

Monday February 9, 2026

The Deuel County Zoning Board met on Monday February 9, 2026 at 6:30 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members, Dennis Kanengieter, Jay Grabow, Mike Lammers, Kevin DeBoer, Mike Dahl, States Attorney Craig Evenson, Zoning Officer Jodi Theisen and other members of the public.

Chairman Mike Dahl called the meeting to order.

The minutes from the January 12, 2026 and February 3, 2026 meetings were discussed. Motion by Lammers, seconded by Kanengieter, to approve the corrected January 12, 2026 minutes and postpone the February 3, 2026 minutes until the February 11, 2026 meeting. All voted in favor, and the motion carried.

Dahl asked if the board, or any staff member, had anything to add to the agenda with none being offered.

Dahl stated that if anyone from the public would like to speak about a topic not on the agenda, they would have up to five minutes to do so during the public comment session.

Dahl asked for any seated board member if they think they need to recuse themselves from any discussion topics on the agenda, or from voting on an agenda item with no board member responding.

Motion by DeBoer, seconded by Kanengieter, to approve the Monday February 9, 2026, Agenda. All voted in favor and motion carried.

Evenson and Theisen discussed with the Board the upcoming special joint meeting with the Deuel County Commissioners on March 3, 2026. At the Planning Commission meeting on February 3, 2026, the Board made a motion to start the moratorium but did not make a formal recommendation to the County Commissioners. The purpose of the March 3 joint meeting is to provide that recommendation. The meeting will also ensure that all aspects of the moratorium and related legal requirements are properly addressed, confirming that the process is being handled correctly

Motion by Grabow, seconded by Kanengieter, to adjourn as the Deuel County Planning Commission and convene as the Deuel County Board of Adjustment. Motion passed unanimously.

#### **Item #1 - Variance**

The applicant/owner, Scott Keogh, seeks a Variance to Section 1103.06, Minimum Lot Area and Yard. The request, if granted, would permit the removal of an existing deck and the construction of a new deck, pergola, and fire pit wall that encroach into the required side-yard setback, and to allow the pergola and fire pit wall to be located within fifty (50) feet of the high-water mark. The property is located on Lot 7 and Lot 7A, In Replat of Lot 10, Ingvalsons Sugar Sand Beach Addition, Norden Township, Lake Cochrane, Deuel County, South Dakota.

The applicant, who purchased the property in 2014, requests a variance to remove an existing deck and pavers and replace them with new construction. In 2016, the applicant applied for a shoreline alteration. The applicant is also applying for a Special Permitted Use for shoreline stabilization, which requires adjoining lakeside property owner signatures, to replace an existing retaining wall located within thirty (30) feet of the high-water mark. The proposed retaining wall will be approximately two (2) feet tall and seventy-five (75) feet long.

The existing deck is located approximately sixty-seven (67) feet from the high-water mark and approximately five (5) feet from the Viessman property line. The lot width is seventy-five (75) feet. The required side-yard setback is ten (10) feet; under no circumstances shall a building have a side yard of less than five (5) feet. The applicant proposes construction of a new deck located approximately sixty-five (65) feet from the high-water mark, including stairs, and approximately five (5) feet from the Viessman property line. The applicant also proposes a pergola located approximately forty-seven (47) feet from the high-water mark and approximately five (5) feet from the Viessman property line.

An existing fire pit wall, constructed sometime between 2014 and the present, is located approximately twenty-seven (27) feet from the high-water mark and approximately one (1) foot from the Viessman property line. The construction date of the existing deck could not be confirmed, and no prior variance

was found to have been granted. The proposed pergola will have no walls and only a roof structure; therefore, it is not anticipated to obstruct views from neighboring properties.

Dahl and Grabow questioned the distance of the pergola from the side property line and the overhang of the roof line. They stated that, for safety and practical purposes, they would like the pergola to be kept more in line with the house.

The property is located outside the floodplain. The Board has previously granted similar variance requests within the Lake Park District, including approvals for the Kooima, Pederson, and Clemensen properties.

The Board opened the meeting for public comment; there was no public comment.

Motion by Grabow, seconded by Kanengieter, to approve a Variance to Section 1103.06 to allow construction of a new deck, pergola, and fire pit wall within the required setbacks, subject to the following conditions:

- a. The new deck shall be located no closer than 8' 3 1/2" (in line with the house) from the Viessman property line.
- b. The new pergola shall be no closer than 45 feet from the high-water mark and no closer than 5 feet from the property line.
- c. The existing fire pit wall shall remain no closer than 25 feet from the high-water mark and no closer than 1 foot from the property line.

All voted in favor, and the motion carried. Please refer to the Findings of Fact and Conclusions of Law on file with this application.

#### **Item #2 – Conditional Use Permit and Variance**

The applicant, Rogge Excavating Inc., on behalf of the property owners Todd and Jody Jongeling, seeks approval of a Conditional Use Permit pursuant to Section 1101.04.04 to allow sand, gravel, or quarry operations, including mineral exploration and extraction and the use of rock crushers, provided all requirements of Section 1219 are met. The applicant also seeks a Variance to Section 1219.03 to allow a gravel or quarry operation within one thousand (1,000) feet of the nearest residence. The property is located in the SW 1/4 less OLS 1–2 and less Thompson Air Strip, Section 18-113-50, Grange Township, Deuel County, South Dakota, and is zoned **A** – Agricultural, with Zone B – Aquifer Protection Overlay District (Shallow Aquifer) and a mapped portion of Zone A – Aquifer Protection Overlay District (Wellhead Aquifer).

The applicant requests approval to operate a gravel mining and rock crushing operation on the subject property. The proposed operation would occur within one thousand (1,000) feet of an existing residence owned by Dennis Pedersen, requiring a variance under Section 1219.03. A signed waiver has been provided by the affected residence owner; however, a formal variance is still required under the ordinance.

The applicant proposes to mine and crush gravel on-site and utilize the property for equipment storage and maintenance associated with the operation. The operation is expected to last several years. No mining shall occur within one hundred (100) feet of public rights-of-way or within twenty-five (25) feet of property lines, and completed excavation areas shall maintain a maximum slope of four-to-one (4:1). Stripped topsoil will be placed on berms along property lines for screening and reclamation purposes, and reclamation is proposed to restore the land to farmland or pasture upon completion of mining activities.

Fuel storage during active mining operations will be temporary and limited to a double-wall portable or mobile fuel trailer. No permanent fuel storage will occur during active mining operations. Outside of mining operations, permanent fuel storage associated with a proposed shop, if utilized, shall be located within an approved containment system and managed in accordance with applicable state requirements. A proposed shop building shall be located no closer than sixty-five (65) feet from any property line or road right-of-way and, based on information provided by the applicant, shall be located outside of Zone A – Aquifer Protection Overlay District. Site access would be provided via a possible driveway on the south end of the property or existing approaches serving the parcel. Proposed hours of operation are from 6:00 a.m. to 8:00 p.m., with extended or 24-hour operations allowed as necessary provided nuisance impacts are controlled.

The property is located within Zone B – Aquifer Protection Overlay District and a mapped portion of Zone A – Aquifer Protection Overlay District. Staff confirmed that municipal wells located within the wellhead protection area remain active and require full protection. Gravel mining and rock crushing operations are allowable within Zone B when ordinance requirements are met; however, no fuel storage, asphalt plants, concrete mixing plants, or permanent rock crushing facilities are permitted within Zone A. Staff recommended that all fueling, fuel storage, equipment maintenance, and rock crushing activities be located outside of the wellhead protection area and as far from it as practicable.

The applicant stated they are working with Grange Township to obtain a haul road agreement, which shall be submitted to the Zoning Office prior to commencement of mining activities. Staff further recommended that reclamation occur on a progressive basis concurrent with mining operations to minimize the extent of disturbed land.

The Board had discussion amongst themselves regarding the aquifers and the need to protect them. They also discussed the black dirt and berms and the importance of not selling the black dirt so it is available to reclaim the area back to farmland after mining. The applicants noted plans to have a wash plant for the sand and rocks. The Board asked if soil borings had been completed to determine water depth and gravel or clay depth. The applicants stated that prior holes had been dug, though not by them, and that blue clay was encountered but the depth is unknown. The applicants further stated they plan to remain at least one foot above the water table and believe the water is more than twenty (20) feet below the surface. Theisen stated that there is an airstrip to the south of the project and that the applicant has been in contact with the landowner regarding the proposed mining request, including discussion of appropriate setbacks from the airstrip for mining operations.

The Board opened the meeting for public comment; there was no public comment.

Motion by Kanengieter, seconded by Grabow, to approve a Variance to Section 1219.03 allowing a gravel or quarry operation, mineral exploration and extraction, and the use of rock crushers within 1,000 feet of an existing residence, expressly excluding concrete batch plants and asphalt mixing plants, based upon the submitted written waiver from the affected landowner.

Motion by Grabow, seconded by Lammers, to approve a Conditional Use Permit request by Rogge Excavating Inc., on behalf of the property owners Todd and Jody Jongeling, to allow sand, gravel, or quarry operations, including mineral exploration and extraction and the use of rock crushers, expressly excluding concrete batch plants and asphalt mixing plants, subject to signing a Letter of Assurance and compliance with the following conditions:

- 1) **Effective Date**
  - a. Approval shall become effective upon signing of the Letter of Assurance by the applicant.
  - b. A haul road agreement with Grange Township shall be submitted to the Zoning Office prior to commencement of any mining activities.
- 2) **General Requirements**
  - a. No storage of junk, construction or demolition materials, concrete batch plants, asphalt mixing plants, or waste products shall occur on the site.
  - b. No discharge of industrial processed water shall occur on the site, except for water associated with the sand washing plant lagoon.
  - c. Fueling, fuel storage, equipment maintenance, and rock crushing activities shall not occur within Zone A – Aquifer Protection Overlay District and shall be located as far from the wellhead protection area as practicable.
  - d. Permanent fuel storage, if utilized, shall be located within an approved containment system and shall comply with Section 1105.12, including secondary containment where required. Temporary fueling during mining operations shall be limited to double-wall portable or mobile fuel trailers and shall include an earthen berm lined with plastic.
  - e. Any future shop building or permanent fueling area shall be located outside of Zone A – Aquifer Protection Overlay District and shall include a concrete floor.
  - f. Vehicles or equipment containing more than one hundred (100) gallons of fuel shall be managed to minimize risk due to the parcel's location within aquifer protection overlay districts.
  - g. A mining permit and stormwater permit coverage from the South Dakota Department of Environment and Natural Resources shall be provided to the Zoning Officer prior to excavation and maintained throughout operations.
  - h. The applicant shall comply with all federal, state, and local laws and obtain all required permits.

- i. The site shall be reclaimed in accordance with South Dakota Department of Environment and Natural Resources standards.
  - j. Reclamation shall be conducted on a progressive basis concurrent with mining activities.
  - k. No mining shall occur within one hundred (100) feet of public rights-of-way or twenty-five (25) feet of property lines unless otherwise approved.
  - l. Excavation slopes shall not exceed four-to-one (4:1) near property lines and roads.
  - m. Hours of operation shall generally be from 6:00 a.m. to 8:00 p.m.; extended hours may be allowed provided impacts are adequately controlled.
  - n. Berms shall be constructed prior to commencement of mining activities.
  - o. Updated local contact information for a site supervisor shall be provided.
  - p. No mining shall begin until core samples have been taken and provided to demonstrate that an adequate clay layer is present to prevent contamination of the aquifer.
  - q. No black dirt shall be sold off site; this material is required to be used for reclamation of the area.
  - r. The applicant shall provide a sand washing plant description and information, and the plant shall not occur within Zone A – Aquifer Protection Overlay District and shall be located as far from the wellhead protection area as practicable.
- 3) Haul Road Agreements:
- a) Grantor shall provide a haul road agreement with Grange Township prior to any mining activities on the above described property.
- 4) Violation and Penalties:
- Violation of the terms of this conditional use permit will be determined by the Deuel County Zoning Officer.
- a. The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all feeder operations within forty-five days (45) of notice of revocation.
  - b. 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 shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
  - c. Failure to comply with the decision of the Zoning Officer or other agent of the Deuel County Board of Adjustment may be deemed a separate violation.

All voted in favor, and the motion carried. Please refer to the Letter of Assurance, Findings of Fact, and Conclusions of Law on file with this application.

### **Item #3 – Variance**

The applicants/owners, Ron & Kathy Gorder, seek a Variance to Section 1101.05 – Area Regulations to allow construction of a hoop barn within the required 65-foot front yard setback from the road right-of-way for use as a Class D Concentrated Animal Feeding Operation (CAFO), which is a permitted use within the AG – Agricultural zoning district. The property is described as E286.96' W630.96' S624.36' in SE1/4 Less That Portion of Block 1 Bahr Addition, Section 11-113-50, Grange Township, Deuel County, South Dakota.

The applicants propose to remove the existing open lot and construct an approximately 62' x 272' hoop barn to house up to 250 head of cattle. The proposed structure would support the continuation of the agricultural operation by the next generation and assist with management of runoff associated with prior cattle feeding operations.

On January 21, 2026, Grange Township approved a reduced setback for the proposed hoop barn contingent upon the applicants removing snow from the road right-of-way from the east to west property lines, including snow piles or drifts caused by the new structure. The proposed hoop barn would be located approximately 43 feet from the road right-of-way (approximately 76 feet from the centerline of the

33-foot township road right-of-way) and approximately 60 feet from the east property line, which is less than the required 65-foot front yard setback.

A written waiver was required from the adjoining property owner to the west, Brock Bahr, whose residence is approximately 298 feet from the proposed structure, less than the required 1,320 feet. The Deuel County Zoning Officer received the signed waiver on January 27, 2026, which satisfies the separation distance requirements for the variance.

The applicants intend to apply for a Class D CAFO permit (up to 999 animal units) but stated the operation will be limited to no more than 499 head of cattle. The property is located outside the aquifer protection zone. Based on the number of animal units, a nutrient management plan, manure management plan, and fly and odor control plan are not required.

**Ordinance Summary:**

- Section 1101.05 – Area Regulations: Requires minimum setbacks of 65 feet for the front yard, 25 feet for side and rear yards, and prohibits accessory buildings within the front yard.
- Section 1304 – CAFO Control Requirements: Outlines when nutrient, manure, and odor/fly management plans are required; smaller operations under 500 animal units are exempt.
- Table 1304.6.2 – Minimum Separation Distances: Allows the Board of Adjustment to reduce required setbacks if a written waiver is filed by affected property owners.

The Board opened the meeting for public comment; there was no public comment.

Motion by Kanengieter, seconded by Lammers, to approve a Variance to Section 1101.05 to allow construction of the hoop barn within the required front yard setback of 65 feet, no closer than 42 feet from the road right-of-way, with the office having received township approval minutes, recording of the written waiver, and application for a Class D CAFO permit. All voted in favor, and the motion carried. Please refer to the Findings of Fact and Conclusions of Law on file with this application.

Motion by Grabow, second by Kanengieter, to recess the Board of Adjustment and reconvene as Planning Commission. Motion passed unanimously.

**Item #3 –Plat**

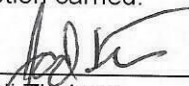
Motion by Grabow, seconded by DeBoer, to recommend approval to the Board of County Commissioners of the plat of Lot 1B of Rymerson Farm Second Addition of Section 22, Township 113 North, Range 49 West, Blom Township, Deuel County, South Dakota. The applicants revised the previously approved plat to reduce the lot size, removing approximately 3.34 acres, and to replat Lot 1A as Lot 1B due to trust approval requirements. The machine shed will remain on the property under a lease agreement until the land can be purchased. Motion passed unanimously.

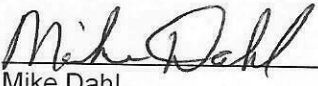
Motion by DeBoer, seconded by Dahl, to recess the Planning Commission and reconvene as Jointly as the Board of Adjustment and Planning Commission. All voted in favor and motion carried.

Dahl opened the meeting for public comment. Monnier asked questions regarding the moratorium, and the Board discussed related topics, including the wellhead, soil borings, rezoning, and the PUC and appeal process.

Theisen informed the Board of the appeal hearing scheduled for Wednesday, February 11, 2026. A joint hearing to recommend a moratorium on power plants to the Deuel County Commissioners is scheduled for March 3, 2026. The regular meeting will be held on March 9, 2026.

Motion by Grabow, seconded by DeBoer to adjourn the meeting at 8:20 p.m. All voted in favor and motion carried.

  
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Jodi Theisen  
Zoning Officer

  
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Mike Dahl  
Chairman, Zoning Board