

VERIFICATION

Cascade County Commissioners
RECEIVED

SEP 26 2019

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x Charity

City of Toronto)
:SS
Province of Ontario)

I, Edward Friesen, as authorized member of Madison Food Park, LLC, and Big Sky Cheese, LLC, as being first duly sworn, do state that I have read the Petition appealing the August 28, 2019, decision of the Cascade County Board of Adjustment's decision on Special Use Permit No. 006-2018 and verify that the information provided therein is true and accurate to the best of my knowledge.

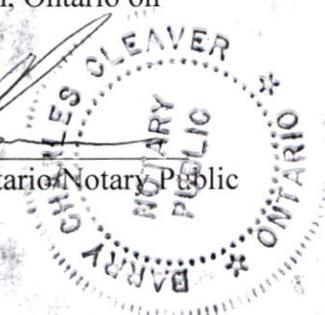
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Edward Friesen

In Witness whereof, and solemnly declared before me, in the City of London, Ontario on September 25, 2019,

[Handwritten signature]

Commissioner of Oaths for Ontario Notary Public





GARLINGTON | LOHN | ROBINSON

MONTANA'S ATTORNEYS SINCE 1870

September 26, 2019

Board of Commissioners of Cascade County
325 2nd Ave. N.
Great Falls, MT 59401

RE: Appeal of Zoning Board of Adjustment Decision

Dear Commissioners:

Pursuant to Section 12.3.5.1 of the Cascade County Zoning Regulations, and on behalf of our client, Madison Food Park, LLC, and Big Sky Cheese, LLC, we present this petition to appeal portions of the Zoning Board of Adjustment's decision on Special Use Permit No. 006-2019 (attached).

We appreciate the time and work the Board of Adjustment applied to our client's application, considering comments from members of the public, and the ultimate decision. We appreciate the Board's approval of the project, but have concerns with several of the conditions added to those proposed by planning staff.

Section 12.3.5.1 of the Zoning Regulations requires us to file this petition and to specify the "grounds of the illegality" to any portion appealed. Therefore, for the reasons stated below, we appeal the following conditions and respectfully ask the Commissioners to remove them from the Special Use Permit approval. The numbers below correspond to the numbers of the conditions cited in the Board of Adjustment's approval letter which we appeal.

2. The Applicant obtains the necessary water rights from the Montana Department of Natural Resources and Conservation ("DNRC"). The Applicant shall be required to place meters on wells and submit quarterly reports to the Planning Department, and obtain water rights if usage exceeds the exempt well levels provided by DNRC.

There are multiple problems with this condition of approval. First, exempt wells do not obtain "water rights" but are subject to a notice of completion. Therefore, the first sentence of the condition is impossible to meet. Second, whether meters are required on wells and any associated monitoring obligations is solely within the purview of the DNRC. The Board of Adjustment does not have the authority to supplement or deviate from DNRC rules and regulations. Further, as a practical matter, the Planning Department is not equipped to monitor quarterly well usage reports

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and lacks the authority to intervene in the event of any deviations, which are solely for DNRC to enforce. For these reasons we respectfully request the Commissioners delete this condition of approval because Big Sky Cheese, LLC, is obligated to abide by DNRC's rules and regulations regardless whether the facility utilizes exempt wells or obtains specific water rights.

3. The Applicant obtains approval from the City-County Health Department and Montana Department of Environmental Quality ("MDEQ") for a new public water supply/wastewater system. The Board requests the DEQ consider requirements for the wastewater ponds to be lined. The Board requires the applicant to provide quarterly reports on the wastewater monitoring wells to the Planning Department.

Big Sky Cheese, LLC, appreciates and understands the need to obtain all required public water supply and wastewater treatment permits from the City-County Health Department and MDEQ and will abide by all such permit requirements. Our concern is with the final sentence. Wastewater monitoring wells are not typically required by MDEQ and the Board of Adjustment lacks all authority to require such wells, any associated monitoring, and any resulting reporting requirements. This condition does not explicitly require the installation of monitoring wells, but implicitly does via the requirement for reporting. It lacks the specificity necessary to know how to satisfy the condition even if the Board had the authority to supplement or deviate from MDEQ's authority, rules and regulations. Therefore, we respectfully request the Commissioners delete this condition of approval. Doing so will have no bearing on Big Sky Cheese, LLC's obligations to comply with all public water supply and wastewater permitting requirements.

7. Operation hours shall be limited to 7:00 AM to 7:00 PM.

Because of the nature of the proposed facility as a cheese processing plant, some activities such as routine maintenance, cleaning and disinfection of equipment, wastewater treatment plant operations and similar tasks will be occurring at the facility as much as 24 hours a day. Therefore, it is impossible to both operate the facility and abide by this condition of approval. There are no findings of fact or conclusions of law adopted by the Board of Adjustment which would support the imposition of this condition. The facility is located more than a mile from any other existing structures and the site was chosen specifically because of the extremely low density of housing and other land uses in the area. Therefore, the facility is in an appropriate area for the proposed use, there are no other land uses limited on hours of operation in the area, there are no findings of fact which support limiting these hours, and it would be impossible to operate the facility with such limitations. We respectfully request the Commissioners delete this condition of approval.

8. All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public, with air from the internal cheese manufacturing process being treated or filtered to address odor concerns. The applicant is to design and adopt odor control measures.

Our concern with this condition of approval is that it is too vague to allow our client to know how to comply or to allow the Planning Department to know when the condition has been met. Generally speaking, all manufacturing process activities will be occurring inside the facility and exhaust ducts will utilize filters to reduce or eliminate odors. However, the condition is worded in such a way in which it could be interpreted as preventing deliveries of milk or other supplies used in the manufacturing process because they occur outside the building. Plus, there are no specifications to determine what “odor control measures” are acceptable. Certainly, Big Sky Cheese, LLC intends to conduct its manufacturing inside and ensure there are no unreasonable levels of odors. However, the facility is located in an area with significant agricultural operations which generate a host of odors, none of which are subject to requirements to be conducted indoors and with odor control measures. Therefore, we respectfully request the Commissioners delete this condition of approval.

12. The Applicant is to execute or obtain and record a road easement from US Highway 89 to the parcel the Cheese Processing Plant is located on.

We have two primary concerns with this condition. First, there are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for requiring an easement – i.e., no finding that there is some intervening private land that might prevent access to the cheese processing facility. Thus, we are unable to determine what concern this condition is attempting to address. Second, we anticipate all the land will be owned by Madison Food Park, LLC. Under Montana law, a landowner cannot grant an easement to itself. Thus, upon recording of such an easement, the easement automatically terminates by operation of law and we would never be able to comply with this condition. Therefore, we respectfully request the Commissioners delete this condition of approval.

14. Livestock and dairy cows are prohibited on site.

There are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for prohibiting livestock and dairy cows on the Madison Food Park site. The project is located in the Agricultural zoning district that expressly permits livestock and agricultural production as a permitted use. There is no basis explained in the record of the proceedings to justify eliminating a permitted use under the zoning regulations. Further, the project is surrounded by agricultural land uses including crop production and livestock grazing.

While Big Sky Cheese and Madison Food Park do not have plans for livestock use on the property, the property contains thousands of acres and some leasing for grazing could be a useful option. Therefore, we respectfully request the Commissioners delete this condition of approval.

15. Design Standards regarding width, pavement and subsurface for access road to accommodate emergency vehicles and provide for dust control shall be implemented.

Our concern with this condition is the requirement for paving the road. There are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for requiring paving, particularly where many of the roads in the area are constructed to a gravel standard. The zoning regulations do not require roads to be paved as a condition of approval for a special use permit. Madison Food Park does expect the road to eventually be paved. However, there are several methods of dust control which can be implemented in the interim which would significantly reduce or eliminate the potential for any significant dust arising from use of a gravel surface. Therefore, we respectfully request the Commissioners revise this condition of approval to remove the paving requirement and, instead, require dust control measures.

16. Applicant shall provide emergency secondary access.

There are no findings of fact and conclusions of law adopted by the Board of Adjustment to explain the basis for requiring a secondary access. Further, there are no specifications in the condition of approval to allow our client to know how to meet the condition, or to allow the Planning Department to know whether the condition has been met. The Planning Department requested comments from the Fire Department and the Department declined to provide any. We presume this condition is rooted in the County's Subdivision Regulations, but no such requirement exists in the County's Zoning Regulations. Having not been requested by the local volunteer Fire Department and having no findings of fact and conclusions of law supporting the imposition of the condition, we respectfully request the Commissioners delete this condition of approval.

17. Applicant obtains fire suppression cistern approval from the Rural Volunteer Fire Department for the fire suppression system.

Because the cheese processing plant is a commercial facility, the design and construction, including fire suppression systems, will be required to meet State of Montana Building Codes through the State's permitting process. This condition, as worded, lacks any specificity for our client to know how to meet the condition, or to allow the Planning Department to know whether

Board of Commissioners of Cascade County
RE: Appeal of Zoning Board of Adjustment Decision
September 26, 2019
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the condition has been met. Therefore, we respectfully request the Commissioners delete this condition of approval, or revise it to default to State of Montana Building Code requirements.

We thank you for your consideration of our petition of appeal. This appeal has been duly verified by Edward Friesen, as authorized member of Big Sky Cheese, LLC and Madison Food Park, LLC. Please let me know if you have questions or need additional information.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

A handwritten signature in blue ink that reads "Alan McCormick". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Alan F. McCormick

Direct Line: (406) 523-2518

Email: afmccormick@garlington.com

AFM:jdl
Enclosure



CASCADE COUNTY PLANNING DEPARTMENT

"Working Together to Provide Efficient and Effective Public Service"

August 28, 2019

Notice Of Conditional Approval

From: Cascade County Planning Department

To: ATTN: Ed Friesen
Big Sky Cheese, LLC
748 Crescent Circle
Great Falls, MT 59404

ATTN: Joe Murphy
Big Sky Civil & Environmental
PO Box 3625
Great Falls, MT 59403

Subj: NOTICE OF CONDITIONAL APPROVAL

Re: Special Use Permit #006-2019
Value Added Agricultural Commodity Processing Facility: Big Sky Cheese, LLC

Dear Mr. Friesen & Mr. Murphy,

On August 28, 2019 the Cascade County Zoning Board of Adjustment ("Board") conditionally approved your request for a Special Use Permit (#006-2019) to allow a Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant, on Parcel 0005348300, Geocode 02-3017-34-47-02-01-0000 subject to the following conditions:

The motion made, and conditions of approval are as follows:

I move the Board adopt the staff report and findings of fact starting on page 2 of the report as well as the findings with respect to the analysis criteria also contained in the staff report dated June 27, 2019, for SUP #006-2019, pages 4 through 24 of the staff report and **approve** the Special Use Permit for the applicant's proposed Cheese Processing Plant on Parcel 0005348300, Geocode 02-3017-34-4-02-01-0000, subject to the following conditions:

1. The Applicant obtains a Driveway Approach Permit from the Montana Department of Transportation ("MDT") and completes a Transportation Impact Study ("TIS") if required by MDT, and allows the MDT to relocate the intersection if it is deemed necessary.
2. The Applicant obtains the necessary water rights from the Montana Department of Natural Resources and Conservation ("DNRC"). The Applicant shall be required to place

121 4th St. N, STE 2H/1

Great Falls, MT 59401

Phone: (406)-454-6905 | Fax: 406-454-6919 | Email: planningcomments@cascapecountymt.gov

<http://www.cascapecountymt.gov/departments/public-works/planning>



CASCADE COUNTY PLANNING DEPARTMENT

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- meters on wells and submit quarterly reports to the Planning Department, and obtain water rights if usage exceeds the exempt well levels provided by DNRC.
3. The Applicant obtains approval from the City-County Health Department and Montana Department of Environmental Quality ("MDEQ") for a new public water supply/wastewater system. The Board requests the DEQ consider requirements for the wastewater ponds to be lined. The Board requires the applicant to provide quarterly reports on the wastewater monitoring wells to the Planning Department.
 4. The Applicant obtains a MDEQ general permit for storm water discharges associated with the construction activity and, after construction, installs required onsite detention basins for storm water runoff as part of a storm water pollution prevention plan.
 5. The Applicant obtains any other County, State, or Federal permits required by the respective agencies for the legal operation of the proposed use.
 6. The Applicant adheres to all relevant building code requirements established by the Department of Labor and Industry.
 7. Operational hours shall be limited to 7:00 AM to 7:00 PM.
 8. All cheese manufacturing process activities must occur inside a fully enclosed building and not be visible to the general public, with air from the internal cheese manufacturing process being treated or filtered to address odor concerns. The Applicant is to design and adopt odor control measures.
 9. All setback requirements for the Agricultural District must be followed.
 10. Outside storage must be fully screened to conceal work equipment or materials not stored inside, with landscaping to meet or exceed County standards.
 11. No structure is to extend into the Height Overlay District.
 12. The Applicant is to execute or obtain and record a road easement from US Highway 89 to the parcel the Cheese Processing Plant is located on.
 13. Outside lighting is to be designed to avoid light pollution with the goal of being dark sky friendly or dark sky compliant if possible.
 14. Livestock and dairy cows are prohibited on site.
 15. Design standards regarding width, pavement and subsurface for access road to accommodate emergency vehicles and provide for dust control shall be implemented.
 16. Applicant shall provide emergency secondary access.
 17. Applicant obtains fire suppression cistern approval from the Rural Volunteer Fire Department for the fire suppression system.

If you wish to appeal the decision of the ZBOA, the Cascade County Zoning Regulations provide Section 12.3.5 "Appeal of Zoning Board of Adjustment Determination to Board of County Commissioners or Court of Record" delineating the appeal process. Appeals must be filed within 30 days of the date of decision

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CASCADE COUNTY PLANNING DEPARTMENT

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(August 28, 2019) with either the Commission or the Court by a duly verified petition, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.

I have included the Special Use Permit in this letter. The Location/Conformance Permit for the new structure shall be issued once conditions 1-17 (see above) have been verified. Please provide the relevant documents to the Planning Department upon acquisition of any relevant permits or licenses to expedite the process. Should you have any questions, please contact me at 406-454-6905 or email me at shopkins@cascadecountymt.gov.

Sincerely,

Sandor Hopkins, Interim Planning Director
Cascade County Planning Department
121 4th St N, Suite 2H/I
Great Falls, MT 59401

121 4th St. N, STE 2H/1

Great Falls, MT 59401

Phone: (406)-454-6905 | Fax: 406-454-6919 | Email: planningcomments@cascadecountymt.gov

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**CASCADE COUNTY, MONTANA
COUNTY ZONING DISTRICT**

Cascade County Planning Department

121 4th St No., STE 2H/I

Great Falls MT 59401

Phone: (406) 454-6905

- Approved
 Denied
 Withdrawn

SPECIAL USE PERMIT

This is a permit issued in recognition of compliance with Zoning Requirements set forth in the Cascade County Zoning Regulations. THIS IS NOT A BUILDING PERMIT.

Original Issue Date:
August 28, 2019

Permit Number: **S006-2019**

Approved

Name: *Big Sky Cheese, LLC*

Structure: *Value-added Ag Commodity - Cheese Processing*

Mailing Address: *748 Crescent Circle*

City, State, Zip: *Great Falls, MT 59404*

Property Address: *8346 US Hwy 89*

Permit Description:

Legal Description: *S34, T20N, R5E*

Parcel Number: *0005348300*

Geo Code: *3017 34 4 02 01*

Special Conditions:

See Conditional Approval Letter


County Zoning Administrator