

The Deuel County Board of Adjustment and Planning Commission met at 10:15 a.m. on Monday September 16, 2024, at the Deuel County Commissioners' Meeting Room, Deuel County Courthouse. Deuel County Planning Commission members present included Mike Dahl, Jay Grabow, Dennis Kanengieter, and Mike Lammers. Also present were Zoning Officer Jodi Theisen, States Attorney Craig Evenson.

Chairman Dennis Kanengieter, called the meeting to order.

Kanengieter stated for the record that the Deuel County Planning Commission and Deuel County Board of Commissioners are meeting jointly.

County Commission Chair Grabow called the Deuel County Board of County Commissioners to order.

Motion by Dahl, seconded by Kanengieter to approve the agenda. Motion passed unanimously.

First agenda item was a joint public hearing on Ordinance #B2022-01-7, An Ordinance to amend Article II, "Definitions" adopted by Ordinance B2022-01, as amended, of the Zoning Ordinance of Deuel County be amended by adding language in bold and underline and removing strikeout language:

Article XII, "GENERAL REGULATIONS" **Section 1247. Public and Private Utilities;**

Section 1247.01. Applicability.

The requirements of these regulations shall apply to all Public and Private Utilities facilities.

Section 1247.02 Federal and State Requirements.

All Public and Private Utilities shall meet or exceed standards and regulations of the South Dakota State Statutes and any other agency of federal or state government with the authority to regulate Public and Private Utilities.

Section 1247.03. General Provisions.

1. Mitigation Measures

a. Roads

- i. Public Roads. Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the Public and Private Utilities project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the Public and Private Utilities. Where practical, all-weather roads shall be used to deliver cement or concrete, and all other heavy components to and from the Public and Private Utilities sites.**
- ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the Public and Private Utilities for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and Public and Private Utilities components. The permittees shall notify the County of such arrangements upon request of the County.**

2. Setback

Noise.

a. Noise level for residences shall not exceed 45 DBA, average A-Weighted Sound pressure. The noise level is to be measured at the perimeter of existing residences. The property owners shall have the right to waive the respective setback requirements, the waiver needs to be in writing and filed with the Zoning Office

Article XI, "Zoning Districts," Section 1102 "CI" Commercial/Industrial District, Section 1102.04 Conditional Uses, 7. Public and Private Utilities; provided they meet the requirements of Section 1247;

Kanengieter and Grabow each opened the public hearing for their respective boards.

Theisen provided an overview of the proposed ordinance. Theisen stated that the Planning Commission had been working on the comprehensive review of the zoning ordinance for a couple of years, with public hearings on amendments in the last years and they feel that this section needed to be added to the zoning ordinance.

Dahl and Grabow also stated that the South Dakota Public Utilities Commission has the right to override the county ordinances. There was a question about shallow aquifer and well head protection area. The board stated there is a section to handle that and there are state regulations also.

Kanengieter and Grabow each closed the public hearing for their respective boards.

Kanengieter asked for a motion and a 2nd to recommend approval of Ordinance #B2022-01-07 to the Board of County Commissioners. Motion by Dahl, Seconded by Lammers and the the motion passed unanimously.

Motion to adjourn as Planning Commission made by Dahl, second by Kanengieter. Motion passed unanimously

The County Commission held the first reading of ordinance #B2022-01-07, as amended by the Planning Commission, by title. Grabow asked Theisen to conduct first reading.

Grabow asked for a motion to set the date for the 2nd reading to be October 1, 2024 at 10:00 a.m. Motion by Mewherter, seconded by Fieber. Motion approved unanimously.

Motion to reconvene as Planning Commission made by Dahl, second by Lammers. Motion passed unanimously. Kanengieter stated for the record that the Deuel County Planning Commission and Deuel County Board of Commissioners are meeting jointly.

County Commission Chair Grabow called the Deuel County Board of County Commissioners to order.

Second agenda item was a joint public hearing on Ordinance #B2022-01-8, An Ordinance to amend that Article XIII, "Concentrated Animal Feeding Operation Regulations" adopted by Ordinance B2022-01, as amended, of the Zoning Ordinance of Deuel County be amended by adding language in bold and underline and removing strikeout language:

Section 1304. Concentrated Animal Feeding Operation Control Requirements.

6. Required Setbacks and Separation Distance for New Class A, B, C, and D, concentrated animal feeding operations and those existing, non-permitted concentrated animal feeding operations expanding into a Class A, B, C, or D Concentrated animal Feeding Operations after **November 15, 2022** **October 1, 2024**. See Table 1304.6.2.

Table 1304.6.2
Required Minimum Separation Distances And Setbacks ^{1,4}

Number of Animal Units	Under 500 Animal Units	500 to 999 Animal Units	1,000 to 1,999 Animal Units	2,000 to 4,999 Animal Units	5,000 to 7,500 7,499 Animal Units	Over 7,500 to 9,999 Animal Units	Over 10,000 Animal Units
Established Residences ^{2,3}	1,320 feet	1,320 feet	1,760 feet	2,640 feet	3,960 feet 5,280 feet	5,280 feet 10,560 feet	21,120 feet
Churches, Businesses and Commercially Zoned Areas	1,320 feet	1,320 feet	2,640 feet	2,640 feet	3,960 feet 5,280 feet	5,280 feet 10,560 feet	21,120 feet
Incorporated Municipality Limits ³	1,320 feet	2,640 feet	5,280 feet plus	5,280 feet plus 440' for each 1,000 animal units over 2,000 animal units or portions thereof	6,600 feet plus 440 feet for each additional 1,000 animal units over 5,000 animal units	8,800 7,700 feet plus 440 feet for each additional 1,000 animal units over 10,000 7,500 animal units	17,600 feet plus 440 feet for each additional 1,000 animal units over 10,000 animal units
Established Private Water Well ^{5,6,7}	1,320 feet	1,320 feet	1,760 feet	2,640 feet	2,640 feet	2,640 feet	2,640 feet
Existing Public Water Well ²	1,320 feet	1,320 feet	1,760 feet	2,640 feet	2,640 feet	2,640 feet	2,640 feet
Lakes and Streams classified as Fisheries as identified by the State	200 feet	200 feet	500 feet	500 feet	500 feet	500 feet	500 feet
Federal, State & County Road ROW							
Confinement	200 feet	200 feet	300 feet	300 feet	300 feet	300 feet	300 feet
Open Lot	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
Township Road ROW							
Confinement	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet
Open Lot	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet	150 feet

- Two (2) or more CAFOs under common ownership are a single concentrated animal feeding operation if they adjoin each other (within one mile) or if they use a common area or system for disposal of manure. Required setbacks for the two (2) or more CAFOs treated as a single operation shall not be less than the minimum setback required for each operation if said operations were treated as individual operations.
- Established residences do not include any residence established after June 3, 1997 less than one-half (1/2) mile from any Concentrated Animal Feeding Operation which was active at the time of the residence's construction.
- The Board of Adjustment may allow a setback of less than the minimum required provided a written waiver by the entity deriving the benefit of the setback is filed with the application
- The Board of Adjustment may utilize Section 1304.7 to increase or decrease the required setback.
- Setback does not apply to the wells of the CAFO operator.
- Established private water wells refer to wells used as a source of potable water for human consumption for at least one (1) week within one (1) year prior to application date for the proposed CAFO.
- The Board of Adjustment may require a lesser setback if the well is upgradient and greater lesser setback if the well is downgradient from the concentrated animal feeding operations exceeding 7,499 animal units. This may be used to change the setback from the CAFO to a well or public water supply.**

7. Exemptions to Separation and/or Setback Distance Requirements

f. All Concentrated Animal Feeding Operations in operation prior to July 1, 2022 October 1, 2024 which do not comply with the required minimum setback/separation requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from the suggested separation distance:

- i.. Example 1: A Class D CAFO expands to a Class A or B CAFO
- ii. Example 2: A Class B CAFO expands to a Class A CAFO.
- iii. Example 3: A Class A CAFO expands by 10% of the number of animal units

Provided, that the expansion does not further encroach the setback/separation distance existing on July 1, 2022 October 1, 2024. See Figure 1304.7.

g. Any Concentrated Animal Feeding Operation in operation as of July 1, 2022 October 1, 2024 which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided, that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 1304.7.

Kanengieter and Grabow each opened the public hearing for their respective boards.

Kanengieter chaired the public hearing and began by asking Theisen to provide an overview of the proposed ordinance. Theisen stated that the Planning Commission had been working on the comprehensive review of the zoning ordinance for a couple of years, with public hearings on amendments in the last years and there has been some concern about larger CAFOS and the board feels that this section needed to be added to the zoning ordinance.

Warren Wiesner had a question about if Plainview Dairy could expand. The board stated since they have a CUP for a CAFO they could apply to the board for an expansion by 10% of the number of animal units without applying for a variance from the amended setback this is one time expansion.

Mike Fieber stated that he and other property owners suggest to leave the residence, churches, Businesses and Commercially Zoned Areas and the setbacks for the 5,000 AU to 7,499 AU at the 3,960 feet and 7,500 AU to 9,999 AU at the 5,280 feet. They believe that the new setback for these two categories of CAFO would affect more of the local property owners from expanding and since the setbacks just got increased in the last two years.

Dahl wanted to state also that the boards need to be careful on limiting development in the county because growth helps with lowering taxes for the property owners.

Kanengieter and Grabow each closed the public hearing for their respective boards.

Kanengieter asked for a motion and a 2nd to recommend approval of Ordinance #B2022-01-08 to the Board of County Commissioners. Motion by Dahl, Seconded by Lammers and the the motion passed unanimously.

Motion to adjourn made by Dahl, second by Grabow. Motion passed unanimously

The County Commission held the first reading of ordinance #B2022-01-08, as amended by the Planning Commission, by title. Grabow asked Theisen to conduct first reading.

Grabow asked for a motion to set the date for the 2nd reading to be October 1, 2024 at 10:15 a.m. Motion by Fieber, seconded by Mewherter. Motion approved unanimously.

Motion to reconvene as Planning Commission made by Lammers, second by Kanengieter Motion passed unanimously. Kanengieter stated for the record that the Deuel County Planning Commission and Deuel County Board of Commissioners are meeting jointly.

County Commission Chair Grabow called the Deuel County Board of County Commissioners to order.

Third agenda item was a joint public hearing with the Deuel County Commissioners and the Planning Commission Board was held upon the request the petitioner/landowner, Lynn Farms LLC (Jon Gorder) to issue a change in zoning classification for property that is described as The remainder of the property outside the one thousand (1,000) feet of the established high-water line of Lake Cochrane in Gov Lot 1 of Section Eight (8), Township One Hundred Fourteen (114) North, Range Forty-even (47) West of the 5th P.M., Norden Township, Deuel County, South Dakota, to "LP" Lake Park District from "AG" Agricultural District.

Lynn Farms LLC (Jon Gorder) seeks the change of zoning to "LP" Lake Park District from "AG" Agricultural District, (the above described approximately 8.32 acres in Gov Lot 1 that is outside the 1000' feet from the HWM). Which is outside the area Zoned Lake Park District. Theisen stated the subject parcel is being used as farm land and is zoned AG" Agricultural District. Theisen stated in Section 1103.02. Area Contained in "LP" District.

- All land, unless otherwise zoned, within one thousand (1,000) feet of the established normal high-water line of Lake Cochrane or any land which has been specifically zoned Lake Park by the Deuel County Commission.

The applicant, Gorder, stated the application includes a drawing for the area to be rezoned and indicated that the property (approximately S500' E800' of Gov Lot 1 9.18 +/- acres) for development. Staff has met with the applicant and was told that the proposed development would be for commercial storage facility. This would fall under the Lake Park District under a CUP for commercial storage facilities. Gorder has met with the Lake Cochrane Sanitation District and they have provided a letter stating they are willing to sign off on the rezoning request.

Dahl had concerns about the approach and safety issues for the proposed site of the commercial storage building in the suggested area to be rezoned. Gorder and the Deuel Highway Superintendent, Jamie Broksieck, believe that the site will not present any issues.

Theisen recommended to the Boards that a Lynn Farms LLC (Jon Gorder) sign a letter of assurance: that the Grantors, their heirs, successors, and assigns further hereby agree that no building permits may be issued on area outside of the Commercial Storage Facility CUP site plan in S500' E800' in Gov Lot 1 of Section 8 Township 114 North, Range 47 West of the 5th P.M., Deuel County, South Dakota, in the County of Deuel, South Dakota unless the Commercial Storage Facility is platted in the future and recorded with at least one (1) or more acres. Any such construction shall otherwise comply with the applicable zoning ordinance at the time.

Deuel County Board Planning Commission member Lammers motioned, seconded by Kanengieter, recommends the approval to change of zoning to "LP" Lake Park District from "AG" Agricultural District, the described property (the remainder of the property outside the one thousand (1,000) feet of the established high-water line of Lake Cochrane in Gov Lot 1 of Section Eight (8), Township One Hundred Fourteen (114) North, Range Forty-even (47) West of the 5th P.M., Norden Township, Deuel County,

South Dakota) contingent that the applicant signs the letter of assurance and it is filed in the Deuel County Register of Deeds. Motion passed unanimously.

Motion to adjourn made by Dahl, second by Grabow. Motion passed unanimously

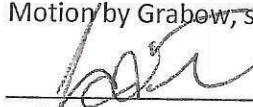
The County Commission held the first reading of ordinance 2022-01-04A, as recommended by the Planning Commission. Grabow asked Theisen to conduct first reading.

Grabow asked for a motion to set the date for the 2nd reading to be October 1, 2024 at 10:30 a.m. Motion by Fieber, seconded by Grabow. Motion approved unanimously.

Motion by Grabow, second by Dahl, to reconvene as Planning Commission. Motion passed unanimously.

Motion by Dahl, second by Grabow, to recommend approval to the Board of County Commissioners the Plat of Christianson Second Addition in SW1/4SE1/4SE1/4SW1/4 of Section 30, Township 113 North, Range 47 West of the 5th P.M., Deuel County, South Dakota. Motion passed unanimously.

Motion by Grabow, second by Dahl, to adjourn the Planning Commission. Motion passed unanimously.



Jodi Theisen
Deuel County Zoning Officer



Dennis Kanengieter
Chairman, Zoning Board