

November 22, 2016

The Board of Clay County Commissioners met in a special session at 7:00 p.m. on November 22, 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 and amended by the Board of Clay County Commissioners. Members present were Travis Mockler, Phyllis Packard, Leo Powell, Micheal Manning, and Raymond Passick. Others present: Auditor Carri Crum and Patrick Andrews from SE Council of Governments.

Andrews gave a PowerPoint presentation regarding the proposed changes to the zoning ordinance. Cindy Kirkeby asked for clarification between Small A and Small B. Andrews clarified that the current proposal does not distinguish between A and B. It is just one Small category. A typo was pointed out in the draft and noted that it would be changed.

Richard Hammond asked if there should be a time limit for filing of permits with the County. Powell suggested a 30-60 day timeline. Packard and Passick discussed that the Conditional Use Permit requirement is conditional upon the permit being filed with the County. Hammond also asked if the Feedlot Compliance Certificate is the approval the County is looking for from the State in Chapter 3.07(3). Mockler said the General Water Permit and the Manure Management Plan are the needed documents. Packard asked Hammond if it would be his recommendation that the County require it. Mockler mentioned that the State DENR official never discussed the Feedlot Compliance Certificate. Hammond suggested adding language to define what the County considers approval from the State. Hammond and the board members discussed the process and timeline for obtaining a Conditional Use Permit.

Glen Pulse asked the Board how the process works for purchasing a currently operating CAFO. The Board discussed the need for a Conditional Use Permit and discussed the language in the proposal regarding a new owner.

Barbara Yelverton asked for clarification regarding increasing the size of an operation. The Board clarified that the operator does need to go through the permit process in that situation.

Sharon Gray asked about how the Board is able to deny a 5,600 animal operation. Mockler pointed out that the ordinance is not based upon emotion. Things such as setbacks and the Manure Management Plan help determine whether an operation can be as large as 5,600.

Cindy Kirkeby asked why the Small A and Small B categories were just changed to Small. Mockler said currently the County has no control over Small B if an operator is releasing manure irresponsibly. Under the proposed ordinance the County is able to make the operator get a Conditional Use Permit. Kirkeby said she thinks everyone except the very, very small operators should have to get a Conditional Use Permit.

Barbara Yelverton asked if an operator was over a shallow aquifer, who will monitor it? Would it be a neighbor who would monitor it? Mockler said currently in the ordinance the Smalls are allowed. Barbara Yelverton proposed a scenario where a formal complaint was filed, would the County enforce it? Mockler said the State would step in to investigate the complaint on site. Powell asked Mockler and Manning if anyone from the state comes to count their livestock. Mockler said no, but he has never increased his number either.

Charles Yelverton asked why the number of dairy is over 5 times the number of other species. Mockler said it was the number the Board agreed on based on economics. Powell said he was looking for something like a happy medium between the people who wanted to see a lower number and the people who wanted to see a higher number.

Pulse said Clay County is a unique area and set of population, and he feels like a lesser number would be a lot more acceptable to the area. Charles Yelverton asked if the County Site Analysis study found any areas in Clay County. Powell said there were two good sites, but there may be more based on what he has observed for three-phase power, hard surface roads, etc. However, with the environment in mind the Board considered things like impermeability of the soil over aquifers. Pulse said he saw a dairy very well run that started at 900 cows, but it affected property values in the area, including him personally. He feels the State plan does not always run properly.

Kirkeby asked if there was any studies regarding the percent of objection to animal numbers. Packard said the numbers suggested that nationwide the optimal number was 4,500 head. There is a level at which it is more difficult to keep a good operation and to keep everyone happy. Gray said she is concerned about water quality, but her concern is air quality and smell. She used an operation on the way to Sioux Falls as an example. Manning compared it to the operation that the Commissioners toured and suggested she drive by it to compare for herself the lack of odor. Mockler said the type of operation she discussed is not prevented in the current ordinance. Charles Yelverton asked if the Dakota Plains Dairy is the operation the Commissioners toured, and asked if it was a locally owned operation. The Board discussed that it is a family operation but not a local family. Powell discussed the process for antibiotic usage and quarantine at that dairy as it was a previous concern heard at the Board's public hearings. Charles Yelverton asked what dairy prices are because he has heard overproduction has been an issue and also said there is no need for such a high number in Clay County when the site analysis has indicated two potential good locations. Powell pointed out that the county is not currently inundated with dairy operation requests and said all the County is doing is making the option available to farmers who can prove themselves. Powell said he thinks the regulations for CAFOs regarding what happens with runoff is a far better thing than no regulations for manure runoff.

Dean Spader asked why the Secretaries of Ag of ND and SD are encouraging more animals spread out on the land when Clay County appears to be doing the opposite. Mockler said the Secretaries of Ag want animals on more farms and do not care whether they are grazed or concentrated operations.

Kirkeby discussed setbacks in the current proposed draft. Mockler said the setbacks were 200 ft and 300 ft due to the manure management application setback being 200 ft and 300 ft. Hammond also clarified that a location 300 ft from a lake and 200 ft from a river or stream would already be over an aquifer. Gray said even if 500 ft precluded the County from siting a place, then the County should not reduce to 200 or 300 ft. She thinks there is nothing wrong with being more restrictive than the State. Passick said the Board must balance ordinances with the Comprehensive Plan, which says agriculture is the primary industry, and the County should promote it. It does not mean that the County should do things at the expense of the environment, but the County should give an operator a chance to prove itself able to comply. It would not be different than a tire plant, for example, because every industry has some kind of effect.

Kirkeby discussed the definition of Agriculture and said CAFOs are more like an industry. She said she does not consider a CAFO agriculture. She considers them a business. Mockler pointed out that every farm is a business of some sort. Andrews said there was conflict in previous hearings about the definition of Agriculture District. Mockler said the Board went back to the 2005 definition because no one could tell them where the 2013 definition came from. Kirkeby said the 2013 ordinance improved upon the 2005 ordinance in certain respects.

Hammond suggested it might be beneficial under the manure application tables to strike “shallow” from “private shallow wells.” He also asked about requirements for insurance professionals at the State level such as bonds or surety. Mockler said there is a state fund for environmental cleanup in the event of an issue as well as any private insurance.

Discussion took place regarding employment, wages, and benefits at the Dakota Plains Dairy. Tours were discussed, and Andrews suggested Ag United as a resource for potentially obtaining a tour. Hammond said Plymouth County Dairy in Iowa conducts tours often on Saturdays.

Pulse thanked the Board for having another public hearing. He also asked the Board to keep in mind when they vote on the ordinance that operations do have an impact on more than just that land, such as neighbors, property values, etc.

Powell pointed out that manure is so valuable that operators would be losing money by applying too much manure to the land. Spader said too few animals are as bad as too many.

Powell moved, seconded by Manning and carried to set the public hearing for the second reading as December 13, 2016 at 7:00 and to adjourn.