

COMMISSIONERS PROCEEDINGS

Madison, Nebraska

September 17, 2019

The Board of County Commissioners of Madison County, Nebraska met in regular session at 9:30 A.M.

Advance notice of meeting was published in the Thursday, September 12, 2019 edition of The Norfolk Daily News and posted on the Madison County website. A copy of said notice was provided to each Board member. An affidavit of acknowledgment of receipt of notice of meeting as published was executed.

Following a moment of Silence and the Pledge of Allegiance to the flag of the United States of America, Chairman Ron Schmidt called the meeting to order and notified the public of the copy of the Open Meetings Act posted in the meeting room.

Present: Commissioners Christian Ohl, Ron Schmidt, and Troy Uhlir, and County Clerk Anne Pruss. County Highway Superintendent Richard Johnson was present from 9:40 A.M. until 11:17 A.M. Norfolk Daily News reporter Jerry Guenther and US92 reporter Cody Ronnfeldt were present until 11:17 A.M.

Commissioner Uhlir read the following consent agenda items into the record:

- 1) Approval of minutes of September 4, 2019 meeting
- 2) Discontinue overtime payment for staff members in Zoning Department effective October 1, 2019
- 3) Authorization to advertise for bids for a patch truck for District #2 road department
- 4) Authorization to advertise for bids for repair of Bridge No. C-0084-01030 on Grandview Drive across Elkhorn River
- 5) Approval of purchase of FL16 Warren dump box in the amount of \$26,850.00 from R.D.O. Truck Center
- 6) Approval of agreement with Mainelli Wagner and Associates, Inc. for routine biannual bridge inspections
- 7) Award of contract including Alternate No. 1 for the total amount of \$1,558,118.55 to the low bidder, A & R Construction Company, Project No. C-59-864, Benjamin Avenue Paving

Motion was made by Ohl and seconded by Uhlir to approve the consent agenda. Roll call vote: Ayes, Ohl, Schmidt, and Uhlir. Nays, none. Motion carried.

Commissioner Uhlir read the regular agenda items aloud. Motion was made by Uhlir and seconded by Ohl to approve the regular agenda. Roll call vote: Ayes, Ohl, Schmidt, and Uhlir. Nays, none. Motion carried.

Pursuant to published legal notice in the Tuesday, September 3, 2019 edition of the Norfolk Daily News, Chairman Schmidt opened a public hearing at 9:37 A.M. to receive comments regarding the application of Dale Frisch for a conditional use permit to operate a swine finishing unit on property located in Section 12-21-4, which is located at 53965 826th Road, Newman Grove. The applicant, Dale Frisch was present during the hearing.

Zoning Administrator Heather McWhorter reported that the applicant is requesting a permit for a 1,000 head swine facility in an Ag intensive zoning district. The required setback is 1320 feet from a residence and no residences exist within the setback. The applicant is consistent with the Madison County Comprehensive Plan. The score for this facility on the Madison County Livestock Feeding Operation Siting Matrix was 380 points, and 350 points. The conditional use permit for this operation of up to 1,000 head of swine over 55 pounds and will be unlimited amount of time subject to successfully passing an annual review. She stated that information minors Calvin Frisch and she will not be repeating the information. She said that the application received unanimous approval from the Planning Commission.

The applicant, Dale Frisch, testified that he along with Calvin Frisch are building identical barns and will assist each other with these facilities. Mr. Frisch stated that the decision go into this type of operation to diversify his operation. Commission Uhlir asked both Dale and Calvin what they are currently do and Dale stated that he currently farms and has a 400 head nurse on the same site and currently is employed by an electrician. Commissioner Uhlir asked if the current 400 head will move into this new facility and Mr. Frisch stated that these heads are being custom feed for Niewohner. The head will be coming from the same unit but 400 head will move into a different barn. Mr. Frisch advised the swine will be two or three weeks old and weigh 10 to 15 pounds each. Commissioner Schmidt asked how Mr. Frisch was going to depose of the manure. Mr. Frisch advised that this will be knifed into the ground and for 1000 head barn there will be approximately 80 acres of nitrogen. Dale stated that the two farms are 1/2 mile away from each other and in December I will be moving to a house on this property.

Calvin Frisch expressed support for the conditional use permit application.

No one spoke in opposition to the application.

Chairman Schmidt closed the hearing at 9:42 A.M.

After discussion, the following resolution was introduced:

RESOLUTION #2019-48

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR CERTAIN LAND LOCATED IN THE COUNTY OF MADISON, NEBRASKA UNDER AUTHORITY GRANTED BY THE MADISON COUNTY ZONING AND SUBDIVISION RESOLUTION AND LEGISLATIVE BILL 186 (1978)

WHEREAS, a recommendation has been received from the Madison County Joint Planning Commission and

WHEREAS, notice of public hearing was published in the September 3, 2019 edition of The Norfolk Daily News, and a public hearing was held by law.

WHEREAS, the Madison County Joint Planning Commission and the Madison County Board of Commissioners have

established the following Statement of Finding of Facts:

1. The application is consistent with the Madison County Comprehensive Plan.
2. The application is consistent with the Madison County Zoning and Subdivision Regulations.
3. The score for this facility on the Madison County Livestock Feeding Operation Siting Matrix was 380 points, and 350 points are needed to pass.
4. The feedlot setback is 1,320 ft. from the nearest dwelling. No dwellings are located within the setback.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Madison County, Nebraska, hereby grants a Conditional Use Permit to Dale Frisch to operate a swine finishing unit for 1000 head as provided under Article 4, Section 402 "AG1" Intensive Agriculture District, Madison County 2003 Zoning and Subdivision Regulations on the following described land:

SE ¼ SE ¼ of Section 12, Township 21 North, Range 4 West of the 6th P.M., Madison County,

This Conditional Use Permit shall be subject to the following conditions in addition to those established with the Madison County Zoning and Subdivision regulations:

1. This is a Medium Animal Feeding Operation Conditional Use Permit for an operation of up to 1000 head of swine over 55 pounds.
2. This conditional use permit shall be for an unlimited amount of time subject to successfully passing an annual review of the Madison County Livestock Feeding Operation Siting Matrix, implementing the additional conditions of this permit, and will become effective with the adoption of this resolution.
3. This permit is subject to the Madison County Zoning and Subdivision Regulations, the laws of Nebraska, the U.S. Government and Nebraska Department of Environmental Quality; the AFO permitted here shall be operated to comply with all of these entities. The Conditional Use Permit will be invalid if a permit is not obtained from NDEQ within one year.
4. Any new owner/operator of this operation must give notice to the Madison County Zoning Administrator 30 days prior to the closing date of the sale.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that upon taking effect of this Resolution, the above Conditional Use Permit shall be entered and shown on the Official Zoning Map of Madison County, previously adopted by reference, and said zoning map is hereby reincorporated as a part of the Madison County, Nebraska Zoning and Subdivision Resolution as amended.

Motion was made by Ohl and seconded by Uhlir to approve the application of Dale Frisch for a Conditional Use Permit to operate a swine finishing unit on property located in Section 12-21-4. Roll call vote: Ayes, Ohl, Schmidt, Uhlir. Nays, none. Motion carried.

Pursuant to published legal notice in the Tuesday, September 3, 2019 edition of the Norfolk Daily News, Chairman Schmidt opened a public hearing at 9:43 A.M. to receive comments regarding the application of Calvin Frisch for a conditional use permit to operate a swine finishing unit on property located in Section 19-21-3, which is located at 54068 825th Road, Newman Grove. The applicant, Calvin Frisch was present during the hearing.

Zoning Administrator Heather McWhorter reported that the applicant is requesting a permit for a 1,000 head swine facility in an Ag intensive zoning district. The required setback is 1320 feet from a residence and no residences exist within the setback. The applicant is consistent with the Madison County Comprehensive Plan. The score for this facility on the Madison County Livestock Feeding Operation Siting Matrix was 380 points, and 350 points. The conditional use permit for this operation of up to 1,000 head of swine over 55 pounds and will be unlimited amount of time subject to successfully passing an annual review. Ms. McWhorter stated the only difference from Dale Frisch's application is that there is a house within 1200 feet of the facility that is within the 1320 setback but there is a signed waiver. She stated that information minors each Dale Frisch. She said that the application received unanimous approval from the Planning Commission.

Dale Frisch and Calvin Frisch expressed support for the conditional use permit application.

No one spoke in opposition to the application.

Chairman Schmidt closed the hearing at 9:45 A.M.

After discussion, the following resolution was introduced:

RESOLUTION #2019-49

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR CERTAIN LAND LOCATED IN THE COUNTY OF MADISON, NEBRASKA UNDER AUTHORITY GRANTED BY THE MADISON COUNTY ZONING AND SUBDIVISION RESOLUTION AND LEGISLATIVE BILL 186 (1978)

WHEREAS, a recommendation has been received from the Madison County Joint Planning Commission and

WHEREAS, notice of public hearing was published in the September 3, 2019 edition of The Norfolk Daily News, and a public hearing was held by law.

WHEREAS, the Madison County Joint Planning Commission and the Madison County Board of Commissioners have established the following Statement of Finding of Facts:

1. The application is consistent with the Madison County Comprehensive Plan.
2. The application is consistent with the Madison County Zoning and Subdivision Regulations.
3. The score for this facility on the Madison County Livestock Feeding Operation Siting Matrix was 380 points, and 350 points are needed to pass.
4. The feedlot setback is 1,320 ft. from the nearest dwelling. There is one home within the setback however a signed waiver

has been provided.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Madison County, Nebraska, hereby grants a Conditional Use Permit to Calvin Frisch to operate a swine finishing unit for 1000 head as provided under Article 4, Section 402 "AG1" Intensive Agriculture District, Madison County 2003 Zoning and Subdivision Regulations on the following described land:

NW ¼ NW ¼ of Section 19, Township 21 North, Range 3 West of the 6th P.M., Madison County

This Conditional Use Permit shall be subject to the following conditions in addition to those established with the Madison County Zoning and Subdivision regulations:

1. This is a Medium Animal Feeding Operation Conditional Use Permit for an operation of up to 1000 head of swine over 55 pounds.
2. This conditional use permit shall be for an unlimited amount of time subject to successfully passing an annual review of the Madison County Livestock Feeding Operation Siting Matrix, implementing the additional conditions of this permit, and will become effective with the adoption of this resolution.
3. This permit is subject to the Madison County Zoning and Subdivision Regulations, the laws of Nebraska, the U.S. Government and Nebraska Department of Environmental Quality; the AFO permitted here shall be operated to comply with all of these entities. The Conditional Use Permit will be invalid if a permit is not obtained from NDEQ within one year.
4. Any new owner/operator of this operation must give notice to the Madison County Zoning Administrator 30 days prior to the closing date of the sale.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that upon taking effect of this Resolution, the above Conditional Use Permit shall be entered and shown on the Official Zoning Map of Madison County, previously adopted by reference, and said zoning map is hereby reincorporated as a part of the Madison County, Nebraska Zoning and Subdivision Resolution as amended.

Motion was made by Ohl and seconded by Uhlir to approve the application of Calvin Frisch for a Conditional Use Permit to operate a swine finishing unit on property located in Section 19-21-3. Roll call vote: Ayes, Ohl, Schmidt, Uhlir. Nays, none. Motion carried.

Motion was made Ohl and seconded by Schmidt to remove Chairman Schmidt from the board for the application of a conditional use permit for Scott Schmidt due to a conflict of interest. Roll call vote: Ayes, Ohl, Schmidt,

Uhlir. Nays, none. Motion carried.

Pursuant to published legal notice in the Tuesday, September 3, 2019 edition of the Norfolk Daily News, Chairman Schmidt opened a public hearing at 9:48 A.M. to receive comments regarding the application of Scott Schmidt Poultry for a conditional use permit to operate a poultry feeding operation on property located in Section 27-22-2, which is located at 829th Road, Madison. The applicant, Scott Schmit was not present during the hearing.

Zoning Administrator Heather McWhorter reported that the applicant is requesting a permit for a four-barn contract broiler facility covering approximately 5 acres. The facility will have a capacity of 190,000 broiler chickens. The facility will be totally housed under roof and will not include constructed waste storage structures. The litter from the facility will be composed in the production houses between production cycles and either spread out from continued use as litter or removed and land applied as crop nutrients. Applicant has 1,369 acres available for litter application. Property is zoned Ag Intensive with a matrix score of 380 points, and points were needed to pass. The application is consistent with the Madison County Comprehensive plan and is consistent with the Madison County Zoning and Subdivision Regulations. The feeding operation setback is 1,980 from the nearest dwelling. There are two homes located approximately within the setback from the proposed facility. Mr. Schmidt has provided a signed waiver from the two owners. She said that the application received unanimous approval from the Planning Commission.

Trevor Enstrom with Nutrient Advisors expressed support for the conditional use permit application. He stated that his company has been working with the Schmidt family to write the nutrient management plan and the state operating permit. Also, NDE has visited the site and determined that no permit is required but due to Lincoln Premium poultry requirements all growers are required to receive a state operating permit.

Willow Holoubek with Lincoln Premium Poultry expressed support for the permit application. Ms. Holoubek stated that Lincoln Premium Poultry will work with Madison County on routes taken but the trucks that will haul feed and take the poultry to be processed.

Ron Schmidt expressed support for the conditional use permit application. Commissioner Ohl asked if there were any other counties that have enacted any agreements or requirements on the growers. Ms. Holoubek advised that Lincoln Premium Poultry has made the logistics and live managers available to the county or road departments but no written agreements have been written but it is very clear that we're willing to work with the county on routes to be taken. She continued to state that they don't allow trucks passing each other so if an alternative route is available to enter from one direction and leave from the other direction is the preferred method. Most of the transporting of these animals is done at night because the chickens need to be at the plant by 3:00 A.M. due to processing beginning at 5:00 A.M. County Clerk Anne Pruss asked if these properties are reviewed on an annual bases. Ms. Holoubek advised the Lincoln Premium Poultry has a biosecurity and environmental compliance person and all locations are audited third party for biosecurity, welfare, and environmental to insure that each site is kept up and will be visited on a semi-annual basis. Lincoln Premium Poultry will do a pre-audit with the growers to insure that everything is being done correctly so this will be done on an annual basis. Commissioner Uhlir asked how often these barns will turn over and Ms. Holoubek stated that they will turnover six times a year.

Commissioner Uhlir asked Ron Schmidt to clarify Resolution #2019-41 road closure. Mr. Schmidt advised that an agreement prepared by Jason Lammler with Brogan Gray, P.C. is complete and has been given to Mark Fitzgerald with Fitzgerald, Vetter, Temple, and Bartell Law Firm on behalf of the Klein Family. He stated that there are a few items that need to be changed and then given to the Klein and Kuchar families to sign the easement agreement.

Mr. Schmidt stated the County Highway Superintendent Dick Johnson advised that the county would like to come up to the gate with the maintainer, and then back around. Mr. Schmidt stated that the back around will be built on his property and that if a semi-truck would need to use the back-around they then can do so.

No one spoke in opposition to the application.

Chairman Schmidt closed the hearing at 10:04 A.M.

After discussion, the following resolution was introduced:

RESOLUTION #2019-50

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT FOR CERTAIN LAND LOCATED IN THE COUNTY OF MADISON, NEBRASKA UNDER AUTHORITY GRANTED BY THE MADISON COUNTY ZONING AND SUBDIVISION RESOLUTION AND LEGISLATIVE BILL 186 (1978)

WHEREAS, a recommendation has been received from the Madison County Joint Planning Commission and

WHEREAS, notice of public hearing was published in the September 3, 2019 edition of The Norfolk Daily News, and a public hearing was held by law.

WHEREAS, the Madison County Joint Planning Commission and the Madison County Board of Commissioners have established the following Statement of Finding of Facts:

1. The application is consistent with the Madison County Comprehensive Plan.
2. The application is consistent with the Madison County Zoning and Subdivision Regulations.
3. The score for this facility on the Madison County Livestock Feeding Operation Siting Matrix was 380 points, and 350 points are needed to pass.
4. The feeding operation setback is 1,980 ft. from the nearest dwelling. There are two homes located approximately within the setback from the proposed facility. They have provided a signed waiver of setback agreement.
5. The property is zoned AG1 Agriculture Intensive.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Madison County, Nebraska, hereby grant a Conditional Use Permit to Scott Schmidt Poultry for a Poultry Feeding Operation as provided under Article 4, Section 402 "AG1" Intensive Agriculture District, Madison County 2003 Zoning and Subdivision Regulations on the following described land:

**The N $\frac{1}{2}$ SW $\frac{1}{4}$ & SW $\frac{1}{4}$ SW $\frac{1}{4}$ & NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 22 North, Range 2 West of the 6th P.M.,
Madison County, Nebraska**

This Conditional Use Permit shall be subject to the following conditions in addition to those established with the Madison County Zoning and Subdivision regulations:

1. This is a Large Animal Feeding Operation Conditional Use Permit for an operation of up to 190,000 broiler chickens (1,520 HE).
2. This conditional use permit shall be for an unlimited amount of time subject to successfully passing an annual review of the Madison County Livestock Feeding Operation Siting Matrix, implementing the additional conditions of this permit, and will become effective with the adoption of this resolution.
3. This permit is subject to the Madison County Zoning and Subdivision Regulations, the laws of Nebraska, the U.S. Government and Nebraska Department of Environmental Quality; the AFO permitted here shall be operated to comply with all of these entities.
4. Any new owner/operator of this operation must give notice to the Madison County Zoning Administrator 30 days prior to the closing date of the sale.
5. A zoning permit must be obtained from the Zoning Office before construction of the barns begins.
6. A copy of the signed permit must be recorded with the County Register of Deeds office by applicant.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that upon taking effect of this Resolution, the above Conditional Use Permit shall be entered and shown on the Official Zoning Map of Madison County, previously adopted by reference, and said zoning map is hereby reincorporated as a part of the Madison County, Nebraska Zoning and Subdivision Resolution as amended.

Motion was made by Ohl and seconded by Uhlir to approve the application of Scott Schmidt for a Conditional Use Permit to a poultry feeding operation on property located in Section 27-22-2, which is located at 829th Road, Madison. Roll call vote: Ayes, Ohl, Uhlir. Nays, none. Abstained, Schmidt. Motion carried.

Motion was made Ohl and seconded by Schmidt to instate Chairman Schmidt to the board. Roll call vote: Ayes, Ohl, Uhlir. Nays, none. Abstained, Schmidt. Motion carried. Motion carried.

County Attorney Joe Smith spoke on the current litigation on prescription opiate. In the past the county has received letters from attorneys and no action was taken at the time. Mr. Smith suggested that one of the commissioners be appointed to assist him in looking at the different offers that have been presented. The commissioners were in agreement that Chairman Ron Schmidt assist Mr. Smith in this process.

Jerry Hernandez, Partner Specialist with the U.S. Department of Commerce, U.S. Census Bureau presented information and the importance for everyone be counted for the upcoming 2020 Census Count. Mr. Hernandez stated that the census is about trying to count every person at the right place at the right time and was mandated by law in the U.S. Constitution since 1790. The census is also about representation every 10 years, and the results of the census are used to reapportion the line of the House of Representatives, about redistricting and changing the boundary lines as the state legislative district so it can adapt to the population shifts. The federal government is going to disperse 60 to 75 million dollars across this nation and this is a way the government determines this. Mr. Hernandez advised that the focus in this area is due to the low response scores and that the population that's using the most of the federal funds are the low income and immigrants.

Mr. Hernandez advised that they are working with local, county, and state governments and establishing a complete count committee. This committee will be in charge of promoting the U.S. Census throughout the community. He continued to ask "why isn't the U.S. Census responsible for this?" because it is the tax payers dollars that are paying my wages and we need to be good stewards of this money. He stated that the U.S. Census does not have a budget to promote or market but you will see some commercials. He advised that there is a fear or stigma with this and regards to this it is our job is to remove that fear so that a higher response score can be obtained; and, so that these areas can receive the federal dollars that are needed to your community.

Mr. Hernandez explained that the process is to get an accurate head count and most immigrants might be hesitant in answering the census so I explain to them. I might ask them if they currently using the roads because this uses federal dollars. Do you have kids and are they in school do they receive free or reduced meals? He will respond that this is how the money is received it is by the stats obtained from the census.

Mr. Hernandez asked Commissioner Ohl if the county could appoint a person to be on the complete count committee and this person should be someone from the community. Currently the City of Norfolk, Chamber of Commerce, Norfolk Fire Department, and Northeast Community College will be involved. At this time a chairperson hasn't been appointed to the committee. County Clerk Anne Pruss suggested that the commissioners draft an application

and have it be submitted to the county and then the commissioners could then appoint someone. Maybe the media and the county's website could assist in promoting this appointment.