

The Deuel County Zoning Board met on Monday August 7, 2023 at 6:00 P.M., at the Clear Lake Community Center in Clear Lake. Those present were members Dennis Kanengieter, Mike Dahl, Paul Brandt, Jay Grabow, and Kevin DeBoer. Also present were Deuel County States Attorneys Craig Evenson, Deuel County Zoning Officer Jodi Theisen and numerous property owners.

Chairman Dennis Kanengieter called the meeting to order.

The Chairman Kanengieter stated that there are sign up sheets in the back of the room for pro and con to speak during the Deuel Harvest section.

Motion by Grabow, seconded by DeBoer to approve the agenda. All voted in favor and motion carried.

The minutes from the June 26, 2023 meeting and August 1, 2023 meeting were discussed and corrected. Motion by DeBoer, seconded by Grabow, to approve the June 26, 2023 meeting and August 1, 2023 minutes. Motion passed unanimously.

Theisen stated that there were errors on the staff report that was on the webpage and sent to the board, and she has given the board the corrected staff report at this meeting.

Motion by DeBoer, seconded by Brandt to approve a Conditional Use Permit request by the applicant, Jerae Wire - East River Electric Power Coop, and land Owners, Jeffrey & Christine Watt & Kurt Kaiser & Kay Johnson Trust, to construct approximately 1.5 miles of electrical transmission lines from the Toronto Substation to connect to the existing WAPA line on property north side of 195th street roughly 1.5 miles west (SE1/4 & SW1/4 of Section 26-113-50 and S1/2 of Section 27-113-50, Grange Township, Deuel County, South Dakota. The Toronto Substation was permitted on May 15, 2023. The applicant seeks to set H1 and H2 poles with roughly a 300' span in between. The poles will be 60' to 70' tall depending on the terrain. The lowest conductor will be 25' or greater depending on the location to the bell of the line sag. The poles will be 2' from the ROW in the private easement which they have obtained with the land owners. The zoning office has also notified the impacted townships (Grange Township in Deuel) about the plans for the installation of the transmission line. Dahl asked Wire if they had visited the Berwalds about their concerns about the substation that was previously granted. Wire stated that they moved the substation further west on the platted parcel and asked Theisen at the meeting to provide him with the Berwald's contact information. Please see Findings of Fact and Conclusions of Law on file with this application. Kanengieter called for a roll call vote; DeBoer-yes, Brandt-yes, Grabow-yes, Dahl-no, and Kanengieter -yes and the motion carried.

Theisen informed the board that the Zoning Office received an email from Brad Fairchild that he would like to postpone his variance application hearing until the October meeting. He can not make the Board of Adjustment meeting tonight due to a work conflict.

The Chairman Kanengieter stated the invitation for people to speak will have a limit of five minutes and that was decided by the Chairman.

The chairman Kanengieter asked the board if they have been engaged in conversation regarding applications outside the meeting which pre-disposed or in your estimation may be perceived to have pre-disposed you to a certain decision. No one stated anything so the answer is no.

Theisen asked the board if anyone on the board – this is as far as disclosure of potential conflicts of interest, relationship to the applicant, or ex parte communication, and that is, has anyone, any member on this board engaged in conversation regarding these applications outside the meeting which pre-disposed or in your estimation may be perceived to have pre-disposed you to a certain decision? No board members said anything so the silence is a no. Theisen asked the board if they may have any relationship with any applicant or anyone providing testimony that may be perceived to pre-dispose you to a certain decision and whether you feel it will. In the case of today's meeting, it would be relevant if you have any wind easements with this applicant. Theisen asked the board if they have any other potential conflicts of interest that you can think of that you'd like to disclose; there were none .

Motion by Grabow, seconded by Kanengieter to approve the WES application and to have discussion on the application. Theisen stated that there has been a Conditional Use application for Deuel Harvest Wind Energy South LLC. The property in the project is Blom, Brandt, Clear Lake, Norden and Scandinavia Townships. It is in an agricultural zone, and portions are located over the Zone B of the Shallow Aquifer Protection District. The company requests to operate a 260 MW Wind Energy System with up to 76 wind turbines, operations and maintenance building, a project substation, two aircraft detection lighting system ("ADLS") towers, collector lines, transmission lines, laydown yard, concrete batch plant and up to three meteorological towers. Invenergy has defined in their application- a project area that includes approximately 38,000 acres with 32,951 leased acres in the above townships for wind towers and electrical transmission lines. In addition to the wind towers, the project includes gravel access roads to the turbines, buried electric collection lines and communication cables, operations and maintenance building, a project substation, two aircraft detection lighting system ("ADLS") towers, collector lines, transmission lines, laydown yard, concrete batch plant(s) and up to three meteorological towers, and temporary construction areas and facilities. This information is all in the staff report that was given to the board members and there are some located on the back table for the public to look at. The company will have to get haul road agreements with the local townships and the county and to provide a name and number for a person to contact if there are any questions. The proposed tower locations meet or exceed existing setback for offsite uses, participating residences, property lines and rights of way as far as the information that they provided. Invenergy also plans on employing aircraft detection lighting systems as is evidenced by the willingness to put up two ADLS Towers, the Aircraft Detection Lighting Towers.

The applicant has a similar farm that was permitted in 2019 Deuel Harvest North.

Theisen stated that she did review the noise and flicker report and there are 101 nonparticipation residences within the study, there are 46 receptors with a decibel level exceeding 40 decibels that would be nonparticipation. The highest is 44 dBA with V163-4.5 STE and 43 dBA with SG 4.4-164 & GE Sierra 4.4-140 LNTE the maximum is 45 decibels that would be allowed, so nothing does exceed those 45 decibels. The applicant stated the flicker will not exceed 30 hours in one year at any residence. There are (10 – SG, 10- Vestas and 10- GE) 14 receptors expected to experience over 20 hours of flicker per year. However, 29:59 hours is the highest, 9 of those 14 that will experience over 20 hours in one year are participation residences. The highest nonparticipating receptor would be 25:27 hours.

Theisen stated the applicant does agree to obtain and submit haul road agreements as required and to submit a decommissioning plan within 120 days of completion. They agree to meet state and federal permitting requirements with regard to interference in communication. As far as the staff summary and recommendation, the applicant has provided documentation of its ability to meet the requirements of the zoning ordinance in reference to this proposed wind energy system. The board may attach conditions to this request provided there is a logical reason to do so. Any conditions recommended by staff are primarily in reference to continuing obligations of the applicant from zoning ordinances and similar conditions as were applied to previous permits. Suggested conditions would be that the application would become effective upon issuance of a permit by the South Dakota Public Utilities Commission. This permit would expire if no substantial construction described within the application has occurred within 3 years of issuance of this permit, which would be on August 7th, 2026. The conditional use permit is transferable. Subsequent owners or operators shall agree to the same conditions described. The general requirement conditions, that were stated earlier, and would carry forward are, no discharge of industrial processed wastewater, how much petroleum can be stored on site and the need of secondary containments over the shallow aquifer. The grantor shall provide the zoning office updated local contact information of plant supervisor authority to implement dust control or other necessary enforcement of the conditions of this permit. The applicant agrees to meet requirements of Section 1215 of the Deuel County ordinance in reference to remaining obligations including, but not limited to, the submittal of haul road agreements, submittal of decommissioning plan, final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of bond for abandonment and decommissioning.

Theisen stated in case of violation, the violation of the terms of this Conditional Use would be determined by the County Zoning Officer. The first violation substantiated by the Zoning Officer would result in a notification letter stating the violation and the prescribed period of time to remove the violation. The second violation occurring within a calendar year of the previous one would result in a review of the validity of the Conditional Use Permit and potential revocation of the permit. A third violation within one calendar year of the initial violation may result in the revocation of the Conditional Use Permit and cessation of all Wind Energy System of all operations of the wind tower that's causing the problem. It would reflect back on the entire

project, but again, if we're talking about one tower, it's specific to that one tower. So that one tower that is creaky does not shut down the whole project. It's in reference to that tower.

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 would need to file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer would need to transmit the information based on the appeal and then that would need to be taken within 30 days, and the applicant, if they disagree, or another party, could appeal that decision of this Board of Adjustment to Circuit Court. Failure to comply with the decision of the Zoning Officer or other agent of Deuel County Board of Adjustment would be deemed as a separate violation.

Robert Young, with Invenergy, the lead developer for Deuel Harvest Wind Energy South LLC project gave a power point presentation about the project. Young stated that they have developed 117 wind projects, 19 solar projects, 19 battery storage projects, 2 natural gas are projects around the globe but majority are primarily in the U.S. that they are working on developing.

Young stated that the project; "Deuel Harvest Wind Energy South LLC", will have up to 260 megawatts and up to 76 wind turbines. The project is located in Blom, Brandt, Clear Lake, Norden and Scandinavia Townships. It will contain operations and maintenance building, a project substation, and up to two aircraft detection lighting system ("ADLS") towers, collector lines, transmission lines, laydown yard, concrete batch plant(s) and up to three meteorological towers. Invenergy has defined a project area that includes approximately 38,000 and they are looking at using a turbine model between 3.4 MW and 4.5 MW turbine. They are anticipating approximately 325 jobs during construction and approximately 15 full time operational jobs. They will give out \$25,000 per year scholarship to the Deuel School for the life of the project for South Deuel Wind. Deuel County will receive \$307,000 every year to add to their tax base.

They would like to state that Section 1215 lists many various requirements and they have provided information within their application to show that those requirements have been met. They will comply with the noise, flicker and the distance setbacks.

Young stated that they were informed that the county had received 3 letters of concern about the project. He stated that Norton's residence is located in Town of Clear Lake and the nearest turbine would be approximately 3.3 miles from their residence. He also stated that they would comply with all the setbacks from the Blackfork property. Young also stated that they are in compliance of the setback from Neal & Polly Ruhd's property and addressed their concerns pertaining to hunting stating the wind easements do not restrict landowners from hunting. However, Young asked that hunters should please be mindful of any wind tower personal working nearby.

Kanengieter asked the board if they have any questions for the applicant. Dahl had a couple of questions, one how do you decide which turbine to use and the locations of the turbines. Young

stated that they select which model studies work best for the project. Based on supply, productivity and efficiency.

Grabow had concerns about the decommissioning plan and the haul road agreements, and he stated that they need to be filed with the Zoning Officer before the building permits are granted.

Lisa Agrimonti, Deuel Harvest Wind Energy South LLC attorney, stated that they will follow the decommission section and to submit a decommissioning plan within 120 days of completion.

Kanengieter asked to take a 10 minute break.

Kanengieter called the meeting back into order.

Kanengieter stated at this time he is going to open it up to the public to come up and speak, and States Attorney Evenson is going to handle the public comments, he stated that he will call proponents up first then he will call the opponents and he will be calling them by name as were listed on this sheet.

First Proponent:

Jim Dailey – stated that no one likes change but it is part of change. He discussed that Invenergy has helped with scholarships for the graduating seniors, and they have helped the crisis fund.

Dennis Evenson on behalf of Deuel County Ag Development – Stated that this organization is supportive of the ag community and wind power projects.

There were no Opponents that wanted to speak.

Dahl stated that applicant has to make sure they met all the setback and that they are correct, and if they could use the larger turbines so the number of turbines would be less. Brandt asked when the project is completed if there be a contact person if anyone has any concerns about the project or turbines, and also during the construction period to be respectful of the land owners with opening and closing gates. Dahl talked about the applicant helping the community with scholarships for graduating students in all the communities, since this is county wide project and reaching out to all the local schools.

Young stated yes, they will meet all the setbacks and the ordinance requirements, and yes they will have a contact person during and after construction, and yes they will be reaching out to the other schools in the county.

The board stated that they would like to add a condition to the motion to the letter of assurance will state that the decommissioning plan will comply with ordinance and that the applicant will submit to the PUC in the near future a decommissioning plan. When the applicant submits the decommissioning plan to the PUC, they shall submit the same decommissioning plan to the

Deuel County Zoning Office. Any and all additional requirements made by the PUC shall be added to the decommissioning plan.

Theisen stated Mr. Chair, are you asking me to go through and read questions for findings of fact at this time? Kanengieter –yes, Theisen stated he will go ahead and read these questions, that does not mean that your discussion is over, but if you have something that spurs a question in your mind, go ahead and bring to the board.

First, is the board satisfied that the application was submitted prior to our application deadline? I'll take your silence in each case to indicate that you affirm or agree. Is the board satisfied that the application meets the definition of a wind energy system? Theisen asked does the board agree that this permit should not become effective until all required permits are granted by the state and federal government, including the remaining applications and licenses referenced in this application.

Theisen asked if the board agrees that the application and testimony adequately addressed the entrance and exit to the property, parking and loading, general compatibility with other uses in the ag district; utilities, screening and buffering; required yards and open spaces and the signs? Does the board agree that the application, staff report, 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, or tower height and appearance? Were there any of those that you wanted more questions or comments on?

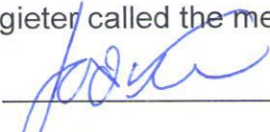
Theisen asked if the board agrees that the application demonstrated the ability to meet setback requirements listed in the ordinance. Again, we're not establishing that the setbacks -- that they are where they are, we're asking whether or not they have the ability to meet setbacks with the number of towers they're talking about. Does the board agree that the applicant has demonstrated the ability to meet these shadow flicker requirements? Does the board agree that the applicant has demonstrated the ability to meet the noise requirements? Does the board agree that the applicant submitted all information required to obtain a permit? In the board's review of written testimony submitted, the application, staff report or testimony provided tonight, were all issues relating to the zoning ordinance or land use plan adequately addressed? Okay, does the board agree that the issuance of a conditional use will not adversely affect the public interest if operated according to our ordinance and the condition prescribed? Does the board agree the conditions recommended by staff, in addition to those which were amended, added by amendment, should be incorporated into the condition use permit? Does the board have any additional recommended conditions to add to this permit? Does the board agree that it is powered to issue the permit?

Does the board request the legal counsel, with the help of Theisen, to prepare findings of facts consistent with these conditions to be approved by the chairperson of the board; and any

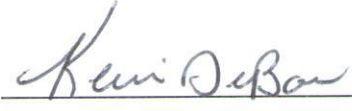
assist in writing findings of fact to be signed by the chair, is that all right by you? Theisen stated you will have to approve the findings of fact at a later time.

Kanengieter stated the public hearing is over and we're going to take a vote, roll call vote: Brandt-yes, Grabow-yes, Dahl-yes, DeBoer-yes Kanengieter-yes. Motion carried the conditional use permit will not be valid until the finding of fact are approved by the board.

Kanengieter called the meeting.



Jodi Theisen
Zoning Officer



Dennis Kanengieter *Kevin DeBoer*
vice Chairman, Zoning Board