

# NANCE COUNTY PLANNING AND ZONING COMMISSION

## Record of Minutes of Meeting

January 21<sup>st</sup>, 2012

### 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 21<sup>st</sup>, 2012 at 7:00 p.m. Meeting notice was given by publication in the January 9<sup>th</sup> 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. Delancey acknowledged the posted Open Meetings Act.

### Agenda Item 2 – Roll Call

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

### Agenda Item 3 – Minutes

Minutes from the December 17<sup>th</sup>, 2012 meeting had been sent in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by Connelly. Ayes by roll call: 7. Nays: none. Absent: Guisinger and Belitz.

### Agenda Item 4 – New Business

Delancey opened the public hearing. Nance County resident, Rod Wetovick and Todd Anderson of Chamness Technologies were present for the hearing of an application for a CUP (Conditional Use Permit) for Mr. Wetovick to spread SoilBuilder I & II on his land in Nance County. This soil conditioner from Hall County would be spread on his property in West Newman Township at N ½ S12-T-15-R7W and W ½ S10-T15-R7W, in Fullerton Township at NE ¼ S1-T16-R6W, and in Council Creek Township at NE ¼ S18-T-17-R5W, E ½ S19-T17-R5W, and NE ¼ S20-T17-R5W. Anderson of Chamness provided the Zoning Commission with a soil analysis and haul route.

Odor was discussed. The cost friendly, convenient, and soil enhancements of the product were also discussed. There was comment made that some landowners in Merrick County were unhappy with the smell. It was felt that consideration would need to be taken in deciding the stockpile locations.

Frenzen made a motion to Recommend for Approval the CUP by Rodney Wetovick with no added conditions. Seconded by Wondercheck. Ayes by roll call: 7. Nays: 0. Absent: Guisinger and Belitz.

### Agenda Item 5 – Old Business

Continued discussion on the Keystone XL pipeline that is proposed to go through Nance County. Representative Jeff Rauh of Keystone XL was on hand to discuss/answer additional questions the Commission had. No decision has yet been made on what action to take in regards to setbacks for the pipeline and additional regulations for pumping stations.

### Agenda Item 6 – Administrative Business

### Agenda Item 7 – Next Meeting

Next meeting will be February 18<sup>th</sup>, 2012 @ 7 p.m.

### Agenda Item 8 – Adjournment

A motion to adjourn was made by Frenzen and seconded by McCoig. There were no objections.



SUBMITTED BY:

AFFIRMED BY:

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Commission Secretary

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Commission Chairperson

# NANCE COUNTY PLANNING AND ZONING COMMISSION

## Record of Minutes of Meeting February 18<sup>th</sup>, 2012

### 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 18<sup>th</sup>, 2013 at 7:00 p.m. Meeting notice was given by publication in the February 6<sup>th</sup> 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. Delancey acknowledged the posted Open Meetings Act.

### Agenda Item 2 – Roll Call

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

### Agenda Item 3 – Minutes

Minutes from the January 21<sup>st</sup> meeting had been sent in advance and were briefly reviewed. McCoig made a motion to accept the minutes as presented. Seconded by Houtby. Ayes by roll call: 7. Nays: none. Absent: Connelly and Cieloha.

### Agenda Item 4 – New Business

Delancey opened the public hearing. Duane Meyer, representing Michael Santin (applicant who was unable to attend) and Todd Anderson of Chamness Technologies were present for the hearing for an application for a CUP (Conditional Use Permit) for Mr. Santin to spread SoilBuilder I & II on his land in Nance County. This soil conditioner from Hall County would be spread on his property in West Newman Township at NW ¼ S15-T15-R7W and the NE ¼ of the SW ¼ S15-T15-R7W in Nance County.

Anderson of Chamness provided the Zoning Commission with a soil analysis and haul route.

Odor and stockpile locations were discussed. Sharman (ZA) stated that she had made it a point to check out the odor situation at the two most recent CUP locations for both Voichoskie and Wetovick last week. There was no offensive odor detected at the Voichoskie location which had had a previous strong odor in weeks prior that she had personally detected. Anderson of Chamness stated that it was done hauling to that site and that most of the SoilBuilder had most likely been spread at this site. It may have had the strong odor at the initial check since a final load had just been delivered only two days prior and had yet to be spread. Sharman also commented that there was an odor at one of the Wetovick sites, but it was not offensive in nature at that time, it could only be detected within a ¼ mile and she also noted that a fresh load had just been delivered that day.

Public present was Andy Prososki who also commented that there was a very strong odor from time to time. He was attending this meeting to learn more about the product and that he was interested in acquiring this product for his land despite the odor. He did mention that although they did not attend any of the hearings for the Wetovick CUP, he did stress that board members of Pawnee Hills Golf Course were opposed to any spreading of this product on land around the golf course due to the odor. He also stated that they approached Mr. Wetovick about this.

Frenzen made a motion to Recommend for Approval with Conditions the CUP by Michael Santin. (The conditions would address the odor and neighboring landowner notification of such odor) Seconded by Wondercheck. Ayes by roll call: 7. Nays: 0. Absent: Connelly and Cieloha.

Sharman stated that she would notify Mr. Santin of the added condition.

### Agenda Item 5 – Old Business

Minimal discussion was held on the Keystone XL Pipeline. Prososki commented that he was checking for updates or any news from the Commission on any actions that they planned on in regards to Nance County Zoning Regulations. He stated that other members from the community who were present in December were unable to attend since they were out of state dealing with this issue on a federal level.

Members of the Commission stated that at the present time they were not looking to address the issue at this meeting until it was decided by the federal government that the Keystone XL Pipeline was approved.



Sharman did advise the Commission that they would probably want to consider making a decision prior to any landowners signing easement agreements with TransCanada. If changes are made to the regulations regarding setbacks, this could affect the easement agreements between both parties.

Agenda Item 6 – Administrative Business

Agenda Item 7 – Next Meeting

Next meeting will be March 18<sup>th</sup>, 2013 @ 7 p.m.

Agenda Item 8 – Adjournment

A motion to adjourn was made by Frenzen and seconded by Wondercheck. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

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Commission Secretary

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Commission Chairperson

# NANCE COUNTY PLANNING AND ZONING COMMISSION

## Record of Minutes of Meeting

March 18<sup>th</sup>, 2013

### 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 18<sup>th</sup>, 2013 at 7:00 p.m. Meeting notice was given by publication in the March 6<sup>th</sup> 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. Delancey acknowledged the posted Open Meetings Act.

### Agenda Item 2 – Roll Call

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

### Agenda Item 3 – Minutes

Minutes from the February 18<sup>th</sup> meeting had been sent in advance and were briefly reviewed. Frenzen made a motion to accept the minutes as presented. Seconded by McCoig. Ayes by roll call: 6. Nays: none. Absent: Connelly, Belitz, and Guisinger.

### Agenda Item 4 – New Business

Delancey opened the public hearing and acknowledged the Public Meetings Act. Todd Anderson from Chamness Technologies was unable to attend due to a funeral out of state. Craig Frenzen was present for the hearing for his application for a CUP (Conditional Use Permit) to spread SoilBuilder I & II on his land in Nance County. This soil conditioner from Hall County would be spread on his property in Cedar Township at NE ¼ S22-T17-R6W, SE ¼ S35-T17-R6W, E ½ of NE ¼ & Pt. NW ¼ of NE ¼ S33-T17-R6W, SE ¼ S19-T17-R6W, W ½ S28-T17-R6W, NE ¼ S30-T17-R6W, SE ¼ S21-T17-R6W, SE ¼ S22-T17-R6W, NE ¼ S27-T17-R6W and to land in Fullerton Township at NE ¼ S20-T16-R6W in Nance County.

Odor and stockpile locations were discussed and Frenzen stated that he would be stockpiling the SoilBuilder several acres away from populated areas.

McCoig made a motion to Recommend for Approval with Conditions the CUP for Craig Frenzen. (The conditions would address the odor and neighboring landowner notification of such odor) Seconded by Houtby. Ayes by roll call: 5. Nays: 0. Abstain: Frenzen. Absent: Connelly, Guisinger, and Belitz.

The next applicant for a CUP to apply SoilBuilder I & II was Chuck Delancey. Delancey excused himself from the position of Chairman/member for this hearing. John Cieloha, Vice-Chair, assumed the position of Chairman. Delancey requested a CUP to apply SoilBuilders I & II to his land in Cedar Township at SE ¼ S27-T17-R6W and N ½ S34-T17-R6W in Nance County. Location of stockpiling and odor were also discussed.

Frenzen made a motion to Recommend for Approval with Conditions the CUP for Chuck Delancey. The conditions would be to notify neighboring landowners of the possibility of odor from stockpiling. Seconded by Wondercheck. Ayes by roll call: 5. Nays: 0. Abstain: Delancey. Absent: Guisinger, Connelly, and Belitz. Delancey assumed position of Chairman for the Commission after voting was complete.

The final applicant for a CUP to apply SoilBuilders I & II was Galen Frenzen. Frenzen also requested a CUP to apply SoilBuilders I & II to his land in Township at W ½ S28-T17-R6W and E ½ S29-T17-R6W in Nance County. Location and odor were again discussed. Cieloha made a motion to Recommend for Approval with Conditions the CUP for Galen Frenzen. The conditions would be that all neighboring landowners would be notified of the possibility of odor arising from stockpiling. Seconded by Wondercheck. Ayes by roll call: 5. Nays: 0. Abstain: Frenzen. Absent: Guisinger, Connelly, and Belitz.

### Agenda Item 5 – Old Business



Sharman notified the Commission of the upcoming meeting on April 18<sup>th</sup> by Keystone XL. This meeting would be in Grand Island and was considered a public comment session. The Commission held a brief discussion on the pipeline. No one from the public was in attendance.

Agenda Item 6 – Administrative Business

Sharman notified the Commission of the upcoming NPZA Conference in Kearney, March 28-30<sup>th</sup>. If anyone was interested in attending it was still not too late to apply for a scholarship. Delancey expressed interest and Sharman stated that she would submit the paperwork the following day.

Agenda Item 7 – Next Meeting

Next meeting to be determined.

Agenda Item 8 – Adjournment

A motion to adjourn was made by Frenzen and seconded by McCoig. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

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Commission Secretary

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Commission Chairperson

# NANCE COUNTY PLANNING AND ZONING COMMISSION

## Meeting Minutes June 24, 2013

### 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 24, 2013 at 7:00 p.m. Meeting notice was given by publication in the June 12, 2013 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. Delancey acknowledged the posted Open Meetings Act.

### Agenda Item 2 – Roll Call

The following quorum of Commission members was present and answered roll call: Chuck Delancey, Roy Guisinger, Pat Connelly, Dennis McCoig, and Lynn Belitz. Arriving in time for the public hearing were Delmer Wondercheck and Galen Frenzen. Absent were Brett Houtby and John Cieloha.

### Agenda Item 3 – Minutes

Minutes from the March 18, 2013 meeting had been mailed in advance and were briefly reviewed. Connelly made a motion to accept the minutes as presented. Seconded by McCoig. Ayes by roll call: 5. Nays: none. Absent: 4.

### Agenda Item 4 – Old Business

None

### Agenda Item 5 – New Business

Public Hearing: Reapplication for a Conditional Use Permit by Joe Beck to spread Soil Builder fertilizer from Hall County on land in Nance County at SE ¼ 12-16-4 and N ½ 18-16-3 in Prairie Creek Township.

Present from the community were applicants Joe, Marilyn and Scott Beck, and landowners Paul Borowiak and Charles Smith.

Delancey opened the public hearing. Baldrige noted that, in response to the public hearing notice, she'd received several phone calls from neighboring landowners who were not at all happy about the odor from Beck's previous application of Soil Builder. Joe Beck said that Soil Builder does have an odor when it is spread, to which Borowiak added that he hays across the road from the Becks and it doesn't smell as bad as a feedlot.

In response to concern from a neighboring landowner about the roads being torn up as a result of the trucks hauling in Soil Builder, the Becks said that county road is always in bad shape and needs to be repaired. Scott Beck added that it takes a couple weeks to get the fertilizer spread.

The plan is for temporary stockpiling to take place on the N ½ of 18-16-3, as much of the fertilizer won't be needed until March 2014, which is generally the case with farmers using Soil Builder.

After discussion and there being no further comments, Delancey closed the public hearing. In keeping with previous CUPs for Soil Builder I and II, McCoig made a motion to approve the CUP with the following conditions:

This is to be a perpetual permit that shall remain with the land unless a circumstance arises that warrants the permit's review, potential recall, and/or the need for expanded conditions. Stockpiling of the product shall be allowed for a period not to exceed 6 months or the next available planting period, and with every application of the product to the land, a new Site Plan shall be provided to the zoning administrator.





Wondercheck seconded the motion. Seven ayes, no nays, 2 absent, motion passed.

Agenda Item 6 – Administrative Business

Email addresses: Baldrige needed email addresses from several of the Commission members and they were given.

Agenda Item 7 – Next Meeting

The next meeting will be scheduled as needed.

Agenda Item 8 – Adjournment

A motion to adjourn was made by Frenzen and seconded by McCoig. There were no objections.

SUBMITTED BY:

AFFIRMED BY:

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Commission Secretary

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Commission Chairperson



# NANCE COUNTY PLANNING AND ZONING COMMISSION

## Meeting Minutes October 21, 2013

### 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 21, 2013 at 7:00 p.m. Meeting notice was given by publication in the June 9, 2013 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. Delancey acknowledged the posted Open Meetings Act.

### Agenda Item 2 – Roll Call

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

### Agenda Item 3 – Minutes

Minutes from the June 24, 2013 meeting had been mailed in advance and were briefly reviewed. Frenzen made a motion to approve the minutes as presented. Seconded by McCoig. Ayes by roll call: 6. Nays: none. Absent: 3.

### Agenda Item 4 – Old Business

None

### Agenda Item 5 – New Business

- a. Public Hearing: Application for a Conditional Use Permit by Rod Wetovick to establish a compost test site using manure from Hall County at N ½ 12-15-7 and W ½ 10-15-7 in West Newman Township, Nance County.

Delancey opened the public hearing. Present from Chamness Technology was Doug MacCrea, and representing both himself and the Bengtsons (letter “b” under Agenda Item 5) was Rod Wetovick.

Wetovick and MacCrea described the project background and plan. Supporting documentation outlining the “Concept of Operations,” soil analysis reports, and project area mapping was provided by Chamness along with the Conditional Use Permit applications. MacCrea explained that the compost formula of paunch and grit (mixed at a 1:1 ratio) has been tested at a Dodge City location and is known to be effective. He is not sure about the amount of time it will take for the mix to compost because of the temperature differential between Fullerton and Dodge City (it can be 20 degrees colder in the Fullerton area on average), but he estimates 8-10 weeks per compost pile. He also noted that the test sites proposed at this meeting are small enough that they don’t require NDEQ permits.

Delancey mentioned that the last time paunch entered Nance County, there were big odor problems. MacCrea said that mixing grit with other materials reduces the odor, and that odor tends to be a problem when the compost pile is not turned often enough and when the pile is too moist. Chamness will be turning these piles once per week, a process that aerates the piles, reducing moisture by about 40%.

McCoig asked where the finished compost would be spread, and MacCrea said that the product will belong to the Bengtsons and the Wetovicks to use as they see fit. Wetovick said there may be more product at one location than can be spread there, in which case it will be hauled to a different location to be spread. Wetovick asked if he would be required to get an additional permit to move the compost from one location in Nance County to another location in Nance County. Frenzen said that at that point, the product would be compost, not manure, so no permit would be required. Baldrige added that CUPs are only required for



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bringing manure in from outside the county, not for moving it around within the county. Once a CUP has been acquired to bring it in from outside the county, Baldridge considers it a Nance County product, so no matter how the product is defined, a permit would not be required to move it around within the county.

Delancey asked about the nutrient value of the final product. MacCrea said that it would have to be tested, but that they expect it to be at about 60-70% of the nutrient value of Soil Builder I and Soil Builder II, products with which this Board is familiar.

Guisinger asked MacCrea to define grit and paunch. Paunch is the contents of the steer's stomach at the time of death (no entrails, just hay and corn typically). Grit is a mix of manure, hair, sand, and mud -- the things washed off of steer when they arrive on the kill floor. Grit does not include anything from the slaughter process, except perhaps minimal traces of blood.

Frenzen noted that odor shouldn't be a problem at the Bengtson CUP location because of the proximity of the Christensen feedlot. He asked Wetovick if there might be any issues with the water table at his CUP locations. Wetovick said that both of his sites were previously approved for CUPs to spread Soil Builder I and Soil Builder II, so he doesn't anticipate any problems. He also said that he doesn't think the odor from the compost test sites will be any worse than the odor from the Soil Builder products.

Frenzen asked if there is a smell when the compost piles are aerated, and MacCrea said yes, for just about an hour.

McCoig asked Wetovick where the nearest residences are in relation to his compost test sites. Wetovick said that in all cases, residences were at least ½ mile away, and in most cases, more like 1 mile. Guisinger asked MacCrea about the proximity of residential properties in Merrick County. MacCrea said that he didn't think there was anything within 3,000 feet of the proposed test sites, and Baldridge said that she notified the Merrick County zoning administrator of the public hearing.

Baldridge read a letter from John H. and Ethelene Russell, who live and have recreational ground across the Loup River, about 2 ½ miles northeast of one of Wetovick's proposed test sites. The Russells expressed concern about the odor impacting their quality of life and the value of their recreational property. They enclosed a January 2012 article from *The Grand Island Independent*, wherein a Hall County Supervisor talks about problems with odor from the stockpiling of a Chamness product. They also had concerns about the company itself because of an Iowa lawsuit in which Chamness was fined for the illegal discharge of water pollutants.

In response to the Russells' letter, MacCrea said that the odor problem related to stockpiling in Hall County was owing to the fact that the recipient of the product refused to spread it in a timely fashion. When Chamness found out about the problem, they took immediate action and met with Hall County Commissioners to establish guidelines for landowners who would receive Chamness products. MacCrea also noted that Hall County Commissioners are desirous of a compost facility for the product Chamness would like to deliver to Nance County for test sites, and that the only hold-up has been acquiring the land necessary to build a permanent facility. One location that has been approved is currently being leased so can't be developed, and other potential sites are greatly overpriced.

Regarding the Iowa lawsuit, MacCrea said that the suit was the result of an illegal November 2011 discharge carried out by one Chamness employee who was subsequently fired and is still undergoing criminal prosecution proceedings in federal court. Chamness was liable as the employer and accepted responsibility for the employee's actions, but such a practice is in no way company policy or practice.



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McCoig asked for confirmation that these CUP applications were related to just temporary test sites, not permanent sites in Nance County, and MacCrea answered affirmatively. He also noted that these test sites are not necessarily optimal locations for a permanent facility. In addition, any permanent site would have to meet the litmus test for state permits. For example, a permanent facility would have to lie outside the floodplain.

Guisinger asked: If a permanent facility were to be built in Nance County, would Chamness truck out the final compost product? MacCrea said that they'd like to distribute the compost in Nance County.

Frenzen asked if these test sites would be conducted atop bare ground or on an asphalt pad. He also asked if soil compaction would be required. MacCrea said that the compost piles would be on the bare ground as it now exists, and that the soil seems to be compacted enough as is to support the equipment.

Frenzen asked what the start date would be if the CUPs were approved. MacCrea said they'd like to begin hauling in the compost materials the first two weeks of November. The paunch and grit will be mixed on-site as they arrive. Guisinger asked what the odor would be like since the products are arriving un-mixed, and Frenzen said the paunch stink to high Heaven. MacCrea said the odor would be brief as the components would be mixed immediately.

Guisinger asked if the roads could handle the truck traffic, and Wetovick said he thought it would be OK. Chamness will, as it has in the past, use the Palmer blacktop until it gets to gravel, and then it's just 2 ½ - 3 miles to the test sites. He is not aware of there having been any complaints about the Chamness truck traffic in the past. MacCrea said that the Bengtson test site is preferred because of its proximity to the highway, so that is where the testing will begin. Wetovick's sites are back-up.

Delancey closed the public hearing. Frenzen made a motion to approve the CUP with the following conditions:

Chamness Technology shall monitor and maintain the compost test site for the duration of the composting process, which is expected to run from November 2013 to May 2014. Chamness must adhere to the "Concept of Operations" as presented with the Conditional Use Permit application. This permit is NOT perpetual. If Chamness and Wetovick wish to repeat the test, they must seek an amendment to this Conditional Use Permit.

McCoig seconded the motion. There being no further discussion, the Board voted by roll call: all ayes, no nays, three absent.

The Board asked Baldrige to request of the Russells that they notify Baldrige if at any stage of the process, they have concerns or complaints.

- b. Public Hearing: Application for a Conditional Use Permit by Terry and Darla Bengtson to establish a compost test site using manure from Hall County at SW ¼ 2-15-6 in West Newman Township, Nance County.

This hearing was conducted in conjunction with the one above concerning Rod Wetovick's CUP application. Please read the above for the full discussion.

Frenzen made a motion to approve the Bengtson CUP with the following conditions:



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Chamness Technology shall monitor and maintain the compost test site for the duration of the composting process, which is expected to run from November 2013 to May 2014. Chamness must adhere to the “Concept of Operations” as presented with the Conditional Use Permit application. This permit is NOT perpetual. If Chamness and the Bengtsons wish to repeat the test, they must seek an amendment to this Conditional Use Permit.

Seconded by McCoig. Roll call vote: all ayes, no nays, three absent.

## Agenda Item 6 – Administrative Business

### a. FYI re. Variance application by Schneider

Baldrige and Delancey filled in the Board on the Request for Variance hearing held earlier that evening with the Board of Adjustment. It concerned a concrete pad that Bruce Schneider poured near the Genoa airport. The pad is about 60’ from the center of the road instead of 83’. Schneider’s variance request was unanimously denied because it failed to meet the requirements for granting a variance.



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## b. Discuss possibility of pipeline regulations

Present from the public were Bobby Britton (KXL Permit Specialist), Brock Taylor (KXL Land Manager), Lee Hamann (Attorney with McGrath North), and Franc Fennessy (KXL Project Representative). Also present was Nance County Attorney Rod Wetovick.

Baldrige explained that the reason she wanted to discuss this issue was to ensure that the Board was giving due consideration to the issues at hand so that we all have a clear understanding of and ability to communicate our reasons for either establishing zoning regulations related to pipelines or not doing so.

Baldrige talked about information she has gathered over the past year having attended multiple TransCanada / Keystone XL meetings and Bold Nebraska meetings, alike, as well as having visited a Keystone pump station in David City. She described her understanding of the issues presented by both the proponents and opponents of pipeline regulations. Baldrige also gave the Board and guests a sheet outlining what she considered to be the highlights of a White Paper written by attorney Lee Hamann regarding the legal issues related to counties establishing zoning regulations for pipelines.

Discussion was as follows:

Guisinger asked what KXL's regulated well setbacks were. Hamann did not know off-hand. McCoig asked if KXL would fill/decommission wells that were too close to the pipeline route and dig new ones for affected landowners. Taylor said that 99% of the time, they re-route around existing wells to maintain stated setbacks, but if they can't re-route, they work with the landowner to resolve the problem. Frenzen asked what happens if KXL representatives don't know that a well is in the path of the pipeline, and Taylor said they can't do anything about that until they get on-site, at which point they'll address the matter.

Frenzen and Baldrige noted that counties are not allowed to regulate public power transmission lines, so we must ask the questions: If not transmission lines, how can we regulate pipelines? Guisinger asked: What, then, is it that we regulate as a county? If we regulate manure delivery in the county because of ground water concerns, then why not pipelines?

Baldrige said that she has seen sample local regulations that, in addition to well setbacks, address road conditions during pipeline construction. Wetovick noted that the county already signed a Road Haul Agreement with KXL when the initial route was introduced. Fennessy said that soon they would bring a revised Road Haul Agreement for the new proposed pipeline route to the Board of Supervisors. Hamann said that these Agreements are contractual obligations.

Hamann talked about preemption, which means that federal and state regulations preempt, or have legal rights/authority over, local regulations. So among other legal concerns, counties must be careful that regulations they craft do not run afoul of state and federal regulations. For example, a county cannot regulate that the buried depth of the pipeline be greater than that mandated by state regulations. Fennessy noted that TransCanada's own regulations/guidelines exceed those of the fed with "57 Special Conditions" (see page 7 at <https://ecmp.nebraska.gov/deq-seis/DisplayDoc.aspx?DocID=A%2ft5CAg4upa6%2bA4diaoVlg%3d%3d>).

Frenzen said that there are two pipelines one block from his house, that they are old, and that regulations weren't as stringent when they were installed. He said we need to stop wasting time on these discussions. Wetovick suggested that the Board take a straw vote to determine whether they feel it is worth taking the time to investigate the matter further.





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McCoig said we would have to adopt regulations for all kinds of pipelines, not just crude oil, if we craft regulations. All pipelines have to follow state and federal regulations already, and the regulations are different for the different kinds of products that flow through pipelines, so do we really want to step into this difficult area? Hamann confirmed that pipeline regs are determined by the Pipeline Safety Act, and that KXL is regulated as crude oil.

Guisinger asked about the availability of MSDSes (Material Safety Data Sheets), which describe the contents of the pipeline. Fennessy explained that there is an MSDS for each of the 26 different types of crude that will flow through the pipeline. Which MSDS is relevant in the event of a leak/spill cannot be determined until it is known which “batch” of crude was in the pipeline at the leak/spill site. Baldrige mentioned what she’d heard in a different meeting: TC feels that in the event of an emergency, it would do more harm than good for local authorities to have a ceiling-high stack of MSDSes that they’d have to shuffle through, with no indication as to which MSDS was relevant. TransCanada has demonstrated through unannounced, NDEQ spot-testing that it can provide MSDSes to local authorities within about 10 minutes of leak/spill detection.

Baldrige said that she would like to have a map outlining the precise location of the pipeline through Nance County once it has been finalized. Current maps only show a wide construction zone swath that isn’t precise enough for the zoning and emergency management offices. The KXL reps said they would provide the map.

Hamann suggested that the Board talk to the Boards in Saline, Jefferson, and Fillmore counties. The original Keystone pipeline went through those counties, and now Keystone XL is slated to go through them again. Hamann says there has been no clamor to adopt pipeline regulations in those counties as a result of problems or issues with the first pipeline.

Fennessy said that on Monday, November 4 at 10:30, there will be another pump station tour in David City. All Board members are invited.

Most Board members felt that it wouldn’t hurt to have a little more discussion before making a final decision about whether or not to proceed with drafting regulations, so Delancey asked Baldrige to get a copy of Holt County’s pipeline regulations for review. Hamman said that those regulations would not pass the preemption test if they were challenged in court, and he suggested that instead we look at Brookings County, SD’s regs. Baldrige will obtain both for the Board’s review.

## Agenda Item 7 – Next Meeting

The next meeting will be scheduled as needed.

## Agenda Item 8 – Adjournment

A motion to adjourn was made by Frenzen and seconded by Cieloha. There were no objections.



SUBMITTED BY:

AFFIRMED BY:

\_\_\_\_\_  
Commission Secretary

\_\_\_\_\_  
Commission Chairperson