

Monday November 19, 2018

The Deuel County Zoning Board met on Monday, November 19, 2018, at 6:30 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Steve Rhody, Kevin DeBoer, Paul Brandt, and Mike Dahl. Also present were Attorney John Knight, Zoning Officer Jodi Theisen, and alternate board member Gary DeJong.

Chairman Dennis Kanengieter called the meeting to order.

Motion by Rhody, seconded by DeJong, to approve the Agenda for November 19, 2018. All voted in favor and motion carried.

Motion by DeBoer, seconded by Rhody, to approve the October 15, 2018, minutes. All voted in favor and motion carried.

Motion by Dahl, seconded by DeBoer, to approve the October 22, 2018, minutes. All voted in favor and motion carried.

The Deuel County Board of Adjustment considered the adoption of findings related to the special exception for Crowned Ridge Wind II, LLC that was approved at the October 22, 2018, meeting.

Jodi Theisen, Deuel County Zoning Officer presented the Board with suggested findings. Theisen then read the proposed findings for the Board to consider.

After reviewing the proposed findings for the Crowned Ridge Wind II, LLC project, Chairman Dennis Kanengieter called for a motion to authorize the Chairman to sign the proposed findings for the Crowned Ridge Wind II, LLC project as follows:

SEE ATTACHED

A motion was made by Dahl and seconded by Rhody to authorize the Chairman to sign the proposed findings for the Crowned Ridge Wind II, LLC project. Chairman Kanengieter then called for a roll call vote. Deboer-yes, Dahl-yes, Dejong-yes, Rhody-yes and Kanengieter-yes.

Dennis Kanengieter stated that Gary DeJong is going to excuse himself from the Deuel County Board of Adjustment and Paul Brandt will continue his role as a member on the Deuel County Board of Adjustment for the the rest of the agenda.

Jason Halverson applied for a Special Exception Permit. The request, if granted, would permit the applicant to use the following property: Lot 24 Lake Alice Shores in Gov Lots 2,3,4,5 & SE1/4 of SW1/4 in Section 7-116-48, Altamont Township, Deuel County, South Dakota, to alter the shoreline within 35' from the high water mark in a Lake Park District. Dale Heilman, Halverson's contractor, texted the Zoning Officer and stated that they had a death in the family and couldn't attend the hearing. The board looked at the pictures provided by Theisen from November 2, 2018, and noticed that the silt fence was falling down, the dirt was back filled toward the footings, and wasn't covered to help

stop erosion. Motion by Rhody, seconded by DeBoer, to postpone the Special Exception to reshape the shoreline within the 35' from the high water mark within the Lake Park District, and to have Theisen contact Heilman to maintain the silt fence and to substantially cover the black dirt that is in front of the house and within the 35' from the high water mark to help stop erosion. All voted in favor of and the motion carried.

Christopher Uckert & Joseph & Clarice Uckert Living Trust applied for a Variance Permit. The request, if granted, would permit the applicant to use the following property: Lot 1 Joseph & Clarice Uckert Addition in the NE1/4 in Section 8-115-49, Clear Lake Township, Deuel County, South Dakota to retain existing building and trees that are closer to the side lot line and the road right-of-way than what the ordinance allows in an AG Zoned District. Zoning Officer Theisen stated that the existing pole shed located to the north of the platted line is approximately 9' and the ordinance set back is 25' and the existing trees are approximately 36' from the road right-of-way and the set back is 150' from the road right-of-way. Motion by Dahl, seconded by DeBoer, to grant the Variance to retain the existing shed approximately 9' from the side lot line, and to retain the existing grove of trees approximately 36' from the road right-of-way. All voted in favor and motion carried. The findings for this Variance are the existing trees won't cause a safety or snow problem. The land is being transferred among family and the building will not adversely affect the adjoining property owner.

Adam & Taylor Krause and Krause Farms LLP applied for a Variance Permit. The request, if granted, would permit the applicant to use the following property: Adam and Taylor Krause Addition in S1/2S1/2 of Section 18-115-49, Clear Lake Township, Deuel County, South Dakota, to retain existing buildings that are closer to the side lot line than what the ordinance allows in an AG Zoned District. Zoning Officer Theisen stated that the existing pole shed and house are located approximately 9' from the side lot line and the ordinance set back is 25'. Motion by DeBoer, seconded by Dahl, to grant the Variance to retain the existing buildings approximately 9' from the side lot line. All voted in favor and motion carried. The land is being transferred among family and platting the existing building site does not have an impact on the general public.

Kelly & Laura Sieh Living Trust applied for a Variance Permit. The request, if granted, would permit the applicant to use the following property: Plat of Toering Addition in SW1/4 of Section 4-115-50, Havana Township, Deuel County, South Dakota to retain existing buildings and trees that are closer to the road right-of-way than what the ordinance in an AG Zoned District allows. Zoning Officer Theisen stated that the existing house is approximately 15' and the shed is approximately 117' from the road right-of-way and the ordinance set back is 150' for the minimum depth of the front yard and the existing trees are located right along the road right-of-way and the set back is 150' from the road right-of-way. Kelly stated that they are selling the property. The board asked the Sieh's if the evergreen and the bush by the house cause a visual problem. The Sieh's stated no, and they have rented the house out in the past. Motion by Dahl, seconded by Brandt, to grant the Variance to retain the existing house that is

approximately 15' and the shed that is approximately 117' from the road right-of-way and to retain the existing trees up to the road right-of-way, and to remove the evergreen by the house and remove the bush by the driveway. This Variance doesn't apply to any new structures that are built on the property. All voted in favor and motion carried. The findings for this Variance are by removing the evergreen and the bush that it improved the safety and visual concerns for the property. The property is located on a county highway with a 50' road right of way. The variance will not cause any greater snow or safety concern.

Dennis & Gail Toft applied for a Variance Permit. The request, if granted, would permit the applicant to use the following property: Block 1 Toft Addition in NW1/4 of Section 19-115-47, Herrick Township, Deuel County, South Dakota, to retain existing buildings and trees that are closer to the road right-of-way than what the ordinance in an AG Zoned District allows. Zoning Officer Theisen stated that the existing house is approximately 34' and the garage is approximately 110' from the road right-of-way and the ordinance set back is 150' for the minimum depth of the front yard. The existing trees are approximately 20' up to the road right-of-way and the set back is 150' from the road right-of-way. Motion by Brandt, seconded by DeBoer, to grant the Variance to retain the existing house that is approximately 34', the garage that is approximately 110' from the road right-of-way and to retain the existing trees that are approximately 20' and up to the road right-of-way. This Variance doesn't apply to any new structures that are built on the property. All voted in favor and motion carried. The findings for this Variance are that platting this property will not cause any greater snow or safety concern. The platting of this property was to correct the legal description.

Motion by Dahl, seconded by DeBoer to remove from the table Tom Flicek Representing the Estate of Robert J Flicek, application for a Variance Permit. The request, if granted, would permit the applicant to use the following property: Lots 35-36-37 in Severson Bay in Gov Lot 5, in NE1/4 Section 5-114-47, Lake Cochrane to replat three lots into two lots with lake frontage less than the ordinance requires which is 75 feet of lake footage in a Lake Park Zone District. Tom Flicek stated that Flicek's built the original cabin on a 60' lot in 1972, then they purchased 20' in 1976, and the additional 40' in 1986. Flicek stated that the ordinance was changed in 1982 so the original cabin was built before that. The variance would allow two 60' lake frontages and would allow the lots to be sold at a lower price and to have more growth for the county. The two lots would have the ability to have two homes on them instead of only one home. Flicek stated that he would remove the garage on the one lot and would remove the mudroom on the house on the other lot. State's Attorney John Knight stated that the ordinance was changed before the family purchased the last 40'. Motion by DeBoer, seconded by Brandt, to grant the Variance to replat three lots into two 60' lots to remove the garage to make that a buildable lot and to remove the entry on the existing house. All voted in favor of and the motion carried. The findings for this Variance are, the history of the lots makes the property unique. The purchasing of the lots starting in

1972, then 1976, and purchase the final footage in 1986, which was after the ordinance changed for the required lake footage.

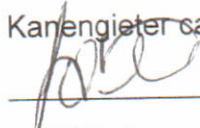
Shane Haman came and talked to the board about some property he is interested in purchasing in Havana Township. Haman stated that he would like to purchase some land from Laretta Kranz. He was inquiring about the steps required to build a shed to operate an Aluminum Truck Polishing Business on the land he would like to purchase. Haman stated that they would like to build a house on this land also. Haman was wondering about the permitting process, and, if he would have to rezone the land, what permits would he have to apply for. The board suggested talking to the neighbor that is adjoining this property about his intentions. He would then have to rezone the property from an Ag District to a Commercial District and apply for a Special Exception for a Truck Polishing Business. If he purchases the land and builds a house first then he could apply to rezone the property from an Ag District to a Commercial District and apply for a Special Exception for an Aluminum Truck Polishing and existing residence.

The Deuel County Board of Adjustment recessed and convened as the Deuel County Planning Commission.

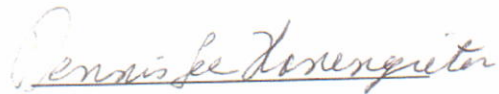
Motion by Dahl, seconded by DeBoer, to approve the Plat of Block 1 Toft Addition in NW1/4 of Section 19-115-47, Herrick Township, Deuel County, South Dakota. All voted in favor and motion carried.

Motion by Brandt, seconded by Deboer, to approve the Plat of Toering Addition in SW1/4 of Section 4-115-50, Havana Township, Deuel County, South Dakota. All voted in favor and motion carried.

Kanengieter called the meeting.



Jodi Theisen
Zoning Officer



Dennis Kanengieter
Chairman, Zoning Board

**Findings of Fact
Special Exception Use Permit
Crowned Ridge Wind II, LLC
October 22, 2018**

This matter having come before the Board of Adjustment and the Board having taken testimony and heard the evidence, the Board enters the following Findings of Fact in support of its motion to approve the Petitioner's application for a Special Exception Permit.

1. Deuel County adopted its Comprehensive Land Use on April 6, 2004 (Ref: SDCL 11-2-11; 11-2-12; 11-2-13)
2. Deuel County adopted its current zoning regulations with ordinance #2004-1 on July 6, 2004. (Ref: SDCL 11-2-13)
3. Deuel County Zoning Ordinance appoints the Planning Commission to act as the Board (Ref: SDCL 11-2-49 and Zon. Ord. Section 501)
4. The Deuel County Zoning Ordinance has identified the Board as the approving authority relating to special exceptions. (Ref: SDCL 11-2-17.3 and Zon. Ord. Section 504)
5. On August 8, 2018, Crowned Ridge Wind II, LLC applied for a special exception permit to operate a Wind Energy System on property in Goodwin, Havana and Rome Townships As displayed in Exhibit "A" attached and hereby incorporated by reference
6. Required public notices pursuant to South Dakota Codified Law and Deuel County Zoning Ordinance was published in the paper September 5, 2018. (Ref: SDCL 11-2-57 and Zon. Ord. Section 504.2)
7. On September 20, 2018, a public hearing was held before the Board. At said hearing, testimony both in support and in opposition to the request was heard and reviewed by the Board (Ref: SDCL 11-2-57 and Zon. Ord. Section 504.3)
8. The following use is listed in the A – Agricultural Zone and Zone B of the Aquifer Protection Overlay District of the Deuel County Zoning Ordinance (Ref SDCL 11-2-17.3):

Wind Energy Systems (Ref: Zon. Ord. Section 1215).

All special exceptions allowed in underlying districts, with the exception of those expressly prohibited in Zone B, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zone. (Ref: Zon. Ord Section 1105.10.1)

9. This proposed project meets the definition of a Wind Energy System.
10. The application and testimony allowed the Board to adequately review how the applicant will satisfy requirements for site clearance, topsoil protection, compaction, livestock protection,

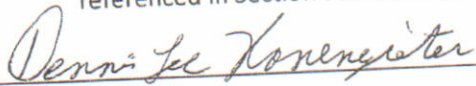
fences, public roads, haul roads, turbine access roads, private roads, control of dust, soil erosion and sediment control, electromagnetic interference, lighting, turbine spacing, footprint minimization, collector lines, feeder lines, decommissioning, tower height and appearance, noise and flicker. (Ref: Zon. Ord. Section 1215)

11. The applicant satisfactorily demonstrated the ability to meet required setbacks for turbines from property lines, right-of-way, residences, businesses, Lake Park Districts, municipalities, government facilities and other structures, uses and features which would require setback. (Ref: Zon. Ord. Section 1215)
12. The reference to business in the ordinance is defined as a physical structure.
13. The applicant submitted Boundaries of the site proposed for WES on a USGS Map, a map of easements, copies of easement agreements with landowners, maps of occupied residential structures, businesses, churches, and buildings owned and/or maintained by a governmental entity, maps of sites for WES, access roads, and utility lines, location of other WES in general area, project schedule, and mitigation measures. (Ref: Zon. Ord. Section 1215)
14. The application and testimony at the meeting allowed the Board to adequately review and determine that satisfactory arrangements have been made, or may be made if conditions are placed upon the applicant concerning:
 - 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.
The proposed entrances and exits do not create a safety issue or hardship of any kind.
 - 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 general in the district.
Applicant has sufficient parking and loading at the proposed sites. The entrance and exit to the property and proposed structures, along with the off-street parking and loading areas will have no or minimal economic impact on the surrounding properties and properties generally in the district. The proposed project will have a positive economic benefit to the properties in the project and the county as a whole.
 - c. Utilities, with reference to locations, availability, and compatibility.
Applicant has adequate arrangements for utility services.
 - d. Screening and buffering with reference to type, dimensions, and character.
Applicant meets the established setbacks for 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.
Any signs will be located on site and will primarily be temporary in nature and do not appear to impact any other property or motorists.

- f. Required yards and other open spaces. Applicant has met the required setbacks.
 - g. General compatibility with adjacent properties and other property in the district. Wind Energy Systems are a use allowed by special exception in the Ag District. Applicants proposed project meets the use contemplated by the ordinance.
 - h. Refuse, and service areas; Applicant has made sufficient arrangements for the storage and disposal of its refuse and its proposed service areas are sufficient. (Ref: Zon. Ord. Section 504.5)
 - i. The letter of agreement will assure that the applicant will abide by the haul road agreement. (Ref: Zon. Ord. Section 1215)
 - j. This permit shall not become effective until all required permits are granted by the state and federal government, including the remaining applications and licenses referenced in the application. (Ref: Zon. Ord. Section 1215)
15. The applicant satisfactorily addressed through the application or testimony any concerns or issues that were brought up with the request which relate to the Zoning Ordinance or Land Use Plan.
16. In order to comply with the requirements of the Zoning Ordinance the Board of Adjustment prescribes the following conditions and safeguards in conformity with the Deuel County Zoning Ordinance to be agreed to in the form of a "Letter of Assurance":
- 1) Effective Date and Transferability:
 - a. Upon issuance of applicant permit by South Dakota Public Utilities Commission.
 - b. This permit shall expire if no substantial construction described within the application has occurred within three (3) years of issuance of a permit by South Dakota Public Utilities Commission.
 - c. The applicant may apply for an extension of this permit if the requirements of 1.b above cannot be met.
 - d. For the purposes of this application substantial construction shall be considered the completion of at least 25% of the towers in the final layout are erected.
 - e. The Special Exception permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.
 - 2) General Requirements:
 - a. There shall be no discharge of industrial processed water on the site
 - b. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one (1) locality in one (1) tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system where it is deemed necessary by the Board of Adjustment.
 - c. Grantor shall provide the zoning office with an updated local contact information of plant supervisor with authority to implement dust control and other necessary enforcement of the conditions of this permit.
 - d. To use Aircraft Detection Lighting System where possible and applicable according to the FAA.

3) Obligation to Meet Requirements:

- a. Applicant agrees to meet requirements of Section 1215 of the Deuel County Ordinance in reference to remaining obligations including but not limited to: 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/decommissioning.
17. The Wind Energy Systems such as proposed by the applicant are allowable in the A – Agricultural District and Zone B of the Aquifer Protection District under certain conditions. Therefore, The Board of Adjustment finds that it is empowered to grant the Special Exception, and that the granting of the Special Exception will not adversely affect the public interest.
18. The Special Exception Permit was approved on October 22, 2018 by a vote of 5 yes and 0 no. (Ref: SDCL 11-2-59).
19. Once these findings are approved by the Board and signed by the Board Chair the zoning officer shall issue the Special Exception Permit and any letters of assurance, building permits or other items associated with said Special Exception Permit.
20. The findings contained herein combined with the findings of the Board of Adjustment contained in the motion to approve the special exception permit serve as the Official Findings of Fact referenced in Section 504.4 and 504.5



Chairperson
Deuel County Board of Adjustment

Date Approved: October 22, 2018

Date Signed: 11-19-18

Date Filed: 11-19-18

Special Exception Permit Number(s): 18-102 AG

Exhibit A – Crowned Ridge Wind II, LLC

