

Monday September 11, 2023

The Deuel County Zoning Board met on Monday, September 11, 2023, at 6:00 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were Jay Grabow, Paul Brandt, alternate Scott Fieber, Kevin DeBoer and Mike Dahl. Also present were States Attorney Craig Evenson, Zoning Officer Jodi Theisen, Robert Young, Lisa Agrimonti, Kyle VanderWal & Allyson VanderWal.

Vice Chairman Kevin DeBoer called the meeting to order.

Motion by Grabow, seconded by Brandt, to approve the September 11, 2023 Agenda. All voted in favor and motion carried.

The minutes from the August 7, 2023, meeting was discussed. Motion by Dahl, seconded by Grabow, to approve the amended August 7, 2023 minutes. All voted in favor and motion carried.

Motion by Grabow, second by DeBoer, to recess the Planning Commission and reconvene as Board of Adjustment. Motion passed unanimously

The Deuel County Board of Adjustment considered the adoption of findings related to the conditional use for Deuel Harvest Wind Energy South LLC that was approved at the August 7, 2023 meeting.

Theisen presented the Board with suggested findings for the conditional use. 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 conditional use permit. 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 Wind Energy South LLC, Vice Chairman Kevin DeBoer called for a motion to approve and adopt the amended proposed findings for the south project as follows:

SEE ATTACHED

A motion was made by Grabow and seconded by Brandt. Vice Chairman DeBoer then called for a roll call vote: Grabow-yes, Dahl-yes, Brandt-yes, DeBoer-yes and Fieber-yes and motion carried.

After reviewing the proposed Letter of Assurance for the Deuel Harvest Wind Energy South LLC, Vice Chairman Kevin DeBoer called for a motion to approve the Letter of Assurance.

Motion by Grabow, seconded by Brandt, to approve the Letter of Assurance for the for Deuel Harvest Wind Energy South LLC. All voted in favor and motion carried.

Motion by Dahl, seconded by Grabow to approve a Variance by Kristi Brandenburger for the date of a Type A Manufactured Home. Theisen & Kyle VanderWal, Brandenburger son-in-law, stated that Brandenburger would like to move in a 22-year old mobile home onto property that

she purchased from by Todd & Jody Ann Jongeling located in Jongeling Addition in the S1/2SE1/4, Section 28-T113N-R49W. An unoccupied house is currently on the same legal description and is proposed to be removed prior to placing the manufactured home on site. There were no objections. This Variance does not apply to any new structures that are built on the property. Please see Findings of Fact and Conclusions of Law on file with this application. Motion passed unanimously.

Motion by Grabow, second by Brandt, to recess the Board of Adjustment and reconvene as Planning Commission. Motion passed unanimously.

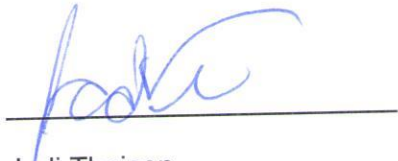
Motion by Brandt, second by Grabow, to recommend approval to the Board of County Commissioners the Plat of LG Harms Addition in SE1/4 of Section 27, T115N, R49W. Theisen stated the existing house is within the front yard setback will not require a variance for platting. However, this structure is nonconforming for the front yard setbacks and would require a variance to be replaced or added onto in the future. Motion passed unanimously.

Motion by Dahl, second by Grabow, to recess the Planning Commission and reconvene jointly as Planning Commission & Board of Adjustment. Motion passed unanimously

Theisen informed the board of the Special Permitted Use Permits for campers in LP that are incomplete. Theisen stated she has sent emails Moen and Parsley and no response. The board discussed a boundary issue.

The Planning Commission requested Theisen to compose a proposal to amend Section 1103.04 & 1101.03 Special Permitted Uses regarding the camper and the percentage permission of adjoining signatures required.

Motion to adjourn made by Grabow, second by Brandt. Motion passed unanimously. Meeting adjourned at 8:00 p.m.



Jodi Theisen
Zoning Officer



Dennis Kanengieter
Chairman, Zoning Board

**Findings of Fact
Conditional Use Permit
Deuel Harvest Wind Energy South LLC
September 11, 2023**

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 Conditional Use Permit for a Wind Energy System comprised of up to 76 wind turbines and other ancillary structures/uses ("Project Facilities").

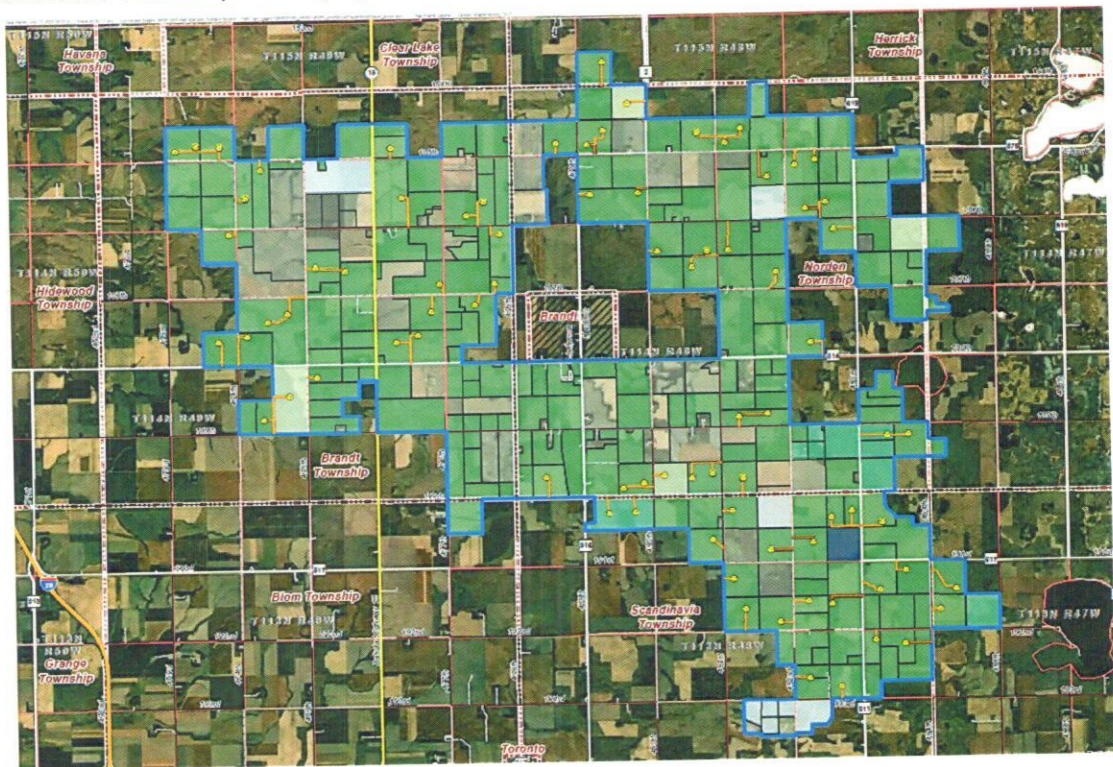
1. The following use is listed as a conditional use in the A – Agricultural Zone and Zone B of the Aquifer Protection Overlay District of the Deuel County Zoning Ordinance (Ref: SDCL 11-2-17.3):

Wind Energy Systems (Ref: Zon. Ord. Sections 1101.04.22 and 1215).

1. Project facilities may be located in Zone B of the Aquifer Protection Overlay District:

All conditional use 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 July 18, 2023, Deuel Harvest Wind Energy South LLC applied for a Conditional Use Permit to operate a Wind Energy System on property in Blom, Brandt, Clear Lake, Norden and Scandinavia Townships as displayed in Exhibit "A" below and hereby incorporated by reference.



3. This application for the Project Facilities meets the definition of a Wind Energy System.
4. This permit shall not become effective until issuance of applicant's permit by South Dakota Public Utilities Commission.
5. 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 met towers, noise and flicker.
6. 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 for the final design will be completed upon issuance of building permit(s).
7. 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.
8. The agreement in the letter of assurance that the applicant will obtain haul road agreements satisfies the requirement for a haul road agreement.
9. 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 Conditional Use. With respect to Section 504, the Board specifically finds:
 - a. Access § 504(5)(a) & g): The Project will have adequate access and will not adversely affect automotive and pedestrian safety and convenience or daily traffic flow.
 - b. Parking and internal traffic § 504(5)(b): The project will provide for adequate parking for the operations and maintenance building and internal traffic will not be adversely affected.
 - c. Utilities and Refuse § 504(5)(c): The Project is designed to have adequate utilities and will properly manage waste during and after construction.
 - d. Screening, Buffering, and Open Space § 504(5)(d): The Project Substation will be located within a fenced area. The wind turbines will be buffered from participating and non-participating landowners in accordance with the Zoning Ordinance's setback requirements. There are no screening requirements applicable to a WES.
 - e. Lighting § 504(5)(e): South Deuel will meet all lighting requirements listed in Ordinance § 1215.03(4), and lighting will not create a nuisance or distract traffic. The Project will employ ADLS if approved by the FAA. In addition, the O&M Building will have lighting

and signage that complies with County requirements. Brightness, intensity, glare of lights will be similar to lighting that is typically used within the Agricultural District.

- f. General compatibility with adjacent properties and other property in the district. § 504(5)(f): The Project is compatible with the existing agricultural land uses in areas within and surrounding the Project. Wind development is particularly compatible with agricultural land because the existing uses can continue around the wind energy facility. The Project will provide new sources of income for area landowners and allow landowners to diversify their operations with minimal disruption to existing agricultural use.
10. No other issues were brought up with the application or during testimony which relate to the Zoning Ordinance or Comprehensive Land Use Plan that needed to be addressed.
 11. 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 Conditional Use Permit, and that the granting of the Conditional Use will not adversely affect the public interest.
 12. The Board requested 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 Conditional Use permit and any letters of assurance, building permits or other items associated with said Conditional Use Permit.
 13. In order to comply with the requirements of the Zoning Ordinance, the Board of Adjustment grants a Conditional Use Permit to Deuel Harvest South to construct all Project Facilities and is authorized to use the GE 3.4- 140, SG 4.4-164, V163-4.5 or turbines of similar dimensions and capacity with a nameplate capacity of up to 260 MW within the Project Area identified in the Application, subject to compliance with all applicable Zoning Ordinance requirements with 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 of the Project Facilities described within the application has occurred within three (3) years of issuance of this permit (on or before August 8, 2026.) If the Conditional Use Permit decision is appealed, the Conditional Use Permit shall not expire for a period of two (2) years following completion of any final appeal of the decision.
 - c. The Conditional Use 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.

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, Final site location of towers, building permit application, and meeting applicable federal and state requirements.
- b. Further, with respect to abandonment/decommissioning.

- (1) Both the Deuel County Board of Adjustment and the Applicant understand that the decommissioning plan will comply with Zoning Ordinance and that when the applicant submits to the PUC, it will submit the same decommissioning plan to the Deuel County Zoning Office. Any and all addition requirements made by the PUC shall be added to the decommissioning plan. Applicant's compliance with the PUC's decommissioning requirements will be deemed to comply with the decommissioning financial assurance requirements in § 1215.09(a).

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 solely to the specific tower found to be in violation, and will be enforced pursuant to Zoning Ordinance Sections 801 and 808 in the manner as described in Section 4.b below.
- b. Violation of the terms of this Conditional Use permit will be determined by the Deuel County Zoning Officer.

- (1) 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, which time shall be no less than 30 days. 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.
- (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 Conditional Use Permit was approved by a vote of 5 yes and 0 no.

Kevin DeBoer

Kevin DeBoer, Vice Chairperson
Deuel County Board of Adjustment

Date Approved: August 7, 2023 (Permit acted on); September 11, 2023 (Findings Approved)

Date Signed: 9-11-23

Date Filed: 9-11-23

Conditional Use Permit Number(s): 23 CUV 022