this permit, which would then become another setback, so to speak, because there isn't one in the ordinance, if you were going to do that. And then your zoning officer, when Invenergy came and sought a building permit for any one of these towers, any one of the hundred or more, she would then in addition to looking at the setbacks in the ordinance, also look at that setback that's set forth in that condition which says not within whatever of an eagle's nest, and then if it is, then she would deny the permit; if it isn't, she would grant the permit.

Brandt stated in our ordinance, it does say setbacks and it talks about setbacks from non-participating property owners, but at the end of this statement under Section 2-A addresses setbacks, it says for the purpose of this section only the term "business" does not include agricultural uses, and I believe the or I think that the operation is an agricultural permitted use in an Agricultural District. It's allowed as a use in an Ag District with a special exception. Just like a sandpit or rubble site, Class A CAFOs, there's all kinds of ag related businesses. Stone stated that the board didn't use Webster's dictionary, the first three definitions it says what it is. It says nothing in there about a structure. Brandt state you could call anything that you do in agriculture a business, farming the land, then that would be a business. Brandt stated it specifically says for purpose of this section only, the term "business" does not include agricultural uses. Stone state this is not an agricultural use. Hieb stated what the law says is the board has a right to make any reasonable interpretation of its own ordinance. That's how the court's going to review it if it's appealed. I would suggest with regard to this setback, again what you're approving tonight is the land use permit for the area where they're seeking to put these towers. That permit is not going to give permission to the applicant to put any tower any particular place.

Kanengieter asked about value of the property Svedeman or an Invenergy representative addressed these questions.

Brandt stated that the reference to a portion of the ordinance that talks about the setbacks to Lake Alice, the interpretation is a 2 mile setback from the Lake Park District at Lake Alice.

Lisa Agrimonti stated there was a question about Judith Homan's family member who may have agreements with Invenergy; there is a Steve Johnson, Bart Johnson and Monte Johnson.

Homan stated Steve was my dad and he is deceased and her mother and her dad have a trust and my mother handles that the business. Monte and Bart are my brothers and it don't know their business if they have a contract or not.

Motion by DeJong, seconded by Rhody to on the condition to require building permits to only become effective upon publication of a map in the Clear Lake Paper illustrating the tower sites permitted at the time in the Clear Lake Paper. Kanengieter called a roll call vote: Brandt-yes, Rhody-yes, Homan-yes, DeJongt-yes Kanengieter-yes. Motion carried.

Discussion amongst the board and their representation was held about the setback for eagle's nests. Motion by Brandt, seconded by Rhody to add a condition to require half mile setback from active eagle's nests existing at the the time of siting a tower. The applicant to submit a map of existing eagles nest at this point. Kanengieter called a roll call vote: Brandt-yes, Rhody-yes, Homan-yes, DeJongt-yes Kanengieter-yes. Motion carried.

Muller stated Mr. Chair, are you asking me to go through and read questions for findings of fact at this time? Kanengieter –yes, Muller stated he will go ahead and read these questions, that does not mean that your discussion is over, but if you have something that spurs a question in your mind, go ahead and bring to theboard.

First, is the board satisfied that the application was submitted prior to our application deadline? I'll take your silence in each case to indicate that you affirm or agree. Is the board satisfied that the application meets the definition of a wind energy system? Kanengieter – yes, Muller asked does the board agree that this permit should not become effective until all required permits are granted by the state and federal government, including the remaining applications and licenses referenced in this application. Kanengieter asked the board do you agree with that they stated they stated all right.

Muller asked does the board agree that the application and testimony adequately addressed the entrance and exit to the property, parking and loading, general compatibility with other uses in the ag district; utilities, screening and buffering; required yards and open spaces and the signs? Does the board agree that the application, staff report, and testimony at this meeting allowed the board to adequately review how the applicant will satisfy requirements for site clearance, topsoil protection, compaction, livestock protection, fences, public roads, haul roads, turbine access roads, private roads, control of dust, soil erosion and sediment control, electromagnetic interference, lighting, turbine spacing, footprint minimization, collector lines, feeder lines, decommissioning, or tower height and appearance? Were there any of those that you wanted more questions or comments on? Kanengieter asked the board, are you guys good? Brandt stated satisfied.

Muller asked does the board agree that the application demonstrated the ability to meet setback requirements listed in the ordinance. Again, we're not establishing that the setbacks -- that they are where they are, we're asking whether or not they have the ability to meet setbacks with the number of towers they're talking about. Does the board agree that the applicant has

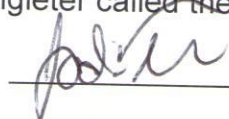
demonstrated the ability to meet these shadow flicker requirements? Does the board agree that the applicant has demonstrated the ability to meet the noise requirements? Does the board agree that the applicant submitted all information required to obtain a permit? In the board's review of written testimony submitted, the application, staff report or testimony provided tonight, were all issues relating to the zoning ordinance or land use plan adequately addressed? Okay, does the board agree that the issuance of a special exception will not adversely affect the public interest if operated according to our ordinance and the condition prescribed? Does the board agree the conditions recommended by staff, in addition to those which were amended, added by amendment, should be incorporated into the special exception permit? Does the board have any additional recommended conditions to add to this permit? Does the board agree that it is powered to issue the permit? This question, if you have a different way of handling this, you're welcome to.

The way I have this listed is a little different than you've done this in the past. 7
Does the board request the legal counsel, with the help of staff, to prepare findings of facts consistent with these conditions to be approved by the chairperson of the board; and any other items associated with this special exception, specifically future building permits from staff and that sort of thing, lines of insurance, would you -- do you want legal counsel and staff to -- and in this case, I'm implying that I'm a part of your staff, to assist in writing findings of fact to be signed by the chair, is that all right by you?

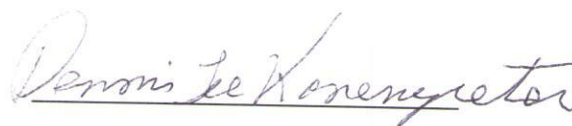
Brandt asked do the findings of fact occur before there's a vote on the special exception, or do they occur afterwards? Muller stated the findings -- what you have just done is to authorize us to write the findings of fact based upon the questions that were just asked, and you could vote yes. Brandt asked based upon our ordinance? Muller stated exactly, that's what those questions were, and based upon your ordinance, and by the way, there will be some of the points that we wrote down during the session as well will find their way into the findings of fact as well. Muller stated you're authorizing a vote, up or down, of the permit with the conditions on there, and also based on what we just said here in the findings, for the chairperson, you're trusting the chairperson to sign the findings of fact that are prepared by legal counsel. Muller stated you will have to approve the findings of fact at a later time.

Kanengieter stated the public hearing is over and we're going to take a vote, roll call vote: Brandt-yes, Rhody-yes, Homan-yes, DeJongt-yes Kanengieter-yes. Motion carried the special exception permit will not be valid until the finding of fact are approved by the board.

Kanengieter called the meeting.



Jodi Theisen
Zoning Officer



Dennis Kanengieter
Chairman, Zoning Board