

**MINUTES OF THE
LINCOLN COUNTY PLANNING COMMISSION**

October 24, 2016

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Ron Albers, Monty Derosseau, Ron Larson, Dan King, Tyler Klatt, Darwin Sogn, and Gary Pashby.

STAFF PRESENT: Toby Brown and Joan Doss - County Planning

PUBLIC PRESENT(from sign-in sheets): Jean Riley, Jennifer Fischer, Jim Fedderson, Rob Johnson, David Baird, Don Paulson, AJ Swanson, Camille Van Voorst, Brad Van Voorst, Doug Tinklenberg, Winnie Peterson, Jan Schroeder, Steven Peterson, Dwight Johnson, Mike McKee, Denise Koopsma, Kathleen Hill, David Brouwer, Vance Myrabo, Drew Anderson, Don Klasson, John Holt, Tom Thomas, Cindy Thomas, Brad Dietzenbach, Lorraine Stratmeyer, Sara Bovill, John Bovill, Bob Lier, Paul Paulson, John Haverhal, Julie Jervik, Brian Minish, Paul Shubeck, John Olbertson, Steve Williams, Angela Landeen, Robyn Ventura, Sierra Davies, Marlene McKee, Tony Taylon, Jo Stratmeyer, Ella Grimsrud, Dianne Grayson, Roy Grayson, Heather Day, Marlin Day, Kristie Davies, Jim Davies, Carol Thies, Trent Christiansen, Janell Beck, Jeff Williams, Drew Anderson, Jim Bradshaw, Mary Bradshaw, Laurie Cole, Brad Peterson, Karren Peterson, Darrel Schroeder, Roger Evanson, Jayne Myrabo, Marisa Myrabo, Eileen Bergerson, Clarence Lems, Karla Lems, Elelyn Pederson, Ron Ingebrigtsen, Marlene Aasheim, Harlan Paulson, Dylan Paulson, Rick Saathoff, Joan Saathoff, LaVonne Cornelius

The meeting was chaired by Ron Albers.

1. CALL TO ORDER

A special meeting of the Lincoln County Planning Commission was brought to order on October 24, 2016 at 7:00p.m. in the Commission Meeting Room of the Lincoln County Courthouse by Chairman Ron Albers.

2. APPROVAL OF AGENDA

A motion was made by Derosseau and seconded by Pashby to approve the agenda. The motion passed unanimously.

3. TEXT AMENDMENTS TO 2009 REVISED ZONING ORDINANCE FOR LINCOLN COUNTY (ARTICLE 6, C COMMERCIAL DISTRICT, SECTION 6.03(A), PERMITTED SPECIAL USES AND ARTICLE 12, ADDITIONAL USE REGULATIONS, SECTION 12.02 WIND ENERGY CONVERSION SYSTEMS)

Background:

The process of reviewing and making proposed revisions to the 2009 Revised Zoning Ordinance started approximately four years ago. Many workshops and public hearings were held over the years with the Planning Commission, the Board of County Commissioners, and County Staff. The resulting review by the Planning Commission was a proposed 2015 Revision which addressed many changes and updates. The Board of County Commissioners after review and a public hearing rejected the proposed full revision on June 14, 2016. Of importance is that prior to July 1, 2016 the Board of County Commissioners was not able to amend the recommendations of the Planning Commission in regards to ordinance changes. Staff recommended to both the Board of County Commissioners and the Planning Commission to move forward with separate text amendments instead of a full revision. Since June 14, 2016 the Planning Commission has conducted work sessions to review possible text amendments as prepared by staff. In regards to commercial wind energy conversion systems, staff with direction from the Planning Commission has prepared draft ordinances based on input from other ordinances, industry information

and standards, and consideration of the potential use for such systems within the county. The proposed information/changes have been previously presented to the Planning Commission most recently on September 12, 2015 and September 19, 2015 as part of the update work session. There have been no changes, other than minor edits to the proposed text amendments presented at that time. The changes to Section 12.02 should provide for protection of the health, safety and welfare while providing for the opportunity for the development of alternative energy in Lincoln County.

Amendment #1 – Section 6.03 Commercial District Permitted Special Uses (pg. 15)

STAFF REPORT – Toby Brown

The use “warehousing” is added back to the section. Warehousing was removed from the C Commercial District in 2013. Staff feels that this has resulted in a significant number of nonconforming uses and new warehousing proposals are required to rezone to a higher intensity – I-1 Light Industrial.

- A. Retail sales and trade, personal services, communication facilities, **and warehousing** provided:
 - 1. There is no outside storage.
 - 2. There is no storage of a regulated substance.
 - 3. The building contains 10,000 square feet of area or less.

(Amended: Ordinance No. 2013-0202, 02-26-13)

PUBLIC COMMENT:

Commissioner Albers asked for comments in favor of the proposed amendment.

Brad Van Voorst noted that he had recently bought land with the prospect of building storage units, and thinks that the development would be good for the county.

Commissioner Albers asked for comments in opposition to the proposed amendment, hearing none, he closed the floor to public comment.

COMMISSION DISCUSSION:

Commissioner Derausseau noted he felt that this would be a good change, and would help mitigate the large amount petitioned to I-1 zoning.

ACTION:

Derausseau made a motion to recommend approval of the proposed amendment as presented, with a second by Commissioner Larson. The motion passed unanimously.

Amendment #2 – Section 12.02(C) Commercial WECS Districts (pg. 45)

STAFF REPORT – Toby Brown

Added full district names and removed RC Recreation/Conservation District.

- C. Commercial WECS. Commercial WECS shall be permitted only on lands zoned A-1 Agricultural, C Commercial, I-1 **Light Industrial** or **I-2 General** Industrial, ~~or RC Recreation/Conservation~~.

PUBLIC COMMENT:

Commissioner Albers asked for comments in favor of the proposed amendment. None were voiced.

Commissioner Albers asked for comments in opposition to the proposed amendment.

Winnie Peterson noted that the regulations need to protect recreation and industrial towers are by name an industrial use. She continued to say that there are many areas in the county that are zoned agricultural but have residential uses. She concluded by saying the commission is tasked with promoting agricultural use and discouraging unharmonious uses and that the turbines should be zoned commercial or industrial.

Jennifer Fischer presented a picture of a substation and noted that the uses are not agricultural or residential.

AJ Swanson presented history on the zoning ordinance and comprehensive plan including the development of building eligibilities. He noted that there is a need for the A-2 intensive agricultural district, and that without honoring the setbacks of the A-1 district there would be a taking of property rights and that they are disregarding and future or hypothetical buildings in the county. Pashby asked if there was a case he could cite about the “property taking,” and Mr. Swanson responded he could not cite one off the top of his head.

Hearing no more comments, Albers closed the floor to public comment.

COMMISSION DISCUSSION:

Albers noted that they did discuss an A-2 zoning district in the 2015 ordinance revision, but that it still needs a good amount of work before they discuss adopting the new district.

ACTION:

Commissioner Pashby made a motion to recommend approval of the proposed amendment as presented, with a second by Commissioner Klatt. The motion passed 6-1 with Commissioner Sogn dissenting.

Amendment #3 - Section 12.02(C)(2) Commercial WECS Setbacks [pg. 45]

STAFF REPORT – Toby Brown

Added 1,000-foot minimum and increased the setback from 3 to 5 times the total WECS height and added a setback waiver. Changed measuring to the closest exterior wall of dwelling unit because it is a defined and more consistent method. Many jurisdictions include both a minimum setback and a setback based on height and use the greater distance. The increased distance reduces the visual impact, shadow flicker impact and the risk of ice throw. New turbines are better designed to minimize and monitor icing. Setbacks to the property line and right-of-way are substantial so no separate setback for ice throw is proposed. The 1,000-foot minimum provides sufficient space from a dwelling unit to protect from many of the impacts of turbines. While distance does reduce noise, the primary measure for noise should be a noise standard. The noise standard will be the primary measure for addressing any noise impacts.

- 2. Setbacks
 - a. WECS shall be set back 2 times the total WECS height from any exterior property line.
 - b. WECS shall be set back 1.25 times the total WECS height from the right-of-way line of any public road or highway.

- c. WECS shall be set back **1,000 feet** or ~~3-5~~ times the total WECS height, **whichever is greater**, from **the closest exterior wall of any habitable structure dwelling unit**.

If an applicant wishes to place a Commercial WECS closer than the setbacks set forth above, the applicant can request an exception from the setback from the Planning Commission. The Planning Commission may allow an exception from the setback only when the applicant obtains waivers from all the owners of property within the setback. Any authorized person, business, or governmental entity that is within the setback may waive the setback through a written instrument to be filed with the Lincoln County Register of Deeds. Exception: In no event shall a Commercial WECS be located less than 1,000 feet from the closest exterior wall of a dwelling unit.

PUBLIC COMMENT:

Commissioner Albers asked for comments in favor of the proposed amendment. None were voiced.

Commissioner Albers asked for comments in opposition to the proposed amendment.

Bob Evanson noted that the minimum was not enough, and cited a manual from the Danish company Vestas that says 400m should be the setback. He also noted that it is confusing that there are setbacks that go to the property line and also setbacks to dwellings. He continued to note that 84% of the project footprint didn't sign up for the project.

Jennifer Fischer noted that it is a violation of property rights and the setbacks allow what she called trespass zoning.

Vance Myrabo noted that the section in the zoning ordinance addressing telecommunication towers states protection from aesthetics and noted that setbacks of less than 3 miles would impact property values. He stated that appraisers are refusing to appraise properties in southern Lincoln County in fear of lawsuits. He closed by stating that 1-mile setbacks would not be adequate either. Commissioner Larson asked if the appraisers were appraising agricultural land or residential properties. Mr. Myrabo noted he wasn't sure, but believed they were looking at both, but mostly residential land.

Brian Minish spoke to the fact they have heard of un-neighborly activity happening including vandalism, and due to this they have asked the property owners to now speak at the meeting. He also noted when they approached the county years back with the idea of this project they were told there were no plans on revisions since the section of the ordinance was only a couple years old. He continued by saying that the proposed 5x the height of the tower has no credible facts to back it up other than the board liking the distance. He also noted that the setbacks need to be based on noise and safety, not personal opinions on the aesthetic. He showed two maps showing the available space using the current regulations and another map showing how the proposed setbacks would impact the available space. He closed by saying that 5x the height of the tower would require more interconnection and would create a larger project footprint, and that the current regulations are in excess for safety requirements. Pashby asked about health effects. Mr. Minish noted that there is no credible evidence of health effects caused by wind turbines. Albers asked how many turbines could fit in a quarter section. Mr. Minish noted that depending on topography and expected wind directions, about two turbines could fit in a quarter section.

Rob Johnson noted that in 2013 that there was a meeting with the Minnehaha and Lincoln County Economic Development Corporation, and the group had given full support which included county commission liaison. He continued that there are 50,000 turbines running in the U.S. and 225,000 worldwide. He also noted that Minnesota's state ordinance only looks at safety since noise is addressed

on the state level. Most counties have 750ft – 1000ft setback, and that the Lincoln County proposal is 52% higher than the state of South Dakota recommendation. He showed a copy of GE recommended setbacks for their largest towers which should be setback at 965ft. He also noted that the previously cited Vestas manual addresses an old model of turbine, that isn't current, so the validity should be questioned. He then cited a study by Berkley that found no decrease in property values by examining 122,000 property sales near wind farms and when he asked about getting properties in the county appraised, he had no issues since the appraisal is a snapshot in time.

David Brouwer noted that he hopes they have kept up on the submitted research and correspondence. He continued by saying each county is different, so it should not matter what another county does about wind turbines. He questioned if industry standards have health and safety in mind, or just what is best for them. He noted that setbacks should be from the property line since there will always be people working and children playing outside. He concluded by saying they need to think about the direct and indirect impacts including the effect on building eligibility.

Jennifer Fischer came to the microphone again and asked why the posters Dakota Wind presented were not shown to the public. Toby Brown put the Dakota Wind materials on the projector for a second viewing.

Winnie Peterson noted that the setback needs to be a mile to mitigate health effects, and continued by saying that GE turbines run at 105dBA which would meet the World Health Organization standards at a mile setback. Pashby asked for clarification on where the setback should measure. Ms. Peterson responded with measuring from property line. Pashby also asked if she was speaking on behalf of WECARE, in which she responded yes, she was.

Drew Anderson, noted he is a banker in Canton and have had two appraisers refuse to appraise property in Lincoln County. Pashby asked if it was residential or agricultural land. Mr. Anderson said it was residential land because they are scared of wind.

Don Klassen noted that wind turbine will destroy the peace and relationships in the community and will provoke violence among neighbors.

Larry Thompson asked how the spacing of the turbines would work and was concerned since he feels the ones in Minnesota are close enough together that they could fall into one another. Albers repeated from an earlier comment that there would be about 2 turbines per quarter section depending on the lay of the land.

Jeff Swarm said that the setbacks need to stay off the property that he pays taxes on.

Jean Riley agreed with Mr. Swarm and went further by noting that she uses all of her property so the setback needs to be from the property line and doesn't want to look at wind turbines. She concluded that the company needs to prove their worth to the community.

Hearing no more comments, Albers closed the floor to public comment.

COMMISSION DISCUSSION:

Commissioner Pashby noted that there isn't a definition for dwelling unit, but a definition for dwelling. He also noted that Toby Brown should work on a definition of habitable structure.

Motion by Pashby to strike dwelling unit and use habitable structure in the proposed amendment. The motion was seconded by Commissioner Klatt, and passed unanimously.

Commissioner Derosseau noted a previous comment said the proposal was a number that they just like and that he believe studies that show debris flying over a mile, but he doesn't know how the current technology works. He continued by stating he couldn't speak on how it would affect the welfare of the residents, but that a mile setback is more fitting.

Commissioner Larson noted that they have received information from 45 surrounding counties and only 4 of those counties have setbacks of more than 2000 ft.

Commissioner Derosseau concluded that the population of the county is a big factor.

Commissioner Albers noted that Lincoln County is the fastest growing county in the state and turbines are forever and they can't move if the setback turns out to be too lenient.

Motion by Commissioner Derosseau to amend 5 times the tower height to 5,280 feet in the proposed amendment. The motion was seconded by Commissioner Sogn. The motion passed 4-3 with Commissioner Klatt, Larson, and Albers dissenting.

ACTION:

Commissioner Derosseau made a motion to recommend approval of the proposed amendment as amended, with a second by Commissioner Pashby. The motion passed 5-2 with Commissioner Larson and Commissioner Albers dissenting.

Amendment #4 – Section 12.02(C)(4) Commercial WECS Noise [pg. 46]

STAFF REPORT – Toby Brown

Changed the dB(A) from 65 to 50 for daytime limit. Added a nighttime limit of 40 dB(A), measuring period of 10 minutes and measure from the closest exterior wall of dwelling as opposed to property line. Dwellings may sit on a large parcel with the dwelling at the far end while others are on a smaller parcel with the dwelling close to the property line. Measuring to the dwelling is a more consistent method. Noise from wind turbines has been shown to be a significant concern and source of investigation. Recent research papers and studies (based on some submitted materials) on wind turbine noise and potential health impacts indicate that noise from wind turbines may cause annoyance which may lead to sleep disturbance. Leq is the equivalent continuous noise level (type of average). The 2015 Health Canada study indicated that the percentage of people that will be “very” or “extremely” annoyed increases considerably when they are exposed to noise levels above 40 dBA. In late 2014, Schmidt and Klokker indicated that 35 dBA appears to be a “tolerable level”. The somewhat older Massachusetts expert panel review (2012) recommended Denmark’s nighttime noise limit for residential areas of 37 dBA when wind speeds were 6 m/sec (about 13 mph) and 39 dBA when wind speeds are 8 m/sec (about 18 mph) as a “Promising Practice”. Many studies have found an association between exposure to wind turbine noise and annoyance but there is considerable uncertainty in potential health impacts with the research that has been conducted to date. This uncertainty will continue until the impacts of wind turbine noise can be comprehensively assessed. Studies and analysis reviewed shows that predicted levels below 40 dB(A) at residences can be associated with a relatively low annoyance, while higher levels, particularly those higher than 45 dB(A), suggest a relatively high probability of serious complaints.

4. Noise. The noise level of the WECS shall not exceed ~~65~~ **50** dB(A) **maximum 10 minute Leq from the hours of 7 a.m. to 10 p.m. and 40 dB(A) maximum 10 minute Leq from the**

hours of 10 p.m. to 7 a.m. as measured at ~~any property line~~ the closest exterior wall of any dwelling unit.

PUBLIC COMMENT:

Commissioner Pashby asked Mr. Brown if there were definitions for receptor and Leq. Mr. Brown responded at this time there were no definitions within the zoning ordinance, but would more than likely need to address them if the amendment was approved.

Commissioner Albers asked for comments in favor of the proposed amendment. None were voiced.

Commissioner Albers asked for comments in opposition to the proposed amendment.

Don Klassen noted he was told that lawn mowers run at 40dBA and that he is told to wearing hearing protection while mowing lawn, and he doesn't think he should have to wear hearing protection all the time.

Brian Minish noted that the decrease from the current regulations is a dramatic decrease, and that 50dBA is reasonably achieved. He asked how ambient noise is defined or measured. He also noted that decibels are a logarithmic measure so the 40dBA is 10% as loud as 50dBA. He continued by saying that a normal conversation is 60dBA, so a lawn mower would be considerably louder than the previous comment stated. Additionally, a whisper is 20dBA, and a fridge is even 45dBA. He asked about what they would do about all the other noise associated with agricultural zoning including grain driers, tractors, and the ethanol plant, and that he feels wind turbines are being unfairly judged. Larson asked what a reasonable level would be, and Mr. Minish responded that 45dBA at night would be reasonable and achievable. Sogn asked if the sound would compound with each turbine. Mr. Minish noted it wouldn't matter the number of turbines because if there is a limit they would have to meet it.

Angela Landine noted that decibel level is relative loudness, and she said a hand dryer runs at 40dBA. She continued by saying that everything is subjective and there are two sides to the story. There are some that say the noise may help some sleep with the hum. Asks that the board look at real studies and to not take anecdotal evidence into account.

Jennifer Fischer noted that the country is quiet, and that grain driers and tractors don't run all day long.

Don Klassen spoke again, and disputed that refrigerators run at the level Mr. Minish noted.

Winnie Peterson noted that the World Health Organization states that it should be 30dBA inside the home, and no more than 45dBA outside of the dwelling. She also noted that the ordinance requires home occupations to not make sound beyond the property line.

David Brouwer noted that everyone will be affected differently and that wind turbines make a different type of noise than a refrigerator. He continued by saying there should not be differences with day and night. He concluded by saying that disruptions in sleep cause stress and stress causes illness. Larson asked if the increased setback would help the noise. Mr. Brouwer responded that noise levels may be irrelevant at 1 mile.

Winnie Peterson presented a website that calculated how far the setback would be for the decibels to drop to WHO levels, and the calculator showed over 1-mile.

Cindy Thomas noted that low-frequency noise and infrasound need to be addressed. She continued by saying that industrial operations make infrasound vibrations that travel further than sound and are felt in the body. She also noted that infrasound affects about 40% of the population. She concluded that the tobacco industry always denied the harmful side effects of smoking, and the wind industry is doing the same and that the noise should match the WHO levels of 30dBA. Larson asked if the decibel level should stay the same throughout the day. Ms. Thomas noted that if 30% of the population sleep during the day, that it should be 30dBA throughout the day.

Vance Myrabo noted that the noise will affect the enjoyment of his property. He also noted that the wind turbines are a different type of noise that will create the health issues and disruptions in sleep.

Tammy Van Bockern said that she has a relative who experiences headaches and had to give up living in the country due to the turbines. She also noted that she is worried about the leased land near the school.

Hearing no more comments, Commissioner Albers closed the floor to public comment.

COMMISSION DISCUSSION:

Commissioner Sogn noted that he has issues with his ears ringing, and that noise regulations are just as important as the 1-mile setback. He continued by saying he lives 1-mile off of Highway 11 and some days you can't really hear traffic, but some days you can hear it more due to the wind.

Commissioner Derosseau asked where should they set the decibel level. Sogn said it should be 30dBA for sleeping, and 35dBA during the day, and measured at the property line.

Motion by Commissioner Sogn to amend the decibels to 35dBA from 7am-10pm and 30dBA from 10pm-7am measured from the property line. Motion was seconded by Commissioner Derosseau, and passed 6-1 with Commissioner Larson dissenting.

ACTION:

Commissioner Derosseau made a motion to recommend approval of the proposed amendment as amended, with a second by Commissioner Sogn. The motion passed 6-1 with Commissioner Larson dissenting.

Amendment #5 - Section 12.02(C)(11) Commercial WECS Flicker Analysis [pg. 46]

STAFF REPORT: Toby Brown

Added provision for flicker analysis. Shadow flicker is the phenomenon caused by the moving shadow of the wind turbine blades moving over a point. The area where flicker is experienced moves as the sun's position relative to the ground changes throughout the day and season to season. It would be at the peak in winter months. A general precedent has been established in the industry both abroad and in the United States that fewer than 30 hours per year of shadow flicker impacts is acceptable to receptors in terms of nuisance and well below health hazard thresholds.

11. Flicker Analysis. A Flicker Analysis shall include the duration and location of flicker potential for all receptors and road ways within a one (1) mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees.

Flicker at any receptor shall not exceed thirty (30) hours per year within the analysis area.

PUBLIC COMMENT:

Commissioner Albers asked for comments in favor of the proposed amendment. None were voiced.

Commissioner Albers asked for comments in opposition to the proposed amendment.

Winnie Peterson noted that the amendment was necessary by requested it be adjusted to be only 15 hours of shadow flicker. She also noted that the technology to mitigate shadow flicker is readily available. Pashby asked why 15 hours should be the maximum, and Ms. Peterson cited research completed in Europe.

Brian Minish noted that even though it appears the county would be prohibiting wind turbines he agrees that a flicker stipulation is important and shadow flicker is easy to mitigate. He continued that he was curious about the definition for receptor.

Rob Johnson noted that he knows of no jurisdiction that has 15-hour shadow flicker stipulation. The concluded that they would use consultants during the planning and could turn off the turbines during sunrise and sunset.

Hearing no more comments, Commissioner Albers closed the floor to public comment.

COMMISSION DISCUSSION:

Commissioner Larson asked how the flicker stipulation would be administered and enforced, and noted that no other county in the matrix of regulations provided by SECOG included shadow flicker. Mr. Brown noted that any commercial WECS would require a conditional use permit and a flicker analysis would be part of that permit approval.

Commissioner Larson also asked what the point would be since the setback was changed to a mile, and the flicker analysis would cover 1-mile as well. Commissioner Albers responded that these amendments are only a recommendation to the county board, but each amendment is separate.

ACTION:

Commissioner Pashby made a motion to approve the proposed amendment as presented, with a second by Commissioner Drousseau. The motion passed unanimously.

4. NEW BUSINESS

Toby Brown noted that the commission recommendations would go to the board on October 25th to set the dates for the ordinance readings.

5. ADJOURN

A motion was made by Commissioner Drousseau and seconded by Commissioner Klatt to adjourn the meeting at 10:03pm. The motion passed unanimously.