

Call to Order @ 6:PM

Members: Mike Eslinger, Scott Harman, Kevin Haffner, Chris Renner

Other attendees: Liz Lundstrom, Nancy Evenoff, Wes Klein, Michael & Kaylene Berg, Linette & Kevin Irwin, Lori Hammer, Christina & Jesse Barbot, Deb & Gerry Burr, Marcia Jurgins, Kennie & Darlene Voegelé, Joe Grannis, Duane Miller, Rich Jurgens, Brock Morgen, Sheila Roth, Kris Waller, Jack Schuh (Basin Electric), Ben Sand (Crowley Fleck), Brittany Ganske, April Oster, Peggy Wolf, Judy Knoell, Signe Snortland, Dallas Maas, Rita Faut, Victoria Oberlander, Anita Roth, Betty Hunt, Jen Wolff, Cay Guthmiller, Wayne Windhorst, Mellissa Homuth; Stephanie Morales; Kristy Smith (Next Era), Nathan Richter, Deborah Smith, Kelsey Swift, Michelle Maas, Steve Guenthner, Cody Didier, Curt Eng, Casey Voigt, Justin Wanner, Andy Thomas, Mark Hafner, Elizabeth Wanner, Briana Scheid

Mike: This meeting today is only for Mercer County ND Ordinances not Beulah Planning and zoning. We are working on updating all of the ordinances one at a time and bringing them up to date along with making public comments on these. If these evening meetings work better, we will do them from now on. The next subcommittee meeting will be May 19th at 6PM. May 13th is the normal Planning and Zoning meeting at 7pm in Beulah.

We have the data center ready to present to our complete board. The most recent issue/comment we have received was regarding water usage. We did include that with the environmental impact. Ordinance needs to be broad enough to cover all the details.

The board will review the ordinances before the meeting. There will be a short time that we will have public comment. There may be a few areas there that may need addressing. If there is anything major that comes up, we can amend it at that time, or the board can vote it down then it would come back to the subcommittee then we would make the adjustments and send it back.

Jen: If approved on May 13th it will still need to be reviewed then if good, we will have the official public comments after. This will go into July more than likely.

Comment: Clarify, that is not a for sure date for reading this is just a possibility.

Mike: Correct, if everything goes smooth then it will be in June.

Comment: Reading through all this, on page 3 under noise. It says it strengthens everything, but everything is crossed out.

Mike: We are finding that most of the noise is not an issue.

Scott: A number of items are higher on the list than data center.

The reasons are stricken with noise mitigation, environment, construction maintenance standards, emergency, and traffic impact study those were relocated into two different sections. Because those would apply to power generation facility with similar impacts, or fertilizer. This all depends on the application. This is not only for data centers this is for all high impact. Noise mitigation requirements didn't change, but one thing that did was the low frequency.

Comment: Scott, I know that on the draft received it may go to other industrial usage. We were looking at this and the type of development that it lists we can go into more. When this moves forward, will that improve to all industrial usages or will it

Scott: Industrial district will look at them. We have not gotten into those yet.

Jen: That is on the agenda for the next P&Z meeting

Comment: At what point is there a discussion at planning and zoning for anything for the permit and conditional use permit. I do not understand how you can regulate after an application is sent in.

Scott: I'm understanding that whatever the industrial use or whatever is it, we won't know until the application is submitted. Everything comes in all shapes and sizes so we will need to see it to know. We will need to see to determine how intense or not intense it is. That would be a future step after the ordinances. The ordinances are just the guardrails on what the county would like to see. We won't know specifics till we get the application then we will set specifics.

Comment: What is the application? Is the ordinance the application? They must meet all those before they can come with for the application then you negotiate the permit?

Mike: Yes, they will look at minimum requirements, if they are willing to play within those then they will apply. After submitting it we can make specific recommendations about what we must have there. A block cell- no we don't have to accept for example. We can make all sorts of demands to protect the county and the citizens.

Comment: there is still confusion about what application, permit, and ordinances are. What we were given for an application was only a one-page thing. Are we going to make a different application?

Scott: The application is going to basically be an encyclopedia

Mike: The big thing we must keep in mind with the ordinances, once we issue the permit we have to make sure that what these companies say they are going to do they will do. This is where a compliance officer will check on this and we are working on this.

Comment: Is there any involvement to change or add to this draft? When can the public say hey you missed something.

Mike: June 10th is when you would be able to do this tentatively at 7Pm Beulah Civic Center.

Comment: People can send recommendation to Jen anytime. Her email is posted or you can drop off paper. She is taking recommendations; there is deadlines for each draft.

Mike: Moving onto the wind towers/wind farms. The ordinances we have in place were written not that long ago and we think they are good currently. But after taking phone calls and a survey, the number one thing is setbacks. We are looking at 2500 feet set back. That is also with Solar as well

Scott: I can see for giant wind towers the 2500 ft but why the solar?

Comment: The heat and reflection. You are collecting energy and it must go somewhere. It will be amplified by the panel.

Mike: Regarding other counties' ordinances they were really concerned about airports. I asked around, and why. Is it the reflection from the panels and what is the concern? We have it in our ordinances there is a setback on airports for solar.

Comment: Could it be due to glare?

Mike: That was my first thought, but according to Shawn (Pilot I know) that is not an issue.

Mike: The air force is mostly with this one since they fly at night. Here again getting back to wind towers and set back is the main issue. And if you look at a data farm, wind farm, and solar farm, and if the data center farm has a half mile set back where no one can live, then wind and solar should be the same.

Comment: Recommendation for setting back a half mile open to the county up for litigation. There are 6 counties that have a mile or greater setbacks, the only other county that has a ½ mile set back is dickey county. Why can we not have the mile setback as a minimum, if you don't have to live next to it, it's not a big deal, but if you live within the half mile of the wind towers or anything else it will be loud. Why can't we set a mile to protect the people in it. It would have knocked 12 wind towers out at the last project if this was set in place for a mile.

Mike: I don't also like to do what other counties do so we have our own with our county. Everything we do can be legally challenged by a lawyer. There is a clause that says if we make the restriction to great, we can be challenged in court saying we are discriminating against a company from moving in. We can be challenged in court for almost everything we do. If we make all the ordinances and setbacks the same, we can't say we are signaling out one thing. Two wind towers are a wind farm. If you go to court and say we are picking on you, no we are treating all industrial farms the same.

Lori: I believe that there is a difference from a data center vs a wind tower.

Mike: Yes, each is unique for itself. If you do a setback so they are out of sight out of mind, how farm can you go on a wind tower. Some of the setbacks on wind towers are safety such as flickers, weather conditions (Ice shards that come off). When we redid the wind towers ordinances, we included the 911 address. So, this added shops, hunting shacks, etc. so that way you couldn't have a wind tower next to a livable structure. Solar is safer than say a wind tower, but they all have their own issues. WE are trying to make it all the same so we cannot be challenged in court. I want the full board to here why we should have the full mike set back. There may be a farmer that says he is fine living within that area though.

Comment: You need evidence to back all three for the mile set back.

Mike: If anyone wants to live within that mile or half mile they can sign off on it.

Comment: Wouldn't that be part of the seller's agreement?

Mike: Yes, you are exactly right. That is what happened with the data center in Williston. These people moved in while it wasn't there but then it got built

Comment: Does it follow the owner or the property?

Mike: It would have to follow the property but that gets into legal.

Steve: That would be like an easement

Scott: I did not touch setbacks in the current draft. Simple things to make it more readable. The other comment that goes to the draft sections, I recommend instead of listing fees do it by resolution. Because that way you don't have to go back and amend the ordinances to update the fee amount. I think for a long time that the only easy way to have dual use for solar panels like goats. Solar panels can be placed up high so people with sheep, cattle, etc. can allow them to graze underneath. This was added. Another one was a solar via conditional use permit via agriculture and added that under industrial.

Mike: That is within a half mile. We will change wind and solar to half a mile.

Comments: Lots of saying no.

Mike: Should we leave the wind towers alone?

Comment: No, I say increase it.

Mike: Okay so I say increase it to half a mile

Wes: Where does it say in the state code you can do this. Where can you make these decisions.

Mike: I'm not making the decisions I am making recommendations

Comment: Is the reason it is at a half mile that the reason it is at a loss for the country if you increase it.

Mike: Yes, because if we go a mile, we must allow residence to stay there

Comment: What if we comprise to a $\frac{3}{4}$ of a mile instead?

Mike: The thing is we don't have to accept the permit regardless. If you are willing, can go 1 mile to the data center, if anyone within that mile can stay, we can make that correction. I would like to keep wind, solar, and battery at a half mile.

Comment: Page 6 paragraph c it already says a mile

Mike: If they are okay living next to a data center they have to sign off on it. If the company wants to reimburse them that is between them and the company. They cannot be forced off the land. If the people within that mile are happy then it's fine.

Comment: Whatever the setback is, I am not knowledgeable if your home is within that mile, and you say you can't live there. Does the data center have to buy you out or whatever?

Mike: They wouldn't get the permit then

Comment: Is the mile wall to wall or a property line?

Scott: As measured from property lines

Comment: Then it is really important it is a mile set back

Mike: Then people need to be okay with living within it.

Comment: Say my house is here within the mile and I do not want it they have to go another mile away, and they go further away to the next person, and they are not okay with it they need to move again?

Mike: Correct, Wind, solar battery's a half mile, and then a mile at a data center I think we have a deal

Comment: You need to move it to a mile

Mike: If you put a wind tower at a mile you are limiting a section and not allowing farmers to have that income.

Comment: Then move it to a mile and let them sign off if they are okay with it.

Comment: But no one is going to want to buy my farm if there are data centers around it.

Mike: You all need to understand that individual landowners have a right to do what they want with their property also. Everyone has different circumstances. Whether I am willing to sell or not I should have that right. Property owners have rights. I heard that 20% of the land getting farmed isn't farmed by the guy who owns it.

Comment: It is a common complaint especially NextEra, I think it's a hard thing that everyone else around you signs for it but you don't want to and they tell you Well it doesn't matter you're stuck with it anyways. You don't have a choice. I think a mile gives protection to you even if you are the only person in that mile that doesn't want it. Even in Oliver County there were a lot of people who didn't want to be around it but they are now.

Comment: What about power plants, they are currently 200 ft from the road.

Mike: We will get to that 1200 ft. What I have talked to and read is doable.

Mike: Scott is going to go over sand and gravel

Scott: Draft is put together a year ago. There are two different sections. Sand and gravel, and frac sand. The way I look at these is to make them as simple as possible. General sand and gravel which is everything except frac sand. Frac sand is everything for oil and gas. I did not change or mess with the language, this is more for legal review this gets into page 3 in the draft, part b & c Onsite inspections and vehicles. Roadworthiness, moving violations, might be out of the realm of P&Z because I have seen this come up in other counties as well. Might need to be removed. One possible, this is where I might need comments from the committee, how fine the frac sand is and how wind can pick it up. Operations are ceasing if there is a high wind.

Comment: What about mesh topper? Do we need to be more detailed by saying it can't be a mesh topper so the sand can't just pop out?

Mike: The load needs to be contained within the box, I am not a fan of the mesh topper most of the time they are ripped. Patrol would need to pull only 1 or 2 and fined the rest would come into compliance. We were sold with a completely enclosed box but that is not how it is.

Comment: Would that be controlled with more patrol or a compliance officer?

Mike: Would both.

Jen: A Compliance officer cannot pull someone over though.

Scott: On the property that would be a compliance officer, and off property it would be highway.

Mike: I would also like to move this to only be able to work during business hours. If there is an emergency or need to haul after dark they would just have to ask. Limiting them to drive during the daylight would limit them to cheat a little. It would be obvious then when they go down the road

Comment: Can we make this a county ordinance though?

Mike: I do for sure want this in the sand and gravel.

Mike: During a high wind warning they are supposed to stop operation, and there was like 8 days last year they did not do it. Sand in my mind needs to get treated differently than gravel, scoria doesn't blow like sand does.

Comment: Is there something that needs to be investigated for the roads. Because Water pools really bad now by Hazen.

Mike: The highway will do a road survey. They have a formula that only a certain number of trucks are allowed within a certain time. If there are more than the vehicles allowed, they may have to put in a turning lane, passing lane, etc. We will have to investigate this now.

Comment: Can there be something done because I eat a lot of sand going down the highway on my motorcycle.

Jen: Ramsey after 45 trucks must have to do a survey

Mike: If you have a complaint, come down and make a formal complaint. That way we can review this.

Comment: There has been a lot of talk about the compliance officer. This person is going to have to be MSHA trained.

Comment: What is the process of complaints? Send Jen an email?

Jen: I get calls all the time, but no one wants to put their name in writing. Needs to be in writing.

Comment: On reclamation, I am curious about this on all the ordinances. How enforceable are they. How do we enforce that? If we have the compliance officer, will they do that?

Mike: I think it is reevaluated every 5 years to make sure it is up to date.

Comment: If they sell it, does it go to the next buyer?

Mike: yes it would go with the buyer

Comment: Do they have to do this yearly or before they sell?

Mike: We must be notified before they sell. So, we can say no also.

Scott: One thing that will need to get added is battery storage.

Mike: Yes, we will need it.

Jen: Will that come to the subcommittee meeting first?

Mike: Yes, it will. Then hopefully we will go into something less conversational like subdivisions at the lake.

Liz: Is there something I can see regarding fire?

Mike: These companies need to go out to an emergency and tell them what to expect with the plants.

Comment: Do we have anything for man camps?

Mike: Man camps, they don't want to use that term, they want crew housing. This will be addressed.

Scott: In my mind it may go under the conditional use permit.

Mike: I thought about setbacks, really to me the most important time to me is during construction. With traffic and noise, the worst part is when they are building it. People who don't respect the land. Setbacks should be 3 miles during construction then go back to a half mile or mile after. If we can keep public away from construction site to be safer. This is something I stay up during the night thinking about. This is why I like having these conversations because it gets us all moving forward.

Comment: Who takes care of things during construction such as garbage? How do you go about dealing with that?

Mike: I wish I had an answer for that. Somebody has to make sure these companies follow the rules. We have specific ordinances they have to use the regional landfill.

Meeting adjourned at 8:35PM