

# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

December 4, 2018

Cherry County Court Room

The meeting was called to order at 4:04 PM CT by Chairman Herb Pabst. Roll call was taken.

The following members were present: Coby Billings, Michael McLeod, Gary Swanson, John Wheeler, Albert Ericksen, and Herb Pabst. Also, present were Ann Krueger to record minutes along with members of the public.

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

Minutes were presented in advance to all planning commission members and a reading of the November 6, 2018 meeting was waived. Michael M. made a motion to accept the minutes as presented to the board. Gary S. seconded the motion. Roll call vote was taken with a favorable vote by Coby B., Michael M., Gary S., and John W. Those abstaining were Herb P. and Albert E.

### Communications:

Jim Ducey noted two weeks ago he submitted a notarized written request that the public comment period be added to the minutes, which has been ignored. According to the Open Meetings Act, he stated that reasonable arrangements are to be made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions. He stated that he felt that he is being denied the right to speak and should not have to wait for a public hearing in order to do so. He mentioned that this has happened before and warned of legal action.

### Old Business:

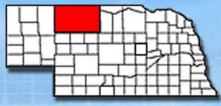
- a. Discuss/Act on Amendment to Zoning Regulations submitted by Wayne Eatinger, which would ban wind turbines from greater than 80 feet the county.

Carolyn Semin asked Mr. Pabst if anyone had that amendment so that it could be read. Coby read the amendment, and he stated:

Under Section 613, the wind energy conversion system, small wind energy systems shall be permitted where the use and certain requirements shall be met. The amendment would strike down tower height for property sizes to say no wind energy system shall exceed 80 feet in height. Section 613-01 would say Cherry County prohibits commercial/industrial wind energy conversion systems.

Herb asked if everyone understood what the amendment was. Coby read a letter that went out from the Zoning Administrator Jessica Coyle, saying she had received the letter of the application from Eatinger, which would change current amendments to say Cherry County Zoning Regulations Section 613-01 would prohibit commercial and industrial wind energy conversion systems, and that in Section 613-02, no wind energy conversion system shall exceed 80 feet.

Carolyn Semin asked if there was a letter from Stahr that addressed that issue. Coby said there was and asked if she would read to the public, which she did. She gave an introduction of Stahr & Associations, and as an aside, mentioned that she thought he was originally hired for solar studies, but that apparently he was hired for more than that. In his letter, she read that Mr. Stahr stated that Mr. Eatinger is proposing zoning regulations which would prohibit the wind turbines, and Stahr stated he wasn't sure of his reasoning, whether it be visual or the process of decommissioning, but in the end, the decision whether to prohibit the wind farms is a decision the County Commissioners would have to make. Stahr recommended that the planning commission make their suggestions based on what the planning commission felt



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the majority opinion of the general public regarding the matter is. Mr. Eatinger also mentioned limiting the small wind generators to 80 feet. Stahr's letter stated that smaller generators are not usually cost effective at this time.

Mike Young stated that these provisions of the zoning regulations are in place to: protect property against blight and depreciation, encourage the most appropriate use of land the county, and to preserve, protect, and enhance historic buildings, places and districts.

Herb stated that although property rights are at the center of this issue, he felt that if the government wants your land, they'll take it. He felt the element of property rights is really off the board.

Gary made a motion to table old business, the requested amendment of Wayne Eatinger, until two members of the planning commission board could speak to the County Attorney about the issue. Albert seconded the motion. A roll call vote was taken with Albert, Gary, Coby and John in favor, and Michael opposing.

Jim Ducey commented that the letter by Orval Stahr does not have a date on it, so there is a question on whether he had been hired yet when it was written.

Public Hearings: at 4:30 pm CT a public hearing was opened for Amendment to Zoning Regulations submitted by William Weller.

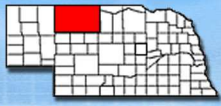
Herb read the amendment proposed by William Weller in its entirety and noted that the key word is industrial within the amendment. In summary, he stated the amendment would change the terms commercial and utility to industrial in each of the segments within the regulations. All wind turbines would then have a change in classification from commercial to industrial.

#### Public Comment:

William Weller pointed out that, according to Cherry County Zoning laws, that definition of commercial is use of products which are sold for resale, or for profit, none of which are done by the wind turbines. The commercial wind turbine is defined with the capacity from 0-100 kW with a height range from 60 to 140 feet on the tower. He stated that none of the turbines in Cherry County are in that definition. The next step up is industrial, defined by Renewegy, a manufacturer of wind turbines. He questioned why wind turbines would be classified differently than other forms of energy production? The energy that is produced by an oil well has less blight and increases property values. Wind turbines have a negative effect on property values. He noted that there are conflicting reports on property valuation by wind turbines. All the wind turbines will show up as defects on the title and have negative industrial impacts on the county. All other forms of energy production are classified as industrial.

Jim Ducey referred again to a letter from Stahr & Associates, which again has no date on it, and tells Weller: Stahr believed the development of wind turbines will not have impacts of property, on raptors, and Ducey noted that he was referred to the birds, not raptures as Stahr stated, and less than 100 feet high should not be regulated. Ducey asked once again, how can some consultant who doesn't have a final contract with the county be telling people in the county what to think? A belief is not a truth, but an opinion, and he stated that any comments by Stahr should be thrown out.

Craig Andresen welcomed Herb back. He knows what they are talking about is a reclassification from commercial to industrial but noted not to lose sight of the fact that Cherry County has been defined as agricultural: ag land, farm, farming, rural countryside. He defined agriculture. The Cherry County Planning Committee is tasked with whether to reclassify wind turbines from commercial to industrial, but also to determine if they are agricultural. Do wind turbines cultivate land, raise crops, breed or raise livestock, produce crops or livestock? Do they engage in the production of livestock? Are they agrarian or pastoral? If so, the planning commission will be rewriting the definitions of those terms. He was in a meeting in Lancaster County where a member stated that wind turbines were in fact agriculture, and people looked at him like his cornbread wasn't done in the middle. He asked the planning commission: how was your cornbread doing then?



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Brent Steffen commented that the United States as a Democratic Republic, and that they do have individual rights, including property rights, and it is incumbent on us to maintain those rights. He said, to quote Ben Franklin; we have given you a republic, if you can keep it. He stated that it is our duty to maintain those rights. In terms of wind energy, it preys on the average taxpayer to the benefit of a few who are well connected, and that's a shame. In Australia, wind energy has been a sales pitch that has been unfulfilled and that will happen here as well. But what will happen to this area in the meantime? It changes the complexion of not just the area of the wind farm but the whole region. It changes the functional complexion. He expressed his support of the amendment and said that the Cherry County Planning Commission members are representatives of the constituents and that the constituents have made their voices known on what they want for this region and this county and encourages the commission to make that known to the Cherry County Commissioners.

Janet Steffen stated they went back to visit family in Oklahoma and noticed all the wind turbines between Kansas and Oklahoma. Driving up here this afternoon, she noticed the beauty here because of the lack of turbines. She stated the turbines are taking over Oklahoma and it's shameful thing that they have let greed and money take over the beauty of the countryside. Back to the idea that we no longer own our property is very sad, and we should not lay down, roll over and let the government take it.

Caleb Miles stated that we are not facing a crisis like WWII and should not compare it to such. It is not a need, and devaluating our property is not necessary. It has no practicality in the region.

Mike Young stated his support for the Weller and Eatinger amendments. When the zoning regulations were written, the turbines were mis-labeled. Nothing about them are commercial. They are taller and have more power than the commercial definition. If one word could be changed to make it industrial, that would make it right and that will have an effect on the county.

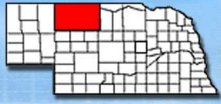
Craig Miles thanked the commission and stated that he wanted to go on the record for support Mr. Eating and Mr. Weller's amendments. He said that we stand at the cusp of a great decision for our county, and we do have property rights. The planning commission is the first line of defense in protecting our property rights and we stand of the cusp of what we are going to be. Cherry County is special, and we have something here that no one else in the world could ever think of having, and we need to protect it.

Tom Witt stated his support of the two amendments. There is no other place in the world like the Sandhills of Nebraska and it's been acknowledged that way over and over in various publications. He asked the planning commission to protect our Sandhills heritage.

Steve Moreland also stated his support of the two amendments. They should be approved and are what we need. What we do could make Cherry County better or worse and putting wind turbines up is a step in the wrong direction. He appreciates the planning commission members volunteered time and he also hopes the commission will be their first line of defense to prevent a tragedy from happening.

Herb asked if there were any other comments.

Eve Millar stated that just today she was on Facebook and NET News currently has a news story on the Stargazers that come to Merritt Reservoir each year and there is a darkness scale, called the Bortle scale, which Merritt ranks number one on, which is the darkest you can get. She has been present in these meetings from the beginning, when her and her husband were deciding whether they were going to be a part of the wind energy project. She has tried to stay neutral and has tried to leave the viewscape out of it, but feels that you cannot leave the view out of the discussion. She stated that we are in a truly unique place, so she supports the Weller amendment that they should be classified as industrial, because they are. They do not fit in the Sandhills. Sandhills aren't much good for building. It will take a lot of stabilization and concrete. She stated that we should not be building on the sand. It comes back to the land and the value that it holds. We have the darkest skies, thousands of acres of rolling grass, and that is a lost thing this day and age. Anyone



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that has traveled has seen the loss of that. She stated that she can't be sold on the money that the wind turbines would bring in. In two years, the subsidies that are holding those towers up will go away and we will be stuck with the view that the towers are going to make. The planning commission is the front line before the commissions and it's their responsibility to listen to the majority of the public and where they want to see the future of our county.

Wayne Eatinger encouraged the board to support the Weller amendment. The public outcry has affected the wind turbine development and slowed things down, which is a sign that the maybe the county is working as it should. He thanked the board.

Bob Stetter stated his support for the Weller amendment and that it has a lot of merit. He also reiterated what Mr. Stahr wrote on the Eatinger amendment, and that "in the end, the decision on whether to prohibit the large scale wind farms, is the decision that the elected county board of commission would have to make". Stetter noted calling it a farm is a misnomer. He also suggested the planning commission make their recommendation to the County Commissioners based on what the members of the public feel should be done. Stahr stated that there is nothing in law that would keep the county from prohibiting the commercial wind farms. Stetter hoped that they would submit their recommendations to the Commissioners and hopes that the planning commission approves the amendments proposed by Eatinger and Weller, and that they protect the Sandhills.

Herb closed the public hearing at 5:05 pm CT and returned to the agenda item of old business on the Wayne Eatinger amendment. It was mentioned that action on the amendment was decided to be tabled until members could speak to the county attorney, and he moved on to new business.

## New Business:

- a. Delegate New Secretary to replace Todd Mathis: Gary volunteered for this meeting only to be secretary and would see that the minutes were recorded. Coby made a motion to delegate Gary for this meeting only and Michael seconded. Roll call vote was taken with all in favor.
- b. Discuss/Act on Amendment to Zoning Regulations submitted by William Weller:  
Herb asked how the group felt about discussing this amendment with the County Attorney as well, or if it should be taken care of now. Gary made a motion to table a vote on this amendment until the next meeting and take up same discussion with the County Attorney, and suggested that 2 or 3 members of the planning commission meet with him, at the same time as the Eatinger amendment. John seconded. Roll call vote was taken with all in favor. Gary recommended Michael McLeod be one of the members to visit with the County Attorney, and it was discussed that John Wheeler would meet as well, as Herb was not feeling well enough to be up to the task.
- c. Due to the New Year holiday, the next regular meeting was scheduled for January 15<sup>th</sup>, 2019 at 4:00 PM CT in the Cherry County Commissioners Meeting Room.

Reports and Recommendations: none

Excused Absence: John W. moved to excuse Dave Rogers and Coby B. seconded. Roll call vote was taken with all in favor.

Motion to adjourn by Chairman Pabst at 5:14 pm CT.

Respectfully submitted,

Ann Krueger