

Cherry County Planning and Zoning Minutes



CHERRY COUNTY PLANNING COMMISSION MINUTES

September 5, 2017

Cherry County Court House Meeting Room

The meeting was called to order at 4:03 pm CT, by Herb Pabst, Vice-Chairman. Roll call was taken. The following members were in attendance: Gary Swanson, Rob Lee, Albert Ericksen, John Wheeler, Lynell Stillwell, Todd Mathis, and Herb Pabst. Not present: Jim Buer and Coby Billings.

Also present were Cherry County Zoning Administrator, Joel Mundorf, Ann Krueger, recorder, and several guests.

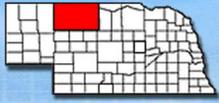
The Open Meetings Act was noted. Public notice for the meeting was published in the August 23, 2017 edition of Valentine Midland News. Minutes from the August 1, 2017 meeting were read. Motion to approve the minutes made by Todd, and Albert seconded. Roll call vote was taken with Lynell abstaining. Gary, Rob, Albert, John, Todd, and Herb voted in favor and the motion carried.

Public Comment: Merrial Rhoades questioned that the minutes were not on the website and the agenda available on the website was not the same as the one handed out in the meeting. The revised agenda included an additional item under 6. Communications, b. Notice of study in progress (solar farm). Joel was not sure why the minutes did not get posted correctly, as they were available shortly after the last meeting was held. He also stated that he cannot post the agenda on the website directly from his desk; it must be sent to a third party to post changes. The minutes and agenda were on the door at the Planning and Zoning office. A heated discussion ensued about the fact that the agenda must be posted and not altered 24 hours prior to the meeting. As this was a last-minute item added, no action will be taken on it at this meeting, and the agenda item will be moved to New Business.

Communications: Guest Mike Murphy, Middle Niobrara Natural Resources District (MNNRD) manager, was asked to speak before the group. Gary asked him to comment about water and water management, and to discuss who looks at water and water usage.

Mike mentioned that the MNNRD follows Nebraska Revised Statutes 46-701 to 46-754, the Nebraska Ground Water Management and Protection Act. This deals with the groundwater management plan and the rules of regulations thereof. The Natural Resource District (NRD) was built to conserve, sustain, and improve natural resources and the environment. The biggest concern is contamination of groundwater. There are 900 pivots across the district, 700 of which inject some sort of fertilizer. The MNNRD is continuously taking groundwater quality samples, and sampling for bacteria and e. coli. The samples are sent to certified labs, in Kearney and state university labs. Some in-house testing can be done, and they also take public samples. There is a complete process in place to follow the rules and regulations. His department continues to add monitoring wells and work with Environmental Protection Agency (EPA) and Department of Environmental Quality (DEQ) requirements. Nebraska has one of the most extensive sampling data collection in the nation. Most of the information, along with studies and reports, are available to the public on the state departments and DEQ's website. Game and Parks studies have also been done and would be located elsewhere. If any of the public has questions into specific reports and studies done, he mentioned to call the local agencies as many are kept on file, if they are not available online.

Gary asked Mike which entities consider water quality standards. Mike mentioned there are several agencies involved and concerned. The DEQ and state agencies focus on pollution, and Nebraska Game and Parks and US. Fish and Wildlife Service are also adamant about staying in compliance with regulations. The National Wildlife Refuge also works with Game and Parks and they do some duplicate studies but are doing extensive cleanup work as well. If a report were filed, it would go to NRD and DEQ. They would follow procedure to report and inspect violations, and would follow those set rules and regulations. A guest asked how long it takes to stop a potential violation. Mike said it could take longer if someone wants to contest it, and could get tied up in litigation, but agencies could step in. There are different penalties



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enforced, from \$1000 to \$5000 in fines per day. Therefore, it is imperative to understand state and county statutes. In a case of sediment dump that happened at Plum Creek, the Army Corps of Engineers stepped in to enter a cease and desist, and the EPA also stepped in, so that the violation was stopped in a timely manner. Each case is dealt with on an individual basis. The Natural Resources Conservation Service, another federal agency, could also be involved.

Gary asked if a zoning board need to worry about water issues with regards to adding more regulations. Mike stated that the state has plenty of statutory requirements in place to stay in compliance for both private and public individuals, and there are also federal regulations in place. The MNNRD has monthly meetings, which are open, and he encourages the public to attend and ask questions. The phone number to the MNNRD office is 402-376-3241 and the website is www.nrdnet.org.

Old Business:

a. Review of wind turbine property report.

Gary printed out his last month's email correspondence with appraiser Ron Elliott and passed copies around for the group and guests to see. In summation, Gary expected to receive a study similar to the Berkely Study, which is quite lengthy, but the Planning Commission did not receive an actual report. The correspondence indicated there is no influence or altering of land values either on or adjacent to the turbine wind farms in the study. Sale prices gave no clear indication of any influence, duress or adjustment in value. Gary expressed his disappointment with the lack of formal conclusion on the study, and still hopes to obtain more information. Ron Elliott's appraisal firm is going to be in Cherry County around the end of next week, as they are doing City of Valentine's residential reappraisal.

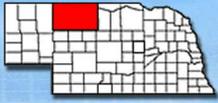
There has not yet been a bill submitted for the work that has been done in regard to the property valuation study. Originally, the Planning Commission was told the cost would be around \$1000 and other counties interested in the report, such as Holt County, would help pay for the rest. However, there is no report to date.

b. Review of Commissioners Report. There is an update to Page 3, which details the changes made to the wind turbine fire contingency plan to add periodic training and also include Wood Lake and Kilgore Rural Fire Departments, in addition to Valentine Rural Fire Department. A guest asked if all the Cherry County fire departments should be included. Guest Jim Ducey said there is no burden of responsibility of the turbine owner, just the fire department. Shouldn't the company be responsible? An example was given in the case of if a baler catches on fire. Is the manufacturer of the baler responsible? It was discussed that they should be liable. Herb said being liable and responsible for putting the fire out are two different things, and that is not the focus of this page of the report. This report is not the same as what is in the regulations. The wind turbine company would have liability insurance and would handle these cases as any business would, such as a manufacturing plant.

New Business:

The agenda item, notice of study in progress for solar farms, was moved to new business. This agenda item was added in order to alert the planning commission that zoning for solar farms will needed to be looked at similarly as to how the wind turbine regulations have been studied. No formal studies have yet been conducted. This issue could be included on the report to the Commissioners on Page 7 of the conclusion under "other issues that have arisen and remain unresolved", stating that solar farms would need to be addressed. Currently, there are no zoning regulations on solar farms and there needs to be new code to include it. Rob asked if there should be a moratorium until there are regulations in place, and the group agreed that it would make sense. When pressed by guests to get more details of a proposed solar farm, Herb stated that this item was put on the agenda as notification that studies need to be done, and since there were not enough notice of this agenda item, a lengthy discussion was not to be had at this time.

New Business: The next regular meeting was set for October 3, 2017 at 4 pm CT at the Cherry County Commissioners Meeting Room.



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A motion to excuse the absences of Jim Buer and Coby Billings was made by Albert Ericksen. Rob seconded. The motion carried with a unanimous roll call vote.

The meeting was adjourned by Vice-Chairman Herb Pabst at 5:20 pm CT.

Ann Krueger, Recorder

Guests included: Merrial Rhoades, Gail Hermann, Charlene Reiser-McCormick, Ann Warren, Thomas Witt, Jim Hermann, Jim Ducey, Bob Stetter, Matt Coble, Lana Peterson, A.J. Abbott.

APPROVED AS CORRECTED