

Monday April 8, 2019

The Deuel County Zoning Board met on Monday, April 8, 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 and Mike Dahl. Also present were Attorney John Knight, Zoning Officer Jodi Theisen and public citizens.

Chairman Dennis Kanengieter called the meeting to order.

The minutes from the March 11, 2019, meeting were discussed. Motion by Dahl, seconded by Brandt, to approve the March 11, 2019 minutes. All voted in favor and motion carried.

Motion by Rhody, seconded by Brandt, to approve the April 8, 2019, Agenda. All voted in favor and motion carried.

#### ITEM ONE

MoDak Dairy applied for a Special Exception and Variance Request. The request, if granted, would permit the applicant to use the following property: N1/2 of the NW1/4 of Section 31-117-50, Rome Township, Deuel County, South Dakota, to operate a Class "A" Concentrated Animal Feeding Operation (CAFO up to 3999 animal units) which will be a heifer unit in the Agricultural Zoning District, and a Variance request to Article XIII Section 1304 (6) Established Residences and Private Wells. The applicant is requesting permission to build a Class "A" Concentrated Animal Feeding Operation with 3 buildings and manure storage within 2640' from an established residence and private well. Jacob Moes one of the owners of Modak Dairy, stated the updated site plan would be for heifers and consist of one free stall barn, four calf barns, and a lagoon. Moes stated that they would like to have the heifers in one spot as they now have them spread though out the county. Brian Friedrichsen from Dakota Environmental Inc. stated that he provided the engineering services for the various parts of the application. Moes talked about the nutrient plan, the manure plan, and the fly and odor control plan. The Board read a letter from the manager of East Dakota Water Development District, Jay Gilbertson, who reviewed the application and site. If MoDak does more test holes and they get a DENR permit, he sees no reason to oppose the request. The Board also read a letter from Rollin Siegfried regarding his concerns about the runoff of manure and the contamination of the subsurface water resources.

Jack Spartz from the Rome Township Board stated their concerns about the road and the drainage. Moes stated that they would help maintain the roads. Ed Raml who is a neighbor to the site in Codington County stated that they didn't get a letter from the

Deuel County Zoning Office. Jodi Theisen, Deuel County Zoning Officer, stated that she sent letters to the surrounding property owners in Deuel County that are within 2 miles of the proposed site, the Town of Kranzburg, East Dakota Water Development District, Brookings –Deuel Rural Water System, South Dakota DENR, Rober Weber from Rome Township and Bernt Larson. Raml had concerns about the roads and the lagoon and manure contamination.

Tom Kolb, the neighbor whose residence is within the ½ mile set back, is in favor of the CAFO and sent a letter in support.

Brian Friedrichsen talked about the soil borings, the elevation of the site, and the location of the lagoon. Friedrichsen stated that this is the first step and they would need approval from DENR before the site is built.

Mike Fieber, from the Town of Goodwin, stated that he has concerns from the residents of Goodwin about the water pressure from Brookings –Deuel Rural Water. They were wondering if they would be able to get enough water pressure with the new CAFO. Jacob stated that he had talked to Brookings –Deuel Rural Water and he will get a letter stating that the water pressure will be ok.

Brandt read a letter from the Deuel County NRCS that stated that the draft site plan does not convert or have any major impacts upon the two wetlands.

Anita Raml stated that she would like board to visit the site and to postpone the application until a later time.

The Board stated that they would require a letter from Brookings–Deuel Rural Water and haul road agreements from Rome Township and Kranzburg Township in Codington County.

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 Brandt, seconded by Dahl, to grant the Special Exception for a Class “A” Concentrated Animal Feeding Operation (CAFO up to 3999 animal units) which will be a heifer unit, contingent upon applying and being granted a State Class “A” CAFO Permit, obtaining the required letter from Brookings –Deuel Rural Water, and obtaining haul road agreements from Rome Township and Kranzburg Township in Codington County. 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 will have adequate entrance and exit.

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 sufficient off-street parking. Loading is not a concern. The special exception will have no or minimal economic, noise, glare, odor or other effects on the adjoining properties or properties generally in the district.

c) Utilities, with reference to locations, availability, and compatibility: Applicant is required to obtain a letter from Brookings –Deuel Rural Water. Applicant has sufficient other utilities available to it.

d) Screening and buffering with reference to type, dimensions, and character: The applicant's barn is far enough off the road so that is not an issue.

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: Does not apply.

f) Required yards and other open spaces: Applicant has adequate yard and other open spaces.

g) General compatibility with adjacent properties and other property: Applicant's proposed use is generally compatible with the adjacent properties. There is one residence that is within ½ mile of the proposed CAFO that has signed a letter consenting to the proposed CAFO.

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 contract with a refuse service to pick up any garage.

Motion by Rhody, seconded by Dahl, to grant the Variance request to Article XIII Section 1304 (6) Established Residences and Private Wells: The applicant is requesting to build a Class "A" Concentrated Animal Feeding Operation with 6 buildings and manure storage within 2640' from an established residence and private well in the Agricultural Zoning District. All voted in favor of and the motion carried.

## ITEM TWO

Constance Moen applied for a Special Exception Permit. The request, if granted, would permit the applicant to use the following property: Outlots Lots 100 & 101 & Lots 52, 53, & 54 of Shady Beach in Govt. Lot 7 in SE1/4 in Section 4-114-47, Lake Cochrane,

Norden Township, Deuel County, South Dakota, to operate a private campground in a Lake Park District. Moen would like to renew her special exception for a private campground so they can park their camper on the lots for the summer. Moen stated that she has parked one camper there and would like to continue. They bring the camper in April and remove it in the fall. Theisen stated the Zoning Office has had no complaints from the neighbors.

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 DeBoer, seconded by Rhody, to grant the Special Exception to permit a private campground for one camper on said lots, no commercial camping is allowed, and this camper cannot be any closer than 20 feet from the side lot and 50 feet from the high water-mark. This special exception is good for two years and the applicant would need to reapply before April 8, 2021. 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: Does not apply.
- c) Utilities, with reference to locations, availability, and compatibility: No extra utilities are required.
- d) Screening and buffering with reference to type, dimensions, and character: Applicant has sufficient screening on both sides of her property.
- 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: Does not apply.
- f) Required yards and other open spaces: Applicant has adequate yard and other open spaces.

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 Lake Park 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 takes their garbage home with them when they leave the property.

### ITEM THREE

DeBoer Construction applied for a Special Exception Permit. The request, if granted, would permit the applicant to use the following property: N210' W300' of Lot 1 West Side Acres & S190' W300' of Lot 1 and Lot 8 of West Side Acres in SE1/4SE1/4 in Section 21-115-49, Clear Lake Township, Deuel County, South Dakota, for a Contractor's Shop and Yard in a Commercial Zoned District. Jerome DeBoer stated that they purchased the property and they are using the area to park their equipment. 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 Brandt, to grant the Special Exception for Contractor's Shop and Yard in a Commercial Zoned District. Kevin DeBoer abstained from the voting. 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.

c) Utilities, with reference to locations, availability, and compatibility: Applicant has adequate utilities.

d) Screening and buffering with reference to type, dimensions, and character: Applicant has sufficient screening on both sides of the property.

- 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: Does not apply.
- f) Required yards and other open spaces: Applicant has adequate yard and other open spaces.
- 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 Commercial 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 contract with a refuse service to handle the garage.

#### ITEM FOUR

Marvin Keimig & Willow Property Group LLC – The board will consider the Special Exception Permit application that was postponed on December 10, 2018. The request, if granted, would permit the applicant to use the following property: Lot 1 (Replat Blocks 4-5 of Block 1-5 Cook's Corner Sub) in NW1/4NW1/4 in Section 26-115-49, Clear Lake Township, Deuel County, South Dakota, to operate an Auto Mechanic Service Shop and Cardboard Recycling Business in a Commercial District. Keimig wasn't at this meeting. On December 10, 2018, Keimig stated that he is renting the building from Willow Property Group LLC and is doing an auto mechanic service, oil changes, brakes, small repairs, and cardboard and paper recycling. He has a cardboard baler inside the building and Keimig stated that they place the paper inside the cardboard bale so the paper is not exposed. The baler is electric and they unload the cardboard and paper inside the building to help with the mess. The baler produces a 4' x 6' bale that weighs around 1500 lbs. The bales are stacked inside the fence to decrease visual clutter and will not impair the cemetery aesthetics. They have a truck come and get the bales (40 bales) which takes an estimated 2 ½ or 3 months to produce. At the December 10, 2018 meeting, Kent Morris with the Cemetery Association had some concerns about the potential business and the location next to the cemetery. Keimig said the vehicles that will be on site will only be the ones he is working on. If a vehicle will be on site for an extended period of time, it will be located behind the privacy fence. He will not be doing a wrecker business, the oil will be stored inside the building, and he will respect any funerals or activity at the cemetery. The board will reserve the right to impose more restrictions during the existence of the special exception.

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 Brandt, to grant the special exception for, others which, in the opinion of the Board of Adjustment would not conflict with adjoining land uses, to operate an Auto Mechanic Service Shop and Cardboard Recycling Business in a Commercial District. 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 has adequate entrance and exit and won'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.
- c) Utilities, with reference to locations, availability, and compatibility: Applicant has adequate utilities.
- d) Screening and buffering with reference to type, dimensions, and character: Applicant has sufficient screening with a fence that is located on the property. The applicant will keep the cardboard bales behind the fence.
- 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: Does not apply.
- f) Required yards and other open spaces: Applicant has adequate yard and other open spaces.
- 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 Commercial 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 dumpster to handle the garage.

ITEM FIVE

Shane & Sarah Haman applied for a Variance Permit of Article XI Section 1101.04. The request, if granted, would permit the applicant to use the following property: Lot 1 Bleeker Addition in the SE1/4 Less N210' S451' E250' in Section 8-115-50, Havana Township, Deuel County, South Dakota, to build a house with a basement with less than 150 feet of front yard, which is closer than County zoning regulations allow in an Agriculture Zoned District. Zoning Officer Theisen stated that there is an existing house located to the north that is approximately 110' from the road right-of-way and the ordinance set back is 150'. The existing trees are located right along the road right-of-way.

Motion by Dahl, seconded by Brandt, to grant the Variance to build a house with a basement no closer than 115 feet from the road right-of-way. All voted in favor of and the motion carried. The findings for this Variance are that there is an existing house located to the north that is closer than front yard setback, there are trees located to the north and south that are closer than setback allows, and this variance will not cause any greater snow or safety concern.

#### ITEM SIX

Steve & Melissa Hennen applied for a Special Exception and Variances. The request, if granted, would permit the applicant to use the following property: Lot 9 United Methodist Bay Addition in Outlot A of Gov Lot 10 in Section 4-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota,

- to alter the shoreline within 35' of the high-water mark in the Lake Park Zoned District; and
- to build a rock stairway within 35' of the high-water mark in the Lake Park Zoned District.

Hennen's stated that they would like to put a stone stairway and terraces within 35' feet from the high-water mark. They stated that the walk area gets a little slick and they would like to make it safer for their family. The Board asked about the drainage toward the lake. Hennen's stated that landscaper contoured the drainage to go around the terrace toward the lake. They will move approximately 5 to 8 cubic yards for the sand patio. The board stated that they do not need a variance for the stone steps since it is not a structure.

Motion by Rhody, seconded by Brandt, to grant the Special Exception to alter the shoreline by building steps, terraces, and a sand patio that is within 35' of the high-water mark in the Lake Park Zoned District according to the landscape plans. Kanengieter then called for a roll call vote. DeBeor-yes, Dahl-yes, Brandt-yes, Rhody-yes and Kanengieter-no. Motion carried.



## ITEM SEVEN

Dennis Renkly – The board considered the Special Exception Permit and Variance application that was postponed on March 11, 2018. The request, if granted, would permit the applicant to use the following property: S1/2 Lot 39, Lots 40, 41, 42, & 43 Severson Bay in Govt. Lot 5 in the NE1/4 in Section 5-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota.

- to alter the shoreline by removing some bushes and three trees within 35' of the high-water mark in the Lake Park Zoned District; and
- to remove a 2nd stairway and replace a stairway within 35' of the high-water mark in the Lake Park Zoned District; and
- to build a deck extending within 50' of the high-water mark which is closer than County zoning regulations allow in the Lake Park Zoned District.

Renkly stated that he would like to build a house, garage, deck and a walk out basement with a patio that is outside the 35' and more than 50' from the high-water mark. Renkly would like to remove three trees and some bushes that are within the 35' of the high-water mark. Renkly stated that he has two stairways going to the shoreline and he is going to keep both right now and maybe remove one of the stairways that is located toward the north of his property in the future. Renkly would like to keep the stairway that is in the middle of his lot if it lines up with the walk out patio. Renkly stated that they measured the proposed deck and it would be outside 50' from the high-water mark.

Motion by Brandt, seconded by Rhody, to grant the Special Exception to alter the shoreline by removing some bushes, 3 trees, and require the applicant to plant 2 trees and some native grasses within 35' of the high-water mark. All voted in favor of and the motion carried.

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

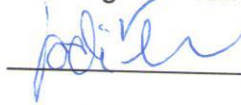
Motion by Dahl, seconded by DeBoer, to approve Plat of Kalsbeck Addition in the S1/2 of Section 31, Township 113 North, Range 50 West of the 5th P.M., Deuel County, South Dakota, contingent upon application for a variance prior to recording the plat. All voted in favor and motion carried.

Dean Maeyaert had concerns about a drainage issue at Lake Cochrane and water pooling up in some yards from a drainage pipe under a road. The Board stated that it is more a property owners concern than a Deuel County Zoning issue.

Motion by Rhody, seconded by DeBoer, to enter executive session at 9:40 P.M.  
pursuant to SDCL 1-25-2 (3) for the purpose of consulting with legal counsel.

Kanengieter declared out of executive session at 11:50 P.M.


Kanengieter called the meeting.



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Jodi Theisen

Zoning Officer



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Dennis Kanengieter

Chairman, Zoning Board