

Monday June 10, 2019

The Deuel County Zoning Board met on Monday, June 10, 2019, at 6:00 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Steve Rhody, Paul Brandt, Kevin DeBoer, Mike Dahl, Judith Homan, and Gary DeJong. Also present were States Attorney John Knight and Zoning Officer Jodi Theisen.

Chairman Dennis Kanengieter called the meeting to order.

Motion by DeBoer, seconded by Brandt, to approve the June 10, 2019 Agenda. All voted in favor and motion carried.

The minutes from the May 13, 2019, meeting was discussed. Motion by Rhody, seconded by Dahl, to approve the May 13, 2019 minutes. All voted in favor and motion carried.

#### ITEM ONE

The minutes from the March 11, 2019, meeting was discussed. Motion by DeBoer, seconded by Rhody, to approve the March 11, 2019 minutes by amending the Prairie View Golf LLC and Appelen Variance Permit which read Section 101.04 and the Section should be 1101.04. In the motion the John Lentz Variance Permit it read Article XI Section 1102.04 Rear Yard and should read Section 1103.5. All voted in favor and motion carried.

Motion by Brandt, seconded by Rhody to appoint Gary DeJong and Judith Homan to the board for the Minutes from May 8, 2019 and for the approval of the Findings of Fact for the Deuel Harvest North. All voted in favor and motion carried.

The minutes from the May 8, 2019, meeting were discussed. Motion by Brandt, seconded by DeJong, to approve the May 8, 2019 minutes. Chairman Kanengieter then called for a roll call vote: Brandt-yes, Rhody-yes, Homan-yes, DeJong-yes Kanengieter-yes and motion carried

#### ITEM TWO

The Deuel County Board of Adjustment considered the adoption of findings related to the special exceptions for Deuel Harvest North that was approved at the May 8, 2019 meeting.

Theisen presented the Board with suggested findings for the special exception. The findings were prepared and reviewed by legal counsel based on the requirements of the ordinance as the Board requested after voting on approval of the special exception permit. DeJong asked about #11 and the definition of business. Knight stated with regard to the setback from businesses, the Board's interpretation of Section 1215.03(2)(a) is that the term "business" refers to a physical structure associated with a business that can be occupied by people. The County's legal counsel is comfortable with the findings as drafted having been at the meeting.

After reviewing the proposed findings for the for Deuel Harvest North 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 Brandt and seconded by Rhody. Chairman Kanengieter then called for a roll call vote: DeJong-yes, Homan-yes, Brandt-yes, Rhody-yes and Kanengieter-yes and motion carried.

After reviewing the proposed Letter of Assurance for the for Deuel Harvest North, Chairman Dennis Kanengieter called for a motion to approve the Letter of Assurance. Motion by Rhody, seconded by DeJong, to approve the Letter of Assurance for the for Deuel Harvest North. All voted in favor and motion carried.

Motion by Brandt, seconded by Rhody to excuse Gary DeJong and Judith Homan and to appoint DeBoer and Dahl for the rest of the Board of Adjustment meeting. All voted in favor and motion carried

#### ITEM THREE

The Board met at Gerald Jelen's property on June 9, 2019. The board discussed the removal of the garage door, definition of private garage in our ordinance, and the issue of more than one dwelling on the same lot. The Zoning officer provided the board an email that Jelen emailed the Zoning Officer that he received from the Deuel County Director of Equalization Office. The board took that information into consideration but the board refers back to the Zoning Ordinance to determine whether the property is in compliance. The board discussed that this structure has bedrooms, a bathroom, a refrigerator, kitchen cabinets, and a utility sink It doesn't fit the the definition of Section 242. Garage, Private – An accessory building used for the storage of not more than four (4) vehicles owned and used by the occupant of the building to which it is necessary. Vehicles include cars, pickups, and boats. The Board directed the Zoning Officer to inform Gerald Jelen that the board has will require the structure to be attached to the existing house or the owner will need to install a functional garage door and remove the pillar in front of the garage door. This structure is more a bunkhouse than a detached garage.

#### ITEM FOUR

Otter Tail applied for a Special Exception Permit. The request, if granted, would allow construction of a 115 kV transmission line to improve the reliability in the region. The applicant will have a 50' wide easement that would be parallel and adjoining the township/county road right-of-ways in most cases on certain property situated in Blom, Grange, and Hidewood Townships. Todd Langston, representative of Otter Tail, explained to the Borad the project is phase 2. The route from Hetland to Lake Norden was phase 1 of the project. The substation at Hetland is fed from Big Stone and this will finish the loop. The project has 43 miles in Hamlin County and 20 miles in Deuel County. Langston stated that they have 70% of the easements and they will follow the road right-of-way and they will bury the H-D Electric lines. The poles will be a wood pole and the average height will be 65' tall. They are working on getting the project done by June 2021. The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h), of the Ordinance. Motion by Dahl, seconded by DeBoer, to grant the Special Exception for Essential Services to construct a 115 kV transmission line to improve the reliability in the region. A condition of the permit is the Applicant is required to contact the Townships and get haul road agreements. All voted in favor of and the motion carried.

- a) Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Applicant doesn't create a safety hazard and there is no issue with automotive and pedestrian safety and convenience, traffic flow and control or access in case of fire or catastrophe.
- b) Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and properties generally in the district: Applicant has adequate parking and loading area. I

think you need to include the findings on the other items called for in this section. Does you staff report address those?

- c) Utilities, with reference to locations, availability, and compatibility: Does not apply.
- d) Screening and buffering with reference to type, dimensions, and character: Does not apply.
- e) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: No proposed signs.
- f) Required yards and other open spaces: Applicant has adequate yard and other open spaces provided they get the easements from the property owners.
- g) General compatibility with adjacent properties and other property: Applicant's proposed use is generally compatible with the adjacent properties and other properties in the Agriculture District.
- h) Refuse and service areas, with particular reference to the items in (a) and (b) above: There are no concerns regarding refuse or service areas. Applicant has a roll off service at the temporary laydown yard.

#### ITEM FIVE

Michael & Jennifer Hawley applied for a Variance of Section 1101.04.02 Front Yard. The request, if granted, would permit the applicant to use the following property: Lot 2 Hawley Addition in the E1/2NE1/4 of Section 20, Township 115 North, Range 50 West of the 5th P.M., Deuel County, South Dakota, to build a shed with less than 150' of front yard in an Agriculture Zoned District. Theisen stated that she went and inspected the site with Hawley and the 40' x 80' shed would be approximately 52' from the the east property line which is less than 150' of front yard. Motion by DeBoer, seconded by Rhody, to grant the Variance to build a 40' x 80' shed that is approximately 52' from the east property line. The findings for this Variance are it will not cause any greater snow or safety concern. Since Lots 1 & 2 Hawley Addition are owned by Michael & Jennifer Hawley it would not cause a problem to be within the ordinance setbacks. All voted in favor of and the motion carried.

#### ITEM SIX

Ronald & Kathy Gorder applied for a Variance of Section 1101.04.02 Front Yard & Section 1101.07.02 Easements/Waivers. The request, if granted, would permit the applicant to use the following property: SW1/4 Less H-1 in Section 12, Township 113 North, Range 50 West of the 5th P.M., Deuel County, South Dakota, to move in a new 2016 Mobile Home with less than 150' of front yard and to move in a mobile home closer than one-half (1/2) mile from an existing Concentrated Animal Feeding Operation (CAFO) in an Agriculture Zoned District. Gorder stated that they had a mobile home there before and moved it out and they would like to move in a new one for their daughter to live in. They didn't plat 3 acres out for the mobile home but they could if they had too. Gorder stated the mobile home is 109' away from the road right-of-way to the south. Gorder also stated that they visited with Mike Gorder, who has the CAFO to the north that is within 1/2 mile from the location of the mobile home, and they have a signed letter from him stating that he is aware of the project. Gorder's stated that they read over the waiver and are willing to sign the waiver knowing they are building within 1/2 mile of an existing CAFO. Motion by Dahl, seconded by Rhody, to grant the Variance to move in a new 2016 Mobile Home no closer than 100' from the road right-of-way and which is closer than one-half (1/2) mile from existing Concentrated Animal Feeding Operation (CAFO) in an Agriculture Zoned District. All voted in favor and motion carried. The findings for this Variance are that the applicants signed the waiver and they have acknowledged the

existing CAFO and that the owners of the existing CAFO are not protesting the project. It will not cause any greater snow or safety concern, there are trees closer to the road right-of-way and it is on an existing family farm site.

#### ITEM SEVEN

Dean & Connie Ackermann applied for a Special Exception Permit and Variance Permit Section 1103.5.5. The request, if granted, would permit the applicant to use the following property: Lot 9 Agnes Place Addition in Gov Lot 8 in Section 5-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota, to alter the shoreline within 35' from the high-water-mark, to build a deck within 50' from the high-water-mark, and to have a camper within 30' from the edge of the road in the Lake Park District. The board stated that they visited their site on Sunday June 9, 2019. Ackermann's stated the shoreline has some erosion happening and they would like to place field rock along the shoreline; they would also like to place wood terraces within the 35' from the high-water-mark to help with future erosion of the hillside. They would not remove any dirt and place 6" x 6" x 30' landscaping timbers every 12' down the hillside as retaining walls. Ackermann's stated they would like to build a wood stairway with a possible 6' x 6' deck half way down the hill. Ackermann's stated that they would dig footings for the post and part of the stairway would be within 35' of the high-water-mark. Dahl suggested that they put fabric under the stairway to help erosion. Ackermann's also stated that they would like to put two 6' x 10' wood landings overhanging the high-water-mark for a walk way to their dock from the stairway that will stay all year round. The Ackermann's stated that they would like to place pavers at ground level between the camper and the existing pavers which are more than 50' from the high-water-mark. They stated that the camper is 5' from the side lot line and is 21' from the edge of the road and is in line with the neighboring mobile home. The Board stated that they camper is 5' from the side lot line but the slide out is much closer. They would like the Ackermann's to move the camper over so the the slide outs are 5' from the side lot line and to have this done by August 1, 2019. Ackermann's stated that the camper will stay there over the winter months. Motion by Brandt, seconded by DeBoer, to grant the Special Exception and Variance to alter the shoreline within 35' from the high-water-mark to allow a stairway with a landing, and 2 landings along the high-water-mark, to build 3 retaining walls along the hill side within 35' from the high-water-mark; to notify the South Dakota Game, Fish and Parks; and to follow the proposed landscaping plan presented to the Deuel County Zoning Board. All voted in favor of and the motion carried.

Motion by Brandt, seconded by Dahl, to grant the Variance to allow a camper on their lot 21' from the edge of the road and to move the camper so the slide outs cannot extend within 5' from the side property line. The findings for this Variance are it will not cause any greater safety concern and the traffic is limited on that road and they use the back lot for parking.

#### ITEM EIGHT

Bruce & Laurie Laleman applied for a Special Exception. The request, if granted, would permit the applicant to use the following property: Lot 7 & E20' Lot 8 Elms in Gov Lot 6 in NE1/4 in Section 4-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota, to alter the shoreline within the 35' from the high water mark in a Lake Park Zoned District. Laleman stated that the ice is pushing his retaining wall back. Laleman stated that he would like to remove the block and place fabric and field rock. The rock will be 16" tall and the length of the lot which is 60'. They also would like to place black dirt behind the rock to level out the yard and they will plant grass. They would like to do this project as soon as possible to help stop the erosion. Laleman stated that they have a sand pit approximately 10' x 12' behind the retaining wall and they will put field rock around the sand pit to help with erosion. Motion by DeBoer, seconded by Brandt, to grant the Special Exception to alter the shoreline within the 35' from the high watermark in a Lake Park Zoned District, to use a silt fence, to notify the DENR about the project, to

notify the Zoning Office when they start the project, to complete the project before October 1, 2019, and to follow the proposed landscaping plan presented to the Deuel County Zoning Board. All voted in favor of and the motion.

#### ITEM NINE

Gregory & Tamara Bothun Revocable Trust, Cori Bothun, and Joseph Bothun applied for a Variance of Section 1103.5.2 & 1103.5.5. The request, if granted, would permit the applicant to use the following property: Lots 9A, 9, 10A, 10, 11A, 11, 12A, and 12 Marion Bay Subdivision in Gov Lot 7 in Section 5-T114N-R47W, Lake Cochrane, Norden Township, Deuel County, South Dakota, to replat two lots into one lot having shoreline frontage less than 75' in width and one lot having a stairway located within 5' from the proposed property line. Bothun via the phone stated that when the surveyor came out to survey the lot they noticed the main stairway toward the water was built crooked. If they would have platted the shoreline with 75' the line would be in the middle of the stairway. Bothun stated that the stairway is how they pull the dock out of the water and he would like to keep the stairway with the main lot with the house. That is why they want to place the pin four feet over making the proposed Lot with 71' of shoreline instead of 75'. Bothun stated that the road frontage and majority of the lot will have the 75' width. Motion by Rhody, seconded by Brandt, to grant the Variance for the proposed plat with one lot with 71' lake front frontage and one lot having a stairway located within 5' from the proposed property line as advertised in the public notice. Four voted in favor and one voted against and motion carried.

#### ITEM TEN

Dan Loge attended the meeting to talk about his property at Lake Cochrane. Mr. Loge & the Rhea's realized when the Rhea Addition was platted the neighbor's deck was built over the lot lines. Rhea's sold the Rhea Fifth Addition to the Loge's to correct the property line issue.

Mr. Loge would like to sell 25', which would be Lot 38, to his neighbors the Finnegan's and is wondering how he could sell this property to be in compliance with the zoning ordinance. The board suggested that Loge replat Rhea Fifth Addition and Lot 39 into one lot and apply for a variance to have a lot with less than 75' lake frontage. Also to have the neighbors Finnegan's and Loge to replat Lots 37 & 38 into one lot and have them apply for a variance to correct the lots lines. The board also suggested that they have another survey look at the project to verify the pins and the property lines.

The Board discussed having a joint meeting with the Deuel County Commissioners about correcting Section 1215.03.2.d- Wind Energy System setbacks. The change in the ordinance would reflect the setback distances as intended in the January 9th, 2017, motion by Commissioner DeJong, addressing changes in the ordinance to setbacks from wind towers to the Lake Park Districts in Deuel County. The ordinance would be changed to read: Distance from the Lake Park District on Lake Cochrane to be 3 miles, distance from the Lake Park District on Lake Alice to be 2 miles, and the distance from the Lake Park District on Lake Bullhead to be 1 mile. Dolye Thomson stated that he remembers Commissioner, Gary DeJong, make that motion to have the setback from the Lake Park District at Lake Alice.

Larry Eining came and spoke to the board about platting out his building site and pasture south of Clear Lake. The board stated that he would need a variance to plat the building site since there are existing buildings and shelterbelts within the setbacks. Kanengieter called the meeting.

  
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Jodi Theisen  
Zoning Officer

  
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Dennis Kanengieter  
Chairman, Zoning Board

**Findings of Fact  
Special Exception Permit  
Deuel Harvest Wind Energy LLC  
June 10, 2019**

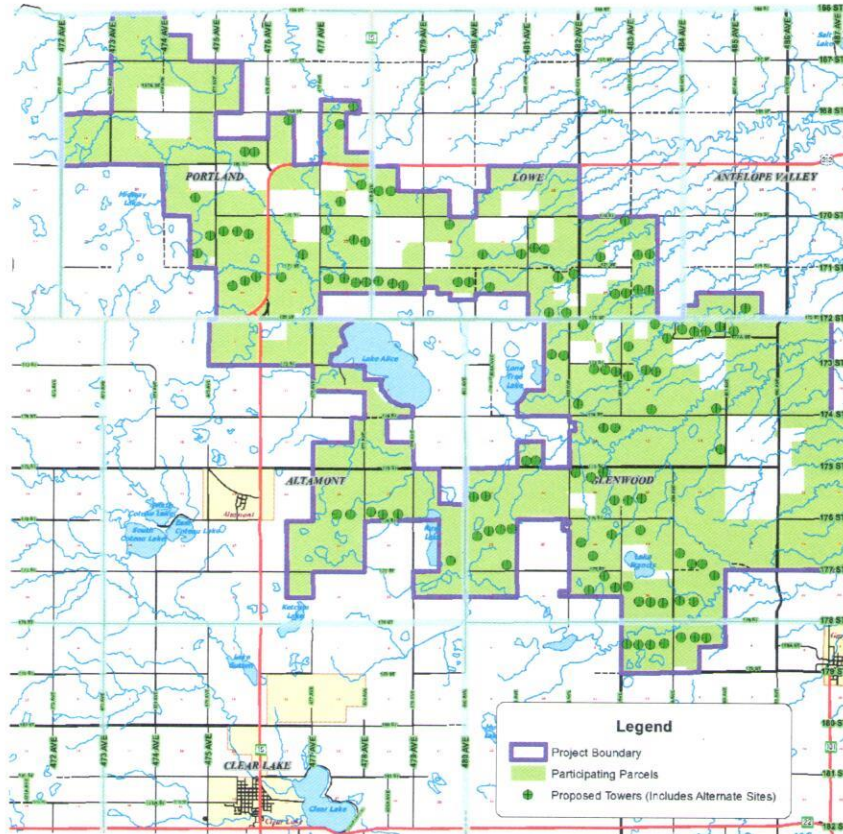
This matter having come before the Board of Adjustment and the Board having taken testimony and heard the evidence. The Board enters the following Findings of Fact in support of its motion to approve the Petitioner's application for a Special Exception Permit.

1. 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)

2. On or before April 8, 2019, Deuel Harvest Wind Energy LLC applied for a Special Exception Permit to operate a Wind Energy System on property in Antelope Valley, Altamont, Glenwood, Herrick, Lowe and Portland Townships as displayed in Exhibit "A" below and hereby incorporated by reference.



3. Section 504.8 of the Deuel County Zoning Ordinance states: "No applicant requesting a special exception permit whose application includes the same or substantially the same requirements for the same or substantially the same property which has been denied by the Board of Adjustment shall be again considered by the Board of Adjustment before the expiration date of six (6) months from the date of the final action on the petition."
4. On January 22, 2018 the Deuel County Board of Adjustment approved a similar application for Special Exception to operate a Wind Energy System filed by Deuel Harvest Wind Energy, LLC.
5. Following an appeal to circuit court, the January 22, 2018 decision of the Board of Adjustment was invalidated due to disqualification of the votes of two Board of Adjustment members.
6. The January 22, 2018 action by the Board of Adjustment was to approve the request, and the Circuit Court's decision to invalidate that approval was not a denial by the Board of Adjustment. Therefore, Section 504.8 does not apply to this application.
7. This application meets the definition of a Wind Energy System.
8. 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 the application.
9. The application 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, tower height and appearance, noise and flicker.
10. The applicant satisfactorily demonstrated the ability to meet required setbacks for turbines from property lines, right-of-way, residences, businesses, government facilities and other structures, uses and features which would require setback. Final determination of compliance with setbacks is completed upon issuance of building permit(s).
11. With regard to the setback from businesses, the Board's interpretation of Section 1215.03(2)(a) is that the term "business" refers to a physical structure associated with a business that can be occupied by people.
12. With regard to Section 1215.03(2)(d), the Board's interpretation is that the 2-mile setback is intended to apply to the Lake Park District at Lake Alice, not the lake itself.
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.

14. The agreement in the letter of assurance that the applicant will obtain haul road agreements satisfies the requirement for a haul road agreement.
15. The Board added conditions relating to concerns expressed about proximity of proposed towers from established eagle nests and notice prior to issuance of building permits for wind towers.
16. The application, staff report, and testimony during the public hearing adequately addressed all applicable requirements of the zoning ordinance, including Section 504 of the Zoning Ordinance in reference to all forms of Special Exceptions.
17. No other issues were brought up with the application or during testimony which relate to the Zoning Ordinance or Land Use Plan that needed to be addressed.
18. 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.
19. The Board requests legal counsel to prepare the findings of fact which are to be approved by the Chairman of the Board; and for the zoning officer to issue the Special Exception permit and any letters of assurance, building permits or other items associated with said Special Exception Permit.
20. 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 this permit (on or before June 10, 2022.)
    - c. 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. No permit shall be issued for a wind tower proposed less than one-half (1/2) mile from active eagles’ nests at the time of permit issuance. The applicant shall submit a map of active eagles’ nests known to exist at the time of the May 8, 2019 hearing.



- e. Building permits for wind towers shall become effective upon publication of notice in the *Clear Lake Courier* in the form of a map which indicates the location of towers permitted.

3) Obligation to Meet Requirements:

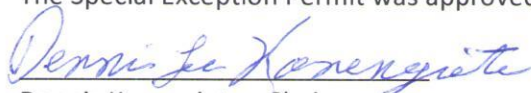
- a. Applicant agrees to meet requirements of Section 1215 of the Deuel County Ordinance in reference to remaining obligations including but not limited to: submittal of Haul Road Agreements, Submittal of Decommissioning Plan, Final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of bond for abandonment/decommissioning.

4) Violation and Penalties:

- a. Violations of requirements of the ordinance relating to the operations of a specific tower will result in enforcement/penalties in reference to the specific tower found to be in violation, and will be enforced in the manner as described in Section 4.b below.
- b. Violation of the terms of this Special Exception permit will be determined by the Deuel County Zoning Officer.

- (1) The first violation substantiated by the Zoning Officer of this Special Exception 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 Special Exception permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the Special Exception permit and cessation of all operations within forty-five days (45) of notice of revocation.
- (2) 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.
- (3) 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.

The Special Exception Permit was approved by a vote of 5 yes and 0 no.

  
Dennis Kanengieter, Chairperson  
Deuel County Board of Adjustment

Date Approved: May 8, 2019 (Permit acted on); June 10, 2019 (Findings Approved)

Date Signed: June 10, 2019

Date Filed: June 10, 2019

Special Exception Permit Number(s): 19-SPV 115