

VIOLA TOWNSHIP BOARD
FINDINGS OF FACT AND CONCLUSIONS
CONDITIONAL USE PERMIT

Name of Applicant: Craig and Kevin Scanlan

Date: July 27, 2021

Tax Parcel Numbers: 721932083739

1. On April 12, 2021, Craig Scanlan submitted an application for a conditional use permit to be allowed to expand a feedlot. Craig and Kevin Scanlan are proposing to construct a 102' x 200' total confinement barn to house 2400 finish hogs. The existing facility is located in Olmsted County, Viola Township, Section 19, NW ¼ of the SW 1/4. The existing facility consists of 720 animal units or 2,400 swine between 55 and 300 lbs. which are housed in one 102' x 200' total confinement barn. Manure is currently stored in an existing 102' x 200' x 8' underfloor poured reinforced concrete liquid manure storage area. Following expansion, the total animal units will be 1,440 or 4,800 swine between 55 and 300 lbs. Manure from the proposed confinement barn will be stored in a 102' x 200' x 8' underfloor poured reinforced concrete liquid manure storage area.

2. On May 24, 2021 an informational meeting and public hearing was held in front of the Viola Township Planning Commission. This meeting was to meet the Minnesota Statue requirements on feedlot expansion and the Viola Township Ordinance requirements for an informational meeting. At that time the Planning Commission requested additional information prior to scheduling a formal public hearing on the conditional use permit application.

3. On May 28, 2021 notice was provided to Craig Scanlon that the Township would be taking an additional sixty days to make a decision. The additional days were required since the additional information had not been provided.

4. On July 20, 2021 the Planning Commission held a public hearing to consider said application. After taking public comment and hearing from the applicant, the Commission continued the meeting until July 27, 2021. After due deliberation the Commission finds:

Ordinance: The Viola Township Zoning Ordinance in Section 5.00 A-1; Agricultural Protection District:
A. Permitted Uses, states;

4. Animal feedlots up to 1,000 animal units per quarter section. Parcels with less than 30 animal units within a quarter section shall not be considered in this calculation.

The Ordinance goes on to say in Section 5.00 A-1; Agricultural Protection District: B. Conditional Uses, that;

9. Animal feedlots exceeding 1,000 animal units per quarter section, as regulated in Section 10.26. The maximum animal units per quarter section shall not exceed 2,000. Parcels with less than 30 animal units within a quarter section shall not be considered in this calculation.

Also, the Viola Township Zoning Ordinance, Section 10.26 – Animal Feedlots reads as follows;

- A. No new animal feedlots or manure storage facilities shall be located in a floodplain or shoreland district.
- B. No new animal feedlots or manure storage facilities shall be located within one half (1/2) mile of an incorporated city limit boundary.
- C. Any animal feedlot requiring a conditional use permit shall, in addition to the criteria specified in Section 4.02, Conditional Uses, consider the following:
 1. All construction and design plans for manure handling, manure storage facilities and procedures of applying the manure to the land have been approved in accordance with required Federal, State, County and Local Statutes. This includes the Olmsted County Soil and Water Conservation Board.
 2. The public road serving the feedlots is adequate and would not need to be upgraded or improved in order to service the feedlots.
 3. The proposed feedlot will not adversely affect the neighboring properties.
 4. A proposed new feedlot (requiring a CUP) would be located one-quarter (1/4) mile or more from the nearest non-farm resident. Setbacks from non-farm dwellings from feedlots see Section 5.00 C. #4. Standards for non-farm dwellings: “No non-farm dwelling shall be located within one-fourth (1/4) mile of an animal feedlot or manure storage facility not located on the same non-farm lot.”

Analysis:

The applicant has applied for a NPDES permit to control the waste manure from the facility, so it does not create an environmental hazard. As of the date of this report the permit is still under review.

Very briefly the system is comprised of an underground collection system located under the structure. Manure can be held there until the optimum time to facilitate its use for crop irrigation. The buildings have fans located in the rear of the building and curtains in the front. The fans control the curtain height depending upon the temperature. The buildings also have sprinkler systems in them which is used for pretreating the floor during cleanout. The buildings are washed and disinfected between each turn of pigs. This is like the current structure located on the parcel. This type of system is widely used in the swine industry.

A common complaint about a swine facility is smell. The township does not regulate air quality. The Minnesota Pollution Control Agency regulates Hydrogen Sulfide (H₂S) emission from feedlots (See MPCA Livestock Order Facts). Ammonia is not currently regulated by MPCA. The University of Minnesota has created a worksheet to determine the number of odor free days per year from the feedlot. Martin Larsen, Olmsted County Feedlot Technician put these together and noted they do not take into account prevailing winds or topography, but which may increase the number of days properties to the north may smell odor. The green dots indicate houses, and the circles indicate the percentage of days there would not be odors. Mr. Larsen did three calculations, one is the current building, one is with the current and proposed building, and one is with both buildings using bio filters. Following is a table using the percentages from the worksheet.

81% = 295 odor free days per year
82% = 299 odor free days per year
85% = 310 odor free days per year
87% = 317 odor free days per year
89% = 324 odor free days per year
93% = 339 odor free days per year
95% = 346 odor free days per year
96% = 350 odor free days per year
97% = 354 odor free days per year
98% = 357 odor free days per year

The closest dwellings are located within a 2,000-foot ring. According to the aerial photo there are six dwellings located within this distance and four dwellings located within the 3,000-foot ring. There are another four dwellings beyond the 3,000-foot ring.

According to the offset tool, the proposed building would increase the number of days with odor by eight for those in the 2,000-foot ring and by four for those in the 3,000-foot ring.

If biofilters were added the number of odor free days would stay the same in both the 2,000-foot and 3,000-foot ring.

Finding of Facts & Conclusions: Ordinance in regular type, staff findings in italic

Section 10.26 of the Viola Township Zoning Ordinance stipulates four criteria for feedlots within the Township.

- A. No new animal feedlots or manure storage facilities shall be located in a floodplain or shoreland district.

The proposal is not located within a floodplain or shoreland district.

- B. No new animal feedlots or manure storage facilities shall be located within one half (1/2) mile of an incorporated city limit boundary.

The site is located over 4.5 miles from Rochester.

C. Any animal feedlot requiring a conditional use permit shall, in addition to the criteria specified in Section 4.02, Conditional Uses, consider the following:

1. All construction and design plans for manure handling, manure storage facilities and procedures of applying the manure to the land have been approved in accordance with required Federal, State, County and Local Statutes. This includes the Olmsted County Soil and Water Conservation Board.

This proposal includes the construction of a manure storage facility beneath the new swine facility. The procedures for applying manure to the land will not change. (Operator uses a manure pipeline to pump the manure to adjoining fields. Plans are currently being reviewed by Minnesota Pollution Control Agency. The Olmsted County Feedlot Technician, who works for the Olmsted County Soil and Water Division, has provided technical guidance to the applicant.

The subject feedlot has existed since 2017 and is monitored by the MPCA. A new NPDES permit has been applied for and will cover the capture, storage, and application of the manure. A copy of the permit application is included in the applicant's submittal packet.

No permit has been approved at this time for the new facility and will not be until a Conditional Use Permit has been approved by the township and application made to TCPA for a zoning certificate to construct an agricultural building. The NPDES permit will need to be in place for TCPA to issue the permit.

2. The public road serving the feedlots is adequate and would not need to be upgraded or improved in order to service the feedlots.

Manure management indicates the use of a dragline when spreading the manure each fall which has very little impact on township roads.

The current barns get turned 2.8 times per year which amounts to 14 semi loads of finished hogs each turn. The increased number of hogs will double the amount. The roadway should be adequate as long as lighter loads are used when road bans are in place.

Viola Township Zoning Ordinance, Section 10.48 Transportation Impact Reports, Letter C – Jurisdictional Responsibility states, "The Engineer of the road authority for the access road shall have the final authority for determining the need and adequacy of the Transportation Impact Report."

This proposal was submitted for review to the Minnesota Department of Transportation and Olmsted County Public Works. At the time of this report, they had not yet responded. Our experience in the past is that the County will not require a traffic impact report for an agricultural activity within an agricultural district.

3. The proposed feedlot will not adversely affect the neighboring properties.

There are 16 non-farm parcels within a mile of this location. The closest is located over 1600 feet from the proposal which is over the one-quarter (1/4) of a mile setback.

Non-farm dwelling parcels create conflicts with farming practices. Residents often times see today's feedlots as industrial operations, because the nature of farming has changed.

Owners of many swine operations do not own the hogs they are raising but own the buildings and raise the animals for a predetermined price per unit. Additionally, they view the nutrients in the manure, which is placed on their land, as an added benefit reducing the amounts of fertilizer they would normally buy.

The common complaint from people living near a hog facility is odor. Odor dissipates as you get further away from the source. Most regulators have used the quarter-mile as a setback guide but depending upon the wind speed, topography and humidity that can be inadequate.

Odors: The Offset Model calculations are attached. The attached map shows the various distances from the facility for the different odor annoyance-free levels. Feed rations are structured to maximize growth efficiency of the animals and minimize nutrient excretion. Manure and irrigation applications should be avoided during peak holidays and weekends. Wind direction and speed should also be evaluated to determine appropriate irrigation days.

Dust: Minimal to adjacent properties. Adjacent properties may be affected to the extent of what the environmental conditions are at the time of traffic in and out of the site and on the site. (Wind direction, wind speed, humidity conditions, etc.) Most of the dust will come during load in and out and truck traffic on the crushed rock road.

The conditional use permit process will further address any potential concerns with respect to neighboring properties.

4. A proposed new feedlot would be located one-quarter (1/4) mile or more from the nearest non-farm resident. For setbacks from non-farm dwellings from feedlots see Section 5.00 C. #4. Standards for non-farm dwellings.

No nonfarm dwellings are located within one-quarter (1/4) mile of the proposed expansion.

Section 4.02 Conditional Use:

The purpose of a conditional use is to permit a use that would not be appropriate generally but may be allowed with appropriate restrictions upon a finding that 1) certain conditions as detailed in the zoning ordinance exist, and 2) the use or development conforms with the Comprehensive Plan, and 3) is compatible with the existing area.

A conditional use is allowed only after a petition for a permit has been approved by the Planning Commission, except when there is an appeal to the Commission decision; then, only after approval of the Township Board.

A. **Criteria for granting conditional uses:** In granting a conditional use, the Planning Commission shall consider the effect of the proposed use on the Comprehensive Plan and upon the health, safety and general welfare of occupants of surrounding lands. Among other things, the Commission shall consider the following:

1. The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish and impair the values of such property;

The feedlot is located in an A-1; Agricultural Protection District and is a use that is consistent with and would be expected in an agricultural district. Animal feedlots are typical throughout the Township and County and are an expected and accepted part of rural living. The use should not reduce property values or be a detriment to surrounding properties if best management practices are used throughout the operation.

Our office has no record of any complaints about the current operation. The increase in animal units requires a conditional use permit. This is to allow for mitigation measures to be put in place to lessen the impact on neighboring properties and the environment.

With conditions, the proposal meets this criterion.

2. The proposed use will not impede the normal and orderly development and improvements of the surrounding property;

The vast majority of Viola Township is zoned A-1; Agricultural Protection District. The purpose of the district, per the Viola Township Ordinance, “. . . is to maintain, conserve and enhance agricultural land and natural habitat for plant and animal life. This district is intended to encourage long-term agricultural uses and preserve prime agricultural farmland by restricting the location of non-farm dwellings and other non-farm land uses.”

As such the subject proposal is a normal use in the A-1 District and the expansion of the existing feedlot and investment in agriculture will in no way impede the orderly development of surrounding property.

With conditions, the proposal meets this criterion.

3. Adequate utilities, parking, drainage and other necessary facilities will be provided;

The applicant has applied for a NPDES permit which addresses the drainage and manure handling. It appears from aerial photos that there is sufficient parking within the boundaries of the property. As this is an existing feedlot, utilities are already in place.

Considering the above information, the proposal meets this criterion.

4. Adequate ingress and egress will be provided to minimize traffic congestion in the public streets;

The subject property has access from 80th Avenue NE. The driveway and buildings are situated such that truck traffic to and from the site can turn around on the site eliminating the need to back onto or turn-around on the Township Road.

Other than those described there are no other public streets in the neighborhood.

Considering the above information, the proposal meets this criterion.

5. The traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded or improved by the Township or County in order to handle the additional traffic generated by the use.

The subject property is bordered by 80th Avenue NE. See 10.26 C.2. above.

Considering the above information and contingent upon potential comments from reviewers, the proposal meets this criterion.

6. Adequate measures have been taken or proposed to prevent or control offensive odor, fumes, dust, noise, vibration, or lighting which would otherwise disturb the use of neighboring property.

See 10.26 C.3. above.

With conditions, the proposal meets this criterion.

7. The special criteria or requirements indicated in Article X, General Regulations, are complied with;

Any special criteria of Article X shall be addressed in the conditions of this report.

8. The water and sanitary systems are or would be adequate to prevent disease, contamination, and unsanitary conditions.

The parcel is served by its own well which was drilled in 2017 under current well water standards. There are no human sanitary systems on site. The manure storage will be reviewed and approved by the Minnesota Pollution Control Agency prior to a zoning certificate being issued.

Considering the above information, the proposal meets this criterion.

Considerations 9 through 20 are only applicable to conditional uses in Flood Plain Districts and so are not considered in this report.

When deciding on a conditional use to the A-1 Agricultural District, the following additional factors shall be considered:

21. The amount of prime agricultural land with a crop equivalent rating of 60 or above that would be taken out of production as a result of the use.

The entire property is used agriculturally. CER's on the land range from a low of 85 to 90. The parcel is 6.93 acres which includes the road right-of-way. The current building removed approximately 2 acres from production, and you can assume the second building will remove about the same, for a total of 4 acres.

It is not to suggest that the structure removes the land from production, it just changes the type of production from row crop agriculture to animal agriculture.

Considering the above information, the proposal meets this criterion.

22. The need for new public roads or the need for improvements to existing public roads is minimal.

The proposed feedlot expansion should not have any significant affect on the public roads serving the feedlots.

At the time of this report Staff had not received any response from Olmsted County Public Works. Staff will provide any response the night of the hearing. We will most likely receive a "no comment" response from Olmsted County Public Works and if so the proposal meets this criterion.

23. A thorough evaluation of the waterbody and topographic, vegetation, and soils conditions on the site must be made to ensure:

- a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;

We have sent a review request to Olmsted County Soil and Water. At the time of this report, we have not received a response. Usually, no response from Soil and Water means they do not have issues with the proposal.

- b. The visibility of structures and other facilities as viewed from public waters is limited;

Not applicable to this proposal.

- c. The site is adequate for water supply and on-site sewage treatment; and
Water supply provided by private well drilled in 2017 under County standards.

- d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercrafts.

Not applicable to this proposal.

Considering the above information, the proposal meets this criterion.

The Olmsted County Ordinance, Section 4.02 CONDITIONAL USE, Criterion #5 reads as follows;

Based on a transportation impact analysis, if required under Section 10.48 of this Ordinance, or (if the requirement for a transportation impact analysis has been waived) considering the recommendation of the responsible road authority engineer as defined in that Section, either . . .

- the traffic generated by the proposed use can be safely accommodated on existing or planned street systems and the existing public roads providing access to the site will not need to be upgraded or improved by the Township or County or other affected jurisdictions in order to handle the additional traffic generated by the use; or . . .
- a road use agreement has been entered into specifying responsibility for improving and maintaining the roads of affected jurisdictions including remediation of damaged roads and specification of designated haul routes to limit truck traffic to structurally adequate corridors;

Again, as described earlier, the determination of the need for a Traffic Impact Study rests with the Engineer of the road authority for the access road to the subject property. In this instance since Olmsted County provides road maintenance to Viola Township, it would be the County Engineer.

Conclusion: Staff has reviewed this request in accordance with the applicable standards and provisions, as included in this report.

Conditions:

1. The applicant must obtain all applicable permits that are required by Federal, State and Local agencies and keep all required permits current.
2. The applicant shall obtain a Zoning Certificate for the construction of the additional swine facility structure.
3. The applicant must maintain a current MPCA permit, or this CUP permit is void.
4. Manure odor from the site must not exceed MPCA regulations and guidelines and the applicant must use best management practices to control odor and other feedlot related nuisances potentially affecting neighboring properties.

5. The applicant must use “best management practices” as identified in their NPDES permit.
6. This Conditional Use Permit limits the number of animal units on the property to 1440 Animal Units.
7. The applicant shall provide dust control annually along the township roadway 300 feet in either direction from the property entrance and along driveway and parking areas.
8. Shelter Belt
 - The Shelter Belt must follow the Craig Scanlan Shelterbelt Planting Plan diagram and study dated 6/15/2021.
 - The Shelter Belt trees as described as Row 2, the row closest to the actual buildings must be Norway Spruce and must be at least and no shorter than 6 feet tall root and ball.
 - The trees that make up the entire Shelter Belt must be maintained/repared and any trees that have died be replaced.
 - The Shelter Belt must be installed around all buildings (previous and new) before the Feedlot Expansion CUP is approved.
9. Biofilters must be installed on the existing feedlot building before construction of the new building can take place. In addition, the new building must also have biofilters installed.
 - The biofilter systems that are installed must be designed and installed by a company who specializes in this area.
 - The company who does the installation must provide an Operating and Maintenance Plan that must be followed by the Scanlans. The media which makes up the filter itself must be maintained and changed according to the manufacturer specifications.
 - The Operating, Maintenance and Specifications documentation must be filed with the Viola Town Board.
10. A Road Agreement must be in place between the Scanlans and the Viola Town Board.
 - Recommendations for inclusion into the agreement:
 - Cost offsets to the extra traffic and wear on the road itself.
 - Chloride or similar chemical to reduce dust from the travel. The application of the chemical should go from the Scanlan Farm north to Olmsted County Road 2 and be maintained.
 - All heavy truck traffic (i.e. Feed trucks, livestock trucks to and from the site, manure hauling) must travel to the north or come from the north from Olmsted County Road 2
11. Violation of the terms of the conditional use permit are subject to the provisions of the CUP and the Township CUP ordinances. Applicant shall have the rights and remedies provided in the CUP. Violations of the CUP may result in revocation of the conditional use permit. The Township shall have all remedies available to it, pursuant to its ordinance, or otherwise available to it in law or equity.

Notwithstanding the foregoing, in the event that Applicant fails to perform any of the terms and conditions of the CUP, the Township shall provide Applicant, in writing, a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis unless the Township determines that threat to health, safety or property require a shorter notice period. If the parties cannot resolve the matter, the Township may issue a notice of violation to Applicant setting forth, in detail, the action(s) that must be taken to remedy the alleged default and a reasonable time period for curing the default.

12. Reimbursement of township costs. If a permit is revoked, the permittee shall also reimburse the township for the township's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.
13. Review of Conditional Use Permit. This CUP includes, at the discretion of the Town Board, a periodic review to determine compliance with the conditions of the permit, and whether changed circumstances or conditions require changes to the permit. The Town Board may also elect, upon adoption of an appropriate resolution following verification of a complaint that a condition has been violated, to conduct additional reviews of the permit. Said review shall only take place following written notice to the owner of the subject property and a duly noticed public hearing. Following such hearing, the permit may be amended based on changed conditions and experiences with the site.
14. Applicant must stay back 350 feet when applying manure to properties along the Unnamed Creek/Silver Creek
15. Karst walks must be completed on all manure application sites prior to application. Applicant shall erect berms around sinkhole sites at least one foot in height. No manure application will be allowed within 300 feet of the sinkhole sites.

Motion by Commissioner _____ to deny the application including the finding as listed above.
Seconded by Commissioner _____. Motion carried with _____ yes votes _____ no votes and _____ members abstained

DECISION

Application is hereby DENIED.
Signed this 27th day of July 2021

Scott Fredrickson, Chair

Attest:

Barb Nicklay, Clerk