

**April 8, 2024 BOARD OF ADJUSTMENT/ PLANNING COMMISSION DEUEL COUNTY
STAFF REPORT**

Monday – April 8, 2024 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE PERMIT

**Applicant: NorthWestern Energy
Land Owner: Global Dairy LP**

Property Description: part of Global Dairy Second Addition in S1/2 of the NW1/4, SW1/4 & SE1/4 of Section 21-113-50, Grange Township, Deuel County, South Dakota

Action Items – Conditional Use Permit – (Section 1101.03.12 – Essential Services)

Zoning Designation: A – Agricultural District

Request: Applicant/Owner are requesting a Conditional Uses Permit requesting to construct a recycled natural gas (RNG) interconnection system from Brookings Biogas LLC network for biogas from anerobic digesters at Global Dairy and two other RNG sites

History/Issue(s):

Specifics of Request

1. NorthWestern Energy (NWE) is requesting to construct a recycled natural gas (RNG) interconnection system from Brookings Biogas LLC network for biogas from anerobic digesters at Global Dairy and two other RNG sites in an Agricultural District.
 - a) Brookings Biogas is both processing recycled natural gas (RNG) on the Global Dairy property (Global) and transferring RNG from to other RNG facilities to Global, then interconnecting to NWE as an “essential public utilities & services” company. The point of interconnect will be the NWE gas site consisting of a metering/quality control building and aboveground valving/equipment to receive the RNG, this requires a CUP pursuant to Section 1101.04.
 - b) NorthWestern Energy have a perpetual gas utility easement for the pipeline with Global Dairy LP and will be located out of the road right-of-way.
 - c) NorthWestern Energy have a perpetual ingress/egress easement for access and perpetual gas site easement with Global Dairy LP.
 - d) NorthWestern Energy will also be requesting an additional SEP at a later time. Their request will outline their plans for delivering the RNG from their Metering site to approximately 1.5 miles east at their existing gas line system where the injection will take place. They are currently working on those design details.
 - e) Necessary permitting with multiple agencies such as the PUC has been done and granted. NWE is a public utility operated under the laws of State of South Dakota.
2. Deuel County Ordinance requires that a land owner go through the Conditional Use Permit Process to have Essential Services in the Agricultural District.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Essential services are listed use in the A – Agricultural District.
 12. Essential services – Overhead or underground electrical, gas, steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith. The Board attached the specific condition in accordance with its ability to add conditions to a conditional use permit.

2. The Deuel County Comprehensive Land Use Plan states that the main goal is to accommodate growth and to minimize the disturbance of agricultural land.
 - o This lot has an existing access off SD HWY 28;
 - o They have efficient Off-street parking; ample room for parking
 - o They have efficient utilities – will not have any Garbage;
 - o They have efficient Screening and Buffering; 6'-8' chain link fence around various areas of the sites;
 - o They will have Signs; signage being located on the entrance gates
 - o They have efficient yard space and other open space;

Staff Summary

Conditional Use Permit – Essential Services: The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional use Permit described in ordinance - To grant the Conditional Use Permit to construct a recycled natural gas (RNG) interconnection system from Brookings Biogas LLC network for biogas from anerobic digesters at Global Dairy and two other RNG sites in AG District.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the Conditional Use Permit and that granting the Conditional Use Permit will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM #2 CONDITIONAL USE PERMIT

Applicant/Owner: Doug Troska

Property Description: Lot 2 Martins Addition in the SE1/4NE1/4 Less H1 of Section 3-114-49, Brandt Township, Deuel County, South Dakota.

Action Items – Conditional Uses Permit – (Section 1102.04.02 Truck terminals and freight warehouses)

Zoning Designation: CI – Commercial/Industrial District

Request: Applicant/Owner requesting a Conditional Uses Permit to build a truck maintenance shop for his trucking business

History/Issue(s):

Specifics of Request

1. The applicant is requesting to build a truck maintenance shop for his trucking business.
 - a) The applicant/owner petitioned to rezone Lot 2 Martins Addition in the SE1/4NE1/4 Less H1 to CI – Commercial/Industrial District from A – Agricultural District. The rezoning 2nd hearing with the Deuel County Commissioners was April 2, 2024 and will be effective April 30, 2024.
 - c) The lot is 5.73 acres which is more than the 5 acres that is required in the CI – Commercial/Industrial District.
 - d) The applicant seeks to build an approximately 30' X 100' truck maintenance shop for his trucking business
 - e) We have also notified the impacted townships (Brandt Township) about the proposed plans to build a truck maintenance shop for his trucking business in CI District.
2. **Deuel County Ordinance requires that a land owner go through the Conditional Uses Permit Process to have Truck terminals and freight warehouses and construct a truck maintenance shop and for his trucking business in the CI – Commercial/Industrial District**

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Truck terminals and freight warehouses is listed as a Conditional Uses in the CI – Commercial/Industrial District.

2. The Deuel County Comprehensive Land Use Plan states that the main goal is to accommodate growth and to minimize the disturbance of agricultural land.

- o This lot will get access off SD Hwy #15 which Troska owns Lot 3 Martins Addition which surrounds this property
- o They have efficient Off-street parking; ample room for parking
- o They have efficient utilities; Has H-D electricity, will hook up to Brookings-Deuel Rural Water and will get dumpster for Garbage service in the future when needed.
- o They have efficient Screening and Buffering; Applicant have existing trees to the west, south & north;
- o They will not have a Sign;
- o They have have efficient yard space and other open space; General compatibility with adjacent properties and other property: Applicant's proposed use is generally compatible with the adjacent properties and there is one residence (house) approximately 980' from the proposed structure in A – Agricultural District which is owned by Matt & Tamra Baer.

Staff Summary

Conditional Use Permit – to have a truck terminals and freight warehouses to build a truck maintenance shop for his trucking business in CI District contingent on the 20 day after the notice of adoption has passed. The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional Use Permit described in ordinance - to have a truck terminals and freight warehouses to build a truck maintenance shop for his trucking business in CI District. Contingent that the rezoning has no referendum or protest and the 20 day after the notice of adoption has passed.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the conditional Use and that granting the conditional Use will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file

ITEM #3 CONDITIONAL USE PERMITS AND VARIANCE

Applicant: Bowes Construction

Property Owner: Brett & Tammy Miller & Donald Georgia Miller Living Trust

Property Description: S1/2 in Section 17-114-50, Hidewood Township, Deuel County, South Dakota

Action Items – Conditional Uses Permit – (Section 1101.04.04 Sand, gravel or quarry operation, Mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants provided they they meet requirements of Section 1219)

Variance – (Section 1219.03 Setbacks: gravel or quarry operation, mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants within 1000 feet from property line of nearest residence)

Zoning Designation: A – Agricultural; Zone B – Aquifer Protection Overlay District (shallow aquifer)

Request: Bowes Construction requests to operation, mineral exploration and extraction, rock crusher, concrete and asphalt mixing plants on the above property located within 1,000 of a residence.

History/Issue(s):

Specifics of Request:

1. Bowes Construction proposes to use the above property to mine and crush gravel.
2. It is expected mining activities will continue for up to 75 years over the two properties.
3. The operation is anticipated to periodically utilize a rock crusher and batch plant.
4. Silt fences and erosion control wattles will be installed along the edge of the property by Hidewood Creek when mining operation is in close proximity to creek in order to control soil run off and erosion.
5. No mining will occur less than 100' from the road right-of-way and they adjoining property lines, and any excavation will maintain a 4:1 slope.
6. Brett & Tammy Miller's residence is less than 1,000' from the property line of this project.

7. Brett & Tammy Miller has signed a waiver to allow mining in the matter described. (Variance is still required)
8. Dan McKay's has a residence less than 1,000' from the property line of this project.
9. As of 4-4-24 the Deuel County Zoning Office has not received Dan McKay's waiver to allow mining in the matter described. (Variance is still required)
10. Northern Border Pipeline has a pipeline that runs through the site. Bowes Construction agrees to meet regulations of the Northern Border Pipeline with regard to the site activities.
11. Bowes Construction has been in contact with Deuel County and Hidewood Township concerning the haul road agreements. As of 4-4-24 the Deuel County Zoning Office has not received a copy of the haul road agreements.
12. The reclamation of the property will return the property to farmland or pasture.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Regarding the Variance: The ordinance requires the property to be used for gravel mining, rock crushers and other related operations to be located at least 1,000' from an existing residence. The Board has granted variances where waivers have been obtained from affected landowners. In this case, a waiver has been obtained from any resident located within 1,000' of the area to be mined.
2. The property is located over Zone B of the Aquifer Protection District.
3. Gravel Pits are an allowable use in Zone B provided performance standards are met.
4. The applicant proposes to meet the requirement that 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.
5. The applicant does not intend to discharge of industrial processed water on the site.
6. The zoning ordinance lists numerous requirements of mining operations.
7. The site will be permitted by SDDENR to verify it meets the department's requirements for mining.
8. A site plan was provided including or providing the ability to ascertain information required for the permit. Many of those items were addressed above.
9. As mentioned, the applicant will obtain a haul road agreement with Hidewood Township and Deuel County Hwy Department.
10. The applicant will has provided information regarding how air, water, and noise pollution will be minimized through hours of operation, berms, dust control, and avoiding mining in wetland areas and streams. As of 4-4-24 the Deuel County Office has not received a storm water pollution prevention plan as approved by SDDENR. Bowes Construction will provide the verification letter document once it is received.
11. A reclamation plan was provided addressing revegetation and regrading of property, and including proposed timeline for completion, and including a tentative operation schedule.

Staff Summary and Recommendation:

The applicant, along with information available to the Board through the zoning office, has provided required information for a permit application and proposes to meet specified requirements of the ordinance. Conditions recommended by staff were based off of conditions applied to previously approved Mining Operations.

Variance #1 – 1000' setback from residence: The Board may table the request, deny the request or approve the request. If approved, staff recommends approval be based upon the submittal of a waiver to the setback requirement by the affected landowner.

Conditional Use Permit – **Gravel Pits [with rock crushing]...** The Board may table the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Effective Date:
 - a. Signing of the Letter of Assurance
 - b. Site preparation, grading, or mining activities in either of the above described parcels shall constitute the commencement of work referenced in Section 1219 to consider each conditional use permit "active."
- 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. All fuel and petroleum storage shall be situated with secondary containment in a location and manner to be reviewed and approved by the Deuel County Zoning Officer.
 - d. There will be no storage of oil or oil by-products on site. This is to include fueling sites.
 - e. There will be no storage of junk on site.
 - f. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
 - g. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, etc.
 - h. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
 - i. No mining shall occur within 100' road right-of-way and adjoining property lines.
 - j. Any mining shall maintain a slope by property lines and roads any steeper than 4:1.
 - k. Hours of operation (including crushing) shall only be allowed to operate Monday through Friday, 6:30 a.m. to 6:30 p.m. additional hours as needed during the construction season.
 - l. All berms proposed shall be graded and completed prior to commencement of mining activities on said property.
 - m. 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.
- 3) Haul Road Agreements:
- a. Grantor shall provide a haul road agreement with Hidewood Township and Deuel County Hwy Department prior to any mining activities on the above described property.
- 4) Violation and Penalties:

Violation of the terms of this conditional use permit will be determined by the Deuel County Zoning Officer.

- a. The first violation substantiated by the Zoning Officer of this conditional use 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 conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all feeder operations within forty-five days (45) of notice of revocation.
- b. 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.
- c. 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.

ITEM #4 CONDITIONAL USE PERMITS AND VARIANCE

Applicant: Buffalo Ridge Concrete
Owner: Plainview Dairy Exchange, LLC

Property Description: N1/2 in Section 17-113-49, Blom Township, Deuel County, South Dakota.

Action Items – Conditional Uses Permit – (Section 1101.04.04 Sand, gravel or quarry operation, Mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants provided they they meet requirements of Section 1219)

Variance – (Section 1219.03 Setbacks: gravel or quarry operation, mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants within 1000 feet from property line of nearest residence)

Zoning Designation: A- Agricultural

Request: The applicant seeks to locate a portable ready mix concrete plant which will be used to construct a CAFO, with a previously issued permit on the above property located within 1,000 of a residence.

Specifics of Property/Request:

1. Plainview Dairy Exchange, LLC received a permit for a Class A Concentrate Animal Feeding Operation on January 30,2023.
 - a. This request is accessory to the Dairy but was not addressed at the time of issuing the CAFO permit.
2. Buffalo Ridge Concrete is requesting to operate a temporary concrete mixing plant on property owned by Plainview Dairy Exchange, LLC for the CAFO expansion that was previously approved.
3. The concrete mixing plant would be operating on the property for at least 2 years, (4-8-24 until 4-8-26). The applicant is asking for CUP for 2 years.

Ordinance/History regarding this request:

1. Entrance and exit access will be directly onto 473th Avenue on the West side of the property. The granting of this permit will decrease the number of traffic/trucks hauling concrete and materials to the site.
2. There is a reasonable amount of area set aside for parking and unloading materials.
3. No utilities changes were proposed in the submitted plans.
4. No screening or buffering were proposed in the submitted plans. While no plans for screening or buffering have been submitted, the requirement is to be 150' from the right-of-way.
5. The site for the portable ready mix concrete plant has a possibility to be located within 1,000' from Albert Moore's residence. As of 4-4-24 the Deuel County Zoning Office has not received the site plan and the location of the portable ready mix concrete plant.
6. If the temporary concrete mixing plant is within the 1000' the Deuel County Zoning Office will require a signed waiver for Albert Moore to allow mining in the matter described. (Variance is still required
7. No signage or additional lighting is being proposed in the submitted plans.
8. The location for the concrete mixing plant meets all setbacks and area requirements.
9. General Compatibility: The property is surrounded by agricultural land.

Staff Summary & Recommendation:

Variance #1 – 1000' setback from residence: The Board may table the request, deny the request, approve the request or and determine that the request would not be need if the location is out if the 1000' setback distance provided by the site plan. If approved, staff recommends approval be based upon the submittal of a waiver to the setback requirement by the affected landowner.

The applicant has provided documentation of its ability to meet the other requirements of the zoning ordinance in reference to the proposed concrete mixing plant. The Board may attach conditions to this request provided there is a logical reason to do so. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

Staff Summary

Board Action: Conditional Use Permit: Concrete Mixing Plant

The Board may: 1) Postpone the decision 2) Deny the Request 3) Approve the request with or without conditions.

Staff recommendation:

If approved, staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant:

1. Regarding the Variance: The ordinance requires the property to be used for gravel mining, rock crushers and other related operations to be located at least 1,000' from an existing residence. The Board has granted variances where waivers have been obtained from affected landowners. In this case, a waiver has been obtained from any resident located within 1,000' of the area to be mined.
2. Prior to operating the batch plant, the applicant is to provide an air quality permit for portable relocation from SD DANR.
3. The applicant will use best practices to limit excess noise, glare, dust, and other effects on adjoining properties.
4. The concrete mixing plant shall be removed from the property and this permit will expire by April 8, 2026 (two years after the hearing date).

ITEM #5 VARIANCE

Applicant/Owners: Edward & Jolene Kusek

Property Description: Lots 61-62 Thokola Beach in Gov't Lot 2 of the Section 8-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota.

Action Items – Variance – (Section 1103.06 Minimum Lot Area and Yard)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Variance to remove old decks and stairs and replace with new decks and stairs less than 50' from the high-water mark.

Specifics of Request:

1. Edward & Jolene Kusek purchased this lot in 2022.
2. The applicants would like to remove two old decks and stairs and replace with new decks and stairs less than 50' from the high-water mark.
3. The existing decks were built approximately in 1999 which the property owner has concerns about rotting wood and safety. Theisen did research and found a building permit from 1999. There was no variance for the decks and stairs, however the deck toward the HWM was added on since 2017 prior to Kusek purchasing the property.
4. The existing lower deck (10' x 35') is located approximately 12' from the high-water-mark and the existing upper deck (9' x 10') is approximately 28' from the high-water-mark. The existing lower deck is located approximate 10' from the property line located to the south (bare lot) and the existing upper deck more than 10' from the side property lines.
5. They would like to remove these existing decks and build a new approximate 16' x 35' two level deck (lower deck) approximate 6' to 8' from the HWM and approximate 10' from the side lot line. The new 10' x 12' deck (upper deck) would be placed in the same location as before which would be approximate 28' from the HWM and more than 10' from the side lot line.
6. There is an existing 4 block high retaining wall approximate 2' from the existing deck toward the water, the retaining wall will stay and the second level of the lower deck will be located above the retaining wall. (per owner as of 4-4-24) However, I have not heard from the contractor yet on this.

Ordinance/Variance History regarding this request:

1103.06 Minimum Lot Area and Yard

1. Each building shall be set back not less than fifty (50) feet from the right-of-way of State or Federal highways. For all other roads, the front yard setback shall at least thirty (30) feet from the edge of the road, but in no circumstance shall the structure be located within the right-of-way. Side yards shall have a ten (10) foot setback from the side yard property line. Exception: On those lots platted prior to June 8, 1976, which have a lot width of less than seventy-five (75) feet, each building shall have a side yard of not less than a distance equal to ten (10) percent of the lot width. Under no circumstances shall a building have a side yard of less than five (5) feet. Roof overhangs may infringe upon the side yard requirements no more than one and one-half (1.5) feet.
2. The Board has history of granting some variance requests in the Lake Park District of similar relaxation of rules. (Kooima, Pederson, Clemensen, etc.)
3. This property is located out of the floodplain.

Staff recommendation: If approved, staff recommendation - To grant the Variance to build/replace the stairs and decks no closer than 6' from the high-water-mark. All voted in favor and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

The Board could deny the Variance on the basis that the circumstances surrounding this request are not so unique in nature to necessitate granting special privilege to this applicant which is denied to other properties in this zoning district.

ITEM # 6 PLAT

Applicants/Owners: Fromm Property Holdings LLLP

Property Description: Plat of Tracts 1,2 And 3 Fromm Addition in E1/2SW1/4 of Section 10, Township 116 North, Range 49 West of the 5th P.M., Deuel County, South Dakota

Request: To plat 3 tracts (tract 1 52.28 acres, tract 2 197.37 acres & tract 3 164.23 acres) of land to separate out the farmland from pasture for transferring purposes.

Action Item –Plat approval contingent that they get the township highway authority approval.

ITEM # 7 PLAT

Applicants/Owners: H Bar G Farms LLC

Property Description: Plat of Tristen and Mara Kwasniewski Addition in Government lot 3 of Section 3, Township 114 North, Range 49 West of the 5th P.M., Deuel County, South Dakota

Request: To plat 1 tract containing 3.19 acres for transferring purposes.

Action Item –Plat approval.

ITEM # 8 PLAT

Applicants/Owners: Arlen Kreger

Property Description: Plat of Kreger Second Addition in NE1/4 of Section 34, Township 115 North, Range 50 West of the 5th P.M., Deuel County, South Dakota

Request: To plat 1 tract containing 4.17 acres for transferring purposes.

Action Item –Plat approval.