

**Minutes of the Dodge County  
PLANNING COMMISSION MEETING  
February 4, 2015**

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The regular meeting of the Planning Commission was called to order by Richard Wolf at 1:00 PM on Wednesday, February 4, 2015. Present were Planning Commission members Harlan Buck, Richard Wolf, Ben Johnson, Walter Wyttenbach, Joshua Toquam, Darren Durst and Minor Buckingham. Also present were County Commissioner Dave Erickson, Steve Gray, John Allen, Environmental Service Director, Mark Gamm and Zoning Administrator, Melissa DeVetter.

Richard Wolf introduced and welcomed the two new Planning Commission members; Ben Johnson and Minor (Corky) Buckingham.

**Elections**

Melissa DeVetter asked for nominations for Chair. A nomination was made by Walter Wyttenbach and seconded by Harlan Buck to nominate Richard Wolf for Chair. Melissa DeVetter asked for nominations one more times. Melissa DeVetter called for a vote. The vote was unanimous to elect Richard Wolf as Chair of the Planning Commission for 2015.

Melissa DeVetter asked for nominations for Vice Chair. A nomination was made by Richard Wolf and seconded by Joshua Toquam to nominate Walter Wyttenbach for Vice Chair. Melissa DeVetter asked for nominations one more times. Melissa DeVetter called for a vote. The vote was unanimous to elect Walter Wyttenbach as Vice Chair of the Planning Commission for 2015.

Motion by Harlan Buck, seconded by Darren Durst, to approve the agenda and the December 4, 2014 minutes and the December 11, 2014 minutes. Motion passed unanimously.

Motion by Harlan Buck, seconded by Ben Johnson, to approve the Bylaws and Rules of Procedure. Motion passed unanimously.

**Zoning Amendment – ZA#15-01**

The public hearing is to consider a Zoning Amendment to the Dodge County Zoning Ordinance. The proposal includes new and amended language for Chapter 16: Performance Standards, Section 16.24 Feedlots & Pasture; 16.24.3 Application and Section 16.46 Solar Energy Farms; 16.46.2 A. Lot Size.

Melissa DeVetter was present to explain the proposed amendments. Ms. DeVetter stated that what is being proposed is to eliminate the language of Section 16.24.3 which was the information requirements for feedlot Conditional Use Permit. The new language will read: An application for a CUP shall be submitted on forms provided by the County. A draft application is available for review. This amendment is a result

of a law suit in which the Courts interpreted this section to mean that the requirements that are listed which are part of the 7020 rules are also part of the Conditional Use Permit. The Court indicated that the soil boring, the engineered plans, the manure management plans are required to be provided up front as part of the application. We have never done it that way. The purpose of a Conditional Use Permit is to look at this particular use on this piece of property and try to figure out what the impact would be from that use and from the public hearing and to try develop conditions that would mitigate some of the issues. We are not here to take public comments on something that the State of Minnesota has already adopted as code. If someone comes to the public hearing and says that they think the borings should be 300' deep or that the concrete is expensive and they only want it an inch thick these are comments that cannot be negotiated through the public hearing process. The Planning Commission and the County Board cannot exempt people from the feedlot rules. The whole purpose of the CUP process is to try to think of the impacts that this particular use and it does not matter what it is (dwelling, kennel or feedlot) on this particular property in relation to the surround area and the Zoning Ordinance criteria. Every single conditional use has the same process. There is a misconception out there that by removing this language we are somehow gutting the public hearing process. It is not this Board job to take public hearing comments on a state code that has already been adopted many years ago. We do not have a choice if we want to follow the code or not. Our attorney recommended that we remove this language because it is confusing. Ms. DeVetter stated that once she started working with the feedlot program and understood the difference between zoning which is allowing this particular use on this particular property in relations to the surrounding area and the criteria as opposed to 7020 rules as to what you need to do to construct the barn. You can go through the public hearing process and get comments on whether or not there will be odor and you could put bio-filters on the barn or if you needed trees, however they will still need to comply with the 7020 rules. Ms. DeVetter stated that she does not disagree that the public has a right to see this information. The information that we have is public, but to claim that this information that we have really no negotiation power over is required at the public hearing when the only thing that we are doing at this point in time, is to provide authorization to use this particular property for whatever use they are proposing is not required. Does the CUP give you permission to construct your barn? No, you will need to get soil borings, engineered plans, manure management plans and go through the Pollution Control Agency's process to get a Construction Short Form permit or an NPDES permit. Does it give you permission to dig your well; no. Does it give you permission to put up your compost shed; no. You still need the zoning permit and deal with the different standards. The only thing this is doing is saying that the County Board is giving you permission to use this property in this way.

Ms. DeVetter stated that she asked Steve Schmidt from Minnesota Pollution Control Agency (MPCA) who is the East supervisor here to explain what happens after a Conditional Use Permit is issued.

Steve Schmidt stated that there are three types of permits that can either be issued by the State or the County. The County can issue two of them as a delegated

County. One is an Interim Permit, and the other one is a Construction Short Form Permit. The Construction Short Form permit is issued to feedlots that are over 300 animal units and proposing some type of construction at the facility or is a brand new piece of ground where there has never been a feedlot before. These types of permits are an environmental permits meaning that they look at things dealing with water and things that are protecting the environment. If it's a hog barn that is being proposed then they look at soil borings, manure management plan and where the manure is going and how it being applied and the rate it's been applied. They look at the overall structure of the facility. They look at whether this facility is part of a larger project and if it is they may request an Environmental Assessment Worksheet (EAW) to be done. If a producer has an existing feedlot that they are proposing an expansion on, then the first thing that will happen is the County is going to send out the Feedlot Officer to inspect the site. The inspection will be for existing pollution problems on that site. If they find any existing pollution problems at the farm then the County is authorized to issue an Interim Permit which means that the feedlot has two years to bring the feedlot up to compliance. They can also do construction under that permit as well. If it's an existing feedlot and they want to add an additional barn they can do that construction under that permit. Both of the two permits are for a two years in duration. The Permit and the Construction Short Form permit can be extended for a period of two more years. The Interim permit, if the work is not done for which the permit was issued, they can extend that deadline for 90 days before they would have to go through some other type of process or documents to get that feedlot into compliance. The third type of permit is National Pollution Discharge Elimination System (NPDES) permit which is issued by the state (MPCA) to feedlots that are considerable larger CAFOs.

Melissa DeVetter stated that Mr. Schmidt addressed that the Construction Short Form permit; this is the same permit that would be required for all barns for 300 animal units to just under the NPDES threshold these would also require engineered plans, soil borings, manure management plans and if they are retaining the manure or transfer the manure. The argument here was that we are violating somehow the public hearing process because this stuff was not able to be commented on by the public. In the Zoning Ordinance under permitted uses we only required a public hearing for 500 animal units and up. So we have barns 300 animal units that do not require public hearing however, it still has to go through all of the standard requirements that a 500 animal unit barn does. There is no public hearing.

Steve Schmidt stated that on the NPDES level there is some other piece the State requires. They are required to have a dead animal mortality plan, operating management plan, air emission plan, and emergency response plan in addition to all of the paper work that Ms. DeVetter just stated.

Melissa DeVetter showed a completed binder that had all the permits for a feedlot operator that he had to obtain to build a barn. Ms. DeVetter stated that if she has any questions or needs help filling out forms, she just contacts the MPCA and they will walk her through it. By removing this language, it does not affect the input at the public hearing because there is no option for deviating at all. If you would require this

information at the public hearing there has been times that the building had to be moved. There might be something that happens at the public hearing that necessitated it to be moved or even changing from a curtain-side barn to a tunnel ventilated barn. Now at this point requiring this information up front as part of the CUP process you are looking at between \$5000 - \$6000 dollars for the soil borings and the engineered plans. These plans are site specific and what happens to that if you move it 200' or you change the barn? To have this up front it may give off some sort sense of security that we have this information, but there are reasons for why the County does not.

Ms. DeVetter stated that the other change that is being questioned is the manure management. Why are we gutting that? What we have found out in this process is that words are the playground for lawyers and every single word can be twisted to be interpreted in a different way. We are not saying that these standards don't apply or that they don't exist, but the reality is that you need to comply with the 7020 rules. We have facilities that may receive funding from NRCS or USDA and in that case they have to get Comprehensive Nutrient Management Plan. This is above and beyond what the 7020 requires, but it still meets the requirements. So are we saying that if they get this plan do they need one from 7020; no. Are we say that a guy that has a cow on  $\frac{3}{4}$  of acre and has developed feedlot conditions because it's a lot and it is where manure accumulates would need a manure comprehensive nutrient management plan; no. But this whole thing has become so silly that we felt the need to change this. What we are saying that you need to apply manure at a rate in accordance with the MPCA rules no matter what size you are. We are not trying to get rid of the requirements at all we just saw this as another playground.

Steve Schmidt stated that as a delegated county or as a PCA employee when we get an application in the manure management plans are reviewed. There is a check list that goes with them and if the public wants to see them at a point in time when the permit application is submitted to them it is public information. When the County issues a permit on the behalf of the MPCA for Construction Short Form or Interim Permit those requirements are the same requirements as the PCA has for the manure management plans. If Ms. DeVetter or the feedlot officer runs across a question then they just have to pick up the phone or send an email and say "Hey I don't understand this piece of manure management plan (for whatever reason) it's not clear to me. Is this an issue?" Than either himself or the regional staff person that is assigned to Dodge County will review it with her.

Melissa DeVetter stated that the proposed changes are being done by the advice of the attorney.

Richard Wolf informed the public that if they wished to speak at this public hearing they will need to fill out the yellow appearance slip and he will call the forward one at a time. Mr. Wolf also reminded them that there will be a limit of three minutes for individuals to speak or five minutes if they are representing a group. Mark Gamm will be the time keeper.

Sonja Trom Eayrs, representing the Dodge County Concerned Citizens, the theme is change. There are changes that need to be made in Dodge County but, it is not the ordinance. There are three critical changes that need to be made. The first change is the composition of the Planning Commission. Until one week ago 6 of the 7 members of the Planning Commission were registered feedlot operators. As of one week ago and due in large part of the second law suit that was initiated by her parent the County Board finally saw the light and appointed someone who is not a feedlot operator. Ms. Trom Eayrs is formally requesting that each of the feedlot operator step aside and not participate in discussion today regarding changes to the feedlot rules. These are rules that specially benefit the registered feedlot operators in Dodge County. Ms. Trom Eayrs stated that she has provided in the materials the General Ethic guide. Dodge County is a member of the Minnesota Association of County and the Minnesota Association of County's has adopted the General Ethic Code back in 2008. County Board members and officials are to ensure that there are no conflicts of interest that exist in matters that come before them for an official action. When you believe that a potential conflict of interest exist, as it does here, you have a duty to avoid the situation. There is a high burden associated to serve in public office. People want transparency and the people in this room want honesty. We want integrity in our public officials. It is important that we have balance representation on this very important committee. If you cannot fulfil that role today, than today is a very good day to resign so that we can have a balance representation in Dodge County. The second change that needs to occur in Dodge County is the way that feedlots are permitted. You just saw the change that they want to propose here. Dodge County has not followed the rules for years. Ms. Trom Eayrs stated that she has submitted a sworn affidavit and Ms. DeVetter stated this morning in her comment that the County hasn't followed the rules for years. There was an order that was issued by Judge Williamson on November 18<sup>th</sup> and she stated that on the present case the application process was faulty from the very beginning preventing the opportunity for a full hearing. There is a due process requirement that you are trying to strip out. Dodge County is sending a message to everyone in this county that we don't follow the rules here. We don't intend to follow rule so we are going to change the rules and because we are feedlot operators we do what we want. You have to reframe from changing the local ordinance regarding feedlots. Ms. Trom Eayrs stated that she has provide in the material Minnesota Supreme Court case; the Interstate Power case it is a 2000 case. This is what is referred to under the law a targeted amendment. It is prohibited by Minnesota law. This ordinance change if it occurs is going to be set aside. You are setting yourself up for further litigation. The third thing that she would request with respect to change, is we need better oversight in Dodge County regarding enforcement of the manure management rules. We don't have it. The proposed changes to the ordinance are going to allow the county to bury data in regards to manure management. Ms. Trom Eayrs gave a rundown of the Masching unit by their farm on February 10<sup>th</sup> an application form which is a one page application form that's what available at the March 5<sup>th</sup> Planning Commission meeting. That was the only opportunity for the public hearing. It was a one page application form that was submitted listing the name of the applicant, where they are going to put it, size of the barn and nothing else. Nothing on the impact on the environment. April 2<sup>nd</sup> went to the County Board

and sailed right through. On April 2<sup>nd</sup> the County issued the CUP and they were ready to move forward. There was critical information that was not provide for months and months later. June 17<sup>th</sup> there was geology evaluation, June 20<sup>th</sup> and engineer plan and it wasn't until August 15<sup>th</sup> that they had anything close to what it appeared to be a manure management plan. Nearly 6 month after the county approved the application.

Darren Durst inquired to Sonja Trom Eayrs what is her definition was of a feedlot operator?

Sonja Trom Eayrs stated she has a listing that she received and it is in the material from Ryan Thesing of all of the registered feedlot operators in Dodge County.

Darren Durst again inquired what the definition was.

Sonja Trom Eayrs "ahem".

Darren Durst stated is it the person who owns it?

Sonja Trom Eayrs stated that it's the information that she received from the county.

Roger Toquam, Ripley Township supervisor, stated that at their January meeting, they received the proposed language changes. After a lengthy discussion they see no reason to oppose these changes.

Dale Schmeling lives in Westfield Township and stated that his wife and he are adamantly opposed to change the requirements. He felt that they should be tougher than what they are for one thing he does not see any investing for water quality. That is his biggest issue the water quality or volume problem. He did a rough count and in a 2 mile radius surrounding his place are 36,000 hogs. His well has dropped since 2003, 12 feet. They put on a stronger pump they are restricted to water volume. As the hog building have been added there has been a drop in his well. He would strongly recommend that they look into water use.

Ken Folie, Canisteo Township Supervisor, stated that Canisteo is one of the Townships that have zoning. Canisteo Township has a couple of things that are important to them which are feedlots size and the number of acreages which is 10 acres rather than 3. They now have the county enforcing and administering them. They are in favor of the changes to the zoning amendment.

Pat O'Connor declined to speak at this time.

Dean Schrom, owner of Innovative Seed and Consulting Company stated that he wanted to show his support for agricultural in the county. He previously was doing business in Steele County and came to Dodge County. His site is a mile and half east of Steele/Dodge county line. He lives in Steele County. He has previously gone through Planning & Zoning for his building permit and his business permit. He just

wants to show his support for the Planning & Zoning commission. They were accommodating and abide the rules. Dodge County is an agricultural county. His idea in business is a round robin, its livestock which creates fertilizer it's not commercial, which affect him, for he is not selling an individual commercial fertilizer. He supports the feedlot program that is in the country now. He has not been to the meetings however, he has read the comments in the newspaper. There are products from Purdue University that are coming out that will suppress odors. We do need cheap food if we want to continue the way this county is going. We don't want chicken from Brazil, beef from Argentina, or pork for Japan. We don't need to send our corn over to Japan. The most productive ground is in Dodge and Steele County in the State of Minnesota. Mr. Schrom stated that he supports and commends this committee on what they are doing.

Brad Trom stated that he thinks it is unfortunate that it took a Judge's decision to tell the leadership in Dodge County that they were doing things wrong. Mr. Trom felt that the County should apologize to the citizens of Dodge County. Now you want to change the rules so you can keep doing the same things the way you used to do. That's wrong. Mr. Trom showed a map of the watershed that was created by John Westley Powel. Mr. Trom also referenced the information requirements for a feedlot permit application in State Statute not county ordinance

Theresa Benda stated that this is a sequence question; when does the public have a right for having information. Her analogy is that; Dodge County determines the property, the value of the property, and then they determine the tax. They don't do it in reverse. So now Dodge County is saying; here is your permit, now if the public want information later is when they can request it. This is great, she should have the right to do anything in Dodge County without any regulation or criteria. Her question to MPCA is according to EPA 2014 there are 3 additional impaired waterways in Dodge County. Dodge County has one waterway that is not listed impaired. How can we approve any feedlots knowing that all of our waterways are impaired according to Minnesota EPA web site? So the bottom line is, if she wants to build a pole shed in Dodge County she would have to give the dimension, the type of animal units, and the number of animal units however, Dodge County is proposing to change their regulations that for her to build a pole shed she would have to give more information than what it would be for a feedlot permit. Ms. Benda stated that she looked at three other counties that are under the MPCA regulation and they all require the information that Dodge County is trying to delay. Why? Our nitrates level is at 36 percent. All of our waterways are impaired. Why do we not want to have access; so public can make comment. What they are proposing we would not know how many animal units are associated with one permit. She should have a right to have a voice and to be informed on what is going on with the nitrates in her ground.

Richard Wolf inquired what the waterways are contaminated with.

Theresa Benda stated that it includes nitrates.

Douglas Eayrs, Concord property owner, stated that this proposed ordinance changes that Dodge County is doing is inconsistent with MN Chapter 7020 rules. Mr. Eayrs stated that he believes that this is inconsistent and has talked to the MPCA and she (he pointed to Ms. DeVetter) better be careful what she says. Mr. Eayrs stated that he believes this is inconsistent. Mr. Eayrs stated that his staff presented to the Planning Commission in December on the CUP application and he knew about the misleading statements that Ms. DeVetter made so she better be careful what she says. She has to be lying and she is a staff person and she made misleading statements before about feedlot rules. The second thing that Mr. Eayrs wanted to talk about was tax unfairness. The 6 acres swine barn with no homestead will be assess for under \$400.00 this year. The great county of ours will probably collect about \$2400.00 and half of that will go to the schools district or more, part goes to the township so every time you do a 2400 head swine barn that kicks out a million gallons this county will only collect a \$1000.00. How much is this worth? Mr. Eayrs stated that he has known the Alberts Brothers all of his life and they pay way more in property taxes than swine barns do. If you own 5 acres and a house you are paying way more than swine barns. The bankers want to finance these because they know that; A. Dodge County is easy to get permitted in. B. They don't have to pay taxes because they basically get tax benefits from this county to build. We don't have dairy operators coming here and we don't have beef operator coming here. This is being done for the poultry and the swine interest. The four people (pointed to the Planning Commission) up here are swine prejudice. They can control this they control the board. Mr. Eayrs stated he wants fairness in government, equal representation and transparency. Mr. Eayrs stated that he is not against Ag he grow up on a farm and they had cattle. Mr. Eayrs commended the Durst operation.

Patricia Derby Concord township resident, the biggest concern was the transparency. The public should have a voice and she felt that the board should have as much data and information as they could to make an informed decision. Ms. Derby believes that the ordinance should remain the same.

Mark Moenning stated that he has had a history involving livestock and has been involved with the County process and also at the State level. The ordinance has had many revisions in the past years. In 94-95 there was a lot of revision with the CUP added and there was a lot of criticism that it not being fluid enough and not staying up with odor issues. That was the whole reason for the majority of CUP process here in Dodge County. The townships reviewed this ordinance and the Land Use Task Force held 28-30 meetings. Mr. Moenning stated that he would encourage the Planning Commission to support the deletion of this language so this will not prevent someone appearing for a CUP. It is not removing the CUP process. There is plenty of reviewing with the 7020 rules.

Larry Dobson resident of Wasioja Township and newspaper publisher stated that he has covered a lot of public hearings and 99% don't have much coverage. Generally not many people show up for public hearings. Mr. Dobson stated that he does not like the proposed change and the county has limited resources to determine what information on that CUP is accurate. He does not think that these people who

applied for the application would, but he has seen were the information has been distorted. The neighbors know a lot about of the properties that are involved. By having the CUP application completed as required presently by regulations then when people look at it and see something is not accurate they could call it to your attention. If the CUP is approved we all know it is much easier to overlook things after it has been approved. Mr. Dobson stated that he felt that it is important to make sure that good information that the public can use to make a decision is available for them at the public hearing.

Pat O'Connor stated that he lives in Blooming Prairie and is a hog farmer in Blooming Prairie Township. His family raises hog, grows corn, soy beans and is involved in Ethanol. Mr. O'Connor stated that he wanted to thank the Planning Commission for what they are doing. You are involved in a thankless job and there is a lot of hate and threats thrown your way and he appreciate what they are doing and wanted to say "thank you".

Motion by Walter Wyttenbach, seconded by Darren Durst, to close the public hearing. Motion passed unanimously.

Melissa DeVetter inquired if there were any question that Steve Schmidt or she could answer.

Richard Wolf stated that since language is being changed; what's to say that for an individual coming in to get a feedlot permit that there might be a lot more paperwork for them. What's to say if the office staff changes and the next person that comes in throw more regulations into getting a permit?

Melissa DeVetter stated that is a good question.

Richard Wolf stated that we heard from all these people about that we are taking regulations way. Mr. Wolf stated that there could be a lot more regulation put on them.

Melissa DeVetter stated that could be true if the application is changed in the future. The intent of this change is not to require some information that is needed for the 7020 Construction Short Form permit to be supplied upfront as part of the public hearing packet. When the land use proposal is reviewed we are trying to take comments on thing that could add conditions on it. If they want that information at a later date when the Construction Short Form is there then they can see it. These (7020 rules) are not things that can be changed at a public hearing level. There are strict guideline or codes that is similar as the septic code that says what has to be in the boring, how deep they have to be, what has to be in the manure management plan, what rates it need to be applied at, how thick the floor has to be under the columns. Everything is dictated by the 7020 rules. At this point that is the only thing we are removing is the requirement for the 7020 to be included in our process for the CUP.

Ben Johnson inquired if the draft copy of the application was available.

Melissa DeVetter stated yes. Copy of the draft application was distributed. Ben Johnson inquired if it could be conceivable at some point that the County Commission could request for information that could be put on an application that would be separate from ordinance required for a permit to be granted.

Melissa DeVetter inquired if he was saying; you would have the person fill out the Construction Short Form and submit it all at the same time?

Ben Johnson stated no, if this application was revised in the future it would not change the ordinance requirements.

Melissa DeVetter stated no. If there is concerns about what may happen in the future you can certainly choose what you have on the application. However, Ms. DeVetter wanted to stress that the way it was worded it was never the intention to be interpreted that this was to be part of the Conditional Use Permit application. We cannot make comments on it for a CUP. We are trying to look at the impact that this land use has for this piece of property.

Walter Wyttenbach inquired that when Judge Williamson made this determination this fall, is that what is playing our attorneys to strike this from there?

Melissa DeVetter stated yes however, it was a matter of how she interpreted as to how we interpreted. She did claim that the process was faulty, but it was based on the wording that it should have been part of the application.

Walter Wyttenbach inquired if this was eliminating the public hearing process.

Melissa DeVetter stated no, absolutely not.

Walter Wyttenbach stated that there is this misconception out there that we are not having public input.

Melissa DeVetter stated that there is this big misconception out there that we are stripping this. In the first place, we are not taking public comment on States rule that has been set. They have to do that no matter what. We take comments on whatever use is being proposed whether it's a dwelling, kennel and try to figure out the impacts. In the case of a feedlot and if it's a hog feedlot there are hog, they eat, they drink and they poop. They will need a place for manure, some are going to die they are going to need care. There will be trucks going in and out. That is what we look at and there are conditions that need to be added to mitigate the issues from this facility. The only thing that a Conditional Use does is to authorizes you to use the property in that particle way.

Walter Wyttenbach stated when the CUP is approved with conditions what is the history of the condition being met. Is it 100%?

Melissa DeVetter stated the conditions that are attached to a feedlot CUP are the Feedlot Advisory Report, which looks at the prevailing winds, odor, and appropriate site location, bio-filters, and some had a tree provision that was added. We also do something that we don't need to do; we tell them they need to get their MPCA permits. They need to follow the manure application 7020.2225. We do that because we want the producer to know that this is just authorization to use the land. They have other entire requirement to meet the State rules. There was a statement made that it's easy to get a permit in Dodge County. Mower County you can go up to 3000 animal units and you don't even have a public hearing.

Richard Wolf inquired what part was of this, were we not conforming with?

Melissa DeVetter stated that we are required to go through the criteria in Chapter 18 for granting a Conditional Use Permit. This is looking at adjacent land uses and is it going to substantially diminish property values. This is the same criteria we have for every single CUP that the county issue. What is trying to be portrayed is that you cannot answer those questions appropriately unless the public is able to review the soil boring logs, engineered plan and the manure management plan that is required by the Pollution Control Agency permit.

Richard Wolf stated that they could review it after it's completed.

Melissa DeVetter stated yes.

Richard Wolf stated that if they had some information to stop it then a building permit would not be issued. Correct?

Melissa DeVetter stated that unless every "t" is crossed and every "l" is dotted they could not even grade out there. They could not construct the barn until everything is compliance. There is not an option for negotiating the code.

Ben Johnson stated that he has heard comments about being transparency. With the proposed changes are there any requirements of the ordinance that will not be transparent or open for public comment which currently are?

Melissa DeVetter stated that every document that we have is public information and is available for them to see and that also includes the Pollution Control Agency documents.

Ben Johnson inquired from the MPCA stand point is there any point of concern or issues of compliance or is there any inconsistency with these changes with the existing MPCA guidelines.

Steve Schmidt asked for a clarification on the question; issues of concern with?

Ben Johnson stated in regards to compliance with MPCA 7020 rules.

Steve Schmidt stated that Dodge County just had their annual review which MPCA conducts on all delegated counties. Dodge County has to submit an annual report to MPCA and Dodge County review showed that they met 100% of the inspections and 100% of the minimum program requirements that both the State and County has signed off in a work plan. The MPCA reviews what work the County has done and what the work plan says. As the review is being done the MPCA goes through individual files. If the feedlot officer states that the County issued a permit then MPCA ask to see that permit to make sure that that permit is in compliance with the State standards. Those permits would be the Construction Short Form or the Interim permits that Mr. Schmidt spoke of earlier. Those are the environmental permits that 7020 rules require.

Richard Wolf stated that there were a few comments made that he wanted to address. Sonja Trom Eayrs made a comment about the Planning Commission being livestock producers that they should not be allowed to vote on this because they are livestock producers. Mr. Wolf stated that they also own houses in this county and they vote on people that come in for a CUP for house on 3 acres. Are you saying that we shouldn't be allowed to vote on house because we live in the county? It doesn't make sense. Ask the Commissioner that when they were replacing the Planning Commission members could they find people? Nobody wanted to step forward. When we come in to try to do what we think is right, then we get blamed for doing things that are causing problem or at least they think they are.

Darren Durst stated that since his last name is Durst he is a credited to all the animal units that the Durst Brothers have. The Durst Brothers are three brothers, one of which is his father. He has no ties there, he is just an employee. So for him to step down off of this board, it's not going to happen.

Sonja Trom Eayrs requested to make a comment.

Richard Wolf stated that the public hearing is closed.

Walter Wyttenbach stated that for him to support this, he would have to assured that we are going to be as strict or stricter.

Melissa DeVetter stated that from the process stand point it is the same. Nothing has change the only thing that changed was that the Judge interpreted this differently than when we did. We still require the same information.

Walter Wyttenbach clarified that we should strike this so it is not misinterpreted.

Melissa DeVetter stated correct and this was the advice of the attorney.

Richard Wolf stated that Ms. Benda talked about nitrate and waterways. Nitrate doesn't just come from manure it comes from dry commercial fertilizer that is spread on fields, it comes from property owners who spread fertilizer on their yards that run

off into the water system. It comes from public waste handling systems. There are so many places that nitrate comes from and then for you to point your finger at animals. It's not just from livestock. You always hear about corporate feedlots and if you would take a look at most of these feedlots that are being built its young farmers. Young people wanting to get into farming coming in with their parents and the only way they can do it is with animal agriculture. Mr. Wolf stated that in 2000 his son wanted to farm and he said; ok we'll pick up some land and start that way. By 2007 they still were not able to pick up an acre of land. It was because there wasn't any for rent in his area. When they found out that there was land to be rented it was rented already to someone who rents thousands and thousands of acres. Did his neighbor come to them and say; would you be interest in farming this land, no they didn't. So to bring in his son into the farming operation they put up a hog facility and that was the only way they could bring him in. Then neighbors turn around and talk to you about how bad you are because you put a hog barn up. Well maybe if you would of came to them in the first place and said I have a piece of ground would your son be interested in farming that then maybe he would not have put the barn up. (Audience clapped) So the next time you property owners want to rent your farmland out you maybe want to talk to your closes neighbors.

Darren Durst had a concern on striking all of this wording with the court case stating that the wording wasn't right so now we want to change the wording. Mr. Durst stated that he didn't think that there was anything wrong with the way it was. What we had wasn't good enough for some people and for other say in their papers that we cannot change 16.24.3 and yet other people want us to.

Melissa DeVetter stated that the language has not changed it was the interpretation that has changed. How it was originally interpreted by the county was that you issue the land use permit and then the 7020 requirements would need to be done before you are can issued the Construction Short Form permit before they are allowed to build the barn.

Darren Durst stated that we have been accused of being the fast track for livestock and we still have a one page permit. Mr. Durst stated that he felt in his book we didn't do nothing wrong and we don't need to take the language out.

Melissa DeVetter stated it still the same language. If the language does not change what it is saying is that you are going to provide the borings, engineer plans, manure management plans at the hearing when you are reviewing the CUP request. The physical manure management plans, the soil borings conducted by Chosen Valley or whoever you hired and the engineer plans are not part of the CUP application. We are not evaluating the 7020 rules. We are evaluating a use whether it's a feedlot for hogs, cows. We are evaluating the impact that can be associated with that use on whatever land this applicant has by considering the adjacent uses and the ordinance criteria. We take public comments for that use.

Steve Schmidt stated that the county is still required to collect all the data that was in the ordinance as part of the delegated feedlot permit for the Construction Short Form

permit or the Interim permit. The proposal here is to try to separate what is required for feedlot permits and what is required from the land use permits which is the CUP permit. There are two permits that we are talking about. One is the delegated county feedlot permit (Construction Short Form permit or the Interim permit) and the other is the land use permit (CUP).

Ben Johnson stated that on the application that is provided now you have the property address, the parcel ID number and the legal description and through the process of the hearing and granting the CUP, with the public comment it was decided that this specific site doesn't meet the requirements that the county has and the proposed barn would have to move 300 feet, then the soil borings that were required before would be sum cost for the applicant. The applicant would have to redo the soil borings and move the proposed barn 300 feet. The point is that the applicant will have to do the soiling borings anyway this just allow the applicant not having that sum cost again.

Melissa DeVetter stated yes that is correct. There are changes that can be made at this level based on the public hearing. You may be required to move the barn 300 feet; you may have to change the barn from a curtain-sided to a mechanical ventilated barn. Now if you turned in an application with soil boring or engineer plans in this location for the curtain-side barn and you get to the public hearing and it has to be moved, you will have to redo the plans. If the permit is denied the producer is out the money for the borings and plans. Any changes will require the boring to be redone. Why on earth would you go out to do the borings when you do not have permission to put a use out there?

Ben Johnson stated that there is no public comment on the analysis of the borings. That has to adhere to the 7020 rules.

Melissa DeVetter stated that they have to follow the code.

Richard Wolf stated that two of letters and a notebook that was submitted should be received into the minutes.

Motion by Harlan Buck and second by Darren Durst to add into the minutes the two letters and the notebook. Motion passed unanimously.

Richard Wolf stated that by listening to what we have heard from people here today they want stuff in our zoning, but what they want, it seems, is what we had. It's too bad that we had the court case over this issue. They are basically making us to take it out that most people wanted. We are not up here as livestock producers we want to do what is right for the county. Mr. Wolf stated that if he sees someone out there that is not doing something that it is not right, and is a livestock producer, he will tell them about it. It's just giving a bad name to all of us. We want what is best for our county.

Walter Wyttenbach stated this all comes down to timing. We have done everything properly with the conditions. Have the producers met their conditions?

Steve Schmidt stated that the MPCA does not get involved with the land use permit. If the board has set conditions on the CUP beyond the 7020 rules those conditions are enforced at the county level. They are not reviewed by the MPCA.

Walter Wyttenbach inquired at the county level are the producers in compliance.

Melissa DeVetter stated that the only thing that is not is the bio-filters. We know that we have a bunch that we will have to test this year.

Walter Wyttenbach stated that by striking this language it will not change the process.

Motion by Walter Wyttenbach, seconded by Harlan Buck, to recommend approval of the Zoning Amendments 16.24.3 to strike the language and to add; an application for a CUP shall be submitted on forms provided by the County & 16.24.6 D of Section 16.24 Feedlot & Pastures as presented. The motion passed with a 6 to 1 vote. (Walter Wyttenbach, Harlan Buck, Richard Wolf, Minor Buckingham, Ben Johnson and Joshua Toquam voted aye. Darren Durst vote nay)

Richard Wolf stated the next amendment for review is Section 16.46 Solar Energy Farm lot size.

Melissa DeVetter stated the second amendment we have is to Section 16.46.2 A is a lot size for Solar Energy Farm. When the performance standards were originally created for these farms we went out to tour a couple of sites in Murray County. There were PCA staff that was there and what they were highlighting was that the PCA was viewing these panels as if it was a parking lot. That they were totally impervious and since that time more installations have gone in. They have now found that they are not. The rain hits the panel and runs off into the grass. When we were looking at the lot size we were trying to have enough space if the PCA was treating this as impervious surface to be able to handle the stormwater on site. Since there is more experience now, what we are suggesting is that the language be changed to; The lot parcel or tract upon which a Solar Energy Farm is located shall adequate to handle the stormwater produced by the impervious surface of the panels, but no less than the minimum lot size of the zoning district in which it is located. They still have to meet the 3 acres minimum lot criteria, but they might need more to be able to handle the stormwater.

Walter Wyttenbach clarified that we just need to strike the language.

Melissa DeVetter stated yes, strike the; “be four times the area of impervious surface created by the panels and/or arrays” and replace it with; “adequate to handle the stormwater produced by the impervious surface of the panels, but no less than the minimum lot size of the zoning district in which it is located.”

Richard Wolf stated that it seemed pretty simple. He could see if it was on pavement it would be an issue.

Melissa DeVetter stated that she wants to make it clear this only effect to the ones that the county can permit. The state has authority over the larger sites.

Minor Buckingham inquired who determines what is adequate.

Melissa DeVetter stated that they will need a permit from the MPCA for stormwater. At that point it will be determined and we will have to work with the MPCA staff. That would be information that the applicant will have to prove to the Planning Commission and the County Board.

Ben Johnson stated that this would be on the applicant to provide data from the MPCA or whatever governing body.

Richard Wolf stated and it's has to be done before the permit can be issued.

Motion by Minor Buckingham, seconded by Ben Johnson, to recommend approval of the Zoning Amendment 16.46.2 A lot size language as presented. Motion passed unanimously.

### **Other Business**

Melissa DeVetter stated that there will not be a March Planning Commission meeting, however there will be an April meeting.

### **Adjourn**

Motion by Harlan Buck, seconded by Darren Durst, to adjourn. Motion passed unanimously. The meeting was adjourned at 2:52 P.M.