

# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

June 6, 2017

Cherry County Court House Court Room

The meeting was called to order at 4:09 CT, by Jim Buer, Chairman. The meeting was moved to the Cherry County Courthouse Court Room due to number of guests present. Roll call was taken. The following members were in attendance: Jim Buer, Herb Pabst, Albert Ericksen, Todd Mathis, Rob Lee, and Gary Swanson.

Also present was Cherry County Zoning Administrator, Joel Mundorf, Ann Krueger, recorder of the minutes, and several guests.

Not present: Lynell Stillwell, Coby Billings and John Wheeler.

The Open Meeting Law posted in the meeting room was noted. Minutes from the May 2, 2017 meeting were read. A correction was made to a spelling of a guest's name. Rob Lee moved to accept the minutes as corrected. Gary seconded the motion. Roll call vote was taken. Rob Lee – yes, Todd Mathis – yes, Herb Pabst - yes, Gary Swanson- yes Albert Ericksen– abstain, Jim Buer – abstain. Motion carried.

Public Comment: Jim Ducey said he should be able to comment during the meeting at any time, not just during public comment. He questioned a handout and its availability before a meeting so the public can review. Jim wanted to know the authors and it was noted that Gary Swanson, Todd Mathis and Rob Lee wrote the handout in question, which was rough draft outline to give to the Cherry County Commissioners. It is a new document and had not yet been discussed by the entire planning commission and is still in rough draft form. Mr. Ducey mentioned the abbreviations in the handout need to be defined, and it was stated again that it is still a rough draft.

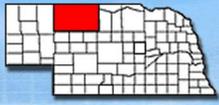
Craig Andresen commented on noise from wind turbines, which is usually measured in decibels and has been found to be the worst predictor of noise annoyance, because it does not measure low frequency noise, or infrasound. His website, [thenationalpatriot.com](http://thenationalpatriot.com), has videos that further explain infrasound and its effects.

Mike Burge said infrasound is also produced naturally, such as ocean waves, shifting pipes, etc. Craig agreed but said the steady, constant low frequency sound from the turbine is what affects people negatively.

Ann Warren said Thomas County has been working on their zoning regulations and thought there were some that could be put in Cherry County's zoning regs. The same setbacks for neighboring property lines as to dwellings should be considered. If somebody wants to sign off and put it next to their property line, they can. Criteria for type of soil should also be considered since we're in the Sandhills. Zoning should have that criteria. Another issue was having a certain distance from the bottom of the wind turbine to the water table. There should be no cost to the county on anything, now or in the future.

Matt Coble submitted a few third-party studies to the planning commission regarding infrasound and stated that one can compare the infrasound to saying the sunlight is damaging to the human body like a nuclear bomb going off. The study is measured in a "g" weighted decibel level. Wind turbines, within a very short proximity, out 200 yards, is 65 dBg. Ocean waves average around 75 dBg. Mr. Coble hopes that the Cherry County Planning Commission will protect his property rights and those of other property owners that want to participate in wind projects. He hopes that zoning is reasonable, rational and based on common sense. Changes that are made to setbacks could jeopardize landowners' ability to participate in wind projects and would give more authority to the county over private property than the landowners.

Sherri Bacon questioned the new handout which referred to Ron Elliot, who is completing the property value study. It was stated that the property value studies are not yet complete. She also noted that the Lancaster County Study is from



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2015, which she felt is outdated and not comparable to the Sandhills. She questioned why there are no other studies listed.

Bree DeNaeyer stated that the mission statement for planning and zoning is based on the Comprehensive Plan. The purpose is to help citizens and decision makers guide change into the framework of this vision, which included both a traditional respect for property rights and a strong sense of responsibility and stewardship. She said that private property rights are something we're all on board with, but we're on fragile territory. A private landowner can't drop a well without permit, you can't spray for grasshoppers or dredge your own meadows without a permit. If you do, you can be turned in to Army Corp of Engineers. There is a loss of sovereignty. The planning commission should remember stewardship and conservation, and seeing to the future through some hard times. Granting a two-mile setback for anything takes away two miles where a person can ranch and make decisions. If two miles are given for wind turbines, she questioned what's next. Private property rights need to be stressed. She stated that we are still primarily a private property state and should not have to answer to a board. Exorbitant amounts of property taxes are already paid and landowners have to be fiscally conservative, so having to answer to a board is an affront to personal property rights.

Another guest said that the two-mile setback would not bother anybody. He said there are good roads with a mail route to the transmission line that BHS Kilgore wants to connect to. Hundreds of turbines could go there and not affect anybody but themselves. The drawback was access to the power line.

Charlene Reiser-McCormick read the same study Mr. Andresen did, which compared infrasound to the high level of sound that dogs can hear. She mentioned an article from Oklahoma that mentioned no tax relief was gained after turbines went into place. She'll give the planning commission a copy of the article once received. She noted LB-504 isn't done doing studies. Larkin Powell, head of Nebraska School of Resources, wrote an article about how the wind turbine farms do affect ground nesting birds and dry the dew on the ground. She thinks more time is needed for more studies. Mr. Andresen mentioned that article Ms. Reiser-McCormick is referring to is on his website.

Mr. Coble had an article on Wind To the Rescue, showing that underfunded schools in Oklahoma benefited from wind projects. They have specifics on how the wind power has helped schools get through tough times. With regards to the different articles on the topic, he stated that it's human tendency that if you have a bias, you seek out information to confirm that bias.

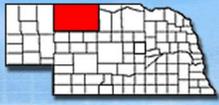
Chairman Buer said you can Google just about anything and find information on either side of any issues.

Randy Peterson questioned if we have regulations on the impact on county roads. Semi trucks could tear up the roads – would that burden of expense of repair fall to the taxpayers or would the developers pay? He said it shouldn't be for commercial wind farms specifically but should be for any future projects and asked if there is there anything in place? Gary Swanson said it is in the regulations and very comprehensive. Gary got a large packet out to show what it looks like.

A 10-day notice to landowners regarding conditional use permits is not an adequate amount time said guest Carolyn Semin. 30 days for any conditional use permit should be given due to length and complexity. She also mentioned that the US Fish and Wildlife Service doesn't need to give approval first. The developer can put the tower up and just hope they don't get sued. To prevent that, they do a wildlife study, but she felt that federal permit should be required. A federal permit requires a lengthy study and takes several years. She felt that to say that we don't need anything, to leave is up to government entities, isn't sufficient. She stressed that private studies need to be done, especially to protect wildlife such as the burying beetle, cranes and others.

Ann Warren said what she does on her land shouldn't affect the rights of private property owners tomorrow.

Bob Stetter stated we all have relatives and friends that come to the Sandhills for recreation, beauty and stillness. He's never heard anyone say that's a beautiful wind turbine – they only questions why it is there. As a longtime member of rotary, he mentioned the 4-way test: is it the truth, it is fair to all concerned, will it build goodwill and better friendships,



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and will it be beneficial to all concerned. He said there's more to life than the almighty dollar. Charlene Riser-McCormick added the saying: when the last tree has been cut down, the last fish caught, the last river poisoned, only then will we realize that one cannot eat money.

Chairman Buer asked several times if there were other comments before moving on.

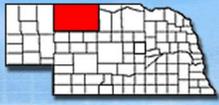
Communications: No communications were addressed.

Old Business: Chairman Buer gave the floor to Gary Swanson, who had a very rough draft of a first step of a report for the commissions, and asked for corrections and suggestions to the planning commission members. Something had to be put down on paper to get started. This will still need to be polished. The first page was accepted, however there are quite a few things still incomplete. Page one is concerning the effects of wind turbines on property values. The quickest way to explain was to show the emails between assessor Ron Elliott and Gary. Ron will be calling Gary to discuss the property valuation study. The next page is a brief synopsis of a scenario of a wind turbine fire. The commission should read through and make corrections and additions. MSDS stands for Material Safety Data Sheet, which shows the composition of the structures. More information will be added on definitions. Albert said that Fire Chief Terry Engles mentioned that there wouldn't be an attempt to put out the fire on the turbine, just on grass fires and questioned if that should be added. This information will be shown to Terry Engles to see if they have any additions. Rob Lee mentioned the mutual aid meeting is coming up, but Gary suggested they give their packet to them before that. Terry had mentioned to keep protocol general to account for different scenarios.

Page 3 discusses the Lancaster County Health Department review. Gary is looking for more planning commission members to add to this page. The Commissioners requested that the Planning Commission specifically study Lancaster County. The second paragraph is straight off the study and the third is straight out of the ordinance. The planning commission needs to read this section carefully. Albert suggested adding information about infrasound. Gary mentioned it's touched upon on the next page. Much more could be added, but this is just the basics. A copy of the Lancaster County study will be given out to the members again so they can review further.

Page 4 discusses issues listed by CCPC, defined as the Cherry County Planning Commission. WTF, defined as Wind Turbine Facility/ies have high frequency and low frequency noise, which is some of what Mr. Craig Andresen was talking about regarding infrasound. Rob asked Craig if the videos discussed soil types. He said the videos did not talk about soil types, but said that buildings such as water towers could amplify the infrasound. Mike Burge mentioned certain soils, like sand, does absorb sound. The planning commission worked down the statements. No discussions on statement one and two. Three brings back issues in Atkinson and how turbines were placed could have increased amplification. There was no discussion on issues four, five, six, seven and eight. Issue number nine was explained that 35 dB, should be dBa, or A-weighted decibels. Most studies are in that range. DBg is infrasound. Another item could be added to look at other ways of measuring sound, like dBc or dBg. Todd Mathis had a study that mentioned dBc is weighted to accentuate low frequency sounds and should be used. Ultimately Gary wanted to know if 35 dBa was sufficient. Does dBg and dBc need to be added? Does this have to be measured at a distance? Craig Andresen said the World Health Organization has some information on the differences on dBa and dBc. The planning commission agreed this issue will have to be addressed further.

The group moved to the conclusion, which is still to be modified. Accounting for the variabilities of WTF (Wind Turbine Facilities) may be impossible. Section 613.03.17 provides a homeowner with a means to address a noise grievance. If the WTF owner is found in violation, the WTF owner is required to take immediate action to bring WTF into compliance which may include ceasing operating. A time frame may be needed to be added. Right now, the regulations are 50 dBa. The next two paragraphs deal with setbacks and noise level. What needs to be added to the conclusion? Gary noted setbacks and noise levels for 6 other counties in Nebraska and whether they have a recourse for addressing the noise, and handed out these notes solely for comparison purposes. The setback limits are from the dwelling. Gary also noted a mile out for the wind turbines in the Kilgore project for decibels on a map and passed that out.



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Rob wondered if the planning commission should wait for the property appraisal until they talk about property line setback. Could a specific corridor be sanctioned scenic? Viewscapes could be addressed by sanctioning specific sections of land as scenic. Wildlife protection could be fleshed out by add something from NE State Statutes. No additions were made to powerline encroachment and decommissioning of WTF. The property rights issue is still incomplete at this time.

Reports and Recommendations: The committee needs to continue to work on this report, and the three absent planning commission members will need to review. Rob suggested 3 other members besides the ones who already started the rough draft continue to work on the draft. Jim will be the contact to arrange subcommittee meetings.

New Business: The next meeting was set for Thursday, July 6<sup>th</sup> at 4:00 pm at the Cherry County Commissioners Meeting Room, moved to Thursday due to the holiday.

A public hearing date was set for August 1<sup>st</sup>, 2017 at 4:30 CT for CUP - Conservation Easement – Trimble.

Herb Pabst made a motion to excuse the absences of John Wheeler, Lynell Stillwell, and Coby Billings. Albert Ericksen seconded. Roll call vote was taken with all in favor.

The meeting was adjourned by Chairman, Jim Buer, 6:36 P.M. CT.

Ann Krueger, Recorder

Guests included: Michael Burge, Willard Hollopeter, Bob Stetter, Jim Ducey, Bill DeNaeyer, Shaniya DeNaeyer, Chase Rath, Tyler Rath, Judith Rath, James Herrmann, Gail Hermann, Twyla Gallino, Claire Lancaster, Marjorie Manning, Charlene Reiser-McCormick, Sherri Bacon, Randy Peterson, LeRoy Semin, Carolyn Semin, Matt Coble, Ann Warren, Merrial Rhodes, Craig Andresen, Carolyn Semin.

CORRECTED & APPROVED