

HITCHCOCK COUNTY PLANNING COMMISSION

August 3, 2023
Trenton, Nebraska

The Hitchcock County Planning Commission met on Thursday August 3rd, 2023 at 6:30 p.m. in the Community Room, Hitchcock County Courthouse, 229 East D Street, Trenton, Nebraska as duly published. Notice of the meeting was given in advance thereof by publication in the *Hitchcock County News*, the designated method for giving notice. Notice of this meeting was given to the Chair and all members of the Board. Availability of the agenda was communicated in the advance notice and in the notice to the Commission members of this meeting. Agendas are posted on the County's website www.hitchcockcounty.ne.gov. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

Chair Dustin Ladenburger called the meeting to order at 6:30 p.m. and the roll was called. Those present were Dustin Ladenburger, Aaron Kolbet, Tom Monnahan, Dustin Webb, and Wayne Merrill. Chair declared a quorum. Also present, Recording Secretary Margaret Pollmann, County Attorney D. Eugene Garner, Assessor Terra Riggs, Commissioner Paul Nichols, Lenard Paxton, Tom Baker, Matthew Mondero and Zoning Administrator Mike Erickson

Chair advised all in attendance, that a current copy of the Nebraska Open Meetings Act was available for review, indicated the location of such copy in the room where the meeting was being held and offered the following statement: *It is the policy of the board that the formation of public policy is public business and may not be conducted in secret. The board conducts its business in accordance with the open meetings act.*

Chair Ladenburger recessed the regular meeting at 6:45 p.m. and opened the public hearing for the purpose of receiving comments from the public in attendance and to receive evidence regarding the proposed amendments to Hitchcock County Zoning Regulations. Said proposed amendment(s) address oil storage and lease tanks within the AG-G District, specifically including permitting and setbacks thereof.

Chair Ladenburger asked if there were any comments from proponents of the proposed amendment(s) to Hitchcock County Zoning Regulations. The following is synopsis of comments offered and questions asked:

- Leonard Paxton requested background information from Dustin Webb and Wayne Merrill and the same was given; land being sold and prior owner signing off on permit; in his opinion, current zoning regulations address the issues before the commission.
- Tom Baker indicated he was opposed to owner of the land being required to sign the zoning permit application and inquired if "owner of the land" included royalty interest owners.
- Matthew Mondero, Production Manager with Great Plains Energy inquired as to front and rear setbacks; further inquiry/discussion on land or owner signing off on permit; advised oil companies want to be good stewards of the land and wish to comply with regulations.
- Zoning Administrator Mike Erickson advised as to 100 year flood plane as it relates to tank batteries.

Extensive discussion held on the above topics by and between the Commission and those present. Attorney Garner advised as to the proposed amendment(s) and how they apply to current regulations and applicable law relating to questions arising during discussion. Also discussed was determination of setbacks as it related to the center line of county road right of ways.

Chair asked if there were any comments from opponents of the proposed amendment(s).

- Lenard Paxton: If regulations are changed to 50' setback, will said setback change for all other structures and if not, it appears you are "playing favorites".
- Paul Nichols: Inquired as to "variance" procedure

Attorney Garner advised as to the *Application for Variance* relating to non-conforming uses.

Discussion on zoning permit fees for existing tank batteries.

Chair inquired if there were any comments from a neutral position.

- Attorney Garner advised that pursuant to the regulations, a majority vote of the commission is required to recommend approval or disapproval of the amendment(s) to the County Board.
- Paul Nichols voiced concerns about the September 15th, 2023 deadline for obtaining zoning permits on existing oil storage and lease tanks.
- Matthew Mondero: Consider a blanket fee for companies with numerous storage tanks and locations.
- Lenard Paxton: Keep 58' setback same as "everything everywhere" instead of changing it to 50'.

Discussion on the option of land (surface) owners giving power of attorney to oil companies to sign off on permits and Attorney Garner advised as to the same.

Chair Ladenburger went through the proposed amendment(s) by page and asked for comments:

Page 1: No comments

Page 2: No comments

Page 3: Attorney Garner advised that the change was merely correcting a misnumber on the current regulations

Page 4:

- Lenard Paxton – 58' for future sites and inquired how many sites are now under 50'. Assessor Riggs advised as to research to date on the issue of current tank battery locations.
- Chair Ladenburger: 50' would be oil storage and lease tank specific.
- Zoning Administrator Erickson advised that pursuant to the zoning regulations there are different setback distances/requirements for specific structures.
- Discussion held on owners/operators obtaining permits by September 15, 2023. It was the consensus of the Commission to change this date to September 15, 2024.
- Discussion held on how the permitting process will be effectuated by current county employees.

Page 5: Section 805 – Permit being signed by owner of the land

- Matthew Mondero – a lot of legal issues arise on oil and gas leases and this course of action for the operation would make it more difficult to fulfill fiduciary duties to stakeholders.
- Assessor Riggs – the oil companies and land owners need to agree on a location and this issue appears to be outside the county's jurisdiction. Suggested a spreadsheet with locations rather than individual permits.

Chair Ladenburger closed the public hearing at 8:22 p.m. and the public meeting that was previously recessed was re-opened.

The minutes of the April 6th, 2023 were reviewed by the Commission. Chair inquired as to any additions or corrections. Member Monnahan moved to accept and approve the April 6, 2023 meeting minutes. Member Kolbet seconded the motion and after consideration, the following members voted in favor of the motion: Kolbet, Monnahan, Webb, Ladenburger and Merrill. Motion carried.

Member Kolbet moved to make the following findings based upon comments and information provided during the public hearing:

- (1) that said proposed amendments are consistent with the Hitchcock County Comprehensive Plan as said Plan pertains to the AG-G District within Hitchcock County, Nebraska;
- (2) that oil exploration and production is a vital component of the economic base within Hitchcock County, including without limitation, employment opportunities and tax basis;
- (3) that it is necessary and in the best interests of the County to amend current regulations to clarify the process to be followed in relation to locating and maintaining oil storage and lease tanks within the AG-G District in order to, among other purposes, (a) facilitate cooperation and communication by and between the operator(s) of said oil storage and lease tanks and the landowner; (b) promote orderly growth and

- development within the County; (c) minimize adverse impacts upon adjoining land uses; and (d) eliminate encroachment thereof upon county road right-of-way;
- (4) that said proposed amendments properly clarify and address the permitting and setback(s) of oil storage and lease tanks within the AG-G District;
 - (5) that throughout the AG-G District there currently exist numerous oil storage and lease tanks that are located within the “58 feet setback” established by Hitchcock County’s existing zoning regulations, and that while some of said oil storage and lease tanks may have been so located prior to June 1, 2001 (effective date of original zoning regulations), thereby possibly constituting “non-conforming uses” under the zoning regulations, owners of oil storage and lease tanks have generally neglected to file zoning permits, resulting in possible multiple violations of the zoning regulations and a significant lack of information/documentation necessary for proper administration and enforcement by the Zoning Administrator;
 - (6) that requiring relocation of all existing oil storage and lease tanks that may be in violation of said setbacks would likely result in excessive expense not only to the owner(s) thereof, but also to Hitchcock County in relation to effective enforcement action(s); and
 - (7) that by reducing the “58 feet setback” for oil storage and lease tanks, said proposed amendments reasonably address those existing oil storage and lease tanks, including any that may constitute “non-conforming uses” under the zoning regulations, by effectively implementing a retroactive permitting process resulting in the compilation of necessary information/documentation necessary for future administration and enforcement by the Zoning Administrator.

Member Monnahan seconded the motion, and after consideration the following members voted in favor of the motion: Merrill, Ladenburger, Webb, Kolbet, and Monnahan. Motion carried.

Member Kolbet moved to recommend to the Hitchcock County Board of Commissioners, APPROVAL of the proposed amendments to Hitchcock County Zoning Regulations as pages 1-5 inclusive and marked Exhibit “A”. Member Merrill seconded the motion and after consideration, the following members voted in favor of the motion: Merrill, Webb, Ladenburger, Kolbet, and Monnahan. Motion carried.

Member Merrill moved to authorize and direct Chair of the Hitchcock County Planning Commission to execute the Resolution/Recommendation of the Hitchcock County Planning Commission for and on behalf of the full body of the commission. Member Kolbet seconded the motion and after consideration, the following members voted in favor of the motion: Ladenburger, Merrill, Webb, Monnahan, and Kolbet. Motion carried.

Zoning Administrator Mike Erickson advised that it would be a good idea to look into regulations regarding solar farms and advised that Cale Giese with the Center for Local Policy could assist with this process.

There being no further business before the Commission, Chair Ladenburger adjourned the meeting at 8:56 p.m.

Dustin Ladenburger, Chair

Wayne Merrill, Secretary