

KINGSBURY COUNTY BOARD OF ADJUSTMENT

The Kingsbury County Commission convened acting as the Board of Adjustment on Tuesday, November 17, 2020 at 10:00 AM. in the Courtroom of the Courthouse in De Smet, South Dakota, for the purpose of considering the CAFO / Conditional Use application of Mike and Wendy Vander Dussen. If granted the Vander Dussens would be able establish a 9500 head (13,585 Animal Unit) dairy in NW ¼ and NE ¼ of Section 32-T110N-R53W in Spring Lake Township, Kingsbury County South Dakota. Board members present were Merle Walter and Roger Walls. Delmer Wolkow, Shelley Nelson and Steve Spilde attended via Zoom. Chairman Walls presided.

Also in attendance included Jerry Peterson, Paul Kostboth, Heather Kostboth, Michael Vander Dussen, Ben Stout, Nik Rows, Jerry Anderson, Jason Van Kooten, Ty Eschenbaum, Angie Goebel, Cameron Pewe, Gary Schumacher, Karl Steege, Tammy Anderson – Director of Equalization, Lawrence Berg, Clayton Minor, Chad Murphy, Jim Finnegan, Scott Hojer. Attending via Zoom were Donna Palmlund, with the Kingsbury Journal, Doug Kazmerzak, Wayne Soren, Jeff Anderson, Al, and Teresa Christensen, Graham and Peter Schukking, RuthAnn Carlson, Julie Carlson, Shane Odegaard, Diane Matson, and Kathy Murphy.

Walls turned the meeting over to Deputy State's Attorney, Jared Gass.

Gass turned the meeting over to Ty Eschenbaum, with A1 Solutions, representing the Vander Dussens. Eschenbaum presented a slideshow to those present with the screen being shared to those attending via Zoom. Eschenbaum then answered questions from the Board.

Gass requested questions or comments from those in gallery and then those on Zoom.

The main concern addressed were in relation to the condition of 449th Ave, odor from the proposed dairy, and potential hires for the jobs created.

All questions were answered by Eschenbaum, Michael Vander Dussen and Nik Rows.

Gass recommended the Board move into Executive Session for deliberation at the Board's discretion.

Walters moved and Wolkow seconded to adjourn from regular session and move into Planning and Zoning to review two proposed plats at 12:41 P.M. All present voting aye – 5, nay – 0. Motion carried.

Chairman Walls declared the Board out at 1:30 P.M.

Walters moved and Spilde seconded to approve the Conditional Use Permit with conditions stipulated by the Board. Gass read the proposed Findings of Facts and Conclusions of Law:

This matter having come before the Board of Adjustment and the Board having taken testimony and heard the evidence, the Board enters the following Findings of Fact and Conclusions of Law in support of its motion to approve the Petitioner's application for a Conditional Use Permit.

FINDINGS OF FACT

1. Mike and Wendy Vander Dussen (hereinafter “Vander Dussens or “applicant” or “Petitioner”), applied for a conditional use permit to allow the construction of a Class A concentrated animal feeding operation of 13,585 animal units (AU) to be located in the NW ¼ and NE ¼ of Section 32-110-53, Kingsbury County, South Dakota.
2. Notice of hearing was published on November 4, 2020, in the Kingsbury Journal, which is more than ten (10) days prior to the Board of Adjustment’s public hearing that was held on November 17, 2020.
3. A hearing was held on November 17, 2020, before the Board of Adjustment, after the required notice.
4. Written notification was sent to adjoining landowners.
5. Opportunity for testimony both in support and in opposition to the conditional use permit was allowed.
6. Those in favor of the permit testified to the appropriate use of the land and the positive economic impact of allowing the Class A concentrated animal feeding operation.
7. The Board heard testimony related to issues of manure storage, runoff, odor and flies, along with the proximity of the dairy to wetlands, aquifers, and rights of way.
8. Vander Dussens are currently seeking a State General Permit and water rights for the proposed Class A CAFO.
9. The board heard testimony from Professional Engineer, Nick Rowe, that manure storage areas would be constructed in conformance with standards established by the South Dakota Department of Environment and Natural Resources.
10. That satisfactory provision and arrangements have been made concerning the following:
 - a. Entrance and exit to property and proposed structures thereon;
 - b. Off-street parking and loading areas;
 - c. Utilities and service areas;
 - d. Screening and buffering set backs;
 - e. Signs;
 - f. Required yards and other open space; and
 - g. General compatibility with adjacent properties and other property in the district.
11. That the Board of Adjustment is empowered under Chapters 4.07.05, 5.12 and 6.05.01 of the Kingsbury County Zoning Ordinance to grant the conditional use requested by Petitioner, and that the granting of the conditional use will not adversely affect the public interest.

12. That the Applicant has complied with specific rules governing individual conditional uses; however, compliance with other rules must be fulfilled, as set forth in the contingencies below.

CONCLUSIONS OF LAW

1. That Vander Dussens have the burden of proof to show that it is entitled to be granted a permit to allow a concentrated animal feeding operation.
2. That the Kingsbury County Board of Adjustment has jurisdiction to enter its decision in the above entitled matter.
3. That the Board has broad police and regulatory authority and is empowered under Sections 4.07.05, 5.12 and 6.05.01 of the Zoning Ordinance to grant conditional use and that the granting of the conditional use will not adversely affect the public interest.
4. That Kingsbury County adopted comprehensive zoning ordinances effective April 8, 2015, as amended, which provide an operational framework for the Board of Adjustment.
5. That said regulations make provision for protection against pollution caused by manure from domesticated animals.
6. That the board heard testimony related to the potential impact on the increase in pollution.
7. That said ordinances provide that the purpose of the zoning ordinances is to protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare and to insure that public and private lands ultimately are used for purposes which are most appropriate and most beneficial from the standpoint of the "county community" as a whole.
8. That said ordinances are declared to be minimum requirements in their interpretation and application.
9. That the Board heard testimony regarding manure storage, runoff, smell and flies, which are all related to public health.
10. That the Board also considered the location of wetlands, aquifers and waterways and their proximity to the proposed facilities.
11. Vander Dussens are seeking a State General Permit and water rights for their proposed Class A CAFO.
12. That manure storage areas shall meet standards established by SD DENR approved systems.
13. That the applicant's Nutrient Management Plan shall be approved by SD DENR.
14. That the Board entered its Findings approving the Petition based on those factors, subject to contingencies set forth herein.

15. That the Board balanced those concerns along with the positive economic impact, which is in accordance with the duties of the Board.
16. That the Board regularly pursued its authority in hearing the application.
17. That based on the evidence presented and upon the motion of Walter, seconded by Spilde, and upon roll call vote of the Board of Adjustment.

The applicant's permit for construction of a Class A Concentrated Animal Feeding Operation totaling 13,585 animal units as defined by the Kingsbury County Zoning Ordinance is approved, subject to the following contingencies:

- a. That the Applicant comply with county and state regulations relating to the application of manure.
- b. That manure storage areas be constructed, and manure handling and disposal be performed in conformance with standards established by a DENR General Permit or NRCS Standards.
- c. That the proposed site has a professionally completed, third party Nutrient Management Plan (NMP) approved by SD DENR and that the NMP meet all applicable SD DENR State General Permit and Kingsbury County Zoning standards.
- d. That the applicant abides by mortality management in conformance with methods allowed by the South Dakota Animal Industry Board
- e. That the applicant abides by County setback regulations.
- f. That applicant provides proof of financial responsibility as set forth in Chapter 11. a. of the Kingsbury County Zoning Ordinance.
- g. That applicant enter into road haul agreements with any township in Kingsbury County subject to road use by the Class A Confined Animal Feeding Operation, and Kingsbury County, transferrable to new owners, which are subject to review upon new land application sites being added.
- h. That applicant provide road construction plans for 449th Ave between U.S. Highway 14 and 215th Street in Kingsbury County approved by the South Dakota Department of Transportation (SDDOT) taking into account safety and load requirements of the SDDOT for anticipated traffic to and from the dairy site, and that applicant, at its sole cost, upgrade the road per the SDDOT approved construction plans.
- i. That the applicant signs a letter of assurance.

The Board voted on the motion via roll call: Walls – aye, Wolkow – aye, Nelson – Aye, Walter – aye and Spilde – aye. Motion carried.

Walter moved and Spilde seconded to accept the proposed Finding of Facts and Conclusions of Law as read by Gass. All present voting aye – 5, nay – 0. Motion carried.

Meeting Adjourned.

Roger Walls, Chairman

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