

Monday June 6, 2022

The Deuel County Zoning Board met on Monday June 6, 2022 at 6:30 p.m., at the Deuel County Complex at 47494 SD Hwy 22, Clear Lake, SD. Those present were members Judith Homan, Paul Brandt, Kevin DeBoer, Mike Dahl, Dennis Kanengieter, States Attorney Teree Nesvold, Zoning Officer Jodi Theisen, Ben Stout and Ty Eschenbaum. There were other numerous Deuel County property owners present.

Chairman Dennis Kanengieter called the meeting to order.

The minutes from the May 16, 2022, May 19, 2022 and May 31, 2022 meetings were discussed. Motion by DeBoer, seconded by Brandt, to approve the May 16, 2022, May 19, 2022 and May 31, 2022 minutes with the corrections. All voted in favor and motion carried.

Motion by Dahl, seconded by Homan, to approve the June 6, 2022, Agenda. All voted in favor and motion carried.

#### ITEM ONE

Greg Bothun, applicant and Greg & Tami Bothun Living Trust and Cori & Joseph Bothun, owners, applied for a Variance of Section 1103.5 Area Regulations. The request, if granted, would permit the applicant to use the following property: Lot 13 Marion Bay in Gov Lot 7 of Section 5-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota, to build a new garage with less than 30' from road right-of-way.

Bothun has owned this parcel for a significant period of time which contains 1 lot which was replatted in 2019 (to make 4 lots into 2 lots). He sold the other lot with the house and garage on it. Bothun would like to build a 16' x 24 garage with a 6' x 24' lean less than 30' from the front yard. The location of the shed is located on the east side of existing pine trees which are along the road right of way. The proposed shed would be located approximately 37' from the edge of the road. This lot only has one other storage shed on it, currently it does not have a house. This property is located on the east side of a county road that has a 66' road right-of-way.

Theisen reviewed the Staff Report and all the regulations. The application may be approved, postponed, denied or disregarded. If approved, approval would be based on the board: in the past the board used the interpretation of the 30' from the edge of the road. The Board is working on updating the current ordinance and will have this section clearer and more defined.

Motion by DeBoer, seconded by Dahl, to disregard this Variance application to build a new garage since in the past the board used the interpretation of the 30' from the edge of the road and the Zoning Office will not charge the variance fee payment. Bothun will need to apply for a special exception and a building permit rather than a variance. All voted in favor and motion carried.

#### ITEM TWO

Greg Bothun, applicant and Greg & Tami Bothun Living Trust and Cori & Joseph Bothun, owners, applied for a Special Exception Permit Pursuant to Section 1103.4.9 - Storage. The request, if granted, would permit the applicant to use Lot 13 Marion Bay in Gov Lot 7 of Section 5-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota, to build a garage in Lake Park District.

Bothun is requesting a special exception to allow a 16' x 24 garage with a 6' x 24 lean. Bothun applied for a variance which the board made a motion to disregard the variance application due

to the new garage being more than 34' from the edge of the road and within their property line in accordance to how the Boards has treated other properties in the Lake Park District in the past.

Motion by DeBoer seconded by Homan, to grant the Special Exception to have an approximately 16' x 24' garage with 6' x 24' lean which meets the setbacks in the Lake Park District. All voted in favor and motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

### ITEM THREE

City of Clear Lake, applicant/owner, applied for a Variance Permit Pursuant to Section 1101.04 Area Regulations. The request, if granted, would permit the applicant to use the following property: N580' E700 of NW1/4 of Section 21-115-49, Clear Lake Township, Deuel County, South Dakota, to move in an accessory building (pole shed) with less than 150' from the front yard.

Theisen stated on June 1, 1995 there was a special exception granted to have a rubble site on the N580' E700 of NW1/4 of Section 21-115-49, Clear Lake Township, Deuel County, South Dakota. The City of Clear Lake is requesting a Variance to move in an accessory building (pole shed) less than 150' from the front yard on this property. They would like to remove the old pole shed from the old airport land to the rubble site. The pole shed would be approximately 110' from the ROW which is approximately 143' from the center of the road with a 33' ROW.

Motion by DeBoer, seconded by Brandt, to grant the Variance to move in an accessory building (pole shed) no closer than 110' from the road right-of-way. All voted in favor and motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

### ITEM FOUR

Hollywood Feeders LLC, applicant and Chad A Olsen & Pamela J Olsen Trust Agreement and Sandra Balbach Trust, owners, applied for a Variance Permit Pursuant to Section 1304.06 CAFO Requirements Setback and Separation Distance. The request, if granted, would permit the applicant to use the following property: NW1/4 of Section 17-113-49, Blom Township, Deuel County, South Dakota, requesting to expand their Class "A" Concentrated Animal Feeding Operation with less than 2,640' from three unregistered wells.

Hollywood Feeders LLC, applicant/owner, is requesting to expand their Class "A" Concentrated Animal Feeding Operation less than 2,640' from three unregistered wells. The proposed expansion of the CAFO will be located within the 2,640 feet of unregistered wells to the south and north. Albert Moore's unregistered wells to the north, are approximately 929.4' and 1,084.5' from the existing CAFO barns. Variance is not required from Mr. Moore's unregistered well as a variance was previously granted with no maximum number of animals and the proposed expansion will not get any closer to Mr. Moore's well. Hollywood Feeders was also granted a variance from Tory Lenning's unregistered well to the south; however, the expansion will be closer than previously approved in 2006, 2009 and 2019. The expansion would be approximately 900' from Mr. Lennings property line and the closest feature of the proposed facility would be approximately 1,000' from Mr. Lenning's well.

There was discussion on the expansion of the CAFO.

Ben Stout, A1 Development Solutions, representing Chad Olsen and Michael Vander Dussen stated that they would like to expand their CAFO from 3,499 animal units to 13,585 animal units, of which are 9,500 mature cattle) which is a new dairy facility in the Ag District. They currently

are permitted for 3,499 feeder cattle and would like to add approximately 6,000 head of dairy cattle. The expansion will consist of construction of two outside yards by the existing mono slope barns, an addition to an existing mono slope barn, a shop, a commodity barn, a scale, a feed pad expansion, two dairy freestall barns, a milk center (parlor), and a sand area and four manure storage ponds.

Olsen stated the site described NW1/4 of Section 17-113-49, Blom Township, Deuel County, South Dakota; the N1/2NW1/4 is owned by Chad A Olsen & Pamela J Olsen Trust Agreement & the S1/2NW1/4 is owned by Sandra Balbach Trust. They are planning a land swap with the rest of the land that Balbach's own then they have the NW1/4 under one ownership.

Stout and Olsen stated that they have an existing nutrient management plan and manure management plan through their current DANR permit. Stout stated that they will update the fields and current plan if the expansion is granted. Currently they have 5,494 acres with additional acres in Minnesota. Stout stated these management plans were prepared manure acres using the state permit standards. Stout stated that they have solid manure now and with the dairy it would be more liquid and perhaps a digester would be utilized in the future. The composting process will still continue and would perhaps be decreased in the future.

Olsen stated that he would like to expand to a dairy because it would help the neighbors (feed and manure), have a much cleaner site, and it will help with the road issues. He would be in charge of the feed and the transportation (custom service) and Michael Vander Dussen would own and operate the cattle. Vander Dussen stated that he helps operate a family dairy in Iowa of about 10,000 Jersey cattle. Vander Dussen stated that roughly the ratio is 1 acre per 1 cow as to the need for feed. Vander Dussen stated that they would employ 30 to 40 people, no onsite housing, and he would be in charge of the manure handling.

Olsen stated that they currently have a haul road agreement with Blom Township. Stout stated that they have inquired with Local Transportation Assistance Program at SDSU and they did analysis of the 473rd Ave to the west and it would cost approximately \$350,000 to build up the road and that is a onetime cost. The road would additionally need maintenance through the years. They are willing to meet with the county and any of the townships about haul road agreements. They would like to do one for the main road 473rd Ave and one for silage and other maintenance issuers as they arise. There was conversation about the upcoming Hwy 28 construction and alternate routes. Stout stated there would be approximately 8 to 10 semis per day traveling the roads around the dairy.

Stout and Olsen stated that they use rural water now and a well that they use. They have been in contact with Brookings-Deuel Rural and they believe they would be able to handle water usage with the expansion. The project would be online this fall and operational in 2024 if the expansion was permitted.

The Board asked the applicants about the well to the south and the elevation. If they had a topography map of the existing well and the new site. Will the new lagoons and barns be above the existing well and have they done any soil borings for the proposed site? Stout stated they did not have a topography map and that they had previous soil borings for the composting amendment done. The borings are in the general location of the new lagoons and with the DANR permit they will have to provide additional borings.

Theisen has received some letters about concerns for this Special Exception request and has passed them on to the board.

The board opened it up to public comments.

Aaron Svec – lives 2 miles west of the current site, his concerns are about the water quality, who will monitor the Dairy, how the shallow aquifer will be affected, and having manure pumped near the creeks and wells. He also voiced a concern on how they will mitigate the variance granted from the well.

Steve Rhody – his concerns were about informing the public with the letters and the time line, and providing them with the application details before meetings.

Harlen Lenning- lives on the first mile of 473<sup>rd</sup> Ave. His concerns are with the quality and condition of the road and the well located to the south of the expansion.

Al Moore – stated that they have a report from 2009 from Local Transportation Assistance Program and the 473<sup>rd</sup> Ave has widened 5 ½ to 6 feet since the report was done. He spoke about the taxes that are collected from the existing site for the township, and had questions about the ownership of the land and who the permit is under, haul road agreements, and displeasure that townships do not get the meeting packet that was sent to the board members for the meeting.

Mark Buschenfeld – lives 1 mile west. His concerns are about the water runoff toward his pasture, and the routes for the trucks when Hwy 28 is under construction.

Troy Lenning – owns the land south of the site with the well. His concerns were the size of the expansion and if the setbacks should be increased, the ground water protection zone, the proposed lagoons in the natural waterway, if there would be drain tile in the quarter of the proposed site, and if they have or would have a mortality plan.

Ross Stroschein – lives 1 mile north. His concerns were about the manure on the site and the animal numbers.

Jim Slaney – lives 3 miles east. His concerns were about the water quality and air quality.

Dennis Stroschein – lives 2 miles or 1 ¾ as the crow flies. His concerns were about the smell with the increase of animals as there are issues with smell now at various times.

Andy Stroschein – lives 2 miles north. His concerns are the setbacks for a large Class A CAFO.

Kim Stroschein – her concerns are about family farming and this expansion driving up rent and land prices as it is hard for the next generation, including her son, to purchase land to farm.

Todd Stroschein – lives 2 miles north. His concerns are about road and manure on the road and all the other concerns previously by other land owners.

Jay Gilbertson – Manager/Treasurer of East Dakota Water Development District, stated that DANR can require the general water testing if they feel this site would need one. He talked about manure application, commercial application and soil samples. Stated that the ordinance prohibits CAFOS on shallow aquifers and larger operations have higher regulations if they are permitted by DANR verses smaller operations that are not permitted.

The board closed the public comments and opened it back up to the applicants.

Ty Eschenbaum – stated in other counties the dairy and the township drive the haul road before and after and if there was any damage caused by the dairy, the Dairy would then pay the cost

to fix the road. He stated there are different options DANR can provide for the mortality of the animals.

Motion by Brandt, seconded by Kanengieter, to grant variance to expand their Class "A" Concentrated Animal Feeding Operation with less than 2,640' from south unregistered well. The expansion will be closer to the south well (Tory & Betsy Lenning) which would be approximately 900' (property line) versus the north wells (Albert Moore). Kanengieter called for a roll call vote; DeBoer-no, Brandt-yes, Homan-no, Dahl-no, and Kanengieter -yes and the motion did not carry. Please see Findings of Fact and Conclusions of Law on file with this application.

#### ITEM FIVE

Hollywood Feeders LLC, applicant and Chad A Olsen & Pamela J Olsen Trust Agreement and Sandra Balbach Trust, owners, applied for a Special Exception Permit ((Section 1101.03 (8)) Article XIII - (Section 1300) – Concentrated Animal Feeding Operation Regulations. The request, if granted, would permit the applicant to use the following property: NW1/4 of Section 17-113-49, Blom Township, Deuel County, South Dakota, to expand its Class "A" Concentrated Animal Feeding Operation (CAFO from 3,499 animal units to 13,585 animal units which is 9,500 mature cattle) which is a new dairy facility in the Ag District.

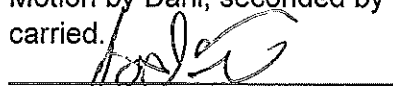
The board did not vote on the special exception application since the variance application was denied.


#### ITEM SIX

Theisen and the Board had discussion about some concerns that were emailed to the Zoning Office about the Ordinance updating. Discussion about some structures built within the setbacks. The board also discussed the damages from the May storms that affected Deuel County structures. Motion by DeBoer, seconded by Dahl, that if a structure was damaged by the storms in May, 2022, and the property owners are rebuilding the structure to the original size the property owner would need to apply for a building permit; however, the building permit fee will be waived. If the structure changes from the original size, the property owner would need to apply for a building permit along with the building permit fee. All the members were present and voted in favor and motion carried.

The board had discussion about the upcoming meetings with the next regular meeting scheduled for Monday, July 12, 2022. The next ordinance meeting in June or July to be determined.

Motion by Dahl, seconded by Homan to adjourn the meeting. All voted in favor and motion carried.

  
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Jodi Theisen  
Zoning Officer

  
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Dennis Kanengieter  
Chairman, Zoning Board