

Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

June 6, 2023

CHERRY COUNTY COURTHOUSE COURTROOM

The meeting was called to order at 4:31 PM CT by Chairman Duane Kime in advertised location of the Cherry County Courthouse Courtroom.

Roll call was taken. The following members were present: Dave Rogers, Wade Andrews, Michael McLeod, Duane Kime, Sherri Bacon, Gary Swanson, John Lee, and Albert Ericksen. Absent was Chris Gentry. Also present were Jessica Coyle, Zoning Administrator, and various members of the public.

The Open Meetings Act was noted on the East Wall hung by Zoning Administrator, as was the public notice in the Valentine Midland News pertaining to this meeting.

Approval of Minutes

Wade A. made a motion to approve the minutes with changes from the May 4, 2023 meeting. Michael M. seconded the motion. Roll call vote was taken. Dave R.-Yes, Chris G.-Absent, Wade A.-Yes, Michael M.-Yes, Duane K.-Yes, Sherri B.-Yes, Gary S.-Yes, John L.-Yes, and Albert E.-Yes. Motion carried 8-0.

New Business:

Discuss/Act Location for Dates in August for Open Houses about Comprehensive Plan and Zoning Regulations

No motion was made. The board will discuss the locations for the dates of August 30 & 31 Open Houses at the July meeting.

Set Meeting Date and Time

The board set a date of July 11th at 4:30 PM CT for the next meeting in the Cherry County Courthouse Courtroom with a public hearing.

Old Business:

None

Communications:

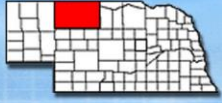
Zoning Administrator advised the board that their August 1st meeting will be in the Library Meeting Room, and they'll need to decide on a time later during library hours.

Reports and Recommendations

None

Excused Absence:

Sherri B. made a motion to excuse Chris G. from the meeting. John L. seconded the motion. Roll call vote was taken. Wade A.-Yes, Michael M.-Yes, Duane K.-Yes, Sherri B.-Yes, Gary S.-Yes, John L.-Yes, Albert E.-Yes, Dave R.-Yes, and Chris G.-Absent. Motion carried 8-0.



Cherry County Planning and Zoning Minutes



Public Hearing:

- a. Public Hearing on TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23 at 4:45 PM CT

Chairman Kime opened the Public Hearing on TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23 at 4:45 PM CT. Chairman Kime advised the public wishing to speak a reminder of their 3-minute time limit and to sign in prior to speaking. Chairman Kime then invited a representative for the application to speak first.

Dean Settje spoke on behalf of the applicant as the consultant for the applicant. Dean gave a background of Settje Agri-Services and Engineering with their number one goal as a company is to protect the ground and surface water.

Tim Marlatt spoke about the family and wanting to make sure the ranch will be long term sustainable for the next generation with the addition of the swine facility.

Dean then spoke about the specifics of this project including that it is 2 buildings with deep aerobic pits underneath with 365 days of storage capacity. The manure will be applied to the fields by injection to the 3 pivots indicated in the application. Dean spoke to the economic benefits of sustainability, growth, and tax revenue. Settje will be the 3rd party overseer to make sure the project is done to specs. Dean suggested that a condition of the permit be an approved Nebraska Department of Environment and Energy (NDEE).

After Dean and Tim were finished Chairman Kime gave everyone a 5-minute break before hearing from the public.

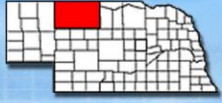
Gerald Grooms spoke as the owner of the house and property to the north of the proposed facility just outside of the ½ mile setback. Gerald was concerned about the effect on property value and ability to potentially subdivide and sell property later, water quality, and odor. He stated that he has 3 family members wanting to move to the property.

David Schultz spoke as a new resident to the county, but previously lived in the Rising City area where there was a swine facility. He spoke about the odor and no economic benefit to that area was seen as promised.

Tracy Grooms spoke about the concern of long-term property value with possible decrease. She is the daughter-in-law of Gerald Grooms. Tracy cited facts from a study in North Carolina and spoke about the effects of exposure to swine manure causing health problems such as rheumatoid arthritis.

Robert Shelbourn spoke about the concern for public health, safety and welfare with the location being close to Valentine, negative effects on health, and about the potential of manure to be gifted or sold without being regulated. Robert stated it should be denied as doesn't meet the regulations.

Jennifer Suhr spoke of the need to protect air and water along with public health, safety, and welfare. She said the odor could affect Valentine and tourism on the river. She feels the nutrient plan was not sufficient in mortality area and the application should be denied as incomplete and not meet regulations.



Cherry County Planning and Zoning Minutes



Jay Simon spoke about land use not being compatible, public health, safety, and welfare, and that different conditional uses require different things in the Zoning Regulations. He stated that the application failed to show public health, safety and welfare and should be denied. Jay was concerned as to who would own the pigs.

Karen DeNaeyer spoke about that the application doesn't meet the requirements of conditional use, public health, safety, and welfare, and challenged the letter from Middle Niobrara Natural Resources District. She also stated that the nitrates in ground water could get to other wells.

Susan Cook, with the Niobrara National Scenic River part of the National Park Service, spoke about the Scenic River and the economic impact the river has on the County. She stated that this could negatively impact the water quality and visitor experience.

Marla Shelbourn spoke about that the application is incomplete, should wait for NDEE approval to approve, lacks best management practice, and should ensure its complete before sending the application to County Commissioners. She stated the best management practice is injection.

Lawrence Turner, former County Commissioner, stated we wouldn't need zoning if not for pigs and chickens. He stated he grew up on a hog farm and the odor was horrible and believes there is a correlation between arthritis and hogs. He feels it should be denied.

Katrina Haase spoke about the Cowboy Trail and those enjoying it affected by odor and the water coming out of the hills. She would recommend voting no on the facility.

Ann Warren said she has committed to purchasing a property on Borman Bridge Road. She would like answers to questions about water testing, is this like the Purdum facility, setbacks efficient enough, and how property values are going to be affected.

LeRoy Semin spoke about hearing that if all regulations are met then the board must approve the CUP. He stated that it didn't matter that the Valentine Feeders application didn't meet the regulations and it was still approved.

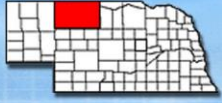
Frank Patterson said that he agrees with the progressive attitude and is all for progress. He has lots of questions that should be answered before proceeding such as odor and traffic generation. Frank was neither in favor of nor against it.

Tim Larson said that there are 27 families besides his that live in the area that could be affected by the odor and thinks that the applicant should change the location to be farther away from civilization.

Chairman Kime then gave another 5-minute break and when resumed asked if any other public would like to speak.

Ed Brown spoke that he's used Settje Engineering for his facilities, there was no data to back to support their points, and that the current facility being built is costing the county because of the road.

Dean Settje then was asked to address any of the comments and concerns heard by Chairman Kime. Dean spoke that he appreciates the concerns and addressed the water testing, size of operation a 10th of Valentine Feeders in size, regulations are designed to be a guideline to follow and can't guarantee that there won't be an occurrence of odor outside the setback at times. He asked the board to visit a site like this facility to see for themselves. Dean stated that this is in the ideal location in reference to Valentine and the nutrient management



Cherry County Planning and Zoning Minutes



plan was not written for this site but a generic. Dean stated that all the manure will be used on the crop land and not sold as it's an almost perfect balance between animals and land.

Michael M. asked where the nearest site is in Nebraska. Dean stated Broken Bow and Madison are the nearest locations.

Duane K. asked if all the manure will be injected under the ground. Dean said yes. Duane K. also asked what the life expectancy of a building like this proposed it. Dean said that a new building like these will last 50-70 years. Duane K. asked if both buildings were being built as 1 project as the drawing showed future on the one. Dean said that was an oversight and both buildings are in this same project.

Albert E. asked if there was any chance if there were to be a break could it get to the Niobrara River. Tim Marlatt stated it would have to travel uphill to reach the Niobrara and would flow east if there was a break.

Duane K. asked Tim Marlatt why that location was chosen for the facility. Tim stated that it was chosen due to the proximity to the pivots where the slurry will be applied.

Chairman Kime closed the Public Hearing at 6:30 PM CT.

Written testimony was submitted by National Parks Service Susan Cook, Karen DeNaeyer, Jennifer Suhr, Marla Shelbourn, Robert Shelbourn, Darin Benning, Gerald and Jane Grooms, and Frank and Dana Miller. The written testimony received prior to the meeting was sent to the Planning Commission via email. The written testimony received during the meeting along with testimony prior was hand delivered by Zoning Administrator to board members at the meeting.

B. Chairperson shall ask for proof of Publication

Chairman Kime asked Zoning Administrator for proof of proper advertisement. Zoning Administrator stated that the ad ran in the May 24th and 31st editions of the Midland News and the printed copy was in the application packet provided.

C. Chairperson shall ask Zoning Administrator TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23 application is complete

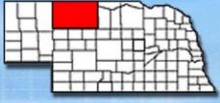
Chairman Kime asked Zoning Administrator if the application was complete, and Administrator responded that it was.

D. Chairperson shall ask for disclosure of any conflicts of interest on TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23

Chairman Kime asked for any conflicts of interest and there was none.

E. Chairperson shall ask for any disclosure of ex-parte communications by any member TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23

Chairman Kime asked the board if there were any ex-parte communications. Chairman Kime disclosed that he was called by Tim Marlatt and Tim wanted to tell him about the application. He stopped Tim and told him he couldn't discuss it with him.



Cherry County Planning and Zoning Minutes



- F. Discuss/Act on TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23

Gary S. stated that the board needs to come up with some conditions. The board discussed that they needed time to review the written testimony and consider all the verbal testimony heard before deciding. Albert E. made a motion to table the decision on TK Angus Co. for a Confined Animal Feeding Operation of a swine finisher housing 4,999 head over 55lbs CUP#001/23 until the next meeting. Dave R. seconded the motion. No other discussion. Roll call vote was taken. Michael M.-Yes, Duane K.-Yes, Sherri B.-Yes, Gary S.-Yes, John L.-Yes, Albert E.-Yes, Dave R.-Yes, Chris G.-Absent, and Wade A.-Yes. Motion carried 8-0.

Chairman Kime adjourned the meeting at 6:35 PM CT.

Jessica Coyle

Zoning Administrator

APPROVED