



STATE OF SOUTH DAKOTA
THIRD JUDICIAL CIRCUIT COURT

Counties

HON. DAWN M. ELSHERE
Circuit Judge
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*Beadle, Brookings, Clark
Codington, Deuel, Grant
Hamlin, Hand, Jerauld
Kingsbury, Lake, Miner
Moody and Sanborn*
http://ujs.sd.gov/Third_Circuit/

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February 22, 2019

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Ms. Lisa Agrimonti
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Re: George Holborn, et al v. Deuel County Board of Adjustment, et al, CIV18-19

Counsel:

Addendum to Memorandum Decision Dated January 25, 2019

The above entitled matter came on for consideration after Deuel Harvest filed a Motion for Reconsideration on February 6, 2019. Briefs were submitted by Deuel Harvest and the Petitioners. A hearing scheduled for February 20, 2019 did not occur and the Court took the Motion under advisement based upon the briefs that were submitted. The Court considered the arguments of counsel and now issues the following as its addendum to memorandum decision dated January 25, 2019.

In the Court's, January 25, 2019 decision, the Court found that Board Members Dahl and DeBoer each had a unacceptable risk of bias in voting on the Projects after receiving funds from Deuel

Harvest for these Projects. The Court stands by the analysis and ruling in the previous memorandum decision regarding the unacceptable risk of bias held by Dahl and DeBoer. Memorandum Decision dated January 25, 2019 pg. 5. The Court did err in failing to consider SDCL 11-2-59 and the Deuel County Zoning Ordinance Section 504(4) which requires conditional use permits to be approved by a two- thirds majority rather than a simple majority. Therefore, since Board Members Dahl and DeBoer each would be disqualified from voting on this project based upon the previous analysis, the Projects did not pass the two- thirds majority required. Thus, the decision of the Board on the Projects is reversed and remanded for a rehearing on the applications consistent with this decision and the original memorandum decision. The Motion for Reconsideration by Deuel Harvest is denied.

Counsel for the Petitioners shall prepare proposed Findings of Fact and Conclusion of Law and Order consistent with the Court's memorandum decision of January 25, 2019 and this Decision and submit them to the Court and counsel within twenty days. Counsel shall incorporate this Court's written decision herein and the January 25, 2019 decision in said Findings of Fact and Conclusion of Law. Petitioners may object in accordance with SDCL 15-6-52.

Sincerely,

A handwritten signature in black ink, appearing to read "Dawn M. Elshere". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dawn M. Elshere
Circuit Court Judge