

# Cherry County Board Minutes



## BOARD OF COMMISSIONERS MINUTES SPECIAL MEETING October 15, 2019

The Cherry County Board of Commissioners met in special session on October 15, 2019 at 3:00 PM in the Cherry County Courthouse Courtroom, as per notice in the Valentine Midland News, with the agenda being on file in the office of the County Clerk. The meeting was called to order at 3:00 PM by Chairman Storer. Roll call was taken. Present for the meeting were Cherry County Commissioners Tanya Storer, Martin DeNaeyer, James Ward, Cherry County Clerk Brittny Petersen, Zoning Administrator Jessica Coyle, and Cherry County Attorney Eric Scott. The Open Meetings Act Poster was acknowledged by Chairman Storer and the Pledge of Allegiance was recited.

Commissioner Storer stated that there would not be any public comment during the meeting as there was already a public hearing held regarding the Conditional Use Permit application #003/18 BSH Kilgore, LLC.

Commissioner Storer reviewed the timeline for the public hearings as held by the Cherry County Planning Commission and the Cherry County Board of Commissioners. On June 4, 2019 the Cherry County Planning Commission held a public hearing regarding CUP application #003/18 and voted 4-3 to recommend the application for approval with the following provisions:

1. That high voltage warnings, emergency contact information and 911 response addresses be posted at all gates allowing access to the project.
2. That the applicant specify the interval of removing the solid waste from the site and where the non-hazardous waste will be disposed of.
3. That specifics of where on the site that hazardous or flammable materials and waste will be stored, when waste oil, lubricants and any other hazardous wastes will be removed from the site and where such waste will be disposed of.
4. As energy from the proposed project is to be marketed to NPPD, that the applicant receive NPPD's approval that NPPD notify the County Clerk within 10 days of stoppage of energy production at the site so that the County will know when the 1 year decommissioning time clock starts.
5. That any plan that is developed for reutilization of the WECS must be submitted within 6 months of the notification of halted energy production and that said plan will require a new conditional use approval unless such plan provides that nothing on the site will change and that all easements for the project shall remain in force. This will allow for the 180 day limit on decommissioning of the project to occur within the first year of discontinuation in the event such plan is not approved.
6. That during the decommissioning process the owner shall indicate to the County where and how all waste materials that are not salvaged shall be disposed of to be certain that all such materials are disposed of in a proper manner and at proper facilities.
7. That the County must be certain that the amount of financial surety will be sufficient to pay all costs associated with decommissioning of the project at some future date. To accomplish this objective the Planning Commission recommended that funding of the decommissioning surety be started in the 5<sup>th</sup> year after completion of construction and continued for an additional 15 years.

To be consistent with the Planning Commission's 5-year recommendation we suggest the funding of the decommissioning surety be structured as follows:

1. Based upon the estimated decommissioning cost less salvage value of \$3,024,000 contained in the application and a 2.2% inflation rate, a total of 10% or \$337,160 be deposited in an agreed upon third-party interest-bearing escrow account with the accrued interest paid to the applicant.

2. At the 15<sup>th</sup> year anniversary, an updated decommissioning cost analysis should be required and an additional amount which will cover the total estimated cost of decommissioning should be required to be deposited. *(Based upon the current estimated cost and the 2.2% inflation rate, this would require that the fund be increased by \$4,335,584.)*
3. From the 15<sup>th</sup> year forward to the date of decommissioning, an updated cost analysis should be required every 5 years and the fund should be added to annually at a rate of 2.2% to cover probable inflation costs.
4. Upon initiation of decommissioning the fund, upon County Commissioner approval, would pay out the incurred cost as decommissioning progresses. Any excess cost would be the responsibility of the project owner or any funds in excess of said cost funds upon completion of decommissioning would be paid to the project owner.

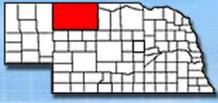
On September 17, 2019 the Board of Commissioners held a public hearing regarding CUP application #003/18 and received both oral and written testimony. After the public hearing was closed a motion was passed to take all information received under advisement and to table action on the Zoning Resolution agenda item and to set a date for action on the agenda item at the next regular meeting on September 25, 2019. At the September 25, 2019 Board of Commissioners meeting a motion was passed to set the time and date for discussion and action regarding Zoning Resolution #Z-81 Conditional Use Permit Application #003/18 BSH Kilgore, LLC for October 15, 2019 at 3:00 PM in the Cherry County Courtroom.

Commissioner Ward stated concerns about waiting five years to fund decommissioning and would prefer it to be funded up front. Commissioner Storer suggested multiplying the cost for decommissioning as provided by BSH Kilgore, LLC, located on page 485 of the application, by 125% for a net decommissioning total of \$4,123,500, with a 10% portion, \$412,350, of the net decommissioning costs to be a cash deposit in an interest-bearing account with a financial institution approved by the Commissioners and the balance to be secured with an irrevocable letter of credit. Mr. Scott stated that the deposit should be subject to a satisfactory deposit agreement that specifies the terms for access to deposits. Commissioner DeNaeyer suggested the completion of a survey to determine the current condition of roads that would be used for the construction of the project and a Roads Agreement to include a requirement for the applicant to return the roads to their prior condition. Commissioner Storer suggested requiring that all individual towers have fire suppression equipment installed. Commissioner Ward added requiring the development of a fire suppression/control plan in conjunction with local fire departments and the cost for training the local fire departments to be paid by the applicant. Commissioner Ward stated that all items required by Cherry County Zoning Regulations should be submitted and approved by the Board of Commissioners prior to the commencement of construction.

The Board engaged in discussion of the previously mentioned proposed requirements and it was confirmed with Mr. Scott that the conditional use permit application could be approved contingent upon the inclusion of said requirements in a resolution to be adopted at a later date.

Commissioner Ward moved to approve the Conditional Use Permit application #003/18 BSH Kilgore, LLC based on twelve enumerated conditions laid forth today, as discussed, to be recorded in Resolution #Z-81, to be executed at the next regular meeting on October 29, 2019. Commissioner DeNaeyer seconded the motion. Mr. Scott reviewed the enumerated conditions listed as follows:

1. That high voltage warnings, emergency contact information and 911 response addresses be posted at all gates allowing access to the project.
2. That the applicant specify the interval of removing the solid waste from the site and where the non-hazardous waste will be disposed of.
3. That specifics of where on the site that hazardous or flammable materials and waste will be stored, when waste oil, lubricants and any other hazardous wastes will be removed from the site and where such waste will be disposed of.
4. As energy from the proposed project is to be marketed to NPPD, that the applicant receive NPPD's approval that NPPD notify the County Clerk within 10 days of stoppage of energy production at the site so that the County will know when the 1 year decommissioning time clock starts.
5. That any plan that is developed for reutilization of the WECS must be submitted within 6 months of the notification of halted energy production and that said plan will require a new conditional use approval unless such plan provides that nothing on the site will change and that all easements for the project shall remain in force. This will allow for the 180 day limit on decommissioning of the project to occur within the first year of discontinuation in the event such plan is not approved.



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6. That during the decommissioning process the owner shall indicate to the County where and how all waste materials that are not salvaged shall be disposed of to be certain that all such materials are disposed of in a proper manner and at proper facilities.
7. Installation of manufacturer approved fire suppression equipment on each individual tower.
8. Net decommissioning will be based on applicant's engineer certified cost times 125%, minus applicant's estimated salvage value, for a total of \$4,123,500. 10% of the net decommissioning costs, \$412,350, to be a cash deposit in an interest-bearing account with a Cherry County financial institution approved by the Board of Commissioners with the balance to be secured with an irrevocable letter of credit with a financial institution approved by the Board of Commissioners. The deposit is subject to a satisfactory deposit agreement that specifies the terms for access to deposits.
9. Satisfactory Road Agreement, including a requirement that all roads be returned to their prior condition, at the cost of the applicant, as determined by a survey.
10. Satisfactory Decommissioning Agreement
11. Development of a fire suppression/control plan in conjunction with local fire departments, with the cost for training the local fire departments to be paid by the applicant.
12. All requirements outlined herein and required by Cherry County Zoning Regulations must be completed and approved by the Board of Commissioners prior to the commencement of construction.

Roll call vote was taken. Commissioner Storer-aye. Commissioner DeNaeyer-aye. Commissioner Ward-aye. The motion carried.

The aforementioned conditions will be included in the draft form of Zoning Resolution #Z-81, which will be discussed and revised by the Board prior to the adoption of said resolution.

At 3:38 PM, with no further business to come before the Board, Chairman Storer declared the meeting adjourned.

***These minutes are not the official record and may be corrected. A copy of the approved official minutes is available to the public in the Cherry County Clerk's Office.***