

Just what were Union County residents' comments regarding the 2008 Revised Zoning Regulations?

By Julie Ann Madden

Sixteen people spoke out of the approximately 50 who attended the Union County Planning & Zoning Board's July 14 public hearing regarding the 2008 Revised Zoning Regulations.

First, South Eastern Council of Governments Senior Planner Toby Brown explained this new version of county zoning regulations.

Brown and Union County Land Use Administrator-Planning Director Dennis Henze used the 1978 zoning ordinance version, which is currently the zoning laws in Union County. In a draft copy now available to the public, deletions from the 1978 are in red with strike-out lines in the copy; changes or additions are in blue with underlines or double underlines; and black is what was left from the 1978 version.

Brown and Henze noted that changes in the 2008 Revised Zoning Regulations are from:

- The 2007 Revised Zoning Ordinance created by Brown, Henze and the Planning & Zoning Board. This ordinance, which was approved by the Union County Commissioners, was defeated in a referendum election on May 22, 2007.

- Revision recommendations to the 2007 Revised Zoning Ordinance by the Zoning Revision Committee, which met for the last seven months of 2007 to resolve issues from the referendum petition. This committee made three recommendations: 1) to leave the Agricultural District intent (Section 3.01) as it had been stated in the 1978 ordinance; 2) to leave the One Dwelling Per Quarter-Quarter Rule but allow landowners one additional residential dwelling per farmstead or rural acreage site; and 3) to increase the Large Concentrated Animal Feeding Operation (CAFO) setback from one-half mile to three-fourths of a mile and to give livestock producers two options to reduce the setback back to one-half of a mile. The options were to collect waivers from 50 percent of the landowners in the three-fourths mile setback distance and to use the South Dakota Odor Footprint Tool (SDOFT) and achieve a 96 percent odor annoyance free area. If only one landowner is in the setback distance, then no waiver is needed.

In addition, they noted the following specific changes:

- One addition to the zoning districts, the Aquifer Protection Overlay District, created by Henze and Brown. This was identified in the county's 2005 Comprehensive Plan but nothing else had been done with it. It was noted that just prior to the public hearing that the requirement in Zone B that no fertilizer could be applied to land in Fall was deleted; however, it still applied to Zone A, which regards areas near municipalities.

- Section 1203 regarding Telecommunications Towers was deleted because there are specific telecommunications tower rules in the individual zoning district regulations.

- Off-premise signs' size was increased to 32 square feet from 25 square feet in the 1978 ordinance. In the 2007 Revised Zoning Ordinance, the size had been 9 square feet.

- Article 15: Non-Conforming Lots and Uses and Structures was deleted and replaced by Article 20 Non-Conforming and Non-Standard Uses, which is the same language as was in the 2007 Revised

Zoning Ordinance.

- Articles 16 – 18 regarding Subdivision Regulations were deleted because the county adopted a separate Subdivision Zoning Ordinance in 2007.

- Articles 19 – 22 regarding building permits, administrative enforcement, conditional uses, variances, zoning amendments were replaced by Articles 21 – 24, which contained the same language as the 2007 Revised Zoning Ordinance.

- Definitions from the 1978 were deleted and replaced with Article 26, which are definitions from the 2007 Revised Zoning Ordinance.

Residents Speak Jim Wennblom, rural Elk Point:

One Dwelling Per Quarter-Quarter Rule: My view is that it should be 2.5 acres (not one per 40 acres). If they can establish a lot size of 2.5 acres, then they should be able to build. I don't think it should be less than 2.5 acres but 2.5 acres or more would be fine. Restricting it so that you have to own 40 acres is way too restrictive.

Penalties for Ordinance Violations: Needs to be strengthened. For example: establishing junkyards with no permits; they should be fined.

Building Permits: There should be inspections at building sites after permits issued.

Property Tax Delinquency: Residents don't have to pay their property taxes for up to five years before county can take action but yet the residents can still earn income from this property by renting it out. If they can earn income from property, they should have to pay their taxes.

Liz Merrigan, rural (Garryown), Burbank:

I think it's unfair that Planning & Zoning members were not part of the Zoning Revision Committee because you would have been aware of issues that continue to be problematic and the rationale for the concerns raised by members of the public who consistently attended those meetings. While the committee worked hard, the lack of direction from the Commissioners seemed to result in a hesitation to correct the contentious issues that have plagued the issuance of this document.

One Dwelling Per Quarter-Quarter Rule: Infringes on the right of residents to exercise personal control over the number of homes they might wish to construct. I do not think a governmental entity should be in charge of decisions that would seem to belong to the person or persons involved. (Since allowing additional residences has been placed as a Conditional Use), does that mean a manufactured home on a foundation would have to be destroyed once the original conditional use is no longer in effect?

CAFO Setbacks: Setbacks should be discussed in terms of actual distances and not the SDOFT model. The science of the SDOFT concept is speculative at best and could ultimately involve excessive wrangling over the stipulations involved. Also, the committee discussed setbacks in terms of distances from dwellings and distances from property lines. Why has the latter not been more vigorously addressed? The acquisition of waivers of 50 percent

of the landowners seems to have built into the ordinance the acceptance of serious divisions between those who wish to construct large CAFOs and the other farmers and landowners who live around them. With no waiver if only one landowner in the setback area...if we are actually saying that a Union County resident has no personal right to be heard on this issue, then I think that is a very hollow victory for the principles of respect, decency and forthrightness that we profess to possess.

Board of Adjustment: When the Planning & Zoning board puts on the hat to hear appeals from residents, it becomes the last resort for citizens who must then go to court if they do not agree with the Board of Adjustment's decisions. Why is it not possible that these appeals go first to the Commissioners before the court? Surely, a person should not be denied access to their elected officials on these matters. I think it is imperative that the Commissioners squarely face the public and respond to concerns of the residents who must bear the personal expense of going to court.

Wayne Sorensen, rural Beresford:

CAFOs: I feel there is a strong need to eliminate SDOFT as a way for the Large CAFOs to go around the three-fourths mile setback. Other counties around have the Large CAFOs at three-fourths of a mile plus the need to increase the setbacks 400 feet per each additional 1,000 animal units over 2,000 from churches, schools, businesses, cemeteries and state parks. It's too close at three-fourths of a mile. If only one waiver is in that one-half mile setback, it should not be suspended. The Large CAFO setback from a federal, state, county and township road at 200 feet is too close.

Board of Adjustment: There is a strong need to have someone else than the Planning & Zoning Board as the Board of Adjustment in an appeal process. Lincoln County had the commissioners in the appeal process.

Doug Maurstad, rural Alcester:

Comprehensive Plan Compliance: In Article 1, Section 1.02 there is no reference that the zoning ordinance should comply with the Comprehensive Plan. South Dakota Codified Law 11-2-13 says the zoning districts must be in compliance with the Comprehensive Plan.

CAFOs: The 50 percent waiver rule and SDOFT are tools that allow farmers to build CAFOs closer to a residence than normally would be required by law. During the seven months the zoning committee met, there was continued resistance to leaving the setback at three-fourths of a mile. The rationale behind this was that there are no places left in Union County where a farmer can put in a CAFO that is three-fourths of a mile from a residence so these two items were enacted to give them opportunity to move closer than the three-fourths mile and still build a Large CAFO.

Example: Four dwellings in the three-fourths of a mile, two for and two against. If you didn't learn anything else during the Hye-rior issue: you're pitting neighbor against neighbor. You're creating chaos again. You're creating hard feelings in the area and that shouldn't have to happen. Take

away the 50 percent waiver rule. With the one landowner, no waiver required: you're completely taking away that landowner's right. If he doesn't want the CAFO within three-fourths of a mile or one-half mile, let it go. Find some place else that you don't have that problem but to take away the right of the landowner for the sake of what you call economic and development progress is wrong.

Dr. Dick Nicolai who developed the SDOFT noted the following flaws at a Sept. 27, 2007 meeting in Yankton, S.D.: 1) Even at 5 miles there is odor from a CAFO; 2) SDOFT only predicts (odor annoyances), there are variables that can affect this; 3) The tool doesn't take topography into consideration, it considers the land to be flat; 4) SDOFT doesn't consider neighbors' health issues; 5) Tree shelter belts are not effective until trees are 35 feet tall; it takes many years for trees to grow that tall; 6) biofilters help increase control of odors but they don't work on curtain-sided buildings; 7) SDOFT is only predicting 10 percent on a setback of one-quarter and one-half mile setbacks; there is no data for three-fourths of a mile setbacks.

Anything that is merely suggestion is not fact but conjecture. I don't believe you should use conjecture to make a law.

If you can smell odor, there are toxic chemicals present: hydrogen sulfide, cyanide, carbon monoxide, methane. That should deserve special consideration when you consider health issues. People have many health issues such as lung disease, emphysema, asthma and so forth but the SDOFT doesn't take that into consideration. I think that should be the first priority when somebody is considering a site for a CAFO that the adjoining neighbors don't have health issues.

Two members of the Zoning Revision Committee objected to the use of biofilters because they are expensive and they couldn't afford to put them in. When you're building a CAFO, you're spending in excess of \$500,000. I don't think it's going to be a problem spending another \$15,000 - \$20,000 for biofilters so you can control odor.

I also talked to the University of Nebraska Agriculture Center's Rick Stoll who said you have to use extreme caution before implementation of the SDOFT. It takes a minimum of 10 years of weather data from several collection points to obtain a working odor footprint tool. Nebraska is connected to six weather sites and has been collecting data for 15 years and still hasn't implemented the odor footprint tool as a mandatory item in their zoning issues. Only one county, Madison County, Nebraska, is using the odor footprint tool. Sioux Falls has two or three connections to the National Weather Service. Dr. Nicolai has applied for grants for monitoring stations in South Dakota but as of yet, it has not been approved. What Mr. Stoll stressed is that you be careful before you put this into effect without sufficient data because once it's in place, it's difficult to go back.

This is only a theory. It has not been used in Minnesota, where Dr. Nicolai first created it. In his home township where he has a hog confinement, they don't use the OFFSET as it's called there. Only 6 or 7 biofilters are being used in the whole state of Minnesota.

I don't believe the South Dakota Pork Producers have endorsed the SDOFT. It's all centered right here in Union County. I can only presume the only reason this is being done in Union County is to allow somebody that wants to introduce a CAFO or build a CAFO or have a hog operation. This is a tool that allows them to squeeze that envelope to allow them to get a CAFO into some place that's less than three-fourths of a mile from somebody's home.

Waste Management Section: If you're applying manure from other than your own sources, must have Manure Management Plan. It says nothing about operations from out-of-state coming into South Dakota and applying manure on fields. I think you should be specific when you rewrite this or make any changes to it that you mention the fact that you're not allowed to come from out-of-state to apply manure on fields in South Dakota.

Burdette and Gladys Hanson, rural Elk Point:

Since recently learning a new zoning ordinance was proposed for Union County we have attempted to get a summary of the proposed changes as compared to existing ordinances. Without the maps and other materials, I don't know what, if any, effects this will have on my farming operations or of those of my neighbors. Such changes as not being able to apply nitrogen in the Fall might be a problem.

And we should know why such a change is required and who is proposing it and such. I respectfully request a 30 to 45-day extension of this hearing so you can give us a summary of the changes and your reasons to make these changes. We need time to fully understand and comment on your changes.

Milton Ustad, rural Beresford:

Section 603 Conditional Uses on Page 9. Allowing an additional residence on a farmstead or rural residential acreage: The way I understand Conditional Use Permits is that if the condition changes, then the Conditional Use Permit is no longer good.

For example: A farmer applies for a Conditional Use Permit to build an additional dwelling for his son. A few years later, the father dies, and the son moves out of that house. Then the permit would no longer be valid. They'd have to move the house or do something with it.

Another problem, most of the people who would build a house, need a financial lender. Would the lender loan the money based on a Conditional Use Permit?

I just think there are some problems with the wording. I don't know but something needs to be changed in this section.

Jeff Dooley of Dakota Dunes:

I was on the Zoning Revision Committee. Liz Merrigan was correct in that the lack of direction and lack of parameters did kind of hamper our ability to really get in there and get anything done but I'd like to make a couple of comments, not for the committee but my own point of view.

One Dwelling Per Quarter-Quarter Rule: As it was explained to us by Brown and Henze, I felt that provided a lot of opportunities for rural housing, for acreages. Now will that conflict with

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certain individuals on a limited basis, it will. We talked about if (Henze) was turning down these housing requests one after another, one every week, one every day, then maybe we need to bring it back to the table and discuss it in more detail. After the numbers were explained, I felt there was substantial opportunity for rural acreages in Union County.

CAFOs: That's a tough issue. I think we all recognized the fact there needed to be separation between CAFOs and houses. The one thing that really affected us was at three-fourths of a mile, it was very difficult for farmers to develop that type of operation. We felt there needed to be some way for them to come to you as a zoning commission and prove they could do this business in a way that would not harm a majority of the people. So, we came up with the SDOFT. After talking with Minnehaha County, we thought this might give you and the farmers an opportunity to say I'm not within the setback but I'd like to have a chance to show you this would work. I don't think any of us intended it to go less than one-half mile. It was a way to give some landowners an opportunity to use their land.

Stan Foltz, rural Akron:

I was on the Zoning Revision Committee.

One Dwelling Per Quarter-Quarter: The fact that we don't have a lot of people coming in and getting turned down, basically, tells me the landowners themselves were doing a very good job at keeping residences in the country where they needed them and where they wanted them because there's ground where it can be developed and there's ground that can't be developed as far as residential.

CAFOs: I'm still highly offended every time when we hear about setbacks. It's not the residential or city people who are living in the country that have great concerns over this, and when you develop your final rules and regulations, keep that in mind. We can't pit city against country here because that's not what it's all about here. Please keep that in mind.

Carolyn Harkness, rural Elk Point:

I only have questions:

1) When do we get answers to our questions?

2) Why is there such a hurry with this document. There are so many people who didn't have an opportunity to read the new proposed handbook. I think it should have been published, explanations like Henze given before so people like us who didn't have the opportunity to get a book could read about the changes. This is not 99 percent of the current book. There are 90 pages of changes and additions. It takes time to go through it, to read it, to study it, to find out what is going on in there. Some of these things in here I've never heard of before so if it was a problem, why wasn't the (Zoning Revision Committee) asked to work on it because they were trying to work with the people in the community.

3) On Mr. Wennblom's statement, maybe I'm wrong but he commented on established junkyards. Isn't an established junkyard a business? On how many farms and acreages, you have your grandfather's old car sitting there or maybe you collect old cars? I

think maybe you'd better be careful there.

4) On the cover it says you guys were involved in giving direction so I'm assuming you know what's exactly in it, you've read it all and studied it. The last time I can remember a surprise with a new word in the handbook was the word "refinery." Now I see words like "adult arcade," "adult cabaret," "adult oriented business," "adult services," "adult theater." Have you read what the definitions of these things are? Is this now what you want to do to our county?

5) Why is a Large CAFO setback at three-fourths of a mile and a refinery's is only at one-eighth of a mile? I think that's a little bit out of line.

6) This is not Minnehaha County. Please come up with something that fits our rural county and please listen this time to us.

Lisa Welch, rural Akron:

On Page 62 in the Aquifer Protection Overlay District, it states that the Planning & Zoning Board and DENR should be alerted of spills or leaks within 24 hours in case of contaminated water. I'd like to think it should be more of an immediate response. A lot can happen within 24 hours like if you take a shower in rotten water that's been contaminated, all of a sudden, you have a skin disease. You should be alerted right away so you can let the public know right away and prevent some of those things.

Since the Zoning Revision Committee took seven months to put this all together, I think you need to take more than five days to decide on its fate.

Carolyn Hanson, rural Elk Point:

You wouldn't furnish us with a hard copy or any of the maps to study the changes. Ninety new or changed pages are just too much for anyone to fully comment on tonight. I'm requesting 30 to 45 days extension for summary of changes and reasons why. We need to fully understand and comment on the changes so please do let us have more than five days. That isn't fair. No one can absorb all of this in five days and understand it. We all have busy schedules and nobody is able to sit down and study this day after day, and it takes more than one day or five days.

Ed Cable, rural Elk Point:

I think it's important that you as Planning & Zoning and the Commissioners should have discussed these in open session, prior to taking the action you've taken on the hearing. We would also suggest that perhaps a hearing shouldn't have been scheduled until you had the final draft in your hands, had discussed it, and like other jurisdictions, for example such as Woodbury County (Iowa) and Minnehaha County (South Dakota), given a display of the summaries, published those summaries and then had some time for open discussion meetings before a hearing was scheduled.

1) We think this is very similar to another county but we think our needs in Union County are significantly different from that other county.

2) The associated maps and especially the aquifer map should have been distributed; it should have also been published in the paper; and things like this not being able to apply nitrogen which

now very conveniently tonight you've eliminated in Zone B, that should have, if that really was not the intention, not been included at all in the first draft.

3) Reference to 2005 Comprehensive Plan, which we think is no longer accurate and certainly should be modified and published appropriately if it's going to be part of this document.

4) Section 102 indicates that one of the purposes of this document is to "lessen congestion of our streets." I don't think anyone in this room thinks we have too much of a problem with congestion on our streets. Certainly no reason to create an entirely new zoning document or to bring up one that was soundly defeated in a referral election.

4) Section 201: Official Zoning Map of Union County is not attached. It should also be attached and furnished for our review.

5) Article 5: 501B: Refers to a specific dated map, which should also be made available. All of these general references can be conveniently referred to a document which some how changes or doesn't exist any more, and that's not how other counties deal with these issues.

6) Section 901.11 E and J also pertains to Section 1102.17 E and J: Air contamination. These two separate paragraphs would appear to not be coordinated and would offer conflicts and misinterpretations, and we think that should be significantly cleaned up as they are especially important sections.

7) Sections 1102.6 and 1103.12. Please explain how 1102.6 makes sense when it's compared to 1103.12. Again, trying to read through these documents when you haven't discussed them, when you haven't indicated what your interpretation is, makes it difficult for us to properly comment.

8) Section 1205.3: Why is the reversion clause deleted when rezoning or special planned development is authorized – why is that reversion clause now automatically deleted? That's a very important paragraph. We need to have some discussion on this as to what your intent is and why was that change made.

9) Section 1302 refers to a map, which should also be dated and attached. There are numerous actions like that.

10) Article 13: Zone A and Zone B. While the idea of an aquifer overlay is probably a good idea, people need to be aware of what intentions you have and what effect it has on their operations today.

11) Article 14 Prohibition for public utility wind conversion systems. We need to understand what the choices are, how we should be encouraging alternative energy, and what, if anything, the current transmission system in the county will offer, can afford, will have the ability to provide for tie-ins to private and our semi-public systems that may eventually become public utilities.

12) Article 1407: Why is there a different separation distance on CAFOs between public and private wells? Why is one farmer's ability to get clean water and maintain it less important than someone else's or a larger group and vice versa?

13) Article 1407: Waste application process: Is this not required by state law presently? Why would we not want to get into a discussion of that before you take action that the farmers do not understand?

14) Section 1407F: The odor footprint tool is not yet a proven science. You need to understand

what rules you're going to set up in terms if you adopt it as presently drafted, how you will implement that, and which technician or consultant you will use so that the background and analysis is consistent from one project to another.

15) Definitions. We have found it interesting that "plat," "tract," and "parcel" are no longer listed in your definition section. We understand that you have renamed what are commonly termed uses in the rewording but yet those old three terms are going to be referred to many, many times on documents that now exist. They should be defined and should be referred to throughout your ordinance.

We also see there is no definition of building permit. While we understand this is a zoning document, perhaps there should be a correlation between a definition given in this document and the actions of your administrator.

16) We are very concerned that the administrative actions outlined in the new articles or relocated articles make it very difficult for someone to appeal a decision of your commission if you were acting as the Board of Adjustment.

17) Article 13, according to our attorneys is not in accordance with South Dakota law. You can try to give Henze all the power you want but we don't believe South Dakota Codified Law allows that to happen.

18) We think all of this should allow for significantly more time. Our attorneys have not been able to complete their review of the entire document, and we would again request 30 to 60 days for that to happen. Simply saying that that can go on while you continue to process it and forward it up to the Commission is not an appropriate answer in our opinion.

Retha Donnelly of Elk Point:

I don't know any of you guys, and I'd like to know your names.

Ed Nydan of Vermillion, owns property in Spink:

Not every rule needs a heavy hand of government. We should have some kind of mediation between parties who are in disagreement and not everything needs to go to a code. If you write your code too restrictive, that's the rules everybody is trying to go by, and it makes it really tough, especially if you're the person being dumped on.

Public Hearing Conclusion

When no one else came to the podium, Board President Bob James began speaking but Donnelly repeated her request to know who the members of the Planning & Zoning Board were. Board Member Tom Smith started the introductions by saying his name and where he lived, and the rest followed. Board Member Dan Fullenkamp was absent.

Board Member Dale Neely made a motion to recess the meeting until next Monday, June 21, saying "I'd like time to review this and go over the comments." Smith seconded the motion.

"Is one week long enough taking into considerations all the requests we've had tonight?" asked James.

Finally after a period of silence, Neely responded, "We could certainly discuss it further at that point."

The vote was 3-1 with James dissenting. The board decided to recess until 4 p.m. July 21, and Henze told the public it would be a public meeting where people can voice opinions again.