

# Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

JULY 11, 2018

CHERRY COUNTY COURTHOUSE CONFERENCE ROOM

The meeting was called to order at 4:02 PM CT by Chairman Jim Buer. Roll call was taken. The following members were present: Lynell Stillwell, Michael McLeod, Todd Mathis, Herb Pabst, Gary Swanson, John Wheeler, and Albert Ericksen. Also present were Jessica Coyle, Zoning Administrator, Craig Andresen, Merrial Rhoades, Jim Ducey, Lana Peterson, Carolyn Semin, Twyla Witt, Tom Witt, Mike Young, Wanda Simonson, Randy Peterson, Craig Miles, Bob Stetter, Otto Buechle, Ray Blackford, Wayne Eatinger, Steve Thede, and Carol Neiman Lewis.

The Open Meetings Act was noted, as was the public notice in the Valentine Midland News pertaining to this meeting.

Minutes were read from the June 5 meeting by Zoning Administrator Jessica C. Herb P. made a motion to accept the minutes as read. Michael M. seconded the motion. Roll call vote was taken with those abstaining of Lynell S. and John W. with a favor vote by Michael M., Todd M., Herb P., Gary S., and Albert E.

Public Comment:

Jim Ducey, Cleve Trimble, Craig Andresen, Mike Buechle, Susan Johnson, and Wanda Simonson all spoke during this time. Cleve provided the board with a written testimony. The others provided comment with concerns on Amendment to Section 613, wind energy as progress, and for a moratorium on solar until regulations are written.

Jim B. informed the public that the Amendment to Section 613 and BSH Kilgore Conditional Use Application are of equal importance. The board is charged by the Commissioners to review, research and make a recommendation. We are doing our best to expedite this and appreciate everyone's patience.

Jim B. closed public comment at 4:30 PM to open Public Hearing for CUP 004/18 filed by Mary Mercure for River Access for canoe, tube, kayaks and recreational vessels.

Public comment on CUP 004/18 was opened at 4:30 PM CT.

Randy Mercure explained the reason for needing the permit was they lost access to a landing in court with Lee Simmons. They exchanged the old access landing below the rapids for a campground and smaller landing above the rapids. The new access point is on the old Connor's Property below the rapids. He did tell the board that they made the access already as they had people who had already booked with them to go down the river and needed it.

Herb asked if they started it and Randy responded with a yes. Herb stated that Rich Mercure had done this in the past and was told he needed to get a permit ahead of time.

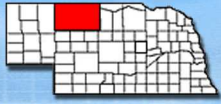
Jim Ducey stated that he feels that there needs to be a permit before starting. They need to follow the proper chain and get a conditional use permit before starting a project.

Steve Thede feels that if you are going to having a zoning process then it should be followed and adhered to. If you are going to allow the public to do, then ask for a permit why do we have a process. He feels that if this isn't done locally then this process could be taken away from the Niobrara Council and Planning Commission.

Todd M. asked Randy for an explanation of the location on the map.

Jim B. closed the Public Hearing at 4:45 PM CT and the regular meeting was opened.

Discuss and Act on CUP 004/18 Mary Mercure



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Jim B. explained that he was contacted by Randy to come do some work on a landing for Mercure's. When he got there and realized it was a new project, he asked if they had a permit. They didn't have one at the time, so he didn't do the work and advised them to get a permit before continuing. Jim B. feels like it was an honest mistake that Mercure's didn't get the permit before making the access on the river. Jim B. also advised the board of the recommendation from the Niobrara Council in favor of the access.

Albert E. asked if there are any fines or penalties assessed to Mercure for building before getting a permit. As of now the county doesn't have any.

John W. wanted to know how close this access is to the one they lost in court and Randy said its 200 ft.

Michael M. questioned the application number 4 item D. of provisions made for adequate water supply, sewage disposal, public utilities and erosion control. Erosion control is the only thing that applies to this application and is addressed on the application. Randy Mercure said that there is no well needed at this location.

Jim B. asked for a motion to approve CUP 004/18. Todd M. made a motion to approve CUP 004/18. Albert E. seconded. Roll call vote was taken with Todd M., Gary S., John W., and Albert E. as yeas and Lynell S., Michael M., and Herb P. as nos. Motion passed 4-3.

Jim B. reopened regular meeting at 4:51 PM CT.

## Communications

### Review of Permits issued by Zoning Office

Jessica C. reported that there were 3 permits issued for building of houses. One of these permits was issued on school lease ground to build a house.

### Zoning Administrator Report & Handout from Pilger Workshop

Jessica C. reported on the workshop that she attended on June 9 in Pilger, NE. She gave the board a copy of the handouts and reported that Dave Ptak gave a lot of good advice on Open Meetings Act, Board of Adjustments, and Conflicts of Interest.

Jim B. closed the regular meeting at 5:00 PM CT and open the Public Hearing on Amendment to the Zoning Regulations of Participating Property Lines (Other than Right Angle Corners) to Non-Participating in Section 613 on page 55.

Public Hearing was opened at 5:00 PM CT.

Michael M. asked why this change and Gary S. responded that it is to eliminate unnecessary verbiage.

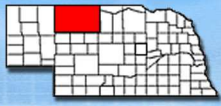
Lynell S. asked if the Commissioners had objected to this item and was informed by the board that they didn't reject only this one, but all the changes proposed.

Craig Andresen addressed the board concerned with if they should act on the Amendment to Section 613 filed by Wayne Eatinger before they make these changes. Jim B. responded that these take precedence over the Amendment to Section 613.

Public Hearing was closed at 5:15 PM CT.

Jim B. opened the Public Hearing on Amendment to the Zoning Regulations Diameter plus applicable building setback to One Mile under the WECS in Section 613 on page 55 at 5:15 PM CT.

Michael M. asked if these were the changes proposed by Wayne Eatinger and Jim B. replied they were the one's proposed by the Planning Commission to the Commissioners.



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Craig Miles wanted this Amendment defined. Jim B. defined it as that instead of being the diameter that it would be a One Mile.

Lana Peterson asked that the board should change it to be 2 miles instead. It was recommended that she go to the Commissioners Meeting to voice this.

Jim B. closed the public hearing at 5:30 PM CT.

Jim B. opened the Public Hearing on Amendment to the Zoning Regulations of ½ Mile for Non-Participant to Two Mile for Non-Participant under the WECS for a Dwelling in Section 613 on page 55 at 5:30 PM CT.

Craig Miles addressed the board that he would like to see any industrial project to adhere to the same agriculture regulations that is imposed on feedlots. He doesn't feel that 2 miles is enough.

Carol Lewis addressed the board about the difference between industry and commercial and which group does cattle fall under.

Twyla Witt asked the board to change the definition of commercial WEC to say industrial and have this item on the next agenda.

Tom Witt addressed the board about including something about the shadow flicker on a dwelling.

Jim B. closed the Public Hearing at 5:45 PM CT.

Jim B. opened the Public Hearing on Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Roads Rights-of-Way in Section 613 on page 55 at 5:45 PM CT.

Tom Witt addressed the board that he feels like shadow flicker needs to be addressed for the roads as well.

Jim B. stated that the shadow flicker on the roads would depend on the location of the tower in reference to the road. He also stated that both requirements of roads and shadow flicker would have to be met in a permit.

Jim B. closed the public hearing at 6:00 PM CT.

Jim B. opened the Public Hearing Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Other Right of Ways in Section 613 on page 55 at 6:00 PM CT.

Wanda Simonson asked the board to clarify what an easement and right of way are and if they are interchangeable.

Lana Peterson read a definition she found on the internet that states that a right of way is a type of easement.

Jessica C. read the definition of easement out of the zoning regulations and that is how easement is used in this context.

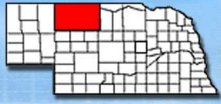
Jim B. closed the Public Hearing at 6:15 PM CT.

Jim B. opened the Public Hearing Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to One Mile under the WECS for Public Conservation Lands including Wildlife Management Areas and State Recreation Areas in Section 613 on page 55 at 6:15 PM CT.

Jim Ducey asked for a definition of what is included in the Public Conservation Lands. Jessica C. read the definition of Public Lands in the zoning regulations found on page 52.

Craig Miles asked if school lease ground is considered public land and Herb P. responded that it is public ground. Herb P. also stated that the leaser can control who is allowed on the land with the example given for hunting.

Jim B. closed the public hearing at 6:30 PM CT.



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Jim B. opened the Public Hearing Amendment the Zoning Regulations under the Special Safety and Design Standards on No More than 30 hours per Year of Shadow Flicker to be No WECS shall cast a Shadow Flicker on Any Public Road in Section 613 on page 56 at 6:30 PM CT.

No Public Comment was given.

Jim B. close the public hearing at 6:45 PM CT.

Jim B. opened the Public Hearing Amendment to Zoning Regulations No Commercial/Utility WECS Shall exceed 50dBA at the Nearest Structure Occupied by Humans to No Commercial/Utility WECS Shall exceed 35 dBA at the Nearest Non-Participating Dwelling in Section 613 on page 58 at 6:45 PM CT.

Tom Witt asked the board if they are going to vote yea or no on all of these, and Jim B. confirmed that he is correct.

Jim B. close the public hearing at 7:00 PM CT.

Jim B. reopened regular meeting at 7:00 PM CT.

Discuss and Act on Public Hearings to Amendments in Section 613

Jim B. opened for discussion on Amendment to the Zoning Regulations of Participating Property Lines (Other than right angle corners) to Non-Participating in Section 613 on page 55

No Discussion.

Albert E. made a motion to approve the change as read. Seconded by Lynell S. Roll Call vote was taken with all those in favor except for Gary S.

Jim B. opened for discussion on Amendment to the Zoning Regulations Diameter plus applicable building setback to One Mile under the WECS in Section 613 on page 55.

Herb P. stated that Commissioner Storer when running for office stated she feels like the regulations should be like those of the confined feeding section of the regulations when it comes to setbacks.

Albert E. made a motion to approve the change as read. Seconded by John W. Roll call vote was taken with all in favor except Herb P. and Gary S.

Jim B. opened for discussion on Amendment to the Zoning Regulations of ½ Mile for Non-participant to Two Mile for Non-participant under the WECS for a Dwelling in Section 613 on page 55.

No Discussion.

Gary S. made a motion to approve the change as read. Seconded by Albert E. Roll call vote was taken with all in favor.

Jim B. opened for discussion on Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Roads Rights-of-Way in Section 613 on page 55.

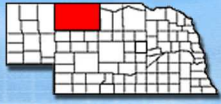
No discussion.

John W. made a motion to approve the change as read. Seconded by Todd M. Roll call vote was taken with all in favor.

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No discussion.

Todd M. made a motion to approve the change as read. Seconded by Albert E. Roll call vote was taken with all in favor.



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No discussion.

Lynell S. made a motion to approve the change as read. Seconded by John W. Roll call vote was taken with all in favor except Herb P.

Jim B. opened for discussion on Amendment to Zoning Regulations No Commercial/Utility WECS shall exceed 50dBA at the Nearest Structure Occupied by Humans to No Commercial/Utility WECS Shall Exceed 35dBA at the Nearest Non-Participating Dwelling in Section 613 on page 58.

No discussion.

Herb P. made a motion to approve the change as read. Seconded by Albert E. Roll call vote was taken with all those in favor.

Old Business

Solar

Jim B. addressed the board that he feels they need help to write regulations. He feels they should ask the Commissioners for the authority to hire and for a budget to spend to get the right person found and vetted. He feels that the commissioners would approve this.

Gary S. made a motion to ask the commissioners a request for funds and to have the authority to hire someone to assist in writing the solar regulations. Seconded by Albert E. Roll call vote was taken with all those in favor.

Amendment filed by Wayne Eatinger

Herb made a motion to schedule a Public Hearing for the next meeting on the Amendment to Section 613 filed by citizen Wayne Eatinger. Seconded by Albert E. Roll call vote was take with all those in favor.

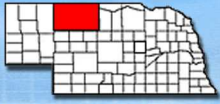
The next meeting is scheduled for August 7<sup>th</sup> at 4:00 PM CT in the Conference Meeting Room with a Public Hearing set for 4:30 PM CT for the Amendment to Section 613 filed by Wayne Eatinger.

Report:

Jessica C. told the Planning Commission on her verbal discussion with Dave Ptak from the Pilger Workshop. Dave Ptak said he wouldn't recommend disallowing anything in the regulations, but just make it difficult to achieve getting a permit.

Excused Absence:

Herb P. made a motion to excuse Coby Billings from the meeting. Seconded by Michael M. Roll call vote was taken with all those in favor.



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The meeting was adjourned by Chairman Buer at 7:24 pm CT.

Jessica Coyle

Zoning Administrator

APPROVED