

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 MICHAEL DAHL,**

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

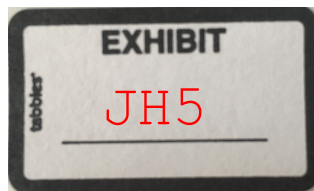
17 **DEUEL COUNTY COURTHOUSE**

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

20 **September 21, 2018**

21 10:49 A.M.

22 **Nancy McClanahan**
Reporter/RPR, RMR



23 **McCLANAHAN REPORTING**

24 1-800-813-0936

605-882-0936

P.O. Box 342

25 Watertown, SD 57201

APPEARANCES

1
2 Reece Almond, DAVENPORT, EVANS, HURWITZ &
3 SMITH, L.L.P., P. O. Box 1030, 206 W. 14th St., Sioux
4 Falls, SD 57101-1030, ralmond@dehs.com, appearing on
behalf of Plaintiffs. George Holborn, Ruby Holborn,
John Homan appearing personally at the deposition.

5 Christina L. Kilby, KILBY LAW, PLLC, 112
6 Geneva Boulevard, Burnsville, MN 55306,
ckilby@kilbylawmn.com, appearing on behalf of
Plaintiffs.

7 Zachary W. Peterson, RICHARDSON, WYLY, WISE,
8 SAUCK & HIEB, LLP, P.O. Box 1030, 1 Court Street,
Aberdeen, SD 57402, zpeterson@rwwsh.com, appearing on
behalf of Defendant Deuel County Board of Adjustment.

9
10 Lisa M. Agrimonti, FREDRIKSON & BYRON, P.A.,
11 200 South Sixth Street, Suite 4000, Minneapolis, MN
55402-1425, lagrimonti@fredlaw.com, appearing on behalf
of Defendants, Deuel Harvest Wind Energy LLC and Deuel
12 Harvest Wind Energy South LLC. Michael Svedeman
appearing personally at the deposition.

STIPULATION

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

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1 PROCEEDINGS

2 MICHAEL DAHL,

3 being first duly sworn, testified as follows:

4 EXAMINATION

5 By MR. ALMOND:

6 Q. Please state and spell your name for the court
7 reporter, please.

8 A. Middle name too? Michael Dahl.

9 THE REPORTER: D-A-H-L?

10 THE WITNESS: Yes.

11 Q. We're just going to dive right into it,
12 Mr. Dahl. What were your parents' names?

13 A. Vernon and Ione.

14 Q. And do you have siblings?

15 A. Yes, I do.

16 Q. What are your siblings' first and last names?

17 A. Do you want both the live and deceased or --

18 Q. Yes.

19 A. Julie Squires. Janice Selken, who is deceased.
20 David Dahl. Jeffrey Dahl, who is deceased. And
21 Christy Dahl.

22 Q. And children?

23 A. We have a son Aaron.

24 Q. Dahl?

25 A. Dahl. A-A-R-O-N.

1 Q. And does your son have a spouse?

2 **A. No.**

3 Q. Your other board members, Kevin DeBoer,
4 Dennis Kanengieter, Paul Brandt, and Steve Rhody. I'm
5 going to say some names and let me know whether they're
6 related to any of those people. James and
7 Jerome DeBoer. I believe those are Kevin DeBoer's
8 brothers. Do you know that?

9 **A. Am I related to them?**

10 Q. No. No. Do you know James and Jerome DeBoer?

11 **A. No, I don't.**

12 Q. Do you know that Kevin DeBoer has brothers
13 named James and Jerome DeBoer?

14 **A. Yeah, I've heard their names but I don't know
15 them.**

16 Q. Okay. Do you know who Justin and
17 Kristen Brandt are?

18 **A. No, I don't.**

19 Q. What about Jason and Teresa Kanengieter?

20 **A. No, I don't.**

21 Q. Diane and Joel Brandt?

22 **A. Yes, I know them.**

23 Q. Are they any relation to Paul Brandt?

24 **A. I believe they're brothers, Joel and Paul.**

25 Q. And Dennis Kanengieter, do you know who his

1 employer is?

2 **A. Yes, I do.**

3 Q. Who is that?

4 **A. Phil Rogness.**

5 Q. Is that Rogness Trucking?

6 **A. I believe so.**

7 Q. Aside from Phil Rogness, are there any other
8 Rognesses that work in the Rogness Trucking business
9 that you know of?

10 **A. I don't know.**

11 Q. Do you know Phil's wife's name?

12 **A. Hmm, I don't recall it, no.**

13 Q. All right. Now I want a list of every or any
14 agreement that you've entered into with a wind
15 investment company.

16 **A. Okay. It was Enxco.**

17 Q. How do you spell that?

18 **A. E-N-N-X-C-O? I'm not sure. And Iberdrola.**

19 Q. Iberdrola?

20 **A. (Nods affirmatively.) And it would have been**
21 **Invenergy.**

22 Q. Enxco, what type of agreement was that? Was it
23 a wind lease?

24 **A. It was a wind lease.**

25 Q. A lease agreement or easement or --

1 **A. Yeah, it was an easement.**

2 Q. When did you enter into that agreement?

3 **A. I don't recall what the dates or years were. A**
4 **long time ago.**

5 Q. Is that agreement --

6 **A. I think in the '80s maybe.**

7 Q. Is that agreement still in place or still
8 effective?

9 **A. No.**

10 Q. And when did that agreement terminate?

11 **A. Long -- I don't recall.**

12 Q. Several years ago?

13 **A. Several years ago.**

14 Q. Tell me about the Iberdrola. Was that also a
15 wind lease?

16 **A. Yes, it was.**

17 Q. Is that agreement still in place?

18 **A. No.**

19 Q. When did you enter into the Iberdrola
20 agreement?

21 **A. I don't recall the date. Probably --**

22 Q. Just give me a year, if you can.

23 **A. I would be guessing.**

24 Q. That's fine.

25 **A. 2006-ish.**

1 Q. And when did that agreement terminate?

2 **A. Five years later.**

3 Q. When you say it was five years later, explain
4 why you know it was five years later.

5 **A. Because they never did progress with their wind
6 farm. So it expires after five years.**

7 Q. So it was set to expire after five years if
8 there was no progress.

9 **A. No progress.**

10 Q. And then you mentioned Invenergy. Do you have
11 a lease agreement, or did you have a lease agreement
12 with Invenergy?

13 **A. Yes, I did.**

14 Q. And you gave that agreement to your attorney;
15 right?

16 **A. Uh-huh (Yes).**

17 Q. Yes?

18 **A. Yes.**

19 Q. Sorry. You've got to say yes or no because the
20 court reporter is taking down what we're saying.

21 **A. Yes.**

22 Q. And that's been produced in discovery so I've
23 seen it and read through it.

24 **A. (Nods affirmatively.)**

25 Q. And I can give it to you. That agreement is in

1 Exhibit 9, would have been marked as Exhibit 9 for
2 purposes of this deposition, and looks like you signed
3 and dated it and I'm looking at page 66. Is that your
4 signature there, Michael Dahl?

5 **A. Yes.**

6 Q. It looks like you would have signed this
7 January 13 of 2016?

8 **A. Yeah, that would, I assume, be right.**

9 Q. Sound about right to you?

10 **A. Yes.**

11 Q. January of 2016 is when you entered into your
12 wind lease with Invenergy. Tell me about how that came
13 to be.

14 **A. Well, they were asking for interested people to**
15 **come to their office if interested in signing up for**
16 **wind energy. Well, so I went down and they said, well,**
17 **we don't have a lot in that area but you can sign up and**
18 **we will go from there. Well, come to be, when they**
19 **decided where they were going to build their towers,**
20 **they said, we did not get enough area in your area, land**
21 **signed up, so they terminated it.**

22 Q. So --

23 **A. And I don't know if it was just me. I do know**
24 **we had other neighbors that had signed up with them, and**
25 **they said they would be terminated also.**

1 Q. So you actually went into Invenergy's office
2 because you wanted to sign up?

3 **A. I wanted to find out more about their --**

4 Q. So no one from Invenergy actually approached
5 you individually --

6 **A. No.**

7 Q. -- and asked you to sign up?

8 **A. After that they did, after they knew that I was**
9 **interested in signing up.**

10 Q. How did you know they were looking for people
11 to sign up?

12 **A. Just newspaper, their ads and word of mouth.**

13 Q. Where was their office at?

14 **A. On Highway 15 right in Clear Lake here.**

15 Q. Okay. Do you recall approximately when you
16 went into the office to find out more information?

17 **A. Probably, maybe six months before the signing**
18 **of a contract, I would say. I'm just guessing. I don't**
19 **remember. I didn't think those dates would be important**
20 **down the road.**

21 Q. I totally understand that. I'm not going to
22 try to hold you to any specific date, but. So you went
23 in to get more information from Invenergy. You didn't
24 sign anything that day?

25 **A. No, sir.**

1 Q. Then you left, and then did someone from
2 Invenergy reach out to you? Explain to me how you went
3 from going there to signing the agreement.

4 A. I received a phone call wanting to know if I
5 would meet with them for signing the -- you know, they
6 would consider my land for an easement, and just
7 wondered if I could meet at somewhere with them to sign
8 a contract, or an agreement, an easement.

9 Q. And did you end up meeting with someone to sign
10 it?

11 A. Yeah.

12 Q. Who did you meet with?

13 A. I don't recall the name. I don't.

14 Q. Who from Invenergy have you had discussions
15 with outside of hearings?

16 A. Outside of hearings?

17 Q. Board hearings, board meetings.

18 A. Board hearings.

19 Q. Meetings or hearings.

20 A. I would have to read through there to -- I
21 don't remember names. I don't remember a name.

22 Q. And looking at Exhibit 9, page 73, looks like a
23 letter from Invenergy to you dated -- What's the date on
24 there?

25 A. March 15, 2016.

1 Q. Enclosing you will find your \$3,095 development
2 term fees. Do you see that?

3 **A. Yes.**

4 Q. So did you get a payment for \$3,095 from
5 Invenergy?

6 **A. Yes, sir.**

7 Q. Did you cash that payment?

8 **A. Yes, sir.**

9 Q. Did you ever pay it back?

10 **A. No, sir.**

11 Q. Have you received any other money from
12 Invenergy or anyone affiliated with Invenergy?

13 **A. No, sir.**

14 Q. How about any gifts?

15 **A. I don't recall any.**

16 Q. No tickets to any games?

17 **A. No, sir. No.**

18 Q. No dinners?

19 **A. No, sir.**

20 Q. Okay. And then at some point, your wind lease
21 was terminated; right?

22 **A. Correct.**

23 Q. Tell me how that happened.

24 **A. Oh, it was an afternoon I received a call from
25 one of their representatives asking if they could meet**

1 with me. So we met at our house here in town, and he
2 stated he wouldn't elaborate over the phone, but when he
3 came to the house, he said we're going to terminate your
4 contract, because we do not have enough interest in your
5 area to extend the farm that far that direction.

6 Q. And I've seen the Notice of Release of Easement
7 and it's dated November of 2016. Does that sound about
8 right in terms of timing --

9 A. I think so, yeah.

10 Q. -- when the guy stopped over?

11 A. Yeah, I'd say so. Yeah.

12 Q. And one other thing, let's try not to talk over
13 one another, because it makes her job really hard when
14 we do that.

15 A. Okay.

16 Q. It's unusual because in normal conversation
17 people like to do that, because they anticipate what
18 we're going to be asking, but it's important that we try
19 not to do that, otherwise she's going to get mad at us.

20 Who is the individual, do you know the name of
21 the individual that you talked to about the Notice of
22 Easement Release?

23 A. I don't recall.

24 Q. Okay. When did you first get on the Board of
25 Adjustment?

1 **A. I don't recall that date, sir.**

2 Q. Was it before -- Were you on the Board at the
3 time you entered into your wind lease with Invenergy?

4 **A. Yes, sir.**

5 Q. Did you have any conversations with anyone
6 from Invenergy about the fact that you were on the
7 Board?

8 **A. No.**

9 Q. Have you ever had any conversations with anyone
10 from Invenergy about you being on the Board?

11 **A. I don't remember.**

12 Q. I'm asking, of course, outside of official
13 meetings. If you're sitting on the Board and someone
14 from Invenergy is there, obviously, they know you're on
15 the Board. But outside of board meetings or hearings,
16 do you remember if you've had any conversations with
17 anyone from Invenergy that related to you and your
18 position on the Board?

19 **A. No, sir. Not that I recall.**

20 Q. Did you ever discuss with your fellow board
21 members that you had entered into a wind lease with
22 Invenergy?

23 **A. Yes, I would have.**

24 Q. And when did -- How many times did you do it?

25 **A. I have no -- I don't recollect that amount. I**

1 **mean, I --**

2 Q. You said -- I guess, give me a general flair of
3 what those discussions would have looked like. Why
4 would you have brought it up? When would you have
5 brought it up?

6 **A. Well, I think as I recall, the first time that**
7 **it was probably brought up was during the Flying Cow**
8 **application in the Lake Cochrane area.**

9 Q. Is Flying Cow another wind farm that was being
10 proposed --

11 **A. Yes, sir.**

12 Q. -- or developed in Deuel County?

13 **A. Yes, sir.**

14 Q. Let's wait, if you could just wait for me to
15 finish my question. So this Flying Cow project was
16 being proposed, and at that time you believe you told
17 your fellow board members about your wind lease with
18 Invenergy?

19 **A. Yes, sir.**

20 Q. And why did you do that?

21 **A. I, if I may go back, I believe I told**
22 **John Knight that, that I had a contract with Invenergy.**
23 **And then at his -- He instructed us or informed us that**
24 **it would probably be best if I abstain from the voting**
25 **on that wind project.**

1 Q. So you talked to your board members. You let
2 them know that you --

3 **A. Yep. Let them know that I had a possible**
4 **conflict of interest with having a contract not with**
5 **Flying Cow, but with another company at that time.**

6 Q. Was that in 2017 when the Board considered the
7 Flying Cow?

8 **A. You'd have to look that up. I don't remember.**

9 Q. So because you had an agreement with Invenergy,
10 you thought it was appropriate to recuse from
11 considering the Flying Cow application; is that correct?

12 **A. That's correct.**

13 **MS. AGRIMONTI:** Could we just take a minute.
14 I would like to talk with Zach.

15 **(Brief recess.)**

16 **MS. AGRIMONTI:** Thank you.

17 **By MR. ALMOND:**

18 Q. Aside from recusing yourself with respect to
19 the Flying Cow matter, have you ever recused yourself
20 from any other wind-related issues that were being
21 decided by the Board?

22 **A. No, sir.**

23 Q. Are you aware of any other of your fellow board
24 members who have recused themselves from voting or
25 deciding on wind-related issues?

1 **A. No, not until last night.**

2 Q. And who recused himself last night?

3 **A. Paul Brandt.**

4 Q. And what was your understanding of the reason
5 why he recused himself?

6 **A. He had a contract with NextEra for a met tower.
7 That's what he said.**

8 Q. And is NextEra another wind developer?

9 **A. Yes, sir.**

10 Q. So that's Paul Brandt; right? Paul Brandt had
11 an agreement with another wind developer; right?

12 **A. Right. At which that, I might add, the met
13 tower was never erected, so.**

14 Q. But because of that agreement that Paul Brandt
15 had with another wind company, Paul Brandt recused
16 himself from a proceeding last night?

17 **A. Correct.**

18 Q. What was the proceeding last night for? Was it
19 for another wind farm; is that right?

20 **A. It was to listen to the presentations of both.
21 We did not vote on it, though, last night.**

22 Q. Okay. And was that the Crowned Ridge project?

23 **A. Correct.**

24 Q. And the public hearing was held last night;
25 right?

1 **A. Yes, sir.**

2 Q. You said you didn't vote on it. Tell me what
3 happened.

4 **A. Um, well, it became 10:00 o'clock, 10:30, and**
5 **all of the opponents of wind energy had brought a lot of**
6 **information to us we thought we should take a look at it**
7 **and read through, and so we just decided to postpone or**
8 **table the vote, for the time, for until October 11.**

9 Q. I'm going to show you what has been marked as
10 Exhibit 4, and these are documents that were provided by
11 the county in this litigation. Many of which were the
12 public comments that were submitted during the
13 Deuel Harvest or Invenergy project. Do you recall
14 receiving public comments during the Deuel Harvest
15 project?

16 **A. Yes.**

17 Q. Would you say the quantity of information that
18 you received -- I guess compare, let us know in terms of
19 comparison in terms of the quantity of information you
20 received as it relates to the Crowned Ridge project and
21 the Deuel Harvest project.

22 **A. I don't think I've got time to compare that.**

23 Q. Okay.

24 **A. You know, they were both you got information**
25 **and --**

1 Q. Were they pretty comparable in terms of the
2 quantity of information?

3 **A. In terms of the quantity? Probably more last**
4 **night.**

5 Q. Probably more last night?

6 **A. Yeah. (Nods affirmatively.)**

7 Q. And the county has all the written submissions
8 that were submitted for the Crowned Ridge project;
9 right?

10 **A. Yes. Last night, yeah.**

11 Q. What about the type of information and
12 arguments that were made last night? Can you give me
13 any arguments or information that was provided to you
14 last night that wasn't provided for the Invenergy
15 projects?

16 **A. I wouldn't -- I don't recall right now**
17 **without --**

18 Q. So nothing pops in your head about, oh, that
19 was something that I didn't hear in the Invenergy
20 project?

21 **A. Probably ice throws.**

22 Q. Ice throws?

23 **A. I guess, yeah. I don't recall too much being**
24 **said about that in past.**

25 Q. And I understand your testimony earlier was

1 that you got, you know, information from the public that
2 you wanted to consider. Was there any specific
3 information that the public provided that the Board
4 thought it needed to really look at, or was it just all
5 the information together?

6 **A. I believe there was some that stuck out more**
7 **than others. You know, some, a couple of things had**
8 **been brought up that we hadn't discussed in prior.**

9 Q. And what were those?

10 **A. The ice throw, I believe it was, that we had**
11 **discussed, and I don't know what the other board members**
12 **had. That was the one that I had.**

13 Q. Any other example that you had?

14 **A. Who was liable for ice throws.**

15 Q. Okay. Anything else for you?

16 **A. Oh, I had four or five questions. Basically, I**
17 **just wanted the NextEra people to explain to people**
18 **there what these answers were.**

19 Q. Tell me about, have you ever gone to any events
20 or meetings that Invenergy put on?

21 **A. No.**

22 Q. So I understand it, Invenergy held events for
23 landowners or potential landowners who were entering
24 into the easement agreements. You never went to any of
25 those events?

1 **A. No, sir, not that I recall.**

2 Q. I'm going to show you what has been marked as
3 Exhibit 10, and I'll represent to you that those are an
4 assortment of letters that Invenergy sent out to, it
5 appears, people in Deuel County. If you flip through
6 those, can you tell me if you received any of those
7 letters?

8 **A. Oh, I might have. I don't recall, though.**

9 Q. And there is more than one so just flip
10 through; and if you do recall actually receiving one,
11 let me know.

12 **A. (Complies.) No, I don't recall receiving**
13 **these.**

14 Q. You may have; you may not have.

15 **A. I may have; I may not have. I don't remember.**

16 Q. Your testimony is you never attended any events
17 hosted or sponsored by Invenergy?

18 **A. Not as I recall.**

19 Q. I want to talk a little bit more about the
20 Notice Release of Easement. What can I refer to that
21 as? Your release or termination --

22 **A. Termination.**

23 Q. Termination of your easement. I'm sorry if I
24 already asked you this, but do you remember who you
25 talked with about the termination of easement?

1 **A. No, I don't.**

2 Q. And the actual notice of the termination, how
3 did you receive that?

4 **A. You mean written or verbal or -- I mean, it was**
5 **handed to me and said, This is the --**

6 Q. I'm showing you Exhibit 9, starting on page 76.
7 My question is, how did you receive that document?

8 **A. It was handed to me across the table.**

9 Q. Okay. So it wasn't mailed to you or e-mailed
10 to you?

11 **A. No.**

12 Q. So is your understanding that your wind lease
13 with Invenergy is terminated?

14 **A. Is it my understanding?**

15 Q. Yes.

16 **A. Yeah.**

17 Q. And given that, do you believe you owe any
18 obligations to Invenergy?

19 **A. No, sir.**

20 Q. None whatsoever?

21 **A. No.**

22 Q. So the Invenergy project, I understand it was
23 two different special exception permits for two
24 different projects. Is that your understanding?

25 **A. Yes, sir.**

1 Q. And there was a "North" project and a "South"
2 project is what Mr. DeBoer referred to them as. Is that
3 how you view the projects?

4 **A. Yep.**

5 Q. How do you receive the applications?

6 **A. Application for the permit?**

7 Q. Yes.

8 **A. I would have met and it came in an envelope. I**
9 **don't recall exactly. All our stuff usually comes**
10 **mailed.**

11 Q. So you believe you received the two
12 applications for the two separate permits probably
13 through the mail?

14 **A. Yes.**

15 Q. In the four binders that I've just put in front
16 of you are the two applications that were submitted or
17 have been purported to be submitted to the county. It's
18 Deposition Exhibit 2.

19 **A. Okay.**

20 Q. Do you remember when you received the
21 applications for the permit?

22 **A. No, I don't.**

23 Q. But it would have been after this December 20
24 letter; correct?

25 **A. I would assume, yes.**

1 Q. So I got the two applications here for the
2 "North" project and the "South" project. Did you review
3 both of those applications in their entirety?

4 **A. Yes, sir. I looked through them.**

5 Q. Did you look at each page? I'm not asking you
6 if you read every word on each page, but did you flip
7 through each page and kind of get a flair of what was on
8 that page?

9 **A. Yes.**

10 Q. And how much time did you spend going through
11 the application?

12 **A. I have no idea. You look at it here for a
13 while and then you'd come back to it and look some more.
14 I don't recall how much time I spent on it. Do you need
15 to have this open anymore?**

16 Q. Why don't you turn to page 201 in there for me,
17 please.

18 **A. 201? Okay.**

19 Q. Actually, if you go to page 200, looks like
20 this is Appendix F, copies of Memorandum of Easements
21 with Landowners. Then if you go to page 201, I
22 interpret this to be a list of all the landowners signed
23 up for the project. Do you remember reviewing this
24 document here or these pages of the application?

25 **A. Reviewing them?**

1 Q. Reviewing them.

2 A. Yes, I did.

3 Q. You reviewed the landowners of the project?

4 A. I looked through a lot them. I don't know if I
5 actually looked at every single one, like you said.

6 Q. Okay. Tell me about -- We can be done with
7 this now. Tell me about First District's involvement.
8 Generally, what does First District do for the county?

9 A. Well, as I understand it, they're kind of a
10 guideline for us. That's kind of been my interpretation
11 through the years I've served.

12 Q. How did they guide the Board with respect to
13 the Invenergy project?

14 A. Hmm? I got to think back what they -- I do
15 recall after the permit was passed that they came
16 through with the findings and read what the, you know,
17 our list of stuff that we have to go through for special
18 exceptions.

19 Q. What about before you guys voted on the
20 project?

21 A. I don't recall that they were involved at all
22 in anything that I did or we did as a board. They might
23 have but I don't recall.

24 Q. I'm going to hand you what has been marked as
25 Exhibit 5. I'm going turn to page 26 here. That's an

1 e-mail from Todd Kays to dc zoning. Is it your
2 understanding dc zoning is Jodi? That's her e-mail?

3 **A. Yeah.**

4 Q. And Todd Kays is with First District; correct?

5 **A. Uh-huh (Yes). I believe so.**

6 Q. Did you ever get this e-mail or the attachments
7 referenced in the e-mail, which are the documents that
8 follow the document you're looking at?

9 **A. I don't remember getting it, no. I might have,
10 but --**

11 Q. Flip to the next page. On the top there it
12 says it's a Staff Report. Do you remember getting that
13 Staff Report or reviewing that Staff Report at any time?

14 **A. I don't recall, but. No, I don't recall.**

15 Q. So you have no memory of Jodi Theisen providing
16 you with that Staff Report?

17 **A. No, I don't recall.**

18 Q. Feel free to flip through it. I just want
19 to --

20 **A. I don't remember. I don't.**

21 Q. Maybe I'll ask a better question. Did you rely
22 on First District in any way to assist you in deciding
23 on the two applications submitted by Invenergy?

24 **A. No.**

25 Q. But you did say after you guys voted, there was

1 some involvement of First District; correct?

2 **A. Yes, sir.**

3 Q. And that was -- Tell me about what
4 First District was doing there.

5 **A. They were going through the findings of our
6 reasons of passing the permit.**

7 Q. Did they assist you with preparing those
8 findings?

9 **A. They didn't assist us in preparing it, no.
10 They just read the question, you know.**

11 Q. So at some point the Board put together written
12 findings; right?

13 **A. Yes, sir.**

14 Q. Saying, you know, we found this, we found that
15 and we're granting a permit.

16 **A. Yes, sir.**

17 Q. Who actually put that document together?

18 **A. I would assume Jodi, when it was all done.**

19 Q. Were you involved at all in putting the
20 document together?

21 **A. No.**

22 Q. I know at some point it was presented to you as
23 a board member --

24 **A. Right.**

25 Q. -- and you ultimately voted on it. Right?

1 **A.** I got to think back on how that all transpired,
2 but we went through it with, I believe it was Todd, with
3 the findings, and then how it was all compiled and we
4 okayed it and I would assume approved the minutes or --

5 **Q.** When you went through it with Todd, was that
6 during a public meeting?

7 **A.** **Yes.**

8 **Q.** Did you ever review the findings or go over the
9 findings with Todd or anyone else outside of a public
10 meeting or hearing?

11 **A.** **No, sir.**

12 **Q.** Have you ever had any conversations with any of
13 your board members about this project at all outside of
14 a public meeting?

15 **A.** **No.**

16 **Q.** I'm going to show you now what has been marked
17 as Exhibit 4. Contained in Exhibit 4 are various public
18 comments, is what it's commonly referred to, things that
19 the public submitted for the Invenergy project. Why
20 don't you look at page 2 there, in particular. It's an
21 e-mail from Joe Blastick to Jodi with a bunch of
22 attachments saying, essentially, Jodi, I would like this
23 to be considered, you know, have the Board consider this
24 information. Do you see that?

25 **A.** **Do you want me to read the whole --**

1 Q. Let me ask you just more generally before I ask
2 you about those in particular. Did you receive written
3 submissions from the public for the Invenergy project?

4 **A. I don't understand the question.**

5 Q. Did people of the public submit documents, what
6 have you, to the Board prior to the hearing?

7 **A. Yes.**

8 Q. As I understand it, they e-mailed Jodi --

9 **A. What do you mean by "documents"?**

10 Q. A letter.

11 **A. A letter, yes.**

12 Q. A report. A website.

13 **A. Copies of websites, yes, sir.**

14 Q. Right. And there is an assortment of
15 information that was shared to Jodi who then forwarded
16 it to the Board. Is that how it worked?

17 **A. Yes.**

18 Q. The information that you received -- Well,
19 first of all, did you receive written documents from the
20 public before the night of the hearing?

21 **A. Oh, yes.**

22 Q. And how would you have received those
23 documents?

24 **A. Either through e-mail, letters through the**
25 **mail. Probably it. I had a couple phone calls. I**

1 **mean, that's not documents but it's --**

2 Q. In all the documents that you received, were
3 they provided to the attorneys here in this case in the
4 litigation?

5 **A. Yes. Yes.**

6 Q. So that's what all, they should all be in here
7 somewhere?

8 **A. Yes.**

9 Q. I just want to make sure I have everything that
10 at least you received.

11 **A. Yep.**

12 Q. Then what about when you had got to the
13 hearing? The hearing was on January 22, 2018. When you
14 showed up to the hearing, was there a stack of documents
15 for your review?

16 **A. I don't remember that.**

17 Q. Then people submitted documents during the
18 hearing; correct?

19 **A. Correct.**

20 Q. Did you read all the documents that were
21 submitted during the hearing?

22 **A. I looked through, I think, most of them.**

23 Q. What about all the documents that were
24 submitted before the hearing? Did you read through
25 everything that came into your possession?

1 **A.** I think I did. I can't -- I might have missed
2 something, you know, through the e-mail. I ain't saying
3 that. But I tried to read everything that come before
4 me.

5 **Q.** Let's go back now to Exhibit 4. There is this
6 letter starting on page 3. Do you recall reading this
7 letter from Joe Blastick?

8 **A.** I don't remember for sure if I read it. I
9 might have. You've got to remember, we looked
10 through -- But it seems to me like I did. A lot of this
11 is coming back, but, or something close to it that I
12 read.

13 **Q.** What are your e-mail addresses?

14 **A.** Mine?

15 **Q.** Yes.

16 **A.** Mdahl@itctel.com.

17 **Q.** Do you use any other e-mail addresses?

18 **A.** No, sir.

19 **Q.** Do you save all your e-mails? Do you delete
20 e-mails? Do you save important e-mails?

21 **A.** Yeah, I saved a lot of them. I, you know,
22 sometimes delete some.

23 **Q.** Did you save all your e-mails related to this
24 project?

25 **A.** Yeah, because they're either in the e-mail or

1 **in the deleted items, you know. They are there.**

2 Q. Okay. And were you asked to go into your
3 e-mails and collect all of the e-mails that you had
4 related to this project for purposes of this litigation?

5 **A. Ah, yeah. Well, everything that came through**
6 **Jodi's that came to us was submitted, as I understand.**

7 Q. Were you asked, yourself, though, to go through
8 your e-mails, and do you collect all the e-mail that you
9 had related to this project?

10 **A. I don't recall if I was asked that or not, but.**

11 Q. I'm going to ask you to do that. I want you to
12 go home today and search through all your e-mails and to
13 find all the e-mails that are related to this project
14 and to give them to your attorney. Okay? Can you do
15 that?

16 **A. Yeah, I've done that, because there was nothing**
17 **that I had that wasn't forwarded from Jodi, that would**
18 **have been in her, in her e-mails.**

19 Q. So the only e-mails you would have received
20 related to the project would have come from Jodi, is
21 what you're saying?

22 **A. I -- Yes. That's what we were told, anyway.**

23 Q. Well, I'm curious about you and what e-mails
24 you received.

25 **A. Yes. I don't --**

1 Q. I'm just going to ask if you can go back and
2 look through them and you can work with Zach. I just
3 want to make sure I have all the e-mails that you have.
4 Sounds like you have all of them that you received.
5 They're either deleted or their in your inbox currently.
6 So I'm going to ask you to do that, and you can work
7 with your attorney to go through that process.

8 **A. Okay.**

9 Q. Can you turn to page 305 for me of Exhibit 4.

10 **A. Page 305.**

11 Q. Just read through quickly. Do you remember
12 receiving and reviewing that letter prior to voting at
13 the January 22, 2018 meeting?

14 **A. Yes, sir.**

15 Q. You do remember receiving that letter?

16 **A. Yeah, it was -- Yeah, I remember receiving it.**

17 Q. Did you ever send or forward any, you know,
18 documents like this or public submissions to anyone
19 else?

20 **A. No.**

21 Q. Prior to the January 22, 2018 hearing, did the
22 Board have any discussions about this project outside of
23 public meetings?

24 **A. No, sir.**

25 Q. Tell me about how the process was decided, the

1 process that was going to be used, how that was decided
2 by the Board. In other words, if Invenergy was going to
3 go first and give its presentation and then the public
4 would be allowed to speak, etc., how was that process
5 determined?

6 **A. I am not sure. I don't think that we were, as**
7 **the whole board. I think the chairman and I don't know**
8 **if John and them set up the agenda -- Is that what**
9 **you're kind of saying, the agenda part of it?**

10 Q. Yeah. You weren't involved in that, though, is
11 what --

12 **A. No. Not in how what order of things would be**
13 **going in, no, sir.**

14 Q. One thing I'm particularly curious about is the
15 three-minute time limit that was implemented on people
16 of the public.

17 **A. Uh-huh (Yes).**

18 Q. Were you involved at all in deciding that
19 three-minute time limit?

20 **A. I wasn't involved in it but I agreed with it.**

21 Q. Who came up with the idea of three minutes?

22 **A. I don't know.**

23 Q. When was the three minutes first -- Who
24 communicated that we should maybe do a three-minute time
25 limit to you? When was the first time that you heard

1 about this three-minute time limit?

2 **A. It was Chairman Kanengieter. And what was the**
3 **second part?**

4 Q. I was just kind of saying, I'm just kind of
5 curious who told you maybe we should do a three-minute
6 limit. The chairman?

7 **A. Ah, he didn't say maybe.**

8 Q. But it was his idea to use a three-minute
9 limit?

10 **A. I don't know if it was his idea.**

11 Q. But he's the one who told you that you were
12 going to be using a three-minute limit.

13 **A. Uh-huh (Yes).**

14 Q. Did he provide any explanation for why three
15 minutes?

16 **A. I don't recall he did.**

17 Q. Do you remember if people in the public voiced
18 opposition to that three-minute time limit during the
19 hearing?

20 **A. Oh, a couple of them did.**

21 Q. And do you recall whether or not certain people
22 in the public who were speaking were actually cut off by
23 the Board because they had reached their three-minute
24 time limit?

25 **A. Oh, yeah.**

1 Q. Were several people cut off? Just a few? Can
2 you give me any sort of way to quantify?

3 **A. I don't recall. I guess one thing that I would**
4 **like to say is that I do know that the three-minute is**
5 **used in a lot of public hearings.**

6 Q. How do you know that?

7 **A. From the news. (Chuckles.) That's why I was**
8 **not against it.**

9 Q. When did you -- In the night of the hearing,
10 how early did you get to the place where the hearing was
11 taking place?

12 **A. I don't recall. I assume 15 minutes, half hour**
13 **before.**

14 Q. When you got there, I already asked you this,
15 but was there a pile of documents there waiting for you
16 to review? Do you have any recollection of anything
17 like that?

18 **A. I wouldn't say a pile, but I don't remember**
19 **just what was there when I got there.**

20 Q. Do you remember going through documents as soon
21 you got there, or did you get there and just kind of
22 small chat with your other board members and people of
23 the public?

24 **A. Yeah, we just small chat. I mean, don't do it**
25 **until the meeting starts.**

1 Q. So you didn't review anything before the
2 meeting?

3 A. I don't remember doing so, sir. If anything,
4 it might have been the agenda, you know.

5 Q. I want to talk with you a little bit about
6 Mr. Homan's runway application for a special exception
7 permit. Do you recall Mr. Homan submitting an
8 application for a special exception permit for a runway?

9 A. Yes, sir.

10 Q. Before Mr. Homan submitted his application, had
11 you ever considered an application for a runway before
12 that?

13 A. Not while I had been on the Board, no.

14 Q. And did John Knight recuse himself from
15 advising the Board on the runway application?

16 A. Yes. I believe he did, yes.

17 Q. And what was your understanding as to why he
18 recused himself?

19 A. As I recall, he represents -- And I'm not a
20 hundred percent sure on this, but he represented one of
21 the neighbors or something to this. That was my
22 understanding. I don't remember exactly what it was,
23 but I do know he represents one of the other neighbors
24 or something along this.

25 Q. We're going to take a look at Exhibit 4,

1 page 310. Does that look like the runway application
2 Mr. Homan submitted to the Board?

3 **A. Yes.**

4 Q. Going down to the bottom of the page there, it
5 indicates it was filed on March 15, 2017. Do you see
6 that?

7 **A. Uh-huh (Yes).**

8 Q. Yes?

9 **A. Yes. Sorry.**

10 Q. So March 15, 2017, there weren't any wind
11 towers around Mr. Homan's property at that time;
12 correct?

13 **A. No.**

14 Q. And there weren't any applications pending
15 before the Board for any wind towers around Mr. Homan's
16 property at that time, were there?

17 **A. No, sir.**

18 Q. I'm going to hand you now what is marked as
19 Exhibit 11. What is Exhibit 11?

20 **A. What now?**

21 Q. What is Exhibit 11?

22 **A. What is Exhibit 11? It looks like the minutes
23 from our April 10 meeting.**

24 Q. Okay. Then I think you already flipped to it,
25 but I want you to look at paragraph 10 there. This is

1 the Board meeting that was considering Mr. Homan's
2 application for a runway; right?

3 **A. Okay, yes. Was this the first meeting, I**
4 **guess, or --**

5 Q. Well, it's dated April 10.

6 **A. I guess I don't recall when the process**
7 **started.**

8 Q. But if you look back at Exhibit 4, page 310, we
9 see that he filed his application March 15, 2017. And
10 this was the April meeting the following month. It was
11 shortly after he filed his application. Whether it was
12 the first meeting I don't know. But go to the last page
13 of Exhibit 11. And continuing on with paragraph 10,
14 it's the very top paragraph there, the last sentence
15 reads that the motion by Rhody, seconded by Dahl to
16 table the special exception. And it goes on to say,
17 until the Board can get more information about the
18 setbacks for wind towers from an airstrip. Do you see
19 that?

20 **A. Yes, sir.**

21 Q. Tell me why the Board was tabling it to get
22 information about setbacks from wind turbines.

23 **A. Well, as I recall the discussion, it was on --**
24 **trying to think how this all transpired again now.**
25 **There was talk of the wind towers being in the area**

1 signing up easements. And I guess, you know, rather
2 than handcuffing one person's land over another, we
3 wanted to find out more information as to what setbacks
4 are, if any.

5 Q. So you had known from your own personal
6 experience that Invenergy was considering development in
7 the area; right? Because you had signed an agreement
8 before this?

9 A. I did sign that, but I didn't know they were in
10 that, up in that, in what parts of the county else they
11 were in.

12 Q. At that time did you know what parts of the
13 county wind development was looking at?

14 A. Probably.

15 Q. Okay. So you thought it was appropriate to
16 look into setbacks for wind towers at that time
17 because -- I guess explain to me again. I don't want to
18 put words in your mouth, but. As of April 10, 2017, why
19 were you concerned about wind towers?

20 A. As I recall, I think we didn't want to handcuff
21 other landowners in the area. And like I said, we
22 hadn't -- I had never permitted a landing strip before
23 in the county. Kind of caught us offguard and, you
24 know, we didn't know what was coming for sure before
25 that meeting. You know, other than a landing strip.

1 Yes, it was on the agenda, but we didn't know where --
2 We knew where. But I think to answer your question the
3 biggest thing was not to handcuff other landowners' land
4 rights for a runway, as I recall. I don't remember the
5 total discussion.

6 Q. Aside from this special exception permit --
7 I'll start over. This special exception permit was for
8 a runway; right?

9 A. Yes.

10 Q. And the application didn't mention wind towers,
11 did it?

12 A. No.

13 Q. And there weren't any wind towers around the
14 property at the time; right?

15 A. No.

16 Q. There was no application that was in front of
17 the Board to put any wind towers around the property;
18 right?

19 A. No.

20 Q. So the application didn't have anything to do
21 with wind towers; right?

22 A. No. Not --

23 Q. So I'm curious if there are any other special
24 exception permit applications that don't deal with wind
25 in which you or members of the Board have thought it

1 appropriate to consider how wind development might
2 affect -- or how the application might affect wind
3 development.

4 **A. I don't know if there is any -- Well, I've been**
5 **on the Board. I know that they have asked for letters**
6 **of assurances on other special exceptions.**

7 Q. Because of wind rights or --

8 **A. No, just various things.**

9 Q. Okay. And my question was --

10 **A. I know that drifts off from what you answered,**
11 **but I mean, it was part of the discussion that night of**
12 **letters of assurance, you know, that this --**

13 Q. So on April 10, 2017, the Board discussed
14 letters of assurance at that first meeting?

15 **A. I don't know if that was discussed at that**
16 **meeting, but it was discussed further down the road.**

17 Q. I know there were additional meetings --

18 **A. Yeah.**

19 Q. -- about the runway application.

20 **A. Yep.**

21 Q. But you don't remember when the idea of letter
22 of assurance first --

23 **A. No, I don't recall for sure if it was during**
24 **this one or the next meeting or what. I just know that**
25 **we had -- (Nods affirmatively.)**

1 Q. So, again, going back to my initial or earlier
2 question, can you give me any other examples in which
3 you or the Board had been considering a special
4 exception permit unrelated to wind where you thought it
5 appropriate to consider how that permit might affect
6 wind development?

7 A. I think we look at all things when we consider
8 it, you know, no matter what the special exception.

9 Q. Give me an example then.

10 A. Oh, we look at height of a -- We look at, you
11 know, traffic. We look at height of things. You know,
12 is it going to obstruct vision?

13 Q. My question is, specifically, about when the
14 Board has considered how a permit might affect wind
15 development.

16 A. Again, I don't understand your question.

17 Q. Well, you wanted to table Mr. Homan's runway
18 application because you wanted to learn how it was going
19 to impact wind development; right?

20 A. Well, I believe I stated we wanted to find out
21 more of setbacks for --

22 Q. For wind towers.

23 A. For wind towers.

24 Q. I guess my question is, can you give me an
25 example of any other special exception permits where you

1 considered how the permit was going to affect wind?

2 **A. I can't recall one, no. Not lately. Because**
3 **it hasn't been --**

4 Q. It says, Give more information about the
5 setbacks for wind towers. What's the setbacks you're
6 looking for more information for?

7 **A. Excuse me?**

8 Q. What was the source of the setbacks?

9 **A. Paul Brandt at that time called FAA to find out**
10 **what their restrictions were in that.**

11 Q. Was it after this April meeting?

12 **A. I believe that was after this April meeting.**
13 **When you asked about any other one, I don't remember if**
14 **Will Stone's application for his runway, I believe we**
15 **pretty much did the same. We had letters of assurance.**

16 Q. Let's look at page 331 of Exhibit 4. Before
17 today, have you reviewed that document?

18 **A. Yes, I remember this one.**

19 Q. And you think you would have received this
20 document shortly after June 9, 2017, or maybe on June 9,
21 2017?

22 **A. Yeah, I don't recall, yes.**

23 Q. And if you go to the conclusion paragraph on
24 the second page of this letter, it says, "Should the
25 Board grant Mr. Homan's application, Invenergy

1 respectfully requests that such approval specifically
2 state that it does not grant Mr. Homan any right to
3 limit the uses on neighboring properties." Do you see
4 where it says that?

5 **A. Just a minute. Let me read through that again.**
6 **Should the Board grant Mr. Homan's application,**
7 **Invenergy respectfully requests that such approval**
8 **specifically state that it does not grant Mr. Homan any**
9 **right to limit the uses on neighboring properties.**
10 **Should you have any -- Yeah.**

11 Q. So that's where the Board got the idea to ask
12 for a letter of assurance, isn't it?

13 **A. I don't think so.**

14 Q. Was it your idea to have them ask for a letter
15 of assurance?

16 **A. No, sir.**

17 Q. Do you know whose idea it was?

18 **A. Ah, I believe it was Paul Brandt's.**

19 Q. You believe it was Paul Brandt's idea to ask
20 for a letter of assurance?

21 **A. Uh-huh (Yes). And we all agreed. I mean,**
22 **we're all --**

23 **(DEPOSITION EXHIBIT 14 MARKED.)**

24 **By MR. ALMOND:**

25 Q. I'm handing you what has been marked as

1 Exhibit 14, which appears to be the Deuel County Zoning
2 Board minutes from June 12, 2017. Do you see that?

3 **A. Uh-huh (Yes).**

4 Q. Yes?

5 **A. Yes.**

6 Q. For the court reporter again.

7 **A. (Chuckles.) I'm too used to talking to my
8 wife.**

9 Q. If you can flip to paragraph 9. Have you got
10 it?

11 **A. Yes.**

12 Q. Paragraph 9 is where the minutes reflect the
13 discussion related to Mr. Homan's runway application;
14 right?

15 **A. (Pauses.)**

16 Q. Just a general question, if paragraph 9 relates
17 to Mr. Homan's runway application.

18 **A. Yes.**

19 Q. And if you go to the next page there on the
20 very bottom of the page, last paragraph, starts with
21 "Dahl stated." Do you see that?

22 **A. Uh-huh (Yes).**

23 Q. "Dahl stated to Homan, if you can't get the
24 wind rights, then maybe he should wait to see where the
25 towers would be sited." Do you remember saying that?

1 **A.** **No, I don't remember saying it, but it's --**

2 Q. You don't dispute that you said it?

3 **A.** **I don't dispute. It's in the minutes so I**
4 **obviously did.**

5 Q. Why would you have stated to Mr. Homan that if
6 he can't get the wind rights, then maybe he should wait
7 to see where the towers would be sited?

8 **MS. AGRIMONTI:** Mr. Almond, I believe you
9 meant air rights rather than wind rights.

10 **MR. ALMOND:** Yes, it says --

11 **MR. PETERSON:** It reads wind rights.

12 **MS. AGRIMONTI:** Oh, okay.

13 **By MR. ALMOND:**

14 Q. I'm sorry. It says, "Dahl stated to Homan, if
15 you can't get wind rights, then maybe you should wait to
16 see where the towers would be sited." My question is,
17 why would you have said that?

18 **A.** **Why would I say air space or wind right?**

19 Q. Well, it says, "Dahl stated to Homan that if
20 you can't get the wind rights, then maybe he should wait
21 to see where the towers would be sited."

22 **A.** **That's why it don't seem like a correct**
23 **statement that I would say wind rights. I mean, a**
24 **correct writing of what I said.**

25 Q. Why were you concerned about the siting of

1 towers?

2 **A. As I said, it was before that, like I said**
3 **before, we were not wanting to tie up anybody's hands**
4 **with having wind easements by an airstrip, you know.**

5 Q. Just as a general process, does Jodi prepare
6 these minutes?

7 **A. Yes, sir.**

8 Q. Then at the next board meeting are the minutes
9 reviewed by the Board and approved?

10 **A. Yes. To me, that don't even make sense to say**
11 **something like that, because wind rights got no dealings**
12 **with that. It's more we were worried about towers on**
13 **the adjoining properties.**

14 Q. Well, at the time the adjoining property had no
15 right to put towers on their property, did they?

16 **A. No, but they were signing easements.**

17 Q. Okay. But they had no right to put towers on
18 their properties?

19 **A. No, they didn't have no rights.**

20 Q. But you were trying to protect that right in
21 case they wanted to?

22 **A. Well, we try to protect the rights of all of**
23 **our citizens of Deuel County, not just a few.**

24 Q. But on June 12, 2017, the neighbors had no
25 right whatsoever to put a turbine on their property, did

1 they?

2 **A. No. There was no permitted.**

3 Q. But you still thought it was necessary to
4 protect non-permitted rights?

5 **A. Well, that's anything. You try to protect**
6 **property rights of everybody for whatever.**

7 Q. So when building permits are issued, do you
8 know if you consider the neighbors' rights to build a
9 concentrated animal feeding operation?

10 **A. Yes, we do.**

11 Q. You do?

12 **A. Yes.**

13 Q. But the Board doesn't consider building
14 permits, do they?

15 **A. No, that goes through state permits.**

16 Q. I'm handing you what has been marked as
17 Exhibit 1, which is the Deuel County Zoning Ordinances.
18 Can you point to me where in those ordinances it
19 instructs the Board to consider non-permitted uses when
20 considering whether to grant permits?

21 **A. Excuse me? Say that again.**

22 Q. Well, for Mr. Homan's runway application, you
23 were worried about his neighbor being able to put up a
24 wind turbine; right? You didn't want to interfere with
25 his neighbor's right to put a wind turbine up; right?

1 **A. I would assume that would be it, correct.**

2 Q. But at the time the neighbor didn't have the
3 right to put up a wind turbine. He needed to go get
4 permission from the Board to do so; right?

5 **A. Well, his neighbor didn't, but --**

6 Q. Someone needed to get permission from the Board
7 to allow them to put up --

8 **A. Mm-hmm (Yes).**

9 Q. So my question is, why do you think the Board
10 needs to consider special exception uses when
11 considering a special exception permit, a special
12 exception use that has nothing to do with the use the
13 permit is being applied for?

14 **MR. PETERSON:** I'm going to object to the
15 form. Answer if you can.

16 **A. I guess I can't answer that. I don't --**
17 **What --**

18 Q. So for Mr. Homan's runway application, did you
19 consider and want to protect his neighbor's right to
20 build a CAFO?

21 **A. Well, probably, because having a CAFO is not**
22 **going to affect an airplane, you know.**

23 Q. My question is, did you consider that?

24 **A. Not directly, but I suppose indirectly we would**
25 **have, we did.**

1 Q. Did the Board discuss --

2 **A. No.**

3 Q. -- CAFOs and neighbor's ability to build a
4 CAFO?

5 **A. Not on that one, no.**

6 Q. What any other special exception uses that are
7 listed in the ordinances? Did the Board discuss or
8 consider any other special exception uses aside from a
9 wind development?

10 **A. I don't recall.**

11 Q. I'm still just struggling to understand the
12 logic here. So the neighbor didn't have any right to
13 put up a wind tower at the time; right?

14 **MR. PETERSON:** Objection. Asked and answered
15 at least five times. Go ahead.

16 **A. Restate the question.**

17 Q. The neighbor didn't have any right to put up a
18 wind turbine at the time that you were considering the
19 Homan application.

20 **A. No.**

21 Q. Just like he didn't have a right to build a
22 CAFO at the time?

23 **A. No.**

24 Q. Or a right to do any special exception use on
25 his property at the time?

1 **A. Correct.**

2 Q. But you're telling me that every special
3 exception permit that the Board considers it tries to
4 protect the neighboring property's right to apply for a
5 special exception use?

6 **A. I would say that comes into the consideration.**

7 Q. Can you point to me in the ordinances of where
8 that authority lies for you to take that into
9 consideration?

10 **MR. PETERSON:** Objection. It calls for a
11 legal conclusion.

12 Q. Are you able to do it?

13 **A. No, I can't do that right now. I don't know.**
14 **I'd probably be here a long time. It would be under the**
15 **special exceptions or --**

16 Q. So ultimately you approved the Invenergy wind
17 system; right? The permits, excuse me, the two special
18 exception permits that Invenergy applied for they were
19 ultimately granted; right?

20 **A. Right.**

21 Q. And they were issued by the Board?

22 **A. Correct.**

23 Q. Tell me about the consideration that went into
24 those people living around that project and their rights
25 to build runways.

1 **A. Tell you about the people that live around**
2 **there?**

3 Q. Yeah, when you guys approved that project, what
4 consideration went into the people who lived around the
5 project's ability to build runways there?

6 **A. I would say anybody can do it as long as**
7 **they're not interfering with someone else's land rights.**

8 Q. The Board didn't consider people's abilities to
9 build runways when they were considering the wind
10 application, did they?

11 **A. Well, indirectly. Probably not. I don't know.**

12 Q. So you weren't --

13 **A. Directly and indirectly we do. We always, you**
14 **know, in the future here now if there is something going**
15 **on and somebody else then wants to do something, like,**
16 **okay, wait a minute here now. Let's look at this.**
17 **Let's look at the whole picture.**

18 Q. I just want to be totally clear here. You're
19 telling me today under oath that you considered the
20 people living around the projects abilities to build
21 runways when you're considering the Invenergy wind
22 project?

23 **A. I would say no. Not directly.**

24 **(DEPOSITION EXHIBIT 15 MARKED.)**

25 Q. I'll hand you what has been marked as

1 Exhibit 15, which are the Board minutes of the zoning
2 board from its September 11, 2017 meeting. If you could
3 flip to paragraph 12 for me, please.

4 **A. (Complies.)**

5 Q. If you go down to about right in the middle of
6 that paragraph, it says, "The Board stated that they are
7 looking at all of the property owners' rights. The
8 Board stated that the runway and the future wind towers
9 or any improvements to the land surrounding the runway
10 could be compatible." And you would have reviewed these
11 minutes; right?

12 **A. Uh-huh (Yes).**

13 Q. Yep?

14 **A. Yes.**

15 Q. And you would have approved these minutes at
16 the following meeting?

17 **A. Yes.**

18 Q. It says the future wind towers. I mean, at
19 this time it sounds like the Board had already made up
20 its mind that there were going to be future wind towers.
21 Is that fair?

22 **A. I don't know if that would be fair, but there
23 would probably be wind tower permits coming before us.**

24 Q. Was there a specific project that you had in
25 mind when you made that statement?

1 **A. I wouldn't -- I couldn't name a project,**
2 **because we didn't know what it was called yet.**

3 Q. Did you have an understanding that it was
4 Invenergy company that was developing the project in
5 that area?

6 **A. I don't know if I did or not. I didn't know**
7 **which company. I don't recall if I knew at that time.**

8 Q. Let's go back to Exhibit 4, which is the binder
9 right in front of you. Can you turn to page 346 for me,
10 please.

11 **A. (Complies.)**

12 Q. If you go to page 3 of that letter, you can see
13 its written by John Homan. And if you go back to the
14 beginning of the letter then, it's the August 12, 2017
15 letter from John Homan. If you go to the third
16 paragraph there, John writes, "I attended the April
17 zoning board meeting to apply for the permit in person.
18 The very first question I received from the Board before
19 any question about airports or landing strips was from
20 Mr. Kanengieter and it was, How is this going to affect
21 wind towers?" Do you disagree with Mr. Homan's summary
22 of what happened at that April zoning board meeting?

23 **A. I don't disagree and I don't agree. I don't**
24 **remember exactly what was said there.**

25 Q. Do you recall Mr. Kanengieter making that

1 statement, How is this going to affect wind towers?

2 **A. I don't recall that.**

3 Q. And, again, go to the next paragraph. "The
4 conversation continued for over a half hour and the
5 Board's questions and comments were only concerning wind
6 towers. It went so far as the Board telling me that
7 they would not grant me the permit because in the future
8 some surrounding landowner may want to put up a wind
9 tower on the adjacent property." Do you disagree with
10 the summary there in terms of what transpired at that
11 meeting?

12 **A. I don't recall that and I don't remember. I**
13 **won't agree or disagree.**

14 Q. Two more paragraphs down starting with *Also*
15 "... the Board gave more time to the other parties
16 opposing my land strip, including representatives for
17 the wind tower company than they gave me to defend my
18 request." Do you disagree or agree with that?

19 **A. I would almost have to disagree. I think we**
20 **gave equal time or approximately.**

21 Q. And then go to the next page, please, page 2,
22 or page 347 of Exhibit 4. First full paragraph there.
23 Talking about the June meeting was handled the same as
24 the April meeting. Every question was about how the
25 landing strip would affect surrounding wind towers.

1 Agree or disagree with that summarization?

2 **A. I don't know if it was that the whole meeting**
3 **was handled the same. There, again, I wouldn't**
4 **disagrees or agree with it.**

5 Q. If you go down to the middle of the page, the
6 largest paragraph there, second to last sentence. There
7 is a question posed by you. "Would you want to spend
8 all that money to put in a landing strip and then have
9 someone build a wind tower at the end of it so you
10 wouldn't be able to use the runway?" Do you remember
11 asking that question?

12 **A. I do not remember asking that question.**

13 Q. Okay. Do you dispute that you did ask the
14 question?

15 **A. I just don't remember asking it. I just don't.**

16 Q. A couple years ago the Deuel County Zoning
17 Ordinances were changed as it related to wind energy;
18 correct?

19 **A. A couple years ago?**

20 Q. Few years.

21 **A. Whatever it's been.**

22 Q. Right.

23 **A. Just recently here.**

24 Q. Yeah.

25 **A. Okay.**

1 Q. And then after the county commission decided to
2 change the ordinances, do you recall there being a
3 petition for referendum that was circulating?

4 A. Yes, I did hear about it. I never seen it.

5 Q. And was it your understanding of the reason for
6 the petition for referendum was to change the ordinances
7 to allow to make it easier for wind development in
8 Deuel County?

9 A. Yes, I believe that was, the intent of it was
10 to refer back to what we've always had.

11 Q. And did you ever sign a petition for
12 referendum?

13 A. No.

14 MR. ALMOND: Let's take five.

15 (RECESS TAKEN AT 12:20 TO 12:23 P.M.)

16 By MR. ALMOND:

17 Q. I'm handing you what has been marked already as
18 Exhibit 9. If you would turn to page 75 for me. This
19 is a letter that was addressed to you; correct?

20 A. Uh-huh (Yes). I haven't read it, but it looks
21 like it's directed to me.

22 Q. Well, I received this document through
23 discovery. Your attorney provided this document. Do
24 you recall receiving this letter?

25 A. What was the date? No, I don't recall it, but.

1 Q. The gist of it was, it looks like they were
2 inviting people to come to the Deuel County zoning board
3 meeting on November 21 to oppose an amendment that was
4 being considered. Is that right?

5 **A. Ah, yeah, I would say, the way I'm reading it.**

6 Q. Do you recall that November 21 meeting?

7 **A. I never went.**

8 **MR. ALMOND:** Okay. I don't have any more
9 questions for you, Mr. Dahl.

10 **MS. AGRIMONTI:** Mr. Dahl, I do have a couple
11 of questions for you.

12 **THE WITNESS:** All right.

13 **EXAMINATION**

14 **By MS. AGRIMONTI:**

15 Q. There have been a series of questions from
16 Mr. Almond regarding the Homan airstrip approval. I
17 wanted to clarify what the issue was before the zoning
18 board, what you were trying to resolve. Was there a
19 concern about the scope of the air rights that Mr. Homan
20 would have if he had an airstrip on his property with
21 respect to neighboring properties?

22 **A. Repeat that again, please.**

23 Q. Was there an issue about what air rights
24 Mr. Homan would have on the neighboring properties if he
25 had a special exception permit for an airstrip?

1 **A. I would believe that was taken into**
2 **consideration, yes.**

3 Q. And is that why there was a contact to the FAA
4 to better understand what it would mean to neighbors if
5 Mr. Homan had a strip on his property?

6 **A. Yes, I believe that was, and what the contact**
7 **was is what the amount of space you need for the up, you**
8 **know, so many feet for every foot high or something, you**
9 **know, to find out more about that, and if they had**
10 **restrictions on that.**

11 Q. And did the zoning board come to understand
12 that if Mr. Homan wanted to use the air space on his
13 neighbor's property that he would have to get
14 navigational rights to do so in an uninterrupted
15 fashion, unrestricted fashion?

16 **A. Say that again.**

17 Q. Yeah. Did the board come to understand that if
18 Mr. Homan wanted unrestricted use of his neighbor's air
19 space, that he would have to get an agreement with his
20 neighbors to do so?

21 **A. Correct.**

22 Q. And last I would like to turn your attention to
23 Exhibit 15. It was the last exhibit put before you, and
24 specifically paragraph -- Actually, it's Exhibit 14. I
25 apologize. Do you have that in front of you, No. 14?

1 **A. No, I don't. I don't.**

2 Q. Can you put that Exhibit 14 before the witness?

3 **A. Okay.**

4 Q. Please direct your attention to paragraph 12.

5 **A. Okay.**

6 Q. All right. The minutes reflect here that John
7 Homan and his lawyer --

8 **A. Hold up. I'm not on the right one here.**

9 Q. Paragraph 12, and it would be Exhibit 14.

10 **MR. ALMOND:** I think you've got the wrong
11 exhibit.

12 **MS. AGRIMONTI:** I'm looking at the
13 September 11, '17, minutes.

14 **MR. ALMOND:** It's 15.

15 **MS. AGRIMONTI:** All right. Said it right and
16 marked it wrong. So let's start again.

17 Q. Paragraph 12, the minutes reflect that
18 John Homan and his lawyer, Christina Kilby, appeared at
19 the zoning board. Do you see that?

20 **A. Yes.**

21 Q. And was it your understanding that Ms. Kilby
22 was acting as an attorney?

23 **A. I don't recollect if it was this meeting, but
24 it was at one of the first ones. I don't know if we
25 knew who you were exactly.**

1 Q. Thank you.

2 **A. Other than just --**

3 Q. Go ahead. I didn't mean to interrupt you.

4 **A. Other than just someone with John. We didn't**
5 **know your position.**

6 Q. Did you come to understand her position at a
7 different meeting?

8 **A. Yes.**

9 Q. And what was your understanding?

10 **A. That she was John's daughter and she was an**
11 **attorney.**

12 **MS. AGRIMONTI:** Thank you.

13 **MR. ALMOND:** Is that all you have, Lisa?

14 **MS. AGRIMONTI:** That's all I have, yes.

15 **FURTHER EXAMINATION**

16 **By MR. ALMOND:**

17 Q. One question I forgot to cover with you. I'm
18 handing you what has been marked as Exhibit 13. Have
19 you ever seen that e-mail before?

20 **A. Yeah, let me read it here. (Pauses.) I don't**
21 **recall seeing it. Not saying that I didn't get it, but**
22 **I don't recall.**

23 Q. Okay. Ms. Agrimonti was just asking you about
24 the Homan runway application and looking into laws, etc.
25 Did the Board ever find a law that required an easement

1 on neighbors' air rights in order to get a runway?

2 **A. I can't answer that question. I don't --**
3 **Paul Brandt is the one who looked into that and I don't**
4 **recall just what the, what the -- Say that question**
5 **again to me.**

6 Q. Yeah. Did the Board ever find a law that
7 required an easement of your neighbor's property in
8 order to use the air rights and get a runway?

9 **A. I guess I can't answer that question right now.**

10 Q. So you don't know I guess is probably the
11 question.

12 **A. I don't know, right.**

13 **MR. ALMOND:** I don't have any other
14 questions, but I might want to keep this open because
15 if he goes back and finds e-mails that weren't
16 produced, I think I have the right to ask him
17 questions about e-mails that weren't produced to the
18 extent they are responsive to discovery that was sent
19 out.

20 **THE WITNESS:** I think the only e-mails that
21 would be because I don't -- Okay.

22 **MR. ALMOND:** I want you to go look.

23 **THE WITNESS:** Yep.

24 **MR. ALMOND:** And there may not be nothing.

25 **THE WITNESS:** Yeah.

1 **MR. ALMOND:** But if there is something, I'm
2 protecting my right to ask you more questions about
3 it.

4 **THE WITNESS:** Yeah.

5 **MR. ALMOND:** I don't have any other
6 questions.

7 **MR. PETERSON:** Mike, you have a right to read
8 the transcript and correct any errors you may
9 perceive, or you can rely upon the court reporter and
10 waive that right. It's your preference. I don't care
11 which one you do, but you need to indicate on the
12 record what you prefer.

13 **THE WITNESS:** I'll waive it.

14 **MR. PETERSON:** Okay.

15 **(DEPOSITION CONCLUDED AT 12:31 P.M.)**

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