

**DALLAS COUNTY  
PLANNING & ZONING COMMISSION MINUTES**

The Dallas County Planning and Zoning Commission was called to order on **Tuesday, April 16, 2019 at 5:00 P.M., in the Dallas County Board Conference Room at 902 Court Street in Adel, Iowa**, by chairman Craig Walter. Vice Chair Richard Beechum, and members John Brummett, Sherry James, and Michael Hegarty were present. Gail Smith arrived at 5:02pm. Murray McConnell, Director; Samuel Larson, Senior Planner; and Elizabeth Kilson, Office Manager, were also in attendance.

C. Walter welcomed two new members, Sherry James and Michael Hegarty.

**Approve Agenda:**

**Motion by R. Beechum to approve agenda as presented. Seconded by J. Brummett. Ayes unanimous. Motion carried.**

**Approve Minutes of the last meeting of October 16<sup>th</sup> 2018:**

**Motion by R. Beechum to approve the minutes of the last meeting of October 16<sup>th</sup>, 2018 as written. Seconded by J. Brummett. Ayes unanimous. Motion carried.**

**Old Business:** (None)

**New Business**

**Item 1: A petition to consider approval of a Conditional Use Permit to operate an agricultural equipment repair, modification, and sale business (Porter's Ag Solutions) on Parcel # 1313100004, in the W1/2 of the NW1/4 Section 13, T78N, R29W (Union Township), 33224 H Ave, zoned A-1 (Agricultural) for Bryan Porter (Jamie Bergkamp).**

**Petitioner**

Jamie Bergkamp introduced himself as the agent for Bryan Porter. Explained that he owns approximately 20 acres, zoned A-1 off of H Ave. The property used to be owned by Bayer Crop Science. Mr. Porter began leasing the property in 2016 and has used it as a business for repairing and selling agricultural equipment. B. Porter purchased the property in 2019. Mr. Porter's opinion is that this use keeps with the agricultural area. They are asking for positive recommendation so can continue servicing agricultural equipment. J. Bergkamp went on to say that there has been a slight change with the site plan provided. He showed the commission that the business is still conducted in the buildings and marked off area, but the septic system cannot be where it is labeled on the site plan, as it cannot be driven upon. They will move it beyond the scope of the marked out work area to prevent any truck traffic from driving on it and to keep it outside of the minimum distance from a well that is currently near one of the buildings. J. Bergkamp referenced the conversations that they've had on behalf of Mr. Porter and what the options for continuing the business would be.

C. Walter asked for public comment. No one spoke.

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**Comments from Staff**

S. Larson advised the commission that the use first came to the office's attention when in the summer of 2018, the then property owner and Mr. Porter came into the office to see if the use would be allowed. The office stated no, and gave advice on what options were available. There was no follow up and no action from either party.

There was a question from the assessor's office about the use, and after doing research, it was found out that Mr. Porter purchased the property in 2019 and continued to operate the business there without contacting the office or taking action. The office started code enforcement.

J. Brummett confirmed that there was a violation before asking for the conditional use permit. S. Larson confirmed that was correct.

S. Larson stated that with reviewing the business and reviewing the ordinance, it would be a tough fit for this location. The property doesn't really allow for expansion of the business. There are almost four miles of gravel before getting to a hard surface road. With Mr. Porter being an ambitious and hard-working individual, the office wants him to be successful but question if this location is best for that. If the commission is thinking of recommending approval, the office suggests conditions to be placed on the recommendation.

M. McConnell stated that the business that operated at the location previously was not authorized or permitted by Dallas County. The property is located on a lot in a rural subdivision. The conditional use permit seems the best option for this use, as there can be conditions placed to regulate use. Typically, this type of use would be in an industrial or commercial zoning. Rezoning a lot in a rural large lot subdivision is not a good idea as that will open the door for any use allowed in that zoning district to be allowed there. Access to the property is H Ave, a gravel road. The property does not currently allow for large truck traffic.

The then property owner and Mr. Porter were advised of all the zoning issues before Mr. Porter purchased the property. The biggest concern the office has is that Mr. Porter was aware of the zoning and that it currently was not allowable for the use, and he was given advice on what steps could be taken. But he purchased the property and continued to operate, and didn't try to take action until after code enforcement began. Staff recommendation is that this use should not be in this area, but if a conditional use is granted, it should have a time limit and prohibit any expansion unless he goes through the process again. The office has explained to Mr. Porter the lack of expansion and in conversations, he's admitted outgrowing the space.

C. Walter confirmed with J. Bergkamp that his client knew of the processes and issues and still continued to purchase the property.

J. Bergkamp agreed and stated that the business was already operating, but that Beacon website from the Assessor shows the zoning of the property as Commercial.

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M. McConnell advised that website does not show zoning, it's the assessment class.

J. Bergkamp agreed and stated that it indicates it's commercial and with the previous commercial business operating there for several years. When the previous property owner wanted to sell, Mr. Porter was forced to buy it as moving a business like that would be almost impossible to do on a short notice.

J. Bergkamp went on to say that he met with Mr. McConnell and Mr. Larson about what would be the best course of action; a rezone would not fit well in this area, and moving forward with the conditional use permit seemed like the best option. He voiced concerns about too short of a time limit.

**Comment from Commission**

M. Hegarty wanted clarity on the alternatives that would be available to Mr. Porter.

M. McConnell advised that rezoning to a C-2 or I-1 type zoning, would open up and allow all those listed uses to be allowed on that property. The conditional use permit is the only opportunity to place conditions or limits on a use or types of business activity. He went on to say that just because there are no complaints from neighbors now, experience says that at some point they may object, if activity and truck traffic increase. He gave a background on a previous scenario very similar to this request, in an agricultural area north of Waukee that was zoned for commercial uses and it just doesn't fit within the area, but due to the zoning, it's really only able to be used for commercial activities. M. McConnell emphasized that there should be a time limit so P&Z can revisit this and make sure it still fits within the area, but mentioned that ten years does not seem reasonable. He mentioned further investments into the property will limit the resale to just commercial uses.

R. Beechum asked for the number of tractor trailer trucks that go on H Ave to get to Mr. Porter's business. R. Beechum works for the school transportation and stated that the H Ave is not good for large truck traffic, and that it's hard enough to get a bus down the road.

J. Bergkamp agreed that limiting expansion would be fair. He stated that he could not quantify the number of truck traffic, but that at any given time; there might be six to eight pieces of equipment on the property for repairs.

M. Hegarty pressed J. Bergkamp for a turnover of equipment, would the change outs be one per day, a couple per day? J. Bergkamp advised that he is seasonally busy, but did not know a definite number. He went on to say that he was fine with limiting expansion, but did think that the six months to a year time limit seemed unreasonable, as how could one operate a business if every six months to a year they would have to go before a board again and potentially not have a business anymore if the permit was denied. He mentioned that his best guess would be that the business will operate as is in this location for approximately ten years, and then be sold for a different purpose.

M. McConnell stated that as a staff, a list of conditions was put together for this permit. One: Not allow any outdoor storage of equipment. Two: to be compliant with the zoning ordinance, anytime there is a business use next to a residential use, there must be a type of screening buffer to screen the business from the residences. Screening can be a

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fence, landscaping, a berm, or a combination of those. Three: time limit – ten years should be the max. Four: Adequate turn around for trucks. Five: a limit on the number of employees, as that would increase the traffic to and on the site, but this condition would be difficult to enforce. Six: limiting on-site sale of goods or retail sales not related to the core of the work. Seven: there is no legal septic system, and with up to ten employees, that is important to install right away.

S. Larson advised the commission that there is flexibility in those conditions that the commissions can discuss – number of employees, two to ten year time limit, etc.

R. Beechum voiced concerns about if something is A-1 and A-2, if they can get a permit for a business, why do zoning then? He stated again that H Ave cannot handle the truck traffic, and busses have a difficult time going down those roads. He would not like to see this business in this location.

M. Hegarty stated that most farmers have two jobs, and that given a choice, they would like to work from home if possible, or at least close to home.

J. Brummett advised he was okay with the approval of the conditional use permit, based on the recommendations provided by staff. He stated that the business has been operating for three years with no complaints, but understands they could in the future.

C. Walter asked if that was a motion. J. Brummett stated he though more discussion should take place first.

R. Beechum stated that he would like to see a five year limit. Ten seems too long, and unlikely that he may stay at that location for ten years.

M. McConnell agreed with M. Hegarty statement (about farmers wanting to work from home), but how many farmers have up to ten employees?

J. Bergkamp confirmed that his comment about the number of employees was *no more than ten*, but he did not have a definite number of employees, but more than likely close to three employees.

J. Brummett confirmed that the objection of retail sales was just to minimize traffic? M. McConnell agreed, and mentioned that Mr. Porter admitted he sold wood pellets.

J. Brummett stated that since the site is large, the truck turn around should be easy to adhere to.

M. Hegarty stated that if outdoor storage was not allowed, should there be an additional building allowed? Pole buildings are inexpensive, and easy to remove when the use of land changes.

M. McConnell advised he would prefer screening of outdoor storage (solid fence, berms, landscaping) over allowing an additional building, because that would allow the overall value of the additional building into the property, you push this acreage out of the

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price range of someone who may want to put a house there someday, and limit it to a business use.

M. McConnell advised that two residences to the north would be the sides that would need screened the most. The parcel is large, has natural timber barrier to the south and east.

J. Brummett confirmed that McConnell was wanting outdoor storage now? M. McConnell clarified that he would prefer to have outdoor storage screened versus allowing an additional building.

C. Walter asked for additional comments, or if J. Brummett would like to make his statement a motion.

G. Smith stated he would like hours of operation as a condition, since there are residential neighbors out there. He stated Mr. Porter probably doesn't work until midnight, but if its defined, then there will be no concerns.

C. Walter asked if he had some hours in mind.

G. Smith stated the neighbors probably don't want to hear noise at ten pm at night, and that the operation should be shutting down before then. He suggested 7am to 8pm.

M. Hegarty agreed with the noise and that large trucks back up and the beep noises are loud.

G. Smith stated he sees both sides. On one hand, Mr. Porter came in and talked to the office before purchasing, and knew the rules, but bought it anyway. He probably shouldn't have done it, as he was forewarned. On the other, he was in a spot and businesses are good for the economy. He agreed with Mr. McConnell that it cannot be allowed to turn into this grandiose, and then it will be that way forever. G. Smith stated there should be a smaller time limit, as growth in that area could change in ten years. The dynamic of the area could change to large lot residential, and someone with a conditional use permit shouldn't limit someone else's ability to use their land within the confines and rules of the county ordinances. Since he didn't follow the rules when he know about them, he shouldn't get ten years to ruin the opportunity of those around him, *but* we should not put him out of business.

S. James disputed the suggested hours of operation, and stated that there will be peaks and valleys of work to accommodate farmers and their busy seasons. She did not disagree with 8 or 9pm end time, but maybe they would need to start work before 7am.

C. Walter suggested 6am-8pm. S. James stated maybe 6am-9pm.

G. Smith suggested that the time could be set, and if there are complaints, they can be changed. And that the hours of operation will put the burden on Mr. Porter to ensure the noise is managed and it is not an excessive amount.

M. McConnell clarified that now condition one is to screen all outdoor storage from off property view and no additional buildings be allowed. Two, hours of operation are 6am to 9pm. Three: five year permit; this will come back to P&Z and board of adjustment for review at the end of five years.

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M. McConnell asked if limiting the number of employees was now a condition. There was conversation between several members about limiting the buildings and the septic system will limit the number of employees. G Smith stated it should be defined, since there is a track record for fudging the system, placing these guidelines will help keep him in line to follow the rules.

M. McConnell speaking again: Four: limiting the number of employees to ten or less. Five: updating the illegal septic system. Six: provide adequate turn around for truck traffic.

Commission agreed.

M. Hegarty asked if there were any hazardous materials or if hazardous waste removal was necessary?

J. Beregerkamp advised he does work with electronics and updating older farm equipment, but he wasn't sure that this was the place for those concerns, as there are laws to follow about that.

G. Smith stated that a condition be placed that he follow EPA guidelines.

M. McConnell advised that painting equipment would be the issue, and didn't seem to think that was needed for this permit. It's possible that we add condition seven that all DNR guidelines on air quality be followed.

J. Bergkamp stated that Mr. Porter already has to legally follow all those environmental guidelines. He went on to say that all the conditions so far seem agreeable, but he had concerns with the five year limit. Trying to operate a business with that in mind seems unreasonable.

M. McConnell stated that three years with no complaints, if it continued that way, it's possible that the permit would just get renewed. The time limit does not equal denial in five years, it just means the use has to come back through the process.

J. Bergkamp stated that its way in Earham, and development isn't likely.

G. Smith stated that in five years, there may be residential subdivisions around there, and the room may be full of people in five years that do have a problem. But that's a gamble. Mr. Porter took a gamble by not following the proper channels, and now there is a 5 year limit on the permit. No one can dictate what will happen in five years. Look at the growth now, no one would have guessed.

C. Walter brought up the last condition, about the EPA guidelines. M. McConnell conceded that point, and the septic system, as Environmental Health is already aware and working towards fixing this scenario.

Conditions:

1. screen all outdoor storage from off property view and no additional buildings be allowed
2. hours of operation are 6am to 9pm
3. five year time limit
4. ten employees maximum
5. Provide adequate turn around for truck traffic.

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J. Bergkamp clarified screening and that it should be on the north side. M. McConnell agreed.

**Motion by J. Brummett to recommend approval of a Conditional Use Permit to operate an agricultural equipment repair, modification, and sale business (Porter's Ag Solutions), with the conditions stipulated on Parcel # 1313100004, in the W1/2 of the NW1/4 Section 13, T78N, R29W (Union Township), 33224 H Ave, zoned A-1 (Agricultural) for Bryan Porter (Jamie Bergkamp). Seconded by G. Smith. Ayes by M. Hegarty, S. James, J. Brummett, G. Smith, and C. Walter. Nay by R. Beechum. Motion carried.**

**Item 2: A petition to consider approval of a Conditional Use Permit to operate an auto dealership and repair business and landscape business equipment storage (Charleston Enterprises) on Parcel #1416100010, in the SW1/4 of the NW1/4 of Section 16, T78N, R28W (Adams Township), 20097 E Panther Creek Rd, zoned A-2 (Agricultural/Floodplain/ Conservation) for Doug Charleston.**

**Petitioner**

Doug Charleston introduced himself. He moved out to the property in 1996 and made numerous improvements to the property. He's been running his business out of it ever since. He sells grasshopper mowers, just two to three a year, in addition to his landscaping business. About seven years ago, he started selling cars to supplement the winter work if there is no snow, got a license from the DOT. He likes to help his neighbors. He wants to be compliant. He wanted to start buying slightly damaged cars to fix and resale from the auction (IAA in De Soto). All the cars are not salvaged; they are all able to be moved, bolt on parts only.

With a recycler's license, you can buy cars that have been damaged like that and can resale them to body shops without fixing the damage.

**Comments from the Public**

Ross Harrison stood and introduced himself as a neighbor of 18 years to D. Charleston. He and his wife have a few concerns of the proposed business use. He deposits lawn debris from the landscaping business on the property, and seasonally slow burns the lawn debris. R. Harrison voiced concerns about air quality, and how they cannot be outside when this burning is taking place. He stated he had spoken with D. Charleston about the issues he had, and that would stop the burning for a time, and then it would start back up. He and the neighbors reached out to the DNR and got them involved. The "auto business" appears to be used car lot, with cars and lawn mowers abutted to the road, with for sale signs. R. Harrison stated that the area is rural residential, very beautiful. He doesn't think a used car lot fits in the area. R. Harrison doesn't mind the business; it's just the eye sore they do not care about. He stated that screening or moving the used cars to behind the buildings would make it more appealing. He stated that people don't travel down gravel roads just looking for used cars, and that they must use other advertising.

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Pam Russenberger introduced herself as a neighbor. They moved out to the country to live a quiet life, go for walks on the gravel, and raise their children the way they were raised. They enjoy the privacy of the country life, and don't want to hinder anyone's opportunity to make a living, but they wanted to ensure its within the confines of the ordinance and still a welcoming place for everyone who lives there.

D. Charleston responded that the burning was addressed by DNR, he was fined and has not burned since December; cars are nicely displayed, the yard is mowed.

**Comments from Staff**

M. McConnell wanted to point out that there has never been a Conditional Use Permit approved that allows retail sales, as it creates too much traffic to the area. Conditional Use Permits, if approved, should not alter the area. Four other neighbors have submitted letters, voicing concerns about this business and the uses. M. McConnell stated that the property looks commercial, S. Larson took photographs of the property. M. McConnell stated that in he did give D. Charleston a letter when he applied for a DOT License December 28 2010, as that is required to show the zoning is appropriate. As of the writing of this letter, the property is zoned A-1 Agricultural zoning. The zoning allows for the operation with the dealer's license as a Home Occupation. What brought all this to light was that D. Charleston wanted to apply for a recycler's license. This instance is not typical, as limited basis would mean a car or two. The office also limits any displays, especially on public roads.

D. Charleston told M. McConnell to look at the letter and asked him to define "limited basis."

M. McConnell stated limited basis would be a small scale, home occupation. He read the requirements for home occupation. There has not been a complaint made to the office before this conditional use permit application was submitted. The office does not recommend approval of the conditional use permit.

G. Smith confirmed that they were just discussing the expansion, not the existing.

**Motion by G. Smith to recommend denial of a Conditional Use Permit to operate an auto dealership and repair business and landscape business equipment storage (Charleston Enterprises) on Parcel #1416100010, in the SW1/4 of the NW1/4 of Section 16, T78N, R28W (Adams Township), 20097 E Panther Creek Rd, zoned A-2 (Agricultural/Floodplain/ Conservation) for Doug Charleston. Seconded by S. James. Ayes by J. Brummett, M. Hegarty, C. Walter. R. Beechum abstained from voting.**

**Item 3: Election of Officers 2019**

J. Brummett stated he likes the current chair. G. Smith agreed. R. Beechum agreed to be vice chair.

**Motion by J. Brummett to approve election of officers for 2019. Seconded by R. Beechum. Ayes Unanimous. Motion carried.**



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**Motion by J. Brummett to adjourn meeting. Seconded G. Smith. Ayes unanimous.  
Meeting adjourned.**

*An audio recording of this meeting is available upon request from the Dallas County Department of Planning & Development.*

Craig D. Walter 5-21-19  
Craig D. Walter Date  
Chairman, Planning & Zoning Commission

STATE OF IOWA )  
COUNTY OF DALLAS )

Signed or attested before me on May 21, 20 19 by Craig Walter

Elizabeth Kilson  
NOTARY PUBLIC



(SEAL)

Murray McConnell 5-22-19  
Murray McConnell Date  
Director of Planning & Development

STATE OF IOWA )  
COUNTY OF DALLAS )

Signed or attested before me on May 22, 20 19 by Murray McConnell

Elizabeth Kilson  
NOTARY PUBLIC



(SEAL)