



# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

November 12, 2020

Cherry County Fairgrounds 4-H Building

The meeting was called to order at 4:30 PM CT by Chairman Gary Swanson in advertised location of the Cherry County Fairgrounds 4-H Building at 120 S. Green St. in Valentine, NE.

Roll call was taken. The following members were present: Chelsea Luthy, Wade Andrews, Michael McLeod, Duane Kime, Gary Swanson, John Lee, and Albert Ericksen with a vacancy. Dave Rodgers was absent. Also present were Jessica Coyle, Zoning Administrator, Keith Marvin, consultant for Planning Commission, and various members of the public.

The Open Meetings Act was noted, as was the public notice in the Valentine Midland News pertaining to this meeting.

### Approval of Minutes:

Duane K. made a motion to approve the minutes from the October 6, 2020 meeting. Albert E. seconded the motion. Roll call vote was taken. Chelsea L.-Yes, Wade A.-Yes, Michael M.-Abstain, Duane K.-Yes, Gary S.-Yes, John L.-Yes, and Albert E.-Yes. Motion carried 6-1 with abstention.

### New Business:

The date for the next meeting is December 1, 2020 at 4:30 PM CT in the Courthouse Courtroom.

### Communications:

None were given by the Zoning Administrator or Planning Commission Members

### Excused Absence:

John L. made a motion to excuse Dave Rogers from the meeting. Chelsea L. seconded the motion. Roll call vote was taken. Chelsea L.-Yes, Wade A.-Yes, Michael M.-Yes, Duane K.-Yes, Gary S.-Yes, John L.-Yes, and Albert E.-Yes. Motion carried 7-0.

### Public Hearings:

#### Public Hearing on CUP 003/20 Bow & Arrow Ranch LLC Conservation Easement:

Chairman Swanson opened the Public Hearing at 4:45 PM CT as advertised in the Valentine Midland News by reading the ad that ran in the October 28<sup>th</sup> and November 4<sup>th</sup> editions.

Tom Davis was there representing the application. Tom stated that the application stands on its own and the land is going to stay agricultural use and ranching.

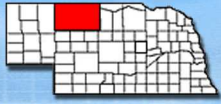
Jacob Alishause with Nebraska Land Trust was there to answer questions. Jacob stated that Nebraska Land Trust is an agriculturally based board governed non-profit started in 2001.

Chelsea L. asked Jacob if the easement is perpetual and can be sold. Jacob responded yes.

Wade A. asked if there is a secondary easement holder. Jacob stated that there is not on this easement.

Chairman Swanson closed the Public Hearing on CUP 003/20 Bow & Arrow LLC Conservation Easement at 4:57 PM CT.

#### Discuss and Act on CUP 003/20 Bow & Arrow LLC Conservation Easement:



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Duane K. made a motion to approve CUP 003/20 Bow & Arrow LLC Conservation Easement. Albert E. seconded the motion. Roll call vote was taken. Chelsea L.-Yes, Wade A.-Yes, Michael M.-Yes, Duane K.-Yes, Gary S.-Yes, John L.-Yes, and Albert E.-Yes. Motion carried 7-0.

Public Hearing on CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility:

Chairman Swanson opened the Public Hearing at 5:01 PM CT as advertised in the Valentine Midland News by reading the ad that ran in the October 28<sup>th</sup> and November 4<sup>th</sup> editions.

Chairman Swanson entered Exhibit #1 Application; Exhibit #2 Keith Marvin's response dated July 11, 2020; Exhibit #3 letter from McGrath North dated November 11, 2020; Exhibit #4 Current Comprehensive Plan; and Exhibit #5 Current Zoning Regulations into the record.

Chris Danielski was representing the applicant. Chris stated that they are a 3<sup>rd</sup> generation operating farm in Cherry County. He said the application is a well thought out plan for improving soil health by eliminating commercial fertilizer.

Chris Danielski read a letter from Leonard Danielski. Leonard said that his family moved to the area when he was 17 years old. His letter stated that the family has been studying this project for the last 5 years and this is not an experiment. They have been organic farming for the last 10 years using chicken manure, but will now be able to produce the fertilizer here. He also stated the family motto of "You take care of the land and it will take care of you". Leonard's hope is that this will bring youth back to the area with the 80 jobs it will create.

Chris Danielski then introduced Dean Settje of Settje Agri-Services & Engineering in Raymond, NE. Dean Settje gave background of their company and projects they have worked on. Dean stated that they worked with the Danielski's to create an application to submit to both the State/Federal Environmental Compliance (Nebraska Department Environment Energy) and County Zoning. Settje's not only help with the permitting and construction, but the management of the operation including compliance, record keeping, and nutrient management.

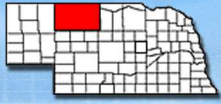
Eric Ogren spoke on the PIC multiplier and that this facility is a sow farm. It would produce breeding sows to go into other facilities. Eric stated that the reason for the location is the biosecurity and being distanced away from other swine facilities. Eric said it will be stocked once and breeding done with artificial insemination, weaned pigs will leave at 21 days, and barrows will go to customers, and sows to other farms.

Dean Settje spoke again about the Nebraska Department Environment Energy (NDEE) permit and its components. The permit has been approved by NDEE. The facility is a Deep Pit Swine facility with manure storage for 365 days and mortalities of onsite composting with the best ventilation system. Dean showed the impact on traffic and economics. The manure is kept uniform being stored in the pits and will be injected into the soil using a dragline. Dean showed how they used the Odor Footprint tool from UNL and its comparison to the county setbacks. Inclosing he stated they feel they have met all the requirements of the CUP, zoned ag, good roads, good climate, and biosecurity.

Lee Hamann, Ed Brown's attorney, from McGrath North referenced his letter submitted on November 11, 2020. He was concerned with the animal units exceeding 2,000, water quality, odor mitigation, roads, schools, and asked Planning Commission to do research to protect the welfare of the citizens. Does not want both phases approved, but have applicant apply for Phase 2 after Phase 1 is operating.

Jay Ringenberg, a principal at JDR Environmental LLC and previously worked at NDEQ, was concerned with the odor and that NDEE doesn't monitor or control this, feels the applicant needs to revise the nutrient plan to state injection only and show transporting of manure. He feels the county need to make sure that these are done.

Dale Jacobson, engineer from firm in Omaha, spoke on the wind rose and that predominantly the winds are from the NW in the spring during application and will blow towards the Two Rivers Ranch. Dale feels the Planning Commission



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should recommend that 3 monitoring wells be installed and monitored 3-4 times a year. Dale also feels a professional engineer study needs done on the German Settlement road.

Heather Painter, from Ainsworth, spoke on her experience of living next to the 1<sup>st</sup> swine facility in Brown County. Heather stated property values decreased, health issues in family, interpreters in school systems, and that there's tax credits for building facilities like the one being proposed.

Rick Weber stated that Danielski's are 1<sup>st</sup> class citizens and community minded giving back to the community. He feels that this will be an asset to the community.

Ed Brown, rancher on German Settlement road for 30 years, stated he does not want change, road concerns, property values decrease, and quality of life. He said he has a right to quiet enjoyment and questions if there will be other facilities.

Rodney Palmer, lawyer from Ainsworth, owning a cow/calf operation close to a swine facility and is Ed Brown's attorney. He stated he's noticed that county has to maintain the roads more, Danielski's don't need this to survive, odor carries 7-8 miles away, and Brown County Planning Commission and Commissioner's turned down a hog confinement **with costs being a factor**. Provided a letter with his testimony that will be kept on file with other written testimony.

Mike Murphy, Middle Niobrara Natural Resources District (MNNRD) representative, provided a letter that he read into testimony. He stated that the deep pit style of manure storage is the best and has no failure in Nebraska. He stated that Danielski's have voluntarily complied with monitoring and that ag is a vital economic activity in Cherry County.

Tagg From, manages Two Rivers Ranch, stated his concerns are odor, property values, road safety, and do the schools know the impacts of the facility. He stated that if this is better than the fertilizer before than how bad was it before.

Craig Andresen stated the he feels that Tagg and Ed's right to quiet enjoyment will disappear, increase traffic in Crookston, right to quiet enjoyment should be part of Zoning Regulations, and a written statement from neighbors should be part of the application.

Gregg Perrett stated citizens like goods roads, but are all the swine, chicken and gravel pits going to come from China.

Kim Snyder, lives 2 miles from a facility in Ainsworth, spoke on the experiences they have had and the changes they have had to make in their lives. Kim said she feels that the facility comes at a high cost to taxpayers, only here for the biosecurity, and does not want the application approved.

Jayne From, lives on German Settlement road, stated her children are her why due to them traveling the road for school, gave statistics on truck accidents, and feels a study needs done on the road along with a traffic survey.

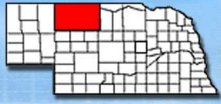
Shirley Schuman, a concerned citizen of Crookston, stated where are the workers going to live with no affordable housing and concerns the school systems.

Nina-Marie Nelson, live 1.5 miles from site, stated does not understand the setbacks, health concerns, property values threatened, enjoyment of land will change, and concerns with the increase in crime with the workers. She also stated smell is an annoyance.

Craig Miles stated he does not understand why Danielski's got approval from State before the county level and wants to know what is going to be forfeited in Cherry County.

Eve Millar, lives 2 miles SE of proposed site, stated concerns of the road maintenance and costs, housing for workers, and where are the workers coming from.

Zoning Administrator entered into the record written testimony provided from Wilbur Fay, Jay D. Ringenberg, and DD Consulting.



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Chairman Swanson took a recess and resumed the meeting at 7:31 PM CT.

Zoning Administrator gave written testimony provided during recess to board from Casey Lancaster.

Chairman Swanson gave the applicant time to rebuttal.

Dean Settje stated that there's no plans for onsite housing, groundwater is important and comes from mismanagement, requested to leave the NDEE to monitor and enforce the monitoring wells, odor control footprint and county setbacks are met, and explained the reason for different directional setbacks is due to prevailing winds.

Chairman Swanson asked Rodney Palmer what are the types of facilities in Brown County? Rodney had left, but Kim Snyder spoke that the one is a deep pit lagoon and the other is pull plug deep pit.

Chairman Swanson asked Mike Murphy about installing monitoring wells and who would be responsible for the monitoring of these wells. Mike stated that there is already a monitoring well that is checked yearly. If the county insists on additional wells and has the MNNRD monitor, then it will cost the county. Mike also stated there is no state statute requiring these be done. Mike suggested that all individuals have a test done on their personal wells now for a baseline.

Duane K. asked Danielski's about how much truck traffic now on the road. Chris Danielski said truck traffic will decrease to 210 loads a year. Luke Moser also noted that the yields on the fields decreases with organic fertilizer, in turn decreasing traffic during harvest.

Wade asked for clarification on the total animal units exceeding the 2,000. Dean Settje stated yes it does exceed.

Chelsea L. asked Danielski's based on the site is there room for expansion and if it has been thought about. Dean Settje stated the expansion is already there and is why it is a 2-phase project. Luke Moser stated no room without taking out a field. Chris Danielski said there is no intention of expansion.

Albert E. asked if 100% of voluntary easements were signed. Dean Settje stated that the Cattle Country Easements were signed for all residence within the setbacks. Dean stated that Nina-Marie Nelson's residence is outside the setback.

Keith Marvin asked Dean Settje if there's 365 days of storage for both Phases of the project. Dean Settje stated that yes both phases will have 365 days of storage.

Chelsea L. asked why the 5-year timeline. Dean Settje responded that phase 1 will take 1-2 years to build and getting operating. After phase 1 is operating they will then start and implement phase 2.

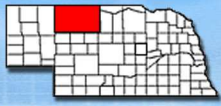
Keith asked if the application given to the county was amended to the NDEE. Dean Settje stated that yes, the NDEE application given to the county was amended to NDEE to state injection only for application of manure.

Chairman Swanson asked if they will be pumping manure across Minnechaduzza Creek. Dean Settje said that no there will not be any pumping across the river. If they use the fields farther than 3 miles away, then will haul by truck. Chris Danielski said it is not feasible to pump that far and only included those fields if needed.

Duane K. asked if they would end the project with phase 1 if they cannot find help. Chris Danielski said no it will not end with phase 1. They will use H2A, contract labor, and migrant workers for help if needed. Dean Settje stated that is also a reason for needing 5 years to complete.

Keith Marvin asked if the county has the amended application. Dean Settje said they can provide, and Chris Danielski said the approved NDEE permit states only injection for application.

Wade A. asked about the mortality plan. Chris Danielski said that it is by composting and the final project will be odorless with smell only coming when turned. Dean Settje said that animals will be mixed with sawdust.



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John L. asked if the composting bays are concrete. Dean Settje said yes and that 90% of the mortality is in young stock so easier and quicker to compost. Eric Ogren said that a 3:1 ratio of wood chips to animals will be used.

Chairman Swanson asked Nina-Marie Nelson to verify her residence on a map.

Keith Marvin advised that if they table a decision then no outside communication between now and next meeting. If they want more information, then need to continue the hearing.

John L. asked Mike Murphy about the confinements in Brown County and their storage for manure. Mike Murphy stated that they are lined pits and open lagoons with liners that are open to the air. Mike also stated that the manure storage system being proposed is the best.

Albert E. asked if the ventilation blows the air out of the pit then would odor be the same. Dean Settje said that the pit fans create a consistent air flow to control odor and not create a plume. Dean stated that a deep pit is a controlled environment.

Keith Marvin asked Dean Settje if this facility is like those by Central City. Dean Settje responded he was not positive if they are.

Chairman Swanson stated the options the board has for the meeting.

Wade A. asked Keith Marvin if the relationship between the application and the current Comprehensive Plan are an issue with over 2,000 animal units. Keith responded that the current Zoning Regulations allow for the Board of Commissioner's to approve the overage if the applicant can prove acceptable assurances.

Chairman Swanson said that the current regulations are deliberately made this way.

Keith Marvin stated the positives to the double the capacity of the deep pit storage on a windy day. Keith also stated that the technologies for hogs exceeds cattle in terms of odor and Planning Commission should go visit a facility for themselves.

Albert E. asked Keith Marvin if they could just approve Phase 1. Keith Marvin stated yes.

John L. asked how many employees it would take to just run Phase 1. Eric Ogren responded that portions of Phase 1 are built for running both phases, but it would be approximately 30-35 people.

Duane K. made a motion to close the Public Hearing on CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility. John L. seconded the motion. Roll call vote was taken. Chelsea L.-Yes, Wade A.-Yes, Michael M.-Yes, Duane K.-Yes, Gary S.-Yes, John L.-Yes, and Albert E.-Yes. Motion carried 7-0.

Chairman Swanson closed the Public Hearing at 8:29 PM CT on CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility.

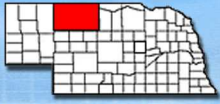
Discuss and Act on CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility:

Chairman Swanson asked Keith Marvin to identify some of the issues and give ideas of conditions to attach with a recommendation to the Board of Commissioner's.

Chairman Swanson asked Keith Marvin if the application meets the requirements of Zoning Regulations. Keith Marvin stated that they do meet the regulations with the exception clause of exceeding 2,000 animal units.

Chelsea L. discussed the phasing of the whole project and making the conditions strong.

Duane K. made a motion to table approval or disapproval of CUP 001/20 Danielski Harvesting & Farming LLC/Valentine Feeders Swine Facility until the next meeting. Wade seconded the motion. Chelsea wanted clarification on reason



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behind motion. Duane K. stated it was to gather more information on your own and visit a facility like the one proposed. Roll call vote was taken. Chelsea L.-Yes, Wade A.-Yes, Michael M.-Yes, Duane K.-Yes, Gary S.-Yes, John L.-Yes, and Albert E.-Yes. Motion carried 7-0.

Reports and Recommendations:

None

Adjournment:

Chairman Swanson made a motion to adjourn the meeting at 8:41 PM CT.

Jessica Coyle

Zoning Administrator

Approved with Changes in red as per Rodney Palmer request and motion made by Albert E. to approve as amended on December 1, 2020.

APPROVED