

**Nelson, Nina    Argument for Cherry County Planning Commission, January 5, 2021**

The facility that Mr. Danielski is asking you to approve is not allowed by Cherry County’s zoning regulations. His proposed facility (1) is not allowed in the zoning district, (2) is not compatible with the existing uses in the area, and (3) the regulations state that even if all conditions of a permit were to be met, the County Board doesn’t have to allow the use he is requesting. **You can and should say no, and I recommend that the County Board say no.**

1) Not allowed in the zoning district

The ranch property my husband and I own is contiguous to Mr. Danielski’s property, located in the “Cattle Country Agricultural District” zone. Pursuant to the Cherry County Zoning Regulations, the intent of this district is to, and I quote, “maintain agricultural crop and livestock production which is in balance with the natural environment”, and also to “encourage soil and water conservation, preserve water quality, prevent contamination of the natural environment within the County, and to preserve and protect ranch and farm operations from conflict with *non-agricultural uses*.”<sup>1</sup>

What are “non-agricultural uses”? Again, our own county zoning regulations tell us that an agricultural use does **not** include “confined animal feeding operations” and that confined animal feeding operations are a *commercial* use. Specifically, the definition of “agricultural use” in our zoning regulations says that a “confined animal feeding use ...**shall not** be considered an agricultural use.”<sup>2</sup> Also, our regulations define “commercial use” and that definition specifically includes “confined...animal feeding uses” just in case it wasn’t clear that this kind of operation isn’t considered agricultural in this area.<sup>3</sup>

So, if any of you are considering the allowance of this conditional use permit because “it’s only swine, it’s in a rural area, it’s ‘ag’” – then keep in mind that **our own** regulations tell us what ag is...and Mr. Danielski’s request is **not** ag, and therefore, it is not allowed in our area.

2) Not compatible with existing uses in the area

However, we’re here today because Mr. Danielski has the right to request allowance of a use that is not otherwise allowed in the Cattle Country Agricultural District by requesting a “conditional use permit.”

In our zoning regulations, a “conditional use” is one that is not “generally compatible with other permitted land uses in a zoning district” but which could *become compatible* to permitted uses **ONLY IF** the use was controlled as to number, location, and relation to other surrounding uses,

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<sup>1</sup> Zoning Regs § 501.01

<sup>2</sup> Zoning Regs § 303.06

<sup>3</sup> Zoning Regs § 303.18

AND ONLY IF the use would promote “public health, safety, convenience, and general welfare”.<sup>4</sup>

This definition makes it clear that you **cannot** recommend that the requested conditional use permit be approved. First, control of the number of animal units will be difficult and ever-changing. Currently, Mr. Danielski’s application states there will be almost 19,000<sup>5</sup> animals – which is approximately 6,816<sup>6</sup> animal units – but that if there is any question as to the actual number of animals, our Zoning Administrator will have to go out to the facility to count, one by one, all 19,000 animals.<sup>7</sup> Do you feel that with those numbers this facility will be able to maintain compliance with the conditions you might want to include in this permit? The answer is “NO”.

But, also keep in mind that a “conditional use” – even if highly regulated and maintained to the exact number of animals allowed – **must also** promote public health, safety, convenience, and general welfare. Tell me how a confined animal feeding operation with almost 19,000 animals squeezed together in confined buildings, with giant pits of excrement sitting under them will promote *public health* in Cherry County... Explain how it will promote *safety and convenience* in Cherry County...and explain how this will be beneficial to the *public welfare* of Cherry County? In fact, none of these factors will be met, and these are factors that **must** be met for this application to even meet the definition of a ‘conditional use’ in our own zoning regulations.<sup>8</sup>

Even if you find that this confined animal feeding operation will meet the narrow definitions set forth in our regulations, you must **also** find that this use of land is **compatible** with the surrounding uses of land, and it is clear that you will find Mr. Danielski’s permit to be incompatible with the surrounding farms and ranches. In fact, “incompatible use” is defined in our zoning regulations as a use of land that is inconsistent with the stated use of the zone – which makes sense, because we are in an Ag District, and “confined animal feeding operation” was specifically excluded from the definition of agricultural uses.<sup>9</sup> Also, “incompatible use” is a use that inconsistent with the zoning district because the use activities would “diminish the use, value, and enjoyment” of the other uses in the district.<sup>10</sup> Study after study has been done

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<sup>4</sup> Zoning Regs § 303.21

<sup>5</sup> Actual number per the permit is 18,840; rounding up to 19,000

<sup>6</sup> This is the actual number (Sows 16,840 x .4 = 6,736 animal units, and Piglets 2,000 x 0.4 = 80 animal units)

<sup>7</sup> Zoning Regs § 303.23

<sup>8</sup> Zoning Regs § 303.21 and § 303.22

<sup>9</sup> Zoning Regs § 303.06

<sup>10</sup> Zoning Regs § 303.41

showing that confined hog facilities have a negative effect on the value of surrounding properties, specifically if the property was within 1 to 2 miles of a hog facility, and the drop in property values was anywhere from 10% to 32%.<sup>11</sup> Which means in hard and fast numbers that our +\$3 million dollar property value could potentially drop by around \$1 million dollars. We are not willing to sit back and watch that happen, neither should you allow this to happen by voting for this application.

Based on our own zoning regulations, you cannot find that Mr. Danielski's permit, even as a "conditional use", meets the necessary requirements of being compatible with the uses around it in an ag district, and you cannot find that his confined animal feeding operation will promote the health, safety, and welfare of our area.

3) Regulations don't require the allowance of the permit, even if all conditions are met

Our zoning regulations spend 10 pages explaining what conditional uses may possibly be allowed in the Cattle Country Ag District, so it's easy to focus on how Mr. Danielski could possibly meet some of the conditional use provisions, and his application addresses some of these areas. However, our zoning regulations state that **only** "after the provisions...relating to conditional uses have been fulfilled", the Board of Commissioners – upon your recommendation – **may** permit a confined animal feeding use.<sup>12</sup> The word "may" is permissive; it is not mandatory.<sup>13</sup> **You do not have to say yes to this application**, even if it meets all the conditions you set forth. **You have the authority to say no, and you should say no.**

Finally, even if you really feel that the 19,000 swine in this confined feeding operation will promote public *health* and the safety of the neighbors in the district, and that this *commercial* use could somehow be compatible with the cattle-friendly zoning district, **you can still say no.** And based on all of the reasons I've given, **you must say no.**

Nowhere in Mr. Danielski's permit application does he tell you how he meets the definitions of a compatible use in Cherry County, nowhere does he explain how his operation will promote the health of Cherry County residents, and he cannot overcome the fact that what he is requesting is commercial in nature and should not be allowed in this agricultural district. **Based on our own Cherry County zoning regulations, you must say no to this application.**

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<sup>11</sup> study from Iowa State University

<sup>12</sup> First sentence of Zoning Reg § 501.05

<sup>13</sup> Zoning Regs § 301.03 and common definitions