

Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

July 6, 2017

Cherry County Court House Court Room

The meeting was called to order at 4:01 pm CT, by Jim Buer, Chairman. The meeting was moved to the Cherry County Courthouse Court Room due to number of guests present. Roll call was taken. The following members were in attendance: Jim Buer, Herb Pabst, Albert Ericksen, Todd Mathis, Rob Lee, Gary Swanson, Lynell Stillwell, Coby Billings and John Wheeler.

Also present was Cherry County Zoning Administrator, Joel Mundorf, Ann Krueger, recorder of the minutes, and several guests.

The Open Meetings Acts posted in the court room was noted. Public notice for the meeting was published in the Valentine Midland News on June 21, 2017, and available on the Cherry County Planning and Zoning website. Minutes from the June 6, 2017 meeting were read.

The minutes were amended to add Carolyn Semin to the guest list. The date when previous minutes were read was corrected to May 2, 2017. Guest Jim Ducey stated that according the Open Meetings Act, Neb. Rev. Stat. Ann. § 84-1411, the minutes need to include where and when meeting notifications were posted.

Albert moved to accept the minutes as corrected. Herb seconded. Roll call vote was taken with Lynell, Coby, and John abstaining. Rob, Todd, Herb, Gary, Albert and Jim voted in favor. Motion carried.

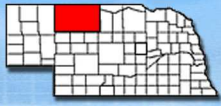
Public Comment: Brynn Welch from North Carolina addressed the group concerned about the research, or lack thereof, done on groundwater and the effects that wind turbines will have. She stated that concrete will be leaching into groundwater and would affect humans and animals. Freezing and thawing of the groundwater could create erosion on the base of the wind turbine towers.

Jim Ducey passed out a handout. He stated that, subject to Open Meetings Act, the public has a right to attend and speak at any time during a public meeting. He also voiced concerns that the wind turbine fire issue should have an immediate suppression of fire, and not be allowed to burn. The volunteer fire department should not have to spend hours or days monitoring a fire. The potential toxic fumes from a burning wind turbine would affect neighbors. He also stated that no details have been given to address the size and height of a turbine. Potential construction noise is not addressed in the planning commission's report and no construction hour limits are given, for example, only permissible from 8 am to 5 pm. If helicopters are used, that will also create noise. Scenic corridors are not addressed. He stated the report should be based on facts and not beliefs.

Craig Andresen stated that in the United States, wind energy accounts for a very small amount of energy used but is reliant on a large amount of tax subsidies. He gave statistics on renewable energy usage around the nation and globally, compared to coal and fossil fuel, with findings indicating that wind is more expensive. He mentioned that the power generated by the wind will not stay local, but questioned how long the areas receiving the wind energy will pay for it due to its expense.

Dan Welch discussed his problem with his land easements with NPPD, and his concerns about planes flying over his property taking pictures.

Sherri Bacon also spoke concerning property rights. Signing an easement gives the other party control of your property. Wind turbine facilities have become a significant portion of foreign owned land, because they have the easement. That then infringes on the tax payer.



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Another guest said there needs to be a two-year moratorium, as other states have done, because the issue is no longer about progress but is becoming about greed.

The public comment period was suspended momentarily and the public hearing for conservation easement regarding Conditional Use Permit (CUP) Application 02-17 For Cleve Trimble was opened at 4:30 pm CT.

This permit is to add 50 acres to an existing conservation easement.

Cleve Trimble addressed the group. He has owned a ranch for 50 years, in which the Snake River flows through. In looking to the future, his concerns are that someone could come in, take the 50 acres and break it in 10 acre parcels without having to go through a zoning process. His purpose of the easement is to see that doesn't happen. It does not omit the land from taxes. He's done similar easements with other portions of his land. This is to keep it out of development.

Public Comment on Easement Application: Jim Ducey wanted to go on record to commend Cleve for his efforts. The 5 smaller parcels he wants to include are adjacent to the area which is already protected. He felt it extends the protection of the Snake River.

Craig Andresen asked if the easement keeps it in the protection forever? Cleve mentioned that the way it's written to federal standards, it is in perpetuity. Doug Petersen asked if the permit would affect his property? Mr. Trimble stated it would not.

The public hearing was closed at 4:45 pm CT, and the regular meeting was re-opened.

Motion to approve CUP Application 02-17 Conservation Easement was made by Herb Pabst. Gary seconded. A roll call vote was taken and the motion carried unanimously.

The public comment period was reopened.

Larry Ridenour asked if there was a reason the comment is at the beginning? He felt it would be more beneficial to have it at the end instead of getting slammed with new information.

Barb Welch brought up the environmental impact statement regarding access roads. In their road easement with NPPD, NPPD has been using pesticides on 14 feet on either side of the access roads.

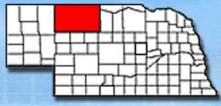
Carol Neiman Lewis stated her concerns for the wind turbine project and the loss of bird life and bats, which eat mosquitos. She questioned what the CDC has to say regarding those issues. The northern long-eared bat is in this area, which is an endangered, protected species, and she hasn't heard of any mention of that in any of the studies. She feels that much more investigation needs to be done.

Bob Stetter said that the reason Dr. Trimble wanted the conservation easement was because his land was too fragile for development. He questioned whether the land where the wind turbines are going to go are any less fragile.

Mr. Trimble gave his statement regarding the golf course in Mullen, where members marvel at the unfettered horizon. The conventional wind tower, at 400 feet tall, can be seen from 30 miles away in any direction, so roughly 3000 square miles are affected. The aesthetics and impacts to the local environment are enormous and must be taken into consideration.

Peggy Marsh reiterated what Cleve mentioned.

Jerry Adamson mentioned a statement that he's heard regarding the new towers being computerized so that when planes are flying over, the tower will have lights come on, but otherwise the lights would be off. He also mentioned the number of towers will be reduced because the new towers can generate more power.



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Brynn Welch mentioned studies she's read on whopping cranes and effects based on 8 documented crane strikes taken from 1998, which is most likely underreported and out of date, so additional research was also needed on effects on birds.

Tim Anderson wanted to comment on the discussion regarding blinking lights, which get the attention of avian waterfowl, so if the lights are off, the collision rate in theory would be higher. Blinking lights would be something that needs to be consulted with the US Fish and Wildlife Service and Game and Parks and how they affect the wildlife. A view-shed model needs to be done for the turbines, so landowners know what they'll be looking at from their properties.

Carol Neiman Lewis also said solar rooftop panels should be looked at.

Ann Warren asked if the commission has taken into consideration her request for additional zoning. The long-term effects of wind turbines are unknown.

Olen Olsen mentioned that he was interested in the wind turbines at first, but decided against it. 19 to 30 wind towers are the number of turbines the wind energy group is saying will be constructed. He had heard 480 towers was their original goal.

Larry Ridenour stated that the original figure was based on the original landowner line, but that is no longer the case.

Public comment time was closed at 5:14 CT after asking several times if there were further comments. Chairman Buer expressed thanks to the public and asked that the public respect the planning commission's time to get through their meeting.

Communications: No communications.

Old Business: The planning commission continued their review of the Cherry County Commissioner's request. The members are continuing to work on their report. On the cover page, a correction was needed for Coby's name, to omit the "l".

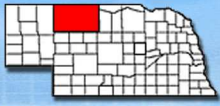
Page 1 - Effects of wind turbines on property value – the report is still not done, as five other counties are wanting the study done as well. The report is expected to be fairly substantial, but is hoped to be completed by the end of next week.

Page 2 – Wind turbine fire. Valentine Fire Chief Terry Engles reviewed this sheet and suggested to add a statement that wind turbine fires will not be extinguished by the Valentine Rural Fire Department. This item should be potentially moved to number one. Chief Engles is worried about spectators and keeping them away. There has not yet been a wind turbine fire in the state of Nebraska. Who would be creating the safe zone? It is presumed that the Sheriff's Department would help secure the area. The departments will work together and look at the situation, and have their plan should a fire arise. The departments want flexibility, so the fire plan is a generalization.

Page 3 - Lancaster County Health Review – this page is a summary of what the Lancaster County Health Department came up with. Clarification on 3 dBA above background noise was discussed.

Guest Ducey said that arrangements are needed to be make a reasonable effort for the public to hear the discussion. A complaint can be filed that this is an illegal meeting if not done. Gary Swanson invited the guests to move closer and offered to bring up more chairs.

The commission continued to discuss the noise impact regarding sound limits on exterior walls. The wording of the sentence needs to be worked on to make it clearer. The commission discussed saying "As determined by a pre-construction noise study."



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Page 4 - The materials reviewed by the CCPC (Cherry County Planning Commission) seemed to coalesce around several themes, which are listed out in 9 statements. Coby asked if something about low frequency noise needs to be added. How would it be measured? Should setbacks address that? Change dB to dBA, and also change grammar of effect/affect. All abbreviations need to be defined.

Conclusion – this is meant to be a brief review of what the planning commission did to address the concerns.

Viewscape/landscape – the zoning regulations do not have any view corridors or scenic views on their zoning map. Lynell suggested adding the wording officially or formally identified to that statement. Cherry County has not “formally” identified any view corridors or scenic views. Wildlife protection, a contentious issue, is the next item. Power line encroachment requires voluntary easements. Wind energy conversion system (WECS), should be written out and used instead of using the abbreviation WTF, wind turbine facility, as noted in the regulations.

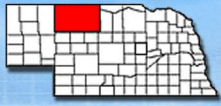
Decommissioning of WECS – the statement is brief. Add that engineering will be required on all applicants on the decommissioning portion of the application.

Property Rights – there is nothing yet written on this portion. Should the commission leave it blank or take it out? Property rights are a great argument and a tough issue. Property Rights have two sets: town and country. Junk cars needed to be moved in town, and in the country, that’s no so. Where does the line get drawn on property rights? The commission agreed that property rights are too large of an issue to be omitted from the report, but it is difficult to define. Todd mentioned the voluntary easements on power lines could be added under property rights. Lynell asked if the Commissioners could work on their interpretation of property rights and what “encroachment” means. Coby agreed there is a fine line.

Another item will be added to the report with other issues. New concerns such as LB 504, regarding a two-year moratorium on wind turbine facilities, could be added. Jim Ducey added Senator Hughes is the committee chair on two other resolutions currently being addressed that could potentially be added under other concerns. Lynell asked for definition and interpretation by the Commissioners on “property rights” as it applies to Cherry County. Todd asked about whether there is anything in Nebraska Statutes regarding wildlife protection? The commission added Nebraska Game and Parks under the wildlife section.

Gary handed out the section of the code that concerns the setbacks. The first page shows dwellings, and 1000 feet for participants, and half mile for non-participants. Participants or non-participants may waive the setback by any amount. The regulations say diameter plus applicable building setbacks, which could be clarified. Part 13 of the zoning regulation says that no commercial WECS should exceed 50 dBA, excluding bad weather. Part 17 is in regards to public enquiry complaints and basically says those with grievances will go to the zoning administrator and have the noise measured, and if it’s beyond what the regulations say, it needs to be fixed, up to and including the shutdown, of the WECS. The planning commission needs to determine what to do regarding decibel levels and setback. One recommendation from the Lincoln study says 40 dBA. Gary handed out maps that illustrates a one-mile setback, which shows that sound typically dissipates at a mile. Average, still countryside noise level is around 30 dBA. Distances and setbacks could be affected by the property valuation study. Concerns from the planning commission were brought up that setbacks should potentially not be set until the property valuation is complete. The commission, at this time, is not comfortable setting a limit without the property valuation study completed. The commission discussed further about definitions in the report. Guest Jim Ducey suggested changing the wording of “powerful avenue” to “legal means” regarding Section 613.03.17 providing a home owner a way to address grievances. Albert asked about including or differentiating non-participating property lines in addition to non-participating dwellings. Dwelling is defined in the zoning regulations. The commission discussed if there are definitions of property lines and how to work the setbacks from dwellings and participating/non-participating property lines.

Coby mentioned that the dwelling definition is in wind turbine regulations and also in the zoning regulations, but they differ slightly, so the commission should perhaps clearly define which one they’ll use.



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The planning commission hit an impasse on participating and non-participating property lines. They have not found concise examples in any of the other county's regulations. They discussed changing the wording to setback from non-participating property line because it states non-participating dwellings. Should setback amount be inserted after the valuation study? If so, another meeting should be held before report is submitted. Perhaps property lines should be left open as to the number of miles. They discussed changing the sentence about no wind turbine facility (WECS) should exceed a certain number of dBa at the nearest dwelling, rather than use the term structure occupied by humans. When this number is determined, it is going to be a suggestion. A public hearing will need to be held should any of the numbers differ from what is currently in the code. A special meeting was discussed to be held following the receipt of the property valuation so that the report that the planning commission was working on would be completed, with setbacks and dBa values filled in.

New Business: A special meeting was set for Friday, July 21st, 2017 at 9:00 am at the Cherry County Commissioners Meeting Room. A recommendation was made by Gary Swanson to hold no public comment period during that meeting in order to finalize their report. The next regular meeting date will be decided at that time.

The meeting was adjourned by Chairman, Jim Buer at 7:17 P.M. CT.

Ann Krueger, Recorder

Guests included: Chris Abbott, A.J. Abbott, Michael Burge, David Hamilton, John Ravenscroft, Jerry Adamson, Matt Coble, Carolynn Henderson, Larry Ridenour, Will Fischer, Peggy Marsh, Tim Anderson, Megan Anderson, Olen Olson, Julie Olsen, Jeffrey Moore, Bill Quigley, Pat Simonson, Aaron Simonsen, Susan Welker, Sam Miles, Bob Stetter, John Mundorf, Lana Peterson, Carol Nieman Lewis, Twyla Gallino, Gail Hermann, James Hermann, Sherri Bacon, LeRoy Semin, Janice Drinkwalter, Ann Warren, Charlene Reiser-McCormick, Barbara Welch, Brynn Welch, Dan Welch, Jim Ducey, Marion Rhodes, Thomas Witt, Twyla Witt, Carolyn Semin, Craig Andresen, Merrial Rhoades.