

Open Work Session
Zoning of Certain Large Agricultural Storage Tanks
June 15, 2021

Ms. Lori Carter, Director of Planning, Zoning and Community Development, and Mr. Paul Wilber, County Attorney, came before Council. Mr. Wilber explained, Mr. Clark Meadows, Zoning Director, is unable to be here today, so he has Mr. Meadows' notes.

Mr. Wilber said the issue is that the County Council has had a moratorium for at least a year now, so Mr. Meadows did some investigating into open top storage tanks and how to deal with them. He said he thinks Mr. Meadows focused on the issue of notice to neighbors and size of the tanks, and Mr. Meadows is suggesting modifying the zoning code. He said they will continue to be permitted uses in Industrial 1 and Industrial 2, and in Agricultural and Village Conservation when utilized for agricultural products, byproducts, fertilizers and soil amendments, which they know is a key word in this discussion. He said a capacity exceeding 250,000 would be required to have a special exception, so that would require notification to the neighbors and a hearing, and the Board of Appeals would be able to set conditions. He said he thinks that is the key thought Mr. Meadows came up with from his investigation, but also a minimum setback of 200 feet from other property in all zoning districts and a minimum lot size of five acres in any zoning district. He concluded, those were proposals Mr. Meadows asked him to present.

Mr. Holloway said the tank they have issues with is 3 million gallons, so how did Mr. Meadows come up with 250,000? Mr. Wilber responded, Mr. Meadows discussed it with the agricultural community and 250,000 is derived from those discussions. Ms. Carter added, 250,000 equates to 26,855 bushels.

Mr. Cannon said he likes this a lot and is glad to see them taking these measures. He then asked if there will be any stipulations as to how the product may or may not be used, such as would the product have to be used on that farmer's land, or could the product be sold somewhere else, and would that change whether it is industrial or agricultural use. Mr. Wilber responded, obviously if someone is conducting a commercial operation in an agricultural area, that is going to be an issue. Mr. Cannon said Zoning always said they just worry about the structure of the tank, but the determination of how the product is used sounds like it will be coming into play now, to which Ms. Carter responded, that is correct.

Mr. Cannon asked how traffic restrictions will come into play, to which Ms. Carter responded, they do not legislative or regulate traffic, so that is an area they would not be looking at per se. Mr. Cannon suggested maybe they could do this in concert with whoever regulates traffic because, if Zoning approves something and the next thing they know there are 300 trucks moving in and out, it would not be a good idea to approve it. Ms. Carter said she thinks that is where a special exception comes in, and having it come before the Board will help with that because that will give the citizens an opportunity to be able to say what their concerns are. Mr. Wilber said the smaller the tank, there should be less traffic in and out, to which Mr. Cannon responded, that is a good point, but he just wants to make sure that as a County they are paying attention to the ancillary impacts that could impact the community.

Mr. Cannon asked if there would be any limit on the number of tanks per acre, to which Ms. Carter responded, they can add that, and that is why they are here, to see if there are other things the Council wants to see in this. Mr. McCain said he thinks that is definitely something that should be added.

Mr. McCain said this is certainly going in the right direction, but he wants to circle back to Mr. Cannon's question about whether how the tank is being used will come into play. Ms. Carter responded, if it is being used for ag activity then of course it would not, but there are other examples where it would. Mr. McCain said DAF itself is a good example of whether it is industrial or agricultural, so what went in that tank is a major issue, and size is a way to address that. Ms. Carter said she thinks they will look at what the use is to make sure it follows the regulations as stated as far as ag use and the actual activity.

Mr. Holloway said they referenced open top tanks, but someone would not put corn in an open top tank, and could not put gasoline in an open top tank, so what is the purpose of having an open top tank for sludge, to which Mr. McCain responded, anaerobic digestion. Mr. Holloway asked if that could be done with fans or pumps because that might help alleviate some of the issues they have with this tank. He explained, corn and soybeans are ventilated with fans and pumps to dry them, so he is just throwing that out there. He clarified, he does not know if there is a real reason why it has to be an open top.

Mr. Wilber said, from what he gathers from Mr. Meadows, closed top tanks have not been an issue and they have dealt with whatever issues are generated by the product in the tank, but where this is an open top tank, obviously the smell is an issue. Mr. Holloway said, the way this is written they could put a 3 million gallon closed top tank without going to a special exception and ventilate it with fans and cause just as much of a problem, to which Mr. Wilber responded, conceivably. He clarified, they are not engineers, so they do not know what could be done to deal with it.

Mr. Hastings said the issue is there has not been a court ruling to say that this particular product, in this case DAF, is agricultural versus commercial or waste. He said they do not have anything to point to, so at this point in time they have to assume it has an agricultural use, and that is why they are going forward.

Mrs. Acle said one thing to consider when coming up with these recommendations is looking at the process for appeals if citizens are not in agreement with the decision made by the Planning and Zoning Board and how they will be notified of the process to appeal. She then asked if that is going to stay the same? She said she knows it is currently 30 days, but if citizens do not know what the process is, how do they know, to which Mr. Wilber responded, the process time limits are in the code and the appeal from the Board of Appeals on a special exception is to the Circuit Court. Mrs. Acle said she looked on the website and could not find the process or timeline on how to appeal something. Mr. Wilber said he will see if he can provide Mrs. Acle with that, to which Mrs. Acle responded, she just wants to make it public knowledge so if someone wants to do it, they will know how to.

Mrs. Acle said it is great that Mr. Meadows was able to speak with some of the citizens, but is there the possibility of putting together a taskforce, workgroup, or advisory committee, or maybe have townhalls to get input? Mr. Wilber said the sensitivity is that the moratorium has been going on for quite a while. He clarified, they can come back to that, but they have to go through the Planning Commission with a piece of Legislation and then bring it back to Council, so they want to incorporate Council's suggestions.

Mr. Holloway said a 200 foot setback is not a long distance. Mr. Wilber said he thinks Mr. Meadows looked at the CAFO setbacks, to which Mr. Holloway responded, this presents more of an issue. Ms. Carter said they are open to suggestions. Mr. Holloway suggested 400 or 600 feet, as he thinks 200 is a little short. Mr. Dodd said he agrees, but does not know what to recommend, so maybe they should look into that because it is difficult to compare a CAFO to a DAF tank because they are two different things.

Mrs. Acle said the Charter Review Committee has a place for citizens to post comments or questions, and she wonders if that is something they could do to have an open forum, but she is not sure how that works. Mrs. Hurley said she worked with IT to develop a comment section for the Charter Review Committee where citizens can submit their comments online. Ms. Carter asked if they are comments that aide in the process, or just comments, to which Mrs. Hurley responded, just general comments.

Mr. Cannon said he assumes this will be a Legislative Bill, to which Mr. Wilber responded, it will be a zoning code amendment. Mr. Cannon asked if there would be a Public Hearing with the Planning and Zoning Commission as well as the County Council, to which Mr. Wilber responded, yes. Mr. Cannon asked, so there would be two separate Public Hearings, to which Ms. Carter responded, correct.

Mr. Dodd said he has the feeling they are nowhere close to even moving ahead with a Legislative Bill because Council has a lot of questions, to which Mr. Cannon responded, he thinks Mr. Meadows has done pretty well and has given them a lot to work with.

Mr. Cannon asked, in relation to off-season uses of the current DAF tank, who monitors that as far as the County or State is concerned? He asked, if they are pulling from this tank during months they are not supposed to, or putting it into the soil, who supervises or oversees that, to which Ms. Carter responded, she is not sure she knows that answer, but they can definitely look into it. Mr. Cannon said it would be nice to know that in case someone has a problem and would like to know where to report it.

Mr. Dodd said the last time they met with Mr. Meadows he asked the same question of who goes out to the site to see if they are continuing with the same process after a permit has been given.

Mr. Holloway said, when they have a special exception, it is basically on a complaint basis. He said, if a neighbor complains, the Board of Zoning has folks explain why they have exceeded or not followed their special exception. He clarified, this, of course, is not under a special exception.

Mr. Hastings said he loves the idea of public comments, and the more the public can submit their own understanding, they can speed up the process. He said, in general, he loves the idea of having more comments on everything from this to solar sighting, etc. He then asked if there is a way they could get creative, such as if a tank of a particular size could not go within a certain distance of homes. He said he is sure that is probably not part of their current code, but what he is getting at is he thinks the future is probably not going with open DAF tanks, it is probably going with aerobic digestors filling up giant bags, such as what Perdue is doing. He said they do not want to continue to see in the future where a commercial and industrial waste is essentially run across rural roads and then put into a space where there is not the area to adequately manage it if something were to go wrong. He said they want to limit traffic for that, but the real issue is they are putting something that is a potential problem in a space that is rural and not able to handle the traffic and other kinds of concerns that go along with that, so he wonders if there is a way to further limit it by size within a certain amount of space or residential homes.

Mrs. Hurley said it was mentioned that Industrial 1 and Industrial 2 zoning would still be permitted the way it currently is, regardless of size, and if it is in an Ag District or Village Conservation it would require a special exception. She then asked Ms. Carter to explain, for the public's benefit, exactly what that process is from the time an application is submitted until the time it is approved.

Ms. Carter said, when an application walks in the door it is reviewed by the Zoning Administrator and, depending upon the actual process, he may have to talk to other staff. She said typically if an application

comes in the door it could be scheduled for the following meeting depending on the time of advertising. Mrs. Hurley asked where it is advertised, to which Ms. Carter responded, in the Daily Times, and a sign is posted on the property as well. She said, from the time the staff report is put together, if a citizen has a concern they can actually request a copy of that. She said, once the Public Hearing is scheduled, if they would like to attend, then they are able to attend. She said, from the time it is posted, if anybody has any type of concern they are more than welcome to contact the Department. Mrs. Hurley asked if the Board normally votes at the same time as the Public Hearing, to which Ms. Carter responded, it all depends. She explained, the majority of the time it does, but there may be times, just like the Council, where they may have to table something, but the majority of the time yes.

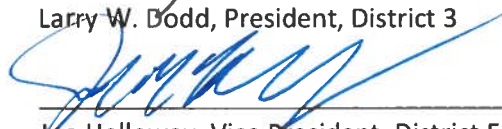
Mr. Wilber asked what Council sees as their path forward and if they want this to come back to Council after Mr. Meadows looks at it some more and takes something to the Planning Commission, to which Mr. Dodd responded, he thinks it would be best to come back for another Work Session.

Mr. Cannon suggested Mr. Wilber come back with a draft of the Bill, to which Mr. Wilber responded, he will do that. Ms. Carter clarified, the draft would be taking some of the suggestions Council made today, to which Mr. McCain responded, the draft would take into consideration the discussion they had today.

Mr. Hastings thanked Ms. Carter and Mr. Wilber and said this is really helpful and he thinks this is what a lot of constituents have wanted. There was no further discussion.



Larry W. Dodd, President, District 3



Joe Holloway, Vice President, District 5



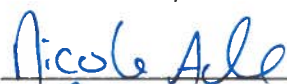
John T. Cannon, At-Large



William R. McCain, At-Large

absent

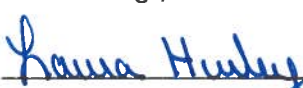
Ernest F. Davis, District 1



Nicole Acle, District 2



Josh Hastings, District 4



Laura Hurley, Council Administrator