

# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

January 2, 2018

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, Herb Pabst and recorder, Ann Krueger. Also present were Merrial Rhoades, Bob Stetter, Carolyn Semin and Jim Ducey.

The Open Meetings Act was noted. Public notice for the meeting was published in the December 20, 2017 of Valentine Midland News. Minutes from the December 5, 2017 meeting were read.

Rob moved to approve the minutes as read. Albert seconded. Roll call vote was taken with all present members voting in favor, and the motion carried unanimously.

### Public Comment:

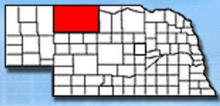
Jim Ducey asked to take out the word guest in front of the commenters' names. They are citizens, not invited there, as the term "guest" is defined, and came there on their own volition. He said the recorder should not add things to the minutes.

Communications: Meeting with the Cherry County Commissioners. Herb asked how the meeting went. Albert said that Commissioner Storer asked quite a few questions to Albert and Jim during their meeting and was the most vocal. The communication between the planning commission and the commissioners needs work, however, as the commissioners didn't have the planning commission's report or the proposed changes to regulations. Albert wasn't sure if the lack of a zoning administrator was part of the trouble. The planning commission was wondering why the commissioners hadn't looked on the website for the report in advance. Officially, the zoning administrator has provided that information in the past, so that could have been an oversight. The commissioners did not give further instruction to the planning commission at this time.

### Old Business:

- a. Gary handed out several pictures of a 53-acre solar facility outside of Kearney that Jim Buer had taken pictures of. There is a fence around it. There is most likely cement around the pedestals. Buffalo County doesn't currently have any solar panel regulations and this facility is believed to be within city limits. Gary felt as though it looked pretty benign. Jim said he had a hard time finding it. Gary thought the setbacks for a solar farm such as the one pictured may be similar to a house or something else of industrial usage. The planning commission might want to start outlining the trespass of power lines and those sorts of issues, and potentially a height limit if some sort of tower mechanism is used.

Albert mentioned that in Knox County, they had garden solar systems, which were smaller systems. Albert wondered if solar wells used in pastures would be regulated, but it was generally agreed that they would not. In Thomas County, the restrictions are pretty specific. Knox County has regulations for setbacks next to highways, local streets, and so on. Illinois mentions setbacks of 500 feet from a residence. Gary has not located many Nebraska regulations from different counties, but feels the regulations may not need to be as extensive as the regulations that Thomas County has set. Gary asked that, if a planning commission member travels to Kearney, they should try to find out more information on the regulations. He thinks there is a similar farm in Arnold, NE. Albert believed the name was Pandorf. About a mile or so south of the airport there is talk of a wind farm, which would be just outside of city limits, but that is something that needs to be checked. At this time, if it were



# Cherry County Planning and Zoning Minutes



approved, it would be done so as a conditional use permit, by which conditions could be put as the commissioners see fit. There are no regulations that specifically state solar farm at this time.

Herb asked about fees that are being charged to apply for a permit. Gary mentioned the commissioners usually set that. Herb had some additional information about an email discussing a proposed solar farm, which would be 1.8 miles southeast of Miller Field and encompass 320 acres. The planning commission didn't know off hand if that is outside of city limits. There is already a highline on the property to take the power out.

Jim Ducey asked if the commission should propose a draft of zoning regulations for solar farms since there is interest in building a solar farm, along with definitions. Herb mentioned that Knox County has many definitions they could start with. Ducey also asked if it is the role of the zoning administrator to attend the planning commission meetings, then they could start conducting research and proposing drafts of regulations. It would help to shorten the discussion period, and it would be valuable for a zoning administrator to do that.

## New Business:

- a. Continue discussion of Solar Energy Section for Zoning Code – the planning commission continued to review regulations from other counties. They looked at noise programs. Decommissioning could be the same as wind turbine regulations. Rob liked how they had the Department of Natural Resources in Illinois complete a consultation with potential solar farms. Herb questioned if there would be noise coming from the solar farm. He didn't believe there would be so there might not need to be as great of setbacks as turbines. Jim Ducey interjected to say that he thought there could be reflectivity issues. He mentioned a row of cedar trees would help address that issue. Herb thought the dark panels would help with the reflection. Discussion continued about different aspects of a wind farm, such as grass or weeds growing under the panels. Herb asked the planning commission what parts of the Knox County regulations they'd like to look into. The definitions could be used for Cherry County. Albert mentioned finding a different term than "farm", which would be more industrial, such as industrial solar facility or complex. Gary mentioned for continuity purposes, they should start with Solar Energy Conversion Facility and go from there. They could define non-commercial and commercial. Small solar energy systems and setbacks from roads should probably be a certain distance. Knox County requires an 8-foot safety fence around the perimeter and a non-reflective light. Rob thought that might be state mandated. Gary would like to check into the fencing more, and whether you need to fence something in or fence it out. Erosion was also discussed and whether power lines would be buried. Herb said they could make a general draft and start with the wind turbine regulations and build from there. Gary thought talking to someone from Kearney who dealt with the solar regulations might be the best way to start. Gary asked Albert if he'd like to research more into the reflectivity issues. The planning commission will continue to research other counties regulations.

- b. The next regular meeting was set for February 6, 2018 at 4:00 pm CT at the Cherry County Commissioners Meeting Room. Elections will be held at that time.

Public Hearings: No public hearings.

Reports and Recommendations: Continuing review of solar regulations.

Excused Absences: A motion to excuse Lynell Stillwell, Todd Mathis, Jim Buer and Coby Billings was made by Gary. Albert seconded. A roll call vote was taken with all members voting in favor. Motion carried unanimously.

The meeting was adjourned by Vice-Chairman Pabst at 5:15 pm CT.

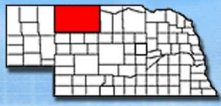
Ann Krueger, Recorder



# Cherry County Planning and Zoning Minutes



APPROVED



# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

February 6, 2018

Cherry County Court House Meeting Room

The meeting was called to order at 4:02 pm CT, by Jim Buer, Chairman. Roll call was taken. The following members were present: Albert Ericksen, Coby Billings, Herb Pabst, John Wheeler, Todd Mathis, Gary Swanson, and Jim Buer. Also present were Merrial Rhoades, Jim Ducey, Gary Weaver, and Carolyn Semin was present for part of the meeting.

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

Minutes were read from the January 2<sup>nd</sup> meeting by Todd M. Herb P motioned to accept the minutes as read. John W. seconded. Roll call vote was taken. Coby B. and Todd M. abstained, and the other members voted in favor. The motion carried unanimously.

### Public Comment:

Jim Ducey asked if any of the planning commission members were going to attend the Cherry County Commissioners hearing on February 7<sup>th</sup>. Herb P. had a discussion with Jim Ducey on this question. Jim B. was unsure if he would attend. Other planning commission members did not comment.

Communications: Jim B. read a letter from the Cherry County Commissioners reappointing Gary Swanson and Herb Pabst to the planning commission, terms to expire on 1/11/2021. Rob Lee asked not to be reappointed to planning commission as per Jim Buer's understanding. Cherry County Commissioners are looking for a replacement for Rob. There was a short discussion on including members' cell phone numbers on the sheet of planning commission members. All of the members' cell numbers are now included on the commission members listing.

Gary S. shared an article from the Omaha World Herald on theft of copper from Omaha Public Schools. Gary was making the commission aware that this is still an ongoing problem and may be a concern that will show up during decommissioning of some projects in the future.

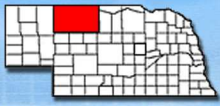
Old Business was tabled until later in the meeting so that Gary Weaver could give a report to the planning commission.

Gary Weaver reported the following:

- a. 2 building permits were approved in the last 30 days: Franz Muller received a building permit for a house and Dan Woodworth received a building permit for a garage.
- b. Planning Commission members received a handout for the Nebraska Planning and Zoning Association (NPZA) meeting that will be held in Kearney in March on the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup>.

### Old Business:

Jim Buer shared solar regulations that he had received from Kearney, NE. Planning commission members also had solar regulations from Thomas County, NE, Knox County, IL, and Chisago County, MN. 30 minutes of discussion of what is needed for solar conversion regulations. Would solar panels used for ag purposes be exempt? What size solar farm would be required to meet certain regulations to setbacks and builder permits and fees. Many ideas and much discussion were had by the planning commission and others in the room. Jim Ducey added to the conversation, mentioning the Thurston County/Facebook solar project. No decisions were made for solar projects at this time.



# Cherry County Planning and Zoning Minutes



Planning commission members also compared zoning regulations from Custer County, NE to Cherry County's zoning regulations. On page 20, item 14 of the Custer County regulations it states: Other uses and structures determined by the Board of Supervisors to be comparable with the above stated conditional uses and consistent with the Intent of this zoning district. Cherry County does not have this verbiage in their zoning regulations. It may have been in Cherry County's regulations in the past but is not included in the regs at this time. Some of the planning commission members discussed what it would take to add this verbiage to Cherry County's regulations, on page 30 and make it item 18, and include it there. No action was taken on this idea at this meeting but will be discussed more in the future.

## New Business:

Discussion moved to the NPZA meeting, scheduled for March 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup>. Planning Commission members discussed who would attend if possible and what conference agenda items would be most beneficial to Cherry County Planning Commission members. Jim B. thought he may be able to attend the conference on Thursday.

## Election of Officers:

Herb P. moved to nominate Jim Buer to continue as Chairman. Albert E. seconded Herb's motion. Gary S. motioned to close nominations. John W. seconded Gary's motion. A roll call vote was taken. Coby, Todd, Herb, Gary, John and Albert all voted in favor and the motion carried.

Motion by Todd M. made for Herb P. to be Vice- Chairman. John W. seconded. A roll call vote was taken with Herb abstaining. The remaining members voted in favor and the motion carried.

Motion by Albert E. for Todd M. to be secretary, seconded by Herb P. A roll call vote was taken with Todd abstaining. The remaining members voted in favor and the motion carried.

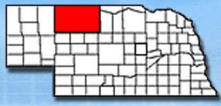
The next regular meeting was set for Tuesday, March 6th, 2018 at 4:00 pm CT at the Cherry County Commissioners Meeting Room.

Excused Absences: A motion to excuse Lynell Stillwell and Rob Lee was made by Coby B. and seconded by Herb P. A roll call vote was taken with all members voting in favor. Motion carried unanimously.

The meeting was adjourned by Chairman Buer at 5:23 pm CT.

Todd Mathis, Secretary





# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

APRIL 19, 2018

### CHERRY COUNTY COURT HOUSE MEETING ROOM

The meeting was called to order at 4:03 PM CT, by Jim Buer, Chairman. Roll call was taken. The following members were present: Coby Billings, Herb Pabst, John Wheeler, Todd Mathis, Gary Swanson, Lynell Stillwell, and Michael McLeod. Also present were Jim Ducey, Carolyn Semin, Marion Rhoades, Merrial Rhoades, Rita Rowan, Susan Hanna, Don Hanna, Kalli Kieborz and arriving later Kim Goodwin.

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

Jim B. introduced new board member Michael McLeod and Zoning Administrator Jessica Coyle to all present.

Minutes were read from the February 6<sup>th</sup> meeting by Zoning Administrator Jessica C. Herb P. made a motion to accept the minutes as read. John W. seconded. Roll call vote was taken. Lynell S. abstained, and the other members voted in favor. The motion carried unanimously.

The meeting was closed at 4:12 to open for Public Hearing CUP-001/18 Sharps Outfitters LLC for a Shower Bath.

Public comment was opened.

Rita Rowan, Wayne Sharp's daughter, spoke on putting a Handicap accessible Shower on the Niobrara River Corridor. She had a model of the building and the concession stand that would be added to the end of the shower at a later date. The New structure would be located North across the road from the current concession stand of a trailer. Rita stated that they would be willing to put in trees or berm to disguise the building.

Kalli Kieborz of Niobrara Council was there to report from their meeting held earlier in the afternoon on April 19, 2018. It was the recommendation of the council that is met their 50% dispatching with screening for a new development. They feel that it wouldn't deter from the ambiance of the river.

Jim Ducey urged Sharps to put trees in to help with cover.

Kalli Kieborz described the aerial and location of existing buildings and in comparison of trees to the new building.

Jim Ducey asked Rita if the model was going to be the color of the building.

Rita Rowan answered that the building is going to be green and brown to go with the ambiance.

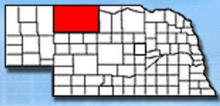
Rita Rowan stated that the open part of the building would eventually have a wall on the North side to have more sheltered area to hold family reunions or host large groups and put a grill outside of the concession stand.

Jim Ducey asked if it would be suitable for a propane tank next to the river.

Kalli Kieborz said that it meets their standards and the current CUP covers it all to be built.

Jim B. asked if they are going to be busy.

Rita Rowan responded yes that their 30 RV plugins are booked for the weekends but not during the week. Customers are allowed to bring generators but they can only run until 9 or 10 PM.



# Cherry County Planning and Zoning Minutes



Jim B. asked the question of how long the current trailer for concessions has been in existence.

Rita Rowan responded with that it's been there since the 1980's. Her parents moved there in 1973 and their first campers were in 1975. She stated that her parents used to milk cows and have a 9 hole golf course. They didn't start getting any canoers until the early 1990's then there was the tubes and kayaks. She said last year they brought in the Big Bertha's lounging tubes and the customers really enjoyed them.

The Public Hearing was closed at 4:30 PM CT and the regular meeting was reopened.

The Planning Commission then discussed CUP-001/18. Jim B. said that it passed thru the zoning office and Niobrara Council. Colby brought to attention that the Cattle Country Easement was not applicable or included and why. Gary Weaver responded with it was not required because there was no change of use or ownership per Jim Edwards former zoning administrators advice. Herb asked if there was still any livestock on the property to which Rita stated only wildlife. Jim B. asked Todd M. to verify it in the Cherry County Comprehensive Plan, which it's located on page 15 Section D. Todd M. read aloud the section and concluded that there was no change in land so the Cattle Country Easement wasn't needed. Herb P. asked when construction would start on the building. Rita responded with an approved permit they would begin. Herb P. reiterated to Rita that they must break ground on construction with 90 days of approval.

Jim B. asked if any further discussion. Herb P. made a motion to approve CUP-001/18. Michael M. seconded. Roll call vote was taken and passed unanimously.

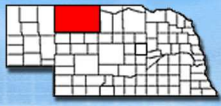
Jim B. informed Rita that of the process it now had to go on to the Cherry County Commissioners for their approval and that it has to be advertised 10 days in advance.

Excused Absences: A motion to excuse Albert Ericksen was made by Coby B. and seconded by Lynell.

The next regular meeting was set for Tuesday, May 1<sup>st</sup>, 2018 at 4:00 PM CT at the Cherry County Commissioners Meeting Room.

The Meeting was adjourned by Chairman Buer at 4:42 PM CT.

Jessica Coyle, Zoning Administrator



# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

MAY 1, 2018

### CHERRY COUNTY COURTHOUSE MEETING ROOM

The meeting was called to order at 4:00 PM CT, by Jim Buer, Chairman. Due to the size of the public the meeting was then moved to the District Court Room. Roll call was taken. The following members were present: Coby Billings, Herb Pabst, John Wheeler, Todd Mathis, Gary Swanson, Lynell Stillwell, Albert Erickson, and Michael McLeod. Also present were Jessica Coyle, Zoning Administrator, and J. Michael Adam, Richard Coke, Barbara Coke, Twyla Witt, Ray Blackford, Bill Howes, Twyla Gallino, Wanda Simonson, Jim Ducey, LeRoy Semin, Carolyn Semin, Rod Warren, John Mundorf, Matt Coble, Ann Warren, Bob Stetter, C. Trimble, Mike Young, Randy Peterson, Shawn Kellis, Dixie Hollenbeck, Craig Miles, and Gary Weaver.

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

Minutes were read from the April 19<sup>th</sup> meeting by Zoning Administrator Jessica C. Gary S. made a motion to approve with the correction of the spelling of Michael McLeod. John W. seconded. Roll call vote was taken. Albert E. abstained and the other members voted in favor. The motion carried unanimously.

#### Public Comment:

Wayne Eatinger, Wanda Simonson, LeRoy Semin, Mike Adams, Mike Young, Matt Coble, Craig Miles, Jim Ducey, Ann Warren, Twyla Witt, and Nat Warren all spoke on the Amendment to Zoning Regulations Section 613

The meeting was closed at 4:30 to open for Public Hearing CUP-002/18 US Cellular for a 280' Self Support Communications Tower.

Public Comment was opened at 4:30 PM CT.

Shawn Kellis, agent representing USCOC, and Jim Ducey both spoke about CUP-002/18 application.

The Public Hearing was closed at 4:50 PM CT and the regular meeting was opened.

The Planning Commission then discussed CUP-002/18. Jim B. asks for a motion. Coby B. made a motion to recommend approving CUP-002/18. Herb P. seconded. Roll call vote was taken and passed unanimously.

Public Comment concerning section 613 was reopened at 5:00 PM CT.

Public comment was closed at 5:10 and regular meeting resumed.

Herb P. made a statement that they weren't intimidated in making any decisions as the commissioners alluded to.

Communications: Zoning Administrator shared a NPZA workshop that is being held June 9. Jim B. encouraged the public to send a formal document of concerns in writing to the Zoning Office.

Old Business:





# Cherry County Planning and Zoning Minutes



- a. Discussion of Solar Energy Section in Zoning Code—Gary S. made a motion to table this item until the next meeting. Herb P. seconded. Roll call vote was taken with all members in favor.

## New Business:

- a. Discuss Amendment to Zoning Regulations Section 613—Everyone on board received a copy of amendment and the proper procedure was followed and paid. It was then opened for discussion. Jim B. read aloud the amendment. Gary S. stated that a Public Hearing on proposed change is required and set a date. Gary S. also said the board needs to visit with Dave Ptak and Herb P. agreed. Gary S. said the reason a board member needs to visit with Dave Ptak is about the effects of changing zoning rules on an allowed use and potential outcomes. Albert E. made a motion to table until the next meeting. Michael M. seconded. Roll call vote was taken those in favor Coby B., Gary S., John W., Michael M., Albert E. and Herb P. Those not in favor Lynell S. and Todd M. Gary S. made a motion to vote on whether to contact Dave Ptak, Attorney concerning this matter. Coby B. seconded. Roll call vote was taken and passed unanimously. Jim B. asked the board for suggestions on what to ask Dave Ptak.
- b. Discuss & Act on Commissioners denial of proposed changes to Cherry County Zoning Regulations—Discussion was opened. There was discussion of making changes, resubmitting as is, or visiting with the commissioners to see what will be approved. Herb P. said that the decommissioning of towers needs changed. Todd made a motion to start process of resubmitting changes individually and so that there is voting on each item separately. Lynell S. seconded. Roll call vote was taken with those in favor. Coby B., John W., Todd M., Herb P., Michael M., and Lynell S. Those not in favor Gary S. and Albert E. They stated that they will have all public hearing for each item in one meeting.
- c. Review Permits by Zoning office—The applications were passed around so all board members could see what has been approved.

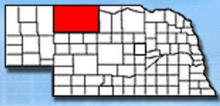
Excused Absences: None

The next regular meeting is set for June 5 at 4:00 PM CT at the Cherry County Commissioners Meeting Room.

The meeting was adjourned by Chairman Buer at 5:51 PM CT.

Jessica Coyle, Zoning Administrator

Amended the motion made by Todd concerning proposed changes to Zoning Regulations as approved in June 5 meeting.



# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

June 5, 2018

### CHERRY COUNTY COURTHOUSE COMMISSIONER'S MEETING ROOM

The meeting was called to order at 4:03 PM CT, by Herb Pabst, Vice Chairman. Due to the size of the public the meeting was then moved to the Conference Room. Roll call was taken. The following members were present: Todd Mathis, Gary Swanson, Albert Erickson, and Michael McLeod. Also present were Jessica Coyle, Zoning Administrator, Carolyn Semin, LeRoy Semin, Craig Andresen, Lana Peterson, Debby Galloway, Bob Stetter, Jim Ducey, Mike Young, Wanda Simonson, Lynn Mundorf, and Ann Warren.

The Open Meetings Act was noted, as was the public notice in the Valentine Midland News pertaining to this meeting before moving to the conference room

Minutes were read from the May 1 meeting by Zoning Administrator Jessica C. Albert E. questioned the motion made by Todd M. Motion changed on the proposed changes to Zoning Regulations in Section 613 to read Todd made a motion to start process of resubmitting changes individually and so that there is voting on each item separately. Albert made a motion to approve as corrected and Gary S. seconded. Roll call vote taken with all those in attendance voting in favor and the motion carried unanimously.

#### Public Comment:

Mike Young, Jim Ducey, Wanda Simonson, Sherry Bacon, Craig Andresen, Bob Stetter, Debbie Galloway, Dave Hamilton, and Michael Knapp all spoke during this time. Mike Young presented a letter of public comment from Cleve Trimble and Wanda Simonson had a letter from Doug Keller that was written testimony given to the board during the meeting.

#### Communications:

Jessica C. reported to the board that the members list could be added to the website but it was up to the board as to the information available. The board discussed and feels that a copy could be requested from the Zoning Office by email provided on the website already.

#### Old Business:

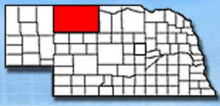
##### A. Continue with discussion on Solar Energy Section

Jessica C. provided a copy of a letter the Zoning office received from Solar Systems wanting her to say that solar is allowed in Cherry County. There are no provisions in the regulations on Solar so there is no ability to enter into any agreements with them. Gary S. made a motion to move to the next item on the agenda and finish discussion of this at a later date. Albert E. seconded the motion. Roll call vote was taken with it passing unanimously by those in attendance.

##### B. Discuss Amendment to Zoning Regulations Section 613 filed by Wayne Eatinger

Herb P. stated that it would require a public hearing and to table until Jessica C. or Jim B. had a chance to visit with Dave Ptak.

#### New Business:



# Cherry County Planning and Zoning Minutes



- A. Discuss Section 613 of Zoning Regulations previously rejected and set a public hearing date  
Discussion was that Herb P. feels they need to make some changes in the decommissioning of towers to protect county and its tax payers. Todd made a motion to have a meeting on July 10, 2018 and have a public hearing on each amendment separately. Todd then made another motion to amend his previous motion to say July 11, 2018 at 4 pm instead of July 10, 2018. Albert seconded the amended motion. Roll call vote was taken with it passing unanimously by those in attendance.
- B. Review Zoning Permits issued by Zoning Administrator  
Jessica C. presented the board with the permits for building construction of homes that had been approved since the last meeting.

## Excused Absences:

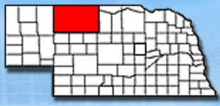
Lynell Stillwell, Jim Buer, Coby Billings, and John Wheeler were absent from the meeting. Gary S. made a motion to excuse their absences with Michael M. seconding. Roll call vote was taken with it passing unanimously by those in attendance.

The meeting was adjourned by Vice Chairman Herb P. at 5:45 PM CT.

Jessica Coyle

Zoning Administrator

Approved



# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

JULY 11, 2018

### CHERRY COUNTY COURTHOUSE CONFERENCE ROOM

The meeting was called to order at 4:02 PM CT by Chairman Jim Buer. Roll call was taken. The following members were present: Lynell Stillwell, Michael McLeod, Todd Mathis, Herb Pabst, Gary Swanson, John Wheeler, and Albert Ericksen. Also present were Jessica Coyle, Zoning Administrator, Craig Andresen, Merrial Rhoades, Jim Ducey, Lana Peterson, Carolyn Semin, Twyla Witt, Tom Witt, Mike Young, Wanda Simonson, Randy Peterson, Craig Miles, Bob Stetter, Otto Buechle, Ray Blackford, Wayne Eatinger, Steve Thede, and Carol Neiman Lewis.

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

Minutes were read from the June 5 meeting by Zoning Administrator Jessica C. Herb P. made a motion to accept the minutes as read. Michael M. seconded the motion. Roll call vote was taken with those abstaining of Lynell S. and John W. with a favor vote by Michael M., Todd M., Herb P., Gary S., and Albert E.

#### Public Comment:

Jim Ducey, Cleve Trimble, Craig Andresen, Mike Buechle, Susan Johnson, and Wanda Simonson all spoke during this time. Cleve provided the board with a written testimony. The others provided comment with concerns on Amendment to Section 613, wind energy as progress, and for a moratorium on solar until regulations are written.

Jim B. informed the public that the Amendment to Section 613 and BSH Kilgore Conditional Use Application are of equal importance. The board is charged by the Commissioners to review, research and make a recommendation. We are doing our best to expedite this and appreciate everyone's patience.

Jim B. closed public comment at 4:30 PM to open Public Hearing for CUP 004/18 filed by Mary Mercure for River Access for canoe, tube, kayaks and recreational vessels.

Public comment on CUP 004/18 was opened at 4:30 PM CT.

Randy Mercure explained the reason for needing the permit was they lost access to a landing in court with Lee Simmons. They exchanged the old access landing below the rapids for a campground and smaller landing above the rapids. The new access point is on the old Connor's Property below the rapids. He did tell the board that they made the access already as they had people who had already booked with them to go down the river and needed it.

Herb asked if they started it and Randy responded with a yes. Herb stated that Rich Mercure had done this in the past and was told he needed to get a permit ahead of time.

Jim Ducey stated that he feels that there needs to be a permit before starting. They need to follow the proper chain and get a conditional use permit before starting a project.

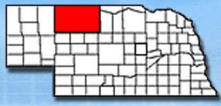
Steve Thede feels that if you are going to having a zoning process then it should be followed and adhered to. If you are going to allow the public to do, then ask for a permit why do we have a process. He feels that if this isn't done locally then this process could be taken away from the Niobrara Council and Planning Commission.

Todd M. asked Randy for an explanation of the location on the map.

Jim B. closed the Public Hearing at 4:45 PM CT and the regular meeting was opened.

Discuss and Act on CUP 004/18 Mary Mercure





# Cherry County Planning and Zoning Minutes



Jim B. explained that he was contacted by Randy to come do some work on a landing for Mercure's. When he got there and realized it was a new project, he asked if they had a permit. They didn't have one at the time, so he didn't do the work and advised them to get a permit before continuing. Jim B. feels like it was an honest mistake that Mercure's didn't get the permit before making the access on the river. Jim B. also advised the board of the recommendation from the Niobrara Council in favor of the access.

Albert E. asked if there are any fines or penalties assessed to Mercure for building before getting a permit. As of now the county doesn't have any.

John W. wanted to know how close this access is to the one they lost in court and Randy said its 200 ft.

Michael M. questioned the application number 4 item D. of provisions made for adequate water supply, sewage disposal, public utilities and erosion control. Erosion control is the only thing that applies to this application and is addressed on the application. Randy Mercure said that there is no well needed at this location.

Jim B. asked for a motion to approve CUP 004/18. Todd M. made a motion to approve CUP 004/18. Albert E. seconded. Roll call vote was taken with Todd M., Gary S., John W., and Albert E. as yeas and Lynell S., Michael M., and Herb P. as nos. Motion passed 4-3.

Jim B. reopened regular meeting at 4:51 PM CT.

## Communications

### Review of Permits issued by Zoning Office

Jessica C. reported that there were 3 permits issued for building of houses. One of these permits was issued on school lease ground to build a house.

### Zoning Administrator Report & Handout from Pilger Workshop

Jessica C. reported on the workshop that she attended on June 9 in Pilger, NE. She gave the board a copy of the handouts and reported that Dave Ptak gave a lot of good advice on Open Meetings Act, Board of Adjustments, and Conflicts of Interest.

Jim B. closed the regular meeting at 5:00 PM CT and open the Public Hearing on Amendment to the Zoning Regulations of Participating Property Lines (Other than Right Angle Corners) to Non-Participating in Section 613 on page 55.

Public Hearing was opened at 5:00 PM CT.

Michael M. asked why this change and Gary S. responded that it is to eliminate unnecessary verbiage.

Lynell S. asked if the Commissioners had objected to this item and was informed by the board that they didn't reject only this one, but all the changes proposed.

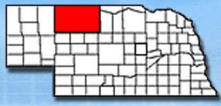
Craig Andresen addressed the board concerned with if they should act on the Amendment to Section 613 filed by Wayne Eatinger before they make these changes. Jim B. responded that these take precedence over the Amendment to Section 613.

Public Hearing was closed at 5:15 PM CT.

Jim B. opened the Public Hearing on Amendment to the Zoning Regulations Diameter plus applicable building setback to One Mile under the WECS in Section 613 on page 55 at 5:15 PM CT.

Michael M. asked if these were the changes proposed by Wayne Eatinger and Jim B. replied they were the one's proposed by the Planning Commission to the Commissioners.





# Cherry County Planning and Zoning Minutes



Craig Miles wanted this Amendment defined. Jim B. defined it as that instead of being the diameter that it would be a One Mile.

Lana Peterson asked that the board should change it to be 2 miles instead. It was recommended that she go to the Commissioners Meeting to voice this.

Jim B. closed the public hearing at 5:30 PM CT.

Jim B. opened the Public Hearing on Amendment to the Zoning Regulations of ½ Mile for Non-Participant to Two Mile for Non-Participant under the WECS for a Dwelling in Section 613 on page 55 at 5:30 PM CT.

Craig Miles addressed the board that he would like to see any industrial project to adhere to the same agriculture regulations that is imposed on feedlots. He doesn't feel that 2 miles is enough.

Carol Lewis addressed the board about the difference between industry and commercial and which group does cattle fall under.

Twyla Witt asked the board to change the definition of commercial WEC to say industrial and have this item on the next agenda.

Tom Witt addressed the board about including something about the shadow flicker on a dwelling.

Jim B. closed the Public Hearing at 5:45 PM CT.

Jim B. opened the Public Hearing on Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Roads Rights-of-Way in Section 613 on page 55 at 5:45 PM CT.

Tom Witt addressed the board that he feels like shadow flicker needs to be addressed for the roads as well.

Jim B. stated that the shadow flicker on the roads would depend on the location of the tower in reference to the road. He also stated that both requirements of roads and shadow flicker would have to be met in a permit.

Jim B. closed the public hearing at 6:00 PM CT.

Jim B. opened the Public Hearing Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Other Right of Ways in Section 613 on page 55 at 6:00 PM CT.

Wanda Simonson asked the board to clarify what an easement and right of way are and if they are interchangeable.

Lana Peterson read a definition she found on the internet that states that a right of way is a type of easement.

Jessica C. read the definition of easement out of the zoning regulations and that is how easement is used in this context.

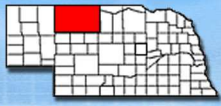
Jim B. closed the Public Hearing at 6:15 PM CT.

Jim B. opened the Public Hearing Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to One Mile under the WECS for Public Conservation Lands including Wildlife Management Areas and State Recreation Areas in Section 613 on page 55 at 6:15 PM CT.

Jim Ducey asked for a definition of what is included in the Public Conservation Lands. Jessica C. read the definition of Public Lands in the zoning regulations found on page 52.

Craig Miles asked if school lease ground is considered public land and Herb P. responded that it is public ground. Herb P. also stated that the leaser can control who is allowed on the land with the example given for hunting.

Jim B. closed the public hearing at 6:30 PM CT.



# Cherry County Planning and Zoning Minutes



Jim B. opened the Public Hearing Amendment the Zoning Regulations under the Special Safety and Design Standards on No More than 30 hours per Year of Shadow Flicker to be No WECS shall cast a Shadow Flicker on Any Public Road in Section 613 on page 56 at 6:30 PM CT.

No Public Comment was given.

Jim B. close the public hearing at 6:45 PM CT.

Jim B. opened the Public Hearing Amendment to Zoning Regulations No Commercial/Utility WECS Shall exceed 50dBA at the Nearest Structure Occupied by Humans to No Commercial/Utility WECS Shall exceed 35 dBA at the Nearest Non-Participating Dwelling in Section 613 on page 58 at 6:45 PM CT.

Tom Witt asked the board if they are going to vote yea or no on all of these, and Jim B. confirmed that he is correct.

Jim B. close the public hearing at 7:00 PM CT.

Jim B. reopened regular meeting at 7:00 PM CT.

Discuss and Act on Public Hearings to Amendments in Section 613

Jim B. opened for discussion on Amendment to the Zoning Regulations of Participating Property Lines (Other than right angle corners) to Non-Participating in Section 613 on page 55

No Discussion.

Albert E. made a motion to approve the change as read. Seconded by Lynell S. Roll Call vote was taken with all those in favor except for Gary S.

Jim B. opened for discussion on Amendment to the Zoning Regulations Diameter plus applicable building setback to One Mile under the WECS in Section 613 on page 55.

Herb P. stated that Commissioner Storer when running for office stated she feels like the regulations should be like those of the confined feeding section of the regulations when it comes to setbacks.

Albert E. made a motion to approve the change as read. Seconded by John W. Roll call vote was taken with all in favor except Herb P. and Gary S.

Jim B. opened for discussion on Amendment to the Zoning Regulations of ½ Mile for Non-participant to Two Mile for Non-participant under the WECS for a Dwelling in Section 613 on page 55.

No Discussion.

Gary S. made a motion to approve the change as read. Seconded by Albert E. Roll call vote was taken with all in favor.

Jim B. opened for discussion on Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Roads Rights-of-Way in Section 613 on page 55.

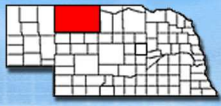
No discussion.

John W. made a motion to approve the change as read. Seconded by Todd M. Roll call vote was taken with all in favor.

Jim B. opened for discussion on Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to Three Times Total Tower Height under the WECS for Other Right of Ways in Section 613 on page 55.

No discussion.

Todd M. made a motion to approve the change as read. Seconded by Albert E. Roll call vote was taken with all in favor.



# Cherry County Planning and Zoning Minutes



Jim B. opened for discussion on Amendment to the Zoning Regulations of Diameter plus Applicable Building Setback to One Mile under the WECS for Public Conservation Lands including Wildlife Management Areas and State Recreation Areas in Section 613 on page 55.

No discussion.

Gary S. made a motion to approve the change as read. Seconded by Lynell S. Roll call vote was taken with all in favor except Gary S.

Jim B. opened for discussion on Amendment the Zoning Regulations under the Special Safety and Design Standards on No More than 30 hours per year of Shadow Flicker to be No WECS shall Cast a Shadow Flicker on Any Public Road in Section 613 on page 56.

No discussion.

Lynell S. made a motion to approve the change as read. Seconded by John W. Roll call vote was taken with all in favor except Herb P.

Jim B. opened for discussion on Amendment to Zoning Regulations No Commercial/Utility WECS shall exceed 50dBA at the Nearest Structure Occupied by Humans to No Commercial/Utility WECS Shall Exceed 35dBA at the Nearest Non-Participating Dwelling in Section 613 on page 58.

No discussion.

Herb P. made a motion to approve the change as read. Seconded by Albert E. Roll call vote was taken with all those in favor.

Old Business

Solar

Jim B. addressed the board that he feels they need help to write regulations. He feels they should ask the Commissioners for the authority to hire and for a budget to spend to get the right person found and vetted. He feels that the commissioners would approve this.

Gary S. made a motion to ask the commissioners a request for funds and to have the authority to hire someone to assist in writing the solar regulations. Seconded by Albert E. Roll call vote was taken with all those in favor.

Amendment filed by Wayne Eatinger

Herb made a motion to schedule a Public Hearing for the next meeting on the Amendment to Section 613 filed by citizen Wayne Eatinger. Seconded by Albert E. Roll call vote was taken with all those in favor.

The next meeting is scheduled for August 7<sup>th</sup> at 4:00 PM CT in the Conference Meeting Room with a Public Hearing set for 4:30 PM CT for the Amendment to Section 613 filed by Wayne Eatinger.

Report:

Jessica C. told the Planning Commission on her verbal discussion with Dave Ptak from the Pilger Workshop. Dave Ptak said he wouldn't recommend disallowing anything in the regulations, but just make it difficult to achieve getting a permit.

Excused Absence:

Herb P. made a motion to excuse Coby Billings from the meeting. Seconded by Michael M. Roll call vote was taken with all those in favor.



# Cherry County Planning and Zoning Minutes



The meeting was adjourned by Chairman Buer at 7:24 pm CT.

Jessica Coyle

Zoning Administrator

APPROVED





# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

AUGUST 7, 2018

### CHERRY COUNTY COURTHOUSE CONFERENCE ROOM

The meeting was called to order at 4:02 PM CT by Chairman Jim Buer. Roll call was taken. The following members were present: Coby Billings, Herb Pabst, Gary Swanson, John Wheeler, and Albert Ericksen. Also present were Jessica Coyle, Zoning Administrator, Craig Andresen, Merrial Rhoades, Jim Ducey, Carolyn Semin, Twyla Witt, Mike Young, Bob Stetter, Barb Welch, Dan Welch, Twyla Gallino, Ann Warren, Cindy Weller, Tyrel Yager, Billy Weller, Gary MacLeod, and Cleve Trimble.

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

Minutes were read from the July 11th meeting by Zoning Administrator Jessica C. Albert E. made a motion to accept the minutes as read. Herb P. seconded the motion. Roll call vote was taken with those abstaining of Coby B. with a favorable vote by Herb P., Gary S., John W. and Albert E.

#### Public Comment:

Written testimony was provided by Matt Coble, Dan Welch, Twyla Gallino and Billy Weller. Jim Ducey, Twyla Gallino and Ann Warren all spoke during this time. Concerns were the Amendment filed by William Weller, Mercure Project, and immanent domain.

Jim B. closed Public Comment at 4:51 PM.

Jessica C. reported that there was only 1 building permit submitted and approved.

Keith Marvin was in attendance to discuss with the board about potentially writing some Solar Regulations for Cherry County. He has written or assisted in writing of regulations in 50 counties in Nebraska and is currently writing Solar regulations for Hastings, NE. He showed the members examples of Zoning Regulations that he has done recently for Stanton and Antelope Counties. He has Dave Ptak on retainer to help with making sure that all regulations comply with current legislation. He is going to supply the Planning Commission with a written quote to review.

The Planning Commission discussed what Keith Marvin presented and asked that Zoning Administrator Jessica C. contact him to get a quote on writing Solar Regulations only and a quote for redoing the Zoning Regulations with adding in Solar and the Comprehensive Plan.

The next meeting is scheduled for September 4th at 4:00 PM CT in the Auditorium at the Valentine Community High School with a Public Hearing set for 4:30 PM CT for the Amendment to Section 613 filed by Wayne Eatinger.

#### Report:

#### Excused Absence:

Herb P. made a motion to excuse Lynell Stillwell, Todd Mathis, Michael McLeod from the meeting. Seconded by John W. Roll call vote was taken with all those in favor.

The meeting was adjourned by Chairman Buer at 6:09 pm CT.

Jessica Coyle

Zoning Administrator

Approved with corrections of spelling and grammar errors.





# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

September 18, 2018

### CHERRY COUNTY COURTHOUSE CONFERENCE ROOM

The meeting was called to order at 4:02 PM CT by Chairman Herb Pabst. Roll call was taken. The following members were present: Coby Billings, Michael McLeod, Todd Mathis, Gary Swanson, 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 read from the August 7<sup>th</sup> meeting by Zoning Administrator Jessica C. Gary S. made a motion to accept the minutes as read with spelling and grammar corrected. Michael M. seconded the motion. Roll call vote was taken with those abstaining of Todd M. with a favorable vote by Coby B., Michael M., Gary S., and Albert E.

#### Communications:

Zoning Administrator Jessica C. provided copies of Jim Buer letter of resignation, proposals from Consultants for assistance in writing regulations, list of members with updates, Amendment filed by William Weller, a supplement to BSH of Kilgore application, information on fall NPZA workshop in Columbus October 10-11, and zoning permits approved.

#### Public Comment:

Written testimony was provided by Debbie Galloway. LeRoy Semin spoke to the board asking for them to conduct a study on the water as referred to in the Amendment filed by William Weller. LeRoy also suggested to the board to go back to meeting every 3 months.

Herb P. closed Public Comment at 4:30 PM.

#### Old Business:

Herb P. moved on as they aren't ready to discuss Solar Regulations for now.

#### New Business:

Orval Stahr was present to discuss what services he could provide for the Planning Commission in terms of writing Zoning regulations to include Solar and make necessary adjustments to current regulations in wind energy, livestock confined feeding and conservation easements, updating the Comprehensive plan so that it matches the Zoning Regulations and includes the Energy element and LB140 airport hazard zoning changes.

Gary S. Nominated Coby Billings to fulfill the vacancy as Vice Chairman of the Planning Commission until end of term. Michael M. 2nded. All in attendance voted in favor.

Chairman Herb P. made a motion to wait until the next meeting to discuss and act on the Quotes submitted for writing Zoning regulations. Motion failed.

Chairman Herb P. made a motion to act on the quotes tonight. All in attendance voted with an aye to act on the quotes tonight.

The board discussed amongst themselves the differences in the quotes provided by both Keith Marvin and Orval Stahr. Gary S. brought up the need for a consultant on all aspects of zoning. Michael M. made a motion to hire Orval Stahr to rewrite, reexamine and review the Comprehensive Plan, along with having Orval Stahr and Keith Marvin review the CUP from BSH of Kilgore. Motion was retracted by Michael M.



# Cherry County Planning and Zoning Minutes



Michael M. made a motion to hire Orval Stahr to reexamine and rewrite the zoning regulations including Solar and Comprehensive plan, with him reviewing the CUP submitted by BSH of Kilgore to current regulations on wind. Coby B. seconded the motion. Roll call vote Albert E., Gary S., Michael M., and Coby B. with yes and Todd M. with a no. Motion carried 4-1. Todd voted no as he doesn't feel that they need to do the Comprehensive Plan.

The board then directed to Zoning Administrator Jessica C., they would like to send a letter to Orval Stahr with the board's priorities for him moving forward.

The next meeting is scheduled for October 16th at 4:00 PM CT in the Auditorium at the Valentine Community High School with a Public Hearing set for 4:30 PM CT for the Amendment to Section 613 filed by Wayne Eatinger.

Excused Absence:

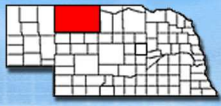
Gary S. made a motion to excuse John Wheeler from the meeting. Seconded by Michael M. Roll call vote was taken with all those in favor.

The meeting was adjourned by Chairman Pabst at 6:02 pm CT.

Jessica Coyle

Zoning Administrator

Corrected those names that were excused and removed Lynell Stillwell and Jim Buer.



# Cherry County Planning and Zoning Minutes



## CHERRY COUNTY PLANNING COMMISSION MINUTES

November 6, 2018

### CHERRY COUNTY COURTHOUSE CONFERENCE ROOM

The meeting was called to order at 4:00 PM CT by Vice Chairman Coby Billings. Meeting was then moved due to size to the Cherry County Courtroom and reopened at 4:13 PM CT.

Roll call was taken. The following members were present: Coby Billings, Michael McLeod, Gary Swanson, John Wheeler and Dave Rogers. 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 read from the September 18<sup>th</sup> meeting by Zoning Administrator Jessica C. Gary S. made a motion to accept the minutes as read with correction of only John Wheeler as an excused absence. Michael M. seconded the motion. Roll call vote was taken with those abstaining of John W. with a favorable vote by Coby B., Michael M., Gary S., and Dave R.

#### Communications:

Zoning Administrator Jessica C. provided copies of Todd Mathis letter of resignation, Orval Stahr letter on the Wayne Eatinger Amendment, an Article on the FCC Control on 5G, proposed changes to fees charged for zoning permits and applications, and zoning permits approved.

#### New Business:

The board delegated a Secretary for this meeting only with Gary Swanson volunteering and passing along the duties to the Zoning Administrator Jessica Coyle to record the minutes. Roll call vote was taken with a favorable vote by all in attendance.

#### Old Business: None

#### Public Hearing on the Amendment to Zoning Regulations filed by citizen Wayne Eatinger:

Coby Billings opened the Public Hearing at 4:30 PM CT.

Jessica C. Zoning Administrator handed the board a copy of the written testimony provided by Twyla Gallino prior to the hearing.

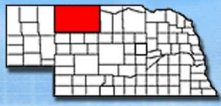
Written Testimony was received and recorded by Jessica C. Zoning Administrator from Craig Andresen, LeRoy Semin, Carolyn Semin, Gary Phipps, Wayne Eatinger, Glenda Phipps, Eve Millar, Tyler Rath, Craig Miles, Dave Hamilton, Bob Stetter, Lana Peterson, Ann Warren, Charlene Reiser-McCormick, Cleve Trimble, and Wanda Simonson.

Wayne Eatinger spoke on the petition submitted with the Amendment and how it affects the Sandhills plus the importance of the Planning Commission.

Craig Andresen spoke on the peer reviews he submitted into written testimony and his support for the Amendment.

LeRoy Semin quoted the Comprehensive Plan and his interpretation of said quotes that were submitted into written testimony in support of Amendment.

Carolyn Semin described the Sandhills with many adjectives and referenced a comparison to Lakeshore Drive in Chicago and Chimney Rock in support of Amendment.



# Cherry County Planning and Zoning Minutes



Mike Young compared the sales and size of Valentine to O'Neill regarding the recreation in the area in support of Amendment.

Wanda Simonsen spoke about her and her families support of the Amendment and that any decision should wait till after the new commissioner is in office.

Joy Miles read a letter submitted by Lana Peterson reviewing the impacts of the community and landowners quoting the Comprehensive plan and that the Comprehensive plan should be reviewed annually in support of Amendment.

Glenna Phipps supplied a copy of reports on the affect's turbines have on animals and sited examples from people who live next to them in support of the Amendment.

Eve Millar read a letter from Sylvia Fink in Webster County and that you can hear the turbines even over a mile away in support of the Amendment.

Ann Warren said that there's a problem in Cherry County with too many conflicts of interest and agendas and the she feels 1 person controls the Board of Commissioners vote. She recommended to the board tabling any decisions until a new commissioner is in office and supports the Amendment.

Craig Miles wanted to go on record that he opposes wind and supports the Amendment filed by Wayne Eatinger.

Jim Ducey said he supported the Amendment and Craig Miles statement and feels the board shouldn't vote until more members are present.

Tyler Rath shared an assessment he compiled on the Potential Impacts to the Endangered Whooping Crane as a Result of Proposed Industrial Renewable Energy Development in Cherry County in support of the Amendment.

Rick Weber spoke that he has done some research and feel that wind turbines will drop land value and that no neighbors have the right to devalue their neighbor's property in support of the Amendment.

Gary Phipps spoke about the effects on animals with turbines in support of the Amendment.

Melanie Coffman a Thomas County resident spoke about the R-project in support of the Amendment.

Ronda Kenner spoke of a friend from Lamar, CO and the health and livestock problems they have since wind turbines were built by them.

Bob Stetter spoke on the impact of turbines on the ill effects on economic development of the County and suggested the board recommend to the commissioners to adopt the Amendment.

Sherri Bacon spoke on the decommissioning of the turbines and how its going to be enforced when the easements are transferred to a foreign country in support of the Amendment.

Cleve Trimble spoke in support of the Amendment and how turbines will affect the golf course.

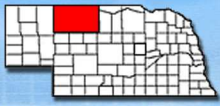
Dave Hamilton spoke against the Amendment and that this is a stall tactic and that change is difficult to accept.

Brock Moreland spoke as a 5<sup>th</sup> generation rancher in support of the Amendment that the land in the Sandhills isn't good for much of anything besides cattle and that wind isn't reliable for turning windmills.

Charlene Reiser-McCormick spoke in support of the Amendment stating that turbines don't bring in jobs long term and that there was a rise in crime during the time they were built around Broken Bow.

Jim and Gail Herrmann stated that are both in support of the Amendment.

Vice Chairman Billings closed the Public Hearing at 6:10 PM CT.



# Cherry County Planning and Zoning Minutes



## New Business:

### Discuss and Act on Amendment

Michael M. made a motion to table the vote on the Amendment to Section 613 filed by Wayne Eatinger until next meeting. John W. seconded. Roll call vote all in favor.

The next meeting is scheduled for December 4th at 4:00 PM CT in the Cherry County Court Room with a Public Hearing set for 4:30 PM CT for the Amendment to Section 613 filed by William Weller and Discuss and Act on Amendment to Section 613 filed by Wayne Eatinger.

### Reports and Recommendation:

Jessica C. reported that the contract with Orval Stahr hasn't been approved and signed by the County Commissioners.

### Excused Absence:

John W. made a motion to excuse Herb Pabst and Albert Ericksen from the meeting. Seconded by Gary S. Roll call vote was taken with all those in favor.

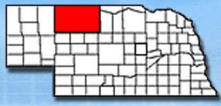
The meeting was adjourned by Vice Chairman Billings at 6:35 pm CT.

Jessica Coyle

Zoning Administrator

APPROVED





# 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:

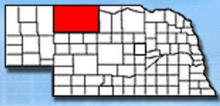
- a. Discuss/Act on Amendment to Zoning Regulations submitted by Wayne Eatinger, which would ban wind turbines from greater than 80 feet the county.

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



# Cherry County Planning and Zoning Minutes



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.

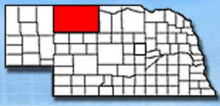
Herb read the amendment proposed by William Weller in its entirety and noted that the key word is industrial within the amendment. In summary, he stated the amendment would change the terms commercial and utility to industrial in each of the segments within the regulations. All wind turbines would then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



# Cherry County Planning and Zoning Minutes



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.

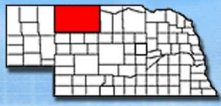
Craig Miles thanked the commission and stated that he wanted to go on the record for support Mr. Eating and Mr. Weller's amendments. He said that we stand at the cusp of a great decision for our county, and we do have property rights. The planning commission is the first line of defense in protecting our property rights and we stand at 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



# Cherry County Planning and Zoning Minutes



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