

**BOARD OF ADJUSTMENT**  
**March 12, 2019**

**CALL TO ORDER**

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

**APPROVE AGENDA**

Motion by Kiner, second by Claggett to approve the agenda for the March 12, 2019 meeting. All members present voted aye. Motion carried.

**APPROVE MINUTES**

Motion by Kiner, second by Claggett, to approve the minutes of the February 12, 2019 meeting. All members present voted aye. Motion carried.

It was noted that Tim Neugebauer was given the opportunity to ask for a continuance as all four board members will have to vote aye for the conditional use permit and variance permit requested, to pass. Mr. Neugebauer declined so the meeting continued.

**PUBLIC INPUT**

Chairperson Bode called for public input. She reminded the public that this was for items not on the agenda. Hearing none, the meeting continued.

**CONDITIONAL USE**

The Planning Commission recommended granting 4-0-2 with the following conditions:

1. Comply with all state and federal regulations.
2. Comply with all sections of the Davison County Zoning Ordinance.
3. Have a nutrient management plan in place.
4. Have a written plan for the site to address cleanup and disposal of the structures when the economic life of the building has expired. The life of the building shall be considered expired if no animals occupy the building in a 12-month period.
5. All manure shall be injected.
6. Road maintenance agreement with Rome Township on 267<sup>th</sup> St. between 406<sup>th</sup> and 407<sup>th</sup> Avenues.

The following discussion was held regarding the application of Tim Neugebauer for a conditional use permit to build a concentrated animal feeding operation.

Mr. Neugebauer stated that he, his wife, kids, brothers and nephews all work the barns. He said they won't have to get on the roads to spread manure.

Chairperson Bode invited opponents to speak.

Delmar Mueller, Chairman of Rome Township, stated that the road agreement should encompass more than 267<sup>th</sup> St. between 406<sup>th</sup> and 407<sup>th</sup> Avenues. He said there were plenty of roads that could be used for haul roads such as Highway 41.

Delmar Mueller, now speaking on his own behalf said that three bridges near the project have severe weight limit restrictions. He also said the Township spent \$12,000 on 405<sup>th</sup> Ave in front of Tim's other barn. He stated that out of state and Canadian Corporations don't belong in Davison County. He reminded the commissioners they didn't have to approve this application.

Erin Hennley said she agrees with Delmar. She said hauling and construction roads need to be in writing. Torn up roads aren't good for any of us. She said they own forty acres with a slough they are probably going to turn into CRP and build a home. She further stated they have a large pheasant population and Topeka Shiners, which are endangered. She said right now they have a clean, natural environment. If this is allowed, all that will change. She said that both she and Darrell (Hohn) have migraines which the smell will affect. She said the proposed confinement is right up against their property. She said they should have a right not to be sick. She said they don't have a problem with the confinement, just the placement.

Larry Olsen stated that he doesn't live near the site, he was speaking on behalf of family members Dixie Nolz and Jim Lyle. He said that acreages are an integral part of Davison County and most people understand dust, noise, etc..., but he said this is different. He feels people like to be outside enjoying fresh air and that will be diminished. He feels all these confinements are rubber stamped once they meet the requirements of the Zoning Ordinance. He thinks public input needs to be considered. He wondered if the number of CAFO's already in existence had been taken into account. He feels Sunterra has found a honey hole in Davison County with its zoning laws.

Darrell Hohn stated that he is the closest place, other than Tim's moms, to the proposed confinement. He said he has tried to raise hogs a couple of times and has had to quit, due to debilitating migraines caused by the hogs. He said if this project proceeds, he will have to move off the land that has been in his family for 100 plus years. He said that his granddaughter spends between 30-40 hours a week at the farm, feeding ducks, cows and enjoying being outside.

Mr. Hohn believes if the confinements continue to be built, acreages will be a thing of the past. He said you can already see it. He graduated from Parkston with a class of 94, his son's class had 34.

Mr. Hohn said his biggest concern is the Ethan Aquifer. The aquifer is 20' to 60' deep. There are no test wells for this site. He said when Tim built his other CAFO, he did voluntary testing. This is on gravel, not clay. If this goes into the aquifer, it will go straight into the Mitchell and Niobrara aquifer. He feels neighbors air and water quality should be considered. He further stated that these buildings aren't engineered or monitored.

Matt Trabling stated that he is against the confinement for the same reasons stated. He specifically mentioned damage to the roads. He said there are other places he could build.

William Neugebauer who lives south of the area, in Hutchinson County said that he has three barns built around him already. He wondered how many more he could take. He said his brother lived in NW Iowa where CAFO's abound. He had to stop going there. He said the additive they put in the pits is an issue for his wife.

Hearing no other opponents, Chairperson Bode asked for proponents.

Dan Boehmer, Ethan Lumber, said that he lives three miles from the site. He said that people are still paying big bucks to hunt 1 1/2 miles from a CAFO. He said Walmart, Menards and Cabela's are all out of state companies, yet people shop there all the time. Sunterra is a management group. They're just like a Holiday Inn where you rent a room. You rent space to Sentera for pigs.

Mr. Boehmer stated as the contractor that Rebar is used, 18" on center in the floor and 12" on center in the walls. Concrete is poured to engineering specs. Can no leakage be guaranteed? No, it can't.

Mr. Boehmer stated he had lived at his current location 53 years and has hogs most of the time. His well is over 50 years old. His water quality is good and he knows this because he has had it tested. He believes the quality of water being made worse is a theory, not fact.

Mr. Boehmer believes young people will continue to put in confinements so they can continue to farm as they bring in steady income. He believes that rules and regulations were written by the people, for the people. He said that tax dollars on five acres of property with a confinement will be about \$3,000, without the confinement about \$100. He said that hog barns are aiding in funding school districts. He believes there needs to be a study conducted to look at the pros and cons of confinements.

Chairperson Bode asked for any additional comments.

Erin Hennley stated that her job is collection specialist for Boyd Reimnitz. She said she has workers from Tripp and other areas that work at Sunterra operations. She said after they leave her office, nobody can come in for about three hours because of the smell. She further stated that 80% of the money from the checks cashed leaves the country.

Chairperson Bode brought the discussion back to the table and asked commissioners if they had any questions or comments.

Commissioner Claggett asked Mr. Neugebauer about the \$12,000 road issue that was brought up earlier. Mr. Neugebauer responded by saying that prior to him building, Tobin Township doesn't plow snow so there was a plugged culvert. The road in question had been graveled twice in 40 years. Mr. Neugebauer said that he had not requested anything of the township. They took it upon themselves to gravel. He said that Lisbon Township gravels their roads on a rotation.

Commissioner Claggett asked about leakage into aquifer and if DENR looks into this. Mr. Neugebauer stated that DENR has five test wells that provide info on water quality. He plans to build in April or May, weather dependent.

Commissioner Claggett asked about placement of the facility. Mr. Neugebauer stated that he had looked at other places. But he said, if it is placed where he is proposing he can drive right along the tree line and not have to haul manure on the roads.

Commissioner Kiner asked if there would be a site more conducive to neighbors. Mr. Neugebauer responded by saying that there are always going to be neighbors.

Commissioner Bode stated there had been some modification since the Planning & Zoning Board met.

Commissioner Reider wondered what the distance was from non-participating neighbors. Mr. Neugebauer responded that his mother was the closest at 1,730', with others 2,015', 2,070', 2,850' and so on.

Commissioner Reider asked about the ownership structure. Mr. Neugebauer responded that it will be put into an LLC just like his other one. He said that he will do the day to day work while his wife, kids and nephews will help with loading.

Chairperson Bode stated that you are investing in a building and labor. She asked, is this a long-term commitment? Mr. Neugebauer said that he has a twelve-year contract with Sunterra. Once twelve years are up, he can either renew or find another provider.

Chairperson Bode asked if there are standards that have to be met. Mr. Neugebauer said that there are people that oversee the operation and inspect the barn.

Chairperson Bode asked about security. Mr. Neugebauer stated there are cameras and alert systems in place. The alert systems monitor water, air and temperature. If something goes awry, he receives an alert.

Commissioner Kiner stated that he doesn't think the setbacks in the Zoning Ordinance are near enough. However, if the County doesn't follow them, they are sure to end up in court.

Chairperson Bode stated that it's hard to decipher between opinions and facts. She said that the Board needs to base their decision on facts. She feels it may be time to change setbacks, but the decision today must be based on current regulations. She said she appreciated Larry mentioning the number of CAFOs in existence as she feels that's something that will need to be reviewed. She said she also has a concern for fertilizer application management. She also feels test wells are important, as Darrell mentioned. She said she also doesn't want the bridge project and the CAFO project ongoing at the same time. Lastly, she stated that 407<sup>th</sup> isn't in good shape today. She would like to see documentation before and after the project.

Chairperson Bode stated that she will choose to support this project considering the facts and findings brought forward today with the condition that the building is moved as far west as possible with the back of the barn fairly even to the back of the tree line.

Motion by Claggett, second by Kiner, after consideration of Section 1206 A Conditional Uses, to grant a Conditional Use Permit for a concentrated animal feeding operation in the Ag District with conditions stated by the Planning and Zoning Board with the exception of #6 which was amended to read, a Road maintenance agreement with Rome Township, as requested by Tim Neugebauer. This request is pursuant to Section 304 (10) and Section 309 of the Davison County Zoning Ordinance as adopted on 4/1/98 and as subsequently amended. The property will be legally described as the SE ¼ Ex the SE ¼ of the SE ¼ of Section 30, T 101 N, R 60 W of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received February 15, 2019  
Daily Republic March 1, 2019  
Posted February 21, 2019  
Notified Applicant February 22, 2019  
Notified Abutting Property Owners February 21, 2019  
Consideration of 1206 A. Conditional Uses

Roll call vote:  
Kiner - aye, Claggett – aye, Reider – aye, Bode – aye, Weitala – absent. Motion carried.

## **VARIANCE**

The Planning Commission recommended granting a west side yard setback +/- 250' (ft) resulting in a west side yard setback of +/- 50' (ft) from a concentrated animal feeding operation and denying south front yard setback of +/- 100' (ft) resulting in a front yard setback of +/- 200' (ft) from a concentrated animal feeding operation; 4-0-2.

Motion by Claggett, second by Kiner, after consideration of Section 1206 B Variances, to deny a variance for south front yard setback +/- 100' (ft) resulting in a front yard setback of +/- 200' (ft) from a concentrated animal feeding operation and to grant a variance for west side yard setback +/- 250' (ft) resulting in a west side yard setback of +/- 50' (ft) from a concentrated animal feeding operation in the Ag District, with the condition that the building is at least 400' (ft) from the front right-of-way, as requested by Tim Neugebauer. This request is pursuant to Section 309 (3)f and 309 (3)h 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 Ex the SE ¼ of the SE ¼ of Section 30, T 101 N, R 60 W, of the 5<sup>th</sup> P.M., Davison County, South Dakota.

Application received February 15, 2019  
Daily Republic March 1, 2019  
Posted February 21, 2019  
Notified Applicant February 22, 2019  
Notified Abutting Property Owners February 21, 2019  
Consideration of 1206 B. Variances

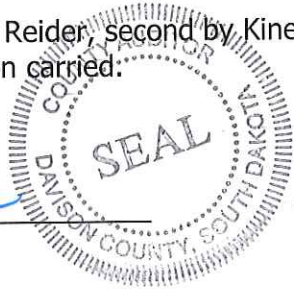
Roll call vote:  
Claggett – aye, Reider – aye, Kiner – aye, Bode – aye, Weitala - absent. Motion carried.

**ADJOURN**

At 11:35 a.m., motion by Reider, second by Kiner to adjourn Board of Adjustment. All members present voted aye. Motion carried.

**ATTEST**

  
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Susan Kiepke, Auditor



  
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Brenda Bode, Chairperson