

Hyperion: Refinery project fits with county's Comprehensive Plan, zoning ordinance

By Julie Ann Madden

Editor's Note: Because of the amount of information given at the Jan. 10 meeting, readers will find some stories in our newspaper and some online.

Is Hyperion's proposed "Energy Center" consistent with Union County's 2005-2025 Comprehensive Plan?

During the Union County Planning & Zoning Commission's revisions of their zoning ordinances, South Eastern Council of Government Senior Planner Toby Brown repeatedly told both that board and the Zoning Revision Committee the zoning ordinance must be consistent with the County's 2005-2025 Comprehensive Plan.

Residents have voiced concerns that the Hyperion Energy Center would not be consistent with the Comprehensive Plan and the county's Agricultural Protection Area.

However, at the Jan. 10 Planning & Zoning Commission meeting, Hyperion attorney Todd Meierhenry went through Union County's Comprehensive Plan, explaining their position that their project is consistent with the Comprehensive Plan's Section VIII Planning Policy Framework regarding the county's future land-use and growth management policies and recommendations.

The Comprehensive Plan

The county has three future land-use areas: community expansion areas around its cities; rural service areas at the interstate highway exchanges; and agricultural protection area.

Due to the size of the Hyperion project, Meierhenry said it would have to be placed in the Agricultural Protection Area.

"If you look at the existing Planned Development, which is Dakota Dunes, we believe it's consistent with your past policies," Meierhenry told the board members, explaining Dakota Dunes Community Improvement District was placed in the county's Agricultural District and allowed to have residential, commercial and light industrial zones.

Next, he went through each of the Planning Policy Framework's objectives which are "intended to result in the type of future living and working conditions desired by the majority of citizens" (Comprehensive Plan p. 22).

Objective No. 1: "To provide for the orderly arrangement of the County enabling each part (agricultural, residential, recreational, commercial and industrial) to perform its function economically and with minimum conflict to the other parts."

"Planned Development is very consistent with an orderly growth and its minimal conflicts," said Meierhenry. "Part of the Planned Development, the reason we made it in the manner we did is to provide minimum conflict with the rest of the county and the rest of the zoning areas, especially with regards to onsite temporary housing so that we don't have a lot of traffic on our roads in and out of the construction area during the construction time."

Objective No. 2: "To provide an efficient, safe and economical system of transportation within

the County and the surrounding area."

"The Planned Development provides access to major transportation outlets. No other area in the county has access to two state highways, an interstate highway, and two access points to Iowa," as printed in their outline of presentation.

Objective No. 3: To promote the economic growth and social development of the County as a partner in cooperation with the private sector.

"The Planned Development is definitely under your Comprehensive Plan in providing substantial economic development," said Meierhenry. "A \$10 billion project will add assessed valuations somewhere between \$2 billion and \$2.2 billion to your taxable valuation. To think about that today when we're at \$1.2 billion of taxable valuation, this will be basically two times more than the taxable valuation."

Objective No. 4: To provide ample opportunities for public participation at all stages of planning and implementation process, including public hearings, rezoning notices, and public awareness campaigns.

Hyperion held three "public awareness open houses" where people could come and ask experts at different booths questions and get answers.

Objective No. 5: To retain flexibility within the planning and zoning process so as to readily cope with changing social and economic conditions.

Objective No. 6: To review and update the objectives and policy guidelines every five years.

Agricultural Protection Area Comprehensive Plan pp. 25 - 27

The Agricultural Protection Area is intended to:

- Preserve and promote a full range of agricultural uses;
- Secure land for livestock production and other agricultural uses;
- Strengthen agriculture's contribution to the area's economic base;
- Support process, value added, and other activities closely allied to the agricultural industry;
- Facilitate existing and future farming operations; and
- Prevent conversion of land identified as valuable agricultural resource to uses that are not consistent with agriculture.

The aforementioned intentions and activities shall not be compromised by non-agricultural development and shall be enhanced by the protection offered herein. The character of the Agricultural Protection Area should remain agricultural in nature with industry and commercial business permitted only when it will benefit the area without degrading the environment. Guiding policies include the following:

- a. Preserve and enhance land for agricultural uses.*
- b. Discourage premature conversion of rural lands into urban development.*

"It will discourage premature conversion, and this is what you're to do as a Planning Commission is to discourage premature conver-

sion of ag land into urban development," said Meierhenry. "The size of this project, which is 3,800-plus acres is definitely of the size it is not premature conversion of a property. This is basically meant that you do not want to postage stamp."

c. Allow non-farm dwellings through a conditional use process, but only to the extent that said use is compatible with its surrounding environs. Adequate density requirements should be a prerequisite of the conditional use.

d. Discourage development patterns that require public improvements financed in part by the farming community but which are not necessary to support agriculture.

"The county doesn't provide water," said Meierhenry. "It doesn't provide sewer and those items. All of those items will be done by the development itself. And the farming community won't pay for them."

e. Permit the extension of public services or utilities into agricultural areas only when such services or utilities are appropriately sized and necessary for agriculture, farm uses or permitted non-farm uses.

"Hopefully, we will have natural gas and some of the other items that come that we'd be able to provide folks down the line access and actually benefit," he added. "Again, this will not be at the county's expense or taxpayers' expense."

f. Encourage livestock and other agricultural uses in areas where conditions are best suited for agricultural pursuits.

"That's not applicable in this manner because there are no agricultural hog farms or any other type of agriculture that will go in this area," said Meierhenry. "Only those listed as uses."

g. Craft zoning regulations which, to the greatest extent possible, enable the majority of the agricultural activities to be conducted as a permitted use.

h. Designate an Agricultural Protection distinct in the zoning regulations to provide for a comprehensive range of agricultural development opportunities.

i. Agricultural operations shall be sufficiently buffered from moderately to densely populated areas.

j. Location of non-agricultural residential uses shall not be sited so as to be detrimental to or conflict with other uses that are germane to the Agricultural Protection Area.

B. Agricultural Preservation Principles

Agricultural land is a nonrenewable source. Once public and private decisions are made that result in the conversion of agricultural land to non-agricultural uses, this vital resource is almost always irretrievably lost. Of substantial importance to the County is to preserve all agricultural lands in the county by whatever means are available and effective, until such time that logical and orderly urban development follows.

"We meet this standard (the last sentence in the above paragraph) because it's going to develop a

large area that's going to employ a lot of people and provides a timeline showing how it logically can develop," said Meierhenry.

The County recognizes that agricultural lands do not exist in a vacuum; without the ability to engage in viable agricultural activities on such land, they become merely vacant areas. The key to preserving agricultural lands in the County is maintaining a healthy agricultural economy in the County; that begins by reducing premature disinvestment in agriculture. The County shall foster and encourage varied activities and strategies which encourage a diverse and sustainable agricultural economy and utilization of agricultural resources."

"I apologize to some who object that we had the word 'vacant' in the application," he said. "We didn't mean anything by it. Vacant was used in the Comprehensive Plan (above paragraph) and in our application."

He also read the last sentence in the above paragraph to the board.

1. In General

• *Buffer requirements from farm lands and activities should be incorporated into local zoning regulations to minimize nuisance complaints.*

• *Implement zoning regulations that contain uses related to and in support of agriculture.*

"We have buffers and implement zoning," said Meierhenry. "We have generally stated our off-farm income is most important to agriculture today in our state. In addition, the petroleum products which usually account for about 10 percent of agricultural expenses will be there and will give them a ready supply."

• *When creating land use controls such as the zoning regulations, keep the regulatory burden on various agricultural activities to the minimum necessary for identifying, addressing and mitigating potential impacts in the areas of health, safety and welfare.*

"It keeps the burden to a minimum," said Meierhenry, "and this Planned Development does not add any burdens, regulatory burdens, on agriculture."

• *Allow the operation of existing legal nonconforming agricultural uses consistent with protection of the public health, safety and welfare.*

• *Discourage the fragmentation of large parcels of agricultural land.*

"This discourages fragmentation," he said. "It's within the Comprehensive Plan because it's very large. It's not small."

• *Monitor the application of all land use controls to verify the effectiveness in preserving agricultural land and perpetuating agricultural uses in the county while maintaining a reasonable use to the individual owner.*

"Verify your effectiveness of this Plan by reviewing it," said Meierhenry.

• *Incorporate within the zoning regulations performance standards for the permitting of concentrated animal feeding operations and related ventures. Whenever possible, such performances standards shall be used in lieu of conditional use permits.*

2. Housing Conflict Mitigation
"You also have a Housing Conflict Mitigation Policy," said Meierhenry, "and you don't want houses in these areas that would conflict with agriculture. The housing that's presented is limited public safety housing. So if anyone comes saying 'you allowed them to do a house, why can't I' it's solely for public safety which would be the manager, the fire and the police. It will have a proper public purpose as to regard what the property's being used for. That's industrial, and it limits and helps eliminate any need for a county sheriff to attend or a rural or district fire organization."

• *Given that non-farm residential development can generate unusually high costs to the community in terms of lost farmland and increased demands for (limited) public services, implement zoning regulations that endorse the restriction of siting residential housing (non-farm) dwellings in areas designated as an Agricultural Protection zone.*

"As you will see with 1,800 employees, obviously, a number of them will want to live close to where they work," said Meierhenry. "It will create a supply and demand, a positive for both folk who are out there."

• *New development, if and when approved, should be sited in such a way so as to minimize and/or prevent future conflicts.*

• *When considering applications for new development, the county shall consider potential impacts on existing adjacent agricultural uses and shall use its regulatory authority to mitigate those impacts which would be detrimental to the continuation of existing agricultural operations and activities and the establishment of new agricultural operations and activities.*

"Consider impacts on adjacent Agriculture...again, we believe this will be beneficial," he said. "Yes, it's different, and it's change. There's evidence that the real estate values have gone up and will continue to go up, and stay up even after it's built."

• *Employ zoning strategies that require sufficient separation distances of non-farm dwellings from preferred agricultural activities, including concentrated animal feeding operations.*

Planned Development Districts Article 13 of Zoning Ordinance

Section 1301. Intent. *The provisions of this article are to be applied in instances where tracts of land of considerable size are developed, redeveloped or renewed as integrated and harmonious units, and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this ordinance. A Planned Development, to be eligible under this Article, must be:*

1. In accordance with the Comprehensive Plan of the County, including all plans for redevelopment and renewal;

2. Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the Planned Development and for the

County;
“Because of the size and the scope, the length of time this is developed,” said Meierhenry, “obviously, you can find just because it’s a \$10 billion project that in scope, nature and size it fits with Planned Development.”

3. So designed in its space allocations, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and value of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the County;

4. So arranged as to provide a minimum of sixty percent of gross planned development area for usable open space on the tract.

Section 1302 Tract. The tract for which application is made must have the following minimum area:

1. For a Planned Development Unit under subsection 1304 (1) below, one-half acre in the case of dwellings only, and one acre to all other cases;

2. For a Planned Development District under subsection 1304 (2) below, one acre in the case of dwellings only, and two acres in all other cases.

Section 1303 Who May Apply. An application may be filed by (1) the owner or owners of lessee or lessees of all land and structures included within the tract, or (2) any governmental agency. The holder of a written option or contract to purchase or lease land and/or structures shall, for the purpose of such application, be deemed the owner or lessee of the land and/or structures covered by such option or contract.

Section 1304 Application and General Plans. Each application shall state the proposed modifications of existing zoning, and shall be accompanied by the improvements to be erected upon the tract, the open spaces to be provided, the nature and location of the proposed use or uses, the relationship of the proposed development of surrounding properties, and other pertinent information.

The Application and General Plans shall be sufficient in scope and character to determine that the intent of this Article states in Section 1301 above will be met.

Any proposed division of the tract into separately owned and operated units shall be indicated. The application and General Plans shall be filed and acted upon in the following manner:

1. Where the proposed modifications of existing zoning concern only the bulk and placement of structures and the size and shape of lots, regulation of lot area, average lot width, distance between buildings, size of courts, yards, gross floor area, building height, and/or building coverage, or involve a reduction of lot area per dwelling unit of no more than 33 percent, such Application and General Plan shall be filed with the County Planning Commission and acted upon as a permitted conditional use. If such Application and General Plans are approved by the County Planning Commission upon specific findings that the intent stated in Section 1301 above will be met, such approval shall be construed to modify provisions contained elsewhere in this Ordinance, insofar, and only insofar, as specific deletions, additions and

changes are made which related to land and structures in the tract, and the tract shall be designated a Planned Development Unit within the existing zoning district, provided the requirements in Section 1305 below are met.

2. In any other case, the Application and General Plans shall be filed with the Board of County Commissioners and acted upon as a proposed amendment to this Ordinance. If such Application and General Plans are approved by the Board of County Commissioners, following a favorable recommendation by the Planning Commission, upon specific finding that the intent stated in Section 1301 above will be met, such approval shall be construed to amend this Ordinance insofar, and only insofar, as specific deletions, additions and changes are made which are related to the land and structures in the tract, and the tract shall be designated as a separate Planned Development District, provided that the requirements of Section 1305 below are met.

Section 1305 Subsequent Performance. The Official Zoning Map shall carry a notation of the location and boundaries of any Planned Development Unit or Planned Development District approved as above, giving a reference to a file in which full information concerning the provisions applying to the same may be found.

1. After the approval of the Application and General Plans, the applicant shall file Detailed Plans for review by the Planning Commission, showing the details of the proposed development as fully as possible, and including elevations and perspectives of proposed construction. If the applicant later wishes to change any of the details of the proposed development, further Detailed Plans shall be filed for review by the Planning Commission. No building permit for the proposed development or any part thereof shall be issued until the Planning Commission has determined that the pertinent Detailed Plans are in accordance with the Application and General Plans as approved and with the intent stated in Section 1301 above. If any Detailed Plans are not acted upon by the Planning Commission within 60 days after they are submitted to it, they shall be deemed approved.

2. Within three months after the approval of the Application and General Plans, a certified copy of such Application and General Plans shall be filed by the applicant at his or its own expense in the office of the County Auditor.

3. If construction of improvements is not begun and diligently prosecuted to completion within a reasonable time established by the Planning Commission at the time of approval of Detailed Plans, and if an extension of time is not given by the Planning Commission for good cause shown, the modifications or amendments of this Ordinance provided for in Section 1305 above shall become null and void, and the tract shall revert to all the requirements of its previous zoning. No certificate of zoning compliance shall be issued until a detailed report is submitted by the applicant to the Planning Commission showing the outcome of construction and the Planning Commission certifies that all requirements of this Article 13

relating to Planned Developments have been met.

Section 1306 Subdivision Regulation Variance. The standards and requirements of this Ordinance relating to subdivision regulation may be modified by the Board of County Commissioner in the case of a plan for Planned Development, which, in the judgement of the Board of County Commissioners, provide adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated, and which also provide such covenants or other legal provisions as will assure conformity to and achievement of the plan.

“Again, because of Planned Development, we’ve added more open space than is required in Industrial provisions,” he said, adding with its orientation, the two zones it will have, the open space and the amount of setback, it is our intent to make this a “jewel of the world with regard to refineries.”

“People will come here and look at it and say ‘this is the way all refineries should be,’” said Meierhenry. “No smell. No pollution. This is the way this refinery is going to be built, and it’s in the Planned Development.”