

## MINUTES

### Madison County Joint Planning Commission

Norfolk, Nebraska

The July 18, 2024, Meeting of the Madison County Joint Planning Commission was called to order by Chairman Acklie at 6:02 p.m. in the Lifelong Learning Center 601 E Benjamin Ave, Suites EFG Norfolk, Nebraska.

#### Call To Order/Roll Call- Consideration and/or action on:

**Present:** Oswald, Brown, Flood, Amen, Acklie, Abler, Westerman, Griffith and Milander

**Absent:**

**Also Present:** Mr. & Mrs. Kelly Griffith, Lowell Schroeder, Shannon Kurpgeweit, Dale Frisch, Madison County Commissioner Ron Schmidt, Nathan Eckstrom, David Levy, John Hanson, Lindsay Mow, Alex Chandler, Cale Geese, Scott Gropp, Kevin Connect, Keith Dittrich, Dan Tillis, Mandy Rich, Bill Hansen, Matt Cure, Dick Huddle, Lori Pfeifer, Kay Francavilla, Mary Haschke, Tom Pfeifer, Colby Kearber, Roy Zach, Micheal Degan, Kris Huddle, Barb Hoffman, Madison County Attorney Joe Smith, Intern Walter Furstenau, Zoning Administrator Heather McWhorter, Zoning Office Assistant Rhonda Cortner, Zoning Office Assistant Jennie Martinez and Approximately 69 additional members of the Public.

**Open Meetings Act:** Acklie stated that the Open Meetings Act will be followed.

**Proof of Publication:** Acklie stated the Proof of Publication Notice was published in the Norfolk Daily News.

**Minutes-May 16,2024:** The minutes of the May 16, 2024, Madison County Joint Planning Commission meeting were presented.

Motion made by Abler to approve the minutes and seconded by Milander.

Vote taken. Abler, Westerman, Griffith, Acklie, Oswald, Flood, Amen, Brown and Milander vote "Aye" none vote "Nay". Motion carried.

Acklie reads the Public Hearing.

(Dale Frisch Pre-Sub meeting was held 7-24-2024 prior to The Madison County Planning Commission Meeting)

**The purpose of this hearing is to receive public comments concerning the application of Dale Frisch for a Swine Animal Feeding Operation on property described as the Pt of the E ½ of the SE ¼ of Section 22, Township 21 North, Range 4 West of the 6th P.M., Madison County, Nebraska. This property is located at 82421 538th Ave Newman Grove, Madison County Nebraska. (Parcel# 590133381)**

Heather states that Mr. Frisch has an existing barn with 749 head of swine, over 55 pounds and would like to add 351 head for a total of 1100 head (440 H.E.) The location is a deep pit barn, and the addition of livestock requires a permit as a medium AFO operation. The matrix score was 365, above the required 350. The property is in an Ag-Intensive district. She states that she received a phone call from a neighboring landowner that stated Mr. Frisch has been doing an excellent job keeping the odor down and he is not opposed to the expansion.

Heather reads the Statement of Finding of Facts and the Recommended Conditions.

**Statement of Finding of Facts:**

1. The property is zoned A-1 Agricultural Intensive.
2. Permit is for up to 1,100 (440 H.E.).
3. Matrix score is 365, Passing score is 350.

**Recommended Conditions:**

1. This is a Livestock Feeding Operation Conditional Use Permit for an operation of up to 1,100 swine (440 head equivalent).
2. This Conditional Use Permit shall be for a period of twenty (20) years from the date of this resolution and will be renewed automatically pending no verifiable complaints.
3. This permit is subject to all the Madison County Zoning and Subdivision Regulations and the governing powers of the State of Nebraska and shall be constructed to meet both groups.

**6:04 p.m.** Acklie opens the Public Hearing.

Acklie asks if there is anyone in favor. Dale Frisch speaks in favor. He states that he currently has 749 head of swine and would like to expand his operation by adding 351 head of swine for a total of 1100. He states that he will use the current barn. He states that he has the DEE permits just waiting on the final paperwork.

Acklie asks if anyone else is in favor.

No one speaks

Acklie asks if there is anyone opposed.

No one speaks.

**6:06 p.m.** Acklie closes the Public Hearing.

Oswald Makes a motion to recommend approval based on the above Recommended Conditions. Flood seconds the motion.

Vote taken. Abler, Brown, Acklie, Oswald, Flood, Amen, Westerman, Griffith and Milander vote "Aye" none vote "Nay". Motion carried.

Acklie reads the next Public Hearing.

**The purpose of this hearing is to receive public comments concerning the Conditional Use Permit application of Shannon Kurpgeweit to construct a home on less than 40 acres on ELLY'S LOT SPLIT on property described as located in the SE ¼ of the NE ¼ of Section 21, Township 22 North, Range 2 West of the 6th P.M., Madison County, Nebraska. This property is located Northwest of the City of Madison, Nebraska ½ mile north of the intersection of 549th Ave. and 830th Rd. (Parcel# 590138456)**

Heather states that the applicant is requesting a permit to build a home on a 3.3-acre lot split in an Ag Intensive District. Some of the property is in the floodplain, however they have provided a surveyed map to indicate the area that the home will be in is not in the floodplain.

Heather reads the Statement of Finding of Facts and the Recommended Conditions.

**Statement of Finding of Facts:**

1. This application is consistent with the Madison County Comprehensive Plan, Zoning and Subdivision Regulations and the Zoning Map.
2. The property is zoned A1 Agriculture Intensive and meets the density requirements for the Zoning district.

**Recommended Conditions:**

1. This Conditional Use Permit is permanent and may be transferred between owners.
2. This Conditional Use Permit allows a single-family home on less than 40 acres.
3. With the passage of this permit, the applicant and/or residence builder realizes that the new residence is going to be subject to livestock odors, dust, and general nuisances. This does not mean that the applicant is giving up the right to be protected by Madison County and the State of Nebraska.
4. The applicant should be aware it is their responsibility to remove any Nebraska Noxious Weeds found on the property at any time after the approval of this application by the County Board of Commissioners.
5. A zoning permit must be obtained from the Zoning Office before construction of the home begins.
6. A copy of the signed permit must be recorded with the County Register of Deeds office by applicant.

**6:08 p.m.** Acklie opens the Public Hearing.

Acklie asks if there is anyone in favor.

Nathan Eckstrom speaks in favor. He states that while he did not come for this purpose, however he used to be a neighbor of the applicant, and he was a very good neighbor.

Acklie asks if the applicants are present.

No one speaks.

Acklie asks if anyone else is in favor.

No one speaks.

Acklie asks if there is anyone opposed.

No one speaks.

**6:10 p.m.** Acklie closes the Public Hearing.

Abler verifies that the density requirements will be met.

Acklie states that there are no other homes on the quarter section.

Milander makes a motion to table a recommendation because the applicant is not present. Abler seconds the motion.

Vote taken. Acklie, Flood, Amen, Abler, Brown, Griffith, Westerman, Oswald and Milander vote "Aye" none Vote "Nay".

Motion carried.

Acklie reads the next Public Hearing.

**The purpose of this hearing is to receive public comments concerning the application of Kelly Griffith for a Change of Zoning from "R1" Single Family District to "C2" Central Business District on property described as S ½ Lot 4, BLK 2, Original Town, Village of Meadow Grove, Madison County, Nebraska. This property is located at 433 2nd St Meadow Grove, Ne. (Parcel # 590033948)**

Heather states that the applicants are requesting a rezoning request from Residential to Commercial to construct a building for business/personal use. Residential zoning does not allow for a building that is not accessory to a residence on a buildable lot. The lot is adjacent to the C2-Central Business District in Meadow Grove.

**6:13 p.m.** Acklie opens the Public Hearing.

Acklie asks if there is anyone in favor.

Mrs. Griffith speaks in favor. She states that they would like to rezone the property so that they can construct a storage shed to store equipment for their business of rental properties.

Acklie asks if any part of the building will be used for residential purposes.

Mrs. Griffith states that it will not.

Mr. Griffith states that he agrees with the statements of Mrs. Griffith.

Joy Griffith comments that it might be worth noting that when you look at the map there are old cement pads from what she can remember were from a business prior to this. She states that there has always been a business there from the beginning of the town therefore fitting.

Acklie asks if anyone else is in favor.

No one speaks.

Acklie asks if there is anyone opposed.

No one speaks.

**6:15 p.m.** Acklie closes the Public Hearing.

Westerman makes a motion to recommend approval of the Change of Zoning from "R1" to "C2". Brown seconds the motion.

Vote taken. Abler, Acklie, Brown, Flood, Amen, Westerman, Oswald and Milander vote "Aye" none vote "Nay".

Griffith Abstains.

Motion carried.

Acklie reads the next Public Hearing.

**The purpose of the hearing is to consider recommendations to declare an area within the City of Newman Grove blighted & substandard.**

Proposed Area includes approximately 124.36 acres and is described as follows:

From a point beginning on the southeast corner of Parcel ID (PID) #590013076, then moving northwest along the northern right-of-way (ROW) line of Railroad Avenue until reaching the southeast corner of PID #590013033, then moving north until reaching the northeast corner of PID #590013033, then moving west until reaching the northwest corner of PID #590013033, then moving north until reaching the southwest corner of PID #590013025, then moving east until reaching the southeast corner of PID #590013025, then moving north in a straight line until reaching the northeast corner of PID #590013017, then moving east in a straight line until reaching the northwest corner of PID #590013009, then moving southeast and east along the property line of PID #590013009 until reaching southeast corner of PID #590013009, then moving north until reaching the northeast corner of PID #590013009, then moving west until reaching the southwest corner of PID #590014471, then moving north in a straight line until reaching the northwest corner of PID #590014412, then moving west in a straight line along the south property line of south ROW line of Hale Avenue until reaching the PID #590017853, then moving south in a straight line along the west ROW line of South 8th Street until reaching the southeast corner of PID #590017861, then moving west until reaching the southwest corner of PID #590017861 and continuing west in a straight line along the south ROW line of Bordwell Avenue until reaching the northwest corner of PID #590016202, then moving south in a straight line along the east ROW line of South 5th Street until reaching the southwest corner of PID #590016199, then moving southeast in a straight line along the north ROW line of Railroad Avenue until reaching the southeast corner of PID #590016180, then

moving south in a straight line along the west ROW line of South 6th Street until reaching the northeast corner of PID #590017667, then moving northwest in a straight line along the south ROW line of Logan Avenue until reaching the northwest corner of PID #590013734, then moving south in a straight line along the east ROW line of South 4th Street until reaching the south ROW line of County Line Road and continuing south along the east property line of PID #710073934 until reaching southwest corner of PID #710169683, then moving west in a straight line until reaching the west property line of PID #710073934, then moving north along the west property line of PID #710073934 until reaching the south property line of PID #590017578, then moving west in a straight line until reaching the southwest corner of PID #590017551, then moving north in a straight line until reaching the northwest corner of PID #590017632, The purpose of this hearing is to receive public comments concerning the application of Corn Silk Energy LLC for a Conditional Use Permit for installation of a temporary meteorological tower for the purposes of measuring wind speed on property in Part of the S ½ of the SE ¼ in Section 21, Township 21, Range 3, West of the 6th P.M. Madison County, Nebraska. The property is located approximately 1 mile North and 5 miles East of the City of Newman Grove, Madison County, Nebraska at the intersection of 824th Rd and 543rd Ave. (Parcel # 590126725)The purpose of this hearing is to receive public comments concerning the application of Corn Silk Energy LLC for a Conditional Use Permit for installation of a temporary meteorological tower for the purposes of measuring wind speed on property in Part of the S ½ of the SE ¼ in Section 21, Township 21, Range 3, West of the 6th P.M. Madison County, Nebraska. The property is located approximately 1 mile North and 5 miles East of the City of Newman Grove, Madison County, Nebraska at the intersection of 824th Rd and 543rd Ave. (Parcel # 590126725)

**6:18: p.m.** Acklie opens the Public Hearing.

Acklie asks if there is anyone in favor.

Lowell Schroeder speaks in favor. He explains the location stating that it is in the south part of town around the coop and residential area. He explains why the area was determined to be blighted and substandard looking at things such as deteriorated streets, faulty lot layout and average age of structures.

Acklie asks if this is less than 50% of the City of Newman Grove.

Lowell states that it is.

Acklie asks if there is anyone else in favor.

No one speaks.

Acklie asks if there is anyone opposed.

No one speaks.

**6:22 p.m.** Acklie closes the Public Hearing

Griffith makes a motion to recommend approval to declare the area within the City of Newman Grove

blighted & substandard. Milander seconds the motion. Vote taken. Abler, Brown, Acklie, Oswald, Flood, Amen, Griffith, Westerman and Milander vote "Aye" none vote "Nay". Motion carried.

Acklie reads the next Public Hearing.

**The purpose of the hearing is to consider approval of a general redevelopment plan for Proposed Redevelopment Area C.**

Proposed Redevelopment Area C includes approximately 124.36 acres and is described as follows:

Please see previous item for complete legal description.

**6:24 p.m.** Acklie opens the Public Hearing.

Acklie asks if there is anyone in favor.

Lowell Schroeder speaks in favor. He states that this is the next step that must occur before working with developers and is necessary for TIF.

Acklie asks if this would overlap any of the land that was voted on last year.

Lowell states that it is not that it goes around that area.

Acklie asks if there is anyone else in favor.

No one speaks.

Acklie asks if there is anyone opposed.

No one speaks.

**6:26 p.m.** Acklie closes the Public Hearing

Abler makes a motion to recommend approval of a general redevelopment plan for Proposed Redevelopment Area C. Westerman seconds the motion. Vote taken. Abler, Brown, Acklie, Oswald, Flood, Amen, Griffith, Westerman and Milander vote "Aye" none vote "Nay". Motion carried.

Kurpgeweit is now present.

Milander makes a motion to remove the Public Hearing for Shannon Kurpgeweit from tabled status. Abler seconds the motion. Vote taken. Abler, Brown, Acklie, Oswald, Flood, Amen, Griffith, Westerman and Milander vote "Aye" none vote "Nay". Motion carried.

**6:28 p.m.** Acklie opens the Public Hearing.

Acklie asks if there is anyone in favor.

Shannon Kurpgeweit speaks in favor. He states that his daughter would like to build a house. He states that the area is only grassland and cannot be farmed.

Acklie asks if the area where the house will be is in the floodplain.

Kurpgeweit states that it is not. He states that the surrounding ground is but it's outside the building area.

Acklie asks if there is anyone else in favor.

No one speaks.

Acklie asks if there is anyone opposed.

No one speaks.

**6:30 p.m.** Acklie closes the Public Hearing.

Milander makes a motion to recommend approval based on the above Recommended Conditions. Brown seconds the motion.

Vote taken. Abler, Brown, Acklie, Oswald, Flood, Amen, Westerman, Griffith and Milander vote "Aye" none vote "Nay". Motion carried.

#### **OTHER BUSINESS:**

**Heather states that the Madison County Board of Commissioners imposed a 4-month moratorium at the July 2 meeting to allow for a review of the Wind Energy Regs that were adopted in 2018. The review is intended to allow for any documentation from a credible, peer documented source indicating there may be changes needed to the current regulations to allow for public safety and well-being. As noted by the commissioners, this is not intended to deny Commercial Wind Energy in Madsion County and it is not their intent to change the current regulations that were written with much hard work and diligence in the best interests of Madison County. It is a review to allow for any credible studies that may have been conducted in the past 6 years that may indicate potential adjustments.**

**This will not be a public hearing because there is not a proposed amendment, it is simply a review to determine if an amendment should be initiated. If documentation is presented that is determined to be peer reviewed and credible, a motion should be made to amend the portion of the current regulations that it applies to. In the motion, please indicate why the motion is needed for the safety and well-being of the county. If, after the review, no credible information exists, a motion should be made that the current regulations do not require an amendment. Please keep in mind, this is not a review about the feasibility of wind energy or changes that the public may request simply because they would like them further from their home. This review was requested to look at pertinent information not emotions.**

**Some of the issues raised at the county board meeting were as follows:**

- **Road agreement and truck routes:** This is not a zoning issue. If a CUP is approved, the applicant will apply for a road haul agreement with the county board based on the proposed route of the project. This does not fall within the jurisdiction of zoning.
- **Additional height of the towers:** It is my understanding that the towers have the potential to be approximately 32 feet taller. The additional height allows for production to increase more than double the amount of the original towers in Antelope County. This allows for a project that needs to generate 250 megawatts to install 62 towers instead of 152. The extra height also allows for additional setback to property lines and roads based on the current regulations which require the setback based on the length of the rotor blade. It is my belief the possibility of the extra height is not relevant. The current regulations did not establish a maximum height therefore this is not exceeding something already established.
- **Lighting on the towers:** New legislation has been established that requires each tower going forward to install lighting that only comes on when an aircraft approaches. These towers will not have constant blinking lights.
- **Aerial application:** The FAA notifies all pilots of the location of the towers and all FAA requirements must be met as stated in our regulations, which has not changed.
- **Setbacks to Cities and Villages:** That is established by the ETJ established by the city jurisdiction. It is irrelevant to our regulations.
- **Shadow Flicker:** This was not addressed in the 2018 regulations due to the presentation that shadow flicker will not exceed 30 hours per year. This will be addressed individually in each CUP as a condition of the permit as previously decided.
- **Bond:** Our current regulations have a decommissioning plan; however, it was decided in 2018 that the bond issue would be handled individually as a condition of the CUP. The intent of this decision was to allow for changes due to inflation. If a definitive bond amount is listed, it may not be adequate 20 years from now. In the CUP, we will determine an amount and a time to review, such as every five years, to adjust based on current prices. This affords more protection for the county than amending the regulations.

Joe Smith explains why we are here. He states that this is not a Public Hearing. He asks that the public focus on things that have changed since 2018 or things that may have been missed in the passing of the Wind Energy Regulations.

Heather explains the process that will be followed giving both the opposition and those in favor the opportunity to speak. She reminds them again that this is not a Public Hearing.

David Levy: Baird law firm and representative of Orsted speaks. He states that the zoning regulations that were passed in 2018 after a survey of the entire state are split down the middle. He discusses the different setbacks of different counties in the State being anywhere from no setback to five miles. He states that Zoning is a balance and in 2018 the balance was found. He passes out a handout that explains different setback distances and how and if those setbacks affect participating and non-participating landowners.

Levy discusses changes and states that really nothing has changed except aircraft lighting systems and those have become feasible and acceptable by the Federal Aviation Administration. He states that many did not like the red lights at night, which he understands. He states that aircraft detection lighting

systems turn off the lights at night and they have a radar tower within a windfarm that when a plane gets within a certain distance and the lights turn on.

Levy states that he would like to talk about reliance. He discusses making changes to the regulations now will be changing in the middle of the game. He states that they have spent upwards of 10 million dollars preparing to meet the regulations set in 2018 to file a complete Conditional Use Permit application. He states that changing in the middle of the game is possibly illegal and just not fair.

John Hansen; President; Nebraska Farmers Union and Madison County resident. He passes out information with maps and information on how to grow a rural economy with wind & ethanol. He explains that livestock and processing are value added to the County as well as wind and solar. He explains tax base and revenue generated from wind energy throughout the State. He states that it is his job to keep farmers in business and create opportunities and when he sees a wind turbine, he sees an opportunity to bring a kid into the business.

Hansen states that the Planning Commission is essential for the State of Nebraska being able to provide and realize that we need all kinds of energy being developed including wind and solar. He states that we are short of energy and have resources as well as the property owners that want to do this. He reiterated that balance is important and that the way you balance property rights is not by taking one from the other but by protecting health, safety and welfare and then creating the opportunity to be open for business. He states that good Planning and Zoning is about moving forward by creating new opportunities, expanding the economic base and improving the quality of life. He states that this county is a shining example of what good Planning looks like.

Lindsay Mow: Invenergy provides handouts. She states that Alex Chandler, Ned Porter, Dan Tillis, Mike Degan and Cale Geese are here with her today. She gives a brief overview of Invenergy and the proposed wind project in Madison County. She states that the proposed Corn Silk wind project in Madison County is proposed to be 215 megawatts, projected to bring in over \$85 million to the Community over its lifetime, provide construction jobs, operation maintenance and staff. She states that they currently have 250 landowners signed up and 230 of those live in Nebraska and 169 in Madison County. She states that Invenergy would like to begin construction in 2026 and begin operations in 2027.

Alex Chandler: Invenergy Development Team, states that Invenergy has been working in Madison County since 2018. He explains the environmental studies that are conducted and what the information is used for. He discusses sound, shadow and turbine height and compares those issues with the setbacks in the regulations. He discusses center pivots and states that the regulations were crafted in a way to avoid putting a wind turbine in a center pivot. He states that the regulations were thoroughly researched and there has not been anything significant in technology that would make them obsolete.

Cale Geese, Mayor of Wayne, Nebraska shares a little bit about the experience of wind towers in Wayne County. He discusses the amount of money that is brought in each year for the county and the schools. He discusses other benefits such as landowner lease payments, better roads and bringing people back to the community.

Scott Gropp; Gropp Law; representing the landowners with concern over Wind Energy and the regulations. He provides the Planning Commission with a binder of information. He states that he has worked with 10 different County's in Nebraska and has heard all the arguments from the other side. He states that he has spoken to many County Officials after a zoning meeting and often there is fear of some type of litigation, usually from the wind companies. He states that when County's balance the interest of all its citizens through the lens of public safety health and welfare there is substantial statutory support as well as guidance from the Nebraska attorney general and existing case law.

Gropp states that he was not here in 2018 but after reading minutes one thing that is different is almost 1/3 of the board members are different now and in 2018 there was not an attorney general opinion 19-8 which says you have a right to balance the health, safety and welfare including the regulation of height of towers and turbines if you should choose. He states that one of the things that drives him crazy is that when we start a project, as soon as it's started it's all bets are off, and the Planning Commission cannot do anything. He states that is fundamentally false, not to buy into it and don't be scared of it.

Gropp states that there is also a case in Nebraska; Hanchera v. BD. Of Adjustment. Gropp gives his interpretation of Hanchera and gives an example using Casey's wanting to build a gas station.

Gropp speaks of an informational letter that was provided by NIRMA. He states that the guidance we have now was not there in 2018. He gives examples of other County's changing regulations when land leases were in place.

Gropp speaks of information from energy.gov which talks about wind turbine height increases. He states that the wind company wants you to believe that the setbacks are adjustable by the height of it the 2200' feet is fixed. He states the fall height gets a lot closer to a non-participating member.

Gropp speaks of decommissioning and gives examples of the price to take the tower down. He states that there needs to be financial backing to get rid of them.

Gropp states in 2018 there were 44 renewable energy facilities in Nebraska and in 2023 there were only 27 more due to regulations and problems that have come up.

Gropp speaks of an independent study that was done in Lancaster County regarding noise.

Gropp speaks of a windfarm in Saline County; Milligan 1, regarding road hall agreement violations.

Gropp asks that the planning commission table any decision as there is more information now than in 2018.

Kris Huddle thanks the planning commission for their service. She speaks of the dangers regarding storms and fires and states that the current setbacks are not far enough. She states that there are no setbacks to schools, cemeteries or daycares. She speaks about issues with shadow flicker. She speaks of the swooshing sound and states that it really isn't loud but a constant noise. She compares the noise from a turbine and farm equipment stating the farming noise is expected and only seasonal however

turbine noise never goes away. She states there is nothing in the regulations regarding shadow flicker and nothing to protect them.

Huddle states that they are not here to stop the wind towers but want protection. She speaks of a friend who is scared and what kind of affect this will have due to her medical condition. She mentions kids with disabilities and how it may affect them. She states that people with PTSD move to the country to get away from all the noise. She asks that the Zoning Regulations are looked at to protect health, safety and wellbeing.

Huddle speaks of the need for an escrow account for the turbines. She states that in the event a turbine goes down it will have negative impacts on cornstalks and pastures for cattle.

Huddle states that there are so many things that are new now. She states that the towers are so much bigger. She states that there are no setbacks for churches and cemeteries stating that the vibration is really bad. She asks if it can crack headstones. She states that they ruin the roads. She speaks of the issues with sprayer planes and the effect on the economy if they are not able to spray. She speaks about issues with bright lights on towers which can cause seizures. She states that they have tons of medical records for review. She states that the towers interfere with radars.

Kevin Connot: Allen, Ne speaks of the property tax benefit as he was a past 20-year schoolboard member as a result of the Rattle Snake wind project in 2019.

Keith Dittrich; Tilden, Ne speaks and states that there are no reasons to change the regulations as they were well thought out in 2018. He feels protected and confident in his contract with Orsted.

Dan Tillis: operations manager in for wind site in Neligh, Ne speaks of public safety and making sure landowners are taken care of. He explains that there is a local office and any problems that may come up they are there to help. He states that there have been some unfortunate events and local employees went out with garbage bags and picked up debris out of the field. He states that they do annual drills with the local fire departments and as part of those drills, they are shown how to handle fires and equipment failure.

Mandy Rich: Norfolk, Ne states that she received her associates degree at Northeast the same exact place that has a Wind Energy program that has a turbine really close to her home which she does not hear and is not having a seizure from the lights. She states when the students graduate there are no jobs in Madison County. She states that every problem has a solution, and we have 2 clean energy companies willing to invest their time and money and we need to let them do their job.

Bill Hansen states that he grew up in Madison County and he states that he can see all the economic development that has happened in Petersburg, Laredo, Neligh and Elgin and one of the reasons is because of the wind companies. He also states that the deer don't seem to mind the towers. He states that he would like to keep the regulations the same.

Matt Cure: plant manager Orsted in Wayne County states that they work closely with their landowners and sprayers that are coming in to make sure that everyone can get their work done.

Dick Huddle: property owner southwest of Madison states that he brought data regarding health problems and shows binders containing 7 or 800 pages of that information. He states that it is mainly directed at noise. He states that there is noise from the blades and low frequency noise. He speaks of low frequency noise and states that is the main problem that can travel up to 10 miles from the tower, affecting the inner ear and everything in people's lives. He states that the setbacks are not set back big enough. He states that he could have multiple towers within 2200' from his home and he is worried. He asks the Planning commission to please look at this and offers to share the information that he has.

Lori Pfeifer: southwest of Madison states that she is not opposed to clean energy but concerned. She states that she learned at commissioner meetings that decommissioning will be handled on a case-by-case basis. She states that the potential for a lot of towers is not very conducive on a case-by-case basis therefore she would like the planning commission to look at the regulations for that purpose also. She states that she would not like them to decide tonight but rather go home read information that Dick Huddle has because it is alarming.

Barb Hoffman states that the medical information is true, for example, causing sleep deprivation, dementia and causing seizures in people with epilepsy. She states that a 5-mile setback is needed. She states that people in Knox County have complained of vibrations on the walls.

Kay Francavilla; Norfolk, Retired attorney says; "We the people are pissed off", She states that regulations are fluid and changes happen all the time and as needed. She states that moratorium is needed to take time to study this.

Mary Haschke, west of Madison asks the planning Commission to think about both sides. She compares it to our government and states that we are starting to lose trust in people. She states that she wants things to be fair. She states that we need to sit back and look at the information. She states that Kris and Dick Huddle brought facts. She says that what are you going to believe, if you don't believe what's put in front of you what good are the facts. She states that they want to be heard.

Colby Kearber, 4<sup>th</sup> generation landowner Madison County, states that he just moved back to Madison County, a thriving place from a County that has wind turbines in it. He states that he sat on the porch to drink a cup of coffee with his kids this morning and seen the beautiful sunrise and a monarch butterfly but what he didn't see were towers and transmission lines in his back yard. He states that when you talk about economics coming to a community, Battle Creek is where he grew up and is and has been a thriving city for 150 years without money coming in from out of state investors. He challenges everyone here tonight to think about what your legacy is going to be.

Tom Pfeifer: Madison, Ne states that he would like to reiterate what Colby said. He asks the Planning Commission to take some time and think about it.

Roy Zach states that he did a thesis in 2009 on wind energy. He states that as early as 2007 a study had prompted some doctors and researchers to recommend setbacks distances of up to 1 ½ miles from homes and schools. He states that the reason why we are seeing private developers here in Nebraska is because local public power districts do not qualify for Federal production tax incentive. He states that

Congress passed that they only give that to private developers, therefore not as economically competitive for Nebraska Public Power.

David Levy rebuttals and states that he has a document that contains 33 claims and myths regarding wind energy and information refuting each of those claims. He states the first thing is that the energy goes elsewhere, and Nebraska is the dumpster for this electricity. He states that electricity essentially flows like water. He gives an example of dumping a 5-gallon bucket of water and compares that to how electricity flows. He states that the electrons will flow to the first place of need just like water would.

Levy reads Attorney General 19-008; A citizen clearly has the right to engage in any occupation that is not detrimental to the health, safety and welfare. He states that you cannot use zoning to eliminate an otherwise legal use. He states that you can zone, zoning is that balance between protecting health, safety and welfare and protecting private property rights. He states that the regulations that were adopted in 2018 find that balance. He states that the Attorney General opinion 19-008 says that a 5-mile setback does not have any basis in protecting health, safety and welfare. He states that simply serves the purpose of trying to eliminate the industry from the County and its not legal. He states that Hanchera affirms that you can have zoning. He states that the Whitehead case went to the Nebraska supreme court 3 times and that the court got mad at the City of Lincoln for the way they treated the landowners by changing the rules and keeping them from trying to open a gas station. The supreme court imposed monetary penalties against the City of Lincoln. He states that they changed the rules because they didn't want a gas station in that spot. He states that this is what we are being asked to do here and Nebraska Supreme Court says you cannot do that.

Levy states that a speaker brought up reliance by the landowners. He states that Orsted has 409 leases in Madison County. He states that 93% of those landowners live in Nebraska. He states that 79%; 322 live in Madison County. He states that landowners have signed leases, estate planning, farming decisions, family decisions and many other things. He states that they relied on these rules.

Levy speaks on production tax credits. He states that there was a recent change in Federal Law that allows public entities to use the production tax credits. He explains how the production tax credit works and how we benefit from it.

Levy speaks on fire and states that is true to let the tower burn but as soon as it reaches the ground that fire is the province of the local fire department. He states that support is given to local emergency responders such as training, equipment and communication.

Levy states that at 2200' the sound from turbines is less than the sound of the wind through the trees. He states that the setbacks and the sound work together.

Levy states that it has been said that we don't have shadow flicker in the current zoning regulations. He states that in fact we do.

Levy Speaks on Conditional Use Permits. He states that the wind companies invest 100's of millions of dollars in a project that they do not want the Conditional Use Permit revoked and lose their investment.

He states that a lot of the things that are brought up are very specific and can be dealt with in the Conditional Use Permit process. He states that it has been called a Conditional Uses Permit because you can put conditions on it.

Levy speaks on health impacts. He states that commercial wind energy has been in existence across the river in Iowa for approximately 40 years. In Nebraska in a small way since 1998 and a bigger way since 2005 and a much bigger way since 2008-2009. He states that if they were causing broad health effects, we would hear about it and we don't. He states that to him that's the best evidence that this is safe and the zoning regulations that were carefully adopted in 2018 are appropriate and should be kept the way that they are. He states that this is a lawful business.

Joe Smith discusses the Whitehead Case with Levey.

Micheal Degan; Omaha Attorney states that he has been involved in over a dozen large utility scale projects in the State of Nebraska. He states that he has been involved with a number of situations where regulations were adopted and then they were amended. He states that it is always contentious, and it is difficult to balance as you have people who are in support of wind and people who are opposed. He states that is the right of landowners. He states that we have a process for addressing and balancing those competing interests. He states that he was not there in 2018 but suspects that there were proponents and opponents present. He states that we adopted a comprehensive utility scale zoning regulation that is pretty much in the middle range of zoning choices that Counties in Nebraska have made. He states for 6 years those regulations have been the law for Madison County and in those 6 years his and Levey's clients have relied on those regulations.

Degan states that the issue now is whether we have the power to change the zoning regulations. He states that we do but the question is, are there consequences.

Degan states that he is standing before the Planning Commission because there has been no significant or convincing case that says that we should change the zoning regulations. He states that tower height is already in the regulations as towers get taller the setbacks get longer which means fewer turbines. He states that there was reference made to infrasound. He states that we don't need to go to Iowa to ask questions and he encourages the Planning Commission to go talk to landowners in Antelope County.

He encourages the Planning Commission to ask the board and landowners in Antelope County if they have experienced disastrous impacts in the now over a decade that they have had wind towers. He states that he is sure that they will say that they have not had any of these horrible effects but instead revenue and benefits.

Degan states that his observation of tonight is 2 things. He states that folks are just adverse to wind and that it is not that they truly want different regulations but instead use the process to block wind projects. He states that you don't have to take his word for it but he says that flyers that were passed around referencing an organization called The Alliance for Wise Wind Decisions. He states that there is a website on the flyer and suggests that the Planning Commission go look at the website and see what that organization is about. He states that it is an organization that is anti-wind and they specifically talk

about using regulations to get to that end. He states that their model regulations are so ridiculously restrictive that there would never be a wind farm built in any County. He states that those are not regulations for the health, safety and welfare but regulations to block a legal use of land to the developers and landowners.

Degan states that another group of opponents raise genuine concerns over the specifics of individual projects and that it may be beneficial for everyone in the room to understand the CUP process. He states that the County will have the opportunity to review and fine tune the project as it's developed. He states that there will be a decommissioning plan, road-use agreement, studies for shadow flicker, all of the issues. He states that the county oversees and polices a project and if we violate our Conditional Use Permit the County has the right to revoke it; therefore, we must adhere to the fine print and every aspect of our Conditional Use Permit. He asks that the current regulations are kept in place.

John Hansen speaks of setbacks that will work and won't work and uses examples of other County's and their setbacks. He states that we have 2 good proven developers in Madison County. He suggests going to Antelope County and looking at the towers and talking to landowners. He states that when he sees things that do not protect landowners he pushes back. He states that he wants the towers to be responsibly sited and he wants them to work.

Scott Gropp rebuttals. He states that Milligan 1 wind project was built 7 miles from him, and he knows what the County has gone through since then. He states that he can read and it is not hard. He states that he is familiar with yo-yo of Whitehead oil and states that he can make it real simple and states at the time Whitehead Oil purchased the subject property. He asks the Planning Commission to look at the handout and he reads Hanchera # 6, Zoning.

Gropp states that wind company is not a landowner. He states that if they want to be a landowner they can buy land then they can challenge this. He states that their investment is irrelevant. He states that this is clear, Whitehead owned land. He states that the City of Lincoln said, "we don't want you to do what you can do and we don't have a reason for it. We are just going to tell you that you can't." He states here we are asking you to look at public health, safety and welfare. He states that is not an irrelevant arbitrary standard and is supported in the Attorney General's opinion. He states again it's not hard to read but you are told that none of this is right in front of you.

Gropp states that Nebraska revised statute 66-913 seems to authorize but not require Counties to take in consideration of wind energy, and in addition there are general statutory authority for county zoning in chapter 23 which may include reasonable regulations of such as matters as to the height of structures. He states when you are talking about setbacks and how that's calculated the height of the structure is probably relevant and if you aren't going to regulate the height you can certainly regulate the area that's around it or you can regulate the height and say that you can only have 200' towers and then you can put more towers. He states that one of the problems that Saline County has with Milligan 1 wind is that there are a couple of towers that are too close to the road and when you drive by there is shadow flicker on the road. He states that it is all basic reading.

Gropp refers to the “big, Scary” map and gives an example in Jefferson County. He states that the Jefferson Zoning Administrator hands this out to everyone and before there was a moratorium they all looked at this and the big companies said’ “you guys, if you do this, look at this you can put up a wind tower anywhere in town or the whole county. You effectively violate the statute by zoning them out” He states that this is an arbitrary calculation because we asked the Zoning Administrator; John McKeef where did he come up with this and how did you do this, how did you come up with 600’ for the tower height and he said’ “I was asked to use that.” Gropp states that he asked every one of the Planning and Zoning members that asked him to use that and not a one of them asked him to use that, so let’s figure out who did that. Gropp states this is what it really says; if you are this person here and you want to put up a wind turbine the only thing that you have to do is either follow the County’s regulations and if it can’t fit in that location the wind company can go to the next guy and ask what would it take financially for us to put that in that place. He states that there is nothing that says you have to make the company profitable, you simply say could it be possible to put a turbine here, here and here if we have permission from the landowners. He says sure it would. He states that if somebody wants to put this giant tower beside you, what’s it going to take for me to pay you to tolerate what that is. He states those are called good neighbor agreements and wind companies just like in Jefferson County are going around now to people that said no and asking what if we are throwing \$10,000 at you and asking if they would be ok with that. He states as soon as those people sign up they can build whatever project they want. He states that this is no different than any other County and building. He states if somebody wants to build something, example a liquor store and it’s too close to the church guess what their option in the United States of America is, buy the church, build the liquor store and put your church somewhere else and it’s capitalism and you can do it. He states that these guys don’t want to spend the money. He states that they want you to be the de facto regulators of where a tower can be built and who has to tolerate it. He states that the people that have it on their property tolerate it because they are getting paid and if we increase it and they can’t fit in maybe we should pay other people to tolerate it. He states that it’s not zoning it out.

Gropp speaks on taxes and asks, “Do you know what happens in the States of Nebraska when a wind company and a power purchaser go sideways?” He states that it almost happened to Laredo Ridge Wind, there’s case law and can provide it. He gives an example using Milligan Wind 1 and states if it has regulatory problems and goes belly up, NPPD can go in and take over and run that. He refers to 77-6203 says that it says that no tax shall be imposed on a renewable energy facility if it’s owned or operated by a public power district.

Gropp states that there are a number of things that make this a simple regulation, you have the authority to move forward to changing this. He states that the only problem is whether you want to believe that there has been any change in technology, any change in law, any change in guidance from NIRMA or the Attorney Generals report. He states that he doesn’t know if anyone put pressure on the Planning Commission to come up with these regulations in 2018, maybe there was no pressure but if there was in anyone in your ear whispering “you got to have this distance or your gonna be sued” you can look at all this stuff, it’s very clear.

Acklie states that time is up for discussion.

Kris Huddle wants to speak and is told she can have 2 minutes. She argues about the time that she is allowed to speak. She states that she talked to a guy in Randolph from the volunteer fire department and was told that he was told by the wind company that if there is a fire stand back and let it burn but that he don't know how far back. She states that Madison is the 7<sup>th</sup> largest County population in Nebraska, but we have only a 2200' setback. She refers to shadow flicker and asks why not put it in the regulations. She asks what the Planning Commission is afraid of. She said put it in the regulations and protect everybody. She said if a tower goes down put it in the regulations that it will be cleaned up in 6 months. She states that they can tell you whatever they want but when it comes down to it don't you want that it writing, so that you are guaranteed Madison County does have to pay the expense of cleaning it. She states that they have talked to County Commissioner after Commissioner and got something good out of everyone they talked to. She offers information that she has and offers to get copies for the Planning Commission.

Heather addresses the Conditional Use Permit. She states that when we met and reviewed in 2018 the Planning Commission spent a lot of time and volunteer hours. She said they did a good job, and she doesn't want to minimize that. She states that the Conditional Use permit will address a lot of concerns. She states that some of those that have spoken tonight she has talked to every day for the past 2 weeks but for those who she hasn't spoken to, the issue with shadow flicker is in our regulations, 6.03.06. She states that the wind company will be held accountable to that, and it will be listed in the Conditional Use permit as well.

Heather states that the regulations are written as they state. She gives an example using the bond. She states that if they put a 1 million dollar bond in the regulations that is what the bond will be, but there are different situations and scenarios and the intent in the Conditional Use permit is to ask that every 5 years for an independent study due to inflation and the bond will be adjusted accordingly. She states that it is her opinion that the County will be protected a lot more than one regulation that states a specific amount.

Heather speaks about the comment that was made regarding setbacks to churches and cemeteries. She states that there are property line setbacks, and the churches and cemeteries are not going to be participating landowners therefore will have the 1.1 times the rotor blade setback which increases with height.

She states that when there is an application for a Conditional Use Permit, we will have Public Hearings. She states that you can come in with your concerns and if the need is there, we can add that to the Conditional Use Permit. She states that you are going to be heard and the Planning Commission does a really good job. She states that the Planning Commission should be acknowledged for the job that they are doing.

Scott Gropp confirms with Heather that when a Conditional Use application comes in that the wind company is not going to be allowed to come in and say, 'we applied based on what your current regulations are and you can't tell us yes or no' and he asks Heather to confirm that changes can be made.

Heather asks Gropp to be more specific.

Gropp states that Heather said that case by case basis changes can be made to the bond.

Heather states that a bond amount is not listed, therefore we can add as a condition, so we are not changing something that is already in the regulations.

Gropp confirms that it is Heathers belief that when someone comes in there and applies for a Conditional Use permit that the terms that they are applying are blocked based on the date they submit and you can make changes on what you think is right for approval of that project during application process.

Heather states that what she is saying is there is no term for the bond on the day they are applying.

Gropp states how about we be realistic and understand that once the Conditional Use application is submitted then they are going to tell you that you can't make any changes to it because it's been applied for based on your regulations. He states that is why there is a moratorium on the applicant itself so these things can be fixed. He states that he wants to make sure it's on the record that it's Heather's position, because he believes that will be important later.

Acklie announces that the time is used up for comments.

Joe Smith states that the commissioners have sent this to you on short notice and you have allowed the Public to speak. He states that this board has received this without much guidance to see if they thought there was any need to amend the regulations in a way that is more restrictive to the wind tower projects. He states that if you believe there has been that type evidence shown a meeting can be scheduled with respect to that. He states that if you do not believe that evidence has been shown you can send it back to the commissioners with the conclusion that this board sees no need to change the regulations and that they are up to date. He states that the moratorium is kind of a commissioner's thing but you can advise one way or another what to do with the moratorium.

Abler states that we have rules and if we were to make a change there would be a Public Hearing to make that change. He states that tonight we are not doing that but rather looking for information that makes our regulations desirable to change. He states that prior to 2018 we didn't have much for regulations and would like to make a motion.

Abler makes a motion to recommend that the current wind energy regulations remain the same. Milander seconds the motion.

Discussion amongst the board regarding Conditional Use Permits.

Acklie repeats that motion by Abler and seconded by Milander to leave the regulations as is and no change.

Vote taken. Abler, Acklie, Brown, Flood, Amen, Westerman, Griffith and Milander vote "Aye" "No Change"

None vote "Nay".

Oswald Abstains.

Motion carried.

The public disrupts the meeting, shouting out.

Abler makes a motion to adjourn. Brown seconds the motion. All vote "Aye". None vote "Nay".

Meeting adjourned at 8:43 p.m.