

**BOARD OF ADJUSTMENT**  
**April 10, 2018**

**CALL TO ORDER**

Chairperson Bode called the meeting of the Davison County Board of Adjustment to order at 9:15 a.m. All members of the Board were present. Also present was Planning & Zoning Administrator Bathke, Deputy Jenniges and Auditor Kiepke.

**APPROVE MINUTES**

Motion by Kiner, second by Claggett, to approve the amended minutes of the March 13, 2018 meeting. All members voted aye. Motion carried.

**VARIANCES**

The Planning Commission recommended granting 7-0.

Motion by Kiner, second by Reider, after consideration of Section 1206 B Variances, to grant a variance in minimum lot size of +/- 17.439 acres, to create a lot size of +/- 7.561 acres, where the minimum lot size requirement is 25 acres in the AG District, side yard setback on the east side of +/- 10' (ft) to create a side yard setback of +/- 40' (ft) from the existing shed and side yard setback on the east side of +/- 20' (ft) creating a setback of +/- 30' (ft) from the existing sheds on the parent parcel, where the minimum side yard setback is 50' (ft) in the AG District, as requested by Todd Thompson. This request is pursuant to Section 307 (3) and 308 of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property will be legally described as a Plat of Lot A-1, a Subdivision of Lot A of Maeschen's Addition in the NW ¼ of Section 33, T 101 N, R 61 W, of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received February 20, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 21, 2018  
Notified Abutting Property Owners March 21, 2018  
Consideration of 1206 B. Variances

Roll call vote:

Reider – aye, Weitala – aye, Kiner – aye, Claggett – aye, Bode - aye. Motion carried.

The Planning Commission recommended granting 7-0.

Motion by Reider, second by Kiner, after consideration of Section 1206 B Variances, to grant a variance for lot size of +/- 21.93 acres to create a lot of +/- 3.07 acres, where minimum lot size requirement is 25 acres in the AG Residential District, as requested by Terrence & Jennifer Raymond. This request is pursuant to Section 407 (4) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property will be legally described as

a Survey Plat of Schmig Tract 1 in the S ½ of the S ½ of the SE ¼ of Section 11, T 103 N, R 60 W, of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received February 27, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 21, 2018  
Notified Abutting Property Owners March 21, 2018  
Consideration of 1206 B. Variances

Roll call vote:

Weitala – aye, Kiner – aye, Claggett – aye, Reider – aye, Bode - aye. Motion carried.

The Planning Commission recommended granting 5-2.

Motion by Claggett, second by Reider, after consideration of Section 1206 B Variances, to grant a variance for lot size of +/- 22 acres to create a lot of +/- 3 acres, where minimum lot size requirement is 25 acres in the AG District, as requested by David Gukeisen. This request is pursuant to Section 307 (4) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property's parent parcel is currently described as the NE ¼ of Section 33, T 102 N, R 60 W, of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 13, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 21, 2018  
Notified Abutting Property Owners March 21, 2018  
Consideration of 1206 B. Variances

Roll call vote:

Kiner – aye, Claggett – aye, Weitala – aye, Reider – aye, Bode - aye. Motion carried.

## **CONDITIONAL USES**

The following is a briefing of testimony heard, both pro and con, on the Conditional Use applications requested by CED Davison County Wind, LLC. The hearing was recorded, in its entirety, as stated by Chairperson Bode.

Deputy Jenniges reported he received letters and emails both for and against the project. He also received an acoustic report and showed how tax dollars would be split.

Chairperson Bode asked for cooperation of the audience of about 55 people. She asked that remarks be limited to three minutes so that everybody that wished to speak would have a chance. She further requested that questions be directed to the table. She stated after all questions are presented, someone would answer them.

Cory Juhl introduced himself as working for ConEdison Development out of the Sioux Falls office. He said he has done a lot of work and development since he was last in front of the

Board. He understood he was to come back to the table with a more palatable plan. He feels he has that plan. He has decreased the footprint from 11 towers to 9 towers. He said the plan also meets all County and State setbacks. He further stated not one home is within DBA range. Homes will get 0.001 flicker. There were no fatal flaws found in the wildlife and environmental study done by a third party. He reported a study found no decreased property value because of wind towers.

He said he wanted to clarify that the Sanborn County project was not defeated. It didn't meet height requirements for the Mitchell Regional Airport.

Juhl went on to say that the project will provide taxes for the County. The company will make a one-time donation to the Mitchell Fire District of \$50,000.

In closing, he asked that the commissioners consider the facts, not the passions expressed.

Both Commissioner Claggett and Commissioner Kiner expressed concerns about property values and decommissioning of towers. Commissioner Kiner stated that property value is hard to pin down as one person may not mind wind towers, while others find them offensive.

Ted Christianson commended Planning & Zoning Chair Bruce Haines for his leadership.

He feels there will be a negative environmental impact if this project goes through. He understands the MTI students are in favor of the project. However, he believes the majority of people effected by the project, such as farmers, ranchers and rural land owners, are against the project. He believes home values will plummet.

He said he was inspired by a quote from a Letcher Township homeowner who was asked if she would sell an easement on her property for a wind tower. She replied that she has more respect for her neighbors than that.

He said Commissioner Bode asked Juhl the best question, how many full-time jobs would this project create. He replied it would create possibly 4-6 maintenance jobs.

Lance Koth stated that he is not a resident of Beulah Township, nor does he or his family own land in a rural area. His concern is our future. He said he became involved in wind farms when he was still in banking. A gentleman was working on a decommissioning project. He ended up pulling out because he had no idea where the money would come from to pay for it.

Koth cited several resources regarding wind farms sitting idle.

Koth further stated he believes it will be like oil. Oil has been subsidized since the late 70's or early 80's. It was pushed to expansion further than it could sustain.

Koth said he wanted to make four points. One – wind turbines have limited life and only one purpose and are costly to decommission. Two – we don't know the financial strength of Davison County Wind, nor do we know what the future holds for them. Three – we shouldn't rely on the promise Davison County Wind has made to Davison County. Four – he would

encourage the commissioners to deny the permit to protect the future of Davison County, as well as draft a wind ordinance for Davison County.

Steve Wagman, SD Renewable Energy Assoc, stated he drafted most of the South Dakota legislation regarding wind energy. He handed out a pamphlet with facts on wind energy. He further stated he has done a lot of work with Planning and Zoning boards. He said many counties that have two mile setbacks for wind turbines are lessening those. He cautioned that when you pay for your electricity, you are paying taxes to another state. In addition, he said the salvage for a turbine is \$10,000. These machines are often times donated to MTI for instructional purposes.

Jerry Wadleigh stated he was a former teacher and half way farmer. He is a neighbor of the project. He said he had a great deal of respect for the Greenways, but feels the project will only benefit them and be detrimental to others. He doesn't feel Mt. Vernon School will benefit enough to offset a wind energy system.

Ken Stack lives two miles over the County line in Sanborn County. He reported that he is a member of Davison County Citizens for Responsible Development. He named several resources from which the group had gathered data. He said there needs to be at least a one mile setback. He also said school benefits have been exaggerated. The group does not believe the project is viable without subsidies. They also don't believe the validity of the financials. He said size doesn't mean financial stability. He asked the Board to deny the project.

Fourteen students from the MTI Wind Energy class spoke in favor of the project. Some of the comments made were that the students would like to stay in South Dakota but they feel they are being forced to leave because South Dakota isn't progressive. One stated they are young people that are going to grow up, pay taxes and raise families. Another comment was that young people don't have the same visceral reaction to the look of the wind towers as some older people do.

A couple of the students expressed they were in school on a Build Dakota Scholarship. In order to retain the scholarship, the student must live and work in South Dakota for three years upon graduation. The possibility of the denial of this permit worries these students, as well as other students, regarding their futures.

The students believe people need to be more accepting of change. They believe we need more resources for energy. They thanked the Greenways for allowing them to come to Davison County and work.

Ralph Kiner stated that he was born and raised in Davison County. He said he is a realtor and his first reaction to the project was visceral. One of his biggest concerns is that new construction will take place east, in another county, rather than the western part of Davison County. He doesn't like the fact that the project is pitting neighbors against neighbors. He said personally, he'll be fine. However, he asked the Board to deny the project and get a wind policy in place.

Karla Hoffinke, Executive Director of SD Farmers Union, formally supports wind development. She believes South Dakota needs to be pro-active. She believes school districts and counties

will benefit. She also believes wind development will keep MTI students in South Dakota. She stated that renewable energy will continue to grow.

Gene Stehly stated that he is a Davison County resident and has a history of companies that have saddled taxpayers. He said the history of wind energy is that they change hands many times. He wants to know what guarantees there are of financial stability. He believes the County should be absolved of any liability and is skeptical of LLC's. He asked the Board that they deny the permit.

Doug Hansen said there are so many facts and emotions regarding wind towers. They affect homes and agriculture. He says he was aware of an incident where alternate equipment had to be used for crops because planes wouldn't fly over fields due to wind towers. He believes revenue for one family verses the effect on others isn't a fair balance.

Frank Luczak, who resides in Perry Township, stated he is not opposed to wind power. However, he thinks location should be a factor. He asked if anybody concerned had listened to the decibels generated by these machines. He said that he lives 3 miles from POET, which has a great economic benefit. He believes as rural residents they already sacrifice. He addressed the students by saying, you go where the jobs are. When you go to school, you can't necessarily expect to stay in the same location as the school. He feels this is being rushed and believes an ordinance needs to be in place.

Denise Stehly asked the Board to review Page 42, Article 3, Section 301 of the Planning and Zoning Ordinance. She does not believe the request is compatible with the ordinance.

Jerry Grabenstein, who is a resident of Mitchell, has concerns about decreased property values and people wanting new construction going east out of Davison County, rather than west.

Jerry Scott believes to grant the permit would be to go against the Planning and Zoning Ordinance regarding land use. He says noise levels will be 3 to 4 times higher than anything they have currently.

Holly Hansen resides in Davison County, but not in Beulah Township. She stated that her first instinct was to ask herself if this project fit in Davison County. Her major determining factor is dependent upon population density. She reported that Jerauld County has 36 wind towers located in 8 square miles with one non-participating land owner. Aurora County has basically the same thing with 89 towers located in 25 square miles with 2 non-participating land owners. Davison County would have 9 towers in 4 square miles affecting 11 non-participating land owners.

Glen Lowrie also resides in Beulah Township. He feels property rights and values are important. He doesn't believe the proposed setbacks take into account those rights and values. He stated he is very protective of agriculture.

David Shelton, representing Roland Johnson, stated that Mr. Johnson owns many properties in Davison County and opposes waste. He said the blades are made of carbine, which is considered a global threat. He believes our future is in trouble with this and other products that aren't recyclable. He also worries about the bat kill from the blades.

Lila Stach stated she has a daughter with autism. She needs wide open spaces and no flicker to maintain a healthy lifestyle.

Murry VanLaecken lives in Sanborn County. He stated that we, as citizens, are concerned with the unknown. He would like to see an ordinance in place so that we can tell "them" what to do, not the other way around. He said "Let's protect our citizens."

Darlene Wadleigh said that her land is surrounded by the Greenways and wants to know how aerial spraying will be affected since she has to keep her weeds down. She is opposed to the project.

Peggy Greenway said they are one of four families participating in this project. She had no idea the project would cause such animosity. She said there is so much misinformation circulating, and it is very frustrating. She said there are land owners for the project. However, like anything controversial, they won't come to speak. Mrs. Greenway stated their primary goal is to have something progressive to bring economic growth to the County. She believes renewable energy is the future.

Brad Greenway said this does get emotional. He said he has attended a number of hearings. The Commissioners instructed Mr. Juhl to come back with a plan that works. He feels Mr. Juhl has done just that. He feels they have gone over and above the requirements. He stated that if the commissioners approve an ordinance with a mile set back, it's time to quit wasting my time and yours and taxpayer money. He would like to see Davison County progress.

Greg Olivier said his issue is property value associated with wind energy systems and agrees with what Ralph Kiner stated earlier. He said towers are ugly and won't pay for themselves.

Planning and Zoning and Administrator Bathke said conditions don't have to be in ordinance format, there can be stipulations placed on the permit.

Mr. Juhl was asked to answer any questions posed by the group. The only real question was regarding LLCs. He stated that most if not all independent power producers form LLCs.

Chairperson Bode closed the meeting to public comment at 11:45 a.m. and asked the other commissioners if any of them had questions, comments or concerns.

Commissioner Claggett stated that he wishes the State would come up with a universal plan for all counties.

Commissioner Kiner feels there needs to be a definitive ordinance and has great respect for both sides.

Commissioner Reider thanked the audience for being so respectful of one and other. He said there are benefits and hazards to the very complex issues discussed today.

Commissioner Weitalla thanked everybody for their input. She said her question to herself is, is there compelling evidence to approve the permit?

Chairperson Bode explained that the Board is a quasi-judicial board so they act as a judge on applications received. She further stated they must look at facts and findings. She said she acknowledges the emotions filling the room. However, emotions are not facts.

She addressed the MTI students saying today was good preparation for their future no matter how the vote turns out.

Bode said they, as a board, need to look at numbers, output, value added, employment, direct effect, indirect effect and deduced effect.

Bode asked Juhl when the LLC for Davison County Wind was developed. CED Davison County LLC was renamed to Davison County Wind, LLC. It was stated that all developments are speculative. Davison County Wind was denied a permit in 2015.

Juhl explained that when the hearing began in Pierre on July 11, it was a request from Juhl as Juhl and NW Energy hadn't reached a rate agreement. Juhl was asked by Chairperson Bode why Davison County was part of the discussion when there had not been a permit issued in Davison County. Juhl explained that it was a rate hearing and there doesn't have to be a permit in place. Bode also noted that the rate started at \$60, but when everything was said and done, the rate ended up being \$26. Juhl stated that he and NW Energy disagreed on the avoided costs. Various analysts had differing opinions.

Bode further inquired whether the Davison County Wind project would be sustainable or make a profit. Bode is not convinced of either. She asked whether making money was the goal or was the goal simply to be the developer.

Juhl stated that ConEd is a long-term holder of developments. He said there are several 20 mega watt developments within a couple of hours of here. He said buying power was attractive and the plan is to operate safely, to sell power to the grid and to be a member of the community.

Juhl further stated they would be more than happy to have a decommissioning bond in place before moving forward.

Juhl said the biggest take away from all of this is the emotional impact and fear of the unknown. Wind turbines are new to the township and to Davison County. He said this layout, in the majority of counties, would be approved. He says there are too many generalities, such as loss of property values. He said he's heard so many negatives, but you can't dispute facts.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Claggett, second by Weitala, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 1) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently

amended. The property is legally described as the NE ¼ Ex Tract A of Greenway Addition of Section 6, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Claggett - aye, Kiner – aye, Reider – aye, Weitala – aye, Bode – aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Weitala, second by Kiner, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 2) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the NE ¼ Ex Tract A of Greenway Addition of Section 6, T 103-N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Claggett - aye, Reider – aye, Weitala – aye, Kiner – aye, Bode – aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Kiner, second by Claggett, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 3) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the NE ¼ of Section 7, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018



Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Reider - aye, Weitala - aye, Kiner - aye, Claggett - aye, Bode - aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Claggett, second by Kiner, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 4) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the NE ¼ of Section 7, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Weitala - aye, Kiner - aye, Claggett - aye, Reider - aye, Bode - aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Kiner, second by Weitala, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 5) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the NW ¼ Ex N 813' of W 806' of Section 8, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Kiner - aye, Claggett - aye, Weitala - aye, Reider - aye, Bode - aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Weitala, second by Claggett, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 6) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the N ½ of the NE ¼ of Section 8, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Claggett - aye, Kiner – aye, Reider – aye, Weitala – aye, Bode – aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Reider, second by Kiner, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 7) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the N ½ of the NE ¼ of Section 8, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Claggett - aye, Reider – aye, Weitala – aye, Kiner – aye, Bode – aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Claggett, second by Kiner, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 8) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section

304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the NW ¼ of Section 9, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Reider - aye, Weitala - aye, Kiner - aye, Claggett - aye, Bode - aye. Motion carried.

A member of the Planning Commission made a motion to grant, however the motion failed with a vote of 3-4.

Motion by Reider, second by Claggett, after consideration of Section 1206 A Conditional Uses, to deny a Conditional Use Permit for construction and installation of a wind energy system, commercial (total structure height of 453' (ft) in AGL) and associated facilities (turbine 9) in the Ag District, as requested by CED Davison County Wind, LLC. This request is pursuant to Section 304 (42) of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property is legally described as the SE ¼ of Section 7, T 103 N, R 61 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received March 19, 2018  
Daily Republic March 30, 2018  
Posted March 22, 2018  
Notified Applicant March 22, 2018  
Notified Abutting Property Owners March 22, 2018  
Consideration of 1206 A. Conditional Uses

Roll call vote:

Weitala - aye, Kiner - aye, Claggett - aye, Reider - aye, Bode - aye. Motion carried.

### ADJOURN

At 12:51 p.m., motion by Reider, second by Claggett to adjourn Board of Adjustment. All members voted aye. Motion carried.

ATTEST

  
Susan Kiepke, Auditor

  
Brenda Bode, Chairperson

