

Nance County Planning and Zoning Commission

Record of Minutes of Meeting

January 18, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska, on Monday, January 18, 2010 at 7:30 p.m. Meeting notice was given by publication in the January 6, 2010 edition of *The Nance County Journal*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Brett Houtby, Pat Connelly, Galen Frenzen, and Dennis McCoig. Absent were John Cieloha, Lynn Belitz, Clint Dubas, and Roy Guisinger.

Agenda Item 3 – Minutes

Minutes of the December 21, 2009 meeting had been mailed in advance and were briefly reviewed. Connelly made a motion to accept the minutes as presented. Second by Houtby. Ayes: Delancey, Houtby, Connelly, McCoig, and Frenzen. Nays: none. Absent: 4.

Agenda Item 4 – Speaker Bill Robinson, Landowners for Fairness

Bill Robinson of Landowners for Fairness spoke with the Commission about TransCanada's Keystone XL Pipeline Project, which is expected to come through Nance County sometime in 2012. Landowners for Fairness has been trying to negotiate contract terms with TransCanada that would: increase pipeline depth from 4' to 5'; more fully protect landowners from liability; ensure adequate reclamation of disturbed lands; and provide an annual fee to affected landowners, school districts, and local and state governments. Toward this end, Senator Cap Dierks introduced LB755 when the 2010 legislative session began on January 6.

The question of whether or not we need, and whether or not we can accomplish anything with, zoning regulations remains open. We'll wait to see what happens with LB755. In the meantime, Robinson will get more information on a county that successfully received cooperation on having gas lines buried deeper than federal regulations required, and Los will get information on how counties handled zoning for the original Keystone Pipeline.

Agenda Item 5 – Old Business

Los distributed updated regulation manuals to some Commissioners and collected manuals from others. We also discussed updates to the Zoning Permit forms (Los added language about utility lines and sketching building sites).

Agenda Item 6 – New Business

- a. Election of 2010 officers. Motion made by Frenzen to maintain current officers: Delancey as Chairman and Cieloha as Vice Chairman. (As the Zoning Administrator, Los remains Secretary of the Commission.) Second by Houtby. Ayes: Delancey, Houtby, Connelly, McCoig, and Frenzen. Nays: none. Absent: 4.
- b. Mobile home permits. We have Mobile Home Permits and Mobile Home Renewal Applications in the office of the Zoning Administrator, but when we adopted Zoning Regulations in 1999, we decided against incorporating Mobile Home regulations. Instead, mobile homes are addressed alongside single-family dwellings in Article 12, Section 3. So mobile homes are to be handled like any other structure with a regular Zoning Permit, and Los will move the Mobile Home Permits and Renewal Applications to the archive.

Agenda Item 7 – Administrative Business

Agenda Item 8 – Next meeting

The next meeting is scheduled for February 8, 2010 at 7:00 p.m.

Agenda Item 9 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Houtby. 5 ayes, 0 nays, 4 absent.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

Nance County Planning and Zoning Commission

Record of Minutes of Meeting

February 8, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska, on Monday, February 8, 2010 at 7:00 p.m. Meeting notice was given by publication in the January 27, 2010 edition of *The Nance County Journal*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Pat Connelly, John Cieloha, Lynn Belitz, and Galen Frenzen. Absent were Brett Houtby, Dennis McCoig, Clint Dubas, and Roy Guisinger.

Agenda Suspended for Lot Split Testimony

Brenda and Ronald Knopik were present to defend their application for a lot split at NE ¼ 32-17-7 (Timber Creek). The survey is pending, but the lot will be about 5 acres. A motion to recommend approval to the Board of Supervisors was made by Frenzen and seconded by Belitz. Ayes: 5. Nays: none. Absent: 4.

Agenda Item 3 – Minutes

Minutes of the January 18, 2010 meeting had been mailed in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by Connelly. Ayes: 5. Nays: none. Absent: 4.

Agenda Item 4 – Old Business

- a. Updated zoning manuals were distributed and Los pointed out some of the changes.
- b. Setbacks for trees and fences: Los clarified that the Zoning Regs don't address setbacks for trees and fences (except with regard to Corner Lots, Article 16, Section 5, p. 29). Setbacks pertain only to structures. But state statute (§39-301) does address setbacks and twice a year our Road Department publishes a reminder in the paper that no fence or obstruction should be in the road ROW and no farming of the ditches and ROW is allowed. Enforcement of the statute lies with the "officer in charge of road work".
- c. Violations/complaints procedure: Los clarified that there are only two places in the Zoning Regs where complaints are addressed:
 - on pp. 7 & 8 with reference to CUPs: A and A(1): A person affected by a CUP may file a written complaint (\$75); and A(6): the ZA, Planning Commission, and Board of Supervisors may file a complaint for any violation of a CUP.
 - and under Article 16, Sect. 14.5 – Extraction of Raw Materials (p.32): "... upon observing a problem or verifying a complaint, [the ZA] may order the operation to cease until the problem is solved."

Los doesn't think that investigations of violations are restricted to the filing of a "formal complaint" for \$75, and that it is the responsibility of the ZA to respond when a potential violation is brought to her attention. Frenzen and Connelly think that the ZA should not play the role of "policewoman" and that investigations should be triggered only by a formal complaint. Los will raise this question at the upcoming NPZA annual conference and report back.

- d. Keystone XL Pipeline update: Los described some of the elements that are included in the pipeline regulations currently under review in Holt County. She also advised that the proposed LB755 has been amended to be restricted to crude oil pipelines after pushback from natural gas companies.

Stanton County's ZA, LaLene Bates, told Los that Stanton decided not to adopt any regulations related to the original Keystone Pipeline because state and federal approval were required for Keystone to operate, and that was deemed sufficient. Bates also noted that Keystone works with NDOR on which roads to use or avoid.

Los will talk to other ZAs about it at the NPZA conference and report back.

Agenda Item 5 – New Business

- a. Lot split: Brenda and Ronald Knopik, NE ¼ 32-17-7 (Timber Creek). Approved at the beginning of the meeting.
- b. Lot split (3.93 ac.): Douglas and Kathleen Wegner, E ½ 32-17-8 (South Branch). A motion to recommend approval to the Board of Supervisors was made by Frenzen and seconded by Cieloha. Ayes: 5. Nays: none. Absent: 4.

Agenda Item 6 – Administrative Business

Los will work on wind energy regulations. (Frenzen doesn't think we need utility-scale regs. Cieloha believes wind farm developers would already be here if we had attractive siting.)

Agenda Item 7 – Next meeting

The next meeting is scheduled for March 15, 2010 at 7:00 p.m.

Agenda Item 8 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Connelly. 5 ayes, 0 nays, 4 absent.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

Nance County Planning and Zoning Commission
Record of Minutes of Meeting
March 15, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, March 15, 2010 at 7:00 p.m. Meeting notice was given by publication in the March 3, 2010 edition of *The Nance County Journal*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Dennis McCoig, John Cieloha, Lynn Belitz, Roy Guisinger, and Brett Houtby. Absent were Galen Frenzen, Pat Connelly, and Clint Dubas.

Agenda Item 3 – Minutes

Minutes of the February 8, 2010 meeting had been mailed in advance and were briefly reviewed. Cieloha made a motion to accept the minutes as presented. Seconded by Belitz. Ayes by roll call: 5. Nays: none. Absent: 4. (A sixth member arrived after Minutes were approved.)

Agenda Item 4 – Old Business

- a. **If / when to investigate violations.** Los reported that she asked other Zoning Administrators (ZAs) at the annual NPZA Conference about whether or not they investigate informal complaints and possible zoning violations, and the consensus was that they do. Other ZAs tend to require the formal complaint form and fee only when particular individuals constantly complain about the same problem that the ZA has already investigated. Los also offered the following quote:

Vigorous enforcement of zoning regulations is necessary for the zoning program to be successful. Some zoning decisions will be difficult and controversial, and may be challenged in court. If the county is not willing to go to court when required to enforce its zoning regulations, the county board needs to think long and hard about whether to adopt a zoning regulation at all.

-J. David Aiken, UNL Water & Agricultural Law Specialist

Zoning Commissioners agreed that our default policy should be to investigate issues that are brought to the attention of the ZA (as opposed to following up only when a formal complaint form and fee have been submitted).

- b. **“Non-farm” in state statutes / legality of requiring zoning permits.** Based on research and discussion with the county attorney, Los believes that we *can* legally require Zoning Permits for *all* structures. We *can not* require a “Building Permit” for a farm building, but we *can* require a “Zoning Permit” for *any* structure because statute provides that if a county has zoning regulations, then “... the county board may ... regulate, restrict, or prohibit ... the use, conditions of use, or occupancy of land.” - Neb. R.S. §23-114.03(14) This allows for the enforcement of setbacks, density, land use, etc.

There have been legal battles over the interpretation of the statutes because §23-114.03 simultaneously grants counties the authority to regulate all land use, while prohibiting counties from regulating the use of farm buildings. In a 2002 LFO case, *Premium Farms v. County of Holt*, the Nebraska Supreme Court determined that the intent and purpose of legislators was to exclude farm buildings from needing “building permits” because farm buildings are frequently constructed, reconstructed, and altered due to the changeable nature of farming. It was not the intention of the legislature to exempt farm buildings from zoning/land-use regulations.

Zoning Commissioners agreed that given this clarification, it makes sense to amend Article 18, Section 2 (p. 37) of the Zoning Regulations to remove “non-farm” from the first sentence, thereby eliminating any ambiguity about the legitimacy of requiring a Zoning Permit for the construction or expansion of *any* building in Nance County for the purposes of enforcement of zoning (not building) regulations.

c. **Miscellaneous Discussion.**

- (1) **Corner Lots:** Commissioners discussed the purpose and intent of our Corner Lot regulations (Article 16, Section 5, p. 29) and are thinking about amending them to include “unless a Stop sign is present.” Los will check how other counties handle corner lots, as well as look at state statutes to make sure that change wouldn’t introduce a conflict.

- (2) **Belgrade Not Zoned:** Los will designate Belgrade as an unzoned area on the Official Zoning Map to preclude any confusion about Belgrade in the future.
- (3) **P.R.:** Los will put a brief Zoning Permit reminder and explanation in the county papers.
- (4) **Signage:** Some counties have signs at their entrance points proclaiming "This county is zoned." Food for thought.

Agenda Item 5 – New Business

- a. **Zoning permit amendments.** Los will modify the Zoning Permit form to: make the construction materials section easier to fill out; to gather more precise information as required by the Assessor's office; to include an estimated period of construction (as required by state statute); and to require initials beside the 83' setback section.
- b. **Wind energy regulations.** Commissioners reviewed proposed WECS (Wind Energy Conversion Systems) Regulations that had been last considered a year ago. Discussion was held on topics including:
 - (1) holding off on utility-scale regulations for now since the need for them doesn't seem to be present
 - (2) the B4a requirement that turbines be AWEA approved (what if you wanted to build your own turbine?)
 - (3) permitting small/residential WECS as an accessory use for the A-1 district and as a conditional use for the A-3 and R-1 districts
 - (4) adding a Waiver of Distance requirement for those wanting to build dwellings within the prescribed setback distances
 - (5) "shadow flicker" and setbacks for neighboring dwelling units (probably not an issue for small/residential WECS)
 - (6) borrowing two safety elements from Michigan WECS regulations: climb prevention and waste disposal (others of their regulations seem redundant/excessive given the proposed B5 engineering requirements and B6 FAA requirements)
 - (7) borrowing Michigan's permit application guidelines
 - (8) adding some definitions

Los will prepare updated small/residential WECS regulations that include suggested changes and additions.

Agenda Item 6 – Administrative Business

Commissioners revisited whether or not to suggest to Preferred that they get a variance from the visual/aural barrier regulation for mining operations (Article 16, Section 15.2, p. 32). They decided we should first seek compliance with the regulation and worry about further action later.

Los advised the Commissioners that statute §23-114.01 provides for a \$15 stipend for Commission members for each meeting they attend. No decision was made on requesting these funds from the Supervisors. Los may revisit it during budget time.

Los asked about interest in hearing David Ptak speak on the purpose and enforcement of zoning regulations. Maybe we can have him speak at a future Commission meeting in which the Board of Adjustment, Board of Supervisors, City Administrators, etc. are invited to attend. The Northeast branch of the Nebraska Planning and Zoning Association would foot the bill if they were also invited.

Agenda Item 7 – Next meeting

The next meeting is scheduled for April 19, 2010 at 7:00 p.m.

Agenda Item 8 – Adjournment

Motion to adjourn made by McCoig. Seconded by Houtby. Roll call vote: 6 ayes, 0 nays, 3 absent.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

Nance County Planning and Zoning Commission

Record of Minutes of Meeting

April 19, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, April 19, 2010 at 7:00 p.m. Meeting notice was given by publication in the April 7, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Dennis McCoig, John Cieloha, Brett Houtby, Roy Guisinger, and Galen Frenzen. Absent were Lynn Belitz, Pat Connelly, and Clint Dubas.

Agenda Item 3 – Minutes

Minutes of the March 15, 2010 meeting had been mailed in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by McCoig. Ayes by roll call: 5. Nays: none. Absent: 4. (Cieloha arrived after Minutes were approved.)

Agenda Item 4 – Public Hearing: Husker Coop CUP

Husker Coop submitted an application for a Conditional Use Permit to construct an anhydrous ammonia plant at Fr. Northeast Quarter Section 12, Township 17, Range 7, just south of Belgrade. Notice of a public hearing to review the application was given by publication in the April 7, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*.

A motion was made by Frenzen and seconded by Houtby to open the public hearing. Ayes by roll call: 6. Nays: none. Absent: 3. Present on behalf of Husker Coop were Dave Jarecki, the department head for new equipment, and Eric Dubas, the Belgrade branch manager. Commission members and Jarecki discussed issues such as location and safety, with all in agreement that the new plant would be an all around improvement over the existing plant, which will be decommissioned.

Frenzen made a motion to close the public hearing. Guisinger seconded. Ayes by roll call: 6. Nays: none. Absent: 3. Cieloha made a motion to recommend approval of the CUP to the Board of Supervisors. McCoig seconded. Ayes by roll call: 6. Nays: none. Absent: 3.

Agenda Item 5 – Old Business: Review of WECS Regulations

Los described and Commissioners reviewed updates to the drafted WECS regulations for Nance County.

- Guisinger raised a question about Section 3.4, which would seem to prohibit residents from designing and constructing their own turbines. He will research the existence of individual engineers who might be AWEA certified to inspect/approve DIY turbines for single use.
- Delancey spoke about the National Electrical Code and explained that it doesn't pertain to what's "in the box." Rather, it regulates proper connection to the grid. Commissioners discussed Section 3.7 in light of that information, and decided to add to the regulations that a state electrical permit be required. (The electrical permit requirement will also be added to the check-off list on the WECS zoning permit.)
- Commissioners discussed the newly added Section 5 on Safety and decided to pare down the "climb prevention" component to a single sentence.

Los will modify the WECS regulations and Commissioners will do a final review of them at the May meeting.

Agenda Item 6 – New Business: Clarifications in Zoning Regulations

- a. Article 11, Section 2 (p. 10): Non-Conforming Uses of Land
If you owned one acre of land prior to the county's adoption of Zoning Regulations and you wanted to buy more land, could you buy just one acre (thereby furthering your non-conformity) or must you buy a minimum of two acres (to come into conformance)? Commissioners agreed that once you make a change to your circumstances, you are no longer grandfathered in, so you must either make no change or come into compliance. Los will try to clarify that in the language and bring a suggested amendment to the next meeting.
- b. Article 16, Section 15.2 (p. 32): Screening
Didn't discuss.
- c. Article 12, Section 2.37 (p. 14): re. spreading manure
- d. Article 12, Section 2.38 (p. 15): re. pumping manure
- e. Definitions: LFO (p. 52): ___ goats = 1 A.U.
Informal discussion held on all three items. Los will bring proposed amendments to the next meeting.
- f. Article 12, Section 3.2A and paragraph (p. 17): multiple dwellings on a single ag operation
If you build a second home on 40 ac. or less as an accessory use to a farming operation, are those two dwellings forever bound together under one owner and as an ag operation? Commissioners say yes. The property can never be divided through a lot split. People need to be aware of that when they get a permit to build a second dwelling as an accessory use, and the restriction needs to be filed against the legal so it comes up in title searches.

Commissioners also discussed lot splits: Section 3.1C (p. 17) says that there is no minimum lot area or density requirement for structures that aren't dwellings. So a house in A-1 must be on 3 ac. or more, but a person could have a 1 ac. lot for a quonset, machinery storage shed, etc.

Agenda Item 7 – Administrative Business

New zoning permit handouts tabled until next meeting.

Agenda Item 8 – Next meeting

The next meeting is scheduled for May 17, 2010 at 7:30 p.m.

Agenda Item 9 – Adjournment

Motion to adjourn made by Guisinger. Seconded by Cieloha. Roll call vote: 6 ayes, 0 nays, 3 absent.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Record of Minutes of Meeting

May 17, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, May 17, 2010 at 7:30 p.m. Meeting notice was given by publication in the May 5, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Dennis McCoig, John Cieloha, Roy Guisinger, and Galen Frenzen. Absent were Lynn Belitz, Pat Connelly, Clint Dubas, and Brett Houtby.

Agenda Item 3 – Minutes

Minutes of the April 19, 2010 meeting had been mailed in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by Cieloha. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 4a – Public Hearing: Viaero Wireless CUP

Viaero Wireless submitted an application for a Conditional Use Permit to construct a communications tower at Fr. Northwest Quarter Section 12, Township 17, Range 4, just north of Genoa. Notice of a public hearing to review the application was given by publication in the May 5, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*.

A motion was made by McCoig and seconded by Guisinger to open the public hearing. Ayes by roll call: 5. Nays: none. Absent: 4. Present on behalf of Viaero was Eugene Carroll. From the Genoa Airport Authority were Don Pearson and John Hall. Also in attendance were Martin Koziol, present owner of the development site, and neighbors Pam Dozier and John & Bonnie Hoffmeister.

Carroll described the project and that residents of Genoa who use Viaero/AT&T cell phones will have great reception and internet connections. He was asked if non-Viaero cell phones would be adversely affected, and Carroll explained that the FCC mandates that competing carriers not interfere with each other's signals. If by some chance Viaero was found to be causing interference, they'd be required to address it immediately by adjusting their electronic configurations.

The Genoa Airport Authority requested that Viaero place red, blinking light(s) at the top of the tower in accordance with FAA specifications. That measure isn't technically required because the tower is only 195', not 200' tall, but the tower's proximity to a water tank with blinking lights makes the added safety precaution necessary. Carroll indicated that Viaero would comply.

The Hoffmeisters expressed concern about the loss of view and a potential adverse impact on property values as a result of the tower being in their backyard. They asked if Viaero could move the tower a little further north. Carroll said Viaero had a carefully mapped search ring and had found the best location. Moving the tower would compromise performance.

Other miscellaneous points: Viaero has 300 towers in Nebraska, primarily serving small towns. They've never had a structural failure. Their towers can withstand F2 tornadoes and ice storms that take down the competition's towers. If a tower were to collapse, it would fall upon itself, not topple over. Viaero will service the tower site once per year.

Frenzen made a motion to close the public hearing. Cieloha seconded. Ayes by roll call: 5. Nays: none. Absent: 4. Frenzen made a motion to recommend approval of the CUP to the Board of Supervisors with the condition that

Viaero install blinking light(s) at the top of the tower per FCC specifications. McCoig seconded. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 4b – Mohr Lot Split

Jerry and Marilyn Mohr submitted a Lot Split Application to separate 3 acres off from 160 at the Northeast Quarter 29-17-4, west of Genoa. Lisa and Kurt Mohr intend to build a home at the new site. Los explained to the Mohrs and the Commissioners that the new home will be on a minimum maintenance road and will, therefore, require a Conditional Use Permit once the Lot Split has been approved.

McCoig made a motion to approve the lot split application. Seconded by Frenzen. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 5a – WECS Final Review

Commissioners reviewed the last round of changes to the new regulations for Small Wind Energy Conversion Systems. No further edits are needed. Los will schedule a public hearing at the next Commission meeting so the Commissioners can vote to recommend adoption of the regulations to the Supervisors.

Agenda Item 5b – Zoning Amendments

Commissioners reviewed proposed amendments to the zoning regulations. There was some discussion of Article 16, Section 15 (p. 32) regarding screening. Los will make further revisions to that regulation and will schedule a public hearing at the next Commission meeting so the Commissioners can vote to recommend adoption of the amendments to the Supervisors.

Agenda Item 6 – New Business

No discussion.

Agenda Item 7 – Administrative Business

Los handed out revised Zoning Permits for Commissioners to review and put in their manuals.

Los gave a quick update on the Keystone XL project. They've contracted land for a pipe yard off of North Star Road (?), where they'll have a portable office building. They may also install a valve, communications tower, and fence here in the county. Road usage agreements are to come, but they're looking to take possession of sites in October and possibly start moving in in early 2011.

Los asked the Commissioners about what form/process Preferred Rocks needs to lay new railroad tracks at the facility. Since railroad switching yards are listed as a permitted use in the A-3 district on the Land Use Matrix, we'll simply require a Zoning Permit in the A-1 district as well. Los will add it to the Matrix.

Agenda Item 8 – Next Meeting

The next meeting of the Commission will be Monday, June 21st at 8:00 p.m.

Agenda Item 9 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Cieloha. Roll call vote: 5 ayes, 0 nays, 4 absent.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Record of Minutes of Meeting June 21, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, June 21, 2010 at 8:00 p.m. Meeting notice was given by publication in the June 9, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, John Cieloha, Brett Houtby, Pat Connelly, and Galen Frenzen. Absent were Roy Guisinger, Dennis McCoig, and Clint Dubas. Lynn Belitz arrived later.

Agenda Item 3 – Minutes

Minutes of the May 17, 2010 meeting had been mailed in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by Cieloha. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 4a – Public Hearing: Mohr CUP

Kurt and Lisa Mohr submitted an application for a Conditional Use Permit to construct a new home on a minimum maintenance road (360th Ave., Genoa) at Fr. Northeast Quarter Southeast Quarter Section 29, Township 17, Range 4. Notice of a public hearing to review the application was given by publication in the June 9, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*.

A motion was made by Cieloha and seconded by Frenzen to open the public hearing. Ayes by roll call: 5. Nays: none. Absent: 4. Present on behalf of the Mohrs was Jerry Mohr.

Commissioners were familiar with this request because of a Lot Split application by the same parties the previous month, so after brief discussion, Frenzen made a motion to close the public hearing. Houtby seconded. Ayes by roll call: 5. Nays: none. Absent: 4.

Cieloha made a motion to recommend approval of the CUP to the Board of Supervisors. Connelly seconded. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 4b – Public Hearing: Adoption of WECS Regulations

A motion was made by Frenzen and seconded by Connelly to open a public hearing to entertain any testimony regarding the Wind Energy Conversion Systems Regulations being considered for adoption. Ayes by roll call: 5. Nays: none. Absent: 4.

Notice of the public hearing to review the regulations was given by publication in the June 9, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*. No one from the public attended.

At the previous meeting, Commissioners had done a final review on the proposed regulations and were ready to adopt them pending the formal public hearing. So after brief discussion, Frenzen made a motion to close the public hearing. Seconded by Connelly. Ayes by roll call: 5. Nays: none. Absent: 4.

Frenzen made a motion to recommend approval of the WECS Regulations to the Board of Supervisors. Houtby Seconded. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 4c – Public Hearing: Zoning Amendments

A motion was made by Cieloha and seconded by Houtby to open a public hearing to entertain any testimony regarding eight proposed amendments to the Nance County Zoning Regulations. Ayes by roll call: 5. Nays: none. Absent: 4.

Notice of the public hearing to review the amendments was given by publication in the June 9, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*. No one from the public attended.

At the previous meeting, Commissioners had done a final review of the proposed amendments and had requested further revisions to Article 16, Section 15 (p. 32) regarding screening. Los presented the revised amendment, and after brief discussion, Frenzen made a motion to close the public hearing. Seconded by Connelly. Ayes by roll call: 5. Nays: none. Absent: 4.

Cieloha made a motion to recommend adoption of the eight amendments to the Nance County Zoning Regulations to the Board of Supervisors. Houtby Seconded. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 5 – Lot Split Application

Brett and Shelly Houtby applied for a lot split for the purpose of building a new home on a 3-acre parcel at Fr. Northeast Quarter 7-17-8. Brett and Shelly were both present. The matter was tabled until Lynn Belitz arrived, and then after brief discussion, Frenzen made a motion to recommend approval of the lot split to the Board of Supervisors. Seconded by Belitz. Ayes by roll call: 5. Nays: none. Abstention: Houtby. Absent: 3.

Agenda Item 6 – Old Business

Los will tell the Board of Supervisors that we need a replacement for Clint Dubas.

Agenda Item 7 – New Business

Commissioners discussed whether or not we should conduct regular reviews of hog confinements to make sure they are remaining compliant. The matter came up as a result of a complaint about a confinement dumping waste into Timber Creek. Commissioners talked about DEQ's historical lack of response and the fact that we aren't qualified inspectors. For the time being, Los will keep track of complaints and send friendly reminders to LFOs if/when issues arise.

Agenda Item 8 – Administrative Business

- a. Commercial/Utility Scale WECS: Los will prepare a draft over the next few months.
- b. Comprehensive Development Plan update: Los will review the CDP and make recommendations, if any, about updates.

Agenda Item 9 – Next Meeting

The next meeting of the Commission will be at the call of the Chairman.

Agenda Item 10 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Connelly. Roll call vote: 6 ayes, 0 nays, 3 absent.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Record of Minutes of Meeting August 16, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, August 16, 2010 at 8:00 p.m. Meeting notice was given by publication in the August 4, 2010 edition of *The Nance County Journal*, and by the timely posting of an official agenda in the County Courthouse.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, John Cieloha, Brett Houtby, Pat Connelly, Roy Guisinger, Lynn Belitz, and Dennis McCoig. Galen Frenzen arrived later. There are currently only eight members on the Commission.

Agenda Item 3 – Minutes

Minutes of the June 21, 2010 meeting had been mailed in advance and were briefly reviewed. Connelly made a motion to accept the minutes as presented. Seconded by Cieloha. Ayes by roll call: 7. Nays: none. Absent: 1.

Agenda Item 4 – Lot Split Applications

- a. Ziemba, Eddie & Rosalie: NE ¼ S12-T16-R5, East Newman. Jeff Ziemba was present. This lot split would enable him to acquire the existing farmstead on approximately 8.8 acres from his father. No new utilities, easements, streets, etc. are required. Connelly made a motion to recommend approval of the lot split to the Board of Supervisors. Houtby seconded. Ayes by roll call: 7. Nays: none. Absent: 1.
- b. Swanson, David & Carolyn: SE ¼ S8-T16-R6, Fullerton Township. Both were present to petition for a split of approximately 4 acres of existing farmstead from the surrounding 400 acres +/-, which they intend to sell. Frenzen arrived at the meeting. Delancey reminded the Swansons of the density regulations in the A-1 zoning district. McCoig made a motion to recommend approval of the lot split to the Supervisors. Belitz seconded. Ayes by roll call: 8. Nays: none. Absent: none.
- c. Gonsior, Mike: E ½ NE ¼ S6-T16-R5, Council Creek. Gonsior was not present, so Los presented the petition to the Commission. The survey for this split has been performed but has not yet been received. Gonsior intends to split approximately 3 acres of existing farmstead off from the surrounding 80 acres in order to convey the farmstead to his daughter, Shelli Horacek. No new services are required.

Los informed Commissioners that the side-yard setback regulation is being ignored in this arrangement, as the split is running between two sheds and the roof of one shed abuts the other shed. When the survey was being done, Los and Delancey discussed this problem and decided to let the survey proceed as planned in spite of the setback violation because 1) this is an ag operation so should be afforded flexibility with regard to farm buildings, 2) no new buildings are involved, and 3) the two properties are owned by father and daughter and are intended to remain in the family indefinitely.

Frenzen observed that this arrangement may prove tricky for the assessor to work out. Guisinger questioned whether the Commission is even allowed to approve something that violates the regulations. The answer is no, and such cases should not be handled this way in the future. The proper procedure is to send a request like this through the Board of Adjustment, regardless of the inconvenience to the landowner and regardless of the expectation that the Board would rule in the landowner's favor.

Frenzen made a motion to recommend approval of the lot split to the Board of Supervisors pending receipt of the survey. Connelly seconded. Ayes by roll call: 7. Nays: Guisinger. Absent: none.

- d. Grosch, Don & Erma: NE ¼ S36-T16-R4, Prairie Creek. The Grosches were not present, so Los presented their petition to split approximately 18 acres of existing farmstead off from 200 acres of farm ground for the purposes of financing. No new utilities, easements, streets, etc. are required. Frenzen made a motion to recommend approval of the lot split to the Board of Supervisors. Cieloha seconded. Ayes by roll call: 8. Nays: none. Absent: none.

Agenda Item 5 – Administrative Business

- a. Genoa zoning: Los explained to Commissioners and a Genoa-area resident who was present that Genoa recently decided to begin enforcement of its 1-mile extraterritorial jurisdiction (ETJ) with regard to zoning. According to Genoa's lawyer, Darren Wright, the city took its 1-mi ETJ in 1980 when it adopted zoning regulations, but it never enforced zoning within that 1 mile, leaving it instead to the county to regulate. Their subdivision and lot split regulations specifically authorize them to regulate the same within the 1 mile, so that is what they are doing effective July 22, 2010 when Wright and Los spoke. Genoa's regular zoning regulations do NOT explicitly state that they pertain to the 1-mile ETJ, so for now, until they're done their new Comprehensive Development Plan, they intend to leave it to the county to regulate that 1 mile for everything except subdivisions and lot splits.

Genoa-area residents feel that the city is suddenly imposing something new without holding proper hearings and giving proper notice. Commissioners wonder about the legality of the city enforcing some zoning regulations and not others within the 1 mile. Both groups are mistrustful of the claim that Genoa adopted the 1-mile ETJ in 1980. They recall the issue being discussed, but they believe the outcome was a vote against adopting zoning within that 1 mile. Los will try to get a copy of the ordinance that adopted the 1-mile ETJ, as well as a copy of the map defining the boundaries. The feeling is that Genoa should demonstrate their legal hold on that territory before the county relinquishes its authority to regulate it.

Los will send the county zoning regulations, zoning map, and Neb. Rev. Statute §76-2,110 regarding subdivisions to the Genoa-area resident who was present at the meeting.

- b. WECS Regulations: Los distributed the newly adopted small-scale Wind Energy Conversion Systems Regulations to the Commissioners to put in their zoning manuals.
- c. Zoning amendments: Los was unable to prepare the amended pages of our zoning regulations to distribute at this meeting, so she'll hand them out next time. She told the Commissioners about the two amendments that the Board of Supervisors did NOT approve: one to do with increasing the notification radius for CUPs when hazardous materials are involved, and the other to do with clarifying that liquid manure is not allowed into the county without a CUP.

Agenda Item 6 – Next Meeting

The next meeting of the Commission will be at the call of the Chairman.

Agenda Item 7 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Delancey. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Record of Minutes of Meeting October 18, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, October 18, 2010 at 8:00 p.m. Meeting notice was given by publication in the October 6, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, John Cieloha, Pat Connelly, Galen Frenzen, and Roy Guisinger. Absent were Dennis McCoig, Lynn Belitz, and Brett Houtby. There are currently only eight members on the Commission.

Agenda Item 3 – Minutes

Minutes from the August 16, 2010 meeting had been mailed in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by Guisinger. Ayes by roll call: 5. Nays: none. Absent: 3.

Agenda Item 4 – New Business

Bud Andersen from the **Keystone XL Pipeline** had intended to give a presentation, but he cancelled the morning of the meeting due to family illness. Keystone may again try to come in January.

Agenda Item 5 – Old Business

Genoa zoning update: Los advised the Commission that there still is no evidence that Genoa ever adopted its 1-mile extraterritorial jurisdiction (ETJ). The Genoa City Office has misplaced all but page 1 of the 1981 ordinance that they assert adopted the ETJ, and page 1 contains no information about what was decided. There is a map showing the boundaries of the ETJ, but there is no indication that it is anything more than a proposal. The Commission suggested that the County Attorney get involved to demand evidence of Genoa's authority to exercise zoning in that 1 mile. If Genoa can't produce the documentation, the county should resume zoning enforcement outside of Genoa city limits.

Agenda Item 6 – Administrative Business

- a. **Zoning amendments:** Los distributed updated pages of the zoning regulations that incorporated the six amendments adopted in August. Still needing the new pages are Connelly, Frenzen, McCoig, Houtby, and Belitz.
- b. **Preister's request for variance:** Los and Delancey brought the Commission up to date on Dan Preister's request for a variance, explaining the need for a second hearing and the potential for litigation.
- c. **Regulation violations:** The Commission discussed whether or not to begin imposing a "non-compliance fee" for regulation violations, and agreed with the Board of Adjustment that we should instead stick to enforcement / forcing compliance.

- d. **Zoning reminders:** The Commission discussed the need to ensure that everyone in the county is aware that we have regulations and that they have to obtain permits to build. Los explained that the Treasurer's office was resisting the approach that other counties take: bi-annual inserts in with property tax statements. Commissioners suggested taking the matter up with the Supervisors since separate mailings haven't been budgeted for this year.
- e. **Administrative lot splits:** The Commission agreed that it was a good idea to amend the regulations to allow for administrative lot splits, which would remove the Planning Commission from the lot split process. Instead, the Zoning Administrator would determine, as now, if all the conditions are present for granting a lot split, and then make a recommendation directly to the Board of Supervisors, who currently have final authority anyway. This change should save residents time and preclude the need for as many Commission meetings.
- f. **Stipends:** Los advised commissioners that the zoning budget was approved as presented, and it allowed for a new \$15 per meeting stipend for each commissioner. The stipend is effective with the new budget year, so everyone will receive payments retroactive to July for all meetings attended since then.
- g. **Green Capital Power:** Los told the Commissioners about interest from a Spanish developer in siting a wind farm in Nance County. We may need to look at adopting utility-scale WECS regulations sooner than anticipated.

Agenda Item 7 – Next Meeting

The next meeting of the Commission will be at the call of the Chairperson.

Agenda Item 8 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Cieloha. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson

NANCE COUNTY PLANNING AND ZONING COMMISSION

Record of Minutes of Meeting

December 20, 2010

Agenda Item 1 – Call to Order

A meeting of the Nance County Planning & Zoning Commission was called to order by Chairperson Chuck Delancey in the Nance County Courthouse in Fullerton, Nebraska on Monday, December 20, 2010 at 7:00 p.m. Meeting notice was given by publication in the December 8, 2010 editions of *The Nance County Journal* and *The Genoa Leader-Times*, and an official agenda was made available at the office of the Zoning Administrator.

Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, John Cieloha, Pat Connelly, Dennis McCoig, and new member Delmer Wondercheck. Absent were Lynn Belitz and Roy Guisinger. Brett Houtby and Galen Frenzen arrived later.

Agenda Item 3 – Minutes

Minutes from the October 18, 2010 meeting had been mailed in advance and were briefly reviewed. Cieloha made a motion to accept the minutes as presented. Seconded by Connelly. Ayes by roll call: 5. Nays: none. Absent: 4.

Agenda Item 4 – New Business

a. Lot split applications

The order of review for the two lot split applications was reversed because the Czarniks were present and representatives for the Shotkoski/Preferred application were not. (Los had advised Preferred's lawyer that he need not make the trip from Omaha for this meeting.)

(i) Czarnik, Stephen to Ryan, pt. NW ¼ S6-T16-R3, 4.44 acres

Stephen and Ryan Czarnik were present, along with Ryan's fiancée, Jessica. Commissioners reviewed the application and asked questions. (Frenzen and Houtby arrived at the meeting.) The property is currently pasture land and Ryan intends to bring in a modular home. He and Stephen are aware of the 1 house / 40 acres regulation. Commissioners noted that Section 6 is split with Merrick County, but that the property in question is in Nance County. Frenzen made a motion to recommend approval of the application to the Board of Supervisors. Seconded by Cieloha. Ayes by roll call: 7. Nays: none. Absent: 2.

(ii) Shotkoski to Preferred Sands, pt. NE ¼ S36-T17-R5, 7.04 acres

Los presented the application to split off a strip of land totaling about 7.04 acres from the Gerald and Paul/Angela Shotkoski property to be sold to Preferred Sands for the purpose of accommodating a future extension / spur of the NCRC railroad. After brief discussion, Frenzen made a motion to recommend approval of the application to the Board of Supervisors. Seconded by Wondercheck. Ayes by roll call: 7. Nays: none. Absent: 2.

b. Public hearing to amend Subdivision Regulations to allow for "administrative" lot splits

McCoig made a motion to open the public hearing. Seconded by Houtby. There were no objections. The proposed amendments to Article 12 of the Nance County Subdivision Regulations had been mailed to Commissioners in advance of the meeting. Los briefly described the essence of the changes: eliminating requirements for a mylar original and ten copies of a survey; removing the requirement that affected school districts be notified (it's unnecessary and not statutorily required); and removing the Planning Commission from the lot split / change of lot boundary process. Instead, lot split and change of lot boundary applications will now go directly to the Board of Supervisors, thereby saving time for Commissioners, applicants, and the zoning administrator.

Frenzen made a motion to close the public hearing. Seconded by Connelly. Ayes by roll call: 7. Nays: none. Absent: 2. Frenzen made a motion to recommend adoption of the amendments to Article 12, related definitions, and supporting pages as presented. Seconded by Wondercheck. Ayes by roll call: 7. Nays: none. Absent: 2.

c. Review proposed utility-scale WECS regulations

Commissioners had reviewed a first draft of “Commercial/Utility Grade WECS” regulations a year and a half prior. Los reformatted that document, updated it with recent amendments from reference counties (Boone and Knox), and added elements that she’d picked up at various workshops and conferences. That second draft was mailed to Commissioners in advance of the meeting. After some discussion about the changes, including instances in which our document differs from those of other Nebraska counties, Commissioners agreed that the next meeting should include a public hearing to adopt the regulations as presented.

Commissioners also discussed fees associated with utility-scale WECS. Using Boone County as a guide, Frenzen made a motion that we amend the Fee Schedule to include a \$350 fee per utility-grade turbine. Seconded by Cieloha. Ayes by roll call: 6. Nays: none. Absent: 2. (Wondercheck briefly stepped out of the meeting.) The amended Fee Schedule will be formally recommended for adoption as a part of the public hearing to adopt Commercial/Utility Grade WECS.

Agenda Item 5 – Old Business

a. Genoa zoning update

Los advised Commissioners that Genoa has full zoning jurisdiction within its 1-mile ETJ. The county attorney, the Genoa city administrator, and the Genoa city attorney all agree that while Genoa never defined the zoning district within that 1 mile, their regulations/ordinance still include coverage of that area. That discrepancy could be problematic for them, but they are in the process of redoing their Comprehensive Development Plan and will define that zoning district along the way. No matter what, county zoning is out of the picture.

b. Green Capital Power update

We have no indication yet as to whether or not Green Capital’s interest in locating a wind farm in Nance County will bear out. Los has been providing them with all the information they’ve requested and has been keeping them abreast of the development of our utility-grade WECS regulations. If cooperation counts for anything, we’re in good shape.

Agenda Item 6 – Administrative Business

None

Agenda Item 7 – Next Meeting

The next meeting of the Commission will be at the call of the Chairperson.

Agenda Item 8 – Adjournment

Motion to adjourn made by Frenzen. Seconded by Wondercheck. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

Commission Secretary

Commission Chairperson