August 8, 2019
Meeting Minutes
12:30 p.m. to 3:00 p.m.
Concentrated Animal Feeding Operation (CAFO) Working Group

Members of Working Group present:
Cristy Joy, Dale Softley, John Hansen, Paula Peterson, Scott Johns, Stephen Martin, Tim Kalkowski, Steven Skoda and Marijane Hancock; Theresa Pella absent.

Also present: Tom Cajka, Steve Henrichsen and Rhonda Haas, Planning Department, Chris Schroeder, Health Department and several members of the public.

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

Henrichsen inquired if there were any changes to the agenda for today's meeting.

Henrichsen requested a motion to adopt the agenda. Motion for approval of the agenda made by Peterson, seconded by Hancock and carried, 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Several minor amendments to the minutes were offered and accepted. Henrichsen requested a motion approving the minutes, as revised, for the meeting held on July 23, 2019. Motion for approval of the minutes, as revised, made by Hansen, seconded by Martin and carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Next, Henrichsen gave a brief overview and opened the meeting for public comment.

Melissa Baker, 7125 Yosemite Drive, came forward and stated that she is recommending a moratorium until the regulations have been reviewed and updated. Emission reporting for ammonia and other greenhouse gasses to protect public health and understand the climate impact needs to be a requirement with this type of operation. A Nutrient Management Plan needs to be required and must include both ground and surface water testing on all sources within one-half mile of the operation and have County approval prior to the county process and public hearings. There needs to be an Environmental Impact Statement on all large CAFO's and a required disaster fund for mitigation in environmental relief paid for by the parent company, and not by the County or the farmer. There also needs to a requirement where funds from the parent company are set aside for the decommissioning of the barns. She stated with the way that Lincoln and the smaller communities have been expanding, Lancaster County does not need any large CAFO operations.

Jory Heiss, 23800 NW 27th Street, came forward and stated this will not affect his operation, but the proposed operation is going in 650 feet from their residence. He stated the notification process needs a complete overhaul. The sign that was posted to notify residents in the area was placed in the ditch of a minimum maintenance road, which is unpassable unless the road is completely dry. The public should be given more notice on CAFO applications in the area to allow them adequate time to research information. Notices should be given to all residents that are within one mile of the facility, even if they live in another county, because this will still affect them. There should be access to the proposed site

prior to its applications approval. He stated this is a safety issue for everyone that works and lives in the area and there needs to be regulations for this type of operation.

Janis Howlett, 13200 W. Parker Road, Crete, came forward and stated some of the landowners in the proposed area are talking about selling their land, because they do not want to live next to chicken barns. She asked the group to just think about the fact that North Carolina will be coming in and taking over and they have no vested interest in the wellbeing of the communities in which they will be operating, and gave the group a handout to be added into the record.

Jonathan Leo, 2321 Devonshire Drive, came forward with a handout to be added into the record. He stated that prior to an application for a special permit there needs to be an approved Construction and Operating Permit by NDEE (Nebraska Department of Environment and Energy). The approved NDEE permit would also include an approved Nutrient Management Plan. He stated that Lancaster County requires a public hearing prior to the approval of a special permit, but does not require a public hearing prior to a building permit. With the absence of regulation and concern on the part of public officials both elected and appointed is driving this agitation, anxiety and fear, without proper notice and procedures the citizen cannot be watchful, and there is no fairness in the process.

Jane Egan, 7001 W. Old Cheney Road, Denton, came forward and stated that everyone should have been given a longer time to speak, three minutes is not enough. She stated that there needs to be comprehensive regulations in place that protect the public's welfare, like other industries have. She asked the group to do more work to create a comprehensive set of regulations that address every possible issue that could affect the community if Concentrated Animal Feeding Operations are allowed in Lancaster County.

Next, Henrichsen stated public comment was closed for the rest of the meeting, but he shared that there would be more chances for the public to speak on this in the future. He stated that the County Board has decided that there will be no moratorium and is waiting on the result of the working group.

Henrichsen asked the group members if they needed more time for discussion on the proposed revisions to the Article 2 definitions. Martin stated he wanted to discuss the definition of an enclosed animal feeding operation, and he said the definition should include open sided for ventilation purposes only, which is something that Hall County has in place. Discussion continued on the possible revisions to the Article 2 definitions.

Motion made by Softley that any building other than a total enclosed building with mechanical ventilation, is called open. It was discussed that the revised definition allows this already. Motion fails with lack of second.

Henrichsen asked if there were any changes to the definitions listed under Article 2 and then asked for a motion. Discussion followed.

Motion made by Peterson to accept the definitions listed under Article 2 as they are proposed at this time, seconded by Skoda and carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Henrichsen stated Article 4 is next on the agenda, which is uses the new term in the section on special permitted and permitted uses. Motion made to approve by Kalkowski, and seconded by Skoda and

carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Henrichsen stated Article 13 has been broken down into sections to be voted on, with the first section being: A site plan showing the location and distance from lot lines of all confined areas, compost areas, and accessory buildings used as part of the Animal Feeding Operation.

Henrichsen asked if there needed to be discussion on this item. Kalkowski stated he wanted to add verbiage to this item, he said that says there needs to be a determination that there is an adequate water supply to meet the needs of the facility. Henrichsen asked if Kalkowski wanted that as a separate condition. Kalkowski stated this is the area that he feels it should go in. It was then discussed that this item should be a separate item number and condition. Joy inquired if the site plan needed to be done by a Civil Engineer. Henrichsen said no, but if it is a grading plan then it would need to be done by an engineer. The Planning Department does review site plans to make sure that they are adequate. Softley stated the site plan should show the topography. Discussion continued on adding additional requirements to the site plan.

Softley made a motion to amend Article 13, No. 1, to add the language topography required in the site plan.

Skoda asked for a friendly amendment to the motion to amend to add the language topography and floodplain required in the site plan.

Softley accepted the friendly amendment.

Seconded by Skoda and motion to revise the site plan requirement carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Henrichsen requested a motion for approval of the main motion, as amended. Skoda moved approval of Condition #1 in Article 13 as amended, seconded by Peterson and carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Henrichsen stated the second section is Article 13, No. 2, which is: A Construction and Operating Permit shall be approved by NDEE prior to any building permit, and he asked if there was discussion on this item. Hancock stated that she would like the working group to look at requiring the building permit to be done prior to the special permit is approved. Hansen handed out proposed revisions to the working group that he is wanting to have discussion on. Discussion continued with the working group and Hansen's proposals.

Henrichsen requested a motion on Article 13, No. 2.
Hansen made a motion to amend #1 to Article 13, No. 2, to change the language as follows: A Construction and Operating Permit shall be approved by NDEE prior to the submission of any special permit application.

Seconded by Hancock.

Discussion continued with group members to decide if a Construction and Operating Permit is required to be approved by NDEE prior to the submission of any special permit application.

Softley called the question.
Vote: Lost 3-6: Hansen, Softley and Johns voting 'yes'; Skoda, Joy, Hancock, Peterson, Martin and Kalkowski voting 'no'; Pella absent.

Chris Schroeder, Health Department, stated that the working group might want to change some of the wording prior to its approval to add a clarifier with the title number that the construction application will be under. Discussion continued.

Henrichsen requested a vote on the motion to amend #1 with the added clarifier to include the "Title Number" that the construction application would be under.
Motion to amend #1 on Article 13, No. 2, carried 6-3: Joy, Hansen, Softley, Johns, Skoda and Hancock voting 'yes'; Peterson, Martin and Kalkowski voting 'no'; Pella absent.

Final vote on the main motion, to approve Article 13, Condition #2 as amended, moved by Hancock, seconded by Joy and carried 6-3: Joy, Hansen, Softley, Johns, Skoda and Hancock voting 'yes'; Peterson, Martin and Kalkowski voting 'no'; Pella absent.

Henrichsen stated that Article 13, No. 3, is as follows: If required by Lancaster Count Engineer, a road maintenance agreement shall be included as a condition of the special permit. This would not be something that is done in advance. Hansen stated that there are two CAFO's that are one the county line and the road is in another county, and he asked who pays the road then. Cajka stated the county line goes down the center of the road and there needs to be input from both counties on how they would want the road improved. This is the main reason that the latest CAFO was deferred. The road maintenance agreement would only apply to roads in Lancaster County. Hansen inquired what happens if the other county is or is not willing to absorb costs without any additional revenue to pay for it. Henrichsen stated the Planning Commission has the ability to put a condition that would say that they would need to improve the road to the satisfaction of both County Engineers, which would be a possibility. Discussion continued on adding possible conditions to this item.

Henrichsen requested a motion on Article 13, Condition No. 3.
Motion for approval of Article 13, No. 3, made by Kalkowski, seconded by Hansen and carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Henrichsen stated that Article 13, No. 4, is as follows: The applicant shall submit a completed "Nebraska Animal Feeding Operation Siting Assessment Matrix: as maintained by the Nebraska Department of Agriculture from time to time, or equivalent maintained by the Lincoln/Lancaster County Planning Department if the matrix is discontinued. Any necessary documentation shall be submitted to verify the accuracy of the completed matrix. He stated this item provides information to the public, the Planning Commission and to the County Board. It is not a requirement that the applicant would need to meet a certain type of score. Kalkowski stated that this rule does not do anything but provide information, correct. Henrichsen said yes, it just provides information.

Joy moved motion for approval on Article 13, No. 4, seconded by Peterson.
Hansen stated that in his handout he had redlined the matrix, and that Lancaster County is not a livestock friendly county and is not a good fit to be a livestock friendly county. Lancaster County is the

second or third heaviest populated county in Nebraska. Discussion continued on the need for having the matrix.

Skoda moved motion to amend #1 to Article 13, No. 4 as follows: To remove the points and score from the matrix, and any line that asks for subtotal and total. Seconded by Softley and carried 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Pella absent.

Final vote on the main motion Article 13, No. 4, as amended, carried 8-1: Joy, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Hancock voting 'yes'; Hansen voting 'no'; Pella absent.

Next, Henrichsen stated that Article 13, No. 5, is on setbacks for open and enclosed AFO's. The AFO use, including confined feeding areas or buildings used to house animals, shall be setback, at a minimum, for the nearest wall of a dwelling that is not associated with the AFO. Johns stated that he does not feel that ¼ mile is far enough back for a setback. Hansen stated that his handout redlines the proposed setbacks and that the setbacks need to be increased. Discussion continues on what the setback should be for CAFO's.

Hansen made motion to amend #1 to increase the setbacks for open and enclosed to 5,280 feet, seconded by Johns. Discussion continued on what the setback should be for an open and enclosed CAFO.

Henrichsen stated that it was time for this meeting to conclude and that there was a motion to amend #1 on the table. Hancock made motion to table the item and set up another meeting time, seconded by Martin and carried 7-2: Joy, Softley, Hansen, Johns, Martin, Skoda and Hancock voting 'yes'; Peterson and Kalkowski voting 'no'; Pella absent.

Next meeting scheduled for Wednesday, August 28, 2019 from 12:30 p.m. to 3:00 p.m.

Adjourned 3:00 p.m.

Jonathan Leo 8/8/19

Draft Language for Lancaster County Ordinance Amendments

re Special Permits for Animal Feeding Operations

I. Rewrite Task Force proposed amendment of Article 13 ("Special Permit: Animal Feeding Operation"), section 13.035, #2, from "A Construction and Operating Permit shall be approved by the Nebraska Department of Environment and Energy ("NDEE") prior to any building permit" to ***"A Construction and Operating Permit ("COP") shall be approved by NDEQ prior to the submission of any application for a Special Permit."***

Justification and Analysis: At present, Lancaster County Zoning Regulation Section 13.035 ("Special Permit: Commercial Feedlot") contains no requirement that any NDEE-approved plan precede the approval of a Special Permit or a building permit. The existing ordinance governing the issuance of special permits for commercial animal feedlots only states that they "may be allowed by special permit in the AG zoning district. The application for a special permit shall be accompanied by a statement from the Department of Environmental Quality (DEQ) that either the facility does not need to provide for anti-pollution controls, or that the applicant has received approval from DEQ for anti-pollution controls."

The CAFO Working Group recommends that an NDEE-approved Construction and Operating Permit ("COP"), with its critically important Nutrient Management Plan ("NMP"), be required prior to the issuance of a building permit for any medium or large animal feeding operation ("AFO").[1] Although this would guarantee that no physical construction of an AFO could begin until NDEE has approved the COP and the NMP, it still deprives the Planning Commission, the County Board, and the citizens of Lancaster County of any opportunity to review and critique the NMP's proposed waste management and disposal methods and the manure and litter land application plans. Lancaster County requires a public hearing prior to the approval of any Special Permit for an animal feeding operation; it does not require a public hearing prior to the approval of a building permit.

Under the Task Force's current recommendation, the Planning Commission and County Board could approve the Special Permit for an AFO at a public hearing without any NMP

[1] Existing NDEE Livestock Waste Control Regulations for Animal Feeding Operations (NE Admin. Code, Title 130, Chap. 2) require the owner or operator of an AFO to apply for a Construction and Operating Permit as required in Title 130, Chapter 4, in all cases where NDEE determines that livestock waste control facilities are required as part of the AFO. However, no state law or regulation and no Lancaster County ordinance specifies *when* the Construction and Operating Permit must be approved by NDEE in the sequence of Planning Commission and Board of County Commissioners permit approvals.

to review and critique, and then, after NDEE approves the COP and its NMP (with a public comment period but without a public hearing) the Planning Commission and County Board could approve the building permit without any public hearing.

Although the Task Force's recommendation is better than the present ordinance (which has no such requirement), it is still wholly inadequate. The land use/zoning approval process for a Special Permit application for an AFO must include public examination, review, and comment on how manure, litter, process wastewater, and chemicals will be managed at the AFO. That can only happen if an NDEE-approved COP is required prior to the issuance of the Special Permit. The Planning Commission, the Board of County Commissioners, and the interested public must have the opportunity to read, critique, and comment on the Nutrient Management Plan, which is the single most important part of the COP and the only part that requires comprehensive and detailed analysis of how the AFO's wastes will be managed and applied to land on and off the facility itself.

The contents of the **Nutrient Management Plan** are specified in Title 130, Chapter 14. That Plan contains the commitment of the AFO special permit applicant to conduct its operation in an environmentally sound manner with as few adverse impacts as possible on soils, surface waters, groundwater resources, and public health.

Chapter 14, at section 002, specifies the terms that every Nebraska Planning Commission or County Board must include *in every permit issued pursuant to Title 130*. Those terms are:

> implementation of a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this chapter and applicable effluent limitations and standards. The permit terms for the nutrient management plan are the information, protocols, procedures, best management practices, and other conditions in the nutrient management plan determined by the Director to be necessary to meet the following elements:
>
> 002.01 Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
>
> 002.02 Ensure proper management of mortalities (*i.e.*, dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
>
> 002.03 Ensure that clean water is diverted, as appropriate, from the production area;
>
> 002.04 Prevent direct contact of confined animals with waters of the State;
>
> 002.05 Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
>
> 002.06 Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the State;

002.07 Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

002.08 Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater using either a narrative rate approach or a linear approach described in section 003 below; and

002.09 Identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.

The most frequently-heard objection to this proposed requirement is that it is financially burdensome for small farmers to have to spend several thousand dollars for an NDEE-approved Nutrient Management Plan before they have the assurance that their County Planning Commission has approved the Special Permit or Conditional Use Permit for their proposed animal feeding operation. For any small farmer, this objection is meaningless because existing Nebraska Administrative Code Livestock Waste Control Regulations for Animal Feeding Operations (Title 130) exempt small animal feeding operations of every kind from their jurisdiction, and proposed Lancaster County Special Permit amendments similarly exempt all small animal feeding operations of every kind from their requirements. For any medium-to-large-sized animal feeding operation, it is an illegitimate objection that reflects either hypocrisy or laziness or both. Any medium-to-large-sized animal feeding operation must be adequately capitalized not only to bear the normal type and range of operating costs, but it must also have enough capital to perform basic due diligence for its own benefit as well as that of public decision-makers, neighbors, and concerned citizens. An NDEE-approved Nutrient Management Plan is an essential element of that pre-approval due diligence.

This proposal to require the Nutrient Management Plan to be approved prior to the submittal of an application for a Special Permit not only serves as the only opportunity for the County Planning Commission and the citizens of Lancaster County to read, evaluate, and discuss the Nutrient Management Plan *in a public hearing* before any official approvals have been given to the project, but it also requires the Special Permit applicant to demonstrate up-front that it can be relied upon and has the financial resources to implement responsible environmental and public health management practices.

The CAFO Working Group's proposal to require an NDEE-approved COP prior to the issuance of a building permit but *after* the land use/zoning approval for a Special Permit will continue to frustrate the right and obligation of Lancaster County's Planning Commission, Board of Commissioners, and its citizens to obtain, review, and critique the only document that describes the functions of an animal feeding operation that have the greatest potential to damage our soils, our crops, our surface waters, our groundwater resources, and the public health. Only if the COP's Nutrient Management Plan is submitted to, reviewed, and approved by NDEE before the land use/zoning Special Permit application is filed will the County's public agencies and its citizens be

able to make informed judgments – in public hearings – about whether or not a new animal feeding operation is safe enough to receive a Special Permit.

II. Add a new subsection to Lancaster County Zoning Regulations, Article 13 ("Special Permit"), section 13.035 ("Animal Feeding Operations") to require that "the Special Permit applicant must provide evidence – and annually certify the maintenance – of adequate financial responsibility to cover the cost of cleanup of any contamination remaining on the property of the AFO, or that has migrated off the property of the AFO, after the AFO has been closed or abandoned or the Special Permit has been revoked. Prior to any proposed transfer of an AFO Special Permit from the original permittee or a subsequent transferee from the original permittee to any other permittee of an AFO, the proposed Special Permit transferee shall provide its own financial responsibility instrument that complies with the requirements of this section."

Justification and Analysis: Currently, Lancaster County ordinances do not require the maintenance of this kind of financial responsibility by an AFO Special Permit applicant. The following language is adopted from California Public Resources Code section 43501, dealing with Solid Waste Facilities. I'm quoting from this section so that you can see what this particular statutory framework looks like and we can talk about how to modify it for use in the context of Lancaster County, NE animal feeding operations.

"(a) A person owning or operating a solid waste landfill...shall...
"(1) Upon application to become an operator of a solid waste landfill...certify to the board and the local enforcement agency that all of the following have been accomplished:
"(A) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs.
"(i) The Board shall adopt regulations that provide for an increase in the initial closure and postclosure maintenance cost estimates to account for cost overruns due to unforeseeable circumstances, and to provide a reasonable contingency comparable to that which is built into cost estimates for other, similar public works projects.
"(ii) The Board shall adopt regulations...that require closure and postclosure maintenance cost estimates to be based on reasonably foreseeable costs the state may incur if the state would have to assume responsibility for the closure and postclosure maintenance due to the failure of the owner or operator....
"(B) The operator has established a trust fund or equivalent financial arrangement acceptable to the Board, as specified in...."
"(C) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the Board will ensure adequate resources for closure and postclosure maintenance."

Acceptable forms of closure and postclosure financial responsibility instruments include a trust fund, an insurance policy, a surety or other bond, a letter of credit, or an asset-

to-liability ratio document showing not less than a 4-1 asset-to-liability ratio, certified annually by the owner or operator's CFO or bank officer under penalty of perjury and, consistent with the requirements of the Sarbanes-Oxley Act, stating that the certifying officer has personally examined the finances of the owner/operator and personally verified the accuracy of the representations in the financial responsibility mechanism.

What constitutes a "reasonable" amount of financial responsibility to clean up post-closure on- and off-site contamination from an AFO depends on a number of factors that would have to be identified and evaluated for the purpose of setting a minimum amount. Some of those factors are: the size of the AFO; the kind of animal waste generated by the AFO; the proximity to the AFO of surface water bodies (creeks, streams, rivers, lakes, etc.); the depth to groundwater under and in the vicinity of the AFO; the porosity of subsurface soils (relevant to how rapidly liquid contaminants can migrate through soils into groundwater); etc.

Realistically, the establishment of the requirement and applicable standards for financial responsibility mechanisms for AFO post-closure care may be more appropriate to place in Title 130 than in the Lancaster County Zoning Ordinance. However, Lancaster County zoning regulations MUST require that an AFO Special Permit applicant provide such evidence of financial responsibility, regardless of where the recitation of acceptable financial instruments and standards are located.

I suspect that discussion of how these financial responsibility standards should be developed ought to come from some combination of AFO operators, AFO facility lending institutions, and regulators with NE Departments of Agriculture, Environmental Quality, and Finance. We should probably talk more about this among ourselves, too.

This is turning into a statewide catastrophe.
Here are more details, somewhat shocking, from a post by North Bend resident Andrew Tonnies:

Janis H.
8/8/19

Urgent update in the fight against the Morse Bluff 12 barn "Y24" poultry CAFO! [in Saunders County, a few miles west of Fremont]
The mysterious Y24 Farms from Wilmington NC has a name to go with it: Jody Murphey who apparently lives at a business park in North Carolina, has active applications to the Nebraska Department of Environmental Quality for a total of 120 Costco poultry barns at 8 separate locations in three counties.

It seems Costco is abandoning their talking point of helping small family farmers to diversify and provide an opportunity for their children to stay on the farm. This is a massive takeover by people who have no vested interest in the well being of the communities in which they operate. EVERY SINGLE NEBRASKAN SHOULD CARE ABOUT THIS AND SHOW UP TO OPPOSE THESE BARNS!

Here is a list of all Jody Murphey's proposed poultry barns.

Butler County: Tusk Farm, 12 barns; Tar Heel Farm, 16 barns; Bobcat Farm, 16 barns; Lancelot Farm, 16 barns; Wolfpack Farm, 16 barns; Wildcat Farm, 16 barns

* Saunders County: Y24 Farms LLC, 12 barns***

York County: Bobcat Farm, 16 barns

Last I checked, Costco was housing 47,500 birds per barn every 6 weeks. In animal units, a 16 barn operation is about equivalent to 7000 head of cattle.