

Monday February 12, 2018

The Deuel County Zoning Board met on Monday February 12, 2018 at 6:30 P.M., at the Deuel County Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Steve Rhody, Kevin DeBoer, Paul Brandt, and Mike Dahl. Also present was Attorney John Knight. Zoning Officer Jodi Theisen was absent.

Chairman Dennis Kanengieter called the meeting to order. Motion by Rhody, seconded by DeBoer, to approve the February 12, 2018 Agenda. All voted in favor and motion carried. The minutes from the January 22, 2018 meeting were discussed. Motion by Dahl, seconded by Rhody to approve the January 22, 2018 minutes as corrected. All voted in favor and motion carried.

1. The Board acting as the planning commission considered the application of Ottertail Power Company to amend the zoning ordinance to rezone the property described as: SE1/4NE1/4 and the N200' NE1/4SE1/4 and the N200' NW1/4 SW1/4 and the N200' E150' NE1/4SW1/4, Section 22, TWP113 N, R48, W5th PM containing approximately 52.88 acres from Agricultural to Commercial. A representative of Ottertail Power Company appeared on behalf of Ottertail Power Company to explain the proposed project to build a substation and natural gas power generation plant. The Board discussed the access to the property, the access to the county road and the need for improvement and maintenance of the township road to obtain access to the county road. The Board found that the property meets the required lot size and that the location of the proposed structures will meet the required setbacks.

Motion by Dahl, seconded by Kanengieter, to recommend the Deuel County Board of Commissioners approve the request to change the classification of the property described as: E1/4NE1/4 and the N200' NE1/4SE1/4 and the N200' NW1/4 SW1/4 and the N200' E150' E1/4SW1/4, Section 22, TWP113 N, R48, W5th PM containing approximately 52.88 acres on the condition that Otter Tail enter into an agreement with the county and the township that Otter Tail will make any necessary improvements to the road and be responsible for future maintenance of the portion of the township road necessary for access to the county road. All voted in favor and motion carried.

2. The Board discussed the letter from Flying Cow Wind, LLC – Bitter Root 345 KV Transmission Line Project. The Board determined that no formal action was necessary and declined to make any comment.
3. The Board considered the proposed Plat of Block 1 Anderson Addition. The board had some concerns regarding the setbacks of the existing buildings and trees. Motion by Brandt, seconded by DeBoer to table the consideration or the

approval of the plat to discuss with the owner the need for a variance. All voted in favor and motion carried.

4. The Board then convened as the Deuel County Board of Adjustment to consider the adoption of findings related to the special exceptions for Deuel Harvest Wind North, LLC and Deuel Harvest Wind South, LLC that were both approved at the January 22, 2018 meeting.

Luke Muller, Senior Planner for First District Association of Local Governments presented the Board with suggested findings for both special exceptions. Mr. Muller then read the proposed findings for the North project for the board to consider.

After reviewing the proposed findings for the North project Chairman Dennis Kanengieter called for a motion to approve and adopt the proposed findings for the north project as follows:

SEE ATTACHED

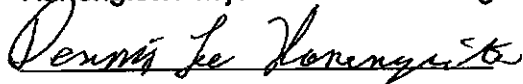
A motion was made by DeBoer and seconded by Brandt. Chairman Kanengieter then called for a roll call vote. Deboer-yes, Dahl-yes, Brandt-yes, Rhody-yes and Kanengieter-yes.

Mr. Muller then read the proposed findings for the South project for the board to consider. After reviewing the proposed findings for the South project Chairman Dennis Kanengieter called for a motion to approve and adopt the proposed findings for the south project as follows:

SEE ATTACHED

A motion was made by DeBoer and seconded by Dahl. All voted in favor and the motion carried.

Kanengieter adjourned the meeting.



Dennis Kanengieter

Chairman, Zoning Board

**Findings of Fact  
Special Exception Permit  
Deuel Harvest Wind Energy North LLC  
January 22, 2018**

This matter having come before the Deuel County Board of Adjustment (Board) 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 Plan 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 Deuel County Zoning Ordinance (Zon. Ord. Section 501)
4. The Deuel County Zoning Ordinance has identified the Board as the approving authority relating to special exceptions. (Ref: SDCL11-2-17.3 and Zon. Ord. Section 504)
5. On December 22, 2017, Deuel Harvest Wind Energy LLC applied for a special exception permit to operate a Wind Energy System on property in Antelope, Altamont, Glenwood, Herrick, Lowe and Portland 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 on January 10 and 17, 2018. (Ref: SDCL 11-2-57 and Zon. Ord Section 504.2)
7. On January 22, 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 1101.03, 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 and exit to property and proposed structures thereon; The proposed entrances and exits do not create a safety issue or hardship of any kind.
  - b. Off-street parking and loading areas; 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; Applicant has adequate arrangements for utility services.
  - d. Screening and buffering; Applicant meets the established setbacks for screening and buffering.
  - e. Signs; 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 space; 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 arrangement for the storage and disposal of its refuse and its proposed service areas are sufficient. (Ref: Zon. Ord. Section 504.5)
  - i. The agreement in the required letter of assurance that the applicant will obtain a haul road agreement satisfies the requirement for a 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)

k. 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's permit by South Dakota Public Utilities Commission.
- b. This permit shall become void if no substantial construction described within the application has been completed within three (3) years of issuance by the South Dakota Public Utility 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 supervisor with authority to implement dust control and other necessary enforcement of the conditions of this permit.

**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 adequate security for abandonment/decommissioning.

15. That 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.

16 The Special Exception Permit was approved on January 22, 2018 by a vote of 5 yes and 0 no. (Ref: SDCL 11-2-59).

17. 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.

18. 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.

*Danni Lee Koverly*

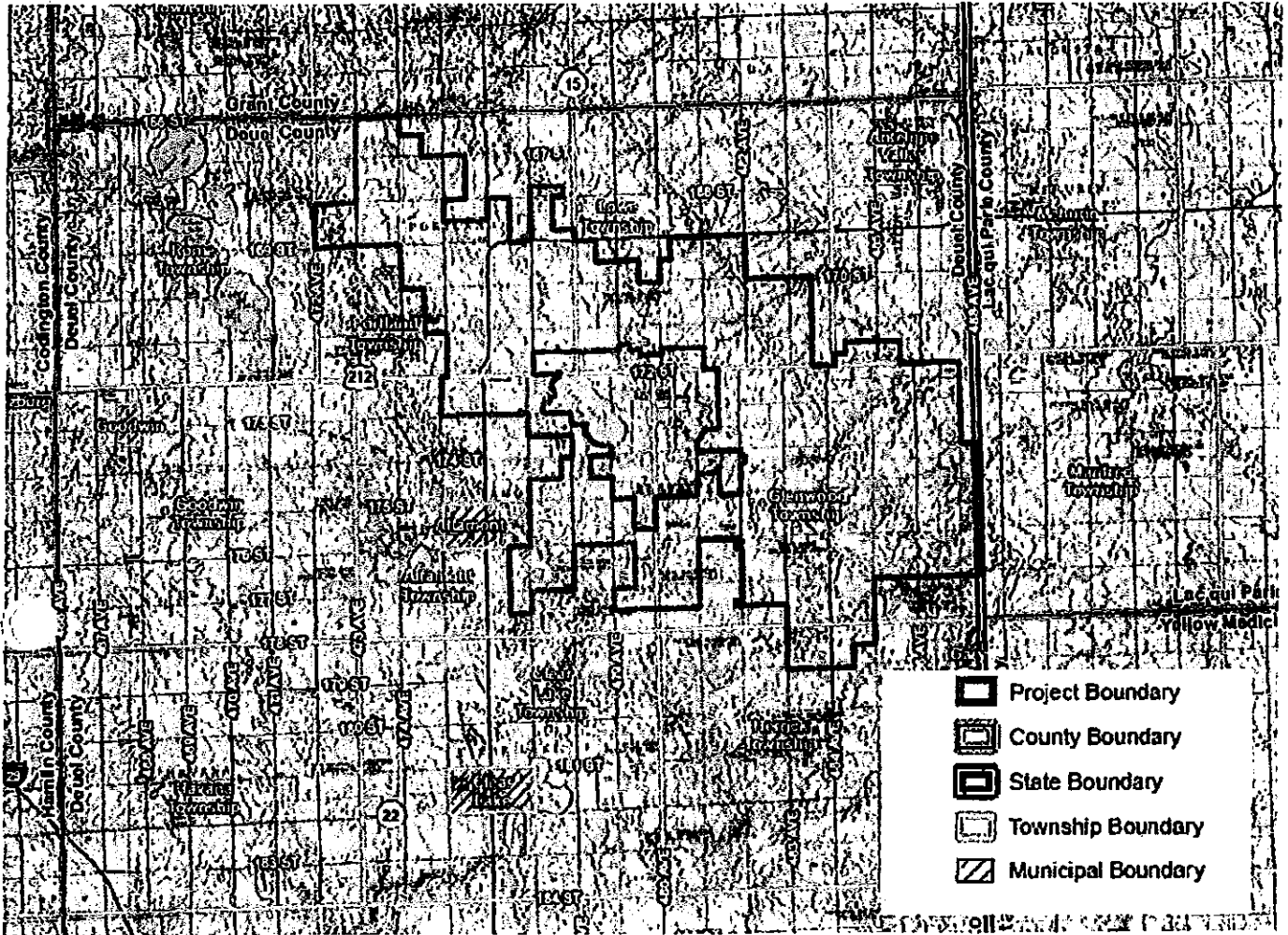
Chairperson  
Deuel County Board of Adjustment

Date Signed: 2-13-18

Date Filed: 2-13-18

Special Exception Permit Number(s): 18-02

Exhibit A - Deuel Harvest North



**Findings of Fact  
Special Exception Permit  
Deuel Harvest Wind Energy South LLC  
January 22, 2018**

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3. Deuel County Zoning Ordinance appoints the Planning Commission to act as the Board (Ref: SDCL 11-2-49) and Deuel County Zoning Ordinance. (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 December 22, 2017, Deuel Harvest Wind Energy South LLC applied for a Special Exception Permit to operate a Wind Energy System on his property in Blom, Brandt, Clear Lake, Norden and Scandanavia 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 were published on January 10 and 17, 2018. (Ref: SDCL 11-2-57 and Zon. Ord Section 504.2)
7. On January 22, 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 1101.03, 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)
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12. The reference to business in the ordinance is defined as a physical structure.
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  - b. Off-street parking and loading areas; 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 adjoining or properties generally in the district. The overall proposed project will have a positive economic impact to the properties in the project and the county as a whole.
  - c. Utilities; Applicant has made arrangements for adequate utilities.
  - d. Screening and buffering; Applicant meets the established setbacks for screening and buffering.
  - e. Signs; 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 space; Applicant has met the required setbacks for a WES.
  - 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. Applicant's 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 agreement in the required letter of assurance that the applicant will obtain a haul road agreement satisfies the requirement for a haul road agreement. (Ref: Zon. Ord. Section 1215)
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- c. Grantor shall provide the zoning office with an updated local contact information of supervisor with authority to implement dust control and other necessary enforcement of the conditions of this permit.

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16. The Special Exception Permit was approved on January 22, 2018 by a vote of 5 yes and 0 no. (Ref: SDCL 11-2-59).
17. 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.

18. 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.

Dennis Lee Karpovitch

Chairperson

Deuel County Board of Adjustment

Date Signed: 2-13-18

Date Filed: 2-13-18

Special Exception Permit Number(s): 18-01

Exhibit A

