

## KINGSBURY COUNTY BOARD OF ADJUSTMENT

The Kingsbury County Commission convened acting as the Board of Adjustment on Tuesday, August 4, 2020 at 9:260 A.M. in the Courtroom in the County Courthouse in De Smet, South Dakota, for the purpose of considering the application of Spring Lake Hutterian Brethren of 21727 452<sup>nd</sup> Ave, Arlington, SD, for a conditional use application. If granted, this would permit Spring Lake Hutterian Brethren to build use an established building to manufacture cargo trailers to be sold. Board members present were Joe Jensen as Zoning Officer, Roger Walls, Delmer Wolkow, Shelley Nelson and Luke Weber. Steve Spilde joined via Zoom. Chairman Walls presided. Also present were Jimmy Decker, Mark Decker and Simon Decker of the Spring Lake Hutterian Brethren, and Rod Tobin, Attorney for Spring Lake Hutterian Brethren. State's Attorney Gregg Gass joined via Zoom.

This meeting was recorded as a portion of the Commission meeting and available in the Auditor's office for listening.

### MINUTES

Wolkow moved and Spilde seconded to approve the minutes of July 7, 2020. All present voting aye – 5, nay - 0, motion carried.

The Board entered its findings as follows:

Jensen informed the Board the Spring Lake Hutterian Brethren have applied for a conditional use to use an existing building to manufacture cargo trailers to be sold.

Gass verified notice of the hearing had been published in the legal papers. Barnard indicated it had.

Gass verified all adjacent property owners had been notified by certified mail by the applicant. Tobin indicated they had been mailed to those neighbors indicated by Jensen.

Gass swore in Attorney Tobin and Simon Decker as those testifying for the hearing.

Gass began the hearing by going through the Finding of Facts.

Attorney Tobin provided reasoning and impact information in addition to answering the Findings of Facts questions.

Gass reviewed the proposed Findings of Facts and Conclusions of Law:

### FINDINGS OF FACT

1. On July 9, 2020 Spring Lake Hutterian Brethren, by Simon Decker Jr., made written application for a conditional use permit to allow the operation of a Manufacturing Facility, to be located on the NE <sup>1</sup>/<sub>4</sub> of Section 22-T109N-R53W in Kingsbury County, South Dakota which was reviewed by the Board, along with other documentary evidence.
2. A hearing was scheduled on August 4, 2020, before the Kingsbury County Board of Adjustment after appropriate notice was given by publication at least 10 days prior to the hearing.
3. The applicant notified adjacent property owners by certified or registered mail, at the applicants cost of the application and hearing on the request for a Conditional Use Permit.

4. At the conclusion of evidence presented at the hearing, the Board met for deliberation on August 4, 2020, based on the evidence presented and upon the motion of Nelson, seconded by Spilde, moved to enter the Findings of Fact And Conclusions of Law stated herein; and based thereon to approve the conditional use permit.
5. Opportunity for further discussion was given. Testimony in support to the conditional use permit was allowed at the August 4th, hearing.
6. One witness appeared to support the permit.
7. No witnesses appeared in opposition of the permit.
8. That adjacent property owners were notified of the hearing by certified or registered mail, and the required published Notice of Hearing was given.
9. That the Board of Adjustment is empowered under Section 6.05.01 of the County Zoning Ordinance to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.
10. That witnesses testifying in favor of the permit testified to the appropriate use of the land and the positive economic impact of the Manufacturing Facility, and that all of the requirements for issuance of the permit had been met.
11. That the Board heard testimony related to issues of lot area, front yard, side yards, rear yards, height regulation, access, storage, noise, air pollution, odor, glare, heat or radiation, vibration, sewage and liquid waste, fire hazard, and physical appearance and other documentary evidence submitted by the Petitioner.
12. That compliance with specific rules governing individual conditional uses of the Kingsbury County Zoning Ordinance 4-02 and 6.05.01 have been met.
13. 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 refuse and service areas.
  - d. Screening and buffering.
  - e. Signs.
  - f. Required yards and other open space.
  - g. General compatibility with adjacent properties and other property in the district.
  - h. The adequacy of roads providing access to the property.
14. That satisfactory provisions and arrangements have been met concerning general compatibility with adjacent properties and other property in the district.
15. That the Applicant has complied with all specific rules governing individual conditional uses, subject to meeting the following contingencies:
  - a. Obtain a Plat.
  - b. I-lave the Plat rezoned to Commercial-Industrial District.
  - c. Building and improvement plans and specifications approved by the Zoning OfT1cer.
  - d. A copy of "As Built" plans being provided to Kingsbury County.
  - e. Provide proof of financial responsibility as required.

- f. Obtaining a building permit from the County Zone Officer.
- g. Obtaining a manufacturing license from the State.

### CONCLUSIONS OF LAW

1. That Spring Lake Hutterian Brethren has the burden of proof to show that it is entitled to be granted a permit to allow the requested commercial-industrial operations.
2. That the Kingsbury County Board of Adjustment has jurisdiction to enter its decision in the above entitled matter.
3. That Kingsbury County adopted comprehensive zoning ordinances effective April 8, 2015 as amended, which provide an operational framework for the Board of Adjustment.
4. That said regulations make provision for protection against pollution caused by commercial-industrial operations.
5. That the Board has broad police and regulatory authority and is empowered under Sections 4.02 and 6.05.(1) of the Zoning Ordinance to grant conditional use.
6. That the Board's discretion in approving an application is limited by Section 6.05.01 of County Zoning Ordinance which provides that: The Board of Adjustment shall have the power to hear and decide in accordance with the provisions of this ordinance, requests for conditional uses, to decide such questions as are involved in determining whether special conditions and safeguards as are appropriate under the Ordinance, or to deny conditional uses when not in harmony with the purpose and intent of this Ordinance.
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 it is the policy of Kingsbury County to promote and encourage agricultural production and processing activities that benefit the agricultural industry, and that the granting of this permit would benefit the agricultural industry.
9. That said Ordinances are declared to be minimum requirements in their interpretation and application.
10. That the Board of Adjustment has considered the stated criteria of the Zoning Ordinance; the objectives of the comprehensive plan; the purpose of the Zoning Ordinance and its relevant Zoning Districts.
11. That the Board heard testimony related to issues of lot area, front yard, side yards, rear yards, height regulation, access, storage, noise, air pollution, odor, glare, heat or radiation, vibration, sewage and liquid waste, fire hazard, and physical appearance and other documentary evidence submitted by the Petitioner.
12. That all setback requirements and/or modifications have been met.
13. That granting the permit as planned would not create a significant contribution of Pollution.
14. That the Board also considered the location of wetlands and waterways and their proximity to the proposed facilities.

15. That the Board entered its Findings in support of approval of the Petition based on factors set forth above.
16. That a purpose of the Zoning Ordinance is to protect and promote the public health, safety, peace, comfort, convenience, prosperity, and general welfare and that granting said permit would promote those factors.
17. That a purpose of other Zoning Ordinances is 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, and that granting said permit would be beneficial from the standpoint of the county community as a whole.
18. That the Board balanced those concerns along with the positive economic impact, which is in accordance with the duties of the Board.
19. That the Board regularly pursued its authority in hearing the application.
20. That approval of the application requires a two-thirds vote. (4)
21. That based on the evidence presented and upon the motion of Nelson, seconded by Spilde, that the findings and conclusions stated herein be adopted and that the applicant's permit for a Commercial-Industrial Operation, as defined by ordinance be approved, subject to the following contingencies:
  - a. Compliance with County setbacks.
  - b. Building and improvement plans and specifications approval by the Zoning Officer.
  - c. A copy of "As Built" plans being provided to Kingsbury County.
  - d. Provide proof of financial responsibility from applicant's insurance carrier.
  - e. Obtain building permit from County Zoning officer.
  - f. Abide by speed and load limits on County and Township roads.
  - g. Obtain manufacturing license from the State.

Nelson moved and Spilde seconded to approve the conditional use for Spring Lake Hutterian Brethren. All present voting via roll call: Walls – aye, Wolkow – aye, Nelson – aye, Weber – aye, Spilde – aye. Motion carried.

Spilde moved and Wolkow seconded to return to regular session. All present voting aye – 5, nay - 0, motion carried.

Meeting Adjourned.

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Roger Walls, Chairman

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