

NANCE COUNTY PLANNING AND ZONING COMMISSION

Meeting Minutes February 18, 2014

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Tuesday, February 18, 2014 at 6:00 p.m. Meeting notice was given by publication in the February 5, 2014 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator. Delancey acknowledged the posted Open Meetings Act.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Roy Guisinger, John Cieloha, Brett Houtby, Pat Connelly, and Lynn Belitz. Galen Frenzen and Delmer Wondercheck arrived later. Absent was Dennis McCoig.

Agenda Item 3 – Minutes

Minutes from the October 21, 2013 meeting had been mailed in advance and were briefly reviewed. Connelly made a motion to approve the minutes as presented. Seconded by Cieloha. Ayes by roll call: 6. Nays: none. Absent: 3.

Agenda Item 4 – Public Hearing: Ken Shotkoski CUP

Ken Shotkoski appeared before the Commission to apply for a Conditional Use Permit to spread manure from Merrick County on land in Nance County at S½ 28-16-7 in Loup Ferry Township and at SE ¼ 15-16-5 and S ½ 14-16-5 in East Newman Township.

Shotkoski provided a soil suitability report for the land in Loup Ferry Township. He had been applying at the rate of 14 tons/acre, but the analysis recommended that he not go above 10 tons/acre because of the high salt content. He will follow the recommendation. Soil suitability reports were not yet completed for the two properties in East Newman Township.

Connelly made a motion that the Commission recommend approval of the CUP to the Board of Supervisors, with the condition that approval was contingent upon receipt of the other two soil suitability reports. Seconded by Belitz. Ayes by roll call: 6. Nays: none. Absent: 3.

Agenda Item 5 – Old Business

a. Pipeline Regulations - discuss Baldridge's recommendation

Present for the discussion were TransCanada representatives Bobby Britton, Lee Hamann, Mark Johnson, and Jeff Rauh.

Baldridge prepared a recommendation for the Commission and mailed it in advance of the meeting. That recommendation is attached to these minutes. The Commission discussed the points raised in the recommendation, with particular focus on point #2. The consensus was that it would be extremely costly to do what is required by point #2, and that in the end it would achieve nothing.

Attorney Lee Hamann suggested that the Commission put its decision regarding pipeline regulations in the form of a resolution. Connelly made a motion to pass a resolution stating that the Nance County Planning & Zoning Commission has done a thorough review of the question of implementing pipeline regulations and the Commission has determined that no further action is necessary. Cieloha seconded the motion. Ayes: Delancey, Cieloha, Belitz, Houtby, and Connelly. Nays: Wondercheck and Guisinger. Absent: Frenzen and McCoig. Motion passes.

b. “Livestock Friendly County” designation - discuss Baldrige’s research

The Commission reviewed Baldrige’s research on what is required to be eligible for designation as a Livestock Friendly County. That research is attached to these minutes.

One of the things Baldrige pointed out is that our Existing Land Use Map shows where residences are located throughout the county, and there is not very much space available for new LFOs, regardless of whether setbacks are big (as in the case of our county regulations) or small (as in the case of the Nebraska Department of Ag’s setback recommendations). However, Frenzen said that the map is very inaccurate, showing residences where there are none.

Most of the discussion had to do with setbacks. Nance County’s LFO setbacks are at least twice that of the Department of Ag’s. To become eligible for consideration as a Livestock Friendly County, we would have to either reduce our setbacks or provide scientific evidence that our larger setbacks are justifiable for environmental reasons. Delancey said that county residents seem to be content with our LFO regulations. Connelly said that we are “livestock friendly” to the people of Nance County. The consensus was that there was nothing to be gained by seeking LFC status.

Frenzen said that he would like to see an increase in the number of Animal Units people may have before being considered an LFO and requiring a CUP. Baldrige will put it on the agenda for the next meeting.

Agenda Item 6 – New Business

a. Setback regulations and fines for non-compliance

Present for the discussion was Bob Konwinski, Chairman of the Board of Adjustment.

Discussion was held on whether or not to establish fines for setbacks violations. A penalty might look something like: if a structure is within 15% (12.5 feet) of violation, and if there is no public opposition, and if there is no potential danger as a result of the violation, the property owner may either move the structure to bring it into compliance or pay a fine in direct proportion to the amount of violation (eg. if the structure is 10% too close to the center of the road then the fine is 10% of the total valuation of the structure). Additionally if the property owner chooses to pay a fine instead of moving the structure, the structure will remain a non-conforming use.

The matter requires quite a bit more discussion, and Baldrige will advertise the issue as a public hearing during the next Commission meeting. In the meantime, she will discuss the matter at the Nebraska Planning and Zoning Administration’s annual meeting in March.

- b. Compliance checks process: The Commission agreed that site inspections should be done both prior to and post construction.
- c. Fines for people who don’t get permits in advance of construction: This issue was mentioned but did not gain traction.
- d. Potential legislation requiring contractors to see zoning permits: The Commission agreed that this was a reasonable thing to pursue. Baldrige will work with the Nebraska PZA and NACO to try to introduce a legislative bill next session.
- e. Difference between spreading manure south of the Loup River and having LFOs south of the river: Tabled

- f. Zoning reminder on tax statements in addition to notices of valuation: The Commission agreed that this was reasonable and necessary to reach 100% of the people who own property in Nance County. Notices on valuation statements and articles in the newspapers are not effective in reaching people who don't have changes in valuation and who don't get the county papers. It was suggested that we might also have a zoning booth at the county fair.

Agenda Item 7 – Administrative Business

- a. Need Houtby's email addresses: received
- b. Re-appointments (Belitz, Houtby McCoig) and Election of Officers: Baldrige said that the Board of Supervisors re-appointed the three Commissioners whose terms were up. Frenzen made a motion to re-elect the current Chair and Vice-Chair for the 2014 year. Seconded by Connelly. Ayes by roll call: 6. Nays: none. Abstentions: 2. Absent: 1. Motion carried.

Agenda Item 8 – Next Meeting

The next meeting is scheduled for Tuesday, March 18 at 7:00 p.m.

Agenda Item 9 – Adjournment

A motion to adjourn was made by Frenzen and seconded by Houtby. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Meeting Minutes April 21, 2014

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, April 21, 2014 at 7:00 p.m. Meeting notice was given by publication in the April 9, 2014 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator. Delancey acknowledged the posted Open Meetings Act.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Roy Guisinger, John Cieloha, Brett Houtby, Galen Frenzen, Dennis McCoig, and Lynn Belitz. Absent were Pat Connelly and Delmer Wondercheck.

Agenda Item 3 – Minutes

Minutes from the February 18, 2014 meeting had been mailed in advance and were briefly reviewed. Guisinger made a motion to approve the minutes as presented. Seconded by Frenzen. Ayes by roll call: 7. Nays: 0. Absent: 2. Motion carried.

Agenda Item 4 – Public Hearing: John Valasek CUP

Application was made for a Conditional Use Permit by John and Patricia Valasek to increase the number of cattle at their feeding operation in Nance County at NE ¼ 33-16-8 in Cottonwood Township from 2,000 head to 3,000 head.

The Valaseks did not attend the public hearing. Tom Janky, a neighboring landowner, was present to hear about the application.

The Commission reviewed NDEQ's permit that approved the expansion, and they reviewed the supporting documentation provided by the Valaseks in making that application to NDEQ. Following a thorough discussion, the Commission felt that everything was in order and that issues such as ample capacities and numbers of holding ponds had been addressed. Frenzen made a motion to recommend approval of the CUP to the Board of Supervisors. Cieloha seconded the motion. Ayes by roll call: 7. Nays: 0. Absent: 2. Motion carried.

Agenda Item 5 – Old Business

a. Update on house setback violation

Baldrige informed the Commission about the final decision on action related to the house setback violation at SE ¼ 3-17-5W in Beaver Township, Nance County. The County Attorney chose to not seek an injunction requiring the owners to move the home because the violation is “de minimis” (too small to quarrel over) in nature, and he decided to not charge the owner/applicant with a Class III Misdemeanor because of a conversation with the owner/applicant in which the County Attorney was convinced that no mal-intent or deception was involved in not following the permit guidelines, rather there was likely a lack of communication between the applicant, the contractor, and the zoning administrator who signed the permit.

The action taken was that Baldrige recorded the property with the Register of Deeds as a Non-Conforming Structure, outlining future restrictions that would be applied to the house regardless of ownership. These restrictions should show up in all future title searches.



After some discussion, most of the Commission felt that this was a no-win situation, and that given the alternatives, it was probably the best resolution to the problem. Responsibility for the action taken (and not taken) resides with the County Attorney, who accepts that ownership.

b. Livestock Friendly County (LFC) redux

At the previous meeting, the Commission felt that there was no point in pursuing LFC designation because the cost of ordering scientific studies to justify our LFO setbacks was not worth the little gain to be had by being named an LFC, namely a bit of nice PR.

However, following that meeting and at the behest of the Board of Supervisors, Baldridge researched what the cost and process would be to secure the necessary scientific studies. Baldridge spoke with a representative from the NE Department of Ag and learned that no such studies exist. Further, this rep said that setbacks are different for every county and that our application would be graded on factors beyond LFO setbacks.

The Commission felt that there was still not much to be gained by receiving LFC designation, but ultimately this is a decision for the Board of Supervisors, so they will remain neutral on the matter. One question raised was whether or not counties can opt-out after receiving the designation if the Dept. of Ag starts to muscle-in to try to influence county regulations. Baldridge will look into that.

Wondercheck arrived at the meeting.

Agenda Item 6 – New Business

a. Pipeline consultation zones - Tabled

b. What's the difference between spreading manure south of the Loup River and having LFOs south of the river? Why does the first require nothing but the second requires a CUP?

A Supervisor asked this question, which Baldridge posed to the Commission. One member thought that the reasoning might be that manure is typically spread once a year, but an LFO has to dispose of manure year-round. Another member pointed out, however, that LFOs have to follow DEQ specifications and procedures, unlike a farmer who is spreading manure. One member noted that he never felt the regulations should have been adopted as written back in 1999. Perhaps we need to revisit this issue before we adopt our new zoning regulations.

c. Increase AUs to an amount above 300 before being designated an LFO? Tabled.

d. Why have CUPs for manure hauled in from outside Nance County?

This question, too, came from a Supervisor. The recollection from some members of the Commission is that this regulation was adopted to prevent people with hog confinements from pumping their lagoons across the county line into Nance without permission. One member noted that it probably also had to do with bad experiences people had with paunch manure around the time that zoning regulations were adopted.

Agenda Item 7 – Administrative Business

None

Agenda Item 8 – Next Meeting

The next meeting will be scheduled as needed.

Agenda Item 9 – Adjournment

A motion to adjourn was made by Frenzen and seconded by Houtby. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Meeting Minutes May 19, 2014

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, May 19, 2014 at 7:00 p.m. Meeting and public hearing notice were given by publication in the May 7, 2014 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator. Delancey acknowledged the posted Open Meetings Act.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Roy Guisinger, John Cieloha, Brett Houtby, Dennis McCoig, and Delmer Wondercheck. Lynn Belitz arrived after the Minutes were approved. Absent were Pat Connelly and Galen Frenzen.

Agenda Item 3 – Minutes

Minutes from the April 21, 2014 meeting had been mailed in advance and were briefly reviewed. McCoig made a motion to approve the minutes as presented. Seconded by Wondercheck. Ayes by roll call: 6. Nays: 0. Absent: 3. Motion carried.

Agenda Item 4 – Public Hearing: Wetovick CUP complaint

This public hearing was called to hear testimony regarding Bill Loseke's complaint about Rod Wetovick's application of Soil Builder I and Soil Builder II at NE¼ 18-17-5 in Council Creek Township, Nance County. (Note that the public notices and meeting agenda erroneously stated that the testimony was regarding compost.)

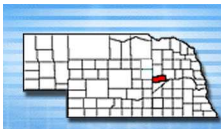
Present from the public were Buck Umstead, Bill Loseke, John Small, Glen Zywiec, John Santin, Ken Santin, Ken Proski, and Bob Small. Also present were Rod Wetovick, Todd Anderson from Chamness, and Nance County Sheriff's Deputy Brent Beekman.

Delancey opened the public hearing.

Loseke said that he was never aware of what was in Soil Builder I and II. He said that regular compost doesn't smell, but that this stuff stinks. He also said that it was never incorporated. He wanted to know how often the compost was turned and if it was turned with the proper equipment. Loseke also wanted to know why it wasn't composted at Swift as opposed to being dumped on Nance County for free.

Anderson from Chamness said that they use all the proper equipment to turn the compost piles. He explained that the contents of Soil Builder II, what they call "grit," are the kill-room floor materials: manure, dirt, sand, and silage. Anderson was asked if there was blood in it, and he said he supposed there could be, but it was unlikely. Anderson described the contents of Soil Builder I, what they call "belt-filter press," as the remnants skimmed off the top of waste water that has gone through a digester process with enzymes added to eat the bio-solids. He said that Soil Builder I is basically bugs. He was asked if Soil Builder contained germs, and he said yes, just like any cattle pen would.

In response to a question from the public, Anderson said that Soil Builder decomposes just like any other organic material, and that the odor comes from the methane gas produced during decomposition. Someone asked if Chamness even knew the chemical composition of the product, and Anderson produced a Lab Analysis Report from March 2014 (the reports are prepared quarterly) showing the nutrient breakdowns of nitrogen, phosphorus, potassium, sulfur, sodium, etc. Additionally, soil samples are taken at application sites before any product is delivered to determine soil suitability and appropriate application rates.



Nance County Planning and Zoning Minutes



In response to other questions and accusations, Anderson said that Chamness does in fact haul this material to Merrick and Hall Counties; they do cover their loads with tarps if the product has the potential to blow out; and no sludge or ooze ever leaked from one of their trucks because their products are not wet enough for that to happen.

Prososki stated that he went through all of this with Bob Voichoskie's application of Soil Builder I and II. Prososki said it stinks so badly all winter long that you want to vomit. He said he would never again allow a neighbor to do it near him. Anderson noted that some counties require that the product be incorporated with two weeks. Loseke asked why it has to be stockpiled, and Delancey said it had to do with the sheer amount of waste coming out of the meat-packing plant. Additionally, it can only be spread at certain times of the year, so it has to be stockpiled in the meantime or the product won't be available when it's needed by the farmer.

Wetovick raised the point that most of the people in the room were cattle producers who were dependent upon slaughter houses for their livelihood. Slaughter houses have to get rid of the byproducts of their industry, and those byproducts are valuable organic materials that can improve the fertility of ag land. He said that Soil Builder does stink, but everyone at the hearing is in the business -- they're not city people who are unfamiliar with agriculture. If this material has to go to a landfill, that cost will trickle down to producers and adversely impact cattle sales. Wetovick described the above in a paper he wrote: "Are you a 'Beef Friendly' producer?" He distributed it to the crowd and it is attached to these minutes.

John Small said that he isn't against manure; he's just against it sitting for a long time and not being incorporated. Wetovick said that there is an organic benefit to spreading it on top and leaving it on top; additionally, if it were incorporated, it would take him out of compliance with his conservation plan.

A member of the public said that the Sandy Ridge Feedlot smells like a rose compared to this stuff. Another person said that paunch manure has cancer-causing contaminants and carries lots of diseases, and that throwing it on the ground is dangerous. Anderson said that paunch is different now from what it used to be; digesters remove all the liquids. Loseke said that a couple years ago, there was a big fish kill from Swift dumping their byproduct into the river. He asked what would happen if we had heavy rains: would this product run off, end up in ditches, attract flies, and contaminate the water table?

Loseke said that no one in the room received notice of the public hearing when Wetovick applied in December 2012 for his Conditional Use Permit to spread Soil Builder I and II on a number of sections. Others in the room confirmed that statement. Baldrige looked through the previous zoning administrator's notes in Wetovick's folder and found several sheets on which Sharman listed and checked-off everyone that was sent a public notice. 31 landowners were notified about that public hearing, including the people in the room who owned land within 1,000 feet of the application sites. Loseke said that all of their notices must have been lost in the mail, and John Santin said that we should send certified notices in the future.

Ken Prososki asked for a public hearing to request that Bob Voichoskie's CUP for Soil Builder I and II be revoked. John Santin also asked to have a public hearing to address the other sections on which Wetovick is spreading Soil Builder I and II. Baldrige will schedule those hearings for Monday, June 16, 2014.

Delancey adjourned the public hearing at 7:53 p.m.

Delancey said that maybe CUPs for Soil Builder I and II should carry conditions based upon the location of any particular use. For example, maybe the product shouldn't be applied next to building sites. The Commission talked about other solutions such as covering stock piles (problematic because of trapped gasses) and requiring that the product be incorporated within x number of days. Maybe product applications should be limited to once

every three or four years. Anderson said that if they left the product alone until spreading it, it would form a crust and the odor would not be offensive until it was broken up for spreading.

Cieloha said that he agreed with Prososki that the smell is so bad it makes you want to vomit. He also said that Chamness destroyed the road while hauling product to Joe Beck. Anderson said that road was bad to begin with, but Cieloha said he thinks Chamness should be responsible for repairing it. Cieloha also said that these producers are getting a free product, Chamness is offloading their waste for free, and neighbors like him are left with nothing but stink and, in the case of Beck’s application site, a bad road.

In response to some general questions, Anderson said that two million pounds of waste per week comes out of Swift. Chamness generally carries 20 tons per load on a side dumper truck. DEQ considers a product to be compost when the internal temperature maintains 140 degrees for four weeks straight. Anderson checks the temperatures on compost piles twice a week. Chamness is interested in establishing a permanent compost site. They would need 30 acres.

Guisinger noted that it was farmers who were complaining, not town folk. He said that was really saying something, meaning the odor must truly be awful if cattle men are so upset about it. Wondercheck pointed out that a lot of people showed up tonight to complain, but many more people who live in the vicinity of the application sites have not complained. In addition, he said some of the complainants have personal reasons for targeting Wetovick, so their claims and accusations are suspect.

The Commission decided to take a month to think the matter over. In the meantime, Wetovick said that he won’t accept or spread any more Chamness product at NE ¼ 18-17-5 until the matter has been settled. Wetovick suggested that in the Commission’s review, they consider regulating only Soil Builder II, as Soil Builder I and the paunch used in composting do not have offensive odors.

Agenda Item 5 – Other
There was no other business.

Agenda Item 6 – Next Meeting
The next meeting is scheduled for Monday, June 16 at 7:00 p.m.

Agenda Item 7 – Adjournment
At 9:15 p.m., a motion to adjourn was made by McCoig and seconded by Houtby. All ayes, no nays.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Meeting Minutes June 16, 2014

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, June 16, 2014 at 7:00 p.m. Meeting and public hearing notice were given by publication in the June 4, 2014 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator and on the Zoning website. Delancey acknowledged the posted Open Meetings Act.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Roy Guisinger, John Cieloha, Pat Connelly, and Galen Frenzen. Delmer Wondercheck arrived after the Minutes were approved. Absent were Lynn Belitz, Brett Houtby, and Dennis McCoig. Also in attendance were Sheriff's Deputy Brent Beekman, Chamness representative Qian Wang, JBS representative John Ditter, and a courtroom full of members of the public.

Agenda Item 3 – Minutes

Minutes from the May 19, 2014 meeting had been mailed in advance and were briefly reviewed. Cieloha made a motion to approve the minutes as presented. Seconded by Guisinger. Ayes by roll call: 5. Nays: 0. Absent: 4. Motion carried.

Agenda Item 4 – Public Hearings

- a. Application by Monte Walker for a CUP to create 12 camp sites with electric hookups at NE¼ 25-17-4 in Genoa Township, Nance County.

Monte Walker described his plans to establish a family-friendly, gated, private, invitation-only campground. Guests would have access to 2 ½ of his 57 acres from Memorial Day to Labor Day. After Labor Day, all RVs and vehicles will be removed from the site. Ultimately, he would like to have 12 RV pads with electric hookups, but for now he is just planning to lease six sites.

Neighboring landowner Joe Held was present with a document (on file in the zoning office) that addressed his concerns. After extensive discussion, Delancey closed the public hearing. Guisinger made a motion to recommend approval of the CUP to the Board of Supervisors with the following conditions:

1. Entrance to the campground must be via Walker's gate or the county road.
2. Walker must maintain liability insurance.
3. Guests of the campground may not trespass on neighboring land and waterways.
4. There may be no more than 25 ATVs on-site at any given time.
5. Garbage service must be established and maintained with a local collection company.
6. Human waste must be taken off-site, not disposed of on Walker's land.
7. Vehicles / campers may not be left at the site during the off season.
8. The campground shall be open between Memorial Day and Labor Day. Guests must remove all vehicles from the site within a week following Labor Day.
9. This is an annual permit and must be renewed every year.
10. Walker must present a copy of the Campground Covenants to the zoning administrator.

Walker and Held were agreeable to those terms. Frenzen seconded the motion. Ayes by roll call: 6. Nays: 0. Absent: 3. Motion passed.



Nance County Planning and Zoning Minutes



- b. Review of Bob Voichoskie's CUP for Soil Builder I and II at N½ 10-16-5 in East Newman Township, Nance County, by request of Ken Prososki.

Present to discuss this permit were Bob Voichoskie, Andy and Ken Prososki, Joe and Scott Beck, and Dennis Jarecke.

Andy and Ken Prososki testified that the odor of Soil Builder is unbearable, leading to headaches and nausea. They acknowledged that Soil Builder is a good product, but they said they don't want to put up with the terrible smell anymore. They also said that the roads were torn up as a result of hauling the product to Voichoskie's farm.

Joe Beck said that he has used the product and it makes a tremendous amount of difference for the crops. He also said that it benefits every cattle producer in the county to provide Swift/Chamness with a place to haul this material.

Voichoskie agreed that Soil Builder stinks, but he said that this year the odor lasted longer than it should have because his loader quit and had to be repaired. He also spoke to the question of what producers expect packing plants to do with byproducts of the industry, reporting that three different packers told him they were going to start charging producers to cover the costs of disposal.

Dennis Jarecke said that he lives southeast of Bob's ground and that he has never smelled the product.

Voichoskie said that Soil Builder is an all-natural, very good product for crops, but that he won't get it again out of respect for Kenny Prososki's wishes. However, he asked that he be allowed to spread what remains of the Soil Builder he already has, and Prososki had no objections to that.

Delancey closed the public hearing. Connelly made a motion to recommend to the Board of Supervisors that Voichoskie's CUP be revoked but that Voichoskie be permitted to spread the remainder of the product that he already has on-site. Seconded by Wondercheck. Ayes by roll call: 6. Nays: 0. Absent: 3. Motion carried.

- c. Review of Rod Wetovick's CUP for Soil Builder I and II at N½ 12-15-7 in West Newman Township, Nance County, by request of John Santin.

John Santin distributed a copy of Chamness' "Concept of Operations" for Wetovick's CUP for a compost test site, and he argued that the terms of the document had not been followed. Baldrige noted that this hearing was about the Soil Builder sites, not the compost sites, and that if Santin wanted to discuss the compost, it would have to be at next month's meeting following proper public notice/advertising. Wetovick said he didn't mind discussing it now in conjunction with Soil Builder, and Delancey agreed that the discussion could proceed.

Santin said that the compost sites violated DEQ regulations and posed a threat to the water supply. He also said that Wetovick was in violation of the 3,000-foot setback noted in the "Concept of Operations" and that the compost was never mixed or stirred like it was supposed to have been. Because of these alleged violations, he thought the CUP should be revoked.

Wang from Chamness said that he wasn't sure why the 3,000-foot setback was in the "Concept of Operations," but that he thinks the DEQ's guidelines require just a 250-foot setback. (Wang later pointed out that the "Concept of Operations" indicated that the inspector simply did not observe a residence within 3,000 feet, as opposed to the document stipulating a 3,000-foot setback. Additionally, Wang later found that



Nance County

Planning and Zoning Minutes



DEQ does not actually have a setback requirement. See Title 132, Chapter 6, Section 2.) Wetovick said that the compost piles were above flood level and there was no danger whatsoever of them contaminating the water. He also said that the piles were turned once per week, on average, as stipulated in the “Concept of Operations,” but that initially they were turned with a front loader until the specialized compost turner was available.

In response to a question about the presence of chemicals in the Soil Builder products, Ditter from JBS said that there are no chemicals in the kill-room floor material. He explained that the facility is regularly inspected by the USDA for compliance with Title 9 of the CFR (Code of Federal Regulations), and the chemicals used in the process for the recovery of the proteins, both grease and the solids used as the soil conditioner, all meet the GRAS (Generally Recognized as Safe) standards. (See Title 21 CFR 184.1 and 570.30.)

Susie Patton said that she smelled it all winter and that her children wouldn’t ride the school bus anymore because it took them past the Soil Builder farms and made them sick. Jeremy and Kelsey Wetovick said that they worked in the fields with the product and that the odor was never a problem for them. Rod Wetovick asked Linda Lesiak if the odor was bothering her in her home, and she said no, but that she noticed it when she drove by the farms where Soil Builder had been applied.

Wetovick presented two documents (on file in the zoning office): one described the nutrition value of Chamness compost, and the other, from the Extension office, described the use of manure and compost as nutrient sources for vegetable crops. Wetovick explained that manure releases nitrogen slowly and can’t contaminate the water, unlike commercial fertilizers which are fast-release and have far more potential for run-off and contamination. Wang added that anhydrous ammonia goes through a nitrification process and turns into nitrate, which dissolves and leaches into the water table. The nitrification process for organic material, on the other hand, is very slow.

Wetovick said that everyone in the room had rights, and that Soil Builder was too valuable a product to just eliminate from Nance County. He asked that conditions be placed upon CUPS regarding stockpiling, incorporation, and frequency of application, rather than ruling out the product entirely. Scott Beck said that in Merrick County, Soil Builder has to be spread within 48 hours and that incorporation isn’t mandatory. Joe Beck said that in Merrick County, the product could be stockpiled for 90 days. Others in the crowd had a different interpretation of Merrick County’s regulations. Baldrige will get a copy of them to clear up the confusion.

Delancey closed the public hearing. No action was taken.

- d. Determination on action to take regarding last month’s review of Rod Wetovick’s CUP for Soil Builder I and II at NE¼ 18-17-5 in Council Creek Township, originally by request of Bill Loeske. This was the second hearing on this CUP.

Bill Loeske said that the problem with this product entering Nance County was BSE (commonly known as Mad Cow Disease). He said that it can’t be killed by the rendering process. Wang said that there is a research paper about the reduction of pathogens through composting (“Manure Composting as a Pathogen Reduction Strategy,” <http://www.omafr.gov.on.ca/english/engineer/facts/05-021.htm>). Further, Chamness maintains the heat in compost piles at 140 degrees for 4 weeks (beyond the recommended 3 weeks), in accordance with the EPA’s PFRP (Process to Further Reduce Pathogens), which is about sanitizing organic material through heating (see CFR Title 40, Part 503, Appendix B, Section B). No process or procedure can kill all pathogens entirely, but on average, PFRP kills at least 90-95% of pathogens. Jeremy Wetovick said



Nance County Planning and Zoning Minutes



that they had and have cattle out where the product has been spread, and there has been no resulting sickness, no breeding problems, etc. (Side note: Ditter talked to Loeske after the hearing and said that JBS' operating procedures eliminate BSE from their facility, so it is very unlikely that any of the JBS material would carry BSE.)

Loeske also felt that the disclaimer on a Chamness document he had absolved them of any responsibility with regard to use of their products. Wetovick explained and Wang verified that the disclaimer has to do with nutrient levels in the compost because they are variable, and it has nothing to do with the safety of the product.

Connelly noted that these products from Swift are new to the county, that we are learning as we go, and that we will adapt accordingly.

Delancey closed the public hearing. Because of the need to do more research, Frenzen made a motion to table both c. and d. for a month. Cieloha seconded. Ayes: Delancey, Cieloha, Connelly, Frenzen. Nays: Wondercheck, Guisinger. Absent: Belitz, Houtby, McCoig. Motion failed. (Note: 5 aye votes are required for a motion to pass per Bylaws, Article V, Section 2B.)

Commission members talked about conditions that might be placed on Soil Builder CUPs to address the odor problem. Delancey suggested that we expand the public hearing notification range beyond the currently required 1,000 feet. He also suggested that for each CUP, we impose conditions that are tailored to each specific situation, as opposed to having a blanket set of guidelines. Cieloha and Guisinger felt that we should take away the perpetual nature of the permits and have them reviewed on an annual basis.

Frenzen said the whole problem boiled down to the odor. The concept/compost is great, but we have to figure out how to address the odor. Frenzen also disclosed that he has a CUP for Soil Builder I and II, but that he has never received the products. Guisinger said that Soil Builder seems to be a good product, but we also have a responsibility to protect the quality of life of county residents.

Guisinger said that Chamness should figure out a place to compost Soil Builder before it is spread. Wetovick said that Chamness is trying to find a permanent compost site now. Jim Knopik said that if that site were in Nance County, the landowner would be liable, but Wetovick said that would not be the case because Chamness would be buying the land. Wang pointed out that Soil Builder is very good for crops, producing fungus and beneficial microbes that have shown to increase the root spread of corn from 1-3 meters to 10-12 meters; but when Soil Builder is composted, it loses 50% of its nitrogen and isn't as good a product.

In order to do more research, Connelly made a motion to table c. and d. for a month. Seconded by Wondercheck. All ayes. No nays. Three absent. Motion carried.

Agenda Item 5 – Other

There was no other business.

Agenda Item 6 – Next Meeting

The next meeting is scheduled for Monday, July 21 at 7:00 p.m.

Agenda Item 7 – Adjournment

At 9:50 p.m., the meeting was adjourned.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Meeting Minutes July 21, 2014

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, July 21, 2014 at 7:00 p.m. Meeting and public hearing notice were given by publication in the July 9, 2014 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator and on the Zoning website. Delancey acknowledged the posted Open Meetings Act.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Lynn Belitz, John Cieloha, Chuck Delancey, Dennis McCoig, and Delmer Wondercheck. Arriving after roll call were Pat Connelly, Galen Frenzen, and Brett Houtby. Absent were Roy Guisinger and zoning administrator Mary Baldridge. Commission members took meeting notes, which Baldridge subsequently assembled into meeting minutes.

Agenda Item 3 – Minutes

Minutes from the June 16, 2014 meeting had been sent in advance and were briefly reviewed. McCoig made a motion to approve the minutes as presented. Seconded by Cieloha. Ayes by roll call: 6. Nays: 0. Absent: 3. Motion carried.

Agenda Item 4 – Public Hearings

- a. Lincoln Williams' application for a Conditional Use Permit to convert a barn into a private hunting lodge / club at SE ¼ 1-15-6 in West Newman Township, Nance County.

Present to represent their application for a CUP were Monte and Lincoln Williams. After the Commissioners posed several questions, Frenzen made a motion to approve the CUP. Seconded by Wondercheck. Ayes: Belitz, Cieloha, Delancey, Frenzen, McCoig, and Wondercheck. Nays: none. Abstentions: Connelly and Houtby. Absent: Guisinger. Motion carried.

- b. Review of Rod Wetovick's CUP for Soil Builder I and II at NE ¼ 1-16-6 in Fullerton Township, Nance County, by request of Ken Prososki on behalf of Pawnee Hills Golf Club.

Members of the public who signed in for this and the next two hearings were John Santin, Mark Ulferts, Bill Loseke, Jim Dubas, Bob Small, Chris Gleason, Ken Prososki, Kate Evers, Linda Bailey, Mike McCray, Rod Wetovick, Jeremy Wetovick, Sha-Nae Orr, Kelsey Wetovick, Seth Wetovick, Jeff Rodriguez, Scott Fehringer, Kevin Koziol, Linda Lesiak, Dale Lesiak, Jerry Patton, Buck Umstead, Penny Wetovick, and from Chamness, Qian Wang. Also present were Dave Nathan and Jim Gleason (26 people).

Fehringer, the chairperson of Pawnee Hills Golf Club, said that the odor of Soil Builder bothers the members of the golf club and he doesn't want to see people quit golfing as a result. Prososki added that there are just 100 members of the golf club and that they are needed to keep the golf club financially viable. Dubas said that he isn't a golf club member but that he does live nearby and the product smells like a hog confinement. He said many of his neighbors agreed.

Rod Wetovick said that they tried to spread the product early so as not to offend golfers. Jeremy Wetovick added that there was hardly anybody on the golf course when they spread Soil Builder, and that the smell wasn't that bad, but Prososki countered that the golf course employees won't work amidst that odor.



Nance County Planning and Zoning Minutes



Chris Gleason said that she just built her dream house and she was concerned about the impact this product/odor would have on the house in the future. She also asked about counties that have banned application of this product, and Wang from Chamness rebuffed that claim as false.

Rod Wetovick said that Soil Builder I does not have an offensive odor and that he'd like to retain the ability to spread it, while Soil Builder II does have an offensive odor and perhaps should have conditions applied to its usage. Dave Nathan suggested that it would be better to just not use the product so as not to upset neighbors and create an unpleasant environment for local taxpayers. He noted that the smell of the product remains on the pay loader even after it has been emptied.

Mike McCray, school bus driver, said that he drove the bus by the site the second week in April and that the smell was rank. Jim Gleason said that he would not want to see a stockpile at that location. Rod Wetovick said that there won't be any Soil Builder applications at that site next year.

Delancey called for an end to the testimony regarding this quarter section and moved on to the next site.

- c. Determination on action to take regarding previous hearing on Rod Wetovick's CUP for Soil Builder I and II at N $\frac{1}{2}$ 12-15-7 in West Newman Township, Nance County, by request of John Santin.

John Santin said, as he did at last month's hearing, that he wanted this CUP to be revoked. Jeremy Wetovick said farmers need to save money where they can, improve their soil, etc. The Wetovicks want to get along with everyone, but this product is good and they bought special equipment for spreading it. Seth Wetovick added that they spread the product over Christmas break, and that maybe a solution would be to spread it earlier in the winter.

Wang from Chamness apologized on behalf of the company for causing problems in Nance County. Since the last meeting, they have received over 1,000 acres worth of requests from other people who want this free, organic fertilizer.

John Small said that the product was applied during Christmas and that he could still smell it in March. He said that the odor is very offensive and that application should be stopped until someone figures out how to better handle the smell. Penny Wetovick countered that the product is very good, and that it was applied to her garden during the winter and couldn't be smelled in April. She talked about incorporation as a potential solution, and Bob Small agreed that would help if it were incorporated within a couple of days and not stockpiled for an extensive period. He added that it would be better if the product were delivered as compost.

Delancey closed the public hearing.

- d. Determination on action to take regarding previous hearings on Rod Wetovick's CUP for Soil Builder I and II at NE $\frac{1}{4}$ 18-17-5 in Council Creek Township, Nance County, by request of Bill Loseke.

Testimony regarding this quarter section was heard during the previous agenda item.

The zoning commissioners discussed the conditions that might be applied to Wetovick's three CUPs for any further Soil Builder applications. Those potential conditions were:

- Authorize only one Soil Builder application site at a time, with no other sites being approved until the product has been applied at that location



Nance County Planning and Zoning Minutes



- Make those sites field-specific, requiring FSA maps with each CUP application
- Extend the range of landowner notification for the CUP hearings, and include renters (notification range is currently 1,000 feet; extend to 2,000 feet? 1 mile?)
- Put a limitation on the length of the product application period once the stockpile has been broken open (Merrick County imposes a 48-hour limit, Chamness suggests a 1-week limit)
- Require a signed waiver from nearby residents
- Incorporate the product within a set period of time once the product is spread (24 hours? 48 hours? 1 week? Chamness discourages an incorporation requirement because it isn't feasible during winter)
- Require that the product be stockpiled for no more than 90 days
- Allow Soil Builder application to a single site to occur no more than once every three years
- Create different conditions for Soil Builder I and Soil Builder II
- Require that road damage as the result of the product being hauled be repaired at the expense of either the CUP applicant or Chamness
- Require that the product be spread in the early winter

Frenzen made a motion to present the above list of potential conditions as a recommendation to the Board of Supervisors for them to make a final determination on the specifics. Seconded by Belitz. Ayes by roll call: 8. Nays: 0. Absent: 1. Motion carried.

Agenda Item 5 – Other

There was no other business.

Agenda Item 6 – Next Meeting

The next meeting will be scheduled as needed.

Agenda Item 7 – Adjournment

McCoig made a motion to adjourn the meeting. Seconded by Connelly. Ayes by roll call: 8. Nays: 0. Absent: 1. Motion carried.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Meeting Minutes August 18, 2014

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, August 18, 2014 at 7:00 p.m. Meeting notice was given by publication in the August 6, 2014 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an agenda was made available at the office of the Zoning Administrator and on the Zoning website. Delancey acknowledged the posted Open Meetings Act.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: John Cieloha, Chuck Delancey, Dennis McCoig, Galen Frenzen, Roy Guisinger, and Brett Houtby. Arriving after roll call were Lynn Belitz and Pat Connelly. Absent was Delmer Wondercheck.

Agenda Item 3 – Minutes

a. Amendment to June 16, 2014 minutes

Minutes from the June meeting had been approved at the July meeting, but a subsequent addendum was made. Frenzen made a motion to approve the June minutes with the addendum as written. Seconded by Guisinger. Ayes by roll call: 8. Nays: 0. Absent: 1. Motion passed.

b. Approval of Minutes from July 21, 2014 meeting

Frenzen made a motion to approve the July minutes as presented. Seconded by McCoig. Ayes by roll call: 8. Nays: 0. Absent: 1. Motion carried.

Agenda Item 4 – Old Business

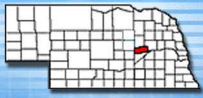
a. Final determination on recommendation to Board of Supervisors regarding Rod Wetovick's three CUPs for Soil Builder I & II

Present from the public were Rod Wetovick, John Small, and Bill Loseke. Also present for a period was Nance County Sheriff's Deputy Brent Beekman.

First, the Commission determined that Wetovick's CUPs at NE¼ 1-16-6, N½ 12-15-7, and NE¼ 18-17-5 have run their course and should no longer be perpetual. If Wetovick wishes to apply Soil Builder products at any of those sites again, he will need to obtain a new CUP for each location.

Secondly, the Commission discussed their recommendations from July's meeting and fine-tuned them with the following results. It is the Commission's intent that these 10 conditions serve as a guide for all new CUP applications for Soil Builder products, and they should serve as a guide for any re-applications by Wetovick for his three CUPs at the sections listed above.

- i. A producer may have more than one CUP for Soil Builder at any given time, but approval of those CUPs must take into account the overall odor footprint when spreading Soil Builder on multiple parcels in the same area.
- ii. CUPs for Soil Builder will be limited to a single application. They will not be perpetual. Each new delivery and application plan will require a new CUP.



Nance County Planning and Zoning Minutes



- iii. CUPs for Soil Builder application sites shall be field-specific, and CUP documentation shall include FSA maps showing the sites.
- iv. The zoning administrator will make the CUP applicant aware that there is a difference in odor between Soil Builder I and Soil Builder II, and that the applicant may want to differentiate which product is used at certain sites based on proximity to residences.
- v. The CUP applicant must provide to the zoning administrator a list of residences within a 1-mile radius of the application site.
- vi. The zoning administrator shall notify residences and landowners within a 1-mile radius of the application site of the public hearings related to the CUP. Waivers from all neighbors of the application site will not be required.
- vii. Stockpiling is defined as the time the first load of the product is delivered through to the time the stockpile is broken open for spreading. A general guideline for timeframes is that a stockpile may exist for 60 days if it is uncovered, and it may sit longer if it is covered. The length of time will be determined based on the month that the product is delivered (generally May through September) and its proximity to residences.
- viii. Once a stockpile has been broken open for spreading, the producer shall make every effort to spread the entire product within seven days. The producer shall notify the zoning administrator at the start of spreading. If weather conditions or mechanical breakdowns delay the spreading process, the producer shall notify the zoning administrator at the start of the delay and at the resumption of spreading. The producer shall also notify the zoning administrator once spreading is complete.
- ix. Whether or not the product shall be incorporated, and whether or not there is a timeframe in which incorporation shall take place, will be determined based on site location and proximity to residences.
- x. The zoning administrator will remind the company delivering Soil Builder to include a haul route with the CUP application and to notify the Nance County Highway Superintendent of the route. The company delivering the product will also be advised to provide an alternate haul route in case the primary haul route becomes undesirable. If the company deviates from either the primary or the alternate haul route, the Highway Superintendent should be notified.

The Commission would like to note as a matter of record that they never intended that the Soil Builder CUPs be perpetual and they don't agree with the Board of Supervisors' decision to make them so. Baldrige will make sure that Wetovick's three CUPs that have been under review are correctly filed with the Register of Deeds as not having perpetual status any longer.

Connelly made a motion to present the above recommendations to the Board of Supervisors. Seconded by Frenzen. Ayes by roll call: 8. Nays: 0. Absent: 1.

- b. How to address existing CUPs for Soil Builder I & II when no complaints have been received

It is the feeling of the Commission that CUPs are intended to be issued and reviewed on a case-by-case basis. Three of Wetovick's CUPs for Soil Builder came under complaint, and as required by Nance County Zoning Regulations, they were reviewed and thoroughly discussed through a public hearing process, after



Nance County Planning and Zoning Minutes



which the Planning and Zoning Commission was able to make informed judgments about how to proceed with the CUPs in question.

As for Soil Builder CUPs that have garnered no complaints, there is no reason to revoke those permits, which would be the consequence of taking away their perpetual status. Those applicants have gone through the proper permitting processes, they have complied with their permits (to the best of our knowledge), and the zoning administrator has received no complaints or requests to have the CUPs reviewed. Therefore the Commission recommends that those CUPs be left as they are.

In summary:

- Wetovick's three Soil Builder CUPs that have been under review are no longer active. If Wetovick wants to apply Soil Builder at any of those three sites again, he will have to apply for a new CUP and conditions will be imposed on that CUP based upon consideration of the guidelines outlined above.
- If any new applicant comes along wanting a CUP for Soil Builder products, his/her application and the conditions of the CUP will be subject to the guidelines outlined above.
- Producers who currently have CUPs for Soil Builder may retain their CUPs as they were issued. If there are no complaints, their CUPs will remain in effect. However, producers are supposed to give the zoning administrator a new site plan every time the product is re-applied. When that plan is delivered, the zoning administrator will suggest to the producer that he/she consider the recommendations outlined above.

Agenda Item 5 – New Business

a. FSA petition

The Commission briefly discussed the circulating petition, which asks that the FSA not close our local FSA office. The general feeling is that it may not do any good, but that it can't hurt to try. Signatures are adding up.

b. Regulate noise from airboats?

Tabled. The person interested in discussing this topic was not present.

c. Unconfirmed agenda item: Approve KXL permits before state/federal permits are confirmed?

Tabled. TransCanada representatives want to be present for this discussion, but they were unable to make this meeting.

Agenda Item 6 – Other

There was no other business.

Agenda Item 7 – Next Meeting

The next meeting will be scheduled as needed.

Agenda Item 8 – Adjournment



Frenzen made a motion to adjourn the meeting at about 10:00 p.m. Seconded by Houtby. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson