

Minutes

**October 15, 2024**

**Planning Commission Meeting**

The agenda for this meeting was posted in the legal paper of record, the Omaha World Herald, on October 4th, 2024.

Chairman Alan Mueller opened the public meeting at 7:00 pm. Pledge of Allegiance was said. Mueller stated that the open meetings act is posted on the north wall in the back of the room. Planning Commission members Althouse, Crofoot, Felthousen, Mueller, Tesar, Staben, Sullivan, Dennis and Grotrian met as advertised.

**Approval of minutes:**

A motion was made by Tesar, seconded by Crofoot to approve the minutes from the September 16<sup>th</sup> meeting. A roll call vote followed with the following votes – Althouse -aye; Tesar – aye; Dennis – aye; Sullivan – aye; Grotrian – abstain; Staben – aye; Mueller – aye; Felthousen – aye; Crofoot - aye. Motion carried.

A motion was made by Staben, seconded by Sullivan to approve the minutes from the September 23<sup>rd</sup> meeting. A roll call vote followed with the following votes – Althouse -aye; Tesar – aye; Dennis – aye; Sullivan – aye; Grotrian – abstain; Staben – aye; Mueller – aye; Felthousen – aye; Crofoot - aye. Motion carried.

**First item on the agenda – Residential Acreage Development** – parcel 130133647 – Owner: Triple RB Farm LLC – Applicant – Jerry Wiebusch, Farmer’s National Company – 8016 O Street, Nehawka - Legal Description: SW1/4 23-10-12 (159.69 acres). This will create a 3.43-acre tax lot. This property is zoned AG. This falls under Section 5.07 – Residential Acreage Development. Mueller asked Jensen to introduce this first item. Jensen stated that his review concludes this application meets Cass County Zoning Regulations.

Jensen mentioned that -at some point – he would like to bring this back as an administrative task.

Mueller stated that the Board of Commissioners would have to make this call. There were a lot of splits that weren’t done correctly in the past. This was set up as a second set of eyes. This would be discussed and decided on at a later time.

Mueller asked if there were any questions or discussions. Since there was no discussion or questions, he closed the public hearing at 7:06 pm. He then asked if there was any discussion from the Board. Since there wasn’t any questions or comments, Mueller made a motion to approve this Residential Acreage Development as presented. Seconded by Felthousen. A roll call vote followed with the following votes – Althouse -aye; Staben – aye; Tesar – aye; Mueller – aye; Dennis – aye; Felthousen – aye; Sullivan – aye; Crofoot – aye; Grotrian – aye. Motion carried with 9 ayes and 0 nay.

Motion carried. This will go before the Board of Commissioners on November 5<sup>th</sup> at 8 am in the Commissioner’s Room.

**The next item on the agenda was Old Business** - previously tabled Conditional Use permit CU-2024-0003 - Commercial Solar Conversion System. Mueller asked the County Attorney to attend to assist with any questions about un-tabling this item. Since he was stuck in traffic, he asked Mueller to hold this item until he arrived. A motion was needed to un-table the item. Discussion followed on whether they wanted to un-table this item for discussion only or if they wanted to take action on it also. It would need a majority vote to un-table it. Staben stated that he would be ok with un-tabling it but for discussion only. He doesn’t think its right to vote on it at this time since it was originally tabled for 60 days.

A motion was made by Staben to un-table the item for discussion only. Seconded by Althouse. Grotrian asked if there was a publicized public meeting for this? Mueller stated that the County Attorney said it can be brought out of “table” if majority of the PC members vote to un-table it. There was already a public hearing on this item. County Attorney, Chris Perrone, confirmed this. Mueller then opened it up to the public to comment on whether they want it opened up for discussion. Nine members of the gallery came up to state their opinions – 5 were against un-tabling it, 4 were for un-tabling it. Since there was a motion and second, Mueller asked for a roll call vote. A roll call vote followed with the following votes – Althouse -aye; Tesar – aye; Dennis – aye; Sullivan – aye; Grotrian – nay; Staben – aye; Mueller – aye;

Felthousen – aye; Crofoot - aye. Motion passed with 8 ayes and 1 nay. Mueller then asked the board if they had any questions. Althouse asked if a 1898 representative was here. Mueller stated that there was not – they came to the last meeting. Althouse asked Jensen if 1898 recommendations and the issues they had were corrected.

Jensen stated they had issues with the single line drawing. The updated single line drawing was submitted by NextEra Energy without the batteries. It was submitted to 1898, who returned it and stated it looked good and met the regulations.

The second concern was the vegetation and having an inspection schedule. The question was submitted to NextEra. Under exhibit 1, page 17, NextEra can add an inspection schedule; however, the regulations already require NextEra to replace any damaged or dead plantings as soon as seasonally and commercially reasonable. They are happy to fine tune this to make it a little more specific.

The next concern was building permits. The project will obtain and provide all applicable permits and approvals in the table and building permit stage.

Althouse asked if there was a question about the site distance from the school. Jensen stated there was – and those items had been addressed in the Conditional Use agreement to make the distance 500 feet from the school.

Tesar asked about screening. Jensen stated it would be the same as the houses.

Felthousen asked about the 250-foot intersection setback. Jensen stated that it had already been addressed in the regulations.

Felthousen asked about road maintenance and dust control applications to be paid for by the applicant through the life span of the project managed by Cass County Roads Department. Jensen stated that a lot of these items were addressed by the Conditional Use agreement. Jensen stated the best thing he could do was to go ahead and read them. They are as follows:

The Project shall comply with the following conditions of approval. Applicant shall provide to the Zoning Administrator written evidence of compliance with all pre-construction requirements herein prior to commencing construction of the Project and may only commence construction once the Zoning Administrator has confirmed the same. “Commencement of construction” shall mean disturbance of soil on the Project site by Applicant to install Project improvements. “Completion of construction” shall mean the date the Project begins commercial operations. Applicant shall maintain compliance with these conditions as long as the Project is operational.

1. Prior to commencing construction, the Applicant shall obtain a building permit for the Project from the Zoning Administrator;
2. The Project shall meet all site development standards under the Regulations, including, without limitation, setbacks and visual screening requirements for adjacent residences;
3. The Project, at this time, shall not include the battery energy storage components in the Application, but this condition does not prohibit the Applicant from seeking approval for the battery energy storage components at a later date;
4. The Project shall comply with the Nebraska Electrical Code and all applicable building and safety codes;
5. Prior to commencing construction, the Applicant shall prepare an Emergency Response Plan and provide it to the Zoning Administrator and local first responders. The Applicant shall provide training to first responders within six months following completion of construction, and thereafter upon reasonable request.
6. Prior to commencing construction, the Applicant shall provide a Road Use and Maintenance Agreement and obtain the County Board’s approval;
7. Prior to commencing construction, the Applicant shall provide a Decommissioning Plan and Decommissioning Agreement in compliance with Sections 8.21.05(C)(8)-(9) and obtain the County Board’s approval;
8. Every five years following the County Board’s approval of this CUP, Applicant shall provide the Zoning Administrator an updated decommissioning cost estimate from a qualified third party and provide financial surety for decommissioning activities in compliance with Sections 8.21.05(C)(8)-(9);
9. Prior to commencing construction, the Applicant shall prepare a stormwater management plan and provide it to the Zoning Administrator;

10. Applicant shall complete all construction in compliance with a National Pollutant Discharge “NPDES” permit where the Nebraska Department of Environment and Energy requires, and where applicable, submit the permit to the Zoning Administrator;
11. Applicant shall construct, operate and maintain the Project in accordance with the Vegetation Management and Landscape Screening Plan attached to the Application;
12. Applicant shall commence construction within five years from the date the County Board approves this CUP, unless the County Board grants a longer period of time to commence construction;
13. Provided Applicant is in substantial compliance with the CUP and these Conditions of Approval (subject to notice and an opportunity to cure as described below), Applicant shall have the legal right to construct and operate the Project and this CUP shall remain in full force and effect until Applicant decommissions the Project, abandons the Project, subject to Section 8.21.05(E), or upon a violation of this CUP by the Applicant which violation remains uncured following 180 days’ advance written notice from the Zoning Administrator to the Applicant.
14. If Applicant sells the Project to any tax-exempt purchaser, such as a public power district, Applicant shall pay to the County within 30 days of the date of closing of such sale, a lump-sum payment of the net present value of the remaining estimated future tax revenue for the Project. Said payment shall consist of the estimated real property tax and tax due under Nebraska Revised Statutes section 77-6203 over the remainder of the Project’s estimated 30-year operational life.
15. The Project and the references to the Regulations herein, shall be subject only to the Regulations applicable as of the date of the Resolution below, regardless of any adoption of new zoning regulations or amendment to the Regulations that may be contrary to this approval. The Regulations existing as of the date of the Resolution below shall be the only Regulations that apply to the Project so long as it operates.

Felthousen asked about # 14 and whether that would include estimated future tax revenue to the school also. Jensen stated that it would indeed include the school. Althouse asked if NextEra had any comments on these items. Greenwald stated that the estimated tax revenue would also include the school. Mueller asked if there were any more questions or comments. Since there was none, he asked if anyone wanted to make a motion.

A motion was made by Tesar to approve CU-2024-0003 with the 15 items added to the Conditional Use agreement that doesn’t include the BESS or the batteries and adds item # 16 the setbacks of 500 feet and the screening for the school. Seconded by Althouse. Perrone told them at this point that they could now discuss this motion. Discussion followed with Staben stating that his motion was for discussion only. But Perrone stated that this is a new motion to recommend approval. The board can make any motion they want at this point. Mueller asked if there was any more discussion. Since there was none, a roll call vote followed with the following votes: A roll call vote followed with the following votes – Althouse -aye; Staben – nay; Tesar – aye; Mueller – aye; Dennis – nay; Felthousen – nay; Sullivan – aye; Crofoot – nay; Grotrian – nay. Motion failed with 4 ayes and 5 nays. There were questions about the gallery being able to speak during the meeting. It was decided that the Chair can allow anyone to speak.

At this point, Crofoot made a motion to recommend approval of CU-2024-0003 – Cass County Solar Nebraska, LLC as submitted with the following conditions:

**Pursuant to Findings of Fact**

**Section 7.06 Item I, Page 6- Glare**

Applicant shall remedy any verified glare issues at their expense.

**Section 7.06 Item K, Page 7**

Per the application, the applicants will bear all costs for road improvements, maintenance including dust control and repair around the project during construction, operation and maintenance.

**Pursuant to Applicant’s Conditions of Approval**

**Item 2, Page 8 & Item 15 Page 9 - Setback**

Applicant agrees to move setback for Conestoga School District from 350’ to 500’ to match residential setback.

**Item 3, Page 8 - Battery Storage**

If Applicant seeks future approval, it will abide by any Cass County zoning regulations pertaining to battery energy storage.

**Item 7, Page 8 - Decommissioning Plan & Agreement**

Prior to commencing construction, applicant will provide a 100-million-dollar Startup/Decommissioning bond as part of its Decommissioning Plan & Agreement.

**Item 8, Page 8 - Decommissioning Estimate**

The Decommissioning Estimate shall include a 20% Contingency Fee.

**Item 14, Page 9 - In Case of Sale to Public Utility**

Applicant shall also pay Conestoga School District, a lump sum payment of the net present value of the remaining estimated future Nameplate Capacity tax revenue.

**Additionally:**

Applicant agrees to mowing the right of way of all project properties.

Applicant shall provide the requirements for Vegetative Inspections and Frequency.

Applicant shall obtain all identified permits, forms, agency plans and approvals and a sound study as detailed by 1898 Exhibit F, page 11.

Applicant shall have all decommissioned, obsolete and/or damaged materials removed from properties within 90 days.

Seconded by Tesar. Discussion followed concerning the \$100-million dollar bond. Mueller stated that a bond is not required until the negative outweighs the positive value of the salvage value. Mueller then asked Greenwald to explain how this works. He stated this would supersede the state requirements and would be considered an additional bond. Althouse asked about the ability to flag the permit for followup—Jensen stated it can be done in the new system. Mueller asked if there were any more questions or comments. He then opened up the hearing for public comment. Four people came up with the following comments:

- Politically motivated – look at the big picture.
- Personal property – will all depreciate.
- Mega disaster for this county
- LLC is not a landowner. Not entitled to a CUP
- Law needs to be followed on this.
- Getting money for school is the most important part of this.
- Land valuation doesn't change.
- What happens if the school money goes away?

Perrone asked for clarification on the condition that they maintain property in and around the project area. He asked if this was for people that they don't have leases signed with. Crofoot stated it was just for the right-of-ways. Mueller asked if there was any more questions or discussion. Since there was none, he called for a roll call vote. A vote followed with the following votes: : A roll call vote followed with the following votes – Althouse -aye; Staben - abstain; Tesar – aye; Mueller – aye; Dennis – nay; Felthousen – nay; Sullivan – aye; Crofoot – nay; Grotrian – nay. Lost motion with 4 ayes to 4 nays.

A motion was made by Althouse to recommend approval with previous finding of facts and 15 conditions plus the 16<sup>th</sup> condition along with some of the conditions Crofoot added. Perrone asked how this motion was any different than the first motion that was voted on. Since it was the same as the first motion, Althouse withdrew his motion.

A motion was made by Tesar to recommend approval with removal of BESS and add in the 500-foot setback for the school with a neutral stance to go to the County Commissioners. Seconded by Althouse. Mueller asked if there was any discussion. Jensen stated that since this was a legal parliamentary issue that Perrone should answer it. At this point, Mueller opened it up to the gallery. One person stated that he didn't think they could legally do this. Perrone stated that they are taking a neutral position as saying that they don't want to make a recommendation. The person from the gallery stated that they have the option to send it to the Board with no recommendation period – not a neutral position. Perrone asked if that is what they are trying to do with this motion. Tesar stated that he used the term “neutral position”. Perrone asked Tesar if he wanted to amend his motion, but Tesar withdrew his motion instead.

A motion was made by Crofoot to send CU-2024-0003 to the Board with no recommendation. Seconded by Tesar. Mueller asked if there was any discussion. Grotrian asked how this motion was any different than sending a motion to not recommend to the Board? Mueller stated that they didn't have a motion for that.

At this point, David Levy from Baird Holms asked if he could make a recommendation. He suggested that they make a recommendation of denial. Then send it on to the County Board.

Crofoot withdrew his motion.

A new motion was made by Crofoot to deny recommendation of CU-2024-0003. Seconded by Sullivan. Mueller asked if there was any discussion from anyone. Since there was none, a roll call vote followed with the following votes – Althouse -aye; Staben – abstain; Tesar – nay; Mueller – nay; Dennis –aye; Felthousen – aye; Sullivan – aye; Crofoot – aye; Grotrian – aye. Motion carried with 6 ayes and 2 nays vote. This will go forward to the Board.

A motion was made by Crofoot to close the meeting. Seconded by Sullivan. A voice vote followed with all members voting aye. Meeting closed at 8:48 pm.

Linda Brouhard  
Recording Secretary

\*These minutes will not be approved until the next Planning Commission Meeting and are subject to change.