

Authority and Decision

I. *Whether the Turner County Board of Adjustment provided Dakota Protein Solutions, LLC with adequate notice and an opportunity to respond?*

The Fifth Amendment to the United States Constitution provides that “[n]o person shall...be deprived of life, liberty, or property without due process of law[.]” US Const amend V. “Due process requires only reasonable notice and an opportunity to be heard at a ‘meaningful time and in a meaningful manner.’” *Schrank v. Pennington Cty. Bd. of Comm’rs*, 1998 S.D. 108, 584 N.W.2d 680. (citing *S.B. Partnership v. Gogue*, 1997 S.D. 41, ¶16, 562 N.W.2d 75) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976)).

The Turner County Board of Adjustment (hereinafter “Board”) violated Dakota Protein Solutions’ (hereinafter “DPS”) due process rights by failing to properly notify DPS of the specific issues on which it based its decisions during the hearings on September 23, 2025, and October 21, 2025. Under Turner County Zoning Ordinance 20.12, certain procedures must be followed when reviewing conditional use permits (hereinafter “CUP”). Ordinance 20.12(B) states that, “[i]f the Planning Director is reasonably satisfied there exists any noncompliance with the terms, conditions or requirements of a conditional use permit, the Director shall give written notice of such noncompliance...to the corporation or entity...to which the permit was granted.”

On August 19, 2025, the Board issued a notice of noncompliance (hereinafter “Notice”) to DPS, defining the scope of review. The only issues identified in the Notice concerned the lack of road-haul agreements, the implementation of dust-control measures on 440th Avenue between 279th Street and 280th Street, and the ground storage of animals in trailers. The Board is prohibited from expanding its authority to address separate concerns expressed at the hearings beyond the scope of the concerns contained in the Notice.

DPS has provided evidence demonstrating that it took the necessary steps to address the alleged violations prior to the September hearing. DPS received the road-haul agreements from the Childstown Township Board and provided copies of the executed agreements. DPS applied dust control to 440th Ave and explained that such measures had not been implemented prior to the August Board meeting because adequate rainfall had minimized dust, and there did not appear to be a need for additional measures at that time. Further, DPS reviewed the ground storage of animals in trailers, as well as operational practices related to the timing and movement of trailers on-site and confirmed that they are in compliance with applicable state laws and regulations. DPS clarified that the trailers containing carcasses may be present on their property while awaiting processing; however, the carcasses are not being stored there. The evidence established that DPS had already addressed the concerns for which they had been given notice by the time of the September 23, 2025, meeting.

The Board raised concerns from the community and Board members at the hearings, primarily regarding odor, which were not properly set forth in the Notice. DPS attempted to respond to the odor concerns, but since this had not been properly noticed, they were not provided with a full and fair opportunity to address this issue. The only allegation in the Notice that could arguably relate to odor is the odor emanating from the loaded trailers. However, the Board did not hear any evidence that the open trailers created an odor offensive to any residence or business in the City of Freeman. From August until the date of the hearing, the primary source of odor appeared to be from the water in the holding pond, and this issue could not be remedied further until after harvest, according to DPS. No new notice regarding the odor concerns was presented in connection with the October meeting. At the October hearing, DPS presented evidence that they were taking steps to reduce odor by treating the water with enzymes and by

ensuring the pond is drained and irrigated onto the land after harvest. If the Board deemed that the odor from the holding pond was the primary source of odor and a violation of the CUP, it should have specifically provided notice of that issue. They never did.

It is clear that the odor from the plant is a legitimate concern that needs to be addressed, but the Board did not position itself properly to do so by failing to give adequate notice to DPS of this concern. As a result, the Board's decision-making process deprived DPS of the opportunity to be heard and violated its due process rights.

II. Whether the Board exceeded its authority by amending the CUP and imposing additional conditions on DPS?

Turner County Ordinance 20.12 limits the Board's authority when reviewing an existing conditional use permit ("CUP"). In the event that the Board determines by substantial evidence that such compliance has not been established, it may revoke the permit, amend the permit, postpone action, or require any other action it deems appropriate. However, a county only has such powers as are expressly conferred upon it by statute and such as may be reasonably implied from those expressly granted. *Tibbs v. Moody Cty. Bd. of Comm'rs*, 2014 S.D. 44, ¶25, 851 N.W.2d 208 (citations omitted).

The Board's action was arbitrary, capricious, and it abused its discretion by finding non-compliance with the three issues for which notice was provided. Those issues had been fully addressed and properly resolved, and there was no determination supported by substantial evidence that compliance had not been established by the September hearing. The Board shall not expand its authority to impose additional conditions on DPS under Ordinance 20.12.

Part of the County's problem is with the initial issuance of the CUP when the Board did not fully set forth requirements to address and alleviate potential odor concerns. When the CUP was

issued in 2021, the permit was granted while the land was zoned A-1 Agricultural prior to being rezoned to I-2 Industrial in 2022. Agricultural District Ordinance 3.02 Permissive Uses states the following:

You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facility operations...Discomforts and inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, burning, vibrations...or operation of machinery during any 24-hour period. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomforts as a normal and necessary aspect of living in an area with strong rural character...

Instead of implementing conditions to mitigate the odor at the time of the initial CUP issuance, the Board amended the property's zoning. Under I-2 Industrial, DPS is only required to follow any applicable state regulations concerning noise, emissions, dust, odor, glare, vibration, or heat. The County limited its own authority when it rezoned the property to I-2. If it had remained A-1, the County would have had more authority and options to continue to address ongoing odor issues. Changing the zoning to I-2 means the county requires DPS to follow only state regulations, and there was no evidence that DPS was violating any of those regulations.

The County, by its own actions in rezoning the DPS property, has severely limited its ability to address these serious and legitimate issues concerning odor being produced by DPS on its property in the operation of its facility. The County will have to analyze what, if any, ability they have to regulate odors emanating from the DPS facility in light of the CUP they authorized and the zoning change they approved. Then they will need to give proper notice under their ordinances prior to addressing these issues.

It is possible that the County may have to pursue these odor issues under applicable nuisance law. This could also present difficulties if DPS is following and is not in violation of any state laws, and is properly complying with any state permits that it holds. The manner in

which the County authorized this permit without properly addressing odor concerns at the time of issuance, and the change in zoning classification the County approved, make it very difficult for the County to properly regulate and address the odor issues presented by the DPS facility.

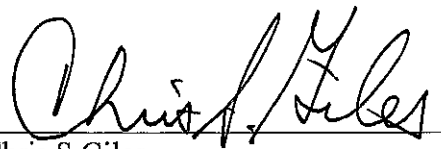
Furthermore, the Court has concerns regarding the motion passed at the meeting, the way it appears to have been modified after the meeting, and before final approval of the minutes. However, after ruling on the first two issues, the Court finds it unnecessary to address the other concerns and improprieties regarding the actual notice process and its approval.

Conclusion

For the reason set forth herein, the Court finds that the Turner County Board of Adjustment failed to provide notice and a right to respond in violation of Dakota Protein Solutions, LLC's due process rights, as well as imposing unauthorized conditions on Dakota Protein Solutions, LLC, under Turner County Ordinance 20.12. DPS is directed to prepare Findings of Fact and Conclusions of Law and an Order consistent with this decision.

Dated 3rd day of June, 2026

BY THE COURT:



Chris S Giles
First Circuit Court Judge

ATTEST: _____
Clerk of Courts