

May 25, 2017

The Board of County Commissioners met in special session on Thursday, May 25, 2017 at 7:00 p.m. for a public hearing of the first reading regarding amendment of the 2013 Revised Zoning Ordinance for Clay County. Specifically, the Board of County Commissioners considered 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 and Section 4.05.02, A-1: Agricultural District, which were recommended by the Clay County Planning Commission. Members present: Travis Mockler, Phyllis Packard, Micheal Manning, and Richard Hammond. Also present: Toby Brown, Southeast Council of Governments, Cynthia Aden, Zoning Administrator, Alexis Tracy, State's Attorney, and Carri Crum, Auditor.

Travis Mockler, Chairman, called the meeting to order and turned the meeting over to Cynthia Aden, Zoning Administrator. The Board and the audience discussed prior suggestions that the Board members were accepting bribes. Sharon Gray wished to go on public record that she does not accuse any Commissioners of taking bribes.

Aden moved on to point out that the sections under review are not exclusive, that the zoning ordinance sections work together. She presented a zoning map and discussed wellhead protection areas, aquifer protection areas, etc.

Aden explained definitions in the proposed ordinance. Nicholas Britten asked questions regarding the definition of CAFOs in relation to agriculture.

Aden also explained conditional use permits. Barbara Yelverton asked who monitors animal numbers, whether a neighbor has to complain that someone is exceeding numbers. It was explained that Aden is a part-time zoning officer, so she would respond on a complaint basis.

Charles Yelverton asked about the Department of Environment and Natural Resources (DENR) process for a CAFO. Travis Mockler explained that the Natural Resource Conservation Service (NRCS) office would be involved. Aden explained the animal number charts. Charles Yelverton and Britten both asked questions about whether a person could have two different kinds of animals on the same properties. Packard, Hammond, Travis Mockler, and Aden explained that there would need to be clearance from the State under state laws. Aden discussed dairy numbers in relation to resource usage and the numbers statistically required for a dairy to be successful and clarified that there are additional requirements to be met for a dairy operation as opposed to other animals.

Aden reviewed the various setbacks under the proposed ordinance and explained that the manure application setbacks are advisory, as the State regulates manure application. Barbara Yelverton asked who would approve an impermeable liner. Travis Mockler explained that the liner would be engineered, the DENR would approve it, and then the Planning & Zoning Commission would also give approval. Charles Yelverton asked if the County could work with a manager and not know the owner of a CAFO because the proposed ordinance is not clear. Travis Mockler said the State will not allow a plan with a manager signature, but the verbiage could be added to the proposed ordinance.

Aden discussed proof of insurance requirements. Charles Yelverton asked if an insurance person working for an operator would be a reliable person and suggested a scientist or engineer would be better. Aden asked how a scientist would know how much to insure an operation for. Mark Winegar asked if the Department of Agriculture could provide a number, to which the Board said it would not. Travis Mockler said there is a fund set up for situations where an owner left a bad situation.

The next change Aden reviewed was building site vs. lot area. She explained that it has nothing to do with CAFO, but it needed to be fixed in the regulations. Then she again discussed conditional use permit requirements. She also discussed that Animal Feeding Operations (AFO) were added to prohibited uses in the Aquifer Protection Overlay (APO). Aden pointed out the requirements for impermeability standards that would have to be met via engineering studies. She said the process is more prohibitive than in the current regulations.

Transmission of liquid hydrocarbon requirements for meeting federal, state, and industry standards are also being clarified in the proposed regulations.

Travis Mockler turned the meeting over to public comment. Gray said she appreciates the work put into the proposed ordinance, and she feels some things are actually positive. She said everyone has biases, and she is against CAFOs. If someone is trying to build a large dairy in Clay County, she would like the Board to share it. She feels like bumping the dairy number to 5,600 is ridiculous. She said the setbacks to waters of the state should not be messed with.

John Davidson said it's wonderful that on Memorial Day week the people can get together to express their freedom of speech. He asked permission to share documents as a part of the file for the permanent record. He quoted Real Estate appraisal statistics regarding decrease in value of private residences in proximity to CAFOs, and said the government is effectively taking property values for that purpose. He said he sees CAFOs as a direct attempt to take away investment from property owners, and said the County has the responsibility to protect the existing investment.

Britten said conditional use for aquifers seems to permit CAFOs over aquifer protection. He also says the County should find a better way to ensure properties are properly insured.

Charles Yelverton said he is disappointed because the Commissioners are responsible for the public health, and there is nothing in the ordinance about public health. He feels the laxities in the proposed ordinance is harmful to public health. He would propose a reduction of dairy cattle to 3,000 to promote organic pasture organizations.

Paul Hasse asked how many of the 4 Commissioners have read the proposed ordinance in its entirety and who presented the need for changes. The Board members said they have each read it multiple times. How much natural gas do the feedlots use? Aden said she has no way of knowing. Hasse said the supply of natural gas in the county is limited. He asked how this would affect llamas, alpacas, and pheasants. Mockler said other animal types not listed in the table are considered on a case by case basis.

Sandy Pederson said there is a small feed lot below the bluff. She asked how many animals are in that lot. Aden explained that the joint jurisdiction area with the City of Vermillion will not be

changed. She asked how many are on the lot on the way to Sioux Falls, and Travis Mockler said 3,000.

Barbara Yelverton conceded that the people in the room are probably all biased against CAFOs. Lynn Riley said she is against confined operations and claimed that the animals have to be drugged a lot to keep them healthy, to which Travis Mockler said that is a fallacy. She said she feels like the County is relying on current technology, such as impermeable liners, too much. She said she thinks the County has blind faith.

Clarence Pederson asked for clarification about the operation below the bluff. Aden said it is not in this particular jurisdiction, so she would have to look at the joint jurisdiction regulations. Travis Mockler said if it was out in the county it would be a small CAFO and said the ordinance has nothing to do with how the animals are raised, but instead regulates pollution. He said he is concerned that the County only has a part-time zoning person and suggested adding staff. Travis Mockler said it would likely require raising taxes for the County to be able to afford it. Riley said the fee should be high for CAFOs. Britten said he is willing to pay more taxes to have staff who could handle monitoring these issues, and Winegar said he would agree.

Hasse reminded the Board not to forget about roads and bridges. The Board pointed out that large CAFOs often have agreements to pay for the roads.

Davidson said it would be good to work together to find investments in the community that are compatible with existing investments and asked what the Commissioners have done to explore this. Travis Mockler asked why raising livestock wouldn't compliment what Clay County already has. Davidson said CAFOs are essentially factories and at a certain point it ceases to be farming.

Keith Mockler said he is in favor of the proposed ordinance because the current ordinance makes it very difficult for anyone to get a building permit. He said he and his brother would like to add 200 head of cattle to his existing 200 head, and they cannot do it. He asked Davidson not to lump everyone into a large operation. He said the current ordinance does not work at all, and he would like to see some action by the Board on the proposed ordinance.

Cindy Struckman-Johnson said she has farmland in Gregory County. She said there is a CAFO that has forced its way in via a waiver of the County Commissioners. She said she agrees with all concerns expressed. She shared something she wrote to Gregory County regarding toxic manure lagoons in relation to public health. She thinks the dairy number is excessive.

Travis Mockler asked for comments from the Commissioners. Hammond pointed out a section on conditional uses in aquifer protection zones and corrected an "and" vs. "or" typo and a "may" vs. "shall" typo to avoid being permissive in the ordinance.

Keith Mockler asked how many sites are available for a large dairy in Clay County, more than four or five? Hammond said in his opinion there may be one area. Travis Mockler said the State has identified three areas, and said those landowners do not even know they have the suitable land.

Hammond pointed out a few more areas that he thought could be clarified, and the Board discussed them.

Packard said they have worked very hard to come up with a compromise. She said she feels it still gives a great deal of protection or ways to question operators. She said regarding the insurance requirement and said the Board has explored and has not found a better solution.

Manning said the Board really has listened to the public's opinions and suggestions. He said there are some things that no one will ever agree on, the Board cannot predict the future and can only work with what they have today. He said he is not concerned about the 5,600 number as long as the County can regulate it.

Keith Mockler asked if a person wanted to build a 5,500-head dairy operation, would they have to apply for a conditional use permit which would require a public hearing? The Board answered that it would have to go to public hearing.

Britten asked why have the 5,600 number if it is not possible in Clay County. Aden said former commissioner Raymond Passick suggested it to give the County an opportunity for economic growth if an operator could prove itself. Manning said the idea was that as long as the County could regulate it, then the number would be insignificant. He pointed out the regulations in place at the State level. Britten asked the Board why they would ever want a 5,600-head operation. Packard said there are two schools of thought. The larger number is the viable economic size, and the other side is 3,500 sustainability. Barbara Yelverton discussed organic dairies as well. Keith Mockler said if he wanted a 50-cow organic dairy, he cannot do it under the current ordinance. Aden said the difficulties of the current ordinance include insurance requirements and the high cost of the permits required for a CAFO, the ordinance restricts smaller operations such as small organic operations. She said she has attempted to use the current ordinance with a couple of smaller hog operations, and it was impossible.

After discussion regarding having another first reading due to changes the Board made during the hearing, Hammond moved, seconded by Manning and carried to set the first reading and public hearing for June 27, 2017 and the second reading for July 6, 2017.

At 9:06 p.m., Manning moved, seconded by Hammond and carried to adjourn.

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Travis Mockler, Chairman  
Board of Clay County Commissioners

ATTEST:

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Carri R. Crum, County Auditor

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