

Monday July 10, 2017

The Deuel County Zoning Board met on Monday, July 10, 2017, at 6:30 P.M., in the Commissioners' room of the Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Mike Dahl, Steve Rhody, Paul Brandt, and Kevin Deboer. Also present were States Attorney John Knight and Zoning Officer Jodi Theisen.

Chairman Dennis Kanengieter called the meeting to order. The minutes from the June 12, 2017, were discussed.

Motion by Rhody, seconded by Deboer, to approve the June 12, 2017, minutes. All voted in favor and motion carried.

Motion by Deboer, seconded by Rhody, to approve the July 10, 2017, Agenda. All voted in favor and motion carried.

1. Kenneth & Carole Knutson Trust applied for a Variance Permit. The request, if granted, would permit the applicant to use the following property: Block 1 & 2 of Knutson Second Addition in the E1/2 in Section 10-113-29, Blom Township, to have existing buildings & trees closer than the ordinance allows to the property line in an AG zoned district. Knuston couldn't attend the meeting but stated to the Zoning Officer, Jodi Theisen, that they have sold Block 2 already and they are selling Block 1 at auction. They wanted to split off the building site separately. Motion by Deboer, seconded by Rhody, to grant the variance to allow the bin to be closer than 25 feet from the side lot line, to allow the existing house and pole sheds closer than 150 feet from the road right-of-way, and to have an existing grove of trees closer than 150 feet from the road right-of-way on the west side of the road. Kanengieter called a roll call vote: Dahl-no, Rhody-yes, Brandt-yes, Deboer-yes, Kanengieter-yes. Motion carried. The findings for this variance are the current road has a 100 foot right-of-way. There is no safety issue for the existing house and buildings and it won't create a greater problem. The bin is 150 feet from the road right-of-way and the purchaser of the land has knowledge that the bin encroaches upon the setback from the property line. The bin will not be a safety or snow issue.
2. Motion by Brandt, seconded by Deboer, to approve the Plat of Block 1 & 2 of Knutson Second Addition in SE1/4 in Section 35-113-48, Scandinavia Township. Kanengieter called a roll call vote: Dahl-no, Rhody-yes, Brandt-yes, Deboer-yes, Kanengieter-yes. Motion carried.
3. Motion by Dahl, seconded by Rhody, to approve the Plat of Hulsebus First Addition in SE1/4 Section 35-113-48, Scandinavia Township. All voted in favor and motion carried.

4. Thomas Harms stated that he has received a letter from the Zoning Board regarding a camper located on Lot 5 Lake Alice Shores. Harms stated he thought the special exception was good for 3 years, not just 2 years. He is planning on building a 1120 sq. ft. house in the spring of 2018. In 2016 Harms installed a septic system. The board suggested that Harms apply for a Special Exception permit for a private park for the August 14, 2017 meeting since his camper has been there during the 2017 summer. Then, in the spring of 2018 Harm will apply for a building permit for a permanent structure.
5. Leigh Mellendorf applied for a Special Exception and a Variance. The request, if granted, would permit the applicant to use the following property: Replat of Lot Mellendorf 1st Addition in Section 15-115-49, Clear Township, to operate an extended home occupation that would consist of an excavation business in existing pole shed and to move in a residence closer to the front and side lots than the ordinance allows in the AG District. Mellendorf purchased some more land from Doug Feten and would like to move an older home on to the property. Mellendorf received letters from all the surrounding property owners giving him permission. Because of the irregularity of the replat the location of the home would not allow him to have a front lot of 150 feet and the house would be closer than 150 feet from the road right-of-way. Motion by Brandt, seconded by Deboer, to grant a Variance to allow the house & garage to be within 10 feet from the road right-of-way set back, within 115 feet from the front yard setback, and 10 feet within the side setback. All voted in favor and motion carried. The findings for this variance are that the lay of the land drops off towards the back of the lot. The location of the plat is in adjacent to Clear Lake City limits and this property has greater setback than the city ordinance.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h), of the ordinance. Motion by Brandt, seconded by Dahl, to grant a Special Exception to operate an extended home occupation that would consist of an excavation business in existing pole shed. All voted in favor and motion carried.

a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Applicant has sufficient access to the property and proposed structures and there is no issue with automotive and pedestrian safety and convenience, traffic flow and control or access in case of fire or catastrophe.

b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare, odor or other

effects of the special exception on adjoining properties and properties generally in the district: Applicant has sufficient off-street parking. Loading is not a concern. The special exception will have no or minimal economic, noise, glare, odor or other effects on the adjoining properties or properties generally in the district.

c. Utilities, with reference to locations, availability, and compatibility: Does not apply as all the utilities are underground.

d. Screening and buffering with reference to type, dimensions, and character: Does not apply.

e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: Applicant will have one yard light on the shed.

f. Required yards and other open spaces: Applicant has sufficient yard and other open spaces.

g. General compatibility with adjacent properties and other property: The applicant's proposed use is generally compatible with the adjacent properties and other properties in the Ag District.

h. Refuse and service areas, with particular reference to the items in (a) and (b) above: There are no concerns regarding refuse or service areas. Applicant will be getting a dumpster and no trash is stored outside. Applicant has not received any complaints.

6. Motion by Deboer, seconded by Rhody to approve the Plat of Lot 1 Mellendorf Second Addition in SW1/4SW1/4 in Section 15-116-49, Clear Lake Township. All voted in favor and motion carried.

7. Leroy and Melissa Anderson came and talked to the board about their trees that were destroyed during the June 11, 2017 storm. They stated that some of their trees that were planted next to the road were damaged so they removed them. During the process of removing the trees they noticed that the remaining trees had brown limbs because they were not receiving sun light. The first row of trees are approximately 17 feet from the road right-of-way and the second row of trees are approximately 30 feet from the road right-of-way. The Anderson would like to remove the old trees and plant new ones in the same area. The board stated that they have granted variance for shelterbelts 50 feet from the road right-of-way, but not any closer. They suggested that they could plant some trees 50 feet from the road right-of-way and when they are big enough to provide shelter they could remove the old trees along the road right-of-way. The Anderson stated that they will thin the existing trees out and hopefully they will come back to life.

8. Jogchum Andringa from Wild Rose Dairy came and talked to the board about wind towers and stray voltage and dairies. Andringa stated that he is concerned that there could be wind towers near CAFO's or dairies and that could lead to high mortality rate in the livestock. The board ask if he has any studies about this topic and Andringa stated that there is not a lot of studies about wind towers and this subject. The board stated that the ordinance does not have a setback for wind towers from CAFO's or large dairies. They suggested that when the wind companies apply for the special exception for a wind farm that he could come and state his concerns. They also suggested that he could go and talk to the wind company that has the easements around his dairy and maybe they could discuss where the towers might be located.
9. Motion by Rhody, seconded by Dahl, to remove from the table John Homan's application for a Special Exception. The request, if granted, would permit the applicant to use the following property: W1/2 less portion lying north of Railroad in NE1/4NW1/4 Section 32-116-47, Glenwood Township, to build and operate an airplane landing strip for private use in an Ag zoning district. John Homan stated that he has approval from the FAA. James Moore, a lawyer for John Homan, stated that nothing has changed from when they applied for a private landing strip through FAA in April of 2017. Moore stated that the FAA does a search to see if there are any obstructions for the landing strip. Rhody stated that he talked to Jesse Bermel with Avangrid Renewables, and they would work around an airstrip. Rhody stated that he had talked to some crop dusters and they stated that they would like an air strip about 1/2 from a wind tower. Brandt called the FAA office in Bismarck and talked to Brian Sehuck who stated that the person who owns the private air strip would be responsible to get assurance from the adjacent land owners that there would be unrestricted air rights and not have any obstructions at the end of his strip. Homan stated there are no obstructions at this time. Brandt stated by getting these assurance letters from the neighbors that they wouldn't have any obstructions for the airstrip - for instance, not put a wind tower there. Brandt stated on a safety standard you need 1 foot rise of 20 feet run.

Homan stated that if you are looking at the all the possibilities in the future, how could you as a board grant or approve any permits, and right now there are no wind towers around this property at the time of application.

Molly Smith, a lawyer for Invenergy, stated that in State Statute 50-13-3, the ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in statute 50-13-4.

Moore stated that air space for taking off and landing is 500 feet above the airstrip and no easement is required.

Tom Linngren, a lawyer representing Darold Hunt, stated that he was in agreement with Smith about getting a letter from Homan stating that he would not limit or not infringe on the property rights of surrounding property owners.

Homan stated that he is looking for approval of his special exception right now not in future, and for future rights that is all speculation.

Motion by Brandt, seconded by Dahl, to grant a special exception on the condition that the applicant (John Homan) signs a letter of assurance acknowledging that if he needs unrestricted access to the airspace over the neighbor's property, applicant is required to secure those rights from the adjacent property owners to use the following property W1/2 less portion lying north of Railroad in NE1/4NW1/4 Section 32-116-47, Glenwood Township, to build and operate an airplane landing strip for private use in an Ag zoning district.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. The Board then made written findings as required by Section 504, subparagraph 5(a-h) of the ordinance.

- a. Entrance to and exit from property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe: Doesn't apply for automotive.
- b. Off-street parking and loading areas where required, with particular attention to the items in (a) above and the economic, noise, glare, odor or other effects of the special exception on adjoining properties and properties generally in the district: Applicant has sufficient parking. Loading is not a concern. The special exception will have no or minimal economic, noise, glare, odor or other effects on the adjoining properties or properties generally in the district.
- c. Utilities, with reference to locations, availability, and compatibility: Doesn't apply.
- d. Screening and buffering with reference to type, dimensions, and character: Doesn't apply.
- e. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district: There are no signs or exterior lighting.
- f. Required yards and other open spaces: Applicant has sufficient yard and other open spaces.

- g. General compatibility with adjacent properties and other property: The applicant's proposed use is generally compatible with the adjacent properties and other properties in the Ag District.
 - h. Refuse and service areas, with particular reference to the items in (a) and (b) above: There are no concerns regarding refuse or service areas. Doesn't apply.
11. The board decided to not test the water at the Kellen Egg farm this year and to send the water samples to South Dakota Public Health Laboratory next year, which would be 2018.
 10. Kanengieter called the meeting.

Jodi Theisen
Zoning Officer

Dennis Kanengieter
Chairman, Zoning Board