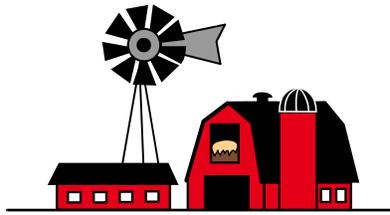


TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

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-- TCPA --

Date: 09/13/2021

To: Viola Town Board
Viola Town Planning Commission
Craig Scanlan
Brian Winters

Re: Conditional Use Permit - Appeal
Section 19

Permit: VTCUP-21-01

Public Hearing: The Viola Township Board will hold a public hearing at the Viola Town Hall, 4010 Center Street NE, Viola, MN 55934, on Monday September 27, 2021, after 7:00 PM regarding:

Request: The Viola Township Planning Commission, on July 27, 2021, granted a conditional use permit to Craig and Kevin Scanlan to allow for the expansion of a feedlot to 1440 animal units in Section 19. "Section 4.04 Appeal of a Planning Commission Decision" of the Viola Township Zoning Ordinance allows for an appeal of a Commission decision.

Appellant: Brian Winters - 2350 80th Ave NE - Eyota, MN 55934

Feedlot Location: 3322 80th Ave NE, Eyota, MN 55934; on the east side of 80th Avenue NE approximately one-half mile south of Viola Road.

Background: 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.

Reviewers List: Olmsted County Planning
Olmsted County Public Works

Minnesota Department of Natural Resources
Olmsted County Public Health Department
Peoples Cooperative Power
Olmsted County Feedlot Tech.

GGG Septic Inspector
MN Department of Transportation
Minnesota Pollution Control Agency

Zoning: A-1 (Agricultural Protection District)

Attachments: Applicant's Submittal
Proposed Conditional Use Language
Emails from the Department of Natural Resources to TCPA
Emails from the Department of Natural Resources to Brian Winters

Ordinance:

Section 4.04 **APPEAL OF A PLANNING COMMISSION DECISION:**

A decision of the Planning Commission may be appealed to the Town Board. Such appeal may be taken by a person aggrieved or by any officer, department, board or bureau of a town, municipality, county or state. Should a zoning certificate or building permit have been issued as a result of the Board's decision, such permit shall be suspended until the Town Board has rendered a decision on the appeal.

A. Appeal Procedures:

1. The appeal application shall be submitted to the Viola Township Zoning Administrator within ten (10) days of the Commission's decision and the appellant shall pay the fee for the appeal as established.
2. Within sixty (60) days after receipt of the appeal application, the Board shall hold a public hearing in accordance with Minnesota Statutes, Section 394.26. The Board shall adopt findings and shall act upon the appeal within the allotted State Statute timeframe of the dated application.
3. A decision of the Board granting the conditional use pertaining to the Floodway, Flood Fringe (FFA and FFB) and the Flood Plain Districts shall be forwarded by mail to the Commissioner of Natural Resources within ten (10) days of such action.
4. A certified copy of an approved conditional use, along with the legal description of the property, shall be transmitted to the County Property Records for recording.

Appeal Background/Application

The applicant is a neighboring property owner. Upon review of their appeal application, it appears the applicant desires to have the Town Board review the decision by the Planning Commission and deny the conditional use permit based on review comments from Nicole Lehman, area hydrologist with the Minnesota Department of Natural Resources.

Excerpts from the application:

“Viola ordinance section 4.02 Conditional Use item #23 requires that a thorough evaluation of the waterbody and topography related to a proposed CUP needs to be completed to ensure the prevention of possible pollution of public waters both during and after construction. In a memo dated July 19th, 2021, Nicole Lehman a DNR Hydrologist detailed her agency’s concerns regarding the Scanlan’s manure application plan.”

“A summary of her concerns includes details that 21 of the fields identified in the plan have intermittent streams and 5 are partially within floodplain. She also describes areas of shallow bedrock. This topography increases the potential for phosphorus and nitrates loading into nearby Silver Creek Reservoir and its tributary waterways. She states specifically the Scanlan’s proposed feedlot expansion is inconsistent with DNR agency clean water goals of the Zumbro River watershed.”

“As an aggrieved party this writer does not believe that the recommendations of the DNR were properly considered by the Planning Commission in the granting of this CUP. The DNR is the primary agency charged with protecting and maintaining public waterways in the state of Minnesota. Their findings that this feedlot expansion is inconsistent with their goals should, along with other previously discussed concerns, form the basis for denial. Since these waterways are the property of all Minnesotans and are a resource to all they should be protected by denial of the permit.”

“If the Board is unwilling to deny the application the applicant desires they clarify one condition in the permit.”

The Planning Commission approved condition 15 to read as follows:

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.

The applicant would like to have the condition changed to read:

15. Per DNR recommendations a Karat walk must be completed on all proposed manure application sites prior to permitting. Annual karst walks must be required on all manure application sites before manure application. These annual walks are to ensure application sites meet required setbacks for surface karst features. The annual karst walk of manure application sites must be documented on MPCA karst forms and reviewed by an individual qualified in karst topography. These forms must be sent annually to the Viola Township clerk to ensure annual compliance.

Staff Review

Staff has provided you with an email chain from Nicole Lehmann, area hydrologist from the Minnesota Department of Natural Resources. We received review comments on July 19, 2021, which the applicant refers to in their application. Those comments were distributed to the commission the night of the hearing (July 20, 2021). The Commission reviewed those comments after some discussion continued the meeting to July 27, 2021. In determining the conditions of the permit, the Commission generated the following conditions based on the DNR comments:

14. Applicant must stay back 350 feet when applying manure to properties along the Unnamed Creek/Silver Creek. Manure may not be spread on federal holidays nor within 300 feet of any known wells.
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.

We have also provided an email chain from Brian Winters to the DNR and the DNR response. As confirmed by the DNR response, the DNR does not have permitting authority for feedlots in Minnesota. That authority was granted to the Minnesota Pollution Control Agency.

The local authority (township or county) can regulate the size of a feedlot and any threshold which a feedlot would need to go through the conditional use permit process. That threshold is 750 animal units in Viola Township. MPCA will not grant a feedlot permit until the applicant has received zoning approval from the local zoning authority.

The DNR provides comments to the local authority but they are referral comments only. As stated earlier, they have no permitting authority. Referral comments can be used by local governments as rational to deny a permit or add conditions to a permit.

In this instance the Commission determined with additional safeguards in place (conditions) the permit should be allowed to move forward.

Staff created a set of findings which support allowing the permit to move forward which are listed below and were adopted by the Commission. Staff believes the Commission correct in their decision to issue the permit based on the findings listed below.

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 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 effect 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.

To be as strict or stricter as required by State Statute we also reviewed the following section of the Olmsted County Zoning Ordinance and provide findings:

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.

Conditions in Question:

The appeal applicant would like to see condition number 15 of the approved permit clarified with additional language.

Current language:

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.

Requested language:

15. Per DNR recommendations a Karat walk must be completed on all proposed manure application sites prior to permitting. Annual karst walks must be required on all manure application sites before manure application. These annual walks are to ensure application sites meet required setbacks for surface karst features. The annual karst walk of manure application sites must be documented on MPCA karst forms and reviewed by an individual qualified in karst topography. These forms must be sent annually to the Viola Township clerk to ensure annual

compliance.

After review of the conditions in question and discussing them with local and legal authorities several troubling items have come to my attention.

1. Viola Township has no authority to regulate manure spreading in any township other than Viola.
2. The township has no authority over the water quality issue which this walk is trying to protect. The Karst walk language is already in the MPCA Land Spreading Manual.
3. There is no form provided by MPCA for a Karst walk for land spreading. The only form available from MPCA is a Karst walk manure storage facility siting form.
4. The Township's role in permitting a feedlot is land use. Is the feedlot being placed in an appropriate area which allows intensive farming activities?
5. This condition, in either form, puts responsibilities on the Township which they have no means to enforce.

The Planning Commission approved this condition, and it should be left as it is.