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June 9, 2017

VIA EMAIL PLYNDE@ITCTEL.COM & U.S. MAIL

Chair Dennis Kanengieter
Deuel County Board of Adjustment
PO Box 616
408 4th Street West
Clear Lake, SD 57226

Re: Special Exception Request, John Homan, 4114 12th Avenue NE,
Watertown, South Dakota

Dear Chair Kanengieter:

I write on behalf of Invenergy LLC ("Invenergy") regarding the application for a Special Exception made by John Homan to allow a private airport (the "Application"). Invenergy does not oppose allowing Mr. Homan to use his property as a private airstrip. However, nothing under federal, state or local law gives the operator of a private airstrip any authority over neighboring properties. Should Mr. Homan wish to control the airspace over his neighbors' properties to support his airstrip, he would need to obtain avigational easements (i.e., easements allowing unrestricted use of navigable airspace). To Invenergy's knowledge, Mr. Homan has not sought these rights.

State Law Requirements

Under state law, Mr. Homan proposes a "private airport" defined as "any airport that is open to and available for use only by the owner and the owner's invitees." SDCL 50-1-1(8); ARSD 70:02:04:01(7)." There are no state requirements that a private airport maintain any setbacks from structures on neighboring properties. Likewise, absent the necessary avigational easements, a private airport owner has no right to request that neighboring property owners maintain a setback from a private airport.

Federal Law

There is no federal law that requires a private airport to maintain any setbacks from structures on neighboring properties to operate. Federal Aviation Administration ("FAA") regulation Title 14 Part 77 applies only to public airports and requires the public airport to control airport and

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departure surfaces to operate. For example, in the FAA's "Reminder of Responsibilities for FAA Personnel and Airport Sponsors for Protecting Approach and Departure Surfaces," the FAA states that "the Airport Sponsor is responsible to maintain clear airport and/or departure surfaces." To accomplish this, the "FAA recommends sponsor seek out opportunities for land acquisition, land exchanges, right-of-first-refusal to purchase, agreements with property owners regarding land uses, or other means of establishing land-use controls." In other words, airport owners are to obtain obtain avigational easements on neighboring property to control surrounding airspace. A copy of the FAA policy is available at:
<https://www.faa.gov/airports/engineering/media/Policy-Reminder-Protecting-Approach-and-Departure-Surfaces.pdf>.

Deuel County Zoning Code

Any setbacks for a private airport must be established by the local government. In Deuel County, there are not setback requirements. "Airports and airstrips" are special exceptions in an agricultural district. Deuel County Zoning Code § 1101.03. The Deuel County Zoning Code does not establish any specific requirements for an airport or airstrip. Likewise, the Deuel County Zoning Code does not require any specific setbacks from an airport or airstrip.

Conclusion

Should the Board grant Mr. Homan's Application, Invenenergy respectfully requests that such approval specifically state that it does not grant Mr. Homan any right to limit the uses on neighboring properties. Should you have any questions, please contact Dan Litchfield of Invenenergy at (773) 318-1289 or me at (612) 492-7270.

Sincerely,

/s/ Mollie Smith

Mollie Smith
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