



PLANNING AND ZONING Cerro Gordo County Courthouse

220 N Washington Ave
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SPECIAL USE PERMIT STAFF REPORT

SUMMARY OF REQUEST

Case No.: 24-06

Hearing Date: March 26, 2024

Staff Contact: Michelle Rush, Assistant Zoning Administrator

Applicant:

N/A

Owner

Scott E Bultje & Gwen S Hohman-Bultje
22781 Jonquil Avenue
Clear Lake, IA 50428

Property Address: 9400 Wheelerwood Drive

Brief Legal Description: SE¼, Section 9, Lincoln Township

Zoning: A-1 Agricultural

Special Use Requested: Review of existing SUP for special event venue

Special Use Area: Approx. 3.6 acres

Parcel Area: 107.7 acres

Special Use Description

On February 24, 2015, Board of Adjustment originally granted Scott Bultje and Gwen Hohman-Bultje (Bultjes) (d/b/a Diamond Oak Events) the current Special Use Permit to operate a wedding barn and special events venue. The Bultjes have since operated the wedding barn and special events venue with one or two events occurring each week, typically on weekends and sometimes on Thursdays.

FINDINGS OF FACT

1. Scott E Bultje & Gwen S Hohman-Bultje are the owners of the subject property.
2. The property is zoned A-1 Agricultural.
3. On March 31, 2015, the Board of Adjustment originally granted Scott E Bultje & Gwen S Hohman- (d/b/a Diamond Oak Events) the current Special Use Permit to operate a an outdoor special events venue for weddings, receptions, reunions, and retreats.
4. On September 26, 2017, the Board of Adjustment approved an amendment to the Special Use Permit, which amended Condition 10 regarding dust control that required the Bultjes to offer and pay for dust control as desired to residents along the route to the special events venue. It was found that there were conflicting dust control requirements with another Special Use Permit for a commercial horse stable granted to Nancy Stricker (d/b/a Circle S Ranch). Dust control conditions in both permits, including

Condition 10, were modified to split the responsibilities of providing dust control to residents.

5. On September 26, 2022, the Planning and Zoning Office received correspondence from Nancy Stricker stating that the Circle S Ranch commercial horse stable business would be ending operations on October 1, 2022. On November 16, 2023, the Planning and Zoning Office received correspondence from Nancy Stricker confirming the Circle S Ranch commercial horse stable business has been out of operation since October 1, 2022.
6. On November 28, 2023, the Planning and Zoning Office presented the case to bring Stricker's Special Use Permit under review for the purpose of revoking the permit due to the business no longer being in operation, and the Board unanimously voted to bring the permit under review. On January 30, 2024, after public hearing, the Board of Adjustment voted to revoke Stricker's Special Use Permit to operate a commercial horse barn due to no longer being in operation and thereby removing the requirement to provide any dust control to residences.
7. Under the Cerro Gordo County Board of Adjustment Rules of Procedure, a Special Use Permit may be brought into review for amendment with an affirmative majority vote of the Board of Adjustment members where there is new information that could not have been presented at the original hearing.
8. On November 28, 2023, the Planning and Zoning Office presented the case to bring the Bultjes' Special Use Permit under review for the purpose of addressing Condition 10 regarding dust control provisions, and the Board unanimously voted to bring the permit under review.

BACKGROUND INFORMATION

On March 31, 2015, the Board of Adjustment originally granted Scott Bultje & Gwen Hohman-Bultje (d/b/a Diamond Oak Events) the current Special Use Permit (SUP) to operate an outdoor special events venue for weddings, receptions, reunions, and retreats.

In 2017, it came to the Planning and Zoning Office's attention that conflicting conditions between the Bultjes SUP for their special events venue and an SUP granted to Nancy Stricker, who operated a commercial horse barn at 22781 Jonquil Avenue, was causing a dispute between the parties. This was caused by both SUPs requiring the SUP holders to both offer and provide dust control as desired by the owners of houses along the routes to either facility (Condition 10 in the Bultje's SUP) where there were several common addresses to both permits. As a result, the Board of Adjustment brought both SUPs into review. On September 26, 2017, the Board of Adjustment approved an amendment to the Bultje's SUP, which amended Condition 10 of the Bultjes' SUP and the dust control requirements in Stricker's SUP. The result was for dust control responsibilities to be split between the SUPs that resolved the conflict in the SUP conditions. A copy of the Bultjes amended SUP is included in your packet.

On September 26, 2022, the Planning and Zoning Office received correspondence from Nancy Stricker stating that she planned to retire, and the Circle S Ranch commercial horse stable business would be ending operations on October 1, 2022. After a year, on November 6, 2023, the Planning and Zoning Office requested confirmation from Stricker that the business is no longer in operation. On November 16, 2023, the Planning and Zoning Office received correspondence from Nancy Stricker confirming the Circle S Ranch commercial horse stable business has been out of operation since October 1, 2022. Said correspondence is included in your packet.

On November 28, 2024, the Board of Adjustment voted to bring Stricker's SUP into review, and on January 30, 2024, after public hearing, the Board of Adjustment voted to revoke Stricker's SUP to operate a commercial horse barn due the business operations ending. The revocation of the permit also ended the requirement to provide dust control for affected addresses along the route to the former business.

Also on November 28, 2023, the Planning and Zoning Office presented the case to bring the Bultjes' SUP under review for the purpose of addressing Condition 10 regarding dust control provisions, anticipating the void left with Stricker's retirement due to the shared dust control responsibilities between the SUPs of Stricker and the Bultjes. The Board unanimously voted to bring the permit under review, which the Board has the option to do under its Rules of Procedure with an affirmative majority vote after the presentation of new information or circumstances, which, in this case, is Stricker's end of business operations and SUP revocation.

STAFF ANALYSIS AND RECOMMENDED ACTION

Condition 10 of the SUP requires the Bultjes to inquire with certain residents along Wheelerwood Drive and Jonquil Avenue—routes it has been determined that event attendees take to access the venue along gravel-surfaced roads—about providing dust control at their expense. Without action, this condition only requires one application of dust control to be offered and provided by the Bultjes in front of affected residences along routes to the venue as desired by those owners and does not cover the whole summer season as a result. A copy of the currently effective SUP is also included in your packets.

It has been the County's practice to require SUP holders to offer and provide dust control as desired by owners of affected residences along routes on gravel-surfaced roads to facilities of special uses that generate significant traffic, which is in line with state code (discussed below). The Bultjes have expressed concern to the Planning and Zoning Office regarding the increased costs of dust control and necessity of requiring up to two applications of dust control in front of affected addresses. However, the cost of doing business is generally out of the scope of the Board of Adjustment's considerations.

Iowa Code Chapter 335 for county zoning provides for a Board of Adjustment to apply appropriate conditions and safeguards to special uses based on findings that are in harmony with the purpose and intent of the County Zoning Ordinance. In Article 21.1 of the County Zoning Ordinance, the ordinance recognizes that certain uses have larger impacts to the vicinity in which they are located and specifies that the Board of Adjustment may attach appropriate conditions to mitigate such impacts. State code addresses the impact of fugitive dust and the County's responsibilities to address the issue.

Iowa Administrative Code 567, Chapter 23.3 addresses emissions of particulate matter and states that reasonable precautions to prevent fugitive dust emissions so as not to become a nuisance. Nuisances are defined and regulated under Iowa Code Chapter 657. The County Engineer, the "public highway authority" in this case, is required by the state to respond to complaints of fugitive dust and abate any nuisances, which means some form of dust control as applicable to this review. Farm operations and routine traffic do not constitute a nuisance in the state code.

In Bultjes' original application for the special events venue, they estimated that approximately 60-75 vehicles would travel to and from the venue to attend events occurring onsite once or twice per week on weekends at the facility. Because of the nature of the business, the venue is a known traffic generator, which is not considered routine traffic for the gravel-surfaced routes attendees take to events. Therefore, requiring dust control is a reasonable precaution to prevent a nuisance under the purposes of the state code and an appropriate condition applied to a business generating significant traffic to mitigate impacts that is in line with the intent of the County Zoning Ordinance.

The original application also states that events are held from early May through October. The County Engineer was consulted regarding dust control procedures in the County. All dust control must be applied by an applicator that is licensed by the County Engineer's Office and can be done twice each year. The first can be applied typically in early June after the frost boils on the gravel roads have dried out and the roads have been properly graded. The second can be applied typically in early August. The specific dates are determined by the County Engineer's Office annually in late March.

Condition 10 of the currently effective SUP requires the Bultjes to offer and provide dust control for six addresses at least once during the summer season:

- 10485 Wheelerwood Drive (Tom Willet)
- 21455 Jonquil Avenue (Austin & Bailey Schmidt)
- 21862 Jonquil Avenue (Harvey & Sheila Austin)
- 22781 Jonquil Avenue and 22831 Jonquil Avenue (Marlen & Nancy Stricker)
- 9727 Wheelerwood Drive (Richard & Virginia Vorland Trust)

These are affected addresses in which attendees have been known to take on route to the venue. The Bultjes direct attendees to take Wheelerwood from Killdeer Avenue as a matter of practice (official instructions included in your packet), but attendees still drive up Jonquil Avenue from County Road B-20 despite these efforts. As a result, the affected addresses have been included in Condition 10 of the permit.

The Planning and Zoning Office requested that the County Engineers Office to conduct a vehicle count study in late-September and October 2023 for a 4 week period because they were in possession of a speed camera at the time so took advantage of the opportunity. For the study, the Bultjes provided the dates for wedding occurring at the venue. The camera was placed on Wheelerwood Drive for the first two weeks and on Jonquil Avenue the second two weeks. The wedding dates provided were on September 30th and October 7th for the Wheelerwood Drive counts, both on Saturdays. The dates showed increased counts on the Friday and Saturday for the date and for the Saturday on the second dates. The increased counts for the Friday of the first date might have been the result of a rehearsal dinner, which is common for weddings.

The wedding dates provided for the Jonquil Avenue counts were October 16th and October 23rd. These were both on Mondays, so it is believed the provided dates might have been incorrect. At the time of the writing of this report, staff did not have enough time to verify with the Bultjes on the accuracy of those wedding dates before packets had to go out. The second count for the 23rd shows increased counts; the first for the 16th shows no significant change. The Saturday before the 23rd date on the 21st shows significantly increased counts, so that may have been a wedding date. The previous Saturday for the 16th date on the 14th cannot discern anything because the camera was reporting suspect numbers the days prior.

The only thing really that can be ascertained from the vehicle counts is that there are increased traffic counts on wedding dates when the camera was located along Wheelerwood Drive. The Bultjes have also mentioned there may have been events occurring on the same dates north of Diamond Oak Events on the same dates. However, when it comes to the matter at hand, it is known that wedding events and other special events generate significant traffic beyond routine traffic, and the County is obligated by state code to enforce reasonable precautions to avoid a nuisance as a result. The County can only enforce what is in its own jurisdiction and cannot control what another county does in its jurisdiction.

The Bultjes have also raised concerns that the residences at 9727 Wheelerwood Drive and 21455 Jonquil Avenue are likely vacant because they have not received response regarding dust control inquiries and have requested they be removed from Condition 10. A copy of these letters are included in your packets. 9727 Wheelerwood Drive is owned by a trust, so it is possibly currently vacant. The Schmidts recently purchased 21455 Jonquil Avenue in August 2023. It is also possible this house is currently vacant, but it is also possible that the owners have not yet moved in.

In both cases, the properties could very likely have residents in the future, so staff recommends that these addresses not be removed entirely from Condition 10. The Bultjes would only be responsible to provide dust control if requested under the current condition. If they receive no response, then they are not responsible to provide dust control in that situation. However, it is sensible to modify Condition 10 to make the Bultjes responsible for dust control only if there are actual residents living in any of the affected houses.

The County Engineers comments are included in your packet. He states it is the County's duty to require dust control twice per year. If the Bultjes were willing to restrict event dates to a certain time per year, Condition 10 could only require one application during the summer season to the respective timeframe event would occur. While the Bultjes have raised the belief that only one dust control application is effective for the entirety of the summer season, this is unknown whether only one dust control application is effective enough to meet state particulate emissions standards. The Bultjes would have the option to pay for a study to be done to determine that information.

In the absence of a confirmable emissions study, the County is obligated to require the Bultjes to offer and provide dust control as desired to the respective residence owners up to twice per year. However, this does not prevent Bultje from negotiating a private agreement with the applicable neighbors. Otherwise, the County is required by the state to enforce dust control standards to a known traffic generator causing fugitive dust. If the Bultjes do not take "reasonable precautions" to avoid fugitive dust, the County Engineer is required by the state to abate the issue, which would be more costly both the Bultjes and the County in the long run.

Staff recommends the Board amend Condition 10 to require the Bultjes offer and provide dust control in front of affected residences along the gravel-surfaced Jonquil Avenue and Wheelerwood Drive that are routes to Diamond Oaks Events Venue. Dust control should only be required if there are actual residents living in the affected houses

BOARD DECISION

The Board of Adjustment may consider the following alternatives:

Alternatives

1. Amend the Special Use Permit, according to the Board's findings.
2. Take no action.

The following motion is provided for the Board's consideration:

Recommended motion to **modify Condition 10 of the Special Use Permit:**

I move to adopt the staff report as the Board's findings and to amend Condition 10 of the Special Use Permit to read as follows:

The owners of the following properties shall be contacted annually by the Bultjes offering to apply dust control up to twice each year at the Bultjes' expense as desired by those property owners along the applicable gravel-surfaced road running adjacent to their respective property. However, this shall only be required if there are active residents living in the applicable residences at the respective time. The number of feet indicated in parentheses shall be the minimum number of feet running with the length of the respective road if dust control is desired:

- 10485 Wheelerwood Drive (300 feet)
- 21455 Jonquil Avenue (400 feet)
- 21862 Jonquil Avenue (400 feet)
- 22781 Jonquil Avenue and 22831 Jonquil Avenue (600 feet)
- 9727 Wheelerwood Drive (350 feet)

All dust control shall be applied by a contractor licensed by the County Engineer's Office following established procedures. The Bultjes shall keep records including contacts made to these residents and dust control applied. Those records shall be made available to the Zoning Administrator upon request.

All other conditions of the Special Use Permit granted by the Board of Adjustment on March 31, 2015 and as amended on May 24, 2016 shall remain in full force and effect.

EXHIBITS

- Exhibit 1: Copy of the Bultjes existing Special Use Permit
- Exhibit 2: Correspondence from County Engineer
- Exhibit 3: Map of affected addresses
- Exhibit 4: Correspondence from Stricker regarding business closure
- Exhibit 5: State code regarding dust control and nuisance
- Exhibit 6: The Bultjes letters/efforts for correspondence to certain addresses
- Exhibit 7: Directions to Diamond Oaks Events venue
- Exhibit 8: County Engineer vehicle county study
- Exhibit 9: Aerial photo of the venue property

Colleen Pearce, Cerro Gordo County Recorder

Aud



Prepared by Michelle Rush, 220 North Washington Ave., Mason City, IA 50401, (641)421-3075
Return to Michelle Rush, 220 North Washington Ave, Mason City, IA 50401, (641) 421-3075

RESOLUTION 18-12

WHEREAS, Scott Bultje & Gwen Hohman-Bultje are the owners of the following described real estate, to-wit:

A 107.70 acre parcel in the SE¼ of Section 9, Township 97 North, Range 21 West of the 5th P.M., Cerro Gordo County, Iowa and

WHEREAS, on March 31, 2015, said owners received a Special Use Permit by the Board of Adjustment to operate an outdoor, special event venue for weddings, receptions, reunions and retreats on the property in accordance with Article 20.2(EE) of the Cerro Gordo County Zoning Ordinance (Resolution 15-24, Recorded as Document #2015-1789), subject to the following regulations/and or conditions:

1. This special use permit may be reviewed at any time in the future upon the request of the applicants or a majority of the Board of Adjustment members.
2. The provisions and/or regulations shall be minimum requirements and wherever the requirements of any other lawfully adopted rules, regulations or ordinances are at a variance, the most restrictive shall govern.
3. It is contemplated that from time to time during the operation of the outdoor, special events venue, that conditions may arise which are not covered by the terms of this permit and which cannot be anticipated. In the event such conditions do arise, the Board of Adjustment of Cerro Gordo County, Iowa, may impose additional regulations to meet any new conditions. In addition, if said facility should, at any time, be operated in any manner which violates the rules and regulations of any federal or state regulatory agency, then the Board of Adjustment may impose such other conditions so as to insure compliance with such rules and regulations.
4. This permit will be subject to revocation for operator's failure to comply with the provisions as herein set forth or such other provisions as may, from time to time, be imposed by the Board of Adjustment of Cerro Gordo County, Iowa, under the terms of this permit.
5. This Special Use Permit is granted solely to Scott Bultje and Gwen Hohman-Bultje and is not transferable to any other party or parties.

Scott Bultje & Gwen Hohman-Bultje

September 26, 2017

6. The site plan is hereby adopted as presented and the applicant shall adhere to the said site plan. The Board of Adjustment shall have the right to review any proposed expansion of the use, not including buildings related to the use which may be acted upon by the Zoning Administrator.
7. An Application for Zoning Certificate shall be completed and a Zoning Certificate issued prior to any new construction on the site related to the special use.
8. Permits from the Department of Public Health shall be obtained for any future on-site water and/or wastewater system intended to serve the use.
9. One sign, not exceeding 10 square feet in size, identifying the use, may be placed on a light pole at the entrance to the site. The sign shall not be placed within or in any way overhang the right-of-way of Wheelerwood Drive.
10. The applicants shall be responsible, at their expense, to apply dust control twice each year in front of their own driveway. In addition the owners of the following properties shall be contacted annually by the applicants, offering to apply dust control at applicant's expense twice per year:
 - 9727 Wheelerwood Drive,
 - 10485 Wheelerwood Drive, and
 - 10859 Wheelerwood Drive.

If dust becomes an issue on Jonquil, south of Wheelerwood Drive, the Zoning Administrator may direct applicants to ask those residents if they want dust control at the applicant's expense. Dust control shall be applied by a contractor licensed by the County Engineer's Office. The applicant shall keep records including contacts made to these residents and dust control applied. Those records shall be made available to the Zoning Administrator upon request.

WHEREAS, Scott Bultje & Gwen Hohman-Bultje, owners of the above described property, filed for an amendment to Condition No. 9 above, and after public hearing on April 26, 2016, the Board of Adjustment of Cerro Gordo County, Iowa, approved the request for the following amendment to Condition No. 9 and added Condition No. 11 and 12 below:

1. Condition No. 9 of the Special Use Permit (Resolution 15-24) approved March 31, 2015 by the Cerro Gordo County Board of Adjustment (recorded as Document No. 2015-1789) is hereby repealed and the following adopted in lieu thereof:

One sign, not exceeding 10 square feet in size, identifying the use, may be placed on the archway structure over the driveway supported by two poles.

2. Condition No. 11 is hereby adopted to allow a 22' height variance for the archway & proposed sign.
3. Condition No. 12 is hereby adopted to allow a 15' front yard variance for the archway & proposed sign.
4. All other conditions in the special use permit approved March 31, 2015 by the Board of Adjustment shall remain unchanged and in full force and effect.

WHEREAS, said amended Resolution 16-29 was filed with the Cerro Gordo County Recorder and was recorded on May 25, 2016, as Document Number 2016-3006, and

WHEREAS, the Assistant Administrative Officer of Cerro Gordo County filed for a review of and proposed amendment to Condition No. 10 above and after public hearing on September 26, 2017, Scott & Gwen Bultje were granted an amended Special Use Permit in accordance with Article 20.2(EE) of the Zoning Ordinance of Cerro Gordo County, Iowa.

WHEREAS, said Amended Special Use Permit was granted by the Board of Adjustment of Cerro Gordo County, Iowa subject to the following regulations and/or conditions:

1. Condition No. 10 is hereby repealed and the following adopted in lieu thereof:

The owners of the following properties shall be contacted annually by the Bultje's offering to apply dust control once each year in early August at their expense as desired by those property owners along the applicable gravel road running adjacent to their respective property. The number of feet indicated in parentheses shall be the minimum number of feet running with the length of the respective road if dust control is desired:

- 10485 Wheelerwood Drive (300 feet)
- 21455 Jonquil Avenue (400 feet)
- 21862 Jonquil Avenue (400 feet)
- 22781 Jonquil Avenue and 22831 Jonquil Avenue (600 feet)

In addition, the owners of the following property shall be contacted annually by the Bultje's offering to apply dust control up to twice each year at the Bultje's expense as desired by those property owners along the applicable gravel road running adjacent to their respective property. The number of feet indicated in parentheses shall be the minimum number of feet running with the length of the respective road if dust control is desired:

- 9727 Wheelerwood Drive (350 feet)

All dust control shall be applied by a contractor licensed by the County Engineer's Office following established procedures. The Bultjes shall keep records including contacts made to these residents and dust control applied. Those records shall be made available to the Zoning Administrator upon request.

2. All other conditions of the special use permit granted by the Board of Adjustment on March 31, 2015 and amended on May 24, 2016 shall remain in full force and effect.

BE IT FURTHER RESOLVED this permit will be subject to revocation for operator's failure to comply with the provisions as herein set forth or such other provisions as may, from time to time, be imposed by the Board of Adjustment of Cerro Gordo County, Iowa, under the terms of this permit.

Motion was made by Charlie Norris on September 26, 2017, to adopt the staff report as the Board's findings and to grant the application, subject to the conditions recommended by staff and as modified by the Board of Adjustment, for an amendment to the special use permit, originally granted to Scott Bultje & Gwen Hohman-Bultje on March 31, 2015 and amended on May 24, 2016, and further, that the grant of the application be made effective immediately and on the condition that Scott Bultje & Gwen Hohman-Bultje shall perform all operations under the application under the specific direction of the Cerro Gordo County Zoning Administrator, consistent with the proposed conditions and recommendations approved by the Board of

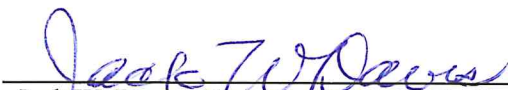
Scott Bultje & Gwen Hohman-Bultje September 26, 2017

Adjustment, until such time as a formal resolution is drafted and adopted by the Board of Adjustment, not to exceed 60 days. Motion seconded by Mary Ann Aslakson. Roll call vote taken resulted as follows:

Aslakson-yes
Taylor-yes
Norris-yes
Siemers-yes


Motion to approve said Resolution on October 31, 2017, was made by Martha Taylor and seconded by Mary Ann Aslakson with the understanding all provisions of said Resolution, are effective retroactive to September 26, 2017. Roll call vote taken resulted as follows:

Aslakson-yes
Davis-yes
Taylor-yes
Siemers-yes



Jack W. Davis, Chairman, Cerro Gordo County,
Iowa, Zoning Board of Adjustment

ATTEST:



Michelle Rush, Secretary, Cerro Gordo
County, Iowa, Zoning Board of Adjustment

John Robbins

From: Billings, Brandon <bbillings@cgcounty.org>
Sent: Tuesday, March 12, 2024 3:45 PM
To: John Robbins
Subject: RE: Review of dust control requirements for Bultje Special Use Permit

Typically we set the dates officially at the end of March but they are normally early June for the first and for the second early August.

Brandon Billings

Cerro Gordo County Engineer

Address: 17274 Lark Ave, Mason City, IA 50401

Phone: (641) 424-9037

Cell: (641)-425-5878

From: John Robbins <jrobbins@niacog.org>
Sent: Tuesday, March 12, 2024 3:23 PM
To: Billings, Brandon <bbillings@cgcounty.org>
Subject: RE: Review of dust control requirements for Bultje Special Use Permit

External Email WARNING: DO NOT open attachments or click links from unknown senders or unexpected emails.
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Could you remind me when the first and second applications are supposed to be each year?

John Robbins
Senior Planner
North Iowa Area Council Of Governments
525 6th Street S.W.
Mason City, IA 50401
jrobbins@niacog.org
641-423-0491 Ext 214

From: Billings, Brandon <bbillings@cgcounty.org>
Sent: Tuesday, March 12, 2024 2:35 PM
To: John Robbins <jrobbins@niacog.org>
Subject: RE: Review of dust control requirements for Bultje Special Use Permit

In this case it is our duty to require the dust control applications, however if they venue was to limit their activities to between the first and second application or between the second application and the first one the next year. In the event of them agreeing to limit their operations I could agree with one application a year.

Brandon Billings

Cerro Gordo County Engineer

Address: 17274 Lark Ave, Mason City, IA 50401
Phone: (641) 424-9037
Cell: (641)-425-5878

From: John Robbins <jrobbins@niacog.org>
Sent: Tuesday, March 12, 2024 10:50 AM

To: Billings, Brandon <bwillings@cgcounty.org>

Subject: Review of dust control requirements for Butje Special Use Permit

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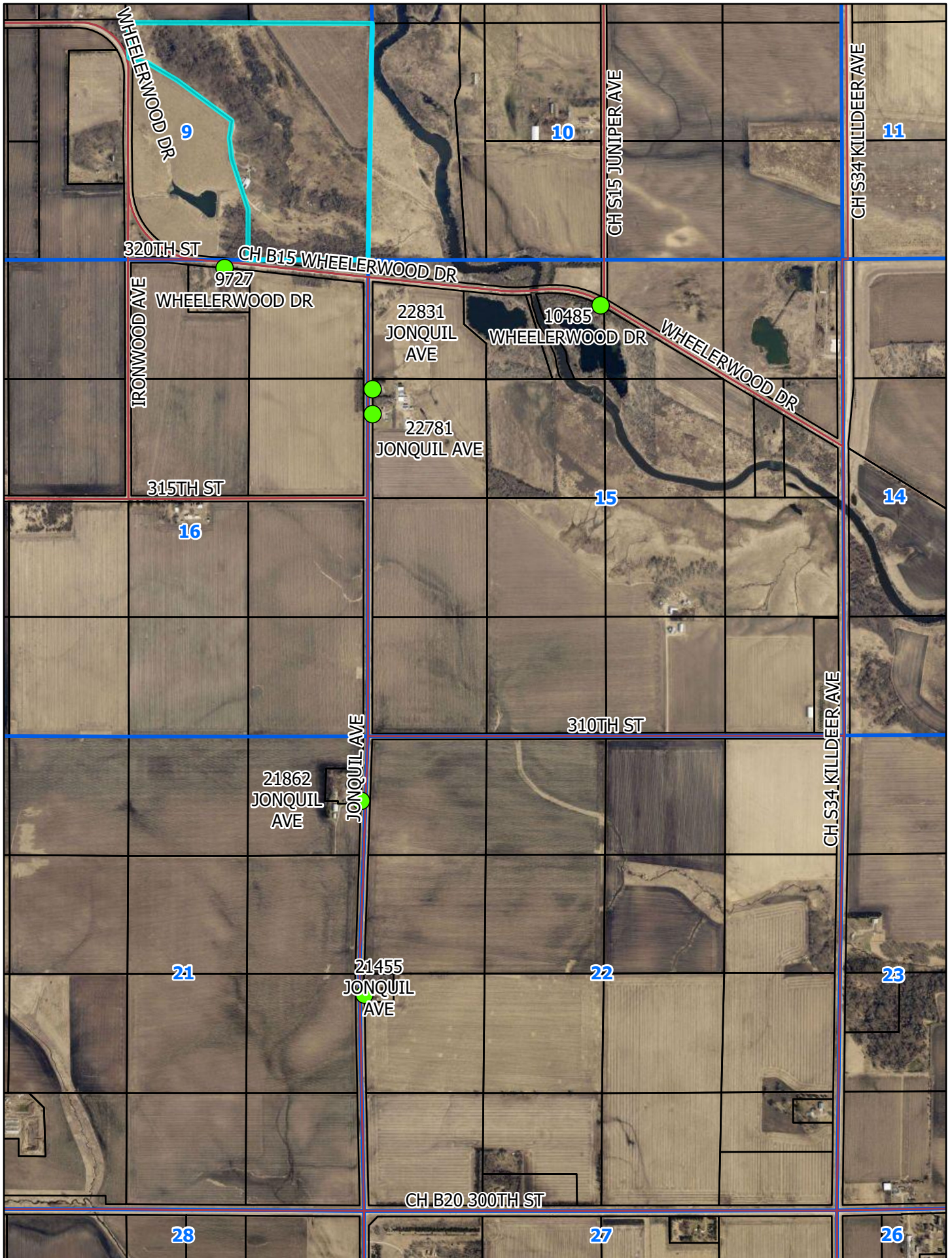
Good morning, Brandon,

Thank you for our phone discussion to better understand the state code under Iowa Administrative Code 567, Chapter 23 regarding fugitive dust and Iowa Code Chapter 657 regarding nuisances. As you are aware, the County Board of Adjustment will be reviewing the dust control requirements under the conditions of Scott and Gwen Butjes' Special Use Permit (d/b/a Diamond Oak Events). Dust control for routes for affected were split between the Butjes and Nancy Stricker. However, Mrs. Stricker has since retired and ended operations of her commercial horse barn and had her permit revoked, thereby leaving a gap in seasonal dust control coverage for those affected addresses. The Board of Adjustment has voted to bring the Butje's permit under review for potential amendment to review the dust control requirement of the SUP (Condition 10).

The public hearing to consider amendment to the Butje's Special Use Permit will be held at 4 p.m. on March 24, 2024 at the Boardroom at the courthouse. I have attached the currently effective permit for your reference. If you could please review and provide any comments or concerns you have to inform my staff report on behalf of the Planning and Zoning Office, I would greatly appreciate it. Please also summarize your responsibilities in enforcing state code regarding fugitive dust and your regular procedures.

Thank you,

John Robbins
Senior Planner
North Iowa Area Council Of Governments
525 6th Street S.W.
Mason City, IA 50401
jrobbins@niacog.org
641-423-0491 Ext 214



received
9-26-22

Circle S Ranch

Nancy Stricker

22781 Jonquil Ave.

Clear Lake, Iowa 50428

As of October 1, 2022 Circle S Ranch will no longer be boarding horses. The stable will no longer be in business. We will no longer be providing dust control for the neighbors. Copies of this letter will be sent to those who are receiving this service.

Nancy Stricker

received
11-16-23

Nancy Stricker

Clear Lake, Ia. 50428

On October 1, 2022 I quit boarding horses. I have no plans to board in the future.

Nancy Stricker

Formerly Circle S Ranch

567—23.3 (455B) Specific contaminants.

23.3(1) General. The emission standards contained in this rule shall apply to each source operation unless a specific emission standard for the process involved is prescribed elsewhere in this chapter, in which case the specific standard shall apply.

23.3(2) Particulate matter. No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 24.

a. General emission rate.

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas, except as provided in 567—21.2(455B), 23.1(455B), 23.4(455B), and 567—Chapter 24.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from Table I, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas, or established from standards provided in 23.1(455B) and 23.4(455B).

TABLE I
ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE*

Process Weight Rate		Emission Rate	Process Weight Rate		Emission Rate
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
	0.05	0.55			16.5
100			16,000	8.00	
	0.10	0.88			17.9
200			18,000	9.00	
	0.20	1.40			19.2
400			20,000	10.00	
	0.30	1.83			25.2
600			30,000	15.00	
	0.40	2.22			30.5
800			40,000	20.00	
	0.50	2.58			35.4
1,000			50,000	25.00	
	0.75	3.38			40.0
1,500			60,000	30.00	
	1.00	4.10			41.3
2,000			70,000	35.00	
	1.25	4.76			42.5
2,500			80,000	40.00	
	1.50	5.38			43.6
3,000			90,000	45.00	
	1.75	5.96			44.6
3,500			100,000	50.00	
	2.00	6.52			46.3
4,000			120,000	60.00	
	2.50	7.58			47.8
5,000			140,000	70.00	

Process Weight Rate		Emission Rate	Process Weight Rate		Emission Rate
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
6,000	3.00	8.56	160,000	80.00	49.0
7,000	3.50	9.49	200,000	100.00	51.2
8,000	4.00	10.4	1,000,000	500.00	69.0
9,000	4.50	11.2	2,000,000	1,000.00	77.6
10,000	5.00	12.0	6,000,000	3,000.00	92.7
12,000	6.00	13.6			

*Interpolation of the data in this table for process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation

$$E=4.10 P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation

$$E=55.0 P^{0.11}-40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

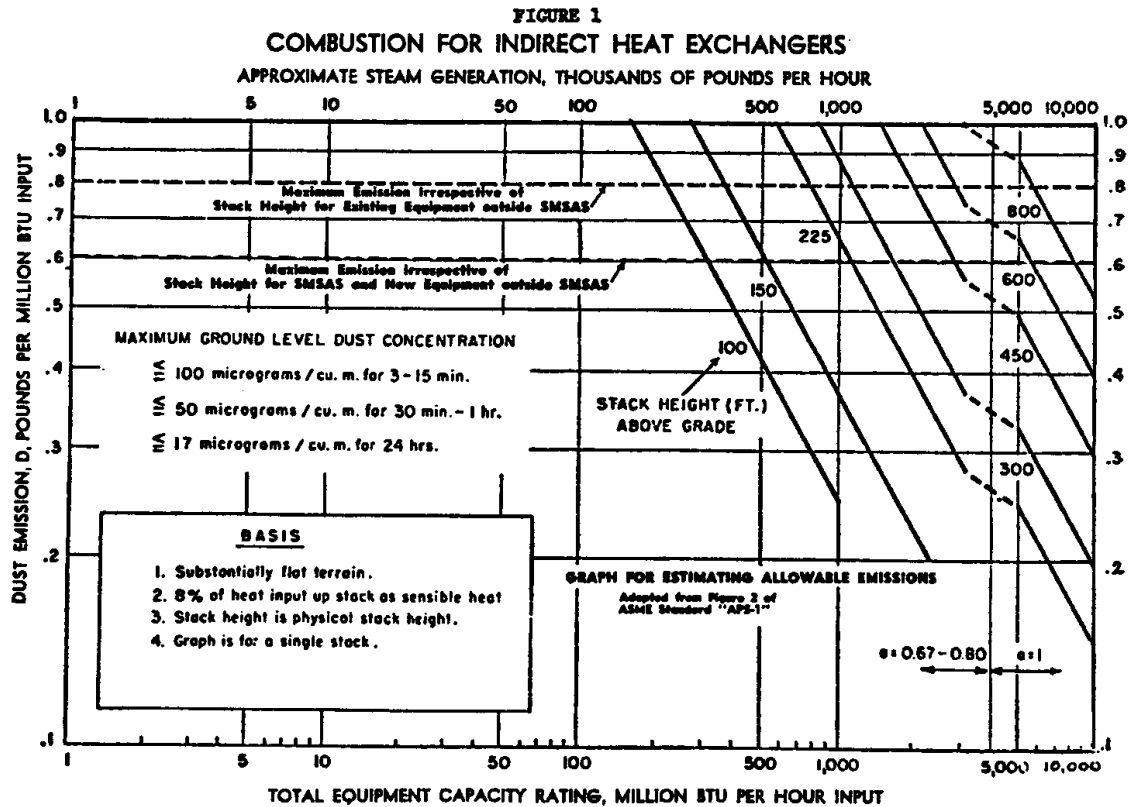
b. Combustion for indirect heating. Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November, 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated from equation (15) in that standard, with $Comax^2=50$ micrograms per cubic meter. Allowable emissions from a single stack may be estimated from Figure 1. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2) "a" shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.



(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA approved single source dispersion model using allowable emission rates and five-year worst case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under paragraph 23.3(2) "b," whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu heat input; except that the maximum allowable emission rate for the stack serving Unit #1 of Iowa Public Service at Port Neal shall be 0.50 pound of particulate matter per million Btu heat input.

All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

c. Fugitive dust.

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.

2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.

3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.

4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.

5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.

6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) Nonattainment areas. Subparagraph (1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. Traditional source means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 23.4(455B), but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see "Identification of Techniques for the Control of Industrial Fugitive Dust Emissions," [available from the department] adopted by the commission on May 19, 1981.

(3) Reclassified areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of subparagraph (2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 24.

(1) *Residential heating equipment.* Residential heating equipment serving dwellings of four family units or less is exempt.

(2) *Gasoline-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) *Diesel-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity, for longer than five consecutive seconds.

(4) *Diesel-powered locomotives.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) *Startup and testing.* Initial start and warmup of a cold engine, the testing of an engine for trouble, diagnosis or repair, or engine research and development activities, is exempt.

(6) *Uncombined water.* The provisions of this paragraph shall apply to any emission which would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) Sulfur compounds. The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Lousia, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in subparagraph 23.3(3) "a"(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit (i.e., a unit which was not in operation or for which components had not been purchased, or which was not under construction prior to September 23, 1970) which has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

(4) Subparagraphs (1) through (3) notwithstanding, a fossil fuel-fired steam generator to which 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc" applies shall comply with 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc," respectively.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

(3) Notwithstanding this paragraph, a fossil fuel-fired steam generator to which 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc" applies shall comply with 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc."

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid

manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

This rule is intended to implement Iowa Code section 455B.133.

CHAPTER 657 NUISANCES

Referred to in [§6B.56](#), [318.6](#), [318.11](#), [364.22B](#), [446.7](#)

657.1	Nuisance — what constitutes — action to abate — electric utility defense.	657.7	Expenses — how collected.
657.2	What deemed nuisances.	657.8	Feedlots.
657.2A	Indexing of petition.	657.9	Shooting ranges.
657.3	Penalty — abatement.	657.10	Mediation notice.
657.4	Process.	657.11	Animal feeding operations.
657.5	Reserved.	657.11A	Animal agriculture — promotion of responsible animal feeding operations.
657.6	Stay of execution.		

657.1 Nuisance — what constitutes — action to abate — electric utility defense.

1. Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere unreasonably with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the nuisance and to recover damages sustained on account of the nuisance. A petition filed under [this subsection](#) shall include the legal description of the real property upon which the nuisance is located unless the nuisance is not situated on or confined to a parcel of real property or is portable or capable of being removed from the real property.

2. Notwithstanding [subsection 1](#), in an action to abate a nuisance against an electric utility, an electric utility may assert a defense of comparative fault as set out in [section 668.3](#) if the electric utility demonstrates that in the course of providing electric services to its customers it has complied with engineering and safety standards as adopted by the utilities board, and if the electric utility has secured all permits and approvals, as required by state law and local ordinances, necessary to perform activities alleged to constitute a nuisance.

[C51, §2131 – 2133; R60, §3713 – 3715; C73, §3331; C97, §4302; C24, 27, 31, 35, 39, §12395; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.1]

[95 Acts, ch 195, §34](#); [2004 Acts, ch 1077, §1](#); [2005 Acts, ch 3, §108](#); [2010 Acts, ch 1050, §8](#); [2023 Acts, ch 19, §2698](#)

Subsection 2 amended

657.2 What deemed nuisances.

The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, places resorted to by persons participating in criminal gang activity prohibited by [chapter 723A](#), or places resorted to by persons using controlled substances, as defined in [section 124.101, subsection 5](#), in violation of law, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a

public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

8. Any object or structure erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

9. The depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of a city, unless in a building of fireproof construction, is a public nuisance.

10. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

11. Dense growth of all weeds, vines, brush, or other vegetation in any city so as to constitute a health, safety, or fire hazard is a public nuisance.

12. Trees infected with Dutch elm disease in cities.

[C51, §2759, 2761; R60, §4409, 4411; C73, §4089, 4091; C97, §5078, 5080; S13, §713-a, -b, 1056-a19; C24, 27, 31, 35, 39, §5740, 5741, 6567, 6743, 12396; C46, 50, §368.3, 368.4, 416.92, 420.54, 657.2; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.2]

92 Acts, ch 1163, §116; 92 Acts, ch 1231, §56; 95 Acts, ch 195, §35; 98 Acts, ch 1072, §1; 2021 Acts, ch 80, §371

Referred to in §654B.1

657.2A Indexing of petition.

1. When a petition affecting real property is filed by a governmental entity under [this chapter](#), the clerk of the district court shall index the petition pursuant to [section 617.10](#), if the legal description of the affected property is included in or attached to the petition.

2. After filing the petition with the clerk of the district court, the governmental entity shall also file the petition in the office of the county treasurer. The county treasurer shall include a notation of the pendency of the action in the county system, as defined in [section 445.1](#), until the judgment of the court is satisfied or until the action is dismissed. Pursuant to [section 446.7](#), an affected property that is subject to a pending action shall not be offered for sale by the county treasurer at tax sale.

2010 Acts, ch 1050, §9

657.3 Penalty — abatement.

A person who is convicted of erecting, causing, or continuing a public or common nuisance as provided in [this chapter](#), or at common law when the common law has not been modified or repealed by statute, if no other punishment for the offense is specially provided, shall be guilty of an aggravated misdemeanor. The court may order the nuisance abated and issue a warrant as provided in [this chapter](#).

[C51, §2762; R60, §4412; C73, §4092; C97, §5081; S13, §5081; C24, 27, 31, 35, 39, §12397; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.3]

2020 Acts, ch 1063, §366; 2021 Acts, ch 80, §372

657.4 Process.

When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor.

[C51, §2763; R60, §4413; C73, §4093; C97, §5082; C24, 27, 31, 35, 39, §12398; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.4]

657.5 Reserved.

657.6 Stay of execution.

Instead of issuing a warrant, the court may order the warrant to be stayed upon motion of the defendant, if the defendant enters into an undertaking to the state, in such sum and with such surety as the court may direct, under the condition that either the defendant will discontinue the nuisance or that, within a time limited by the court, and not exceeding six months, the defendant will cause the nuisance to be abated and removed, as either is directed by the court. Upon the defendant's failure to perform the condition of the defendant's undertaking, the surety shall be forfeited, and the court, upon being satisfied of a default, may order the warrant forthwith to issue, and action may be brought on the undertaking.

[C51, §2765; R60, §4415; C73, §4095; C97, §5084; C24, 27, 31, 35, 39, §12400; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.6]

[2019 Acts, ch 59, §223](#)

657.7 Expenses — how collected.

The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof.

[C51, §2766; R60, §4416; C73, §4096; C97, §5085; C24, 27, 31, 35, 39, §12401; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §657.7]

657.8 Feedlots.

[This chapter](#) shall apply to the operation of a livestock feedlot, only as provided in [chapter 172D](#).

[C77, 79, 81, §657.8]

657.9 Shooting ranges.

1. Before a person improves property acquired to establish, use, and maintain a shooting range by the erection of buildings, breastworks, ramparts, or other works or before a person substantially changes the existing use of a shooting range, the person shall obtain approval of the county zoning commission or the city zoning commission, whichever is appropriate. The appropriate commission shall comply with [section 335.8](#) or [414.6](#). In the event a county or city does not have a zoning commission, the county board of supervisors or the city council shall comply with [section 335.6](#) or [414.5](#) before granting the approval.

2. A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range where there has not been a substantial change in the nature of the use of the range.

3. [This section](#) does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

[[82 Acts, ch 1193, §1](#)]

[84 Acts, ch 1067, §49](#); [2018 Acts, ch 1041, §112](#)

Referred to in [§335.26, 414.26](#)

657.10 Mediation notice.

Notwithstanding [this chapter](#), a person, required under [chapter 654B](#) to participate in mediation, shall not begin a proceeding subject to [this chapter](#) until the person receives a mediation release under [section 654B.8](#), or until the court determines after notice and hearing that one of the following applies:

1. The time delay required for the mediation would cause the person to suffer irreparable harm.

2. The dispute involves a claim which should be resolved as a class action.

[90 Acts, ch 1143, §27](#)

657.11 Animal feeding operations.

1. The purpose of [this section](#) is to protect animal agricultural producers who manage their operations according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal agricultural production. [This section](#) is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced all competing interests and declares its intent to protect and preserve animal agricultural production operations.

2. An animal feeding operation, as defined in [section 459.102](#), shall not be found to be a public or private nuisance under [this chapter](#) or under principles of common law, and the animal feeding operation shall not be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. However, [this section](#) shall not apply if the person bringing the action proves that an injury to the person or damage to the person's property is proximately caused by either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. Both of the following:

(1) The animal feeding operation unreasonably and for substantial periods of time interferes with the person's comfortable use and enjoyment of the person's life or property.

(2) The animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.

3. a. [This section](#) does not apply to a person during any period that the person is classified as a chronic violator under [this subsection](#) as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. [This section](#) shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of [this subsection](#), "*confinement feeding operation*" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

b. (1) A person shall be classified as a chronic violator if the person has committed three or more violations as described in [this subsection](#) prior to, on, or after July 1, 1996. In addition, in relation to each violation, the person must have been subject to either of the following:

(a) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(b) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

(2) Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under [this subsection](#) shall not be counted if the civil penalty ultimately imposed is less than three thousand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in [this subsection](#) for the prior five years.

c. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation

structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

(1) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.

(3) Failing to obtain a permit or approval by the department for a permit to construct or operate a confinement feeding operation or use a related animal feeding operation structure or pollution control device or practice, for which the person must obtain a permit from the department.

(4) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required, or operating a confinement feeding operation required to have a manure management plan without having submitted the manure management plan.

4. [This section](#) shall apply regardless of the established date of operation or expansion of the animal feeding operation. A defense against a cause of action provided in [this section](#) includes but is not limited to a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

5. If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person who may raise a defense under [this section](#) shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action.

6. [This section](#) does not apply to an injury to a person or damages to property caused by the animal feeding operation before May 21, 1998.

[95 Acts, ch 195, §36; 96 Acts, ch 1118, §1; 98 Acts, ch 1209, §38, 39, 53; 99 Acts, ch 114, §58, 59; 2013 Acts, ch 30, §261; 2014 Acts, ch 1026, §132](#)

Referred to in [§266.43, 266.44, 266.45, 657.11A](#)

657.11A Animal agriculture — promotion of responsible animal feeding operations.

1. *a. Findings.* The general assembly finds that important public interests are advanced by preserving and encouraging the expansion of responsible animal agricultural production in this state which provides employment opportunities in and economic growth for rural Iowa, contributes tax revenues to the state and to local communities, and protects our valuable natural resources.

b. Purpose. The purpose of [this section](#) is to encourage persons involved in animal agriculture to adopt existing prudent and generally utilized management practices for their animal feeding operations, thereby enhancing the fundamental role of animal agriculture in this state by providing a reasonable level of protection to persons engaged in animal agricultural production from certain types of nuisance actions.

c. Declaration. The general assembly has balanced all competing interests and declares its intent to preserve and enhance responsible animal agricultural production, specifically animal agricultural producers in this state who use existing prudent and generally utilized management practices reasonable for their animal feeding operations.

2. Except as otherwise provided by [this section](#), an animal feeding operation, as defined in [section 459.102](#), found to be a public or private nuisance under [this chapter](#) or under

principles of common law, or found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action, shall be conclusively presumed to be a permanent nuisance and not a temporary or continuing nuisance under principles of common law, and shall be subject to compensatory damages only as provided in [subsection 3](#).

3. Compensatory damages awarded to a person bringing an action alleging that an animal feeding operation is a public or private nuisance, or an interference with the person's comfortable use and enjoyment of the person's life or property under any other cause of action, shall not exceed the following:

a. The person's share of compensatory property damages due to any diminution in the fair market value of the person's real property proximately caused by the animal feeding operation. The fair market value of the real property is deemed to equal the price that a buyer who is willing but not compelled to buy and a seller who is willing but not compelled to sell would accept for the real property. The person's share of any compensatory property damages must be based on the person's share of the ownership interest in the real property. For purposes of [this section](#), ownership interest means holding legal or equitable title to real property in fee simple, as a life estate, or as a leasehold interest.

b. The person's compensatory damages due to the person's past, present, and future adverse health condition. This determination shall be made utilizing only objective and documented medical evidence that the nuisance or interference with the comfortable use and enjoyment of the person's life or property was the proximate cause of the person's adverse health condition.

c. The person's compensatory special damages proximately caused by the animal feeding operation, including without limitation, annoyance and the loss of comfortable use and enjoyment of real property. However, the total damages awarded to a person under this paragraph "c" shall not exceed one and one-half times the sum of any damages awarded to the person for the person's share of the total compensatory property damages awarded under paragraph "a" plus any compensatory damages awarded to the person under paragraph "b".

4. [This section](#) shall apply to an animal feeding operation in the same manner as [section 657.11, subsections 4 and 5](#).

5. [This section](#) shall not apply if the person bringing the action proves that the public or private nuisance or interference with another person's comfortable use and enjoyment of the person's life or property under any other cause of action is proximately caused by any of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. The failure to use existing prudent generally utilized management practices reasonable for the animal feeding operation.

6. [This section](#) does not apply to a person during the time in which the person is classified as a habitual violator pursuant to [section 459.604](#).

7. [This section](#) does not apply to a cause of action that accrued prior to March 29, 2017. [2017 Acts, ch 17, §1, 2](#)

January 2, 2024

Vorland Trust

9017 Wheelerwood Dr

Clear Lake, IA 50428

To whom it may concern,

I am writing regarding the empty house at 9727 Wheelerwood Dr. A search of county records indicates the Vorland Trust, as owner.

My name is Scott Bultje and my wife Gwen, and I own Diamond Oak Events at 9400 Wheelerwood Drive. I am writing because part of the Special Use Permit for our business requires for us to check in with the owners of a few specific properties and inquire if dust control application for these properties is requested, at my cost.

I need to check if this is reasonable and applicable going forward as I have observed and heard from a source that the house at 9727 Wheelerwood is unoccupied. If this is the case, there would be no reason for me to pay for dust control this coming summer.

Would you please update me with a letter or a call regarding the status of this property and your preference? Thank you in advance for your assistance.

Scott Bultje

Diamond Oak Events, 9400 Wheelerwood Dr. Clear Lake, IA 50428

641-357-1075

January 2, 2024

Austin & Bailey Schmidt

21455 Jonquil Ave.

Mason City, IA 50401

Dear Austin & Bailey,

I am writing regarding the property at 21455 Jonquil Ave. A search of county records indicates you are the owners.

My name is Scott Bultje and my wife Gwen, and I own Diamond Oak Events at 9400 Wheelerwood Drive. We are about 2 miles North and a little West. I am writing because part of the Special Use Permit for our business requires for us to check in with the owners of a few specific properties and inquire if dust control application for these properties is requested, at my cost.

I need to check if this is reasonable and applicable going forward as I have heard, and the house appears to have been unoccupied for some time. If this is the case, and will continue to be the case, there would be no reason for me to pay for dust control this coming summer.

Would you please update me with a letter or a call regarding the status of this property and your preference? Thank you in advance for your assistance.

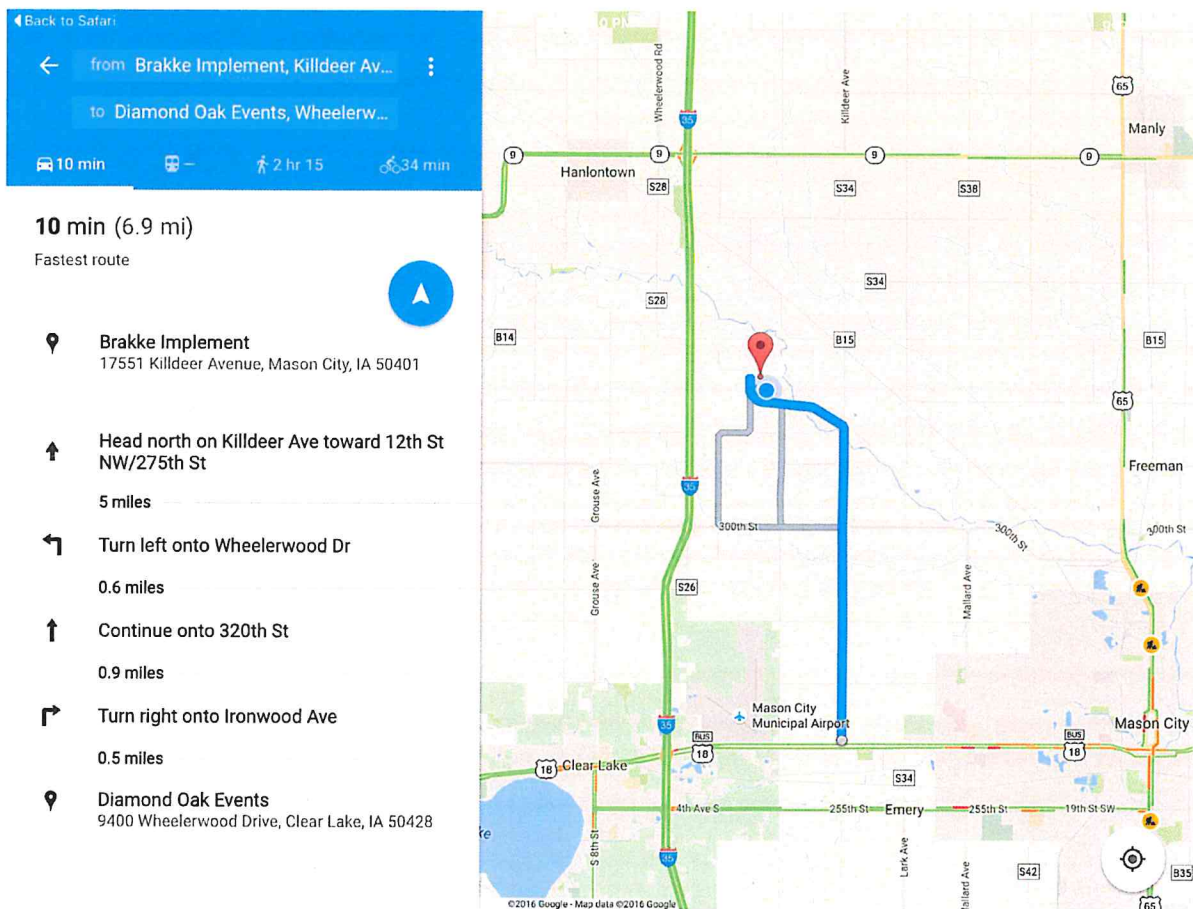
Scott Bultje

Diamond Oak Events, 9400 Wheelerwood Dr. Clear Lake, IA 50428

641-357-1075

Directions From Hwy 18 (from both MC and Clear Lake): Turn North on Killdeer Avenue (Braake Implement, John Deere Dealer). Drive North until reach the intersection of County Road B-20. Continue to the North 1.5 miles and turn left (West) onto Wheelerwood Drive. Continue for 1.9 miles until reach the entrance to Diamond Oak on the right.

Directions from I-35: Take exit 197 for County Road B-20 . Turn right (East) and continue on B-20 for 2.3 miles. Turn Left (North) onto Killdeer Avenue. Continue to the North 1.5 miles and turn left (West) onto Wheelerwood Drive. Continue for 1.9 miles until reach the entrance to Diamond Oak on the right.



Speed Limit Study for Wheelerwood Drive and Jonquil Avenue

The studied segment of Wheelerwood Drive is from Jonquil Avenue, east to Juniper; and Jonquil Avenue from 315th St. to Wheelerwood Drive. Both segments are gravel surfaced. The normal sections of a traffic study were limited to simple traffic counts



On September 9th, 2023, the county Engineer's Office was contacted by the Planning and Zoning Office (P&Z) asking for a vehicle count study. While speed data was gathered, no true analysis was completed. P&Z supplied information as to when wedding receptions were scheduled. The counts were continuously collected, but they were also broken down by calendar day. Counts were manipulated

slightly to add vehicle traveling just after midnight to the previous day. These at most added 7 vehicles to wedding days.

The radar unit was first set up on Wheelerwood Drive at the double arrow sign at the Jonquil Avenue intersection. The 45° angle was pointing to the southeast so no Jonquil Avenue vehicles would be counted. The unit stayed in this location for 2 weeks with raw data collected weekly.



Next the unit was placed on Jonquil Avenue at the northern gate post of a pasture. 2 weeks of information was gathered weekly.

The calendar of the study with orange highlighted wedding days.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		9/26	9/27	9/28	9/29	9/30
		36	89	89	146	158*
10/1	10/2	10/3	10/4	10/5	10/6	10/7
68	55	52	141	73	88	220*
10/8	10/9	10/10	10/11	10/12	10/13	10/14
107	80	3//21	52	2313**	388**	47
10/15	10/16	10/17	10/18	10/19	10/20	10/21
25	26	15	30	40	38	88
10/22	10/23	10/24	10/25	10/26	10/27	10/28
96	137***					

wedding

Black text is Wheelerwood count

Red text is Jonquil count

This is also harvest season. The radar picked up several longer vehicles

*Adjusted for just after midnight counts (added)

** data is suspect - counts each 2-4 seconds = day thrown out.

*** count stopped short of midnight (7:30 pm); some numbers suspect also.

The daily consolidation of the raw numbers are on next page.

Wheelerwood 001		Wheelerwood 002		Jonquil 001 - adjusted		Jonquil 002	
Start Date:	9/26/2023	Start Date:	10/3/2023	Start Date:	10/10/2023	Start Date:	10/17/2023
Start Time:	1:30:00 PM	Start Time:	2:00:00 PM	Start Time:	12:00 PM	Start Time:	12:00 PM
End Date:	10/3/2023	End Date:	10/10/2023	End Date:	10/17/2023	End Date:	10/23/2023
End Time:	1:30:00 PM	End Time:	7:00:00 AM	End Time:	9:00 AM	End Time:	7:30 PM
Days run:	7.0	Days run:	6.3	Days run:	4.9	Days run:	7.3
Hours run:	168	Hours run:	151	Hours run:	118	Hours run:	175.5
Vehicle count:	661	Vehicle count:	742	Vehicle count:	172	Vehicle count:	442
V.P.D.:	94	V.P.D.:	118	V.P.D.:	35	V.P.D.:	60
Lowest speed:	7	Lowest speed:	10	Lowest speed:	11	Lowest speed:	9
Highest Speed:	66	Highest speed:	65	Highest speed:	44	Highest speed:	49
Mean Speed	29	Mean Speed	29	Mean Speed	27	Mean Speed	21
Average speed	32	Average speed	31	Average speed	26	Average speed	22
85% speed:	45	85% Speed:	43	85% Speed:	34	85% Speed:	30



WHEELERWOOD DR

9

10

IRONWOOD AVE

320TH ST

CH B15 WHEELERWOOD DR

16

JONQUIL AVE

15