

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, January 8, 2020, 1:00 p.m., Hearing Room 112, on the first floor of the County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Shams Al-Badry, Tom Beckius, Dick Campbell, Tracy Corr, Cristy Joy, Tracy Edgerton, Deane Finnegan, Dennis Scheer and Cindy Ryman Yost; David Cary, Steve Henrichsen, Tom Cajka, Dessie Redmond, Rachel Jones, Brian Will and Geri Rorabaugh and Rhonda Haas of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Hearing

Chair Corr called the meeting to order and acknowledged the posting of the Open Meetings Act in the room.

Chair Corr requested a motion approving the minutes for the regular meeting held December 18, 2019.

Motion for approval of the minutes made by Campbell, seconded by Scheer and carried 8-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer and Beckius voting 'yes'; Corr abstained.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

##### **BEFORE PLANNING COMMISSION:**

**January 8, 2020**

Members present: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius.

**The Consent Agenda consisted of the following items: Annexation 19010, Change of Zone 19032, Change of Zone 19030, Special Permit 19055 and Special Permit 19058.**

There were no ex parte communications disclosed.

There was ex-parte communications that took place or additional information learned while visiting the site to be disclosed. Finnegan stated that she did go and visit all of the sites, and further stated that she did not get out of the car or speak with anyone.

Item 1.2, Change of Zone 19030, was removed from the Consent Agenda to a separate public hearing.

Campbell moved approval of the remaining Consent Agenda items, seconded by Edgerton and carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

**Note: This is FINAL ACTION on Special Permit 19055 and Special Permit 19058, unless appealed by filing a letter in the Office of the City Clerk within 14 days.**

Chair Corr called for Requests for Deferral.

**PRELIMINARY PLAT 18002**

**TO ADD 430 RESIDENTIAL LOTS ON APPROXIMATELY 152.1 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT THE SW CORNER OF WEST OLD CHENEY ROAD AND SOUTH FOLSOM STREET:**

**PUBLIC HEARING:**

**January 8, 2020**

Members present: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius.

**Staff Recommendation:** Two-week deferral.

The Clerk noted that the applicant has requested to defer this item for two weeks to the regular Planning Commission hearing on January 22, 2020.

Scheer moved to grant the request for a 2-week deferral for public hearing and action on January 22, seconded by Joy and carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

**Opponents:**

1. **Laurie Brunner, 5500 S. Folsom Street**, came forward and questioned when Folsom Street would be paved. With all of the construction going back and forth, this gravel road generates a lot of dust and she believes it is a safety hazard. She stated that the County has told her that the developer is responsible for the road and the developer has said they would not finish the road until the construction starts. She shared that there has been construction down the road for a long time.

**CHANGE OF ZONE 19030**  
**FROM R-3 (RESIDENTIAL DISTRICT) TO R-4 (RESIDENTIAL DISTRICT), ON PROPERTY GENERALLY**  
**LOCATED AT THE SW CORNER OF WEST OLD CHENEY ROAD AND SOUTH FOLSOM STREET:**  
**PUBLIC HEARING:** **January 8, 2020**

Members present: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius.

**Staff Recommendation:** Approval

There was ex-parte communications disclosed relative to site visits. Finnegan stated that she did go and visit this site, and further stated that she did not get out of the car or speak with anyone.

**Staff Presentation:** **Dessie Redmond, Planning Department**, came forward and stated this is a request for a change of zone from R-3 (Residential) to R-4 (Residential) on approximately 15.82 acres, located approximately between SW 12th Street and S. Folsom Street and, south of W. Old Cheney Road. This request is for a portion of the Southwest Village Heights Subdivision that will develop incrementally with anticipated future phases of annexation and rezoning requests. The purpose of this request is to allow smaller single-family attached lots than allowed in the R-3 zoning district. A change of zone from R-3 to R-4 is consistent with the Future Land Use Map designation and compatible with surrounding area. This request complies with the Zoning Ordinance and is consistent with the Comprehensive Plan.

Corr stated that the change of zone area is different and looks like spot zoning. Redmond stated that there is R-4 zoning to the south, and it is typical to have a mix of residential uses within a larger area. The preliminary plat is separate from the change of zone because the preliminary plat is final action by Planning Commission and the change of zone will continue on to City Council. Corr stated that this area would go from R-3 south of Pleasant Hill Road to a section of R-4, then back to R-3. Redmond said yes.

Edgerton inquired about the question on paving of the road. Redmond stated that the portion that will be final platted with this application is considered the first phase of this project. When the second phase of this project starts, the developer will be required to pave the road.

**Applicant:**

**DaNay Kalkowski, Seacrest & Kalkowski, 1128 Lincoln Mall, Ste. 105**, came forward on behalf of SW Folsom Development. In 2018, there was discussion about annexation and zoning of the first phase of this project. The trunk sewer also needed to be extended at that time to serve this area. With the change of zone, they are wanting to do some duplexes in the R-4 area. In addition, this request is just on a small portion of the entire area for this project. It is anticipated that they will be developing single-family homes to the west and north.

Corr inquired about the construction timeline. Kalkowski explained that it would be multiple years. They are finishing the phase to the south, and the next phase will have townhomes and single-family developed and there could easily be a third and fourth addition. They are also waiting for the sewer to be extended to make that connection, so it will be a few years down the road before the second phase is started, which would require the connection to Folsom Street.

**Proponents:**

There was no testimony in support.

**Opponents:**

**Laurie Brunner, 5500 S. Folsom Street**, came forward and inquired about the proposal and asked if there was a difference between duplexes and townhomes, and if that would be offset with additional green space. She further stated that she does not understand the delay of getting Folsom paved until phase 2, it does not make any sense to wait.

**Staff Questions:**

Redmond stated that anything that is two or more dwelling units two-family is considered multi-family. The term townhouse is not in the subdivision ordinance, but is considered single-family attached houses that are in a row. A duplex is two families living in a structure separated by a wall. For the paving of South Folsom Street, they cannot require the developer to pave more road than they are developing at the time. As they develop further up Folsom Street, they are required to pave that portion of the road.

Corr inquired about the increase in the number of units and how that affects the green space. Redmond said that she would defer to the applicant, because it comes down to their layout of the property.

Campbell inquired about the aerial photo and how it appears that S. Folsom Street is paved up to the R-4 section. Redmond stated that she believes there have been some improvements but they are not up to Urban Design Standards at this point. Campbell asked even though the southern portion is paved, it would need repaved. Redmond said that is correct.

**Applicant Rebuttal:**

Kalkowski stated they would need to develop next to that portion of the road to trigger the need for the road to be paved. It is also where they are taking access to the development. The paving that Commissioner Campbell had inquired about, was tapering from when Southwest Village developed and they may or may not be able to use the additional paved area. The plan is largely duplexes and that is why there is no additional green space. With this development, there is already green space with the big LES Easement that is there.

Campbell asked where the access points are for the R- 4 area of this development. Kalkowski stated in phase 2 that there would be an access off Folsom Street constructed. Right now, a street that goes south has an access in two different areas and another access to Folsom. Campbell stated that would be West Pleasant Hill Road. Kalkowski said yes, which would make two different connections in the future.

Corr shared that it looks like there is quite a bit of natural greenspace that cannot be built on because of the natural contour of the area. Kalkowski stated that some of the green space is where the LES Easement is and there is an area nearby that will be a park.

Campbell asked if in the future there would be more green space areas. Kalkowski said yes, there is an area that goes through the development that will be green space.

Scheer moved to close the public hearing on this item, seconded by Beckius and carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

**CHANGE OF ZONE 19030**

**ACTION BY PLANNING COMMISSION:**

**January 8, 2020**

Scheer moved approval, seconded by Beckius.

Scheer appreciated all the remarks and testimony that was given, and will be helpful in two weeks. This is consistent with the Comp Plans goals and he is in support of this change of zone. He shared when looking at the entire development, this piece is a good complement to the rest.

Campbell agreed with Commissioner Scheer. He shared that having R-4 surrounded by R-3 in this development offers more diversity for future homeowners. He is in support of this change of zone.

Corr agreed with her fellow Commissioners. She stated that she likes that the change of zone is happening before any development so that neighbors know what to expect before they start building.

Motion carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

**ANNEXATION 19005**

**TO ANNEX APPROXIMATELY 42 ACRES, MORE OR LESS, ON PROPERTY GENERALLY LOCATED AT SOUTH 27TH STREET AND ROKEBY ROAD;**

**AND**

**CHANGE OF ZONE 17013A**

**FROM AG (AGRICULTURAL DISTRICT) TO R-3 (RESIDENTIAL DISTRICT), FOR THE EXPANSION OF AN EXISTING PUD (PLANNED UNIT DEVELOPMENT), ON PROPERTY GENERALLY LOCATED AT SOUTH 27TH STREET AND ROKEBY ROAD:**  
**PUBLIC HEARING:** **January 8, 2020**

Members present: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer and Beckius and Corr.

Scheer declared a Conflict of Interest on Items 4.1a and 4.1b and exited the chambers.

**Staff Recommendation:** Annexation 19005: Conditional Approval  
Change of Zone 17013A: Conditional Approval

There were no ex-parte communications to be disclosed.

There was ex-parte communications disclosed relating to site visits. Finnegan stated that she did visit this site. Beckius stated that he lives very close to this site.

**Staff Presentation:** **Dessie Redmond, Planning Department**, came forward and stated these are two related applications associated with the Iron Ridge Subdivision, located at approximately South 34th Street and Rokeby Road. The annexation area includes approximately 43 acres, including the Simmons-Salttillo Cemetery and expansion area of the Iron Ridge PUD, plus adjacent right-of-way. The change of zone from AG (Agriculture) to R-3 (Residential) Planned Unit Development (PUD) area includes approximately 39 acres and is to develop approximately 175 units. This is the expansion area to the existing Iron Ridge PUD and does not include the cemetery. This request also includes adding 65 additional units to the existing PUD area for 690 units total. Waivers to building height, minimum lot width, minimum lot area, double-frontage lots and to allow sanitary service with a temporary lift station are being requested. This abuts the city limits to the west, and a full range of municipal services can be provided, if annexed. It is within the City's Future Service Limits and designated for future urban residential land uses. A change of zone from AG to R-3 is consistent with the Future Land Use Map designation and compatible with surrounding development. Both requests comply with the Zoning Ordinance and are consistent with the Comprehensive Plan. Emergency Services Fire and Rescue recommends approval of this project but notes this location is beyond their 4-minute travel time goal. Therefore, a phasing plan is recommended as a condition of approval.

Campbell asked if it was Block 18, Lot 1, which was requesting the 65-foot waiver. Redmond stated that she thought it was Block 15.

Corr inquired where double-frontage lots were located. Redmond stated they are up against Union Ridge CUP. Corr asked if it was on the east side or the south side. Redmond stated the south side. **Steve Henrichsen, Planning Department**, came forward to show on the map where the double frontage lots were located.

Corr inquired about the 16-inch water main by Rokeby Road and asked if they would still be putting it in. Redmond said correct, that it will be coming with the grading of the road. Corr stated that it looks as if a portion of the road is already paved. Redmond stated that there is some asphalt and that came with the Iron Ridge Subdivision. Corr asked if it would be up to standards. Redmond said correct, that for reimbursement of impact fees they would need to be up to Urban Design Standards. Corr inquired about the allocation of Lincoln on the Move funds for this project and asked how it is being decided how the funds would be used.

**David Cary, Planning Director**, came forward and stated it is a separate process using a separate Committee. This Committee has been meeting to decide what the funds will be used on. There are 18 projects that have been identified and this project is one of them. There is no guarantee that the funds will go to all the identified projects, but the projects that are moving forward and get approval will start to get the funds. Corr asked if it is first-come, first-served basis for the funding and asked how the amount is decided. Cary explained, in a way it is first-come, first served, because a project that is ready to go will move to the front of the line. With how the projects were identified, it was not a first-come, first-serve; it was more informed members that know what projects are likely to happen and to know what projects are needed.

**Applicant:**

**Peter Katt, Baylor Evnen, 1248 O Street, Suite 600**, came forward and stated that he is one of the developers and owners of this project. This is a continuation of the existing Iron Ridge Development PUD. This project has been struggling for a long time with Rokeby Road being gravel. With the availability of the sales tax dollars, the city and the other property owners will all help with the paving of Rokeby Road.

Beckius asked Mr. Katt to identify which Apples Way, LLC is involved with the annexation and change of zone applications. Katt stated that Apples Way, LLC was not involved in either of these applications. These applications are being tacked on to the existing PUD, because it was the most efficient way to continue the land use.

There was no testimony in support or opposition.

**Staff Questions:**

Beckius asked if Apples Way was listed as an owner because of the annexation agreement that Iron Ridge Development is entering into. Redmond explained they are listed because the original PUD is being amended to add the additional acres. Beckius asked if the amendment of the PUD is part of the annexation agreement. **Tim Sieh, City Attorney's Office**, stated that Apples Way, LLC would not be part of the new annexation agreement. Beckius asked if the PUD is being amended through the change of zone. Sieh said yes.

Campbell moved to close the public hearing on this item, seconded by Finnegan and carried 8-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'; Scheer declared a conflict of interest on Annexation 19005 and Change of Zone 17013A and, therefore, recused himself from voting.

**ANNEXATION 19005**

**ACTION BY PLANNING COMMISSION:**

**January 8, 2020**

Campbell moved approval, seconded by Beckius.

Corr stated this annexation is logical; the land is contiguous and services can be provided.

Motion carried 8-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'; Scheer declared a conflict of interest on Annexation 19005 and, therefore, recused himself from voting.

**CHANGE OF ZONE 17013A**

**ACTION BY PLANNING COMMISSION:**

**January 8, 2020**

Campbell moved approval, seconded by Finnegan.

Beckius stated he would not be voting on Change of Zone 17013A due to his relationship with Apples Way, LLC, although it is not required by the State for him not to vote.

Motion carried 7-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer and Corr voting 'yes'; Beckius abstained; Scheer declared a conflict of interest on Change of Zone 17013A and, therefore, recused himself from voting.

**CHANGE OF ZONE 19031**

**FROM AG (AGRICULTURE DISTRICT) TO R-3 (RESIDENTIAL DISTRICT) PUD (PLANNED UNIT DEVELOPMENT) TO DEVELOP 860 MULTI-FAMILY UNITS, ON GENERALLY LOCATED AT SOUTH 48TH STREET AND YANKEE HILL ROAD:**

**PUBLIC HEARING:**

**January 8, 2020**

Members present: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Corr and Beckius.

Scheer declared a Conflict of Interest on Item 4.3 and exited the chambers.

**Staff Recommendation:** Conditional Approval

There were no ex parte communications disclosed.

There was ex-parte communications disclosed relating to site visits. Finnegan stated that she did visit this site.

**Staff Presentation:** **Dessie Redmond, Planning Department**, came forward and stated this is a request for a change of zone from Agriculture (AG) to Residential R-3 Planned Unit Development (PUD) to develop 860 multifamily units. This site is located on approximately 54 acres and is a portion the Yankee Hill Country Club Golf Course. Waivers are being requested to the parking requirements, as well as an increase to the building height from 35 feet to 65 feet for buildings that are more than 275 feet from the east property line, to reduce the front yard setbacks, and eliminate a sidewalk on one side of the private street. Redevelopment of this area for urban residential is appropriate as it is within the city limits and can be provided with city services. The plans submitted comply with urban residential density land uses and with the requirements of the Zoning Ordinance. Redmond stated there was a typo in the staff report where it states 4-lanes on Yankee Hill Road from S. 40<sup>th</sup> Street to S. 48<sup>th</sup> Street—this should read “4-lanes from S. 40<sup>th</sup> Street to S. 44<sup>th</sup> Street and 2-lanes from 44<sup>th</sup> Street going west” and referenced a site plan (see Exhibit “1”). Lincoln on the Move funds are proposed to be utilized along with developer contributions to improve Yankee Hill Road. Neighbors have submitted letters of concern with this project. The neighbors do not want the 270-foot section of Bridle Lane paved and there are also concerns with the height waiver, setbacks, and landscape buffers.

Campbell asked if there was a berm required in the conditions. Redmond said no, but they could add it to the conditions.

Beckius inquired about the connectivity from the proposed site to Yankee Hill and asked why they feel the connection to Bridle Lane is not necessary. Redmond stated it is not that they feel it is not necessary and that is why it is being platted to the property boundary. She stated that they could not require the developer to pave Bridle Lane because of the length of the road, which is outside of their development, and further stated that the neighbors do not want that road paved either.

Ryman Yost inquired if there would be a road from the property line to the boundary, but not paved. Redmond said no.

**Applicant:**

**Mark Hunzeker, Baylor Evnen, 1248 O Street, Suite 600**, came forward representing Chateau Development. He shared that the key design elements have been to maximize the green space and to keep all of the ponds and waterways. They are planning to reduce surface parking by using underground parking. This development will provide a variety of shapes and sizes to create interesting space for the residents. The height of the buildings is varied and they are using the grades to transition from east to west. This site has a significant change of grade. The portion of the building that will need the height waiver is more than 680-feet away from the neighbors. Hunzeker provided copies of a proposed Motion to Amend. In addition, he referenced several renderings. (See Exhibit "2")

Corr inquired how much the grade change was. Hunzeker stated there is a 50-foot drop from the east property line to where the building starts.

Campbell asked how much higher the ground to the east of the 9-plex was. Hunzeker stated about 20-feet.

Hunzeker stated that they have had discussions with the neighbors who have concerns with the extension of Bridle Lane, the connection of 48<sup>th</sup> Street and Yankee Hill Road, setbacks, height waiver and screening. We have agreed to make all the necessary changes and have worked with Planning to make these changes. They plan on working with the individual owners on screening concerns that they have.

**Proponents:**

There was no testimony in support.

**Opponents:**

1. **Max Rodenburg, Rembolt Ludtke, 1128 Lincoln Mall, Suite 300**, came forward representing the residents of the Country Acres South Homeowner Association. He stated that they have concerns that have yet to be addressed. They are concerned with the excessive size of this development, the infrastructure, setbacks and grading. If approved, they would like additional conditions added to this project. He shared that this development puts a strain on the outer limits of the City.

[Break at 2:25 P.M.]

Resumed at 2:35 P.M.]

2. **Lisa Koch, 4801 Bridle Lane**, came forward representing the 17 members of County Acres South and they are in opposition. They have concerns with Bridle Lane access and they are wanting it to remain closed. The sanitary sewer line is too close to their well

and needs to be moved to the other side of the road to meet the 50-foot required separation. The size of this development is excessive and there is not the infrastructure in place to handle this amount of traffic. They have concerns with the setbacks and feel they need to be an additional 20 feet from what is proposed. Grading for this project is also a concern.

Beckius inquired why they want an additional 20 feet added to the setbacks. Koch stated in her Homeowners Association, the setback is 60 feet and she feels that they should have to honor their setbacks.

Campbell stated if the building is moved 60-foot it would require the parking in the back, and asked Koch which she would prefer to see parking or the back of the units. Koch stated that she is unsure, but she feels that they can move the entire building 20 feet to the west.

**Staff Questions:**

Campbell asked if this moves forward with no connection to Bridle Lane, does that meet what the residents are asking for. Redmond said that they could not make that a condition. She stated that the neighbors and the developer both agree that they do not want the road. Campbell asked if it would be up to Lincoln Transportation and Utilities (LTU) to determine that the sanitary sewer needed to be moved to the other side of the road. Redmond said yes, there is a requirement from the Environmental of Wells and Water Standards that would require a 50-foot setback and that would need to be met. Campbell asked when that would be determined. Redmond stated that she was unsure. **Bob Simmering, Lincoln Transportation and Utilities (LTU)**, came forward and stated that they would need to submit infrastructure plans prior to the development being built. Campbell asked if it would be up to the applicant to move the lines to meet the requirement. Simmering said yes, it would be up to the applicant and they would need to redesign to meet the standard.

Beckius asked if with the proposed agreement, is the applicant helping to improve Yankee Hill Road. Redmond stated that it is part of the annexation agreement that they need to be in agreement before it goes to City Council. As discussed in recent months, Yankee Hill Road would be improved to four lanes from S. 40<sup>th</sup> Street to S. 44<sup>th</sup> Street and continue on with improvements to urban standards to the east. The proposal shows two round a bouts with urban standards at the intersections.

Beckius inquired about starting on S. 44<sup>th</sup> Street. Redmond stated that they intend to build a construction access point at S. 48<sup>th</sup> Street, but the first built improvement would be at S. 44<sup>th</sup> Street.

Campbell asked about S. 44<sup>th</sup> Street to S. 48<sup>th</sup> Street and S. 48<sup>th</sup> Street to S. 56<sup>th</sup> Street and if it would remain the existing roadway or would there be a new offset 2-lane road built. Redmond stated this is part of the discussion as well. A round a bout is currently planned at S. 56<sup>th</sup> Street and will extend to the west. Tower Heights would be required to improve Yankee Hill Road from S. 48<sup>th</sup> Street to S. 52<sup>nd</sup> Street.

Beckius asked if staff is okay with going from 200 units to 288 units for this development. Redmond said yes, for the first phase. She stated that she has had discussions with Patrick Borer with the Fire Department and they approved the 288 units. Beckius inquired about the lack of connectivity with this project and the larger scope of the other developments in the area. If there were to be an accident on S. 44<sup>th</sup> Street, there is nowhere for them to go, and asked what is the plan. Redmond stated that the plan is to have S. 48<sup>th</sup> Street built to construction standards, which can handle large trucks going in and out. While they are building the apartments, they will be working on S. 44<sup>th</sup> Street paving.

Corr asked for clarification that the sidewalk waiver is for one sidewalk on one side of street. Redmond said that is correct, and staff is requesting denial for that waiver. Corr stated that the neighbors want the S. 48<sup>th</sup> Street on the development site and they want a written assurance and asked if this could be done. Redmond stated the developer has worked on shifting S. 48<sup>th</sup> Street to the west so it is on their site. There may need to be a grading easement so Planning would not agree to put this in as a condition of approval. It is too far out to know what would be needed for the road.

Campbell asked if grading needed to be done on the outlot, would they need to get permission from the Homeowners Association. Redmond said that is correct.

Corr stated that she is concerned with the excessive size and the number of dwelling units per acre, and asked about the density. Redmond stated that there are other PUD's that have been approved in the area that have similar units per acre.

**Applicant Rebuttal:**

Hunzeker came forward to address concerns and stated that there have been several PUD's approved in the last few years that have height waivers and density up to R-5, which is greater

than what is shown here. The setback on the east side is double from what is required. The grading plan takes setback out of the realm of impact on the abutting property. From the Koch property, it would be very hard to see much of the building because of the grading and referenced a schematic (see Exhibit "2"). To move this an additional 20 feet would disrupt the underground parking access points. With the sanitary sewer that is within the 50 feet, that sewer will not be connected to anything and it will be empty. The sewer will be coming out of the other buildings but, if LTU wants the pipe moved, they would move it. With the height of 65 feet, that is just a number; the buildings will not be that high. They will be around 50 foot in height. With the traffic, both developers on both sides have done traffic reports and LTU is satisfied that they are not overburdening the infrastructure. There is an agreement in draft form that they feel will result in an agreement being reached with all involved. The developer is not objecting to the denial of the sidewalk waiver and will be putting a sidewalk in on both sides of the street. This will be a really good project and he hopes for approval as amended.

Campbell asked the density of Mr. Gasbar's other properties. **Stefan Gasbar, Chateau Developer, 3100 S. 72<sup>nd</sup> Street**, came forward and stated they are located on 70<sup>th</sup> Street and Van Dorn.

Corr asked if the inner building was around 4-stories. Gasbar said yes, adding that this development has several grade changes. He shared that the buildings will have flat roofs. The green space for this project is about 55 percent and increasing from that. They want to keep the drainage flow in place and not impede on it. If the buildings are shifted to the west, this could affect the natural drainage on the site. Corr asked if there were any special need or affordable housing with this plan. Gasbar said no, but some of his other properties that were built in the 70's are less per square foot.

Campbell asked about the six 9-plexes on the east edge and if it was possible to lower the others. **Tim Gergen, Clark Enersen Partners, 1010 Lincoln Mall, Suite 200**, came forward and stated the minimum is 10 foot at the north end and the other units are 13-14 feet. Campbell stated the others are more than the 10 foot. Gergen said yes.

Beckius asked if they would be open to placing some additional landscaping on the adjoining neighbors' property. Hunzeker stated that during the break, they had conversations about that and they would be willing to have discussions with the neighbors and enter into an agreement with them.

Edgerton moved to close the public hearing on this item, seconded by Campbell and carried 8-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes';

Scheer declared a conflict of interest on Change of Zone 19031 and, therefore, recused himself from voting.

**CHANGE OF ZONE 19031**

**ACTION BY PLANNING COMMISSION:**

**January 8, 2020**

Beckius move approval as amended, seconded by Campbell.

Campbell asked for another motion to amend to add a condition that on the east side of the 9-plex units that there be a 5-foot berm added to the screening, which would create an even greater separation for the acreage owners.

**Tim Sieh, City Attorney's Office**, came forward and stated there is a motion to amend proposed by the applicant and agreed to by staff. Now, this is a separate motion to amend from Commissioner Campbell to add an additional condition. This new motion requires a second and a vote.

Al-Badry seconded.

Campbell stated the reason for this is that adding the berm does add some noise protection and is used effectively by the State. Since the applicant is required to do some landscaping, also having the 5-foot additional soil level behind the 9-Plex will reduce the noise and visibility even further.

Beckius stated that he is not opposed to a berm, but he just wonders if they have an opportunity to let the applicant and the adjoining neighbors design something together without dictating to them what we want to see.

Joy stated that the Commissioner's idea is great; however, she will not be supporting the motion based on the fact it will let them do their job.

Corr stated she feels the same way. She does like the idea, but because the Commissioners have not had a chance to hear the applicant's thoughts on this, she is hesitant to approve.

Motion failed 2-6; Al-Badry and Campbell voting 'yes'; Edgerton, Finnegan, Joy, Ryman Yost, Beckius and Corr voting 'no'; Scheer declared a conflict of interest on Change of Zone 19031 and, therefore, recused himself from voting.

Campbell commended the applicant and the neighbors for their conversation to bring a better project forward. There has been a great bending by the applicant. He stated he is not concerned about the density of this project. This will be an asset to the community.

Finnegan is in support and likes the cooperation between the three parties to include the City. It was nice that they had neighborhood meetings. The developer has made many concessions,

including the grading, setbacks, and they have addressed all of the neighbors' concerns. A lot of give and take has taken place.

Joy wanted to reiterate that the give and take has been great, and she is in support. She stated as things move forward to continue to look at the 2 lane versus a 4 lane on Yankee Hill Road and have LTU continue to monitor the road conditions. She is supportive of the growth that is happening in this part of Lincoln.

Beckius added that the density and height of this project are becoming more common. Approvals that they have been seeing and given thought to will become more and more normal and this follows standards that they have been following for a long time. He stated that he has some concerns with connectivity and understands that Bridle Lane will not go through, but does worry as developments continue for more connectivity in the area.

Campbell wanted to state on the record that with Yankee Hill Road if they are rebuilding the 2-lanes, they might want to offset the lanes so when they put in the additional 2-lanes in the future it does not shut down the traffic.

Corr stated that she appreciates the cooperation between the developer and neighbors, and that this is tough when putting in new homes or apartments near the beautiful golf course. She is in support of this application.

Main Motion carried 8-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'; Scheer declared a conflict of interest on Change of Zone 19031 and, therefore, recused himself from voting.

Scheer returned to the chambers.

**TEXT AMENDMENT 19010**

**AMENDING ARTICLE 2 DEFINITIONS, ARTICLE 4, SECTION 4.007 AG AGRICULTURAL DISTRICT, ARTICLE 13 SPECIAL PERMIT, SECTION 13.035 AND ARTICLE 22, SECTION 22.005 GENERAL PROVISIONS OF THE LANCASTER COUNTY ZONING REGULATIONS, REGARDING COMMERCIAL FEEDLOTS:**

**PUBLIC HEARING:**

**January 8, 2020**

Members present: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius.

**Staff Recommendation:** Approval

There was ex-parte communications to be disclosed.

Joy stated that she was on the Confined Animal Feeding Task Force Committee.

**Staff Presentation:** Tom Cajka, Planning Department, came forward and stated this text amendment amends Article 2, Definitions, Article 4 AG-District and Article 13 Special Permits related to Animal Feeding Operations, also known as Commercial Feedlots. The proposed text change will allow for uniformity of conditions as they pertain to Animal Feeding Operations. The added definitions will define what an Animal Feeding Operation is and will be in line with definitions from the Nebraska Department of Environment and Energy (NDEE). The proposed conditions are the results of six months of work with the Confined Animal Feeding Operation Working Group. The proposed text is in conformance with the Comprehensive Plan by establishing conditions for Animal Feeding Operations that help establish uniformity for this type of agricultural use in the County, while still protecting the surrounding properties. Cajka continued his presentation by going through all the proposed changes to the text amendment as stated in the staff report. Exhibit A of the staff report identifies the proposed changes to text amendments. Exhibit B of the staff report shows the recommended changes from the working group. Most of the differences with the two exhibits is that changes were made to clear up some of the subjective terms and to clarify some of the language. Due to ongoing lawsuits, they had to keep the existing language that is in the code today, such as reference to NDEQ now known as NDEE. The new code language will have dates added to keep them separate.

Campbell asked if the task force was not concerned with the setbacks for a small Confined Animal Feeding Operation (CAFO). Cajka said correct. The group was following Nebraska Department of Environment and Energy guidelines.

Beckius inquired about the map and if they take into consideration towns outside of Lancaster County. Cajka said yes, they would look at that.

Scheer asked about the process of permitting and shared he has a concern about the sequence of permitting and doing it in a proper way, to not put other jurisdictions or reviewing agencies out of sorts. Cajka stated that the last two applications that came through NDEE did not require a construction operating permit. This permit is required by NDEE once the applicant has been approved for their special permit, but prior to starting their operation. He explained that NDEE prefers that their permit be done after the special permit has been approved. When it is done prior, and if the special permit is denied, they feel that they have wasted a lot of staff time for no reason. Scheer asked if there were advantages to doing their permit with the special permit, or should they continue with what is in place now. Cajka stated the advantage is that the boards would know upfront. Otherwise, you would be relying on the State agency to make sure they meet all of the regulations of NDEE.

Beckius asked about the aspect of limiting existing owners of CAFO from expanding and why they are not being offered to continue to expand onsite, if they would like that option. Cajka stated with any zoning change they would be grandfathered in as non-conforming.

Edgerton stated that she wanted to know the changes that were made to the task force recommendations. Cajka stated that the definitions and setbacks are the same, but that there

was some clean up to the Animal Feeding Operations as defined in NDEE, Titled 130. The County Attorney had issues with some of the language. There were some definitions added that were not in the working groups draft and for clarity and being able to defend if necessary.

**Jennifer Holloway, County Attorney's Office**, came forward and stated that essentially being able to legally enforce the language that is going forward. A lot of time was spent making sure that the working group's intent was still there, but the wording is such that it can be legally enforced.

Edgerton said clarity by not substantive. Holloway said correct.

Beckius stated that everything that the working group suggested has been added. Holloway said correct.

Campbell asked about a situation where someone wanted an AFO for something that was not included on the list, like chinchillas. Cajka stated that he does not think there is anything in the code to address that; they just took all the animals that NDEE had listed. Joy stated the group discussed including animals recognized by the State of Nebraska as livestock.

Finnegan asked about the right to farm and if she purchased land would she be able to farm. Holloway stated from a legal standpoint of if you are on the property and have been farming and a new neighbor moves in and complains--this would be more of a right to farm. Finnegan stated there is an understanding of time and what you have been doing on the property. Holloway said yes.

Ryman Yost asked if there was any consideration to the density or if there is anything to stop multiple people from starting large CAFO's within the same space. Cajka said there is no conditions added that has spacing on a feeding lot from one operation to another, as long as they can meet the conditions.

Holloway showed proposed language to Exhibit "A" of the staff report (see Exhibit "3" attached): For Agriculture meaning, the new definition is not to include livestock or poultry and they should be marked out. Another amendment in the notice section of D 1: a change to the affected property in 22.005 (d)(2) All other districts: To all owners of property within one-half mile of the boundaries of the affected property.

#### **Proponents:**

1. **John Hansen, CAFO Task Force Member**, came forward in support of the recommendations from the task force. He stated these recommendations are a comprehensive and substantial step in a reasonable way to comply with the group's changes, which was to take a look at where we are and look at the county. He stated that the setback for a large CAFO should have been more than a half mile, but supports the recommendations.

2. **Steve Martin, CAFO Task Force Member**, came forward in support. He stated that he has some suggested modifications to the recommendations (see Exhibit "4") he handed in to the clerk. He stated that it was give and take and the majority ruled. He feels the setback should be changed for medium CAFO's, because it does not make a distinction between medium and large. He does not agree with needing the NDEE construction permit first, because it is a large expense to the owner, and it takes a lot of NDEE's time. One of the biggest complaints is odor and there should be some allowances to reduce the setback for operations that can reduce the odor by using newer technology. He stated that this is detrimental to the County's agriculture and there will not be anywhere to have livestock.
3. **Jonathan Leo, 2321 Devonshire Drive**, came forward in support of this application as amended. He stated that he has suggested modification for this text amendment (see Exhibit "5"). He stated that none of the members of the task force group were neighbors from the area. He stated that with the working group's discussion, it became more robust and creative and there was a remarkable outcome, which is being presented. He stated that the setback should be increased from what the group had recommended.
4. **Janis Howlett, 13200 W. Parker Road, Crete**, came forward and stated that it should be required for the applicant to visit with the neighbors. She stated she did not even know about the proposed CAFO in her area until she noticed the yellow sign posted.
5. **Pam Wakeman, 15751 Bobwhite Trail, Crete**, came forward and stated that she attended most of the task force meetings. She agrees with most of the recommendations and also agrees with John Hansen's recommendations on increased setbacks. She did state concerns in terms of none of the members on the task force being neighbors, how the task force was established, and that procedures were not in place prior. She also stated concerns that there were no official meeting minutes taken at first.
6. **Lori Heiss, 23800 NW 27<sup>th</sup> Street**, came forward in support of the new text amendment. She stated that the notification process is inadequate, and they only had a week's notice. She agrees that the setback should be increased. Water needs to be taken into consideration when you are looking at one of these types of operations. She handed her statement to the clerk (see Exhibit "6").
7. **Dr. Harriet Gould, President of Raymond School District, 2550 County Road A**, came forward and stated that she attended the last CAFO task force meeting. She stated that the setbacks to schools and other public places should be greater. If these types of operations are too close, it could be detrimental to the health, safety, welfare and well-being of everyone that is in the area. This raises red flags and it is not okay. This affects people's lives, health, safety, and the future. She stated the setbacks that are being proposed are a major concern and there are too many risks when it is near a school.

8. **Edison McDonald, 3921 Eagle Ridge Road**, came forward and gave the clerk a handout (Exhibit "7"). He is representing Nebraska Communities United and GC Resolve and they are in support of this text amendment. This County has taken a leadership role for setting up an in-depth process and setting quality regulations, which is tremendously important. They do have some concerns with the setbacks near public use areas. With the 30-day notice, they feel that the area of notice should be expanded to 3 miles. They also have concerns with the decommissioning, the parent company should have the liability, and there should be a 5 to 1 asset to liability ratio.

Beckius inquired about the 5: 1 ratio and wanted to know their reasons for this. McDonald stated that they wanted to make sure that it would be helpful with the size of the project.

9. **Reverend Helen Geer, Nebraska Interfaith & Light President**, came forward and stated she is glad that this task force was started and is in support of this text amendment, but feels that the setbacks should be increased. There are concerns with greenhouse gasses and water well permits being required prior and making the results public. She stated Lancaster County is leading the way with these recommendations.
10. **Jory Heiss, 23800 NW 27<sup>th</sup> Street**, came forward and stated that he had attended some of the CAFO meetings and is in support of the text amendment. He stated that regulations are put in place to protect both sides. There needs to be a road maintenance plan for each one of these operations. Water tests should be required before the application process. Heiss provided his written statement to Clerk after the meeting (see Exhibit "8").

**Opponents:**

None.

**Staff Questions:**

Beckius inquired about the decommissioning plan, and asked about the goal of the task force and the county in making this decision. Cajka stated that there was concern of what would happen to the large barns that they left behind and them falling into disrepair. Beckius stated in reading the proposed regulations, he could see the concern of wanting waste on the site cleaned up, but is unsure of the reasoning for the barn. Beckius further stated that the barn would not be a detriment to the surrounding community, and asked what the working group's thoughts were. Joy stated most of it had to do with the waste. With a plan in place, they operator could state that the barns were to be used as hay barns in the future. Cajka stated when an operation has been decommissioned, the NDEE does go in and makes sure all of the

waste has been taken care of. Beckius stated that with these regulations, he fails to see the danger in a building that is just setting.

Edgerton inquired about the group's discussion in regard to water on these sites. Cajka stated there was discussion on wells, but it was not proposed as a condition for well testing to be done prior or with the application. Joy stated the cost of a well test upfront was discussed, and recalls it was a narrow vote on having this done prior, as part of the process.

Joy asked about the Planning Department giving waivers as part of the process, and that she did not think that there was anything within the amendment that would not allow waivers. Cajka said correct. In zoning regulations, there is a blanket statement in the special permit section, which says that the County Board can waive any condition, unless it specifically says that it cannot be waived. Joy asked about sending out notifications to surrounding counties when it is close to the border. Cajka stated that they are not required to send letters to property owners in surrounding counties. Although, they are required to send a letter to the Planning Commission and if they do not have a Planning Commission, it would be sent to the Clerk of the neighboring county.

Al-Badry asked if it could be insured that future owners for medium and large AFO's (Animal Feeding Operations) have general meetings for the public. Cajka said that there is nothing in the zoning regulations that any special permit or any application that requires them to meet with the neighbors. It is highly encouraged by the Planning Department, saying that it can help prevent problems down the road for the applicant.

Cajka stated that he wanted to thank the working group for all of their time and energy that was put in to develop these conditions.

Scheer asked about the number of meetings the group had and how long they were. Cajka stated that there was 11 meetings and they were 1 ½ to 2 hours. Scheer stated that he was trying to figure out what kind of knowledge base existed with the group, and it sounds like it was 20-25 hours or more, with expert witnesses coming in. Cajka said correct. Scheer said that is very impressive and admires all of the work that was done.

Corr asked who selected the Committee members. Cajka stated the County Board ultimately selected them.

Joy moved to close the public hearing on this item, seconded by Beckius and carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

**TEXT AMENDMENT 19010**

**ACTION BY PLANNING COMMISSION:**

**January 8, 2020**

Joy moved to approve as amended by the County Attorney to include the following changes:

1. Amendment to Exhibit 1: For Agriculture meaning the new definition is not to include (strike out) livestock or poultry ; and
2. Amend section of D 1: a change to the affective property in 22.005 (d)(2) (add) All other districts: To all owners of property within one half mile of the boundaries of the affected property.

Seconded by Beckius.

Joy said that there was reasonable give and take on the process and they dealt with many issues with residential and commercial density in the county and how this would affect that. The group focused and tried to address what was a reasonable matter for the public facilities and give enough space with the ability to put more distance on if needed, by the County Board or Commission. They tried to use the agencies and amenities from the government. Many great points were made today with the testimony that was heard today. She stated that where this stands today represents very well the task force's recommendations.

Campbell stated that there might be some good ideas in the recommendations that were brought forth for amending, but would rather see the text amendment pass and get on the books and operational. Then, if the County Board decides they want to form another task force to review some of the amendments, they can. He would like to see what the working group adopted and give it time to work properly.

Beckius said in conjunction with the two Commissioners that just spoke, he agrees that it is important to get this up and running. If there is a need to make changes later down the road, it can be explored. He stated that the proposed text amendment offers a level of protection for all parties involved. The one component to the rules that does not make since is the decommissioning plan. He does not see a huge benefit to anyone, assuming that all waste and litter is removed from the site. He further stated that he does not see how a building sitting on a property is detrimental to the health and safety of a community member, and would be open to removing this part.

Finnegan stated that she is a great believer in community process. Task forces are a painful thing sometimes to serve on. There is great diversity of opinion and the fact that they were able to reach a compromise, somewhat surprised her. She echoed that they were stunned to find out with the first approval there were no regulations in place. She thinks this is a great improvement to have some frame work to work in. She further stated that they need to give this a chance and if it does not work, they can come back.

Scheer agreed with Commissioners and is in support of the motion. He stated that they asked for this and now they have it. This was a great process and, with the work that was put in this, is very impressive. He shared that he has issues, but it is hard for him to vote against this because of all of the work and knowledge that was put into this text amendment. He stated that he agrees with Beckius on the decommissioning and this could be looked in the future. He has some uncertainty about the sequencing of the permitting process. What the special permit is in relation to the NDEE permit in relation to the well permit. Each jurisdiction has its own processes that go into this and he feel this needs to be respected. It concerns him that the proposed text amendment is trying to jump the process. He stated that he will not go against the working group. This is something that is really needed and will complement the implementation of the Comprehensive Plan.

Corr stated that she would support this text amendment. She stated that she might not love every portion of it, but this is something really good that is moving forward and it can be changed in the future if needed. She stated that she does agree with Beckius on the decommissioning and does understand that it is important for the waste component, but the buildings makes her wonder. She stated that overall this is a good package. Thanking everyone for serving and she knows that it can be hard to find compromised. She shared that she was a little disappointed that no neighbors were involved and thought that in the future they could be included.

Finnegan thanked everyone for all of the time that they spent to explore this issue, which helped push the Commissioners to come up with something. She further stated that she knows it is not easy to pull a group together, but when you believe in something, it is the right thing to do.

Motion carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

Chair stated that anyone wishing to speak on an item not on the agenda, may come forward and do so; no one came forward.

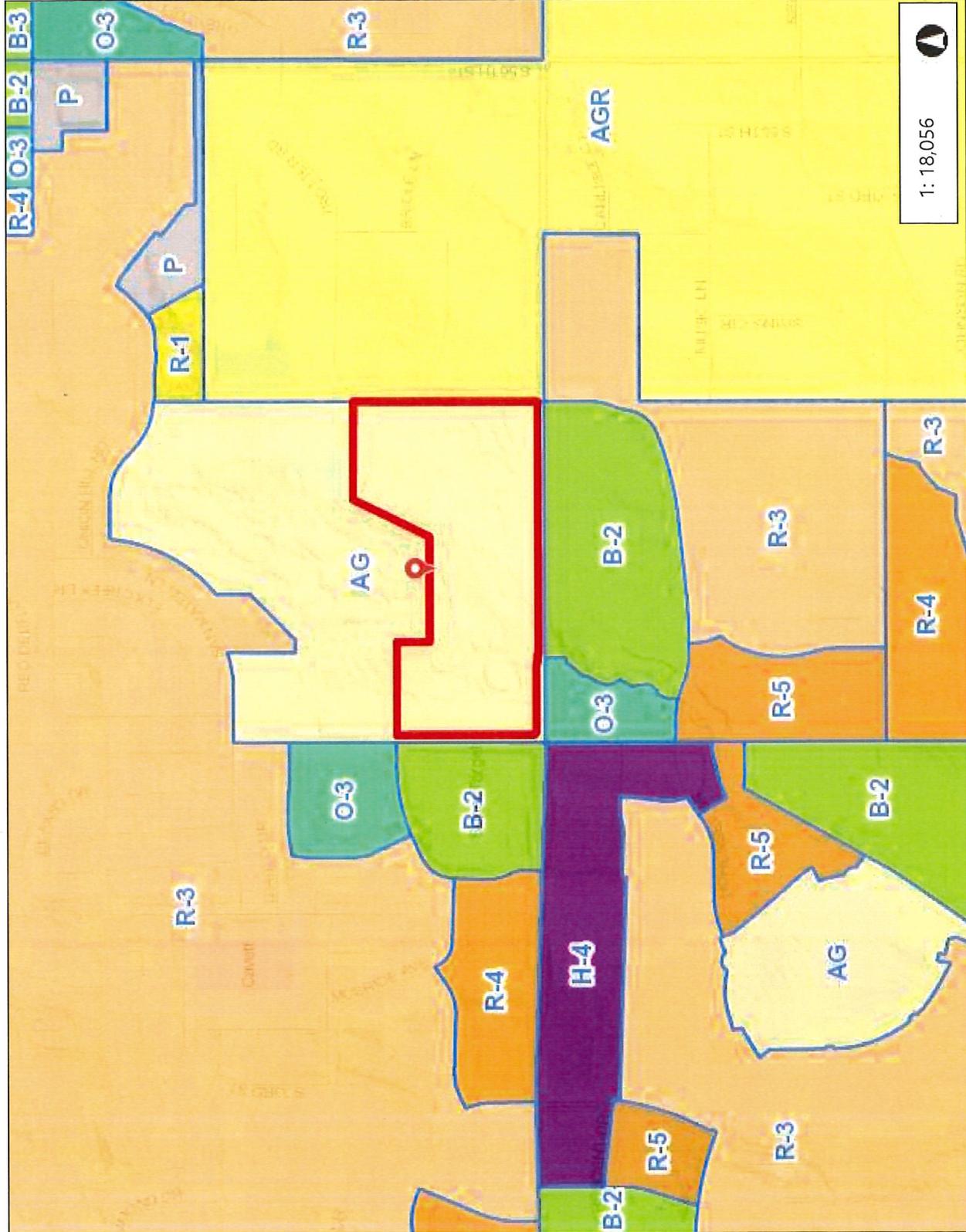
Edgerton moved to adjourn the Planning Commission Meeting of January 8, 2020, seconded by Beckius and carried 9-0: Al-Badry, Campbell, Edgerton, Finnegan, Joy, Ryman Yost, Scheer, Corr and Beckius voting 'yes'.

Meeting adjourned 5:23 p.m.

Note: The Planning Commission will not formally approve these minutes until their next regular meeting on Wednesday, January 22, 2020.

F:\Boards\PC\Minutes\2020\pcm010820.docx





1: 18,056



DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email [plan@lincoln.ne.gov](mailto:plan@lincoln.ne.gov) and you will be directed to the appropriate department.

**Legend**

**Zoning Boundaries & Labels**

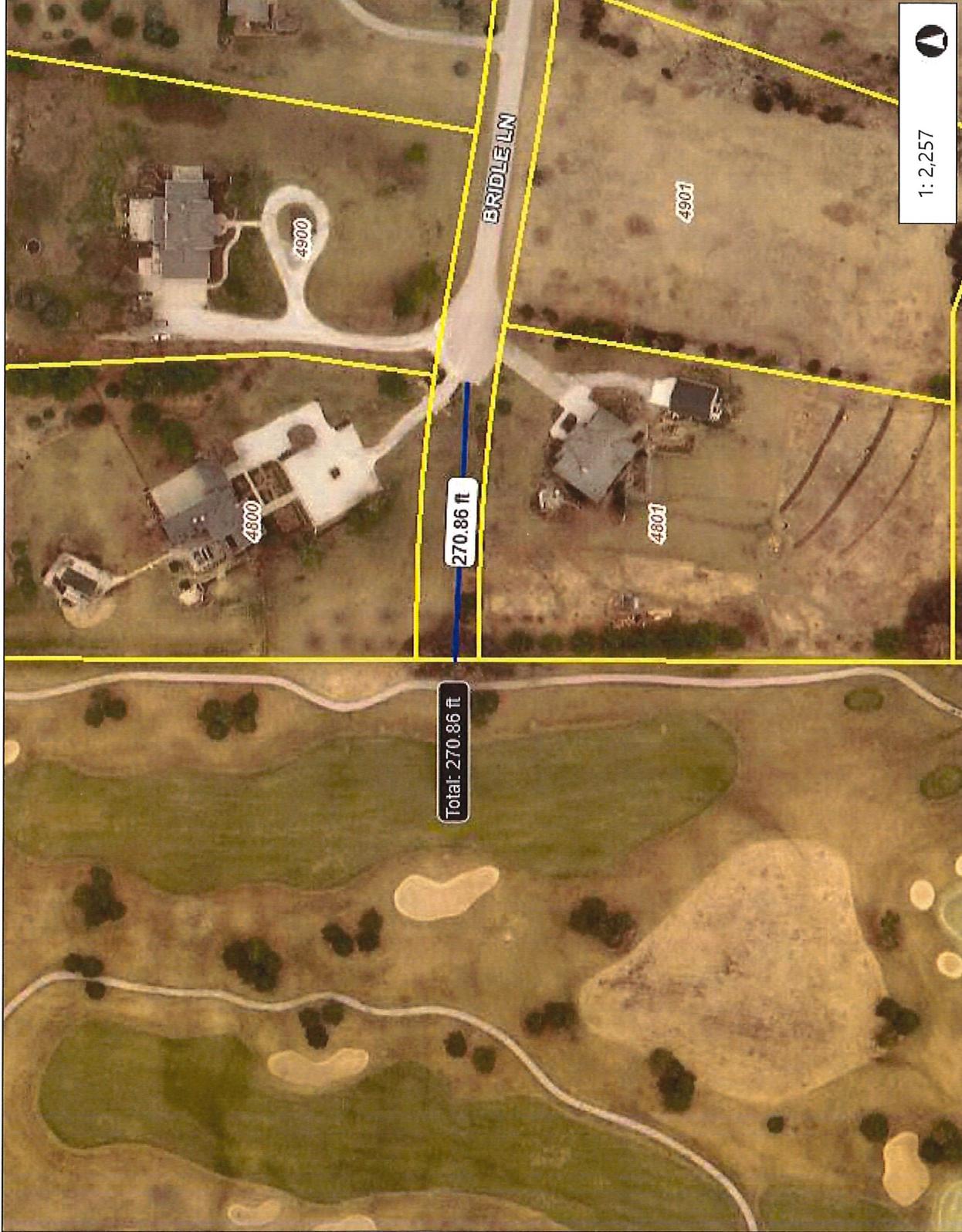
- Lincoln Zoning**
- AG Agriculture
  - AGR Agricultural Residential
  - R-1 Residential
  - R-2 Residential
  - R-3 Residential
  - R-4 Residential
  - R-5 Residential
  - R-6 Residential
  - R-7 Residential
  - R-8 Residential
  - R-T Residential Transition
  - P Public Use
  - O-1 Office
  - O-2 Suburban Office
  - O-3 Office Park
  - B-1 Local Business
  - B-2 Planned NBHD Business
  - B-3 Commercial
  - B-4 Lincoln Center Business
  - B-5 Planned Regional Business
  - H-1 Interstate Commercial
  - H-2 Highway Business
  - H-3 Highway Commercial
  - H-4 General Commercial

**Notes**



Legend

- Address Labels
- Parcels\_Aerial



1: 2,257

Notes

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email [plan@lincoln.ne.gov](mailto:plan@lincoln.ne.gov) and you will be directed to the appropriate department.

0.1 Miles

0.04

0

MOTION TO AMEND  
CHANGE OF ZONE 19031

I HEREBY MOVE TO AMEND THE CONDITIONS OF APPROVAL FOR CHANGE OF ZONE 19031 AS FOLLOWS:

1. Amend condition 1.10 by deleting the phrase "on the east side" and inserting "in Block 1, Lots 1 and 2, and Block 2, Lot 1" in lieu thereof.
2. Amend condition 1.11 by deleting the phrase "on the east side" and inserting "in Block 1, Lots 1 and 2, and Block 2, Lot 1" in lieu thereof.
3. Amend condition 1.12 by deleting the phrase "is for buildings, parking and drive aisles" and inserting "is a landscape setback, with no buildings, parking or driving aisles" in lieu thereof.
4. Amend condition 1.14 by deleting the phrase "along the eastern boundary" and inserting "in Block 1, Lots 1 and 2, and Block 2, Lot 1" in lieu thereof.
5. Amend condition 1.15.1 by deleting "200" and inserting "288" in lieu thereof: "Up to 288 units may be built with only one access, which may be from either S. 44<sup>th</sup> or S. 48<sup>th</sup> Street. The details regarding a secondary emergency access to be worked out with the Planning Department and Lincoln Fire and Rescue.

INTRODUCED BY:

---

2.002 A

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], "Agriculture" shall mean the use of land for the purpose of raising and harvesting crops; for the raising, breeding, or management of livestock, poultry, fish or honeybees; for Small Animal Feeding Operations, for dairying, truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use.

For special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], "Agriculture" shall mean the use of land for the purpose of raising and harvesting crops; or for the raising, breeding, or management of livestock, poultry, fish or honeybees; or for dairying, truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use.

22.005(d)(z) ALL OTHER DISTRICTS: TO ALL OWNERS  
OF PROPERTY WITHIN ONE-HALF (1/2) MILE OF  
THE BOUNDARIES OF THE AFFECTED PROPERTY.

Lancaster County CAFO Regulations  
Comments from Steve Martin, Alliance for the Future of Agriculture in Nebraska

Thank you for the opportunity to participate in the creation of new regulations for animal feeding operations in Lancaster County. As a member of the AFO working group I can say that a lot of thought and effort was put into this effort by the county staff and the working group members.

A couple of items I want to note;

I do want to point out that the recommendations from the working group do not necessarily reflect consensus. In an effort to get something done we voted on each section and the majority ruled. So I believe that there is still room for modification to the proposed regulations.

I also believe that the county staff's input should be considered as they work in this arena every day and work with other regulators so they have valuable experience that should be considered.

Items that should be modified:

Section 13.035(b)(2) – A construction and operating permit or letter of exemption from DEE should be in place prior to operation but not prior to application for county permit.

Some of the group thought that having this in place prior to county application would help provide additional information for the county residents and boards to make decisions. I disagree. The only additional information that the DEE permit will contain is engineering work and nutrient management plans. ALL livestock operations are required to follow DEE regulations, even if they don't have a DEE permit. Having engineering drawings or detailed nutrient management plans does not provide information that is valuable to the county in trying to decide appropriate location for an AFO. Additionally, as noted in the staff notes, DEE would prefer the county permit is in place prior to application for a COP because it takes DEE staff time and resources to process that permit and if it does not get approval at the county level then that is wasted time. Applying for the DEE's COP permit is costly and time consuming for the applicant too. If the county permit is denied, then all that time and money is wasted by the producer.

A solution to this would simply be a condition on the county permit that requires either a COP or letter of exemption from DEE prior to operation.

13.035(b)(4) – the matrix. The matrix should include a score. The matrix is a good evaluation tool and the score adds context to the practices that are being utilized.

13.035(b)(5) – setback distances – as noted in the staff notes and, on the map, included in the staff's packet, with the proposed setback distances there will basically be no new medium or large AFOs built in the county. With the large land base in rural Lancaster County this is unacceptable.

Here are some recommendations:

Medium Enclosed AFO – ¼ mile  
Medium Open AFO – ½ mile  
Large Enclosed – ½ mile  
Large Open – 1 mile

These setbacks should include language that allows for flexibility in the distances based on science, management practices, technology or other factors.

UNL's Odor Footprint Tool is the best science available for odor impacts on enclosed operations. There are also companies and universities that are researching and creating new processes and technology that greatly reduce odor. As those practices and products become proven, there should be flexibility from the board to reduce setbacks based implementation of those factors.

Setback distances between other public places and AFOs should be equal to the distance to a neighbor's residence. There is no rationale to make it a greater distance. National and local landmarks should be removed from this section. Those are not greatly used places that need or deserve this type of protection. We already include parks in this section so pulling out "landmarks" is too much.

As a note, there are many old family cemeteries around the county. The board should maintain flexibility in reducing that setback distance based on the reality of those cemeteries.

Add language that a neighbor can waive their setback distance with an impact easement that is then recorded with the deed of that property. I believe this is allowed today but a statement in this section would provide clarity.

Add language that would make it explicit that the planning committee and/or the board can provide exceptions to any of the requirements if merited. Again, county staff stated that this is already a possibility under the current rules but by having the statement in place it makes it apparent to everyone that is not as familiar with the total county regulations. This could just be a statement that references that section.

#6 – decommissioning plan – strike this section. This appears to be overreaching and since plans can change it does not appear to have much authority. DEE has a decommissioning process and requirements on how an AFO has to be clean out and the manure disposed of. Around the countryside there are unused buildings of many type. It does not mean they don't have value and even if they sit empty for several years, they could be used again for something in the future. Buildings are also different from windmills in that they are not going to fall over on someone or something. At the very worse, a building will fall in on itself. I also believe that there are regulations that the county can use to force the clean up of a nuisance property.

#7 – buffers – this should be an as needed section as every site is different and some sites may not need a new buffer due to existing trees or topography of the land. Making it a requirement takes away flexibility to prescribe what is needed for a specific site.

Thank you

**Lancaster County Zoning Ordinance Article 13 Special Permits Related to Animal Feeding Operations: Suggested Additional Amendments for January 8, 2020  
Planning Commission Hearing on Text Amendments TX19010  
(submitted by Jonathan S. Leo at January 8, 2020 hearing)**

**I. Proposed Revisions to Article 13 Special Permit  
13.035**

**b. Medium or Large Animal Feeding Operation (Medium or Large AFO)**

A Medium or Large AFO may be allowed by special permit in the AG District if the application is received on or after [FUTURE EFFECTIVE DATE] under the following conditions:

2. A Construction and Operating Permit, including a Nutrient Management Plan, approved by the Nebraska Department of Environment and Energy shall be submitted with the application.
4. A completed Lancaster County Animal Feeding Operation Siting Assessment Matrix and all documentation necessary to verify the accuracy of the completed matrix shall be included with the application. The County may request additional documentation.
6. A decommissioning plan outlining the means, procedures and cost of removing or reusing the AFO shall be submitted with the application. A bond or equivalent enforceable resource, acceptable to the Planning Director, to guarantee removal or reuse upon discontinuance, decommissioning or abandonment shall be included as part of the decommissioning plan. The permittee or a financially responsible guarantor of the permittee shall annually provide to the Planning Director a certification that the bond or equivalent enforceable resource remains fully funded and liquid. Such annual recertification shall continue to be made until the Director determines and declares in writing that the decommissioning plan has been fully implemented or otherwise fulfilled. For purposes of this Section, discontinuance, decommissioning or abandonment shall mean the

facility has not stabled or confined and fed or maintained animals for at least forty-five (45) days in a twelve (12) month period.

8. A water well permit(s) issued by the Lower Platte South Natural Resources District (Lower Platte South NRD) for the AFO shall be submitted with the application. The permit(s) shall, in the judgment of the Planning Department, provide a supply of water adequate for the care and feeding of the animals for the expected term of operation of the AFO and for the suppression of any fires that may occur at or within the AFO.

**Suggested Additional Amendments to Lancaster County Zoning Ordinance  
Article 13 Special Permits Related to Animal Feeding Operations: Suggested  
Additional Amendments for January 8, 2020 Planning Commission Hearing on  
Text Amendments TX19010**

**(submitted by Jonathan S. Leo at January 8, 2020 hearing)**

**County Attorney's Version of Lancaster County CAFO Working Group's Proposed  
Zoning Ordinance Amendments**

Formatted: Left

**I. Proposed Revisions to Article 13 Special Permit  
13.035**

**b. Medium or Large Animal Feeding Operation (Medium or Large AFO)**

A Medium or Large AFO may be allowed by special permit in the AG District if the application is received on or after [FUTURE EFFECTIVE DATE] under the following conditions:

2. A Construction and Operating Permit, including a Nutrient Management Plan, approved by the Nebraska Department of Environment and Energy shall be submitted with the application.
4. A completed Lancaster County Animal Feeding Operation Siting Assessment Matrix and any necessary all documentation necessary to verify the accuracy of the completed matrix shall be included with the application. The County may request additional documentation.
6. ~~Each application shall have a~~ A decommissioning plan outlining the means, procedures and cost of removing or reusing the AFO shall be submitted with the application. A bond or equivalent enforceable resource, acceptable to the Planning Director, to guarantee removal or reuse upon discontinuance, decommissioning or abandonment shall be included as part of the decommissioning plan. ~~a condition of the special permit if required by the Planning Commission, and if appealed, the County Board. The permittee or a financially responsible guarantor of the permittee shall annually provide to the Planning Director a certification that the bond or equivalent enforceable resource remains fully funded and liquid. Such annual recertification shall continue to be made until the Director determines and declares in writing that the decommissioning plan has been fully implemented or otherwise fulfilled.~~ For purposes of this Section, discontinuance, decommissioning or abandonment

shall mean the facility has not stabled or confined and fed or maintained animals for at least forty-five (45) days in a twelve (12) month period.

8. A water well permit(s) issued by the Lower Platte South Natural Resources District (Lower Platte South NRD) for the AFO shall be submitted with the application. The permit(s) shall, in the judgment of the Planning Department, provide a supply of water adequate for the care and feeding of the animals for the expected term of operation of the AFO and for the suppression of any fires that may occur at or within the AFO.

Proposed Amendment to  
LANCASTER COUNTY ANIMAL FEEDING OPERATION (AFO) SITING MATRIX  
for Lincoln/Lancaster Planning Commission January 8, 2020 hearing on  
Text Amendment TX 19010  
(submitted by Jonathan S. Leo)

Add the following "Verification of Accuracy" declaration at the end of every AFO Siting Matrix submitted with a Special Permit application:

"I prepared, or verified the preparation by others, of every element of this AFO Siting Matrix and I declare that I have personally collected and/or reviewed all the documents necessary to verify the accuracy of every element of this AFO Siting Matrix and that I have attached all such documentation to this AFO Siting Matrix."

By:

\_\_\_\_\_

Printed name

\_\_\_\_\_

Signed Name

\_\_\_\_\_

Date of Declaration



My name is Lori Heiss and I live at 23800 NW 27th. My husband and I attended and spoke at the last 2 CAFO Taskforce meetings and watched as a County Board appointed working group of varied agricultural backgrounds listened to and respected one another's opinions. They negotiated and were able to reach a compromise of what would be best for Lancaster County. They listened to experts, did their homework and took 6 months to formulate regulations that were sorely needed as we didn't have any. They also took into account public places, especially schools, as our county has 3 schools in rural areas. I would never want another school to have to go through what we have gone through the last 6 months and what will likely continue for the next year. We have spent hours in meetings and had to miss our kids school events to discuss the location of these barns and student safety and welfare. All of which could have been prevented if ANY regulations had been in place.

First, the notification process is seriously inadequate. The 2040 plan reads: "Encourage Developers and others planning proposals to make early contact with neighborhood groups and other invested parties. Notify surrounding property owners, interested groups, and other appropriate agencies of formal development applications"

We had just a little over a weeks notice and even then we were misled with information that everyone within a mile radius was informed and those who were told were "on board." This did not include those affected in Saunders County as this site is right on the county line. Fortunately our initial hearing was delayed. Twice. The opposition letters to this location reached 200+. Clearly not everyone was on board. Including our elected school board at Raymond Central who voted unanimously against the LOCATION of these barns...twice. Rock Creek Village withdrew their intent to maintain Ashland Road as they were misled by the land owner. Saunders County sided with Rock Creek Village. Valparaiso Fire and Rescue did not sign off on this location due to road access and water availability. Ceresco Village Board voted against this location. Why aren't roads and water figured out prior to getting a permit? If the objective is to "check the boxes", why aren't these vital entities in public safety included in this process?

Secondly, we reside in the 2nd most populated county in the state. Neighboring and other highly populated counties either don't allow CAFOs (Douglas county) or have much more stringent setbacks. Lancaster County is not even designated as a Livestock Friendly County. It is also a large enough county that the regulations suggested by the working group would not affect 99% of livestock producers. 1/4 of a mile is only 1,320 feet. The Costco barns are 600 ft. long. Should we be forced to accept living a little over 2 barn lengths away from 380,000 chickens?? The health implications for those who live in close proximity to large CAFOs are staggering. Once built, there is very little regulation or oversight in how they are managed. The Taskforce started with greater distances and "settled" at 1/2 mile from homes. Given all I've learned about large CAFO's these past 6 months, the setback should be 3/4 mile or even greater. And from a school?? At least 2 miles. } 3 miles

Again from the 2040 plan "to avoid undue concentration of population and to facilitate the adequate provisions of transportation, water, sewage, schools, parks and other public requirements. Water - Our most important natural resource. Without it, not a single person survives. It should be determined, prior to obtaining a permit, if enough water is available. There was discussion that it was too costly for the farmer's upfront. What about how much it is costing us all at this point? The cost when a Class C school does not have enough water to grow, remain open in 10 years, fight a fire?? Water supply in our area is already a major concern. Does the Right to Farm supersede the right to basic needs of neighbors?

Lastly, and above all, the 2040 plan states under purpose and title "to secure safety from fire, panic and other dangers; to promote health and the general welfare". The safety, health and general welfare of students is paramount for Raymond Central and according to the 2040 plan, it should be paramount for Lancaster County as well. Thank you.



Grassroots Community Development, Mobilization & Education

## Lancaster Zoning Requirements

Costco is developing a new poultry operation housed under the entity of Lincoln Premium Poultry (LPP) and is building approximately 520 massive barns to supply chicken for its processing facility in Fremont. Each barn holds up to 47,500 birds per flock, with six flocks per year. This new extreme form of vertical integration is unlike anything seen in U.S. history and is NOT in line with Nebraska Values. We need to ensure better standards to protect already existing Nebraska farmers, rural families and communities.

### Costco's New Extreme Form of Vertical Integration Violates Nebraska Values By:

1. Sending money out of state instead of keeping it with local farmers. 25% of the barns are owned by North Carolina poultry investors which means less care for our land.
2. Bad contracts that put Nebraska farmers at serious risk. These industry contracts are similar to contracts that have bankrupted poultry growers in other states.
3. Impeding on existing residents' local control. Costco/LPP has lobbied to take away nuisance rights from Nebraska residents, and they have also lobbied to give preference to out of state electrical contractors over Nebraska businesses while weakening worker safety standards.
4. Creating low-wage jobs that deteriorate Nebraska's working middle class.
5. Large amounts of chicken litter that put local water resources, and the public's health at risk.
6. Shifting liability and taxes from Costco/LPP towards farmer growers and Nebraska counties.

### NCU's Proposed Safeguards

1. **No NEW 'Large' (as defined in state statute) CAFO applications until county regs have been updated** in order ensure the public's health and quality of life.
2. **Put a cap on the number of animals per operation.** This should not influence family agricultural AFO (see Nebraska DEE definitions) operations. The larger industrial CAFO's pose unique threats and should be viewed, handled, and regulated differently.
3. **Increase residential setbacks from CAFO operations** to a minimal 3/4 mile and 1.5 miles from large CAFOs, and 2.5 mile setbacks from public use areas (schools, churches, communities, parks, recreation areas).



Grassroots Community Development, Mobilization & Education

4. **Require at least one-month notice** (prior to the county planning and zoning meeting) to all residents living within 3 miles of a proposed CAFO. Currently, locals are getting as little as 3 days' notice, leaving longstanding residents scrambling for information.
5. **Require emission reporting** for ammonia and other greenhouse gas emissions to protect public health, and better understand air quality impact. There are programs to help the county with this.
6. **Ground and surface water testing** on all sources within 1/2 mile of operation and public reporting of their analytical results should be a required element of the initial application for a special permit.
7. **Projects should not be established in a flood plain.** While this was initially promised by large poultry industry companies, these respective companies have since developed in flood plains on multiple occasions in our general area, which puts unnecessary health risks on local residents.
8. An **'Environmental Impact Review' in a Nutrient Management Plan (NMP)** on all Large CAFO's must be required **prior to county process and public hearings.**
9. **Nutrient Management Plan's (NMPs) should require cover cropping** on all farms applying litter, **and buffer strips** along all running waterways where litter is spread.
10. **The parent company must establish a decommissioning and disaster fund for liability.** Industrial ag companies should guarantee their business practices so the liability is not put on the shoulders of the county or the farmer contract growers during project operation. This reserve should have a 5 to 1 asset to liability ratio. It must take into consideration types of livestock, size of CAFO, and their respective practices. In other industrial poultry communities, after the projects closed operation, the company just left the barns wasting away.
11. **Enact a 'Haul Agreement'** so as more company trucks travel on county roads **taxpayers are not liable for increased taxes to keep up and maintain roads.** New taxes levied from industrial truck traffic should be paid by the respective parent company.
12. **The county should require Large poultry CAFO's to have a detailed disposal and bio-security plan for dead birds if Bird Flu or other disease epidemics wipe out bird populations. We have seen unprepared states, such as Iowa as recently as 2015, suffer from lack of preparation in developing a clearly defined plan.**

PLANNING EXHIBIT #8 TX19010 PC HEARING 1/8/20 JORY HEISS

Hi, My name is Jory Heiss 23800 nw 27th which is right next to the largest proposed feedlot siting in Lancaster County. Because of poor siting regulations on large cafes, the experience my community is going through has been absolutely miserable. After attending the task force meetings, which seemed to fix this unbalanced system, I felt Lancaster County was finally going in the right direction. But then to read that planners wanted to eliminate some of those important updates was a total show of disregard. I find a quote from the staff report in conjunction with the comprehensive plan to be a little frustrating. It states "many families are not well informed of all the implications of rural living before they make that lifestyle choice". My wife and I grew up on farms. We live in the country to be around normal agriculture and farming. Believe it or not, many people live in rural areas to support ag, 4h, and our country schools, not take it away.

I own a Hvac company where I cannot begin to tell you the amount of regulations are put on us. New Code after code, licensing, constant mandatory training, inspections. We adapt, and we deal with it because we understand things change. Regulations are carefully put in place to protect people on both sides. Thats all this is as well. To think that just anyone can shove 8 massive commercial buildings next to homes and schools with little to no siting laws is mind boggling.

I am ~~am~~ sure most all of us do agree with small ~~feedlots~~ feedlots having less siting regulations. But that's not why a lot of us are here. It's the massive ones. As in the staff report and according to NDEE, 125000 chickens is considered large. While I agree, the one proposed next to Raymond Central school is OVER 3 times that! And those putting them up, will not negotiate it. These Massive Cafo sites, put into populated areas are in desperate need of the task force updates.

Regulations are not preventing farmers from growing or diversifying. Its only a guide to make sure everyone is responsible. There is a growing misconception that with these updated regs, Farmers can not site feedlots. That is 100 percent false. With the new regulations, a farmer could propose one 150 feet from a neighbor or school. They would only have to simply earn that by Maybe holding an area meeting educating the public, proving steps will be taken to remove any negative effects from the operation, <sup>then get him a signature.</sup> This is even discussed in the 2040 comprehensive plan that almost always gets overlooked.

Lastly (roads and water) A permanent drawn out trucking route should be included into this along with the Road maintenance plan. These roads are a lifeline to many, and people deserve to see how they will be affected. Most importantly, Sites next to schools and homes using the same type water system like wells, should require a water test, long before any permit is submitted. To think someone can look into putting up a 7 million dollar project, but not afford a water test right away, is absurd. Like with my profession, I spend a large amount of money preparing and gathering information, paying engineers, contractors,

lawyers, etc. for a job I may not get, way before there is a permit. These Cafo sitings should be no different. This shouldn't be farmer vs acreage owner or Republican vs democrat. These updates are simply common sense that one should never have more free will over another. Thank you.