

LINN COUNTY BOARD OF ADJUSTMENT

Jean Oxley Public Service Center
935 2nd Street SW, Cedar Rapids, Iowa

MINUTES

Wednesday, March 30, 2022

I. QUORUM DETERMINED:

The Linn County Board of Adjustment meeting was called to order at 6:30 p.m. by Chair, Brandy Meisheid. The meeting was held in the Jean Oxley Public Service Center, 935 2nd Street SW, Cedar Rapids, Iowa.

PRESENT: Brandy Meisheid, Chair 12/31/23
Sara Alden, Vice-Chair 12/31/25
Michael Martin 12/31/24
Brian Price 12/31/26

ABSENT: Ron Hoover 12/31/22

STAFF: Charlie Nichols, Director
Elena Wolford, Assistant County Attorney
Stephanie Lientz, Zoning Division Manager
Mike Tertinger, Senior Planner
Desire Irakoze, Planner I
Ryan Sampica, Recording Secretary

See attendance sheet for community sign in.

II. OLD BUSINESS

III. NEW BUSINESS

JAP22-0002 Appeal of Agricultural Exemption Determination Christopher Kelly, Owner

Alden recuses herself for reasons of husband is the contractor of the building for this case.

Charlie Nichols presented the staff report.

The applicant is appealing the decision to deny an agricultural exemption request for the construction of a 40' x 60' (2,400 sq. ft.) accessory structure and a 10kW roof-mounted solar installation on the subject parcel.

The subject parcel contains approximately 18.22 acres. The exemption determination form lists 12 acres of hay (all for commercial production) and 50 chickens (90% commercial egg production).

The accompanying staff report will show that:

1. The parcel is not a "farm unit" and therefore, by definition the proposed accessory structure cannot be considered a "farm building."

Staff recommends the Board of Adjustment uphold the determination of the Zoning Administrator to deny the Agricultural Exemption.

Price asked if the biggest contradiction for this is the historical use of the land. Nichols answered that reason is one of the factors that is reviewed as part of the determination.

Meisheid asked if they were allowed to have a building of this size on this property. Nichols confirmed that a building of this size is allowed in the AG zoning district if a single-family dwelling is also present. If the building is not to be used for agricultural purposes, building and zoning permits would be required.

Meisheid then clarified that this size of building is ok. Nichols said that for a parcel of this size in the AG zoning district this size building would be allowed.

Chris Kelly, 2277 31st St Marion, IA, presented his case for why he feels the decision of the Zoning Administrator should be reversed and an Agricultural Exemption should be granted for the proposed accessory structure.

Nichols made a closing statement, clarifying the definition of an agricultural or farm unit. He stated that if a building permit were granted for this building, the Planning & Development Department would also require a recorded agreement stating that a dwelling would be constructed within 6 months after construction was completed on the accessory structure.

Kelly made his closing statement and spoke to his understanding of the intent of the Iowa law to encourage farming.

Motion by Martin to reverse the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Appeal case JAP22-0002, and to reverse the case JAP22-0002, Second by Price.

Alden	Abstained
Hoover	Absent
Price	Aye
Martin	Aye
Meisheid	Aye

JC21-0015 Conditional Use Minor Modification - Utility Substation Expansion CIPCO, Owner

Price recused himself from case because he and his family farms land around this area.

Charlie Nichols presented the staff report.

The applicant is proposing to expand an existing substation on the 4.87-acre subject property to accommodate area upgrades. A substation has existed at this location since at least 1950, per aerial photography. The property is zoned AG (Agricultural). Utility substations are an allowed use in the AG zoning district with an approved Conditional Use Permit. A Conditional Use Permit (C-16-13) was granted by the Linn County Board of Adjustment in 2013 to allow for proposed upgrades and expansion of the substation equipment. An accompanying final plat case (F-09-13) was approved and recorded in 2013, enlarging the subject parcel from 0.8 acres to 4.87 acres to accommodate the proposed expansion.

Per Article IV, Section 107-73, § (6)(b), minor modifications to approved conditional uses are permissible with the approval of the Board of Adjustment after review by the Technical Review Committee. A modification is minor if it has no substantial impact on neighboring properties, the general public, or those intended to use the development.

The utility substation use is allowed as a Conditional Use in the AG (Agricultural) zoning district per Table 107-147-1 in Article VII of the UDC. It appears that the proposal could be able to meet all of the standards for **approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the UDC. However, it appears as though past work on the substation damaged subsurface drainage tile. The applicant must address the current drainage issues, as well as submit a plan to address any drainage issues that could occur as the result of the new construction.**

Staff recommends approval subject to the conditions of the staff report.

Alden asked what would happen if the bond expires and damage occurs to the tile lines after that. Nichols said it would be treated as a violation of the Conditional Use Permit.

Brian Fagan, Attorney for CIPCO, Simmons Perrine Moyer Bergman PLC, reviewed the communication between the two parties since the last Board of Adjustment meeting and reviewed his opinion of the obligation for CIPCO in this case.

William Sondermann, Manager of Engineering at CIPCO, reviewed the drainage tile concerns and described the proposed new drainage/tile lines.

Martin asked about the location of the other disputed tile line. Sondermann said at south of the CIPCO property, on land owned by another party.

Martin asked about connecting the new 8" tile to the 4" tile. Fagan said that the new 8" tile will connect to the current 4" tile, but the increasing the diameter of the 4" tile line south of the property is outside of the scope of this application. Fagan stated the relief structure that the Engineer, Don Ettler, has designed will address the concerns and the flow from the 8" pipe to the relief structure and then to the 4" pipe.

Sondermann reviewed the substation drainage, as well as conversations that have been had with Jon Gallagher with NRCS regarding the substation drainage.

Alden asked what efforts are going to be made to mitigate tile destruction during the construction process for the substation that will be constructed by Clenera as part of the Coggon Solar LLC project to the south of the CIPCO property. Fagan replied stating that is outside of the scope of the CIPCO proposal.

Meisheid asked if the applicant knows how Clenera will address construction and avoid damaging tile lines. Fagan said that will be addressed as part of the Coggon Solar LLC project, and that would be handled through the rezoning case review process for that separate solar project.

Alden asked about the cost estimate and the gap of \$62,000 in one estimate but now an estimate of \$18,000. Fagan said that based on their research the contractor overpriced the estimate due to their availability.

Alden asked to have the obligations of Clenera confirmed. Nichols reviewed the conditions of the Coggon Solar LLC rezoning case.

Marty Robinson, 2005 Lookout Dr, Colorado, spoke in opposition to the proposed substation expansion.

Laura Robinson, 2094 Linn Delaware Rd, spoke in opposition to the proposed substation expansion, and discussed her opinion of 2013 substation expansion.

Tom Robinson, 2094 Linn Delaware Rd, asked general questions of CIPCO regarding the land and their construction plans.

Paula Robinson, 1127 Linn Delaware Rd, spoke in opposition to the proposed substation expansion.

Greg Geerdes, attorney for the Robinson family, 102 S Clinton St, Iowa City, IA, reviewed the email chain between himself and Brian Fagan, the attorney for CIPCO.

Nichols made a closing statement and reviewed the conditions of the 2013 Conditional Use Permit. He stated that CIPCO is not in violation of any conditions that were applied to that case. He also stated that drainage issues are typically handled in civil court and are not addressed or enforced by County. Nichols also said that the Board can add more conditions to this Conditional Use Permit modification.

Alden summarized what Nichols said for clarification, and then reviewed the Board's option to address violations of conditions applied to this Conditional Use Permit, if it is approved.

Fagan reviewed the communication between himself and the Robinson's lawyer regarding the drainage tile issues.

Meisheid asked about the proposed vegetative screening. Sondermann said some of the current vegetative screening will be removed and some will remain and showed the proposed screening on a map of the property.

Alden asked about the bond duration. Nichols said it is currently written to last for one year, expiring in October 2023.

Alden asked for more information about how the bond fund would work. Nichols said that it's like a budget, money is taken over time until it's depleted.

Alden asked Fagan about extending the timeframe of the bond to 10 years and making it a maintained bond amount or setting a cap. Fagan conferred with his client, and stated that CIPCO is agreeable to change the bond to \$150,000 to extend for 10 years.

Alden asked if County would hold the bond. Nichols said the County would hold proof of the bond, and would be listed on the bond, allowing the County to draw on it.

Martin asked about a mechanism to enforce the monitoring and maintenance of the drainage tile. He asked about adding a condition on to have an independent contractor for each party review the status of the drainage tile and provide a report to the County/Board. Nichols said yes, that could be added.

During Board deliberations the following conditions were added to the Staff Report:

- The applicant shall ensure that the bond amount is maintained at \$150,000 over the 10-year life of the bond, which will expire on 4/1/2032;
- The applicant shall develop a map showing the exact location of drainage tile on the subject property, and this map will be submitted to Linn County Planning & Development;
- County staff shall perform a site visit and review of case conditions by August 1, 2022, then twice a year for the life of the bond (first review/visit by May 15, second review/visit by October 1); and
- If there is a disagreement between the applicant and adjoining properties as to the condition of the drainage tile and whether or not issues are persisting, each party (applicant and neighbor) will be responsible for hiring an independent contractor/engineer to assess the condition and create a report with their findings.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report, as well as the additional conditions added to the staff report and Decision & Order by the Board during deliberations for Conditional Use Minor Modification case JC21-0015 and to approve case JC21-0015 , Second by Meisheid .

Martin	Aye	
Hoover		Absent
Alden	Aye	
Meisheid	Aye	
Price	Abstained	

IV. OTHER BUSINESS

V. APPROVAL OF MINUTES

The minutes of February 23, 2022 Board of Adjustment meeting were approved as submitted.

VI. ADJOURNMENT

The meeting was adjourned at 9:03 p.m.

Respectfully submitted,

Sara Alden, Vice-Chair

Ryan Sampica, Recording Secretary