

Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

November 7, 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 Court House Court Room due to number of guests present. 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 Ann Krueger, recorder, and several guests. The meeting was moved to the court room due to number of guests present.

The Open Meetings Act was noted. Public notice for the meeting was published in the October 18, 2017 and subsequent editions of Valentine Midland News. Minutes from the October 3, 2017 meeting were read. Corrections were made to change guest Carolyn Semin's name from Carol, and to the number of recorded leases to 400,000 from 4,000 in guest Michael Knapp's statement. The word "at" was changed from "the" in reference to the hearing at Lincoln in Charlene Reiser-McCormick's statement. A motion to approve the minutes as amended was made by Herb. John seconded. Roll call vote was taken with all members voting in favor, and the motion carried unanimously.

The meeting was closed at 4:31 pm CT to open the Public Hearing – Changes to Wind Energy Regulations.

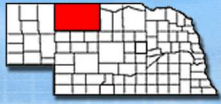
Gary handed out drafts of the proposed changes, which were highlighted on the handouts in blue.

Public Comment was opened.

Guest Matt Coble requested that no setback changes be made. He listed his reasons, some pertaining to infrasound. Mr. Coble gave examples of several wind farm studies. One of the conclusions were that the level of infrasound was well below the threshold level. He said that Section 17 already protects non-participants and the proposed setbacks are based on fabricated beliefs with no scientific evidence. He hoped that the planning commission would make their decisions based on rational, unbiased and well-informed decisions and that they not be intimidated by the opposition.

Guest Sherri Bacon was speaking on behalf of Carolyn Semin and read a letter from Mrs. Semin, which thanked the planning commission for their time spent and added their support for the proposed changes. The letter commented on past planning commission meetings as well as Cherry County Commissioners' meetings and her thoughts and opinions on what has transpired in those meetings, including statements she had heard from Matt Coble. Sherri also gave a handout that had a timeline of the planning commission meetings to share with those not able to attend every meeting. Mr. Coble added that some of his statements that were noted in Mrs. Semin's letter were taken out of context.

Guest Craig Andresen read excerpts from the Cherry County Comprehensive Development Plan, which states that the purpose is to help citizens and decision makers guide change into the framework of this vision, which includes both a traditional respect for property rights and a strong sense of responsibility and stewardship. He quoted from the comprehensive plan that "Cherry County will work to ensure that changes in the use of local land and water resources have no adverse impact on the present or future viability of agricultural operations on neighboring lands." He asked where does, in the proposed wind energy regulations, is that taken into consideration? He went on to quote that the comprehensive plan states that "Development sites shall maintain a vegetative cover sufficient to prevent wind and water erosion", "Developments that propose to use groundwater, or that could potentially contaminate groundwater, shall demonstrate that they will not adversely affect water levels or water quality in existing wetlands or lakes, or adversely affect water levels or water quality in existing wells", "Development plans should also reflect a concern for wildfire hazard, wildlife habitat and steep slopes. Naturally hazardous and sensitive lands are best left in agricultural use". He stated until the whole of the Cherry County Comprehensive Development Plan is reflected in all of the



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regulations for wind energy, the regulations considered today are wholly invalid. Mr. Andresen also mentioned a study on infrasound in Brown County, Wisconsin.

Guest Wanda Simonson stated she was here to support the proposed two-mile setback from the non-participating dwelling and one mile from non-participating property line. She is also representing her husband Pat and three sons, Eric, Mike and Nick, also Cherry County Land owners. She asked that the commission not support industrial development of wind energy projects. The testimony from Vickie Mays in Lincoln shows the actual effect of someone who does live near a wind turbine. She said that her testimony was heartbreaking.

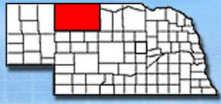
Guest Merrial Rhoades from Thedford wanted the planning commission to make sure that the all items of concern be addressed as all taxpayers will be affected. Regarding the section on wind turbine fires, why aren't the other fire districts incorporated into this report? She is also worried about the Ogallala Aquifer and the effect from contamination from turbines on the water. There are no regulations on solar, and that also needs to be addressed.

Guest Kevin Willart of Valentine thanked planning and zoning for their efforts. He addressed concerns on the handout under item 15. Roads, Section B., regarding a pre-construction survey. His personal experience has been that if the pre-construction survey isn't done to exact specifications, it could lead to legal battles. If construction is to take place, which he hopes it does not, the local entities need to fully protect themselves because the wind energy development company's assessment will be in their favor. He suggested adding video and audio survey to protect the locals' best interest. He also mentioned concerns with number 17 Public Inquiries and Complaints, Section ii, if you are aggrieved to notify board in writing, then the aggrieved land owner needs to post the money for the land study. He said that was inappropriate and it should not be the responsibility of the aggrieved to post the money.

Guest Matt Robinette thanked the commission. He quoted the purpose of the Wind Energy zoning regulations is "to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity." He stated that the proposed changes are not reasonable nor responsible, and are not substantiated by fact. They will prohibit the development of wind energy in Cherry County. He personally believes with the current state of the proposed regulations, zoning is dangerous and irresponsible. Wind Energy is only permitted as a conditional use, which allows for safe and responsible use. The CUP process allows Cherry County to have responsible regulations in the books.

Guest Jerry Adamson agreed with the previous statements by Matt Robinette. He has spent time visiting neighboring counties that currently have wind turbines. Elgin has 150 turbines and are considering 150 more. Broken Bow has 94 and he toured them extensively. Springview has only a couple but he wanted the residents' take on them. He talked to several store owners, and he explained why he was there. No one he spoke to had any derogatory statements. The proposed setbacks are an overkill. He said to think about the small and medium-sized rancher. The small rancher and his family have been discriminated against because they've been put out of the picture with the proposed setbacks. He challenged the commission to find setbacks that aren't as stringent. He wanted the commission to think about what they are doing to the small and medium-sized rancher, and also about property rights. The bottom line he hears is that opponents of wind turbines don't want to look at them. He said that one of the things about the proposed farm in Kilgore, Nebraska, is that the turbines will have radar equipment on the tower; a light system which is FAA approved, which would only come on when planes were in range. The lights would only be on 1% of the time at night. He reminded the commission that the excuse of not wanting to look at them treads on property rights. He asked, if you start treading on property rights here, where do you stop?

Guest Chris Abbott of Gordon stated that Elgin is in Antelope County, and he had updated numbers from the revenue they've taken in from turbines. In 2015, they've averaged \$5000 per turbine. This year, \$7300 per turbine was collected in nameplate tax and personal and property tax. The average turbine is 1.7 megawatts. The Kilgore wind project would double that. Antelope County is less than 1/5 the size of Cherry County. Nebraska has the highest ag-related property tax in the country. California is the second. He stated that we are in a property tax crisis and that it is staggering to know



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the number of school districts that will be filing bankruptcy. He also said that it takes 100,000 acres of grassland to raise the same valuation for tax purposes that one turbine does.

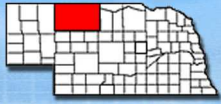
Guest Tom Weise stated that the opposition says Save the Sandhills. He is a 6th generation landowner and feels that he can speak of a true Sandhiller. He says Save the Sandhiller. He is a small operation. He has less than 5,000 acres, so to have an opportunity to have an extra income off of his family's private property would be a boon for him. The opposition says they don't want to look at them. They are so similar to a cellphone tower, which are not as heatedly opposed. There was a time when people didn't want to see a windmill or a barb wire fence, or even a railroad. He said that we look at these things every day and don't think anything about it. He can see seven blinking lights from cell towers on his hill. The scenic value isn't gone. The commission needs to help the property tax paying people of this county. He also mentioned roads and said what they are asking isn't anything different than hasn't been here for 100 years. If people want to save the sandhills, how far back do you go? How much does the planning commission want to help the tax paying citizens? It takes a lot of money to run and ranch and it's tough for the small landowner. He said for the people that don't want to look at them, tell them to take down every powerline to their house, and asked then which side would they be on?

Guest Dave Hamilton, Cherry County landowner, mentioned that he had sent to the planning commission a website link to a video presentation by Ryan Callahan, acoustical engineer, which was in regards to sound, including infrasound. Of all the testing they've done, there are many studies that have flaws. The video shows that there is no danger or health impacts. The committee may have gotten off task from the three big things the commissioners asked them to look at: property taxes, landowner lease revenue, and economic development. Instead of those three big issues, there have been discussion on irrational setbacks that are way out of line. The setbacks don't need to be the furthest away of anyone in the country. The big things need to be considered. He spoke to the chairman and a member of the Custer county wind farm. He called Sherry Bryant, county treasurer in Broken Bow, to find out numbers on nameplate and personal property tax, and she told him \$1,013,800 was generated in one year. Significant property tax relief will not come from legislators in Lincoln. Ag land owners will have to create their own relief with mechanisms such as wind energy. Fairmont, in Fillmore County, and Bluestem Energy Solutions recently held a groundbreaking ceremony. The village of Fairmont voted unanimously for the wind farm. Most rural areas are experiencing decline, so growth needs to be found elsewhere. He said that wind farms create new opportunities for existing residents. It is a resourceful way of capturing local resources. That is a good example of what could happen in Cherry County. He told the commission not to focus on the minutia.

Guest AJ Abbott read a letter from John Johnson. The ten months of research conducted by the planning commission did not show reasons to change setbacks. It was irresponsible and reckless to do so. The manner in which the planning commission board members acted violated the trust of the public. Not all board members have been willing to listen to proponents of wind energy. The data on land value showed no effect. Intimidation, fear mongering and bullying was used to come to the decisions of the proposed setbacks. Most troubling has been the discourse from the opposition which has been combative and without respect. Without the tolerance of free speech, we are no longer a free society. School districts and fire departments are funded by proceeds allocated from landowners' wind turbines, and they are decent people doing decent things to benefit the county.

Guest Rex Adamson stated that the proposed current setback eliminates the small landowner. Even a large landowner could still not be able to participate if they had a long narrow strip of land. A half mile setback would be more fair. Wind energy is a way to relieve property taxes.

Guest John Mundorf stated that property taxes are an issue but it's not on the agenda. He's looked at several different counties and how wind energy affects property taxes, and he found that doesn't affect property taxes. Looking at a 5-year history, he has not seen any changes, regardless of if they have turbines or not. He did some research for Cherry County, and stated that Dave Hamilton says it would generate \$400,000 dollars in property taxes. The total property tax



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on the one turbine west of Valentine collected is \$1,800 dollars. His figures show that would figure as \$100,000 to \$125,000 short on the estimated revenue given previously. In Custer County, one million, 13 thousand dollars of property tax is not that much compared to the overall tax collected. Property taxes are not affected by wind energy. He agrees with some of what the proponents say. On the other hand, he said that if you live in the corridor of the R- Line, you were questioning where it was going to go. When the final route was chosen, most breathed a sigh of relief, but felt bad for their neighbors who were affected. He thinks there will be more transmission lines come through Cherry County, even though NPPD says it won't at this time.

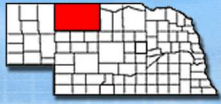
Guest Karl Busch said the R-Line would go through one mile of his property south of Crookston. There are hills there, so he questioned how many hills will be involved. The installation and maintenance could cause many blowouts. That's a concern of his. There is so much talk about taxes and money, but not about the transmission line. Why are they doing this when the windmills could be built near where the use is? There is something missing in the formula. Where is the electricity going to end up being used? He said there are many questions that still need to be addressed.

Guest Mark Birchfield stated that he agrees about property rights, but wanted to mention one thing that came up a couple of years ago. 11 years ago, wind turbines weren't even talked about. Years ago, his loan officer said a neighboring wind property wouldn't affect his land value, but he would probably have to get a new appraisal done on the ranch, which would lower the valuation. He said his borrowing capacity would in turn go down. That's why he's against the turbines.

Guest John Hanson, a member of Cherry County Wind and landowner Cherry County, said he's listened for several years to the arguments, and it boils down to viewscape and property rights. Both are important, and both are slippery slopes. In regard to property rights, everyone expects to have quiet enjoyment of their land, but there is also reasonable expectation to utilize resources to obtain financial security. If land doesn't pay the bills, it will eat your lunch. Regarding keeping our culture together, the most important part is youth. If we don't have our youth, we'll lose our culture. He said that we are continuing to lose youth in agriculture. We need to have the ability for people to be able to utilize their property. The smaller and mid-sized landowners are the ones most greatly affected. Nothing stays the same, you either progress or regress. Cherry County needs to be progressive to keep our culture here. When it comes to viewscape, we all like to look at something nice. But when he sees that or hears noise, he knows someone is making a living because of it. If you erode your rights and give up what you have and can't have, you will have nothing. Pretty quickly, there won't be anyone sitting here. Turbines are a way to offset property taxes. He stated that the commission needs to think about the long-term and the future generations. If you erode rights, pretty soon you have none.

Guest Ann Warren thanked the commission. She opposes the setbacks, only because they should be one and the same. Putting a two-mile setback on non-participating dwellings and one-mile setback on non-participating property line means you are controlling a mile of her private property rights. She mentioned an email that Carolyn Semin had from the Cobb Family from Colorado who live with wind turbines and the negative effects they have felt. It has been damaging to the people, their houses, and their livestock. These are not made up issues, and must be considered. She wondered how close the Cobb family are to the turbines, so she sent them a message. He answered that he was two miles from the closest turbine. He said there shouldn't be a residence within five miles. She recommended a moratorium and noted that LB 504 could come out of committee and onto the floor. She said that we don't need any experiments in the Sandhills. She stated that we don't know what will happen and we don't need to find out.

Guest Jim Ducey handed out his testimony on the report that is being prepared at the request of the Cherry County Commissioners. While he feels there have been steps taken in the right direction, there are still many deficiencies on the amount of studies done. The planning commission's report is lacking the depth needed to cover the amount of problems people that live near turbines have had, and mentioned Vickie May, who testified in Lincoln, and the ill effects she has faced. He feels there are problems in addressing the noise issues and what happens in the case of a fire. It is essential that the development of any wind turbine facility first and foremost respect the essential values appreciated by



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residents and that any facility not degrade the land and rural settings essential to the citizens of Cherry County as well as others which enjoy this country.

Guest Julie Olson, a Cherry County landowner, knows that property rights are a big deal. She has neighbors on both sides. With these wind energy projects come more power lines. She asked what happens when what you want brings in NPPD or another entity that has the power of eminent domain?

Guest Tom Witt from Thedford, stated that there two things to think about. One is LB 504 which will be in front of the legislature again regarding a moratorium. Another is the federal budget issue to reduce the production tax credits for wind turbines. He recommends that little if any action be taken right now. He asked that the planning commission please consider a moratorium to see how the federal budget is handled. There is no need to rush head on.

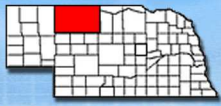
Guest Eve Millar from south of Crookston thanked everyone for their due diligence. She is leaving it up to the planning commission, because it seems as though it's coming down to us against them. We all have the same rights, but she questions what's the best for the biggest group of people? There is proof on both sides, for and against. She witnessed this with uranium mines and waste dumps. She said please do not be emotional in your decisions. Find the real studies that are pertinent to our area. Some may not be pertinent to our area as they are in eastern Nebraska and South Dakota. She said that maybe we do need to wait. Please keep that open as an option. She asked, what happens when the subsidies go away? She had a question on the small to medium landowner. It's her understanding that if you're not a part of the Cherry County wind development group, you won't get a turbine anyway. She asked to look at what is the best for the county as a whole and not just those getting the turbines and the neighbors who are opposed.

Guest Mike Burge stated that he is saddened that it's come to an opposition. This has torn the community apart, as he has friends on both sides. He stated that back to the start of Cherry County Wind, every landowner that owner that owned 100 acres or more, got a letter inviting them to join Cherry County Wind, so anyone who wanted to be involved could have been. He then read a letter from two landowners that were emailed to the commission. In December or 2016, an assignment was given to research main concerns. The results found that health impacts are placebic, the impact of fire districts are much like any other structure, there has not been data to show effect on property values. Cherry County has been labeled as closed for business. The proposed setbacks are economically crippling to our county. No Cherry County landowners have been subject to eminent domain due to wind projects and enrollment is voluntary. He asked the commission to please look at the preservation of rights, additional funding for schools, and increased job opportunities. He hopes to amend the relationships that this project has divided.

Guest Twila Witt owns a ranch in Cherry County and said she has heard numerous people talk about losing people if we don't have the turbines, but stated that numerous people are moving away from counties that have turbines. She doesn't like the sight of the turbines and other people don't as well. She said that this county will lose if the turbines come in.

Guest Craig Miles, of Brownlee, thanked the committee for their due diligence and sympathizes with their position. He's heard a lot about property rights and keeping youth in the area, he's wondering about the wind energy area in Brown County, how come they haven't gone up in class in regards to where they play in football if it's bringing in youth? He said he went to Broken Bow and asked a few people about their thoughts on wind energy, and the people he talked to said they didn't want to see the turbines, but they couldn't stop it. With regards to personal property rights, it is divisive to what has happened in our county. He doesn't want to see the face of Cherry County changed forever, and never able to go back. He's asked a member of the wind energy committee his thoughts on wind energy and that member said he doesn't want it on his land, but said he didn't care about what Mr. Miles had to look at. He said let's take the high road and the safe road, and say let's sit back and wait to see what happens. The foreign businesses are the ones benefiting.

Guest Bob Stetter said there is the issue of whether the wind turbines are able to stand on their own, without subsidies. If you can invest on your own dollars, build them with your own money and can get a good return on investment



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without having a corporation to pay for them, he would be more in favor. He doesn't like them or like to see them. His bottom line was that if we don't have to rely on the government to subsidize them, more power to them.

Guest Charlene Reiser-McCormick, from south of Valentine, warned the members of the planning and to not be fooled by the wind energy companies. It did not create local jobs or economic growth in the counties in Nebraska that have turbines. The property tax that was generated was offset by the cost to rebuild roads and bridges. She said do not be fooled by the complaints of the setbacks. Thomas County will have just as stringent or more setbacks and Hooker County also has two-mile setbacks. Section 613.03 purpose statement is to promote the safe, effective and efficient use of commercial/utility grade wind energy systems. She states they are not safe, not efficient and not effective. She mentioned that President Trump is taking away the tax subsidies for wind turbines and asked, do we want the Sandhills to be a graveyard of wind turbines. She pleaded to the commission to please make regulations that protect us.

Guest Olen Olson from south of Cherry County stated that this is a big problem. There are facts that support both sides. This is a gamble. The wind development companies want you to throw the dice. The best way to win at gambling is to not gamble.

The Public Hearing was closed at 6:30 and the regular meeting was reopened.

Old Business

- A. Review of Commissioner's Report. Gary handed out the proposed report to the commissioners. The most recent version is dated 11/7/17. The main changes from the previous version, under conclusions, added the part regarding LB 504 and that the commissioners should take that bill into consideration. Guest Jim Ducey mentioned that the commission should add a few words to read "as well as form a task force to perform studies", instead of reading a "task force study". No change was made. Guest Kevin Willert wanted to address some items on page three regarding fire, as his experience from the past is that local EMS are also involved. The planning commission felt as though EMS was covered under personnel. Guest Twila Witt wanted to know why all the fire departments weren't listed. Gary mentioned that this is a blueprint to give the commissioners a starting point for all that needs to be done. The crux of this report was to create an outline. The planning commission did not receive responses from everyone, which is why some fire departments in the area were not included.

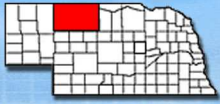
The planning commission went on to review page 6. Gary asked if there were any additions or corrections. None were made. Rob Lee moved they pass the draft of the report on to the commissioners. Herb seconded. A roll call vote was taken and all members voted in favor. Motion carried unanimously.

- B. Review of Zoning Regulations – Chairman Buer asked the commission to review changes made, which were highlighted in blue. Page 56 added that no WECS cast a shadow flicker on any public road. Page 58 had a change changing the terminology to "non-participating dwelling" and lowered the decibels to 35 dBA. Page 55 discussed the changes to setbacks. Guest Kevin Willert asked about how the easements are documented which waive the setback requirement. If a non-participant made a major change in waiving their rights, it must be filed in the courthouse. The commission said that these easements will be recorded with the court. A motion to approve the changes to the zoning regulations was made by Herb Pabst. Albert seconded. Albert, John, Lynell, Todd, Herb and Coby voted in favor. Gary and Rob voted against. Motion carried 6-2.

New Business: The next regular meeting was set for December 5, 2017 at 4 pm CT at the Cherry County Commissioners Meeting Room.

The meeting was adjourned by Chairman Jim Buer at 7:00 pm CT.

Ann Krueger, Recorder



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Guests included: Craig Miles, Sam Miles, Eve Millar, Wanda Simonson, Wayne Eatinger, Kevin Willert, Olen Olson, Julie Olson, Jim Ducey, Matt Coble, Bret Adamson, Charles Stoner, Craig Andresen, Marilyn Ericksen, Lynn Mundorf, Merrial Rhoades, John Mundorf, Katie Mundorf, Joe Mundorf, Bob Stetter, Twyla Witt, Karl Busch, Sherri Bacon, Ann Warren, John Hamilton, Tom Witt, Marion Rhoades, Mark Burchfield, Mary Eatinger, Llyod McIntosh, AJ Abbott, Rex Adamson, David Hamilton, Matt Robinette, Mike Burge, Chris Abbott, Charlene Reiser-McCormick, Billy DeNaeyer, Pam Moody, Russ DeNaeyer, Rachel Dent, Mike Dent, John Hansen, Gail Hermann, Jim Hermann, Rose MacLeod, Gary MacLeod, Dixie Hollenbeck, Gary Garvin, Randy Peterson, Shirley McIntosh, Byron Eatinger

APPROVED