

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :SS
 2 COUNTY OF DEUEL) THIRD JUDICIAL CIRCUIT

3 19CIV18-000019

4 GEORGE HOLBORN, RUBY HOLBORN,)
 JOHN HOMAN, TERESA HOMAN, VICKI)
 5 HINDERS, STACEY HINDERS, RICK)
 KOLBECK, JENNIFER KOLBECK,)
 6 WILLIAM STONE, FAY STONE, HEATH)
 STONE, KATIE STONE, and STEVEN)
 OVERBY,)

7 Petitioners,)

8 vs.)

9 DEUEL COUNTY BOARD OF)
 10 ADJUSTMENT, DEUEL HARVEST WIND)
 ENERGY LLC, and DEUEL HARVEST)
 11 WIND ENERGY SOUTH LLC,)

12 Respondents.)

13
14 DEPOSITION OF DENNIS L. KANENGIETER,

15 taken before NANCY McCLANAHAN, court reporter and
16 notary public within and for the County of Codington,
State of South Dakota.

17 DEUEL COUNTY COURTHOUSE

18 Jury Room
19 408 Fourth Street West
Clear Lake, South Dakota

20 September 21, 2018

21 1:02 P.M.

22 Nancy McClanahan
23 Reporter/RPR, RMR

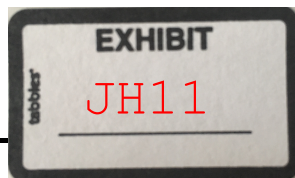
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25

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appearing personally at the deposition.

STIPULATION

13
14 **IT IS STIPULATED** by and between counsel for the
15 parties hereto that the DEPOSITION OF **DENNIS L.**
16 **KANENGIETER**, may be taken at this time and place before
17 NANCY McCLANAHAN, a court reporter and a notary public
18 in and for the County of Codington, State of South
19 Dakota, for the purpose of discovery or for use at trial
20 or for each of said purposes; that said deposition is
21 taken in accordance with the applicable statutes and
22 rules of civil procedure and taken pursuant to written
23 notice; and that counsel waive reading and signature of
24 the transcript by the deponent. It is further noted
25 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 **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 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 **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 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. 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 **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 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 **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 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 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 **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 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. 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 **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 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 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 **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 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 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 **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 **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 dc zoning. 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 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 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 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 Invenergy 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 Invenergy 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 Invenergy
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 Invenergy 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 Invenergy 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 **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 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 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 **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 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 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 Invenergy
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 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 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 Invenergy 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 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 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 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 **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 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 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 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 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. 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 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 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. 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 **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?

1 **A.** **No. I don't. Doesn't mean that I didn't. I**
2 **don't recall it.**

3 **MR. ALMOND:** I'm pretty much done, but if you
4 have some, why don't we go ahead.

5 **MS. AGRIMONTI:** Actually, I don't have any
6 questions.

7 **MR. ALMOND:** I don't have any other questions
8 for you, Dennis.

9 **THE WITNESS:** All right.

10 **MR. PETERSON:** Dennis, you have the right to
11 the read the transcript and correct any errors that
12 you perceive, or you can waive that reading and rely
13 upon the court reporter to get it correctly. I don't
14 care which one you do, but you need to indicate on the
15 record what your preference is.

16 **THE WITNESS:** You're saying that --

17 **MR. PETERSON:** You can either read the
18 transcript --

19 **THE WITNESS:** Or go by what she has?

20 **MR. PETERSON:** Or go by what she's got down.

21 **THE WITNESS:** I trust her.

22 **MR. PETERSON:** Okay. So you'll waive?

23 **THE WITNESS:** Yes, I will.

24 **(DEPOSITION CONCLUDED AT 2:43 P.M.)**

25

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF CODINGTON)

CERTIFICATE

3 BE IT KNOWN that the foregoing deposition was
4 taken before me, NANCY McCLANAHAN, a court reporter and
5 a notary public in and for the County of Codington,
6 State of South Dakota; that the deponent, DENNIS L.
7 KANENGIETER, before testifying was duly sworn by me to
8 testify to the whole truth; that the questions
9 propounded to the witness, the answers of the witness
10 thereto, and any objections or statements of counsel
11 were taken down by me stenographically and thereafter
12 typewritten through computerized transcription under my
13 direction; that the witness has waived reading and
14 signature of the deposition; and that the foregoing 5 -
15 65 pages are a true and correct transcript of all the
16 proceedings had upon the taking of said deposition, all
17 done to the best of my skill and ability.

11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney or counsel of any of the parties,
13 or am I a relative or employee of such attorney or
14 counsel, or financially interested in the action.

15 DATED at Watertown, South Dakota, Codington
16 County, on this 26th day of October, 2018.

16 /s/ Nancy McClanahan

17 Nancy McClanahan, RPR/RMR/NP

18 Expires: 4/13/2023.

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