

# Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

January 15, 2019

CHERRY COUNTY COURTHOUSE CONFERENCE ROOM

The meeting was called to order at 4:05 PM CT by Chairman Herb Pabst in advertised location of the Cherry County Courthouse Conference Room. Meeting was then moved due to size to the Cherry County Courtroom and reopened at 4:10 PM CT.

Roll call was taken. The following members were present: Coby Billings, Michael McLeod, Gary Swanson, John Wheeler, Duane Kime, and Albert Ericksen. Also present were Jessica Coyle, Zoning Administrator, and various 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 from the December 4th meeting. Michael M. made a motion to accept the minutes as presented. John W. seconded the motion. Roll call vote was taken. Duane K.-Abstain, Coby B.-Yes, Michael M.-Yes, Gary S.-Yes, John W.-Yes, and Albert E.-Yes. Motion carried.

Communications:

Zoning Administrator Jessica C. gave the board a copy of the NPZA Conference to be held in Kearney March 6-8, CUP 005/18 USCOC Nebraska/Kansas LLC, dba US Cellular application, and updated board on new members Duane K. and Chelsea L., reappointed members Albert E. and Dave R., and that this is Coby B. last meeting. Jessica also gave all the members a copy of a letter she received from EBI asking about a tower, but it's within City of Valentine's jurisdiction.

Public Comment:

Various members of the public spoke during this time.

Old Business:

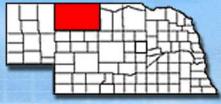
Discussion on the Amendment to Zoning Regulations filed by Citizen Wayne Eater

Gary S. reported that John W., Michael M. and himself met with Eric Scott, County Attorney for over 2 ½ hours on this amendment and the Amendment to Zoning Regulations filed by citizen William Weller. He reported that Eric said that in the State of Nebraska it would be difficult to win a case if you zone something entirely out of the county. Eventually, if it would go to court as things stand now the county would lose. He referenced Holt County where they tried to zone out hog facilities and the Supreme Court stated that you can make it very difficult for a lawful enterprise in a county but not impossible. He also referenced Arthur County where they put weight restrictions on their county roads that made it difficult for the pig facility to come in but didn't disallow them entirely. The pig facility took this to the Supreme Court where a ruling in favor of Arthur County stood as it was jurisprudence for Arthur County to put the restrictions on their roads. The pig facility said that their trucks couldn't go down the roads then and didn't put in the facility.

Gary S. also stated that whatever the Planning Commission decides this will go on to the County Commissioners and they make the decision.

Discussion on the Amendment to Zoning Regulations filed by Citizen William Weller

Gary S. reported that Eric Scott thought this was a rational argument to be made from changing commercial to industrial and should be discussed. Gary S. said if we don't have wind as proposed by the Eater Amendment why do we need the Weller Amendment. As far as changing the code it would create some issues of matching the Zoning Regulations to the Comprehensive Plan. Gary S. stated that as far as he knows that there is no Zoning Regulations in the State of



# Cherry County Planning and Zoning Minutes



Nebraska that has wind turbines listed as industrial use instead of commercial. There needs to be more research done. Gary said that he has only found 2 codes that use industrial when referencing wind facilities and these were in the State of New York, Oregon, and Wyoming.

John W. added that Eric Scott was alright with the Weller Amendment from their meeting.

Gary S. feels that the setbacks need to be put in motion as they would be defensible in court.

Duane K. brought up the idea of using similar setbacks like those that are in place for the feedlots when it came to the wind facilities. There was some concern as to how you'd figure this for a turbine facility as then you'd have to consider the dBA's as well as the setbacks.

Coby B. made a motion to approve the Amendment to Zoning Regulations filed by Citizen Wayne Eatinger. Albert E. seconded. Roll call vote was taken. Coby B.-Yes, Michael M.-Yes, Duane K.-No, Gary S.-No, John W.-Yes, and Albert E.-Yes. Motion carried

Michael M. made a motion to accept the proposed changes in Amendment to Zoning Regulations filed by Citizen William Weller. Gary S. seconded. Roll call vote was taken. Coby B.-Yes, Michael M.-Yes, Duane K.-Yes, Gary S.-No, John W.-Yes and Albert E.-Yes. Motion carried

New Business:

Gary S. volunteered to be the Secretary for this meeting in the absence of filled position.

The date of the next meeting is February 5, 2019 at 4:00 PM CT in the Cherry County Courthouse Conference Room with a Public Hearing on CUP 005/18 at 4:30 PM CT.

Reports and Recommendation:

Zoning Administrator Jessica C. reported that Orval Stahr couldn't attend the next meeting on February 5 to train the board on parliamentary procedures and discuss the Bylaws of the Planning Commission. Jessica C. is going to see if he can attend any other dates in February, otherwise we will try for the March meeting.

Excused Absence:

Michael M. made a motion to excuse Chelsea L. and Dave R. from the meeting. Seconded by John W. Roll call vote was taken. Coby B.-Yes, Michael M.-Yes, Duane K.-Yes, Gary S.-Yes, John W.-Yes, and Albert E.-Yes. Motion carried.

The meeting was adjourned by Chairman Pabst at 5:44 pm CT.

Jessica Coyle

Zoning Administrator

Amended minutes to read 2 instead of 12.