

August 15, 2016

The Board of Clay County Commissioners met in a special session at 7:00 p.m. on August 15, 2016 for a public hearing and first reading regarding Ordinance #2016-03, an amendment to the 2013 Revised Zoning Ordinance for Clay County. Specifically, the Board of County Commissioners discussed the potential for adoption of amendments to Section 2.02, Definitions; Section 3.07, Concentrated Animal Feeding Operations (CAFO); Section 4.05.01, NRC: Natural Resource Conservation District; Section 4.05.02, A-1: Agricultural District; and 4.0508, APO: Aquifer Protection Overlay District, which were recommended by the Clay County Planning Commission. Members present were Travis Mockler, Phyllis Packard, Leo Powell, Micheal Manning, and Raymond Passick. Others present were Cynthia Aden, Zoning Administrator, Carri Crum, Auditor, and Patrick Andrews, SE Council of Governments.

The Board opened the hearing by asking for members of the public to speak on the proposed ordinance. Clarence Pederson asked for a clear explanation. Leo Powell explained that the Deputy State's Attorney said the ordinance needed to be rewritten so that the Zoning Administrator could enforce the ordinance because as it stands she is unable to do so. Cindy Kirkeby suggested the board go through the document for the public. Michael Hauck asked how many times it was necessary to hash this out.

Glen Pulse said he moved to the county based on Clay County having a more restrictive setup. He stated he is for the growth of business, but is also for the rights of property owners who are already there. He said he has seen larger operations tax resources, law enforcement, first responders, schools, etc. Travis Mockler discussed with him the setbacks of the proposed ordinance.

Mockler said people keep telling him the commissioners are rushing into this, but it has been 2 ½ years.

Jim Petrik said he watched Powell and a group of others sit through many meetings and come up with the current ordinance, and large scale livestock operations did not overrun the county then. He said his organic neighbor has to bring in manure from elsewhere because there is not enough in Clay County. Petrik said people need to get past the mindset that manure is some kind of nuclear waste, and that the big livestock operators are going to go where they are wanted. Pulse replied manure is great, but organic producers have to have manure tested for antibiotics, etc.

Sharon Gray stated she thinks it is great that Clay County is stricter than state standards and that the 2005 ordinance was a great compromise. The current proposal is too aggressive. She wants a small group that represents both sides.

Jerry Wilson said he and wife have chosen to live in Clay County. He was involved in the development of the 2005 ordinance and thinks it was about right. Wilson said the county has not seen a large influx of livestock operations, and the largest is 39% of what is allowed. He said the county is seeking solutions to a problem that doesn't exist. Wilson discussed the large dairy operations offering \$10.00 per hour jobs. He said the Planning & Zoning Commission produced a radical draft, and the ordinance is sloppily written due to contradictions. He discussed setbacks in the current ordinance and the new draft. Wilson said natural resources deserve to be preserved.

Powell said the current count of cattle in Clay County is approximately 9,200 and hogs number approximately 10,200 across 12 operations. Wilson said manure is an asset but with 5,600 head of livestock it can become a liability. Powell said about 6 years ago the county had 15,000 head of cattle. Mockler asked if Wilson thought the 2005 ordinance was good. Wilson said it was basically good but needed a little tweaking in 2013. Mockler said the Animal Feeding Operation definition was a huge issue. Wilson said it could be added back in without setback changes. There was discussion regarding the setback for wells.

Mockler referred back to Wilson's statistics regarding livestock operations paying \$10.00 per hour. He said the new large operation in a neighboring county pays \$13.50 per hour, benefits, and a housing allowance to an application who knows nothing about working at a dairy. Mockler said he is trying to spur business so Clay County kids have a job. Wilson said it is not the kind of thing kids should aspire to.

Rebecca Terk said she thinks it's legitimate and important to give farm kids opportunities for employment. She said she worked for a statewide farm organization in Minnesota, working with thousands of farmers and landowners and never met farm kid who had any desire to work for a large confinement organization. She said to people with family farm backgrounds these things are not opportunities. Terk said she has dealt with water pollution in southwest & central Minnesota and said the water in Big Stone Lake in Minnesota is impaired by large operations in South Dakota. Terk suggested keeping levels at what they are now in ordinance.

Ina Anderberg said she has been amazed at the expertise of the community and stated it seemed like the Planning & Zoning Commission was not listening to community members speaking to them at their meetings. She wants the Commission to go back to the 2005 ordinance and said it worked well, so there is no need to change it.

Jim Petrik said he would like the people in attendance to meet the SDSU swine club and the SDSU dairy club to see how enthusiastic they are. He said alfalfa and producers have to send produce to eastern Iowa, Illinois, and Wisconsin. Petrik said farmers can do things safely and sustainably in Clay County.

Terk asked if Clay County's numbers are not sufficient or that whether Clay County does not have enough numbers. She does not think increasing limits is the issue for getting kids into farming. Petrik discussed the lower fixed costs for building operations a notch larger and said farmers here may be willing to partner with a young person if the operation is larger. He discussed the economics of producing to keep up with the market prices. Wilson said the American Dairy Association average is 200 cows.

Clarence Pederson asked why it is important to change from 1000 feet to 250 feet to a well in the proposed ordinance and wondered if that will that really improve economic benefit for farmers. Mockler said the proposed ordinance did not change manure application setbacks. Petrik discussed DENR requirements for waters of the state. Nancy Carlsen asked about Terk's claim of pollution to Minnesota waters. Petrik cited the Chesapeake Bay pollution that was blamed on farming but was found to be due to other sources such as residential development. Petrik said if

manure is applied within regulations then pollution is probably due to residential developments or commercial fertilizers.

Scott Jepsen said farming near the Missouri river already restricted, so being on a shallow aquifer is a double edged sword. He said his kids are not coming back unless they double their operation because that's the only way they can make a living. Jepsen asked people to be realistic regarding economics. Cindy Kirkeby asked if the operation was doubled would it fall under existing calf numbers? Jepsen asked how we can predict now what will be sustainable down the road.

Cindy Struckman-Johnson said her farmland is in Gregory county, where they grow crops, pasture for cattle, or have hunting land. She said, in Gregory, a local farmer wanted to bring in a 6,000-8,000 hog operation a couple miles from town. It was the farmers against the farmers, has been going on 4 years, and is still going. She said it created hate and animosity and that setting up a Concentrated Animal Feeding Operation (CAFO) next to family farms tears people apart because people don't want a stinky environment.

Mike Cody from Yankton said he is going through the same issue with the Yankton County Commissioners, that sixteen years ago same issue came before county commission. He said people who got excited about it lived in country, and they had a referendum election that came out 69% to 31% but now issue is back. He said the big picture shows vast changes coming in agriculture in the future. He discussed changes and pollution in Iowa and said the land will not be able to sustain the demands of the world. Cody claimed the long term plan is not sustainable, that large CAFOs are last century, and he would like to cut back on amount of food going into fast food industry. He also said the country pays way too much money to farmers to grow too much grain. Mockler pointed out that Yankton allows twice the livestock as Clay County.

Cindy Kirkeby gave the commissioners a handout where she attempted to solve problems in the 2013 ordinance. She suggested the commission appoint a committee to look at the ordinance. Mockler said Kirkeby's proposal almost mirrors the proposed ordinance, and Manning echoed Mockler's thoughts.

John Davidson said the purpose of zoning is to achieve balance between different land uses, and the current ordinance achieves the balance. As a Planning & Zoning Commission member, he said he saw many approvals for rural residences, and that has to be balanced against other competing uses. Davidson said no single use can be allowed to dominate over others, but the current proposal allows dominance and present code provides substantial animal operations.

Craig Johnson said people are getting frustrated, and he asked that the commissioners take action on the Planning & Zoning Commission's proposal. He pointed out the right to farm covenant and asked Powell to read it. Johnson said agricultural areas are a different culture, and people should be able to accept that if they are moving into it. Wilson said the definition of agriculture in ordinance excludes CAFOs. Turk said the majority of people testifying so far have lived in Clay County long-term. Johnson said the words coming out of everyone's mouths are different and that he is hearing only one side, nothing that will help the farm side.

Clarence Pederson said the setbacks for private wells other than owners or operators says 250 feet and asked if it was a different number before. Passick pointed out that an area in the current proposal is underlined, which indicates it is new. Mockler discussed setbacks for expansion vs. new operations (Section 5k) and also clarified that cow operations cannot switch to swine.

Mockler clarified that the right to farm covenant has been in the ordinance for years. It is nothing new. Struckman-Johnson said what people have to put up with still has to be regulated by federal, state, and local law. The right to farm is still regulated. Kirkeby discussed the right to farm and natural resource conservation district section relating to agricultural district.

Pulse thanked the commissioners for the meeting and said he is not 110% against the ordinance but is concerned about certain areas. He said he would like to hear from the farmers in attendance as to how it prevents them from growing. Sheldon Johnson said he does not sell a single commodity in Clay County because the economics for it is to go elsewhere. Johnson buys diesel from other counties because it is not available in Clay County. He said he has no personal interest in a CAFO, but reiterated that his products are going elsewhere because there is no market in Clay County. Johnson said it is necessary to give kids room to grow, or it is impossible to talk them into trying farming.

Petrik said he spent \$10,000 extra dollars for raising livestock in Clay County under ordinance due to permitting process, but he did what was required. He said the commissioners are great thinkers, and he has faith that their stewardship is good and they have heard the concerns. Powell asked if soil or concrete in Petrik's pit is more permeable. Petrik said it's a draw, but nothing seals a crack in concrete better than manure. Powell asked if the engineering study indicated the impermeability of the soil. Petrik said it has the tremendous ability to filter.

Passick said most concerns heard at this hearing were about the large operations and clarified that the only large animal number that has increased in the proposed ordinance is dairy. He said approval of the ordinance does not automatically approve a large operation. It merely gives them a chance to prove themselves. He does not think Clay County will be overrun by requests for a large dairy because there is not room in Clay County for lots of large dairies.

Wilson says there are a lot of square miles of floodplains that are opened up in the new ordinance. Mockler asked how the protections are being removed and clarified that the protection was not changed since the 2005 ordinance. Wilson said the entire ordinance was reviewed from 2005 and did not devote a lot of time to CAFOs due to reviewing over 80 pages at the time. Wilson said the AFO definition was removed after he was a commissioner and said removing it was a mistake.

Scott Jepsen asked if his location according to the aquifer map says he cannot have 5,000 head. He said if he had not been there already he would not be able to have his livestock.

Wilson said there has been a change in requirements when selling CAFOs. Petrik said the Department of Environment and Natural Resources (DENR) permit stays with the operation. Once a permitted operation, always a permitted operation, and he cited the feedlot in Hurley as an example. Even though the operation has decreased in size, it still has to maintain permits.

Petrik said regardless of the size of the operation, if there is a single complaint filed with DENR they will be required to become permitted. Petrik asked how many complaints the Board gets in a year. Mockler said the only complaint he has heard is, "Why can't we expand?"

Powell said the Board is trying to follow legal counsel's recommendation regarding the AFO and CAFO definition.

Nancy Carlsen asked if the board directed the Planning and Zoning Commission to increase the dairy numbers, to which the Board said no. Powell said the due process of law is that the process goes through the Planning & Zoning Commission and then the County Commission goes through the same process.

At 9:22 p.m., Powell moved, seconded by Manning and carried to adjourn. The time for second reading will be set at a later Board of Clay County Commissioners meeting.