

Monday April 8, 2024

The Deuel County Zoning Board met on Monday April 8, 2024 at 6:30 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members, Dennis Kanengieter, Jay Grabow, Mike Dahl, Mike Lammers, Kevin DeBoer, States Attorney Craig Evenson, Zoning Officer Jodi Theisen and other members of the public.

Chairman Dennis Kanengieter called the meeting to order.

Kanengieter asked if the board, or any staff member, had anything to add to the agenda with none being offered.

Kanengieter asked for any seated board member if they think they need to recuse themselves from any discussion topics on the agenda, or from voting on an agenda item with no board member responding.

Motion by Lammers, seconded by Dahl, to approve the April 8, 2024, Agenda. All voted in favor and motion carried.

The minutes from March 11, 2024 & March 19, 2024 meetings were discussed. Motion by Dahl, seconded by Grabow, to approve the amended March 11, 2024 & March 19, 2024 minutes. All voted in favor and motion carried.

Motion by Grabow, seconded by Lammers to adjourn as the Deuel County Planning Commission and convene as the Deuel County Board of Adjustment. Motion passed unanimously.

ITEM ONE

NorthWestern Energy, applicant, Global Dairy LP, land owner, are requesting a Conditional Use Permit Pursuant to Section 1101.04.12 Essential Services System. The request, if granted, would permit the applicant to use 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, 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 the Agricultural District.

Robert Gehm, representing NorthWestern Energy, stated Brookings Biogas is both processing recycled natural gas (RNG) on the Global Dairy property (Global) and transferring RNG from two 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. NorthWestern Energy has a perpetual gas utility easement for the pipeline with Global Dairy LP will be located out of the road right-of-way. NorthWestern Energy has a perpetual ingress/egress easement for access and perpetual gas site easement with Global Dairy LP. 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. Necessary permitting with multiple agencies such as the PUC has been done and granted. NorthWestern Energy is a public utility operated under the laws of State of South Dakota.

There was some public comments and questions. For instance, one question was the depth of the pipe and Gehm stated 36' to 48' they follow federal standards and the size of the pipe is 4" steel.

Motion by Dahl, seconded by Grabow, to approve a Condition Use Permit request by the applicant, NorthWestern Energy, and land Owner, Global Dairy LP, 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. All voted in favor and motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM TWO

Doug Troska, applicant/owner, is requesting a Conditional Use Permit Pursuant to Section 1102.04.02 Truck terminals and freight warehouses. The request, if granted, would permit the applicant to use Lot 2 Martins Addition in the SE1/4NE1/4 Less H1 of Section 3-114-49, Brandt Township, Deuel County, South Dakota, to build a truck maintenance shop for his trucking business.

Theisen stated 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. The lot is 5.73 acres which is more than the 5 acres that is required in the CI – Commercial/Industrial District. The applicant seeks to build an approximately 30' X 100' truck maintenance shop for his trucking business. We have also notified the impacted township (Brandt Township) about the proposed plans to build a truck maintenance shop for his trucking business in CI District.

Theisen stated the setback for the proposed shop would be greater than 100' from the ROW, more than 100' from the south property line and more than 50' from rear property lines.

Motion by Grabow, seconded by DeBoer, to approve a Conditional Use Permit request to have a truck terminal and freight warehouse. 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. To waive the Conditional Use permit fee. All voted in favor and motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM THREE & FOUR

Bowes Construction, applicant, Brett & Tammy Miller & Donald & Georgia Miller Living Trust, land owners, are requesting variance request to 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. Property is located in S1/2 in Section 17-114-50, Hidewood Township, Deuel County, South Dakota.

Theisen reviewed this variance request and the subsequent Conditional Use Permit request. Public hearing opened for the the variance and Conditional Use 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 discussion. Cole Schneider, representing Bowes Construction, stated they would like to operate a mineral exploration and extraction, rock crusher, concrete and asphalt mixing plants on the above property located within 1,000 of a residence. It is expected mining activities will continue for up to 75 years over the two properties. The operation is anticipated to periodically utilize a rock crusher and batch plant. 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. No mining will occur less than 100' from the road right-of-way and the adjoining property lines, and any excavation will maintain a 4:1 slope. Brett & Tammy Miller's residence is less than 1,000' from the property line of this project which the office has the waiver. Dan McKay's has a residence that is less than 1,000' from the property line of this project which the office has the waiver. 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. Bowes Construction has been in contact with Deuel County and Hidewood Township concerning the haul road agreements. As of 4-8-24 the Deuel County Zoning Office has not received a copy of the haul road agreements. Theisen stated that Jamie Broksieck, Deuel County HWY Supervisor, is working with Bowes and they will have a haul road agreement but just need to get the paper work done, same as Hidewood Township according to Mike Dahl. The reclamation of the property will return the property to farmland or pasture.

There were no objections.

Motion by Dahl, seconded by Lammers to approve a Variance request by Bowes Construction to have a gravel or quarry operation, mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants within 1000 feet from property line of nearest residence. All voted in favor and motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

Motion by Grabow, seconded by DeBoer, to approve a Conditional Use Permit request by Bowes Construction, to have a gravel or quarry operation, mineral exploration and extraction, rock crusher, concrete and asphalt mixing plants on property located in S1/2 in Section 17-114-50, Hidewood Township, Deuel County, South Dakota. To use dust control and spray calcium chloride a minimum distance of 200' by any residence along the haul road. Approval will be subject to the applicant signing a Letter of Assurance agreeing to the following conditions:

- 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.

All voted in favor and motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM FIVE

Buffalo Ridge Concrete, applicant, Dairy Exchange, LLC, land owner, are requesting variance request to 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. Property is located in N1/2 in Section 17-113-49, Blom Township, Deuel County, South Dakota.

Theisen reviewed this variance request and the subsequent Conditional Use Permit request. Public hearing opened for the the variance and Conditional Use Permit discussion. Chris Jacobson, representing Buffalo Ridge Concrete, spoke on behalf of the project with brief description of the project. He stated that he is working with the dairy contractor for a contract. He does not have a layout at this time or the air quality permit. Theisen stated that there was a request made to have the permit end date in two years since that would be the project timeline.

If the temporary concrete mixing plant is within the 1000' of Albert Moore's property the Deuel County Zoning Office will require a signed waiver for Albert Moore to allow mining in the matter described.

There were concerns about the stock piling, road haul agreement with the township, water usage, the size of the temporary plant and how many loads would be brought in to the site. Jacobson stated that they would ideally like to start the project in June or July, but knows there are lot of steps to happen before his project.

The Board stated Jacobson would need a road haul agreement from the township, site plan (location of the temporary plant), and a letter for water usage.

Motion by Dahl, seconded by Grabow to table the Variance request by Buffalo Ridge Concrete to have temporary concrete mixing plant within 1000 feet from property line of nearest residence. All voted in favor and motion carried.

Motion by Grabow, seconded by DeBoer, to table the Conditional Use Permit request by Buffalo Ridge Concrete to have temporary concrete mixing plant on property located in N1/2 in Section 17-113-49, Blom Township, Deuel County, South Dakota.

All voted in favor and motion carried.

ITEM SIX

Edward & Jolene Kusek, applicants/owners, are requesting variance request to Section 1103.06 Minimum Lot Area and Yard. Property is located in Lots 61-62 Thokola Beach in Gov't Lot 2 of the Section 8-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota.

Tim Schoffelman, owner of DaleTree Decks & Outdoor Living, state that property owners would like to remove two old decks and stairs and replace with new decks and stairs less than 50' from the high-water mark. The property owners have concerns about rotting wood and safety with the existing decks.

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 Kuskek purchasing the property. 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.

Schoffelman stated they would like to remove these existing decks and build a new one approximately 16' x 35' two level deck (lower deck) approximate 6' to 8' from the HWM and

Schoffelman stated they would like to remove these existing decks and build a new one approximately 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' or 10' x 16' 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. 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. Schoffelman stated he did not want to disturb the existing rock and the retaining wall.

There was discussion about the new lower deck closer to the high-water-mark, the stairs to the water and increasing the middle deck size.

Motion by Dahl, seconded by Grabow to approve a Variance to build/replace the stairs and decks in the same footprint and size, to have recessed steps or side steps on the lower deck, and the lower deck can be built no closer than 12' from the high-water-mark. Please see Findings of Fact and Conclusions of Law on file with this application. Motion passed unanimously.

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

ITEM SEVEN

Motion by Dahl, second by Grabow, to recommend approval to the Board of County Commissioners the 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 contingent that they get the township highway authority approval. Motion passed unanimously.

ITEM EIGHT

Motion by Grabow, second by Kanengieter, to table the 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. Motion passed unanimously

ITEM 5

Motion by DeBoer, second by Grabow, to recommend approval to the Board of County Commissioners the 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. Motion passed unanimously

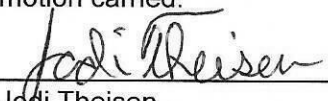
Motion by Grabow, second by Kanengieter, to recess the Planning Commission and reconvene as Board of Adjustment . Motion passed unanimously.

Kanengieter opened the meeting for public comment there was none.

Theisen stated that she had questions from Jodi & Jeff Knutson about the new HWY 15 ROW'S and the setbacks. Jodi & Jeff Knutson stated that the existing pole shed is within the new HWY 15 ROW and the existing older barn is 65' from the new ROW. They had concerns and questions about if they replaced the existing cattle working facility and windbreaks if they would need to be 65' from the new HWY 15 ROW. The board stated that the current ordinance would resist them from replacing the windbreak or cattle working facility.

Theisen discussed with the board about the upcoming joint meeting with the commissioners for rezoning on May 13, 2024.

Motion by DeBoer, seconded by Grabow to adjourn the meeting at 9:15 p.m... All voted in favor and motion carried.



Jodi Theisen
Zoning Officer



Dennis Kanengieter
Chairman, Zoning Board