

MINUTES OF PUBLIC HEARING PROCEEDINGS

The Boone County Board of Commissioners Chairman, Henry R. Thieman called to order a public hearing on Monday, July 14, 2008 at 1:00 p.m. in the Boone County Courthouse Courtroom in Albion, Nebraska. Notice of the hearing was published in advance by publication and the convened hearing was open to the public. Present for roll call were Commissioners Henry R. Thieman, Jerry L. Tisthammer, Tom Schuele; Planning and Zoning Administrator, Janet Lawson; and Planning and Zoning Assistant, Bob Carey. Chairman Thieman noted that the Open Meeting Law is available.

The purpose of the public hearing is to approve or deny amending the Boone County Zoning Regulations in regard to Livestock Feeding Operations (LFOs). The Board has the option to approve, deny or postpone the decision.

Chairman Thieman opened the hearing for proponents and opposition. The Volunteer Planning Commission has held several meetings and their work and studies are very much appreciated. The Board received a copy of the regulation changes that were recommended by the Planning Commission. Chairman Thieman noted that the hearing should not be repetitive information.

Ted Thieman felt that the recommended zoning regulation changes was mainly house cleaning. He felt the recommendations should include all sand soil types not just Valentine Soil. Thieman felt that the setbacks and no overlap should apply to the county as a whole. Need to consider over bearing concentrated areas and protect the air and water quality. Thieman feels that all nine Planning Commission Board Members have a conflict of interest due to livestock connections. Thieman said three citizen meetings were held during the moratorium. Thieman received permission from the Board to contact Keith Marvin, JEO Consulting Group with the citizen's recommendations, to find out if their recommendations were permissible. Thieman read the fifteen conditions for the record that were brought forward from three citizen meetings and forwarded to Keith Marvin, JEO Consulting Group for his response. Thieman also feels these fifteen recommendations were not discussed at a Planning Commission meeting. The submitted document will be attached to the proceedings.

LFO Setbacks

(1) For Class I (301-1000A.U.) Livestock Feeding Operations (LFO) required to have a Zoning Conditional Use Permit, increase the setback by one-quarter mile for ECH operations and one-eighth mile for Open operations. This increased portion of the total setback requirement shall be on the property owned by the respective livestock feeding operations; (2) For Class II A (1001-2500A.U.) Livestock Feeding Operations through Class IV (10,000+A.U.) Livestock Feeding Operations (LFO) required to have a Zoning Conditional Use Permit, increase the setback by one-quarter mile for ECH operations and Open operations. This increased portion of the total setback requirement shall be on the property owned by the respective livestock feeding operations; (3) Specify, in the Zoning Manual language, that setbacks apply between LFOs. We can only find one reference to this, on page 16, in a matrix entitled "TABLE I: LFO SPACING AND DISTANCE". Also clarify and emphasize that smaller size LFOs cannot set up within the setback of a larger sized LFO;

Livestock waste distribution

(4) Eliminate the use of center pivot irrigation systems for spreading livestock manure; (5) Eliminate the spraying of livestock manure on the surface of fields; (6) Create defining language to address "knifing" or "chiseling" livestock manure as a method to distribute livestock waste from LFOs; (6a) Establish that the applications of livestock manure by knifing or chiseling shall

require a conditional use permit; (6b) Establish that installing hoses or pipes, underground or above ground for the purpose of transporting livestock manure shall require a conditional use permit; (7) When hoses or pipes are utilized to haul livestock waste off site, define this method and equipment as an extension of the LFO. As an extension of the LFO, this equipment shall be subject to the same setback requirements as any other part of the LFO. (Note: This is consistent with Section 2.21, D.-If stockpiling of animal waste....); (8) When hoses or pipes are utilized to haul livestock waste off site, the hoses and pipes shall be pressure tested annually and certified reports submitted to Boone County;

Waivers of Distance

(9) Eliminate the possibility of any waiver of distance between LFOs. In other words, no livestock feeding operation may sign a waiver of distance for another livestock feeding operation; (10) Waiver of distance requirements shall be extended to all owners of real property within any LFOs setback distance. In other words, it shall be required that land owners, not just residence owners, sign a waiver of distance when the land falls into an LFO setback. (Landowners feel threatened and are adversely affected by large LFOs just as residence owners are.);

Sandy Soils

(11) Prohibit any further distribution of LFO manure or any further development of LFOs themselves, (beyond what's grandfathered now) on sandy soil classifications in Boone County. Boone County's Zoning manual has an NRCS provided "SOIL LIMITATIONS FOR SEWAGE LAGOONS MAP" that designates, in red, the areas in the county that have a "Severe" limitation. The sandy soil classifications in this red area shall be identified and listed in the manual and as such, no further LFO development or LFO manure distribution will be allowed anywhere in the County where those soils occur;

Financial Assurance

(12) Require ownership details from all applicants for LFO conditional use permits. Cleanup costs and problems caused by abandonment will be borne by the public if appropriate conditions aren't imposed. Appropriateness can be better determined with knowledge of ownership particulars;

Application Requirements

(13) Applications for conditional use permits for LFOs shall include all relevant information useful in considering a permit. Preliminary engineering plans, architectural drawings, manure disposal plans, water issues, plat information, land description and ownership arrangements are some of the information that any application shall include. This information shall be presented to the Planning and Zoning Commission prior to its hearing and a copy must be available for the public. Documented "bad actor" information should be a strong consideration; (14) If an applicant knowingly submits false information or withholds relevant information, denial of the application will be immediate and automatic. We need strong Zoning Manual language to this effect;

Reciprocal agreements with neighboring Counties

(15) To the extent allowed by law, Boone County should enter into reciprocal agreements with its neighbors that have zoning to assure that Boone County residents on or near its borders aren't adversely affected by residents of another County. For example, setbacks should apply across county lines.

The following addressed the Board after the reading of fifteen recommendations from the citizen meetings: (1) Beth Noble presented a map showing LFOs in the county and the concentrated areas in a four to eight mile radius. She questions the monitoring of wells and unmonitored piping carrying waste. Expand the moratorium for three to five years to see what happens with economy and ground water; (2) Ross Knott not opposed to extending the moratorium, the area is a good source of growing feed for livestock. He is concerned with concentrated areas for public health, human safety, and air/water quality. We need to look into the future of sole/small operations compared to the large corporate operations; (3) Don "Kelly" Noble would like the red map showing the sand soil types be all included not just Valentine Soil, all sign waivers for overlaying of circles not just sandy area; (4) Mary Jane Noble waivers are unnecessary; (5) Mark Niewohner the fertilizer applied per acre is monitored by DEQ and still have to apply commercial fertilizer with the organic fertilizer; (6) Chris Baum felt disclosure of all parties involved should be available to the public when applying for permits from the Zoning Commission. Most LFO ownership is not within the county and revenue is not coming back into the county; (7) Sue Stevenson spoke on antibiotic resistance; (8) Ted Thieman felt waivers should be signed by land owner as well as the residents. Corporate ownership is driving land prices up to eliminate the small farmers. DEQ does not protect quality of life, should be worrying about next generation. Private property rights for all landowners; (9) Joyce Erickson felt we need to protect the county from large corporations. We need to protect our air and water resources; (10) Commissioner Thieman acknowledge the letter received in regard to regulation changes on page 15 (9) and page 16 (1) of the zoning manual from Hilary Maricle, David Merrill, Jim Meysenburg, Jerry Niewohner, Gayle Noble, Scott Burroughs, Gale Schafer and Jay Wolf and will be attached as part of the proceedings; (11) Commissioner Tisthammer noted that the Planning Commission is all volunteer. A leak can continue a long time before it is discovered. DEQ only has eight people for ninety-three counties. Safety is an issue and bio security in livestock units is two days; (12) Commissioner Schuele felt since the zoning regulations were implemented they have done more good than one realizes; (13) Mitzi Fox is not sure what has changed but she now smells manure odor at her residence where she hasn't in the past; (14) Charlotte O'Brien feels regulations for applying effluent onto fields need to be black and white in the zoning manual; (15) Commissioner Thieman presented language to be added to the zoning regulations for wind energy. The board did receive in writing County Attorney, David Medlin's findings with regard to the amended zoning regulations recommendations.

Commissioner Thieman read into the record County Attorney, David Medlin's review of the proposed amendments from the Planning Commission to the Boone County Comprehensive Development Plan Zoning and Subdivision Regulations Manual: "I have reviewed the proposed changes to the Boone County zoning manual. There are several statutory provisions that pertain to zoning. Neb. Rev. Stat., section 23-114.03 (Cum. Supp. 2006) provides that individual counties have the power to pass and amend zoning ordinances "for the purpose of promoting the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Nebraska." The proposed amendments appear to be consistent with the purposes set forth in that section and are not unreasonable, discriminatory or arbitrary. The proposed amendments also appear to be directly related to the goals, objectives and purposes set forth in the Boone County zoning manual, as previously amended. Although I cannot guarantee that someone might pose a challenge to these amendments they do appear to be consistent with all constitutional, statutory and regulatory requirements. However, actual approval or denial of the proposed amendments is still a discretionary decision for the county board, if it also concludes that said amendments meet the current goals, objectives and purposes of the county zoning plan."

Motion made by Tisthammer, second by Schuele to close said hearing at 3:05 p.m. Roll call vote: Yeas: Tisthammer, Schuele and Thieman. Nays: None. Motion carried.

The following changes to the Boone County Comprehensive Development Plan Zoning and Subdivision Regulations Manual are as follows, with the changes in **bold**:

- Motion made by Schuele, second by Thieman to add language on page 13, article 12, section 2.21 second paragraph: The Conditional Use Permit, **if approved**, shall be approved after public notice has been given and public hearing conducted as required by law **and contingent upon the approval of a Livestock Waste Control Permit if required under Title 130 under the Nebraska Department of Environmental Quality (DEQ)**. Roll call vote: Yeas: Schuele, Thieman, and Tisthammer. Nays: None. Motion Carried.
- Motion made by Tisthammer, second by Thieman to add language on page 14, article 12, section 2.21, A (1) through (6): to add the language **or other LFO** at the end of each sentence of (1)-(a) (b); (2)-(a) (b); (3)-(a) (b); (4)-(a) (b); (5)-(a) (b); (6)-(a) (b). Roll call vote: Yeas: Tisthammer, Thieman and Schuele. Nays: None. Motion carried.
- Motion made by Tisthammer, second Thieman to add language to page 15, article 12, section 2.21, A (9) **The separation distances required ECH and Open Lots, within the Valentine Soil Association, Elsmere-Wann-Loup Association, Thurman-Hord-Loretto Association, shall be maintained regardless of LFO size. The required separation distances of the larger LFO shall be the determining distance between the facilities. This requirement shall not fall under the waiver process.** Roll call vote: Yeas: Tisthammer, Thieman and Schuele. Nays: None. Motion carried.
- Motion made by Thieman, second by Tisthammer to change language on page 16, article 12, section 2.21, Table 1: LFO Spacing and Distance to **The separation distance between LFOs shall be the distance of the larger facility within the Valentine Soil Association, Elsmere-Wann-Loup Association, Thurman-Hord-Loretto Association. In addition, the overlapping of separation circles within the Valentine Soil Association, Elsmere-Wann-Loup Association, Thurman-Hord-Loretto Association shall not be allowed.** Roll call vote: Yeas: Thieman, Tisthammer and Schuele. Nays: None. Motion carried.
- Motion made by Schuele, second by Thieman to add language to page 47, article 22, section 2.4 (B) All new or expanded livestock feeding operations shall be permitted only by a conditional use permit and shall require a synthetic-lined lagoon, **deep pits** or an above ground sealed storage facility as its waste handling system. Roll call vote: Yeas: Schuele, Thieman and Tisthammer. Nays: None. Motion carried.
- Motion made by Schuele, second by Thieman to add language to page 47, article 22, section 2.4 (C) **The overlapping of separation circles within the Valentine Soil Association, Elsmere-Wann-Loup Association, Thurman-Hord-Loretto Association shall not be allowed.** Roll call vote: Yeas: Schuele, Thieman and Tisthammer. Nays: None. Motion carried.

The submitted document from Keith Marvin, JEO Consulting Group will be attached to the proceedings. The soil type changes are from the General Soil Map Figure 5.1.

A request was received from Windpower companies to amend the zoning regulations with regard to decommissioning wind towers. The Windpower companies requested to amend the zoning regulations manual to include the following language for commercial/utility grade wind energy conversion systems.

- Motion made by Thieman, second by Tisthammer to add language to article 21, section 23.6, section (J) **Within one (1) year after the fifteenth (15th) anniversary of commercial operations of the wind facility, the owner of the wind facility will place a surety bond or equivalent financial security in an amount estimated to decommission the wind facility at the end of its useful life according to the decommissioning plan in the easement contract. If the wind facility is repowered or new equipment is added so that decommissioning is not necessary, the security will be released.** Roll call vote: Yeas: Thieman, Tisthammer and Schuele. Nays: None. Motion carried.

The Board thanked the public for being cordial and respectful throughout the Planning Commission's and Board of Commissioner's discussions and hearings during the moratorium. The present moratorium expires on July 15, 2008. The Board acknowledged all the volunteer time put in by the Planning Commission. We have accomplished some forward progress and expanded within the county zoning regulations.

Motion made by Tisthammer, second by Schuele to adjourn said hearing at 3:40 p.m. Roll call vote: Yeas: Tisthammer, Schuele and Thieman. Nays: None. Motion carried.

Kathy Thorberg, County Clerk