

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
 2 COUNTY OF DEUEL) :SS THIRD JUDICIAL CIRCUIT
 3 19CIV18-000019
 4 GEORGE HOLBORN, RUBY HOLBORN,
 5 JOHN HOMAN, TERESA HOMAN, VICKI
 6 HINDERS, STACEY HINDERS, RICK
 7 KOLBECK, JENNIFER KOLBECK,
 8 WILLIAM STONE, FAY STONE, HEATH
 9 STONE, KATIE STONE, and STEVEN
 10 OVERBY,
 11
 12 Petitioners,
 13
 14 vs.
 15 DEUEL COUNTY BOARD OF
 16 ADJUSTMENT, DEUEL HARVEST WIND
 17 ENERGY LLC, and DEUEL HARVEST
 18 WIND ENERGY SOUTH LLC,
 19 Respondents.

DEPOSITION OF DENNIS L. KANENGIETER,
 taken before NANCY McCLANAHAN, court reporter and
 notary public within and for the County of Codington,
 State of South Dakota.
 DEUEL COUNTY COURTHOUSE
 Jury Room
 408 Fourth Street West
 Clear Lake, South Dakota
September 21, 2018
 1:02 P.M.
 Nancy McClanahan
 Reporter/RPR,RMR
 McCLANAHAN REPORTING
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APPEARANCES

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STIPULATION

IT IS STIPULATED by and between counsel for the parties hereto that the DEPOSITION OF DENNIS L. KANENGIETER, may be taken at this time and place before NANCY McCLANAHAN, a court reporter and a notary public in and for the County of Codington, State of South Dakota, for the purpose of discovery or for use at trial or for each of said purposes; that said deposition is taken in accordance with the applicable statutes and rules of civil procedure and taken pursuant to written notice; and that counsel waive reading and signature of the transcript by the deponent. It is further noted that the deponent has waived reading and signature.

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1 **PROCEEDINGS**
2 **DENNIS L. KANENGIETER,**
3 **being first duly sworn, testified as follows:**
4 **EXAMINATION**
5 **By MR. ALMOND:**
6 Q. State your name, please.
7 **A. Dennis Lee Kanengieter.**
8 Q. Do you mind if I call you Dennis, or do you
9 prefer I call you Mr. Kanengieter?
10 **A. Dennis is fine.**
11 Q. I just worry because I thought I might mess up
12 your name over and over again.
13 **A. Dennis is fine.**
14 Q. Dennis, can you tell me the names of your
15 parents?
16 **A. John and Alice Kanengieter.**
17 Q. Do you have any siblings?
18 **A. Yes, I do.**
19 Q. Can you tell me their names and names of their
20 spouses?
21 **A. Glen, he's deceased. His wife is -- I'll have**
22 **to come back to you. Anyway, my next one is Kenneth,**
23 **and his wife is Mavis. My youngest one under me is**
24 **Denton, and I don't think he's married right now. I**
25 **don't see him that often. Last I knew he was not**

1 Q. Do you know who Jason and Teresa Kannengieter
2 are?
3 **A. No. No, I don't.**
4 Q. Do you know who James and Jerome DeBoer are?
5 **A. James? You mean Kevin's brother or whatever?**
6 Q. (Nods affirmatively.)
7 **A. No. I never knew Kevin before this.**
8 Q. You'd never met Kevin DeBoer until he had
9 joined the Board of Adjustment.
10 **A. Yep.**
11 Q. Do you know a Justin and Kristen Brandt?
12 **A. Not that I know of.**
13 Q. What about a Diane and Joel Brandt?
14 **A. I've met Joel.**
15 Q. You've met Joel?
16 **A. Yes.**
17 Q. And do you understand that Joel's Paul's
18 brother?
19 **A. Yes, I do.**
20 Q. In response to some discovery we sent around, I
21 understand you work for a Rogness Truck and Equipment;
22 is that right?
23 **A. Yes.**
24 Q. Who are the owners of Rogness Truck and
25 Equipment?

1 **married. Durette is Glen's wife.**
2 Q. So they all have the same last name as you,
3 presumably?
4 **A. Yep.**
5 Q. What about children?
6 **A. I've got three.**
7 Q. The names and names of spouses, if they have
8 them.
9 **A. Denise and her husband is Chris Gunary.**
10 Q. Canary?
11 **A. Gunary.**
12 Q. Can you spell it for the court reporter?
13 **A. G-U. Just get it close. I can't think of it**
14 **right off the top of my head. And then I got a son**
15 **David, he's married to Bobbi, or Bob, and that's**
16 **Kanengieter. And my youngest son is Denton -- or**
17 **Denton, Dan, Daniel. He's not married. He lives in**
18 **Phoenix.**
19 Q. Is that all of them?
20 **A. That's it.**
21 Q. In reviewing the records, I've seen the name
22 Jason and Teresa Kannengieter, which is spelled
23 differently from your last name. Any relation to that
24 Jason and Teresa?
25 **A. Possible.**

1 **A. Clark -- Well, it was Clark and Phil. Now it's**
2 **just Phil and his son Tyler.**
3 Q. How long have you worked at Rogness Truck and
4 Equipment?
5 **A. I've worked there since '94.**
6 Q. What do you do?
7 **A. A lot of mechanic work and farmwork.**
8 Q. So Rogness Truck and Equipment, do they own --
9 **A. They're in partner, Phil is in partnership with**
10 **Clark in the farming aspect of it, Clark and**
11 **Phil Rogness.**
12 Q. So you provide farmwork for Clark and Phil?
13 **A. Yep.**
14 Q. And then you also do mechanic work?
15 **A. Yep.**
16 Q. Is the farmwork also under the Rogness Truck
17 and Equipment umbrella, or is it a separate position?
18 **A. It's all under one.**
19 Q. Okay. Do you know Craig and Corey Rogness?
20 **A. Yes, I do.**
21 Q. Who are they?
22 **A. Clark Rogness's sons.**
23 Q. Craig and Corey are Clark's sons?
24 **A. Yep.**
25 Q. Is Clark married to Kimberly?

1 **A. Yep.**
 2 Q. And is Philip married to Colleen?
 3 **A. Yes.**
 4 Q. Do you know a Bert and Verna Rogness?
 5 **A. Yes, I do.**
 6 Q. And who are they?
 7 **A. Bert's a brother to Clark and Phil.**
 8 Q. Bert work at all with Rogness Truck and
 9 Equipment?
 10 **A. No, he does not.**
 11 Q. I'd like to know about any and all agreements
 12 that you've entered into with any wind company to the
 13 extent you have entered into any agreements.
 14 **A. I have entered into one that's probably, I**
 15 **don't know, 10, 15 years ago, and then they dropped the**
 16 **project, so.**
 17 Q. What was the name of that project?
 18 **A. I can't remember the name of it.**
 19 Q. But it was 10 to 15 years ago?
 20 **A. Yes.**
 21 Q. Do you still have some type of contract that's
 22 in --
 23 **A. No, I don't.**
 24 Q. -- place? No?
 25 **A. Threw that stuff all away when they dropped it.**

1 **A. Yeah, I think I have.**
 2 Q. Do you recall what the issue was in front of
 3 the Board?
 4 **A. It was some kind of a building permit that was**
 5 **related to a neighbor, and I don't remember for sure**
 6 **what it was, but I did sustain myself.**
 7 Q. And why did you do that?
 8 **A. Figured it would be a conflict of interest,**
 9 **seeings how I knew him real well. Just figured I should**
 10 **just sustain from it.**
 11 Q. So because you knew your neighbor really well,
 12 you thought it was appropriate to sustain from deciding
 13 the issue with respect to his building permit?
 14 **A. For that one, yes.**
 15 Q. What was the name of your neighbor?
 16 **A. Boy. It happened so many years ago. I can't**
 17 **remember for sure.**
 18 Q. Any other memories of abstaining?
 19 **A. Not that I can remember.**
 20 Q. And, typically, I go over some ground rules
 21 before I start depositions, but I'm trying to get
 22 through these quickly. But I just want to tell you few
 23 things. If you could just wait for me to finish asking
 24 my question before you answer, the court reporter will
 25 like us a lot more.

1 Q. Do you know why they dropped it?
 2 **A. At the time they told us that they wasn't**
 3 **feasible so they just dropped the contracts.**
 4 Q. Okay. Any other agreements you've entered into
 5 with wind companies?
 6 **A. Nope.**
 7 Q. How long have you been on the Board of
 8 Adjustment?
 9 **A. I think it's been since 2002, I believe.**
 10 Q. Are you currently the chair?
 11 **A. Yes, I am.**
 12 Q. Have you been the chair since for the entire
 13 year?
 14 **A. Yes.**
 15 Q. Were you the chair before 2018?
 16 **A. Yes.**
 17 Q. All of 2017?
 18 **A. Yes.**
 19 Q. In your role as a board member, have you ever
 20 recused yourself or abstained from voting on any
 21 wind-related project?
 22 **A. No, I don't think so. I don't remember ever**
 23 **abstaining from one.**
 24 Q. Have you ever recused or abstained from voting
 25 on any decision in front of the Board?

1 **A. Oh, okay. I'm sorry.**
 2 Q. Because it's really hard to take down two
 3 people talking and also try answer with yeses, nos, as
 4 opposed to mm-hmms, (Yeses) or huh-uhs (Nos). I just
 5 wanted to get that out there.
 6 **A. Yeah.**
 7 Q. What about other board members? Can you tell
 8 me about any instances when other board members have
 9 recused themselves or abstained from voting with respect
 10 to a wind-related issue in front of the Board?
 11 **A. No, I can't. Not for a wind issue, except --**
 12 **not for this project.**
 13 Q. For any wind project.
 14 **A. Are you talking about the one we did last**
 15 **night?**
 16 Q. I understand somebody did abstain last night,
 17 which was Paul Brandt; correct?
 18 **A. Correct.**
 19 Q. Aside from last night, do you have any memories
 20 or aware of any time when another board member has
 21 abstained from voting?
 22 **A. Yes, I do.**
 23 Q. Tell me about that time or those times.
 24 **A. That was Mike Dahl and that was for the**
 25 **Flying Crow, the one over by Lake Cochrane.**

1 Q. The Flying --
 2 A. Flying --
 3 MS. AGRIMONTI: Flying Cow.
 4 A. Flying Cow, sorry.
 5 MS. AGRIMONTI: That's okay.
 6 Q. And what was your understanding of why
 7 Mike Dahl recused himself from that Flying Cow?
 8 A. He had a, was going to have a met tower or
 9 whatever on his property that wasn't involved at all
 10 with this project, but he felt if he was getting payment
 11 from one wind energy company maybe he should not be
 12 voting on it.
 13 Q. So who is the agreement that Mike Dahl had?
 14 What was the agreement that Mike Dahl had that caused --
 15 A. I didn't ask him what company or anything he
 16 was involved with.
 17 Q. But he had some agreement for a met tower you
 18 said?
 19 A. That's my understanding.
 20 Q. Was it for the Flying Cow project?
 21 A. No, it wasn't. For a different project.
 22 Q. Did the Board have any discussions about
 23 whether or not he should or should not recuse himself?
 24 A. No, I don't remember that. He just came and
 25 told me he thought he should excuse himself.

1 By MR. ALMOND:
 2 Q. I'm handing you what has been marked as
 3 Exhibit 16. Can you tell me what that document is?
 4 A. Yeah, it's the minutes.
 5 Q. And it's the minutes from the October 17, 2016
 6 board meeting; correct?
 7 A. Yes.
 8 Q. And I'll just say if you go to the back page on
 9 page 4, they're unsigned. I'll further represent that I
 10 pulled these documents off the Deuel County website, and
 11 the copy that was online was unsigned. So I'm not sure
 12 if there is a signed copy or if it differs from what's
 13 in front of us, but if there is one that's signed and if
 14 it does differ, I'm sure your attorney will look into
 15 that and make any -- Let me know, I guess, but --
 16 A. All right.
 17 Q. Looking at Exhibit 16, if you go to the second
 18 page, paragraph 7 there, it says, The Flying Cow Wind
 19 LLC applied for a special exception permit.
 20 A. Yep.
 21 Q. So it looks like that Flying Cow permit was
 22 heard at the October 17, 2016 board meeting?
 23 A. Yes.
 24 Q. Does that comport with your recollection? If
 25 you go to the last page there, page 4, the second

1 Q. How did you respond when he told you that?
 2 A. I responded that if that's the way he felt then
 3 that's what you should do. As a board member, I respect
 4 whatever their opinion is.
 5 Q. Did you agree with his opinion?
 6 A. It doesn't matter if I agreed or not. I just
 7 respect what he said.
 8 Q. And I get that, but I'm asking you, did you
 9 agree with his opinion?
 10 A. Yeah, I guess I did.
 11 Q. Any other instances in which a board member has
 12 recused or abstained or excused himself from deciding a
 13 wind-related issue?
 14 A. Not that I can remember.
 15 Q. I'm going to hand you what is marked as
 16 Exhibit 10, which is just an assortment of letters on
 17 Invenergy letterhead that it seems went out to people in
 18 Deuel County. Can you flip through those and tell me if
 19 you received any of those letters?
 20 A. No, I don't remember getting any of them.
 21 Q. You don't remember receiving any of the letters
 22 in Exhibit 10?
 23 A. No, I don't.
 24 (DEPOSITION EXHIBIT 16 MARKED.)
 25

1 paragraph, it actually memorializes Mike Dahl refraining
 2 from voting because he had signed a lease with another
 3 wind company, and we were just talking about that;
 4 right?
 5 A. Yes.
 6 Q. So this is the meeting that he recused himself
 7 from considering the Flying Cow project?
 8 A. Yes.
 9 Q. So that meeting took place on October 17, 2016;
 10 right?
 11 A. Yes.
 12 Q. Do you know if the Flying Cow project is still
 13 being developed or trying to be developed?
 14 A. I haven't heard anything.
 15 Q. When is the last time you heard anything about
 16 the Flying Cow project?
 17 A. I guess I got to think on it. The Flying Cow
 18 project may still be in existence.
 19 Q. Do you know, I guess, is my question.
 20 A. I would have to say yes then.
 21 Q. You think it is in existence or trying to be
 22 developed?
 23 A. Yes.
 24 Q. It hasn't been built; right?
 25 A. Not to my knowledge it hasn't.

1 Q. But it certainly hasn't been built in
 2 Deuel County; otherwise, they would have come and got a
 3 permit from you. Right?
 4 **A. Right.**
 5 Q. All right. Do you have any knowledge that it's
 6 still being developed in Deuel County?
 7 **A. Not in Deuel County, no.**
 8 Q. But outside Deuel County, any knowledge that
 9 it's being developed?
 10 **A. Yes.**
 11 Q. And how do you have that knowledge?
 12 **A. I was approached for a transmission line across**
 13 **my property to get the power to this Xcel line.**
 14 Q. Where is your property located at?
 15 **A. Section 7, Scandinavia Township, the Northwest**
 16 **Quarter.**
 17 Q. And is that in Deuel County?
 18 **A. Northeast Quarter, I mean.**
 19 Q. Is that in Deuel County, that property?
 20 **A. Yes, it is.**
 21 Q. When were you approached to get a transmission
 22 line across your property?
 23 **A. Maybe six months ago.**
 24 Q. Who approached you?
 25 **A. Paul Tol.**

1 **A. Well, that they would pay so much a year if I**
 2 **signed it to see if they could get the project going,**
 3 **because they didn't know if the project was going to go**
 4 **or not.**
 5 Q. Was it an easement agreement?
 6 **A. I guess you would call it that.**
 7 Q. Were they trying to get an easement over your
 8 property?
 9 **A. That's what they were trying, yes.**
 10 Q. And then did they present you with an agreement
 11 to give them that easement?
 12 **A. Yep.**
 13 Q. Did he give you any other papers, documents of
 14 that first meeting?
 15 **A. No.**
 16 Q. Okay. So I assume you thought about it.
 17 **A. (Nods affirmatively.)**
 18 Q. Are you still thinking about it?
 19 **A. No. I ended up signing them.**
 20 Q. So you signed the agreement that he provided to
 21 you, or did you sign a different one?
 22 **A. It was a different one but it's the same base**
 23 **per easement.**
 24 Q. How does it -- What differed, I guess, between
 25 the contract he left with you and the one you ended up

1 Q. Who does Paul Tol work for?
 2 **A. He didn't state. I assume he's working for the**
 3 **Flying Cow Wind project.**
 4 Q. Tell me what Paul said when he approached you.
 5 **A. He approached me and asked me if I would be**
 6 **willing to allow him to put a transmission line across**
 7 **my north quarter.**
 8 Q. Was that an in-person conversation?
 9 **A. Yes, it was.**
 10 Q. Where did that take place at?
 11 **A. At my place.**
 12 Q. And after he asked you if you would be willing
 13 to allow a transmission line to run across, how did you
 14 respond?
 15 **A. Told him I had to think about it.**
 16 Q. Did you discuss anything else at that time?
 17 **A. No, not really.**
 18 Q. Did he provide you with any documents at that
 19 time?
 20 **A. Yes, he did.**
 21 Q. What did he provide you with?
 22 **A. He provided me with an application to sign if I**
 23 **would approve it, let 'em do it.**
 24 Q. An application. What do you mean by an
 25 application?

1 signing?
 2 **A. It was just some wordage in it and where they**
 3 **were going to place the poles was the main thing.**
 4 Q. The location of the poles?
 5 **A. Yep.**
 6 Q. You probably had some discussions with, is it
 7 Paul, you said?
 8 **A. Yeah.**
 9 Q. You talked about where you wanted the poles and
 10 etc.?
 11 **A. Yep.**
 12 Q. And you said there was some terms or other
 13 wordage in the agreement. What did it relate to?
 14 **A. Related to what they would pay for the poles,**
 15 **you know, placement of the poles.**
 16 Q. So you guys were negotiating the price
 17 basically?
 18 **A. More was, more was where they were going to put**
 19 **the poles than the price.**
 20 Q. Were you asking for more money, or tell me
 21 about those negotiations.
 22 **A. No. When they started this out, the poles on**
 23 **one end of my quarter were ten rows in the field, and a**
 24 **half mile down they were 48 rows in the field. And I**
 25 **wanted the poles on the right-of-way, not having to farm**

1 around them.
 2 Q. Did they agreed to do that?
 3 A. **Yes, they did.**
 4 Q. So did you get less money then?
 5 A. **I don't know. I haven't gotten any money.**
 6 Q. But I mean, the discussion about how much you
 7 were going to get paid and for what, if it was going to
 8 be in the right-of-way and you didn't have to farm
 9 around it, I would assume you would get less money for
 10 that agreement.
 11 A. **No. We just -- The money part I haven't really**
 12 **discussed with them. I just was concerned where the**
 13 **poles went.**
 14 Q. Okay. So aside from the agreement he first
 15 presented to you and the agreement you signed, did you
 16 see any other versions of an agreement?
 17 A. **No.**
 18 Q. When did you sign the agreement?
 19 A. **Boy, I don't know. Probably five months ago.**
 20 Q. At any time when -- I'm sorry. Can you remind
 21 me of the individual's name again?
 22 A. **Paul, you said?**
 23 Q. Paul. What was his last name?
 24 A. **Dowel. (Phonetic spelling.)**
 25 **THE REPORTER:** Say again.

1 A. **No.**
 2 Q. So you didn't volunteer to him that, by the
 3 way, I'm on the zoning board in Deuel County?
 4 A. **No, I did not. I assumed he already knew it.**
 5 Q. Was Mr. Dowel involved in the Flying Cow
 6 project back in 2016 when the Board was considering it?
 7 A. **I don't know if he was or not.**
 8 Q. When was the first time you met Mr. Dowel, as
 9 far as you can remember?
 10 A. **Since he was three years old.**
 11 Q. Oh, Mr. Dowel lives around here?
 12 A. **(Nods affirmatively.) His folks are good**
 13 **friends of ours.**
 14 Q. Okay. What does Mr. Dowel do for a living?
 15 A. **He farms, as far as I know.**
 16 Q. Okay. It sounds like he was going around on
 17 behalf of Flying Cow to approach landowners and talk
 18 about having them sign up easements; right?
 19 A. **Yes.**
 20 Q. Do you know if he was going around on behalf of
 21 any other wind companies, wind farms, asking people to
 22 sign up?
 23 A. **No, I don't.**
 24 Q. Do you know if he was going around on behalf of
 25 Invenergy and asking people to sign up on behalf of

1 A. **Paul Dowel.**
 2 **THE REPORTER:** Oh, okay. I was hearing
 3 "Tol."
 4 Q. Do you know how to spell Dowel?
 5 A. **No, not for sure I don't.**
 6 Q. Okay. Have you exchanged any e-mails with
 7 Mr. Dowel?
 8 A. **No, I have not.**
 9 Q. Do you have any written correspondence with
 10 Mr. Dowel? Has he sent anything in the mail, or have
 11 you sent anything to him in the mail?
 12 A. **No.**
 13 Q. So all of your communications has been with
 14 Mr. Dowel either in person or over the phone?
 15 A. **In person.**
 16 Q. Never spoken with Mr. Dowel on the phone?
 17 A. **No.**
 18 Q. How many in-person conversations have you had
 19 with Mr. Dowel?
 20 A. **Three, four maybe.**
 21 Q. During any of these conversations, did the fact
 22 that you served on the zoning board, was that ever
 23 discussed?
 24 A. **No, it wasn't.**
 25 Q. Not during any of the conversations?

1 Invenergy?
 2 A. **No, I don't.**
 3 Q. Do you know who in the area was going around on
 4 behalf of Invenergy asking people to sign up?
 5 A. **No, I don't.**
 6 **(DEPOSITION EXHIBIT 17 MARKED.)**
 7 **By MR. ALMOND:**
 8 Q. I'm handing you what has been marked as
 9 Exhibit 17. This document look familiar to you?
 10 A. **Yes, it does.**
 11 Q. Is that your signature on the second page of
 12 the document?
 13 A. **Yes, it is.**
 14 Q. Did you sign that on August 15, 2017?
 15 A. **Yes. That's what's stated on there.**
 16 Q. It looks like a --
 17 A. **Fifth of October.**
 18 Q. You're referring to the beginning paragraph it
 19 says October 5?
 20 A. **Way on the bottom there? Fifteenth day of**
 21 **August and then --**
 22 Q. Yeah, it says the foregoing instrument was
 23 acknowledged before me this 15th day of August by
 24 Dennis Kanengieter and Deborah Kanengieter, husband and
 25 wife?

1 **A. Yep.**
 2 Q. And then in the next paragraph below that you
 3 mention 5th of October. It has the name Peter Rood.
 4 Have you ever spoken with Peter Rood?
 5 **A. Not that I can recollect.**
 6 **MS. AGRIMONTI:** Let the record reflect that
 7 there are two dates for the notary. One is 15 of
 8 August, one is 5 of October, which may be leading to
 9 some of the confusion as it is dated as of, on the
 10 first page, October 5.
 11 Q. This Memorandum of Option Agreement, that is
 12 Exhibit 17, does this refer to that easement agreement
 13 we were just talking about?
 14 **A. My understanding it does.**
 15 Q. So there is another, I assume, larger agreement
 16 somewhere that you've signed related to that
 17 transmission line going over your property?
 18 **A. Not that I recall.**
 19 Q. My question is, is there another agreement
 20 beyond this that you've signed?
 21 **A. Not that I recall that I signed anything else.**
 22 Q. So you're saying this is the only agreement
 23 you've signed with Flying Cow?
 24 **A. That I can remember, yeah.**
 25 Q. Do you know where the Flying Cow project is

1 **A. No, they did not.**
 2 Q. So then you were approached about a year later
 3 by that same company. Did you think it was odd that
 4 they approached you when the Board had just effectively
 5 refused to give them a permit?
 6 **A. No.**
 7 Q. You didn't think that was odd?
 8 **A. No.**
 9 Q. Did you ask them any questions about their
 10 development plans or anything like that?
 11 **A. No. They just -- My understanding is they had**
 12 **to have the power line before so they had a way out for**
 13 **the power.**
 14 Q. In 2016 how did you vote on that Flying Cow
 15 permit?
 16 **A. I think I voted for it.**
 17 Q. Let's shift gears and talk about the Invenergy
 18 project or the Deuel Harvest Wind projects. You
 19 understand that there were two special exception permits
 20 that were requested from the Board; right?
 21 **A. Yes.**
 22 Q. When I say Invenergy, you know who I'm
 23 referring to generally?
 24 **A. Yes.**
 25 Q. Is it okay if I just refer to Invenergy as a

1 being planned to go in?
 2 **A. East of Lake Cochrane is all I know.**
 3 Q. Is that where it was going in when it came
 4 before the Board in 2016?
 5 **A. There and South Dakota.**
 6 Q. I guess what I'm trying to ask is, is the
 7 Flying Cow project still looking to develop in the same
 8 area that was being considered in 2016 when it asked for
 9 the permit from the Board?
 10 **A. I don't follow your question. You mean whether**
 11 **they're going to try to come into Minnesota -- or into**
 12 **South Dakota or just stay in Minnesota, I don't know.**
 13 Q. So in 2016 they came to the Board and asked for
 14 a special exception permit; right?
 15 **A. Right.**
 16 Q. And there is a certain area that they were
 17 hoping to develop wind towers in; right?
 18 **A. Right.**
 19 Q. What I'm asking is, do you know if where
 20 they're planning now, does it entail that same area?
 21 **A. I don't know.**
 22 Q. You don't know one way or the other?
 23 **A. No.**
 24 Q. Okay. In 2016 when they came before the Board,
 25 they didn't get a permit, did they?

1 whole and they were doing a "North" project and a
 2 "South" project?
 3 **A. Yes.**
 4 Q. Is that kind of the terminology that you used?
 5 **A. Yes.**
 6 Q. So from my review of the record, it looks like
 7 Invenergy submitted their applications for special
 8 exception permits to the zoning officer in December of
 9 2017. Does that sound right?
 10 **A. That sounds right.**
 11 Q. And here in front of you in these four binders
 12 is one exhibit, it's Exhibit 2, and these are documents
 13 that were produced by your attorney in this litigation.
 14 If you look here at the first page of Exhibit 2,
 15 basically, a letter from Invenergy's counsel with the
 16 application fees, etc., and then behind that page are
 17 where the applications begin.
 18 **A. Yes.**
 19 Q. So what I've done is I've gone through in
 20 Exhibit 2 and separated the applications out the best I
 21 could into a "North" application and a "South"
 22 application. So we have the two projects right here.
 23 **A. Okay.**
 24 Q. Did you receive these applications before the
 25 hearing?

1 **A. Yes.**
 2 Q. And how did you receive them?
 3 **A. I had to stop in the zoning office and pick up**
 4 **a hard copy of them.**
 5 Q. So there was a hard copy provided to you from
 6 the zoning office?
 7 **A. Yes.**
 8 Q. And was it about the same amount of paper that
 9 you're looking at here?
 10 **A. Close. I got two of them at home.**
 11 Q. Yeah, just -- Okay. Then did you take it home
 12 or what did you do with it?
 13 **A. Yes, I did.**
 14 Q. And did you read it?
 15 **A. Yes, I did.**
 16 Q. Did you read through both applications?
 17 **A. Yes, I did.**
 18 Q. Did you read through both applications in their
 19 entirety?
 20 **A. I tried.**
 21 Q. I'm assuming you didn't read every single word.
 22 I certainly wouldn't expect you to, but do you feel like
 23 you covered most of it?
 24 **A. Yes, I do.**
 25 Q. I'm going to have you turn to page 200 of

1 **meeting.**
 2 Q. About how many pages was the packet?
 3 **A. Probably two, three. It just had a list of**
 4 **what questions and stuff that should be brought up to**
 5 **the Board.**
 6 Q. You said two to three. Was that two to three
 7 pages or --
 8 **A. Yeah.**
 9 Q. And it had a list of questions that should be
 10 brought up to your fellow board members?
 11 **A. Yep, or ask wind energy.**
 12 Q. Aside from that two-to-three-page document from
 13 First District, did you receive anything else from
 14 First District before the hearing?
 15 **A. Not that I recall.**
 16 Q. Do you recall receiving a Staff Report before
 17 the hearing?
 18 **A. What do you mean by a Staff Report?**
 19 Q. I'm going to show you what has been marked as
 20 Exhibit 5. I'm going to show you starting on page 27.
 21 It says, Staff Report. Were you provided this document
 22 before the hearing?
 23 **A. Not that I recall.**
 24 Q. So you don't remember looking through this
 25 or --

1 Exhibit 2 here.
 2 **A. 200.**
 3 Q. Do you remember seeing Appendix F, copies of
 4 Memorandum of Easements with Landowners, a list of all
 5 the landowners who had easements for the project?
 6 **A. Yes, I do.**
 7 Q. Did you go through this list?
 8 **A. I probably read them. I didn't check out every**
 9 **one on a plat book.**
 10 Q. Right. But you would have read through the
 11 names to see who has all signed up?
 12 **A. If I -- I maybe went through them, but whether**
 13 **I acknowledged every name, I wouldn't say for sure.**
 14 Q. Tell me about First District. What does
 15 First District do?
 16 **A. First District is there to help us with our**
 17 **zoning ordinance and how we interpret it.**
 18 Q. Did First District provide you any help with
 19 respect to the Invenergy project?
 20 **A. They furnished me a folder for each, for the**
 21 **"North" and "South" as to how I should try to conduct**
 22 **the meeting.**
 23 Q. How did you get that packet that they
 24 furnished?
 25 **A. John Knight gave it to me the night of the**

1 **A. No, I do not.**
 2 Q. Okay. And then go to the page before that,
 3 page 26 of Exhibit 5, an e-mail from Todd Kays. Do you
 4 know Todd Kays is somebody who works for First District?
 5 **A. Yes.**
 6 Q. And the e-mail is to dczoning. Is that Jodi
 7 Theisen's e-mail?
 8 **A. Yes.**
 9 Q. And in the body of the e-mail it says, Hi, I've
 10 completed a review of the Deuel Harvest South
 11 Application. Attached you'll find five documents and
 12 then it lists the five documents, which is the Staff
 13 Report, we just kind of looked at, questions from the
 14 chair, Findings of Fact, letter of assurance, Exhibit A.
 15 I will now start on the "North" site. I am forwarding
 16 this to Gary. Please pass it on to John. Did you
 17 receive that e-mail?
 18 **A. I don't have an e-mail account.**
 19 Q. You don't have an e-mail account?
 20 **A. No, I don't.**
 21 Q. Okay. So you didn't receive that e-mail?
 22 **A. My wife has -- Some of it gets sent to my**
 23 **wife's e-mail account and then she brings it up and I**
 24 **read it.**
 25 Q. Do you know if that e-mail was sent to your

1 wife?
 2 **A. No, I don't.**
 3 Q. Okay. Does the zoning officer or other board
 4 members or anyone with the county communicate with you
 5 through e-mail via your wife's e-mail?
 6 **A. No. Just Jodi.**
 7 Q. So Jodi does send e-mails to your wife's
 8 account?
 9 **A. Yep.**
 10 Q. And since the litigation started, have had
 11 asked your wife or have you gone through and looked and
 12 collected all the e-mails in her e-mail account that are
 13 related to this Invenergy project?
 14 **A. No.**
 15 Q. Okay. I'm going to ask you after this
 16 deposition is over to go do that and then all the
 17 e-mails you can find that are related to this project,
 18 if you'd forward them to your attorney so that he can
 19 review them and then provide them to me.
 20 **A. They're probably not on her phone. I read**
 21 **them. She asks me if I want to keep these all, and I**
 22 **say nope, she deletes them.**
 23 Q. Okay. I would still like you just to look to
 24 see what e-mails are still there.
 25 **A. All right.**

1 after these depositions.
 2 **A. Okay.**
 3 Q. Did you write out the questions or was it given
 4 to you handwritten?
 5 **A. It was given to me.**
 6 Q. And John Knight gave it to you?
 7 **A. Right.**
 8 Q. Do you know who wrote out the questions?
 9 **A. No, I don't.**
 10 Q. So the Invenergy hearing, did you ask for
 11 questions that were written out during the hearing?
 12 **A. I didn't follow it exactly as I should have.**
 13 Q. When you say exactly as you should have, what
 14 do you mean?
 15 **A. I didn't exactly follow what -- You know, I**
 16 **didn't really have enough time to go through that, so.**
 17 Q. When you say you didn't have enough time, was
 18 there some -- Why didn't you have enough time?
 19 **A. It was presented to me right at the start of**
 20 **the meeting. And we, after the length of the meeting, I**
 21 **guess I kind of didn't quite follow it.**
 22 Q. So did you think you should have asked all
 23 those questions?
 24 **A. No, I don't.**
 25 Q. Okay. Did you ask all the questions last

1 Q. Going back to First District. Let's see if we
 2 can find that document two, questions from the chair
 3 document as an attachment here. I'm showing you
 4 page 39. Is that the document that John Knight gave you
 5 before the meeting?
 6 **A. My recall it wasn't printed like this. It was**
 7 **a written out one.**
 8 Q. It was in handwriting?
 9 **A. (Nods affirmatively.) Yep. This is the one I**
 10 **had last night.**
 11 Q. Oh, you had something similar to this last
 12 night?
 13 **A. I had this last night.**
 14 Q. But for the Invenergy projects, your memory is
 15 that you had one that was handwritten?
 16 **A. Right.**
 17 Q. Was it the same questions?
 18 **A. I would have to look at the other one. My**
 19 **memory doesn't recall if it was all the same questions.**
 20 Q. Do you have the handwritten copy?
 21 **A. I assume I do at home.**
 22 Q. Okay. And have you provided that to your
 23 attorney at all?
 24 **A. No.**
 25 Q. I'm going to ask you to give him that as well

1 night?
 2 **A. Yes, I did.**
 3 Q. But at the Invenergy meeting, because the
 4 meeting was going late or what you just said, you didn't
 5 get through all the questions. Is that fair?
 6 **A. That's fair. Yeah.**
 7 Q. Did any other board members get these questions
 8 last night?
 9 **A. No.**
 10 Q. During the Invenergy hearing, did any of the
 11 other board members get the handwritten questions?
 12 **A. No.**
 13 Q. Do you know if they got any other questions?
 14 **A. Not that I know of.**
 15 Q. How long has First District been doing work for
 16 Deuel County?
 17 **A. I guess I don't know. I mean, as long as I've**
 18 **been on the Board, they are right there for us.**
 19 Q. I'm sorry. Remind me again when you got on the
 20 Board.
 21 **A. 2002, I believe.**
 22 Q. 2002. And who decides whether or not to bring
 23 First District in for a project?
 24 **A. Jodi usually talks to them.**
 25 Q. And who decided to get First District involved

1 in the Inverenergy project to the extent that you know?
 2 **A. I guess it's mostly between Jodi and myself.**
 3 Q. Did you decide to reach out to First District
 4 for the Inverenergy project and ask for their help?
 5 **A. Jodi suggested it and I said it would be a good**
 6 **idea.**
 7 Q. Did you have any conversations with anyone from
 8 First District before the hearing in the Inverenergy
 9 project?
 10 **A. No.**
 11 Q. Did you have any discussions with any of your
 12 fellow board members before the January 22 hearing about
 13 the project?
 14 **A. Not that I can recollect.**
 15 Q. Did you discuss the merit of the applications
 16 that were submitted with any of your board members
 17 outside of any public meeting or hearing?
 18 **A. Not that I can remember.**
 19 Q. So as I understand what happened at the hearing
 20 was that Inverenergy kind of went first. Well, first I
 21 believe there was some discussion about conflicts and
 22 whether any board member should recuse themselves and
 23 then Inverenergy presented the project and then members of
 24 the public were allowed to speak, and they were limited
 25 to three minutes apiece. How was that process decided?

1 anyone beside from declaring it at the meeting?
 2 **A. I asked Jodi if she could time it on her phone.**
 3 Q. But in terms of the three minutes, did you ask
 4 for her input, whether she thought minutes was enough,
 5 not enough?
 6 **A. No. No. It was my decision.**
 7 Q. Did anyone suggest to you that you should use
 8 three minutes?
 9 **A. Nope.**
 10 Q. Did certain members of the public voice
 11 opposition to the three-minute limit during the hearing?
 12 **A. They may have. I don't recall.**
 13 Q. Do you recall if any members of the public were
 14 cut off from speaking once they hit three minutes?
 15 **A. Yes.**
 16 Q. So it was enforced?
 17 **A. Yes.**
 18 Q. And there were people that were cut off?
 19 **A. Yes.**
 20 Q. Do you recall if there were people who were
 21 opposed to the project who were cut off?
 22 **A. Yes.**
 23 Q. There were?
 24 **A. Yes.**
 25 Q. In Exhibit 5 in front of you there, can you

1 **A. I decided that process the afternoon before**
 2 **that we would limit it to three minutes.**
 3 Q. Okay. And what about the first part of the
 4 process, the discussion of the conflicts?
 5 **A. You mean with the board members?**
 6 Q. Yep.
 7 **A. I just thought it was a good idea that the**
 8 **public knew that I understood that none of the board**
 9 **members would have any conflict of interest.**
 10 Q. So was that your idea --
 11 **A. Yes, it --**
 12 Q. -- to have each board member --
 13 **A. Yes, it was.**
 14 Q. -- talk with the public.
 15 **A. (Nods affirmatively.)**
 16 Q. Did you discuss that idea with anyone before
 17 the board meeting?
 18 **A. No, I did not.**
 19 Q. And the three-minute time limit, did you come
 20 up with that?
 21 **A. That's what the county commissioners used when**
 22 **they had the hearing for the ordinance change. And I**
 23 **thought that was a good way to control the time limit of**
 24 **how long the meeting was going to run.**
 25 Q. Did you discuss that three-minute limit with

1 turn to page 79 for me, please.
 2 **A. Okay.**
 3 Q. Page 79 of Exhibit 5 looks to be an e-mail from
 4 dczoning, which I think we found out is Jodi's e-mail to
 5 a dkanengieter@hotmail.com. Do you recognize that
 6 e-mail address, dkanengieter@hotmail.com?
 7 **A. Yep --**
 8 **MR. PETERSON:** Pardon me, Counsel. What page
 9 are you on?
 10 **MR. ALMOND:** 79 of Exhibit 5, Exhibit E.
 11 **MR. PETERSON:** Okay. Thank you.
 12 **MR. ALMOND:** Let's go off quick.
 13 **(DISCUSSION OFF THE RECORD.)**
 14 Q. Do you recognize the e-mail address?
 15 **A. Yes, I did.**
 16 Q. And is that the e-mail address your wife uses
 17 for you?
 18 **A. Yes.**
 19 Q. Is there another e-mail address that she uses
 20 for you at all?
 21 **A. No.**
 22 Q. Did you review that e-mail that is page 79 when
 23 it was sent?
 24 **A. No, I don't recollect seeing any e-mail.**
 25 Q. So the one on the bottom where it says, Dear

1 Mr. Knight, I write on behalf of Deuel Harvest Wind
 2 Energy and Deuel Harvest Wind Energy South for the
 3 format for the BOA meeting on Monday, and then it goes
 4 on to propose a certain format. You don't recall
 5 reading that?
 6 **A. No, I don't. I don't always get to read all**
 7 **the e-mails. Sometimes -- She's not a phone buff so**
 8 **maybe e-mails might sit there four or five days**
 9 **before --**
 10 Q. I want you to take a look at what's been marked
 11 as Exhibit 4. And Exhibit 4 is an assortment of
 12 documents, some of which are what people have referred
 13 to as public comments that were submitted to the Board
 14 both before the hearing and during the hearing.
 15 Actually, I think there might be some in there that were
 16 submitted after the hearing. But that's what I want to
 17 talk with you about are the public comments that were
 18 submitted to the Board.
 19 **A. Okay.**
 20 Q. Did you receive any public comments -- When I
 21 say "public comments," I'm talking about e-mails,
 22 letters, reports, websites, anything that people who
 23 were interested in this project were sending because
 24 they wanted the Board to take a look at it. So did you
 25 receive any public comments before the hearing?

1 documentation of reports, e-mails, or not e-mails, but
 2 websites, whatever?
 3 **A. Yep.**
 4 Q. From Jodi as well?
 5 **A. (Nods affirmatively.) Yeah. Okay. I'm sorry.**
 6 Q. It's unusual. This is an unusual way to
 7 communicate so no need to apologize.
 8 But did Jodi give you anything in person, or
 9 did she always just forward e-mails to you with
 10 documents?
 11 **A. Some of it was e-mailed to me and some of the**
 12 **documents I'd ask her to print out and send hard copy to**
 13 **me.**
 14 Q. And the documents you asked her to print out
 15 and send hard copies, how did you learn that those
 16 documents existed?
 17 **A. Through Jodi.**
 18 Q. So she'd call you and say somebody dropped off
 19 something or tell me how did you find out.
 20 **A. She'd call me and say, okay, this person**
 21 **brought in, stuff that the board members to look at, and**
 22 **most of the time I would ask her to copy it and send me**
 23 **a copy.**
 24 Q. Again, take a look at page 2 here of Exhibit 4.
 25 This is an e-mail from Joe Blastick to Jodi that was

1 **A. Yes, I did.**
 2 Q. And how did you receive the public comments
 3 before the hearing?
 4 **A. I received quite a few letters. And my wife**
 5 **showed me some e-mails that got through Jodi, through**
 6 **the zoning officer.**
 7 Q. Did you receive letters directly, or did they
 8 also come through Jodi?
 9 **A. Most of them came through Jodi. I recall I got**
 10 **probably two or three directly from a person.**
 11 Q. And did you provide those letters to the other
 12 board members?
 13 **A. I don't recall if I did or not.**
 14 Q. Do you recall who the letters were from?
 15 **A. Not for sure.**
 16 Q. Do you still have those letters?
 17 **A. I do not know if I do or not.**
 18 Q. I'm going to ask you again, once we're done
 19 here if you'd go back and look for them and if you do
 20 find them, if you could just give them to Mr. Peterson.
 21 **A. Okay.**
 22 Q. So you received some letters directly and other
 23 letters from Jodi?
 24 **A. Yep.**
 25 Q. Right? And you received additional

1 sent on January 19, 2018. Any recollection of whether
 2 or not that e-mail was forwarded to your e-mail account
 3 or your wife's e-mail account?
 4 **A. No, I don't.**
 5 Q. Do you recall reading that e-mail at any point
 6 in time?
 7 **A. No, I don't.**
 8 Q. And then the e-mail has several attachments
 9 there, which are behind, the next page is there. That's
 10 one attachment there. That's a letter from
 11 Mr. Blastick. Any recollection of reading that letter?
 12 **A. Give me a minute. I believe Jodi sent me this**
 13 **one in hard copy.**
 14 Q. And then the letter on page 5 there of
 15 Exhibit 4 on the very bottom references six documents
 16 that he attached via e-mail, which are then attached to
 17 the back of that letter. If you want to flip to the
 18 next page and look at the first one about low frequency
 19 noise and infrasound. Do you believe Jodi gave you all
 20 the attachments to that letter, too, in hard copy?
 21 **A. No, I don't think so.**
 22 Q. Do you know if you received those documents at
 23 all?
 24 **A. No, I don't recall receiving them.**
 25 Q. Okay. And then let's go to page 12 of that

1 exhibit entitled "Are Windmills Killing Ducks?" Any
 2 recollection of receiving that document?
 3 **A. No.**
 4 Q. Okay. Let's go to page 18. Any recollection
 5 of receiving that document?
 6 **A. Yes, I do.**
 7 Q. You do remember receiving that one?
 8 **A. Yeah.**
 9 Q. Go to page -- Well, let me ask you this first.
 10 My understanding is that people opposed to the Inverenergy
 11 project, a concern that they had expressed was that the
 12 project was going to decrease land values in the area.
 13 Do you recall people arguing that point?
 14 **A. Yes.**
 15 Q. Do you recall receiving any reports from any
 16 appraisers or real estate professionals about land
 17 values before the night of the hearing?
 18 **A. No.**
 19 Q. Why don't you go to page 305, please.
 20 **MR. PETERSON:** Of Exhibit 4.
 21 **A. (Complies.) 305?**
 22 Q. Did you receive this letter before the hearing?
 23 **A. I remember reading it.**
 24 Q. You do remember reading this letter. When you
 25 showed up to the hearing on January 22, how soon before

1 Q. Let's go to last night's hearing involving the
 2 Crowned Ridge project.
 3 **A. Okay.**
 4 Q. Did people of the public submit written
 5 comments during the hearing last night?
 6 **A. Yes, they did.**
 7 Q. Were you able to read through all of the
 8 comments submitted last night?
 9 **A. We didn't look at any of them.**
 10 Q. Why not?
 11 **A. We postponed the final vote 'til October 11 so**
 12 **the Board would have a chance to look at them.**
 13 Q. So let's go back to the Inverenergy hearing. The
 14 Board voted that night; correct?
 15 **A. Yes, we did.**
 16 Q. Did you believe that the Board had to vote that
 17 night?
 18 **A. I asked the Board what they wanted to do.**
 19 Q. My question was, did you believe the Board had
 20 to vote that night?
 21 **A. Myself, yes.**
 22 Q. So the Board voted the night of January 22 to
 23 approve the permit; correct?
 24 **A. Yes.**
 25 Q. And then at some point Findings of Fact were

1 the start time did you show up?
 2 **A. Half hour, 45 minutes. I helped set chairs up.**
 3 Q. And were there public comments that were
 4 printed off by Jodi or somebody for all the board
 5 members to look at when you got there that evening?
 6 **A. Yes, there was.**
 7 Q. There were stacks of --
 8 **A. Well, there was some. I didn't say stacks, but**
 9 **there was some stuff.**
 10 Q. Did each board member have his own copy of
 11 those public comments?
 12 **A. Best of my knowledge, they did.**
 13 Q. Do you know, was it Jodi who printed off and --
 14 **A. Yes.**
 15 Q. Approximately how many pages of documents were
 16 there?
 17 **A. I can't recall.**
 18 Q. As I understand it, members of the public also
 19 gave additional public comments in writing during the
 20 hearing; right?
 21 **A. Yes.**
 22 Q. And did you have the opportunity to read
 23 through all the public comments that were submitted in
 24 writing during the hearing?
 25 **A. No.**

1 written up?
 2 **A. Yes.**
 3 Q. Were you involved with the actual writing of
 4 the Findings of Fact?
 5 **A. Yes.**
 6 Q. When did you do that?
 7 **A. At a meeting in the commissioner's room.**
 8 **Another zoning board meeting.**
 9 Q. Who was at that meeting?
 10 **A. The Board and First District.**
 11 Q. Was it a public meeting?
 12 **A. It's always open to the public.**
 13 Q. Do you know the date of that meeting?
 14 **A. No, I don't.**
 15 Q. Are there minutes of it? Were there minutes
 16 taken?
 17 **A. Yes, there would have to be.**
 18 Q. Outside of that meeting, were you involved in
 19 actually writing up the Findings of Fact?
 20 **A. No.**
 21 Q. So during that meeting did you guys start from
 22 scratch, or did you have something to go from? Were
 23 they already done at the meeting and presented to the
 24 Board?
 25 **A. No, they were not. No.**

1 Q. Okay. Do you know who drafted up the first
 2 draft of the findings for purposes of the discussion
 3 amongst the Board?
 4 **A. First District helped us with it.**
 5 Q. First District helped draft up the Findings of
 6 Fact. Was First District at the January 22 hearing?
 7 **A. I don't know for sure if they were or not.**
 8 Q. Who from First District helped draft the
 9 Findings of Fact, if you know?
 10 **A. Oh, I think Luke was his first name.**
 11 Q. Muller?
 12 **A. Possible. I can't recall his last name.**
 13 Q. It's my understanding the Deuel County Zoning
 14 Ordinances were recently amended or changed a few years
 15 ago as it related to wind energy ordinances.
 16 **A. Yes.**
 17 Q. And the county commission is the body who makes
 18 those changes; right?
 19 **A. They finalize them, yes.**
 20 Q. And they finalize the changes, and then after
 21 that there was a petition for referendum that was being
 22 circulated around Deuel County?
 23 **A. Yes.**
 24 Q. Does that sound familiar to you?
 25 **A. Yep.**

1 with the petition for referendum. And if you flip the
 2 page to 14, there is an answer provided. And as relates
 3 to you, it says the other board members cannot recall
 4 any involvement with the petition for referendum. And
 5 then if you go down to the answer to page -- or Question
 6 No. 29, it references Board Member Dennis Kanengieter's
 7 wife Deborah signed the petition.
 8 **A. Yep.**
 9 Q. Do you see that?
 10 **A. Yep.**
 11 Q. You reviewed these answers before they got sent
 12 out; right?
 13 **A. You talking to me?**
 14 Q. Yeah. I mean, you signed for these; right?
 15 I'll help you out, if you go to page 19.
 16 **A. Yes, I did.**
 17 **(DEPOSITION EXHIBIT 18 MARKED.)**
 18 **By MR. ALMOND:**
 19 Q. I'm handing you what has been marked as
 20 Exhibit 18. Is that a County Referendum Petition?
 21 **A. Yes, it is.**
 22 Q. Is that referendum petition what is related to
 23 that wind ordinance that was being referred?
 24 **A. Yep. Looks like I signed it.**
 25 Q. Is that your signature there on No. 7?

1 Q. Was the petition for referendum that was
 2 circulating, was the goal of that to change the
 3 ordinances to make it easier for wind development in
 4 Deuel County?
 5 **A. My understanding was to deny the new ordinance**
 6 **and then go back to the old ordinance.**
 7 Q. And the old ordinance was more favorable to
 8 wind developers; right?
 9 **A. Yes.**
 10 Q. Were you involved at all with that referendum
 11 petition process?
 12 **A. No. Not that I recall.**
 13 Q. Did you sign a petition?
 14 **A. If there was one presented to me, but I don't**
 15 **remember if I did or not.**
 16 Q. And you were asked about it -- I'm going to
 17 hand you Exhibit 8.
 18 **A. Okay.**
 19 Q. And if you could, turn to Interrogatory
 20 Response No. 28 for me, please. It's on page 13.
 21 **A. Okay.**
 22 Q. At the bottom of page 13, see the number 28
 23 there?
 24 **A. Yep.**
 25 Q. It asks to describe all involvement you had

1 **A. Yes, it is.**
 2 Q. If you go down to the bottom there, it
 3 identifies the name of the circulator. Is that your
 4 wife's name there?
 5 **A. Yes, it is.**
 6 Q. So now that you've read that, do you remember
 7 that she was circulating petitions?
 8 **A. She took some out. I didn't realize she had**
 9 **circulated them.**
 10 Q. And I'm curious whether that printed name of
 11 the circulator to the left there it said Dennis and it's
 12 crossed out. Any idea who wrote that Dennis or how it
 13 got there?
 14 **A. Looks like my wife's handwriting.**
 15 Q. The Dennis looks like it's your wife's
 16 handwriting?
 17 **A. Yep.**
 18 Q. Did you ask anyone to sign any petitions?
 19 **A. Nope.**
 20 Q. Okay. Back in -- Well, let's look at
 21 Exhibit 4, which is right in front of you. If you could
 22 turn to page 310 for me, please.
 23 **A. All right.**
 24 Q. And that is John Homan's application for a
 25 special exception permit for a runway; correct?

1 **A. Yes.**
 2 Q. And the bottom there it looks like it was filed
 3 with the zoning officer on March 15 of 2017. Do you see
 4 that?
 5 **A. Yep. Yes.**
 6 Q. Let me ask you this. Before Mr. Homan applied
 7 for a runway permit, had you ever considered a runway
 8 permit while sitting on the Board?
 9 **A. If I recall there was one maybe by Estelline**
 10 **that a guy did aerial spraying off of.**
 11 Q. Any idea when that would have --
 12 **A. No, I don't.**
 13 Q. Do you remember who was applying for it?
 14 **A. No, I really don't.**
 15 Q. It was aerial spraying down by Estelline?
 16 **A. That's my -- That's what I recall.**
 17 Q. And they were replying for a runway permit?
 18 **A. (Nods affirmatively.)**
 19 Q. Right?
 20 **A. Yeah.**
 21 Q. Okay. During that permit proceeding, did the
 22 Board request from the applicant a letter of assurance?
 23 **A. I don't recall if we did or not.**
 24 Q. Was that, the Estelline proceeding, was it
 25 approximately five years ago? Ten years ago? Any

1 Q. I'm going to show you what has been marked as
 2 Exhibit 11. I'll represent that those are the Board
 3 meeting minutes from their April 2017 meeting. If you
 4 go to paragraph 10.
 5 **A. (Complies.)**
 6 Q. Paragraph 10 is the part of the meeting minutes
 7 that relates to Mr. Homan's special exception permit;
 8 correct?
 9 **A. Yes.**
 10 Q. And then if you go to the last page there, or
 11 paragraph 10 carries over, at the bottom it looks like
 12 the Board ultimately tabled the consideration of a
 13 special exception permit until it could get more
 14 information about the setbacks from wind towers from an
 15 airstrip. Do you see where it says that?
 16 **A. Give me a minute. Yes, I do.**
 17 Q. Okay. We've already covered that there weren't
 18 any wind towers around the area, and there weren't any
 19 applications in for wind towers. So I just want you to
 20 explain to me why the Board needed to get more
 21 information about the setbacks for wind towers?
 22 **A. Well, it's stated in here for wind towers, but**
 23 **I think the Board members were more wondering what the**
 24 **restrictions were for an approach and an exit from an**
 25 **airstrip as to how far out that went. There was a**

1 estimate in terms of time?
 2 **A. I'd say close to ten years ago probably.**
 3 Q. Ten years ago. Going back to Mr. Homan's
 4 application, did John Knight recuse himself from
 5 advising the Board were respect to that application?
 6 **A. Yep. Yes.**
 7 Q. What was your understanding of why he recused
 8 himself?
 9 **A. One of the other landowners close to it was one**
 10 **of his clients is what I understood.**
 11 Q. Do you know the name of that individual?
 12 **A. Darold Hunt, I would assume. I don't know for**
 13 **sure.**
 14 Q. Does Darold Hunt live close to where the runway
 15 was going, or why do you assume it was Darold Hunt, I
 16 guess?
 17 **A. Because he's got land adjoining theirs.**
 18 Q. Okay. So Mr. Homan filed his special exception
 19 permit in March of 2017. At that time there weren't any
 20 wind towers around his property, were there?
 21 **A. No.**
 22 Q. There was no application in front of the Board
 23 asking for any wind towers to be put in around that
 24 property, were there?
 25 **A. No.**

1 **couple board members that wanted to know more**
 2 **information on flight pattern, is what I'm getting at.**
 3 Q. How about you? Did you want more information?
 4 **A. It's always good to have more information.**
 5 Q. Were you concerned about setbacks from wind
 6 towers at the time?
 7 **A. Not at the time. After the Board members**
 8 **brought that up, I was more concerned about what, you**
 9 **know, to know what the flight pattern and stuff was for**
 10 **an airstrip.**
 11 Q. So at this time you weren't concerned about
 12 wind tower setbacks?
 13 **A. Not really, no.**
 14 Q. How about any time after this, because I
 15 understand Mr. Homan's special exception permit was
 16 considered over various board meetings.
 17 **A. Yes, it was.**
 18 Q. Did you eventually become concerned about wind
 19 towers?
 20 **A. Wind towers would have probably been in the**
 21 **back of my head, but trying to follow what the ordinance**
 22 **said is what I try to do and what I try to get the Board**
 23 **members to do.**
 24 Q. And what do the ordinances say about runways
 25 and setbacks?

1 **A. I would have to get the book out. I can't**
 2 **recall off the top of my head.**
 3 Q. I'm handing you what has been marked as
 4 Exhibit 1, which is a copy of the Deuel County
 5 Zoning Ordinances.
 6 **A. Do you remember what section it is in so I**
 7 **don't have to page through it?**
 8 Q. What section are you looking for?
 9 **A. Private airstrips.**
 10 Q. If you turn to page 42, there is a list of
 11 special exceptions and number one is airports and
 12 airstrips.
 13 **A. Okay.**
 14 Q. And that's the only place in the ordinance that
 15 the word *airstrip* appears according to my Control F
 16 feature on my laptop.
 17 **A. I won't argue then.**
 18 Q. So you said you were concerned about what the
 19 ordinances said with respect to setbacks, and I'm just
 20 wondering what do the ordinances say with respect to
 21 setbacks as it relates to airstrips.
 22 **A. Well, there is nothing in the ordinance. I**
 23 **guess I misunderstood that.**
 24 Q. So what you're saying is -- So from your point
 25 of view, you thought it was appropriate, or did you

1 Q. At some point Mr. Homan was asked to sign a
 2 letter of assurance; correct?
 3 **A. Yes, he was.**
 4 Q. Was it your idea to have him sign a letter of
 5 assurance?
 6 **A. I think it was the Board's decision, not just**
 7 **mine.**
 8 Q. Okay. I know ultimately the Board did agree
 9 that he needed to sign letter of assurance. What I'm
 10 curious about is which board member came up with that
 11 idea.
 12 **A. I would not try to pinpoint one board member.**
 13 **We discussed it as a board and that's what we came up**
 14 **with.**
 15 Q. Okay. Well, the April minutes don't say
 16 anything about a letter of assurance. And reading
 17 through your ordinances, I didn't find anything about
 18 airstrips and how they require a letter of assurance.
 19 So at some point somebody thought we need or we should
 20 get a letter of assurance. I'm curious as to who came
 21 up with that idea first.
 22 **A. Like I just told you. We discussed it at the**
 23 **board meeting. I don't know for sure if one more than**
 24 **the other one was for it. I'm not going to pin that on**
 25 **one board member.**

1 think it was appropriate to table his permit as of
 2 April 2017?
 3 **A. Yes, I did.**
 4 Q. For your purposes, it was because you wanted to
 5 follow the ordinances?
 6 **A. That, and I had a couple board members that**
 7 **wanted to research the flight patterns and stuff.**
 8 Q. Outside of the ordinances, though?
 9 **A. Yeah.**
 10 Q. Okay. Because you guys could have looked at
 11 the ordinances that day or the next day and looked to
 12 see what setbacks exist; right?
 13 **A. Yeah.**
 14 Q. Did you?
 15 **A. You mean for the airstrip?**
 16 Q. Yeah.
 17 **A. I'm not following you.**
 18 Q. Yes, for the airstrip. Did you guys ever look
 19 in the ordinances to see if there were any setbacks for
 20 airstrips?
 21 **A. I assume we did and didn't find any.**
 22 Q. At that first, or at that meeting in April of
 23 2017, did the notion of a letter of assurance come up?
 24 **A. I don't recall if it came up on the first**
 25 **meeting or not.**

1 Q. And that's fair. Did you come up with the idea
 2 for a letter of assurance on your own?
 3 **A. I just told you. It was a board, all the Board**
 4 **members. Not just me.**
 5 Q. And I understand that ultimately the Board did
 6 agree that a letter of assurance was necessary?
 7 **A. Yes.**
 8 Q. But I'm wondering, are you the Board member who
 9 first thought, hey, let's talk about a letter of
 10 assurance and whether or not it's appropriate for this
 11 situation?
 12 **MR. PETERSON:** Objection. Asked and answered
 13 several times.
 14 **A. I just told you. It was a board decision. I'm**
 15 **not pinning that on one person.**
 16 Q. Now I need to know if you're not pinning it on
 17 one person because you don't want to or because you
 18 can't.
 19 **A. I can't.**
 20 Q. Okay. So you don't know I guess who?
 21 **A. Listen, I can't and I don't want to. I respect**
 22 **my board members.**
 23 Q. Just so we're crystal clear, you can't answer
 24 that question because you don't remember or you don't
 25 have the knowledge; right?

1 **A. Both. I maybe can't remember for sure, but**
 2 **like I said, I'm not going to pin any board member. I'm**
 3 **going to stick with that statement.**
 4 **MR. ALMOND:** Can you instruct your client to
 5 answer my question to the extent that he's capable of
 6 answering them?
 7 **MR. PETERSON:** I think that he says that he
 8 can't remember with certainty, and I think that's his
 9 answer.
 10 **By MR. ALMOND:**
 11 Q. Is there some -- Do you have a guess who it
 12 was?
 13 **MS. AGRIMONTI:** Objection. A guess,
 14 speculation.
 15 **A. No.**
 16 Q. Can you turn to page 331 of Exhibit 4 for me,
 17 please.
 18 **A. (Complies.)**
 19 **MS. AGRIMONTI:** Mr. Almond, we've been going
 20 for about an hour and a half. Do you have an estimate
 21 of any time that might be an appropriate time for a
 22 five-minute break?
 23 **MR. ALMOND:** Let's go off.
 24 **(DISCUSSION OFF THE RECORD.)**
 25 Q. Let's go back on and push through this.

1 **A. I would have to say yes.**
 2 Q. Okay. Go to page 335 for me, please.
 3 **A. (Complies.)**
 4 Q. You can stop. I'm not going to ask you any
 5 questions about that page. I'm handing you what has
 6 been -- Turn to 346, please, in Exhibit 4.
 7 **A. (Complies.)**
 8 Q. I'll represent to you that this is a letter
 9 that John Homan sent to the Deuel County Commission.
 10 Third page has John Homan's signature in print, I guess.
 11 It's not actually signed by him.
 12 **A. Yeah.**
 13 Q. If you go back to page 1, or actually page 346.
 14 **A. Yeah.**
 15 Q. If you go to the third paragraph, Mr. Homan
 16 writes: I attended the April zoning board meeting to
 17 apply for the permit in person. The very first question
 18 I received from the Board before any question about
 19 airports or landing strips was from Mr. Kanengieter, and
 20 it was, quote, How is this going affect wind towers?
 21 End quote.
 22 Do you disagree with Mr. Homan's summary of
 23 what took place at that April board meeting?
 24 **A. I don't recall if I said that or not.**
 25 Q. Okay. So you don't agree or disagree?

1 Looking at page 331 and 332 of Exhibit 4, did you
 2 receive that letter in or around, on or around June 9 of
 3 2017?
 4 **A. I don't remember if I received it, but it does**
 5 **look familiar when I read it.**
 6 Q. Okay. It's addressed to you; correct?
 7 **A. What, sir?**
 8 Q. It is addressed to you, the letter?
 9 **A. Yeah. To me as chairman of the Board.**
 10 Q. Then if you go to the second page there, the
 11 bottom paragraph where it says, Conclusion. And it
 12 says, Should the Board grant Mr. Homan's application,
 13 Invenergy respectfully requests that such approval
 14 specifically -- (Interruption by Reporter.)
 15 Should the board grant Mr. Homan's application
 16 Invenergy respectfully requests that such approval
 17 specifically state that it does not grant Mr. Homan any
 18 right to limit the uses on neighboring properties.
 19 Do you see where it says that?
 20 **A. Yes, I do.**
 21 Q. And this is talking effectively about a letter
 22 of assurance; right?
 23 **A. Yes.**
 24 Q. So is this where the idea of a letter of
 25 assurance came from now that you've read this?

1 **A. No.**
 2 Q. You don't remember?
 3 **A. I don't remember.**
 4 Q. Then if you go to the next paragraph there, it
 5 says, The conversation continued for over a half hour
 6 and the Board's questions and comments were only
 7 concerning wind towers and went so far as the Board
 8 telling me that they would not grant me the permit
 9 because in the future, some surrounding landowner may
 10 want to put up a wind tower on the adjacent property.
 11 Do you disagree with Mr. Homan's summary of
 12 what took place?
 13 **A. No. I don't.**
 14 Q. Go to page 2. The second paragraph there
 15 starts off, The June meeting was handled the same as the
 16 April meeting. Every question was about how the landing
 17 strip would affect surrounding wind towers.
 18 Is that a fair categorization of that June
 19 meeting by Mr. Homan?
 20 **A. I don't think it was the fact about the wind**
 21 **towers. I think it was more the fact about his air**
 22 **rights and the neighbors' air rights.**
 23 Q. I'm going to hand you what has been marked as
 24 Exhibit 13. Do you recall ever receiving that e-mail
 25 before today?

<p>MR. ALMOND: [6] 40/9 40/11 61/3 61/22 65/2 65/6</p> <p>MR. PETERSON: [9] 40/7 40/10 45/19 60/11 61/6 65/9 65/16 65/19 65/21</p> <p>MS. AGRIMONTI: [6] 13/2 13/4 25/5 61/12 61/18 65/4</p> <p>THE REPORTER: [2] 21/24 22/1</p> <p>THE WITNESS: [5] 65/8 65/15 65/18 65/20 65/22</p>	<p>2:43 [1] 65/24</p> <p>3</p> <p>305 [2] 45/19 45/21</p> <p>310 [1] 52/22</p> <p>331 [2] 61/16 62/1</p> <p>332 [1] 62/1</p> <p>335 [1] 63/2</p> <p>346 [2] 63/6 63/13</p> <p>39 [1] 34/4</p> <p>4</p> <p>42 [1] 57/10</p> <p>45 [1] 46/2</p> <p>48 [1] 20/24</p> <p>5</p> <p>5th [1] 25/3</p> <p>7</p> <p>79 [4] 40/1 40/3 40/10 40/22</p>	<p>49/15 53/25 53/25 54/2 54/3</p> <p>agree [5] 14/5 14/9 59/8 60/6 63/25</p> <p>agreed [2] 14/6 21/2</p> <p>agreement [17] 13/13 13/14 13/17 19/5 19/10 19/20 20/13 21/10 21/14 21/15 21/16 21/18 25/11 25/12 25/15 25/19 25/22</p> <p>agreements [3] 9/11 9/13 10/4</p> <p>ahead [1] 65/4</p> <p>air [2] 64/21 64/22</p> <p>airports [2] 57/11 63/19</p> <p>airstrip [6] 55/15 55/25 56/10 57/15 58/15 58/18</p> <p>airstrips [5] 57/9 57/12 57/21 58/20 59/18</p> <p>Alice [1] 5/16</p> <p>Alice Kanengieter [1] 5/16</p> <p>allow [2] 18/6 18/13</p> <p>allowed [1] 37/24</p> <p>Almond [1] 61/19</p> <p>also [5] 8/14 8/16 12/3 42/8 46/18</p> <p>am [2] 10/11 32/15</p> <p>amended [1] 49/14</p> <p>amongst [1] 49/3</p> <p>amount [1] 29/8</p> <p>answer [7] 11/24 12/3 51/2 51/5 60/23 61/5 61/9</p> <p>answered [1] 60/12</p> <p>answering [1] 61/6</p> <p>answers [1] 51/11</p> <p>apiece [1] 37/25</p> <p>apologize [1] 43/7</p> <p>appears [1] 57/15</p> <p>Appendix [1] 30/3</p> <p>Appendix F [1] 30/3</p> <p>applicant [1] 53/22</p> <p>application [13] 18/22 18/24 18/25 28/16 28/21 28/22 32/11 52/24 54/4 54/5 54/22 62/12 62/15</p> <p>applications [8] 28/7 28/17 28/20 28/24 29/16 29/18 37/15 55/19</p> <p>applied [2] 15/19</p>	<p>53/6</p> <p>apply [1] 63/17</p> <p>applying [1] 53/13</p> <p>appraisers [1] 45/16</p> <p>approach [2] 23/17 55/24</p> <p>approached [7] 17/12 17/21 17/24 18/4 18/5 27/2 27/4</p> <p>appropriate [5] 11/12 57/25 58/1 60/10 61/21</p> <p>approval [2] 62/13 62/16</p> <p>approve [2] 18/23 47/23</p> <p>approximately [2] 46/15 53/25</p> <p>April [7] 55/3 58/2 58/22 59/15 63/16 63/23 64/16</p> <p>April 2017 [2] 55/3 58/2</p> <p>area [6] 24/3 26/8 26/16 26/20 45/12 55/18</p> <p>argue [1] 57/17</p> <p>arguing [1] 45/13</p> <p>aside [3] 12/19 21/14 31/12</p> <p>asks [2] 33/21 50/25</p> <p>aspect [1] 8/10</p> <p>assortment [2] 14/16 41/11</p> <p>assume [8] 18/2 19/16 21/9 25/15 34/21 54/12 54/15 58/21</p> <p>assumed [1] 23/4</p> <p>assuming [1] 29/21</p> <p>assurance [14] 32/14 53/22 58/23 59/2 59/5 59/9 59/16 59/18 59/20 60/2 60/6 60/10 62/22 62/25</p> <p>attached [3] 32/11 44/16 44/16</p> <p>attachment [2] 34/3 44/10</p> <p>attachments [2] 44/8 44/20</p> <p>attended [1] 63/16</p> <p>attorney [4] 15/14 28/13 33/18 34/23</p> <p>August [4] 24/14 24/21 24/23 25/8</p> <p>August 15 [1] 24/14</p> <p>away [1] 9/25</p>	<p>B</p> <p>base [1] 19/22</p> <p>basically [2] 20/17 28/15</p> <p>begin [1] 28/17</p> <p>beginning [1] 24/18</p> <p>behalf [6] 23/17 23/20 23/24 23/25 24/4 41/1</p> <p>below [1] 25/2</p> <p>Bert [2] 9/4 9/8</p> <p>Bert's [1] 9/7</p> <p>beside [1] 39/1</p> <p>beyond [1] 25/20</p> <p>binders [1] 28/11</p> <p>Blastick [2] 43/25 44/11</p> <p>BOA [1] 41/3</p> <p>board [89]</p> <p>Board's [2] 59/6 64/6</p> <p>Bob [1] 6/15</p> <p>Bobbi [1] 6/15</p> <p>body [2] 32/9 49/17</p> <p>book [2] 30/9 57/1</p> <p>both [4] 29/16 29/18 41/14 61/1</p> <p>bottom [8] 24/20 40/25 44/15 50/22 52/2 53/2 55/11 62/11</p> <p>Boy [2] 11/16 21/19</p> <p>Brandt [3] 7/11 7/13 12/17</p> <p>bring [1] 36/22</p> <p>brings [1] 32/23</p> <p>brother [3] 7/5 7/18 9/7</p> <p>brought [4] 31/4 31/10 43/21 56/8</p> <p>buff [1] 41/7</p> <p>building [2] 11/4 11/13</p> <p>built [2] 16/24 17/1</p>
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