

REVISED MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 9, 2019, 1:00 p.m., Hearing Room 112 on the first floor of the County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Dick Campbell, Tracy Corr, Tracy Edgerton, Deane Finnegan, Maja Harris, Cristy Joy, Dennis Scheer and Sändra Washington; (Tom Beckius absent). David Cary, Steve Henrichsen, Tom Cajka, Brian Will, Dessie Redmond, George Wesselhoft, Stacey Hageman, Amy Huffman and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Hearing

Chair Scheer called the meeting to order and acknowledged the posting of the Open Meetings Act in the room.

Scheer then requested a motion approving the minutes for the regular Planning Commission hearing held December 12, 2018. Motion for approval made by Campbell, seconded by Washington and carried 8-0: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington voting ‘yes’; Beckius absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

January 9, 2019

Members present: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington; Beckius absent.

The Consent Agenda consisted of the following item: **CHANGE OF ZONE 18032, SPECIAL PERMIT 18041, CHANGE OF ZONE 18033, CHANGE OF ZONE 18034, SPECIAL PERMIT 872J AND SPECIAL PERMIT 18003A.**

Campbell moved approval of the Consent Agenda, seconded by Finnegan and carried 8-0: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington voting ‘yes’; Beckius absent.

Note: This is **FINAL ACTION** on **SPECIAL PERMIT 18041, SPECIAL PERMIT 872J and SPECIAL PERMIT 18003** unless appealed by filing a Letter of Appeal with the Office of the City Clerk within 14 days.

Scheer called for Requests for Deferral.

STREET AND ALLEY VACATION 18005

TO VACATE P STREET STUB FROM THE EAST RIGHT-OF-WAY LINE OF 70TH STREET TO APPROXIMATELY 100 FEET TO THE EAST, LOCATED ADJACENT TO LOT 83 I.T., GENERALLY LOCATED AT NORTH 70TH AND P STREETS

PUBLIC HEARING:

January 9, 2019

Members present: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington; Beckius absent.

Staff recommendation: No recommendation.

There were no ex parte communications disclosed on this item.

The applicant has requested to defer public hearing and action on this item until further notice.

Washington moved to defer public hearing and action, seconded by Edgerton and carried 8-0: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington voting 'yes'; Beckius absent.

CHANGE OF ZONE 05061C

TO AMEND THE PLANNED UNIT DEVELOPMENT (PUD) INCLUDING THE SITE PLAN AND PHASING AND TO ADD EXCAVATING AS A CONDITIONAL USE, ON PROPERTY GENERALLY LOCATED AT SOUTH 1ST AND WEST DENTON ROAD

PUBLIC HEARING:

January 9, 2019

Members present: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington; Beckius absent.

Staff recommendation: Conditional Approval

There were no ex parte communications disclosed on this item.

Staff Presentation: **Dessie Redmond of the Planning Department** stated this is a request to amend the site plan for Phase 2. This is where the horse track is proposed to be located. This original PUD (Planned Unit Development) was approved in 2006. This amendment is consistent

with the PUD. She pointed out the boundaries of the PUD. The northern part is B-2 zoning with Agricultural to the south. These areas generally follow the zoning regulations. Any deviations are spelled out in the development plan. The applicant is generally decreasing the size of the horse track with this proposal. The realignment of S. 1st St. is no longer needed with the decrease in size. Currently, the applicant doesn't have all the details to provide all the conditions. They will provide those terms to us at a later date and those will be reviewed administratively. They will also be required to vacate a portion of S. 1st St. There is currently a driveway that provides access to a property outside the PUD, but takes access through the PUD site. They will be required to dedicate a public access easement.

Washington inquired if the delay in providing information is a common request. Redmond is unaware if this happens a lot, but this is part of the PUD process. It will all be reviewed by staff.

Applicant:

Lynne Schuller, 7055 S. 1st St., Lincoln Nebraska of the **Nebraska Benevolent Horse Association**. They have decided to relocate S. 1st St. They feel this doesn't impede the safety of the rider and animals. This will have the same turns as Churchill Downs. We feel this doesn't take away from the safety. The turns are the key. When you have an oval, it is problematic if you are going to use the infill for a lot of other purposes. We had discussed excavating the middle. It is full of lean clay that is needed, and we felt a pond would be beneficial. That is why we are asking for this to be added as an option.

Campbell inquired about the size of the track at the old State Fairgrounds site. Schuller responded it was 5/8 of a mile.

Craig Wulf, 1501 Longs Peak Circle, Lincoln Nebraska stated that the goal is to have the track prepared late August or early September 2019. We will probably run a three-day meet. Schuller added this has been a tradition in Nebraska for many years.

DaNay Kalkowski stated that the applicant agrees with all conditions.

There was no testimony in support or opposition.

ACTION:

Campbell moved Conditional Approval, seconded by Corr.

Edgerton said it is great that they are able to move forward and she supports this application.

Washington supports this as well.

Motion for Conditional Approval carried 8-0: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington voting 'yes'; Beckius absent.

TEXT AMENDMENT 18016

TO AMEND SECTION 13.048 OF THE LANCASTER COUNTY ZONING REGULATIONS RELATING TO WIND ENERGY CONVERSION SYSTEM

PUBLIC HEARING:

January 9, 2019

Members present: Campbell, Corr, Edgerton, Finnegan, Harris, Joy, Scheer and Washington; Beckius absent.

Staff recommendation: Approval of the Recommended Alternative

There were no ex parte communications disclosed on this item.

Staff Presentation: **Tom Cajka of the Planning Department** this application is to amend regulations related to wind energy. He stated that the Planning staff have offered an Exhibit B, Recommended Alternative. The first section he addressed was Section D. The applicant has proposed to delete the shadow flicker modeling. This is based on the assumption with turbines set back one mile from the road. In Section F, language was added to clarify that if mapping was required, it would be approved by the Planning Dept. Staff doesn't think this wording is necessary, as it would be reviewed as part of a special permit. Section G states that the applicant is proposing the turbine is set back 1,280 feet from a property line. Cajka indicated that current setbacks and noise levels give protection to non-participating properties. It is also important to remember that a turbine has to meet this setback level as well as the noise level. We feel that this change to Section G is contrary to the process and there is already a balance to protect the public health, while providing for the wind energy process. We recommend no change to this section. The applicant is recommending that Section H be deleted stating that a 3-acre property would meet the setbacks for noise. Staff is recommending this part stay. In Section I, they are requesting a change to the way setbacks are measured. This was just recently reviewed extensively. Staff does not support this change. Section J speaks to a pre-construction noise study. Some of the changes are rewording for clarity. Staff does not object to this. Section K is requesting that each application include a pre-construction noise monitoring study to be reviewed by the Health Department. This is currently a 'may be' conducted study. The applicant feels that this could be a problem.

Chris Schroeder of the Health Department stated that when you look at the existing code, the intent is to allow higher noise limits. If they opt to do a pre-construction noise study, it establishes background noises. You could go a little higher.

Cajka continued that Section M is the noise study. It shall be a requirement. The applicant would like this one year after construction, and then every two years after. Planning staff doesn't object to the post construction noise measurements. We don't feel that two years after construction is necessary. Property owners still have the right to file a complaint if they feel the noise is excessive. Any expense occurred would be by the special permit holder. Section N clarifies who pays for noise monitoring, if required. There was a change recommended by the Health Department that the word 'parties' be changed to 'third party professional acoustician or voice professional'. Section O is something new. It is an added condition that agreements be provided to the Planning Department and be a public document. We feel these agreements are between public parties and we do not require these for anything else in the special permit code. The applicant letter talks about trespass zoning. He contacted the APA (American Planning Association) legal department and trespass zoning is not a legal term and is used by anti- wind turbine people.

Washington would like clarification on Section M. Staff supports language asking for post construction assessment, but reject the monitoring every two years. She inquired if this is based on technical specifications or an understanding that the motors don't change over time. Schroeder responded that typically they don't change a lot over time. If there was a gear box failure or such, a noise complaint could be filed. Washington wanted to know who the adjacent land owners can complain to, if they feel it is too loud. Schroeder stated they would complain to the County Board or the Health Department. All complaints go to the County Board, and the Health Department could go out to do testing. This could be lengthy. We felt it was a good approach for these complaints to go to the County Board.

Corr wondered about neighbors that continually complain, since they didn't want this in the first place. She is concerned if the special permit holder has to continually pay for a noise study. Schroeder noted that is why these complaints go to the County board. They can review and decide.

Harris questioned if there is any confusion about who pays for the noise study as the language is written. Cajka stated when we receive noise complaints, the Health Department investigates. In the City when we receive a lighting complaint per say, Building and Safety goes out and investigates. There could be an assumption that this would be at no cost. Health Department has said they don't have the right equipment to monitor that. He thinks it is a good idea to spell out who pays for this. Harris wondered if any other county in Nebraska spells this out. Cajka said no, not that he could find. Harris asked about the post-construction study. Cajka looked at Nebraska. Gage County was the only one who talked about a post-construction level. It is at the discretion of the county as to who pays for this. Saline County and other counties he looked at didn't even address it.

Harris inquired if staff could provide an example of another special permit for agricultural use

where there is mandatory testing in any time period to check for compliance. Cajka is not sure. There are noise restrictions on race tracks, but he doesn't know if there is a condition for a post-construction study.

Edgerton inquired if the turbine violates the setback standard, does it become a non-conforming use? Cajka stated that a non-conforming use can continue to operate. Washington wondered if this is a permanent clause or can it come up for reassessment at some point. Cajka answered that in the zoning code, if a non-conforming or non-standard property ceases to be used for two years, it must go away. Edgerton asked if the modeling data must be reflected in what the restrictions are, perhaps the model is wrong. Can it still continue, but as non-conforming? Cajka noted the last sentence of Section G addresses if the turbine is already up and it doesn't meet the shadow flicker, if a house is built and the turbine is non-conforming.

Campbell questioned Section J, why the pre-construction noise study is conducted one mile away, when requirements for the turbine to hit the noise level is less than that. Cajka responded that was placed in the original text in 2015. Campbell believes it seems inconsistent. Schroeder stated that when we asked for modeling existing noise levels, modeling showed dwellings needed to be a minimum of one mile away.

Scheer would like to go back and contrast for distance setback and noise setback. Through all the processes, his understanding is that the annoyance is the noise. The distance to alleviate the noise annoyance is what we are concerned about. The distance setback he has understood to be from a turbine collapsing. Schroeder stated he was correct.

Cajka stated that these setbacks were determined for safety. He doesn't know if there could be a situation where a turbine could be located less distance and still meet the noise requirements. This gives an added level of security.

Applicant:

Mark Hunzeker, Baylor Evnen Law Firm appeared on behalf of Prairie Wind Watchers. He expressed concern about the process whereby staff are allowed to provide an extended amount of time to explain their position but the applicant is limited to 5 minutes. Hunzeker stated that this application addresses setbacks and noise monitoring. These were all largely ignored in 2015. These issues need to be addressed now. The proposed amendments protect these areas. We spent some time on the separation area. These separations need to be measured from the property line of the non-participating property. We need to have the ability to use the property for residences, church, day care and other uses. All would have the same impact. We have no other uses in the entire county where measurements are taken other than to the applicant property line. Why would you restrict what someone can do in the future? Consider this line. There are other issues of noise leveling. It is useful to establish a baseline. Post-

construction noise measures need to be required. The County Board can require these things under the developer's expense. Previously, there was an opportunity to complain to the County Board. With respect to contract provisions, an alternative would be to adopt a recommendation that says it will be against County Board policy to penalize participating owners complaining about other aspects of development. Then you wouldn't be prohibited from complaining. It is not the reported annoyance level by people who are being paid to endure the noise. It is another thing if they are being subjected to noise and losing something if they complain.

Proponents:

1. Ann Post, Baylor Evnen Law Firm appeared. Today's proposed text amendment achieves a lot. She wants to touch on trespass zoning. This is not a legal term, but it is a term that describes a phenomenon. Trespass zoning occurs where zoning levels are measured from outside the dwelling to the property line on a non-participating property. If they were to build a home, they are going to experience noise at a heightened level. The best way to demonstrate this is with pictures. She presented a hypothetical example of a wind turbine location. She showed the locations where non-participating owners would experience noise. She noted the areas where someone would have to move outside the noise level area to escape the noise from the turbine. These are extreme, but likely examples of how these could affect property owners. She showed another parcel where someone might lose most of their property to noise and adverse consequences. This issue of trespass zoning is one that disappears when you measure noise at the property line as opposed to somewhere in the property line. She would ask that this amendment be adopted.

2. Larry Alder, Cortland, Nebraska. To put this in perspective for people who live in town, your neighbor builds an eyesore and it annoys you. On top of that, he plays his stereo loud at odd hours. You can hear the noise in your house. The back of your property has a playground where the noise gets louder. When you are on the other side of the house, it is within sound limits. If our property has less than three acres in the setback, if we don't keep it from the property line, the decibel levels can be higher than the participating properties. This amendment needs to be set. The setback should be from the property line.

3. Yvonne Mihulka Poole, 2331 W. Ash Rd., Cortland, Nebraska. Ms. Poole provided copies of a zoning map of Lancaster County (see Exhibit "1"). Her farm is in the crosshairs of this. There is a 1-mile buffer zone around the surrounding towns. Health and property rights are protected. This can't be built within one mile of these towns. She wonders why she doesn't deserve the same protection as other properties. Big wind and big money have asked for changes. This amendment is necessary for everyone's health. We all agree with renewable energy. Wind energy can find a place, but not within one mile of someone's house. This is a densely populated area. Our landscapes deserve a viable setback.

4. Curtis Schwaninger, 3750 W. Hallam Rd., Hallam, Nebraska. He received a call a few weeks ago from the company that had purchased the Volkswind property. He was offered \$200.00 an acre. They said they were from NextEra looking at solar. He was offered \$400.00 an acre from someone who came to his house. The next week he heard that NextEra had talked to Lancaster County and Gage County about wind farms. He believes this is deceptive. They can't be trusted to do what they say. He believes very strict rules need to be laid down to protect owners from bullies. Prairie Wind Watchers have over 200 contacts that oppose the wind farm. He believes the majority should have the say. It is a proven fact that wind towers cause health problems. This will also keep the county from being polluted with towers that helicopters would have to dodge. Wind towers, if we need to have them, should be in open areas where their health hazards can be dealt with.

5. Joetta Schwaninger, 3750 W. Hallam Rd., Hallam, Nebraska. In November and December 2018, the Health Department talked about certain studies and noted they were peer reviewed. Tough questions should have been asked. How old were the studies, how accurate were they, were they by mail-in or visit? Regarding peer review, how many reviews were there? Noise annoyance is a minor factor. Health hazards are real. She read from a letter of someone who did not do their research on a wind project. Someone asked for more information and believes all they received were lies. The commissioners looked at money for the county. The towers were too close to houses and they could be heard. Everyone needs to research areas where towers have been for a while. This letter was from an adjuster for Farm Bureau, Holt County, Nebraska. We need an amendment for at least a 1-mile setback.

6. Mike Woodward, 2715 SW. 14th St., Cortland, Nebraska. Part of his concern is the manipulation of noise testing. He provided some research. Noise testing was only done between June and October. This is probably the least windy time of year. He believes there is manipulation of the wind research. There are many factors. Landscape is one. Prince Edward Island and Ontario, Canada have trees, sound absorbing landscape. His other concern with the noise standards versus the mile setback is the placement of the turbine. If someone complains about the noise, data can be manipulated. The rotation can be slowed down to skew the testing. How are we going to control that? The only real control of noise is distance or something absorbent. He has concerns with the way the testing will be conducted. There are factors and variables. With a 1-mile setback, this will probably be the only guarantee we have. The noise modeling that NextEra presented supports the mile setback. He asks for a 1-mile setback to be approved.

7. Judy Daugherty, P.O. Box 193, Hallam, Nebraska. Ms. Daugherty provided copies of articles relating to wind farms in DeKalb County, Missouri (see Exhibit "2") and Saginaw County, Michigan (see Exhibit "3"). She lives on three acres in the middle of the proposed wind project. She believes that NextEra lies and spews partial truths. She heard from the project manager

that they go with the manufacturers setbacks. GE recommends a safety zone of 1.1 times the turbine height. She is really tired of hearing that. That is for the fall zone only. They are trying to imply that this covers everything. We asked Volkswind for a year and a half to produce the safety manual they were going to use. It was never produced. Now NextEra is doing the same thing. We would like to see documentation from the manufacturer. She believes we haven't seen it because it is not in line with what they want to do. Many of us have repeatedly tried to get a safety manual, with no success. This company is far from ethical. NextEra testified that they try not to place a turbine within 1,600 feet of a dwelling. This is not true. We heard from two people from Missouri who have towers placed less than 1,600 feet. Homeowners who have homes in the project area have banded together to protect themselves from these wind turbines. The project footprint encompasses many acres. This is a fact that the marketability of our homes will be affected. We don't like what we have heard from NextEra. We deserve to be safe on our properties.

8. Charlotte Newman, 1500 Pella Rd., Martell, Nebraska. She lives two miles north of Hallam Road. She believes the Commission has heard some good testimony. She appreciates the time that has been taken to hear testimony. She has heard that non-participants are well protected. She doesn't agree. It is easier to measure distance than noise. Measurement from the property line protects future use. Personal testimony says that noise under one mile is a problem. She would beg to differ with assessment of noise annoyance. She believes a lot of safety issues with wind turbines haven't been studied long enough. She thinks this still comes down to putting a large intrusive industry in an agricultural community. This is an industrial project. We have heard many times about big financial gains. When you consider the amount that NextEra has said they will give to participants, you have a small amount of reimbursement for participants. This is not enough to save anyone's family farm or to make a difference. It is not a substantial reimbursement. She asks that this amendment be considered and the ramifications that this brings to the non participants.

9. Joe Dabbs, 26240 SW. 84th St., Hallam, Nebraska. He believes the 1-mile setback from the property line is the best. The last text amendment that raised the decibel level, Deb Schorr voted no primarily because of the population density in Nebraska. He agrees.

Opposition:

1. David Levy, 1700 Farnam Street, Omaha, NE, on behalf of NextEra Energy. He also expressed concern about the process, as their application was before the County Board three weeks ago and decisions were made at that time, yet here we are again. NextEra took this application very seriously. We went through it line by line. Some items were reasonable such as pre-construction modeling and noise modeling down the road. NextEra supports the staff recommendation. He also wants to focus on the idea of trespass zoning. This is a 1-mile setback from a property line. The noise modeling has a limit of 37 decibels. Now they are

talking one mile to a property line. This is a property line versus a dwelling unit. There is no evidence of a direct health impact. Let's also remember that this is an agricultural district. Some of the maps shown were extreme examples. The circle was a 50 decibel circle. Noise doesn't drop off to zero at the end of the circle. The rule of thumb between 37 and 50 decibels is probably one half mile to one mile. The maps don't paint an accurate picture. The reasoning for the physical distance setback is an important point. We are ignoring the reason that there are setbacks.

Harris asked if the post construction mandatory noise studies are industry standard. Levy doesn't know if they are standard, but is aware of other counties that do them. Continuing them later is probably a good idea, but there is no reason to keep doing them. One year post construction is not uncommon. Harris questioned if there are any other counties that require a post-construction study. Levy responded Webster County.

2. David Kuhn from NextEra Energy, representing the Blue Prairie Wind Project. He supports the staff recommendation. He addressed some of the comments made about NextEra, including the specific comment about GE recommended setbacks. The recommended setbacks are 1.1 times the tip height. He emailed a copy of these guidelines to Steve Henrichsen with the Planning Department about the specifics (see Exhibit "6"). He would highly recommend you go through public comments from Missouri. This group brought some people to testify. The presiding commissioner from Missouri saw that and broadcasted his comments.

2. David Schwaninger, 28500 SW. 14th St., Martell, Nebraska. He is a fourth generation farmer and landowner. No one is taking into consideration his loss of monetary gain. He pays taxes of \$45,000.00 a year. Half of that goes to Norris school. These wind turbines are estimated to generate about \$10,000.00 a year each. This would make a huge contribution to his income. A monolith company is building a large building in Hallam and he hasn't heard anyone complain. His wife is from Burwell, Nebraska, where there are several windmills. They got stopped from road construction and couldn't even hear the windmills. He believes it is made up science from people who want to live on a smaller property. He is a fourth generation farmer and property taxes have gone off the rails and Governor Ricketts isn't going to do anything about it.

3. Ken Winston represents **Nebraska Interfaith Power and Light.** Mr. Winston provided copies of a letter of opposition (see Exhibit "4"). He wants to focus on the testimony. This would upend the recently decided balance. We are specifically opposed to the 1-mile setback. We have already spoken about our concerns with climate change. People have the right to have their own views on wind development, but we would like a decision made on verifiable impacts. Most complaints are based on annoyance which is a subjective standard. If adopted, the amendment would set a precedent. The commission should be prepared for anything else that some member of the public finds annoying.

5. John Hansen, 1305 Plum St., Lincoln, Nebraska. He is in opposition to the original text proposal. He agrees with the current revised staff proposal. He is president of the Nebraska Farming Association. These regulations go to the heart of working out compromises that work. He has been through a lot of the state's history and sometimes it is just not possible to make everyone happy. You hope to come up with solutions that are fair and reasonable. Being a good neighbor cuts both ways. At some point, you have to meet in the middle. We want to utilize every tool we can to augment our income. On average, we live in the margins. Many farmers have other jobs to supplement their income. This is an important supplemental income. There are a lot of communities across the state that are desperate to have wind developers come to their county. He is a bit surprised that the developer is willing to accept the staff recommendations, but believes it speaks to them that they are willing to do so.

6. Russell Miller, 341 S. 52nd St., Lincoln, Nebraska. Mr. Miller provided a copy of his testimony for the record (see Exhibit "5"). As a resident of Lancaster County, he is in favor of wind farms for the positive impact it will have on the air quality. It will be a benefit to all of Lancaster County. The coal plant close to Hallam, Nebraska, hopefully won't have to be used as much. The particulates released into the air magnify many health problems. The second positive impact is the tax revenue that they will produce. Norris and Crete Schools will benefit from the taxes. The obvious intent of this application is to make it difficult to have wind towers. He urges this commission to vote against the entire request or to approve only the changes recommended by staff.

7. Matt Gregory is a clean energy advocate. He is in opposition to the language that establishes a 1-mile setback. It will essentially kill wind companies from doing business, which he believes is the intent. He has previously spoke to a study that states many Nebraskans would like to see alternative energy sources developed. There is no peer-reviewed research on ill health effects of wind energy. This is about their annoyance to the sound. A national survey of wind power was correlated to renewable energy sources. One land owner shouldn't have to wait around to see what another land owner is going to do.

8. Lou Nelson, Center for Rural Affairs, 145 Main St., Lyons, Nebraska. He is in opposition to this amendment. He echoes many of the thoughts which have already been expressed. There is no peer-reviewed research for adverse health effects. He believes the standard was balanced out last year. He thinks it is essential to go with either the staff recommendation or reject the application completely. This issue was already researched and voted on.

Staff Questions:

Harris inquired with the current language as it stands, and asked if are we the most conservative county in Nebraska as it relates to wind energy, or the most restrictive. Cajka responded that

for the six or seven counties he looked at—Gage, Saline and Seward Counties are the closest to us. We are the most restrictive. Harris asked if there was confusion about who pays for noise studies. Suggested language regarding pre-construction noise monitoring doesn't specify who pays for that monitoring. Cajka doesn't believe that is confusing. It is part of the application process. It is at the applicant's expense. The question was after there was a complaint.

Campbell was told that 50 decibels is like two people talking. Schroeder agreed that general conversation is 50 to 60 decibels but cautioned in terms of comparison, as wind turbines are perceived as more annoying.

Corr wondered about the post-construction noise testing or a complaint. She questioned if the owners of the project will be notified of the specific date of testing. Schroeder doesn't believe so. Best practice would be not to let them know. We subcontract that.

Scheer inquired if during the application process or the post-construction testing, if staff is confident how the test results will come back or if there is any ambiguity. Schroeder doesn't support that. Post-construction noise testing would be done through a third party. Scheer wondered if the information you get during the application process is to verify distance that the turbine will be sited from the dwelling, pre-construction modeling. Schroeder stated that we have to sign off on protocol. We will work on the modeling protocol and this would be submitted to the company. Scheer can see that argument of one mile is easily defined. Based on information you get from modeling or testing, he questioned if that is reliable to make that distance. Schroeder is confident. Results are conservative. They would predict higher noise modeling to make sure that testing is accurate.

Applicant Rebuttal:

Hunzeker stated that we tried hard to get these issues considered last time. Because they were not considered, they made a separate application. In the staff report of November 14, 2018, on the previous text amendment, reference was made to an analysis by Epsilon Associates that wind turbines would need to be a minimum of one mile from a dwelling. This was a study paid for by NextEra. He presented a drawing of the one mile surrounding area. We aren't talking about a noise level drop-off. The contours must be measured to the property line. This has a real impact on people who choose not to participate. This forces a developer of an industrial use in an agricultural use to account for the noise on land which is participating on the project. Don't force that onto non-participants. This isn't a matter of trying to unbalance the public health, safety and welfare of landowners. This needs to be done on every zoning decision you make. Don't allow a project to foreclose the possibility of development on a non-participating property.

ACTION:

Campbell moved Approval of the Recommended Alternative as proposed by staff, seconded by Corr.

Campbell believes the Planning staff has done a good job in looking at all the different proposals that have come forward. He is still in favor of the project and feels that it is something that can move forward in Lancaster County and doesn't support the more difficult restrictions.

Harris will not support the option. Not because she thinks this is the second bite of the apple, but the applicant has the right to come forward. We have had an extensive public input process and extensive hearings that she has been a part of since Volkswind was here originally. She feels that she has received a massive amount of data to support her original vote. She feels it would almost be an insult to clarify a few things that are already implied. She is not willing to support any of the material changes, including the post construction noise monitoring. We have perhaps the most restrictive noise ordinance already. There is nothing that stops this from being a voluntary requirement. Developers have done these things in the past.

Washington was a little concerned at first about rehashing this. She believes the proposal provides some assurances that she wanted to have in place for protecting non-participating landowners. She will support the staff recommendation. She would have offered to amend for post-construction monitoring in two years. Models don't always give you what you expect. She wants to make clear her vote for these additional assurances for non-participating landowners. ~~She won't negate her previous decisions in Gage County.~~

Campbell doesn't believe the expense of doing this every two years is necessary. Washington would encourage landowners to be thoughtful and diligent. She doesn't want these to get noisier and noisier.

Finnegan will support Campbell's motion.

Joy will support the motion as well. She believes the staff recommendation will serve this well.

Corr thinks a lot of the push for the one-mile rule is because it is easy to understand and measure. She thinks what we have now is fine. She will support Campbell's motion. It becomes confusing when we have people not in the industry trying to interpret this.

Scheer agreed. He wouldn't be in favor of changing the parameter of annoyance to be on distance instead of sound. He thinks what we have is good. In terms of context, this is his third time through this as well. He will vote in favor of this motion. He believes it is a good compromise. He questioned the Health Dept on monitoring. He believes they are confident in their ability to monitor.

Motion for approval carried 7-1: Campbell, Corr, Edgerton, Finnegan, Joy, Scheer and Washington voting 'yes' Harris voting 'no'; Beckius absent.

There being no further business to come before the Commission, the meeting was adjourned at 3:25 p.m.

Note: These minutes will not be formally approved by the Planning Commission until their next regular meeting on Wednesday, January 23, 2019.

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