

August 28, 2019
Meeting Minutes
12:30 p.m. to 3:00 p.m.
Concentrated Animal Feeding Operation (CAFO) Working Group

Members of Working Group present:

Dale Softley, John Hansen, Paula Peterson, Scott Johns, Stephen Martin, Tim Kalkowski, Theresa Pella, Steven Skoda and Cristy Joy; Marijane Hancock 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 requested a motion to adopt the agenda. Motion for approval of the agenda made by Peterson, seconded by Pella and carried, 8-0: Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Pella voting 'yes'; Joy and Hancock absent.

Henrichsen requested a motion for approval of the minutes. Pella asked for clarification of the minutes on the last page Article 13, No. 4, and asked if removing the points and scores from the matrix, the intent was to create a revised matrix that would be used by potential producers. Henrichsen stated that was correct, the Nebraska format would be used and it would change from a scoring system to an information system.

Motion made by Hansen, seconded by Skoda and carried 8-0: Hansen, Peterson, Johns, Martin, Kalkowski, Softley and Skoda voting 'yes'; Pella abstained; Joy and Hancock absent.

Lori Heiss, 23800 NW 27th Street, came forward and stated that she has an acreage that is located next to the proposed CAFO. She stated that she has concerns with the setbacks on a large CAFO, and she feels the larger the CAFO the larger the setback should be. She explained that the more homes, schools and towns in a 2 or 3 mile area there are, the more regulations there should be. There are too many variables and unknowns, and it causes community uproar and opposition. She stated that there is also concern with young drivers sharing the narrow roads and bridges with large trucks.

Harry Muhlbach, no address given, came forward and stated, in part, some of the blame is from the University of Nebraska Economics Department saying that everyone has to get big or get out. He stated he has concerns with the 40 Year Plan, and with the way that Lincoln is expanding it will stop agriculture in Nebraska. With the water concerns he shared that chickens do not use a lot of water, so the water issue is overblown and same with the smell of the chickens.

Jonathan Leo, 2321 Devonshire Drive, came forward stated that this is not about small animal feedlots, and that these regulations that are being discussed would be for the medium and large animal feedlots. He shared that different counties have different practices of how much notice to provide prior to the public hearing on these permits. He stated that they have concerns and ten days or less is not enough notice prior to the public hearing. The notice for this type of operation should be 30 days prior to a public hearing and that signs should be posted within 2 miles of the proposed site.

Harriet Gould, President Raymond Central Board, came forward and stated the proposed application is within one mile of Raymond Public Schools. There are major concerns with regards to the health and safety of the students. She stated that the regulations should state that this type of operation needs to be two miles from any school, although saying that five miles would be better. She explained that the trucks will be using County Road A, and that road goes directly in front of Ceresco Elementary School. Children with allergies will not be able to go outside. She further stated that she has grave concerns with these barns and the pollution to the air and water that they cause.

Melissa Baker, 7125 Yosemite Drive, came forward and stated there needs to be a moratorium until the County Regulations have been updated. Setbacks need to be set at 1.5 miles for residential and 3 miles for public use areas. Large CAFOs don't make sense in Lancaster County. The opposition is growing tremendously and people want answers.

Henrichsen stated the group would move into the discussion and voting of Article 13, item No. 5, which is where the group voted to stop at the last meeting.

Hansen stated that when the last meeting closed, a motion had been tabled that was on the floor, which was the discussion of increasing the setbacks for open and closed CAFOs to 1,280 feet.

Henrichsen stated the group would continue to work on No. 5. The amendment for the last meeting was made by Hansen and seconded by Johns, which was to increase the setback to 5,280 feet (one mile) for both open and closed operations.

Hansen stated he thought one mile was a good place to start when looking at other county regulations. He stated that Lancaster County is the second most populated county in the State and currently has no limit on the size of CAFOs. He further stated that if there is no limit on operation size, the setback would need to be the same for all, with the setback leaning towards what is needed for the larger CAFOs. Discussion continued on the amount of setbacks for medium and large CAFOs.

Cristy Joy entered the meeting.

Martin stated that the setback for a medium sized CAFO should be less than a mile. Pella suggested for a medium to large the setback could be a half-mile. If the CAFO is extra-large in

size, with 12 barns, the setback could go to a mile. She explained there would need to be a windbreak or buffer zone around the operation for extra protection. Discussion continued.

Kalkowski stated there is a difference between an enclosed and open operation. When enclosed they can manage the manure and the odor control better, which is not as easy in an open operation.

Pella stated with an open and closed operation having the same setback there would not be an incentive for the operation to have an enclosed operation.

Henrichsen stated it would be hard to explain why the setback is the same for both open and enclosed facilities. He stated that there is an enclosed facility that has been operating for decades and there have not been any complaints on the odor. Discussion continued on open and enclosed facilities.

Henrichsen stated that on No. 5, the motion is to change open and enclosed CAFO setbacks to 5,280 feet. Discussion continued on what the setback should be for an open or enclosed operation. He explained that all CAFOs that are medium and large are required to apply for a special permit.

Hansen stated that the majority of operations will be at or below the medium threshold. Discussion continued on medium and large CAFOs. Hansen stated the vast majority in the county are small. Discussion continued.

Henrichsen requested a motion on No. 5, which is to change the setback on CAFOs that are open and closed to 5,280 feet. Hansen moved motion to amend #1, seconded by Johns and failed, 4-5: Hansen, Softley, Johns, and Skoda voting 'yes'; Joy, Peterson, Martin, Pella and Kalkowski voting 'no'; Hancock absent.

Skoda moved motion to amend #2 for open facilities setbacks to be set at 1 mile and for an enclosed facilities the setbacks would be set at 2,640 feet. Seconded by Kalkowski.

Johns offered a friendly amendment and asked if Skoda would be willing to split halfway with the mile and the ½ mile for the setbacks. Skoda declined.

Joy stated that the dwelling verses the property line should also make a difference with the setbacks. She explained if there is not dwelling on the property then you have not protected the owner's right to having a building built on their property at a later date. Discussion continued on using the dwellings or property line for the setbacks.

Motion on amend #2 carried 6-3: Softley, Hansen, Peterson, Martin, Skoda and Kalkowski voting 'yes'; Joy, Johns and Pella voting 'no'; Hancock absent.

Henrichsen stated that the draft for No. 5, as now amended, would state “the AFO use including Confined Animal Feeding building used to house animals should be setback, at a minimum, from the nearest wall of a dwelling that is not associated with the AFO, a 1 mile setback for open and enclosed would be a 2,640 foot setback. The last sentence in the draft about cattle and swine operations would no longer be relevant.

Kalkowski asked about an amendment to add a setback for schools. Henrichsen stated that it could be added to No. 5.

Hansen gave a handout to group members. He stated it has language requiring a setback from any special needs or public gathering area including any historical site, religious area, cemetery, school, public park or recreational area, hospital, nursing home, or licensed daycares to be set at 2 miles, but he stated that this can be used as a starting point. Discussion continued on what the setback should be when it is in an area that has school, church and other public facilities.

Kalkowski mentioned the group could look at 1.5 miles for a large AFOs from public sites, and add a separate amendment for the greenbelt areas and low density areas. Discussion continued on this item.

Hansen made a motion to amend #3 to accept his handout for setbacks of two miles, seconded by Johns.

Hansen explained how he came up with areas that should be considered in the 2 mile setback. Henrichsen stated that public gathering and special needs would be hard to define. Discussion continued on what areas to include in the motion to amend for setbacks in public areas.

Hansen accepted a friendly amendment to remove special needs and public gatherings from his list. Discussion continued on whether other areas should be removed from Hansen’s handout. Concern was noted with how public parks would be defined. Some parks have trail ways that go alongside the road for miles. Henrichsen stated a trail easement is not a park. Discussion continued on definitions for areas.

Hansen agreed the rule should state public park and recreation areas do not include trails.

Henrichsen noted that there are 3 schools in Waverly within 1 ¼ miles of existing chicken operations and there have been no complaints from those schools. Discussion continued.

Kalkowski made a motion to amend #3 to say that all large AFOs as defined by NDEE (Nebraska Department of Environment Energy) with a 1.5 mile setback to the list of special uses. Seconded by Martin. Discussion followed on what the setback would be for medium. Kalkowski stated the medium would go back to 1 mile for setbacks, and the 1.5 miles for large AFO’s. Discussion continued.

Henrichsen asked if they were ready to vote on the motion (amend #4) with the setback to residential and any of the designated uses as mentioned prior, and with a setback of 1.5 miles on a large and nothing different for medium.

Motion to amend #3 carried: 5-4: Hansen, Martin, Skoda, Pella and Kalkowski voting 'yes'; Joy, Softley, Johns and Peterson voting 'no'; Hancock absent.

Henrichsen inquired if a group member would want to make a motion on medium operations.

Peterson made motion to amend #4 stating if it is a medium operation as defined by NDEE, would have a 1 mile setback to the list of uses, seconded by Hansen. Hansen stated that this was a good category and a reasonable setback. Discussion continued on a setback for a medium operation.

Motion to amend #4 carried, 9-0: Joy, Hansen, Softley, Peterson, Johns, Martin, Kalkowski, Skoda and Pella voting 'yes'; Hancock absent.

Henrichsen stated that item No. 5 has three parts to it now, and asked if the group wanted to add anything else for setbacks. Discussion followed on adding more items to the setbacks. Henrichsen asked for motion on the main motion, as amended.

Hansen made motion to amend #5 to move Condition #5, as amended, seconded by Pella and carried 8-1: Joy, Hansen, Softley, Peterson, Martin, Kalkowski, Skoda and Pella voting 'yes'; Johns voting 'no'; Hancock absent.

Joy discussed setbacks and buffers in low density housing areas. Discussion followed on buffers and setbacks for low density areas.

Joy made motion to amend #6 for a setback to Residential Low Density of at least 2,640 for enclosed and 1 mile for open. Seconded by Martin. Discussion continued on setback for low density areas.

Motion to amend #6 carried 8-1: Joy, Hansen, Softley, Johns, Martin, Kalkowski, Skoda and Pella voting 'yes'; Peterson voting 'no'; Hancock absent.

Henrichsen stated that the County Attorney has asked that it be made clear that regulation changes are not retroactive and if the group would want to add this condition. There was general consensus on this point.

Peterson made motion to amend #7 that all Large CAFO's be required to have a conservation buffer, seconded by Johns. Discussion followed on a buffer, wind break and buffer strips.

Kalkowski inquired how many sides this would be required on, and he stated that there would need to be airflow in the area. Discussion continued on the number of sides for the buffer that would be required.

Motion to amend #7 carried 6-3: Joy, Hansen, Softley, Johns, Martin and Peterson voting 'yes'; Skoda, Pella and Kalkowski voting 'no'; Hancock absent.

Softley made a motion to amend #8 that a post decommissioning plan be detailed in the application including a bond for the closure and clean up, before the permit is approved. Seconded by Pella.

Pella asked if there was some language already in place for the decommissioning of facilities. Henrichsen stated County Zoning Regulation 13.048 for Commercial Wind Energy states that each application shall have a decommissioning plan outlining the means, procedures and cost of removing wind turbines. Discussion continued on requirement for decommissioning of a CAFO operation.

Paula Peterson left meeting at 3:08 p.m.

Joy moved a motion to amend #1 to Softley's motion to add "which may include a bond or equivalent". Amendment was accepted. Discussion continued. The language was amended to include "...removing or reusing" and "removal or reuse."

Motion to amend #8, with revisions, carried 8-0: Joy, Hansen, Softley, Johns, Martin, Kalkowski, Skoda and Pella voting 'yes'; Hancock and Peterson absent.

Joy moved, to approve the work of the group, as a whole, seconded by Skoda. The group voted on the motion, but then after discussion, Joy withdrew the motion to consider another amendment.

Kalkowski moved motion to amend #9 that it be a requirement the Planning Department mail a 30 day notice of public hearing to surrounding property owners. Seconded by Johns.

Motion to amend #9 carried 8-0: Joy, Hansen, Softley, Johns, Martin, Kalkowski, Skoda and Pella voting 'yes'; Hancock and Peterson absent.

Joy moved a motion to approve the work of the group, as a whole, seconded by Skoda and carried 7-0: Joy, Hansen, Softley, Johns, Martin, Kalkowski, Skoda and Pella voting 'yes'; Hancock and Peterson absent.

Adjourned 3:23 p.m.