

Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

October 3, 2017

Cherry County Court House Conference Room

The meeting was called to order at 4:01 pm CT, by Jim Buer, Chairman. Roll call was taken. The following members were in attendance: Jim Buer, Gary Swanson, Rob Lee, Albert Ericksen, John Wheeler, Lynell Stillwell, Todd Mathis, Herb Pabst, and Coby Billings.

Also present were Cherry County Zoning Administrator, Joel Mundorf, Ann Krueger, recorder, and several guests. The meeting was moved to the conference room due to number of guests present.

The Open Meetings Act was noted. Public notice for the meeting was published in the September 20, 2017 edition of Valentine Midland News. Minutes from the September 5, 2017 meeting were read. Correction was made by Lynell Stillwell to change the location to the Meeting Room from the Court Room. Motion to approve the minutes as corrected was made by Rob Lee. Herb seconded. Roll call vote was taken with all members voting in favor. Motion carried unanimously.

Public Comment: Five guests indicated they would like to comment publicly. A timer was brought in to help keep track of the comment time.

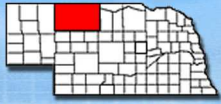
Leroy Semin commented that if BHS Kilgore gets their permit and gets their easement, he said there will be at least five miles of county road involved. He wanted to bring that to the board's attention as there will be extensive use of the county road.

Lana Peterson passed out a handout to the planning members. In reviewing the wind zoning regulations, there are two suggestions that her and her husband Randy have. It is imperative that land owners be held responsible for decommissioning for the wind turbine. If the companies go bankrupt or fail to decommission, this is a way to ensure they will be taken down properly. Also, a two-mile setback should be required. She also mentioned that an engineer should calculate how far an ember would travel if a 600-foot turbine caught fire with conditions present like 50 mph winds and 114-degree temps, such as during the Big Rock fire.

Michael Knapp offered his counterargument about the setbacks. Changing a setback is a very different change to the regulations than altering a fire protocol. You are directly restricting private property landowners' rights when the setback is changed. It will have a direct and profound impact to the 400,000 acres of recorded leases involved in the wind turbine development.

Jim Ducey issued a complaint regarding the emails from Ron Elliot that discussed the impact of wind turbines on property values and how it was reported by the media. He also had a question on the agenda, under New Business, Item a. Review Zoning Regulations. He did not know what that item refers to and thinks it is too vague to try to discuss during their public comment period. He would like those agenda items to be more expressive. Last month, there was a disagreement about the solar discussion. That item was put under new business, but this month it is not on the agenda. On the handout passed out today, there was some discussion at the last meeting that there be something done about solar farm regulations and suggested that it be put in the Conclusion of their report under Other Items. He would also like to request to the zoning board that each month the zoning administrator give a report, or brief summary, of his monthly activities. He wants accountability and to hear what he does, as he's a paid member by the county.

Charlene Reiser-McCormick asked if anyone was able to watch the hearing at Lincoln that took place on September 22nd. She would like to request if she could show that hearing to the planning commission when it becomes available. It regarded testimony on a resolution (LR125) introduced by Natural Resources Committee Chairman Dan Hughes that studied public power in Nebraska, including the role of renewable energy in state economic development. It included



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testimony from landowners near turbines and the problems they have had with them, including noise. She knows the two-mile setback would affect the thousands of acres that are involved in the wind projects, but there are also thousands of acres affected by surrounding neighbors. She also mentioned the letter given by the appraiser could have another letter from the other side just as easily in its place. The property they looked at did not show a complete enough picture. It is not recent enough, nor complete enough. Ron Elliot has been doing property valuations in Thomas County, and there have been many protests with his valuations. There are no statistics given by the appraiser, just a generalization. They also do not indicate if the property was sold to a wind energy development company.

Bob Stetter wanted to add on to Charlene's statement. He was at the meeting in Lincoln, and after being there, he is definitely against wind turbines. The people presenting at the meeting were experiencing firsthand the negative effects of the turbines. He asked why this particular appraiser was chosen. Gary said that Ron Elliot has worked for Cherry County for years, and so that was the reason why he was used. Herb asked if it the testimony changed any other the board member's opinions at the meeting. Bob said they didn't voice their opinion during the meeting, but thought they did. Herb asked if the resolution will leave the committee and go to the floor? Bob said it was very probable. He also said that some of the senators said they had no idea of the effects of the turbines, and others were biased because they "had their finger in the pot".

Lynell asked where the people that testified were from and the guests said various counties.

Twyla Witt watched the hearing live and some of the counties included: Holt, Boone, Nuckolls, Garden, Knox, among others. One of the Senators spoke of the problems he had in his district. The meeting lasted over four hours. She said that Senator Brewer's office and the Natural Resources Committee could direct you to the website or the recording of it. Carolyn Semin said it was not quite available yet. The hearing room was full and there were 30-40 people in the overflow room.

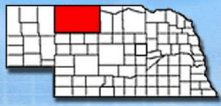
Bob added that there's an article in the Lincoln Journal Star, which discusses what the meeting was a about. It is written by JoAnne Young dated September 22 and uploaded September 25, 2017. Bob has a copy and he would be happy to make more copies, and said it was worth reading.

Twyla asked if they can make comments after the conclusion of the meeting, regarding what the planning commission will include in their report to the commissioners.

Lana asked if the planning commission were to change the zoning regulations, would the commissioners have to approve it. Herb said that was correct. There will be a public hearing first.

Communications: Chairman Buer asked if everyone on the committee received a copy of the letter from Dave Hamilton. The planning commission took a moment to review the letter and asked him to read it. Dave wanted to restate his reasons for supporting wind energy. Under section 613.03, under the purpose statement with regards to Wind Energy Development, it says: "It is the purpose of this regulation to promote the safe, effective and efficient use of commercial/utility grade wind energy systems within Cherry County". He mentioned this will expand property valuation, bring money into the community, and bring stability into markets. It will promote economic growth and provide jobs. It would create 60 megawatts of clean electricity. He mentioned how the County Commissioners had the planning commission look into more issues, and gave the committee six months to take more time. Now, nine months later, proponents are patiently waiting to hear if they will be able to develop.

The report shows no dangerous health effects with a half mile setback. Wind Energy development is an established technology with 13 years success in Brown County and 4 years in Broken Bow, in Custer County. There is talk the planning commission will change the setback, which will cause more delay. A Save the Sandhills group at one time tried to ban center pivots. Change is constant. Enough time has been taken for these studies.



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Guest Charlene Reiser-McCormick had given the planning commission a letter from a judge from Massachusetts where the operation of wind turbines was declared a nuisance. The judge concluded that there was unreasonable interference with the plaintiffs' enjoyment of their property and therefore that constituted a nuisance. After reading the handout, she begged the committee to watch the hearing to see firsthand the effects they have on people.

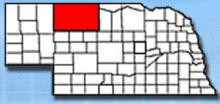
Old Business:

- a. Review of Wind Turbine Property Values Report: Gary said on page two of the report, there is now the letter from Matthew Wilson, whom appraiser Ron Elliot works for. There aren't very many property changes and it's basically not clear of any effect on property values. Gary asked if they should have more than just this letter. Lynell said the letter is the only "official" report they have. This property valuation is more recent than the Berkeley study, but there are limited land sales. Gary said the Berkeley study doesn't say much different than the appraisal by Ron Elliot done on ag land. Chairman Buer asked if the letter would be attached, and it was discussed that it would be the body of that page of the report.
- b. Review of the Commissioners Report: Chairman Buer asked the commission to work through the entire report. With regards to the fire page, page 3, Herb felt that there was not much more that could be done. There is a spelling correction to the word sheriff that still needs to be done. Page 4, the Lancaster County Health Review, was examined. In the health report, the height of the turbines was not discussed. That could have an impact. Gary asked if there were any additions or corrections to Page 5. Lynell asked if the wind farms in other parts of Nebraska are on primarily flat ground? Gary said they differ. The commission moved on to page 6, the conclusion.

Albert made a motion to add to the report a two-mile setback from a non-participating dwelling, and one-mile setback from non-participating property line. No Wind Turbine Facility should exceed 35 decibels (dBA) at the nearest non-participating dwelling. Herb seconded the motion. Gary made a motion to vote on those issues separately, but withdrew his to have discussion on Albert's motion currently on the floor. Rob also felt it would be pertinent to break down the motion separately as well. A roll call vote was taken on Albert's motion with Albert, Todd, and Herb voting in favor. Gary, Rob, John, Lynell, and Coby voted against. The motion failed 5-3. Gary made a motion for a setback of 1 mile for non-participating dwellings be required. Rob seconded. Albert felt one mile is too close because the turbines are enormous. Coby said after Gary's motion is voted on, another motion could be made to change the setback back to two miles. A roll call vote was taken with Gary and Rob in favor. The remaining members voted against and the motion failed 6-2.

Coby made a motion to set the setbacks at two miles from non-participating dwellings. Herb seconded. Lynell asked if it had to be either one or two or if it could be a mile and a half. Albert, John, Todd, Herb, Coby voted in favor of the motion. Gary, Rob, and Lynell voted against. Motion carried 5-3.

Albert made a motion for a setback of one mile from a non-participating property line. Herb seconded. Gary discussed that a half mile is adequate and extending out a mile is perhaps overkill. The setback is two miles from a dwelling in their proposal, so on a property line, where there may not be anyone around for months on end, and a mile may be too much. Half a mile fulfills their obligations and puts an end of any chance for the turbine to get across the property line. Noise abates at that distance. Albert argued that a lot of non-participating property owners don't think that even a mile is enough distance, and therefore he is trying to find a middle ground. Lynell said that people might want to build closer to their property line and that would influence that ability. Rob said the non-participating people's concerns are always addressed, but what about the people that would want to participate? Would that over-restrict the parties that would like to participate? An easement could be signed to change these setbacks between the parties. Discussion ended, and a roll call vote was taken. Albert, Lynell, Todd, Herb and Coby voted in favor of the motion. Gary, Rob, and John voted against. Motion carried 5-3. Under section 613.03.13, Albert made a motion that no Wind Turbine Facility should exceed 35 dBA to the nearest non-participating dwelling. Herb seconded. Albert said the reason for that decibel level is due to the



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infrasound, and the lack of studies done on how that affects people. A roll call vote was taken with all in favor. Motion carried unanimously.

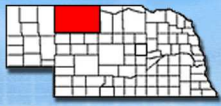
Page 7 of the report was then examined. Gary asked if there were any additions. Guest Jim Ducey suggested to add the proper names of US Fish and Wildlife Service and Nebraska Game and Parks Commission. LB 504 is the bill that might move out of committee, and is addressed under "Other Issues". John said if they should ask the commissioners to wait and see what happens with LB 504, the bill proposing the moratorium and task study, before moving forward with changes to the zoning regulations? Rob suggested to put a reason as to why LB 504 is listed, as it is unresolved, at least until January. Coby said they should put LB 504 as item number six, and the commissioners should consider it.

A suggestion was made by Guest Ducey to say that the commissioners should consider LB 504 based on this being a priority bill and also because of the comments made at the legislative hearing on September 22, 2017. The transcription would probably take two weeks to be available.

The planning commission discussed wording a recommendation in the report to the commissioners as follows: That the Cherry County Commissioners consider LB 504, which is a bill introduced to create a two-year moratorium on industrial development of wind energy projects in the sandhills as well as form a task force study. They also recommend the Commissioners consider the testimony from the Nebraska legislative hearing on September 22, 2017, which should be available shortly, and concerns legal resolution 125, the interim study to examine public power in Nebraska.

Todd asked if they would add on a consideration of solar farms. Gary said it was up to the planning commission to add that but might not be necessary for this report. Gary suggested that the planning commission see an entire corrected report before voting on approving the entire report. A review of the updated report will be put on next month's agenda.

New Business: a. Review zoning regulations – the votes that the planning commission made on their report means that they have to review the zoning regulations and make changes accordingly. The planning commission turned to the page of Wind Energy Zoning Conversion Facilities that shows the chart with property lines. Gary said they will have to make changes to this page, which is page 55 of the Amendments to the Wind Energy Section of the Cherry County Zoning Regulations, illustrated below:



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Setbacks

All towers shall adhere to the setbacks as measured from centerline of turbine established in the following table:

	Wind Turbine – Non Commercial	WECS Wind Turbine – Commercial/Utility WECS	Meteorological Towers
Property Lines (other than right angle corners)	Diameter plus applicable building setback	Diameter plus applicable building setback	1.1 times the total height
Right angle corner property lines	Diameter plus applicable building setback from both property lines	Behind a line on the property lines drawn between two points 150' from the property line intersection. Generator blades must not exceed the building setback lines on the non-road side, and shall not encroach on the right-of-way on the road side. (See Figure 2)	1.1 times the total height from both property lines
Dwelling *	Diameter plus applicable building setback for owner ½ mile for non-owner dwelling	<u>1,000' feet for participant ***</u> <u>½ mile for non-participant ***</u>	1.1 times the total height plus applicable building setback
Road Rights-of-Way**	Diameter plus applicable building setback	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Other Rights-of-Way	Diameter plus applicable building setback	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Public Conservation Lands including Wildlife Management Areas and State Recreation Areas	Applicable building setback	Diameter plus applicable building setback	1.1 times the total height plus applicable building setback
Wetlands, USFW Types III, IV, and V	NA	600'	1.1 times the total height
Other structures not on the applicant's project site	NA	Diameter	1.1 times the total height
Bluffs of over 15 feet		1,320'	

* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.

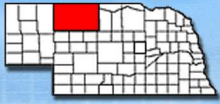
** The setback shall be measured from any future Rights-of-Way if a planned change or expanded right-of-way is known.

*** Participants or non-participants may waive or reduce the required setback by any amount.

Another column might have to be added for non-participating and participating. The planning commission discussed eliminating the diameter plus non-participating property line, and replacing it with one mile. The would change the half mile to two miles for non-participating dwellings. Road Rights-of-Way are currently set at diameter plus applicable building setback. Albert discussed having the measurement at three times the total height, rather than the diameter. Albert has concerns about the turbines throwing ice during winter. Gary thought Albert's idea is rational, and if the regulations are to keep flicker off the road, there should be a section that states just that. Discussion was had on whether the height measured the blades or just when to the top of the hub, and it was determined that the current definition of tower height measure to the hub. Rights-of-way were discussed as railroads, cell phone towers, etc. Coby suggested that public lands could be treated as non-participating entities, and would have the right to sign an easement.

The planning commission discussed keeping three asterisks next to non-participating property line, which would be changed to one mile. Public conservation would also have three stars/asterisks***, which means that participants or non-participants may waive or reduce the required setback by any amount through an easement.

Noise was also suggested to be changed, found on Page 58, number 13. It currently states: "No Commercial/Utility WECS shall exceed 50 dBA at the nearest structure occupied by humans. Exception: a Commercial/Utility WECS may



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exceed 50 dBA during periods of severe weather as defined by the US Weather Service". The commission discussed leaving the decibel at 50 dBA during severe weather, and just changing the decibel levels to 35 dba to the nearest non-participating dwelling, instead of using the term "structure occupied by humans".

Page 56, Section 1 discusses flicker. Gary suggested adding that no wind turbine should cast a shadow flicker on a public road.

Guest Ducey asked if the proposed changes be available prior to the November meeting, with at least 10 days' notice. He also asked if, in the public notice that is in the newspaper, they could put that the information that will be available on the planning commission website.

Gary said the changes proposed are just that, a proposal. It will be written up, and then the changes will be reviewed right away, and also put up on the website. After their meeting, they have a public hearing, and then they can vote to make the changes and also pass the report on to the commissioners. The earliest to have a meeting and public hearing would be the last week of October. Otherwise, they could go with their regular meeting date. Gary suggested holding the public hearing during their regular meeting. Then the commissioners will have to hold a public hearing to actually change the regulations.

The next regular meeting was set for November 7, 2017 at 4 pm CT at the Cherry County Commissioners Meeting Room. A public hearing is also planned for that time.

The meeting was adjourned by Chairman Jim Buer at 7:06 pm CT.

Ann Krueger, Recorder

Guests included: Merrial Rhoades, Marion Rhoades, Twyla Witt, LeRoy Semin, Carolyn Semin, Jim Ducey, David Hamilton, Charlene Reiser-McCormick, Matthew Miles, Mike Burge, Lana Peterson, Lynn Mundorf, John Mundorf, Bob Stetter, Ann Warren, Michael Knapp.

CORRECTED & APPROVED