

Ordinance commissioners passed is completely different from original

By Julie Ann Madden

On March 11, the Union County Commissioners passed a revised ordinance regarding Hyperion's rezoning request application.

According to Commissioner Ross Jordan, "I think this document is completely different from the original."

Resident Objects

Commissioner Milton Ustad asked if making these ordinance changes after the Planning & Zoning Commission had recommended the ordinance as it was submitted would be a problem.

Union County States Attorney Jerry Miller responded that statutes allow the Commission to review and make changes up and to after the vote of the second reading of the ordinance.

However, a woman in the audience disagreed.

"It is my belief that there are substantial changes in the ordinance," said Vickie Larsen, after Commission Chairperson Doyle Karpen finished the ordinance and before she began reading Exhibit A.

"It's my belief that restarts the hearing process from the beginning again," she said.

"Thank you," said Karpen, and continued with the second reading.

Multitude of Changes

Here are the changes found in the second reading of Hyperion's ordinance:

- Article 1, Paragraph No. 1: The number of acres were decreased from 3,882.24 acres to approximately 3,292 acres.

- Article 1, Paragraph No. 2: The actual dates of the county's procedures regarding Hyperion's application were inserted.

- Article 2, Findings Pursuant to Section 1301 of the Zoning Ordinance: The only change was to add the commissioners' public hearing date.

- Article 2, Paragraph 9: "The applicant may need to modify the design and layout of the project to obtain the State and Federal Approvals. Accordingly, the zoning and subdivision approvals set forth in this Ordinance are intended to be as flexible as permitted by law to allow for and accommodate such modifications.

Original: *Accordingly, the zoning and subdivision approvals set forth in this Ordinance are deliberately flexible to allow for and accommodate such modifications.*

- Article 2, Paragraphs 1 through 11: Reasons for rezoning this agricultural land to Planned Development.

- Article 3 and Article 4, Sections 401, 402, 403, 404 and 405 all remain the same.

- Article 4, Section 406, Paragraph A, State and Federal Approvals: Air contaminants, odor, and gasses from the Project and the Subject Property shall comply with the State and Federal Approvals.

Original: *Industrial use performance standards relating to air contaminants, odor and gasses shall be addressed in the State and*

Federal Approvals for the Project and Subject Property.

- Article 4, Section 406, Paragraph B, Additional Performance Standards: In addition to the requirements of State and Federal Approvals, the following performance standards shall apply to industrial uses in the Energy Center Planned Development (ECPD).

The only change was to add the word "shall" in the above sentence.

- Article 4, Section 407, 408, and 409 regarding minimum lot size, minimum yard and maximum lot coverage requirements remain the same.

- Article 4, Section 410, Maximum Height (Requirements), Paragraph 1: In the Industrial Zone, no building predominantly designed for human occupancy shall be in excess of 75 feet in height. For purposes of this Ordinance, any portions of a building or structure that are accessed only for maintenance or inspections shall not be deemed to be designed for human occupancy. All other buildings and structures in the Industrial Zone shall be of such height as is consistent with prevailing standards within the refining and energy industries.

Original: *In the Industrial zone, no maximum height limitations shall apply to buildings and structures.*

- Article 4, Section 11, Prohibition of Off-Site Advertising Signage: No off-site commercial signage shall be erected within the ECPD District. For purposes of this Ordinance, directional and informational signage shall not constitute off-site commercial signage.

Original: *No signs erected by the outdoor advertising industry in the conduct of the outdoor advertising business shall be erected within the ECPD District.*

- Article 4, Section 412, Waste Products and Materials: any solid, hazardous, or other waste which is produced in the ECPD District shall be stored or disposed of in accordance with the Resource Conservation Recovery Act (RCRA) and other applicable federal and state law and regulations. The provisions of the Union County Zoning Ordinance relating to rubbish, refuse, waste materials or garbage shall apply only to the storage or disposal of rubbish, refuse, waste materials, or garbage that is not regulated by RCRA or by State or Federal regulatory agencies.

Original: *No requirements or restrictions applicable to refuse or waste contained within the Zoning Ordinance shall apply to (i) any solid, hazardous, or other waste produced by permitted industrial operations, and (ii) the storage or disposal of any waste in accordance with State and Federal Approvals.*

- Article 4, Section 413, Stormwater and Drainage Systems. *This whole section was an addition to the original ordinance. It states: The stormwater and drainage systems for the Project shall: (i) comply with State and Federal Approvals; (ii) incorporate storm-*

water Best Management Practices (BMPs) to minimize increases in runoff rate, runoff volume, and pollutant loading; (iii) allow no discharge of point source pollutants into Brule Creek; and (iv) prevent discharges of regulated non-point source pollutants into Brule Creek in violation of State and Federal Approvals.

- Article 5, Planned Approvals: Section 501 regarding Submission of Detailed Plans was completely revised. *It now states:*

Section 501. Submission of Detailed Plans. The Applicant shall submit detailed plans for the construction of improvements for any phase of development of the Project in accordance with Subsection 1305 of the Zoning Ordinance. The detailed plans shall be reviewed by the Planning Commission and Land Use Administrator. The five criteria against which the detailed plans shall be measured are set forth below. The Planning Commission shall approve the detailed plans if each and every one of the following five criteria is met:

1. The detailed plans include the plans and level of detail required by Section 1305 of the Zoning Ordinance;

2. The detailed plans demonstrate that the proposed improvements will comply with all of the following requirements of Article 4 of this Ordinance:

- a. The use limitations set forth in Section 403 through 405;

- b. The performance standards set forth in Section 406 (if the proposed improvement is an industrial use), which performance standards govern fire hazards, noise, sewage and liquid wastes, and vibration;

- c. The applicable lot, coverage, and height requirements set forth in Sections 407 through 410;

- d. The signage restriction in Section 411;

- e. The requirements pertaining to waste products and materials set forth in Section 412; and

- f. The stormwater and drainage system requirements in Section 413.

3. The detailed plans demonstrate the proposed improvements address light and odor impacts from the Subject Property to the extent practicable consistent with current industry standards with respect to the project;

4. The detailed plans include an emergency response and evacuation plan demonstrating that the Applicant will respond in accordance with industry standards and applicable state and federal requirements in the event of any accident, discharge, fire or explosion with respect to the Project. The emergency response and evacuation plan shall demonstrate how the Applicant will work cooperatively and establish communication protocols with fire protection and emergency response agencies in Union County and other nearby counties, if necessary; and

5. The detailed plans include a security plan for both construction and operations demonstrating the Applicant will provide its own security forces sufficient to address security and police protec-

tion needs for residential uses and other Project elements. The security plan shall demonstrate how the Applicant will work cooperatively and establish communication protocols with law enforcement agencies in Union County and other nearby counties, if necessary.

Original: *Approval of Detailed Plans. The Applicant shall submit detailed plans for the construction of improvements for any phase of development of the Project in accordance with Subsection 1305 (1) of the Zoning Ordinance. The detailed plans shall be deemed to be in accordance with the Application, the General Plans, and the intent stated in Section 1301 of the Zoning Ordinance as long as the improvements described in such plans: (i) are a permitted principal or accessory use in the ECPD District, as described in Sections 402 and 403 of this Ordinance; (ii) comply with the performance standards set forth in Section 406 of this Ordinance (if the proposed improvement is an industrial use); and (iii) comply with the applicable lot, yard, coverage and height requirements set forth in Sections 407 through 410 of this Ordinance.*

- Article 6 Modification of General Zoning Requirements, Section 601, Applicability of General Regulations. The terms and provisions of this Ordinance apply to the ECPD District in lieu of any zoning regulations or requirements contained in Articles 6 through 12 and Article 14 (except Section 1415) of the Zoning Ordinance. Therefore, the terms and provisions of this Ordinance do not allow for the establishment of either a Junk Yard (as described as a conditional use in 1413) or a Sanitary Landfill (as described as a conditional use in 1414) inside the ECPD District without an additional application and approval and modification to this Ordinance.

Original: *The terms and provisions of this Ordinance apply to the ECPD District in lieu of any zoning regulations or requirements contained in Articles 6 through 12 and Article 14 (except Sections 1413, 1414, and 1415) of the Zoning Ordinance.*

- Article 6, Section 602, Building Permit: Building permits for the Project will be issued for a period of: a) two years; or b) if the work described in the building permit request is of such a size, nature and/or scope so as to require a longer period based upon standard construction practices (as certified by a licensed South Dakota engineer or architect) the period of time needed, to complete the work. In determining the length of a building permit, the Land Use Administrator shall consider (i) the proposed construction schedule as outlined in the detailed plans required by Sections 501 and 502 above, (ii) standard construction practices for projects within the refining and energy industries, and (iii) the advice of an independent engineer or architect, if any is retained by the Land Use Administrator. The Land Use Administrator may cancel a building permit only if the work described in the building permit has not been substantially completed according to the estimated construction schedule, unless the Applicant can demonstrate with documentation to

the Land Use Administrator that the Applicant's failure to comply with the schedule was caused by: 9i) delays in obtaining State and Federal Approvals; (ii) delays in obtaining Project financing; (iii) delays in obtaining equipment, materials, or labor; and (iv) any other cause beyond the direct and sole control of the permit holder. If a building permit is cancelled, the Land Use Administrator shall provide written notice thereof to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained. The County may enter into a contractual agreement with the Applicant to specify all building permit fees over the course of construction.

Original: *The timeframes set forth in Section 1906 of the Zoning Ordinance for commencing and substantially completing work described in a building permit do not apply to any work performed within the ECPD District. Each building permit issued for the Project shall include a schedule for the commencement and substantial completion of the work described in the permit that (i) is consistent with and based upon an estimated construction schedule submitted by the Applicant; (ii) does not expire for so long as the Applicant is using reasonable diligence to commence or complete construction; and (iii) allows extensions for delays in obtaining State and Federal Approvals, delays in obtaining Project financing, and any other causes beyond the direct and sole control of the Applicant.*

- Article 6, Section 603, Schedule of Fees, Charges and Expenses. The Board does not relinquish its right to establish fees, charges and expenses in a fair and consistent manner within the county consistent with State Law or the State Constitution.

Original: *The Board will not establish any fees, charges, or expenses applicable to the ECPD District or uses or structures within the ECPD District in an amount or nature greater or otherwise more extensive than those applicable to other properties uses, or structures within the County. The Board will not establish any fees, charges, or expenses that apply, or have the effect of applying, only to uses or classifications of uses that are planned for, or located within, the ECPD District, but not other properties, within the County.*

- Article 7, Modification of Subdivision Requirements, Section 701, Findings: In the accordance with Section 1306 of the Zoning Ordinance, the Board does hereby find and determine that the modifications set forth in this Article 7 to the County's subdivision requirements contained in the Zoning Ordinance and the 2007 Revised Subdivision Ordinance of Union County, South Dakota, provide adequate public spaces and improvements for the circulation, recreation, light, air and service needs of the ECPD District when fully developed and populated, and also provide such legal protections as will assure conformity to and achievement of the plan of development for the ECPD District.

The words "contained in the Zoning Ordinance and the 2007 Revised Subdivision Ordinance of Union County, South Dakota" were added to the original wording.

This wording was also added to Article 7, Section 703. The rest remained the same.

• Article 7, Section 7 Required Subdivision Improvements: The terms and provisions of Article 18 of the Zoning Ordinance (Required Subdivision Improvements Prerequisite to Issuance of Building Permits) have been superseded by the Subdivision Ordinance, and therefore do not apply to the ECPD District. Article 11 of the Subdivision Ordinance shall not be applicable to the ECPD District, except that the Applicant and the County may enter into contracts associated with the construction of improvements containing such terms and provisions as the parties may mutually agree.

Original: *The terms and provisions of Article 18 of the zoning Ordinance (Required Subdivision Improvements Prerequisite to Issuance of Building Permits) shall apply to the ECPD District, except as follows:*

Subsections 1803 (2) (Water Supply Improvements) and 1803 (3) (Sanitary Sewer Improvements): Subsections 1803 (2) and 1803 (3) are not applicable to the ECPD District. A water supply and distribution system, stormwater management, and drainage system, and sanitary sewer and treatment system shall be constructed for the Project as deemed necessary or desirable by the Applicant to service the Project and in accordance with state and federal law and any applicable State and Federal Approvals. The foregoing Project systems shall not be subject to the review and approval of the Board, and shall remain under the control of the Applicant.

Section 1805 (Requirements for Issuance of Land Use Permits) is not applicable to the ECPD District, except that the Applicant and the County may enter into contracts associated with the construction of improvements containing such terms and provisions as the parties may mutually agree.

• Article 8, Section 803, References to Zoning Ordinance and Subdivision Ordinance. The zoning and subdivision standards and requirements applicable to the ECPD District consist solely of the standards and requirements set forth in this Ordinance and the Zoning Ordinance and Subdivision Ordinance as in effect on the effective date of this Ordinance. Pursuant to Article 13, once all the conditions have been met, the official Zoning map shall carry a notation of the location and boundaries of the ECPD District and shall give a reference to a file in which full information concerning the provisions applying to the district may be found.

Original: *The zoning and subdivision standards and requirements applicable to the ECPD District consist solely of the standards and requirements set forth in this Ordinance and the Zoning Ordinance as in effect on the effective date of this Ordinance. No future amendments to the standards and requirements of the Zoning Ordinance shall apply to the ECPD District unless the Ordinance is specifically amended to include such standards and requirements.*

• Article 8, Section 804, Declaration and Abatement of Public Nuisances. The county does not abrogate its authority under the following: 1) the County's Ordinance for the Declaration and Abatement of Public Nuisances; 2) South Dakota Codified Law 7-8-33 (SDCL 7-8-33); or 3) South Dakota Codified Law 21-10. Any one or more of the following conditions shall be deemed to constitute a public nuisance for purposes of the County's Ordinance for the Declaration and Abatement of Public Nuisances (Nuisance Ordinance):

1. The abandonment of an open construction site;

2. The abandonment of unused construction materials left at the construction site; or

3. The abandonment of the Subject Property along with abandonment of crude oil, or crude oil derivatives.

For the purpose of this Ordinance, the terms used in this Section shall be as defined in Section 1 of the Nuisance Ordinance. In order to declare any of the foregoing conditions a public nuisance under the County's Ordinance for the Declaration and Abatement of Public Nuisances, the Land Use Administrator must first provide notice of intent to declare a public nuisance to the Applicant, and provide the Applicant with a reasonable period of time to cure the condition, which period of time shall be extended for so long as the Applicant: a) has established measures to protect users and occupants of the Subject Property and surrounding properties; and b) is diligently attempting to cure the condition, subject only to delays caused by reasons outside of the control of the Applicant. In any event, the period of time provided by the Land Use Administrator to cure the condition shall be not less than one year. The timeframes for declaring a public nuisance under this Section shall prevail over any timeframes set forth in the Nuisance Ordinance. The County may enter into a contractual agreement with the Applicant to establish a surety or other assurances mutually acceptable to the parties to protect against the abatement of a nuisance.

Original: *This section was added in its entirety, and the original Section 804 became Section 805 Repeal of Conflicting Ordinances, and its wording was not changed. The original Section 805 Effective Date became Section 806.*

Exhibit A

The original Exhibit A was titled "Legal Description Planned Development Application" but it is now called "Exhibit A Subject Property."

Exhibit A: Subject Property contained the list of legal descriptions of the Subject Property.

The following changes were made:

1. **Omitted first legal description which stated:** Section Nine (9) less Wagner Tract One (1) and less the South Half of the North Half of the Southwest Quarter (S½N½SW¼), Township Ninety-Two (92), Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

2. **Changed the second legal description to read:** Section Twelve (12) less the Southeast Quarter of the Southeast Quarter (SE¼SE¼) and less the North Half

of the Northeast Quarter (N½NE¼) and less the East 1697.5 feet of the South 330 feet of the South Half of the Southwest Quarter (S½SW¼) and less parcel conveyed for cemetery in Book 27 of Deeds on page 429 and less the Northeast corner of the Southeast Quarter of the Northeast Quarter (SE¼NE¼), Township Ninety-Two (92), North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.

Its Original: *..South 330 feet of the South Half of the Southwest Quarter (S½SW¼) and less cemetery, Township....*

3. Section One (1) less the East Half of the Southeast Quarter (E½SE¼) and less the Southwest Quarter of the Southeast Quarter (SW¼SE¼) and less the East Half of Lots 1 & 2 of the Northeast Quarter, Township Ninety-Two (92) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.

Its Original: *From the original "Lots 1 & 2" were added to the description.*

3. Section Two (2) Township Ninety-Two (92) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.

Its Original: *Section Two (2) less road and less Lot R-1, Township...*

4. **Omitted:** The South Half of the Southeast Quarter (S½SE¼) of Section Four (4), Township Ninety-Two (92) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.

5. Replat of Quam Tract Three (3) being the Southeast Quarter of the Southwest Quarter (SE¼SW¼) and parts of the Northeast Quarter of the Southwest Quarter (NE¼SW¼) and the Northwest Quarter of the Southeast Quarter (NW¼SE¼), Section Thirty-Five (35), Township Ninety-Three (93) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.

Its Original: *Quam Tract Three (3) located in the Southeast Quarter of the Southwest Quarter (SE¼SW¼) and in the Northeast Quarter of the Southwest Quarter (NE¼SW¼) and in the Northwest Quarter of the Southeast Quarter (NW¼SE¼), Section Thirty-Five (35), Township Ninety-Three (93) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.*

6. Lots A, B, and C in the Southeast Quarter (SE¼) in Section Thirty-Four (34), Township Ninety-Three (93) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.

Its Original: *Lots C in Section Thirty Four (34), Township Ninety-Three (93) North, Range Fifty (50) West of the 5th P.M., Union County South Dakota.*

7. The East Half of the Southeast Quarter (E½SE¼) less Tract 1 of Hatton's Addition in the Northeast Quarter of the Southeast quarter (NE¼SE¼), Section Thirty-Four (34), Township Ninety-Three (93) North, Range Fifty (50), West of the 5th P.M., Union County South Dakota.

Its Original: *The East Half of the Southeast Quarter (E½SE¼), Section Thirty-four (34), Township Ninety-Three (93) North, Range Fifty (50), West of the 5th P.M., Union County South Dakota.*

8. **This sentence was added to Exhibit A:** All public rights of way within and abutting the border of the Planned Development are

included as part of the Planned Development.

9. **Exhibit B:** *Master Zone Plan. The map was revised so that the Subject Property no longer goes west of 473rd Avenue.*

10. **Exhibit C:** Permitted Uses and Structures.

Omitted: 2. Sanitary landfills established in accordance with Section 1414 of the Zoning Ordinance.

11. **Item 3 of this exhibit became No. 2. Residential housing.** *The words "mobile homes" were changed to "modular housing units."*

12. **Section B.** Industrial Transition Zone Permitted Uses and Structures, No. 1: Agricultural uses, but excluding sales and auction yard and concentrated animal feeding operations as defined by the South Dakota DENR.

The words "as defined by the South Dakota DENR" were added.

13. **Exhibit D.** Accessory Uses and Structures. No. 3: Temporary uses and structures related to Project construction, including trailers, indoor and outdoor storage, and construction staging or laydown areas.

The words "construction staging or" were added.