



# Elko County Planning Commission

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## ELKO COUNTY PLANNING COMMISSION SPECIAL MEETING MINUTES

THURSDAY, JANUARY 13, 2011

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### 5:15 P.M. CALL TO ORDER:

Chairman Galyen called the special workshop meeting of the Elko County Planning Commission to order at 5:15 p.m. on **January 13, 2011**, in Suite 102, of the Nannini Administration Building, Elko, Nevada.

Members Present:                    David A. Galyen, Chairman  
   Mike Judd, Vice Chairman  
   Jack D. Larason  
   Dena Hartley  
   David Hough  
   Wilde Brough

Absent :                                 Milt Grisham– Excused

Others Present:                    John Kingwell, Associate Planner  
   Kelly Watson, Planning & Zoning Administrator  
   Kristin McQueary, District Attorney’s Office  
   Randy Brown, Director of Planning & Zoning  
   Rich Hamilton, Wind Working Group  
   Mary Royce, EnergyCo  
   Scott Baker, self  
   Katie McConnell, Spring Creek Association

### I. PLEDGE OF ALLEGIANCE:

Allegiance pledged.

### II. ELECTION OF OFFICERS:

### ACTION ITEM

Pursuant to Section 4-1-10 (A) of the Elko County Code at the first Planning Commission meeting of the year, a Chairman and Vice Chairman shall be elected from the voting members.

- Chair

Chairman Galyen asked for nominations for chairman.

Commissioner Larason moved to nominate Mike Judd for the position of chair. Commissioner Hartley seconded the motion and the motion passed unanimously.

**VOTE:**

AYE: David A. Galyen  
David Hough  
Jack Larason  
Wilde Brough  
Dena Hartley  
Mike Judd

NAY: None

ABSENT: Milt Grisham

ABSTENTIONS: None

Chairman Judd received the gavel from Commissioner Galyen.

- Vice Chair

Chairman Judd asked for nominations for vice chairman.

Commissioner Larason moved to nominate Commissioner Hartley as the Vice Chair. Commissioner Brough seconded the motion and the motion passed unanimously.

**VOTE:**

AYE: David A. Galyen  
David Hough  
Jack Larason  
Wilde Brough  
Dena Hartley  
Mike Judd

NAY: None

ABSENT: Milt Grisham

ABSTENTIONS: None

**III. COMMENTS BY THE GENERAL PUBLIC:**

**NON-ACTION ITEM**

There were no comments made by the public.

#### IV. PUBLIC HEARINGS:

#### ACTION ITEMS

##### **10-1500-0001, Wind Turbines & Towers – Code Development Workshop**

Elko County is in the process of developing a wind energy development code. The workshop topics will address minimum parcel sizes, setbacks and other health and safety concerns.

Mr. Kingwell indicated where the Planning Commission had stopped reviewing the draft ordinance at the last meeting and the issue of whether a conditional use permit would be required was still undecided.

There was discussion about whether a conditional use permit would be required for all private wind energy conversion systems or not.

Commissioner Brough asked if when the process is completed if Staff is anticipating a rush on applications for the use.

Mr. Kingwell stated there are people that are waiting to submit applications but he is unsure of the number of applications.

Commissioner Brough stated there is a lot of information not known yet and suggested a special use permit be used for the people that currently want to put them up until more information is available. He stated on the draft copy under rules of application there is a definition that states a private wind machine has a rated capacity of 100 kilowatts or less and is considered an accessory use and in the next sentence it indicates all private wind machines shall require a conditional use permit which seemed to be a contradiction and asked Mr. Kingwell for an explanation.

Mr. Kingwell indicated an accessory use is supportive or in conjunction with the permitted use which would be a home in a residential zoning and an accessory use is not a use that has to be on the property. He added that a conditional use permit would be required on the accessory use due to the impacts it could have on others.

Commissioner Hartley asked if the board agreed to require a conditional use permit for the use if at some time in the future that could be changed.

Mr. Kingwell indicated the code is fluid and if changes are needed to the code then changes are made.

Commissioner Hartley stated she liked the code the way it was written and she thought it was well written and thoughtful. She further stated she agreed with the process of a conditional use permit being required and asked since there is mandate by state statute if all of the requests would have to be granted.

Mrs. McQueary indicated that state statute wants the Counties to encourage the use and plan for it but doesn't require them to pass thoughtless ordinances in approving them.

Commissioner Hartley stated under the conditional use permit process the adjoining property owners would be notified and if there is enough opposition to the request it should hold a lot of weight with the Planning Commission and it is the Commission's responsibility to exercise good planning when it comes to the whole community.

There was some discussion about the requirement of a principal use being established before an accessory use.

Commissioner Galyen asked that a poll be taken of the Commissioners regarding their opinion on whether a conditional use permit should be required or not.

There was discussion about whether public comment should be allowed for each specific regulation in the code and due to the meeting being a special workshop on an important issue it was decided the public should be able to comment during the review of the code and provide input on the different regulations.

Chairman Judd asked for public comment on the matter of a conditional use permit being a requirement for the use of a private wind machine.

Rich Hamilton, former State Wind Outreach Team Leader also known as the Wind Working Group for the State of Nevada and on the State Energy Commissioners New Energy Industry Task Force and the State Office Energy Strike Force and is currently a wind energy developer who specializes in resource assessment, stated he was present at the request of one of the property owners in the area. He added that he was present to offer assistance but he has an interest since he is from the industry. He further stated he has worked on wind ordinances in counties in the State and there is specific guidance from the Department of Energy for County Commissioners on wind energy projects specifically and guidance of what we are and are not allowed to regulate in an ordinance. He added that in his opinion the decision to require a conditional use permit should be tiered by the size of the turbine where turbines over 100kw should be reviewed because of the potential impacts. He further stated that the economics for smaller machines is slim and the level of sophistication of the contractors who are going to be installing the turbines is not that great and require clear cut guidelines that would lean towards a building permit and the opportunity to apply for a variance if the turbine doesn't fit into the parameters.

Commissioner Brough asked where other counties are separating residential and commercial uses.

Mr. Hamilton responded that below 50kw would be residential or small wind and above that would be a commercial use of 100kw or more and that would be the threshold for a small wind turbine.

Chairman Judd asked Mr. Hamilton if he was familiar with Washoe County's code and how many special use permits have been issued.

Mr. Hamilton stated he thought there had been one wind project approved through the special use permit and most of the turbines that have been put in Washoe County are residential size and are under a permit and can go through meeting criteria.

Scott Baker stated he preferred a building permit be the only requirement.

Mary Royce, representing EnergyCo, stated there are seven people that have reservation rebate letters in Elko County for a 10kw wind turbine which will offset a 2200 square foot electric house.

Commissioner Brough asked if the turbine needs to be 90'.

Ms. Royce stated the ideal wind is at 100' according to the wind organizations that were mentioned by Mr. Hamilton and it is exponential with the best being at 100' and the blades circumference is about 23'.

Mr. Kingwell asked how the turbines are rated.

Ms. Royce answered that 1100kw a month at about 5-7 miles per hour wind. She indicated the 10kw machines are popular right now because of the NV Energy rebate and referred to an existing machine in Lander County and the reduction in the property owner's energy bill since it was installed. She further indicated that most of the parcels the turbines are on in Lander County are 5 acres and the wind turbines need to be within 600' of the inverter and meter which could mean the turbines would be within visibility of the neighbor. She stated that in Lander County there was a special use permit process where the neighbors were informed and if anyone had an objection they could present it at the meeting but the neighbors were not opposed and wanted to know how they could obtain a wind turbine also. She further stated she had visited the adjoining land owners of a parcel of land in Lander County that has a turbine located on it and the neighbors indicated they could hear the whirling of the turbine when they could hear the rustling of leaves on the tree.

Commissioner Larason stated he talked to Joe Lindsey, Building Inspector in Lander County, and asked him why they used the conditional use permit process and Mr. Lindsey answered they do not have an ordinance and chose to use the conditional use permit process. He further stated that the conditional use permit process was used because it was the only thing in place to use and he didn't want anyone assuming that the reason Lander County used it was because it was the best thing to do.

**MOTION:** Commissioner Larason moved to allow the permitting process to be a permit process as opposed to a conditional use process and if there is a zoning matter or anything else that prohibits the wind machine from being installed in that particular location then the parties involved will have to seek a variance before the permit will be issued. Commissioner Brough seconded the motion. The motion failed with Commissioners Galyen, Hough, Hartley and Chairman Judd voting against the motion.

**VOTE:**

AYE:	Jack Larason Wilde Brough
NAY:	David A. Galyen David Hough Dena Hartley Mike Judd
ABSENT:	Milt Grisham

ABSTENTIONS: None

**MOTION:** Commissioner Galyen moved to agree with Staff's recommendation of requiring a conditional use permit for wind towers. Commissioner Hough seconded the motion. The motion carried with Commissioner Larason and Commissioner Brough voting against.

**VOTE:**

AYE: David A. Galyen  
David Hough  
Dena Hartley  
Mike Judd

NAY: Jack Larason  
Wilde Brough

ABSENT: Milt Grisham

ABSTENTIONS: None

Mr. Kingwell stated the next big issue would be the overall height of the towers in residential districts from one acre to 39.99 acres.

Commissioner Galyen stated everything they have heard from the experts indicates that 40' will not work and there was some discussion as to what particular height would be beneficial and included in the draft ordinance.

Chairman Judd stated he assumed the Spring Creek Board of Architecture would have to give their approval for any towers to be constructed in Spring Creek and asked if the Spring Creek Board could maintain a 40' high tower requirement even if the County allowed 90'.

Mr. Kingwell indicated any homeowner's association that is legitimate would have to give their approval.

Commissioner Hartley indicated there is a stricter height requirement for accessory structures in Spring Creek.

Chairman Judd asked what the restriction was.

Katie McConnell, representing Spring Creek Association, stated Spring Creek has a rule and regulation that states 20' for windmills and 30' for accessory structures.

Commissioner Larason stated anything done at the County level doesn't bind Spring Creek and its residents since they have entered into an agreement to abide by Spring Creek's regulations.

Commissioner Brough asked if anything that is 40 acres and over has any height restrictions.

Mr. Kingwell stated in the Open Space zoning district which is at least 40 acres does not have any

height restrictions but residential districts from one to 39 acres have height restrictions.

Commissioner Hough stated the height restrictions are governed by the zoning district and need to be reviewed in relation to adjoining property and structures.

Randy Brown, Director of Planning & Zoning, stated that a conditional use permit has already been established as the required process and allows for review of health, safety and welfare of the structure that can also address the height of the structure. He added that this is an ancillary use and not an accessory use and all factors need to be taken into consideration which can be done through the conditional use permit process including establishing the height requirement.

Chairman Judd asked Mr. Brown if the requirement of a conditional use permit removes the need for a height requirement.

Mr. Brown stated he believed so and indicated the conditional use permit process will allow for review on a case by case basis.

Chairman Judd stated the height requirement is taken care of and will be reviewed on an individual basis through the conditional use permit process.

Mrs. McQueary recommended that a motion be made to include consideration of height part of the conditional use permit process on a wind turbine.

Commissioner Hough agreed that it should be done through the conditional use permit process.

Commissioner Hartley and Chairman Judd also agreed.

**MOTION:** Commissioner Hartley moved to include consideration of height part of the conditional use permit process on a wind turbine as stated by Mrs. McQueary. Commissioner Galyen seconded the motion and the motion passed unanimously.

**VOTE:**

AYE:	David A. Galyen David Hough Jack Larason Wilde Brough Dena Hartley Mike Judd
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NAY:	None
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ABSENT:	Milt Grisham
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ABSTENTIONS:	None
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Mr. Kingwell asked for clarification and indicated all of the height restrictions for wind turbines in the residential districts up to 40 acres will be removed and will be addressed during the conditional

use permit process.

Commissioner Hartley stated Mrs. McQueary's comments were in line with what is written in the draft being reviewed.

There was discussion whether the previous motion included the Open Space zoning district or not and it was suggested another motion be made for the Open Space zoning district regarding height restrictions.

**MOTION:** Commissioner Larason moved that private wind conversion systems in the Open Space zoning district are allowed to be 100'. The motion died for lack of a second.

**MOTION:** Commissioner Galyen moved that Open Space zoning districts would be treated as the residential districts with no height restrictions and would be reviewed during the conditional use permit process. Commissioner Hartley seconded the motion and the motion passed unanimously.

**VOTE:**

AYE: David A. Galyen  
David Hough  
Jack Larason  
Wilde Brough  
Dena Hartley  
Mike Judd

NAY: None

ABSENT: Milt Grisham

ABSTENTIONS: None

Mr. Kingwell read the setback portion of the Open Space zoning district in the proposed ordinance.

Commissioner Hough suggested the wording be changed to the height of the tower plus the radius of the blades, being the overall height. He stated he has a problem with paragraph (e) as it would be binding on subsequent owners.

There was discussion regarding when an agreement has been recorded how that would be disclosed to a possible purchaser or a subsequent owner of the parcel and if it should be included in the ordinance.

Mr. Hamilton indicated the state law says you can't inhibit the efficiency of wind and solar but you can regulate setbacks and height. He further indicated the diameter of the blades is something that should not be regulated because there can be two machines with the same nameplate with different rotor diameters. He stated what counts is not what the manufacturer states but how much of the wing is in the wind. He further stated when you are looking at the setbacks you need to look at the impacts to structures and not necessarily in reference to the property lines and gave some examples of different setbacks included in the codes of other cities and counties. He further indicated setbacks

are not a safety issue but more of a nuisance issue since the towers are set in concrete and will not fall over and are not dangerous or hazardous. He added that the structure needs to be well engineered and have an engineering stamp for protection of the neighborhood and purchaser of the wind turbine.

Discussion took place regarding wind turbines not being any more hazardous than other structures and how they could be damaged due to incidents such as fire and lightning similar to other structures.

Mr. Kingwell gave an overview of the information he reviewed to establish the proposed setbacks and maximum blade diameter.

Chairman Judd asked the other Commissioners for their comments on the setback requirements.

The Planning Commissioners gave their opinions on what the setbacks should be set at.

**MOTION:** Commissioner Hartley made a motion for page 6 (a) that the minimum setback requirement be one and a half times the tower height plus the radius of the rotors or turbines. Commissioner Larason seconded the motion.

Commissioner Larason asked why 6 (b) was not included in the motion.

Commissioner Hartley amended her motion to include 6 (b). Commissioner Larason seconded the amendment. The motion passed with Commissioner Brough voting against.

**VOTE:**

AYE: David A. Galyen  
David Hough  
Jack Larason  
Dena Hartley  
Mike Judd

NAY: Wilde Brough

ABSENT: Milt Grisham

ABSTENTIONS: None

There was discussion whether the motion and the amendment were correctly stated and voted on.

Chairman Judd called a ten minute recess.

Chairman Judd reconvened the meeting at 6:55 p.m.

Mrs. McQueary indicated during the break there was an issue that came up regarding making motions, amendments and voting. She stated if it is clear on the record then it is fine but if it is unclear it is best to withdraw any motions made and start over. She clarified if an amendment is

made to a motion and the original motion maker accepts the amendment as part of the main motion there only needs to be one vote on the motion which includes the amendment instead of having to vote first on the amendment and then the main motion. She added the person taking the minutes has to be clear on the action that is being taken.

There was discussion on the process needed for voting when there is an amendment made to a motion.

Mr. Kingwell continued reviewing the proposed ordinance beginning with 6(c) regarding setback exceptions for property abutting federal lands with documentation. He continued and upon reaching 6(e) asked what the pleasure of the board was on the item.

**MOTION:** Commissioner Hartley moved to keep 6(e) as written in the proposed draft ordinance. Commissioner Larason seconded the motion and the motion passed with Commissioner Hough voting against.

**VOTE:**

AYE: David A. Galyen  
Wilde Brough  
Jack Larason  
Dena Hartley  
Mike Judd

NAY: David Hough

ABSENT: Milt Grisham

ABSTENTIONS: None

Mr. Kingwell continued with the review of the proposed draft ordinance.

Chairman Judd indicated he had a problem with 7 regarding the diameter of the rotors and suggested that the requirement for the wind machine to be engineered would address the diameter size of the blades.

Commissioner Larason agreed that the manufacturer that is designing them will be required to provide engineering reports and felt that would be sufficient.

There was discussion regarding the diameter of the blades being an issue of safety or nuisance.

**MOTION:** Commissioner Hartley moved to accept items 7 and 8 as written. The motion died for the lack of a second.

Commissioner Larason stated logic would dictate the diameter and he didn't think items 7 and 8 are needed.

Chairman Judd indicated that there could be the possibility of someone marketing a rotor that is too

large as being better because of the size and recommended there be a guideline on the size of the blades.

Mrs. McQueary suggested a boundary be given whether it is a minimum or a maximum to help reduce the number of lawsuits that may be filed and provide Staff some guidelines when reviewing applications.

Mr. Kingwell suggested Mr. Hamilton be given the opportunity to provide information since he is more knowledgeable about the issue.

Mr. Hamilton stated the more wing you have in the wind the more electricity will be generated and recommended overall structure height be regulated instead of blade diameter. He further stated companies will not sell a commercial turbine that is inappropriately sited.

Commissioner Hough stated the setbacks had already been established and recommended the radius of the blades be a percentage of the height of the tower such as 12%.

There was continued discussion about whether the radius of the blades should be regulated or not.

Mr. Hamilton restated he felt the overall structure height is what should be regulated and could more easily be enforced. He added that larger turbines would be on higher towers and smaller turbines would be on smaller towers.

Commissioner Brough indicated he would agree with Commissioner Hough but would change the percentage to 15%.

Mr. Kingwell suggested the Planning Commission direct Staff to review the information further about the sizes of the blades and determine the reasoning for the restriction.

Chairman Judd directed Staff to find out what the manufacturers have available at this time and what the rotor lengths are and bring the information back to the Planning Commission at their next meeting.

Commissioner Hough indicated the manufacturers of the systems will market to a contractor who will in turn make a recommendation to the property owner based on the specific circumstance and the best value for the customer.

Ms. Royce submitted photographs of a 100' self supporting lattice tower with a 23' blade radius. She gave some further information on the different types of towers and systems. She restated that there are 7 Elko County residents that own from 2-40 acres that have their rebate reservations that will be submitting conditional use permit applications.

Mr. Hamilton stated in reference to 6(c) the BLM doesn't have a lot of guidance to the land that neighbors them and they will probably not respond to any requests.

Mr. Baker asked if there is a statutory right to a view.

Mrs. McQueary indicated there is not a statutory right.

Mr. Baker interjected that the answer would be no then.

Mrs. McQueary explained that statutes are not the only part of law but there is also case law that covers many aspects of property and in general to say there is not a statutory right isn't a full explanation.

Mr. Baker asked why every structure that is built doesn't have to have the opinion of everyone who it affects.

Mrs. McQueary answered the height restrictions contained in the different zoning districts are there for a reason and the opinion has been made by the virtue of an ordinance.

Chairman Judd closed the item to the public.

**V. STAFF AND COMMISSIONERS COMMENTS:**

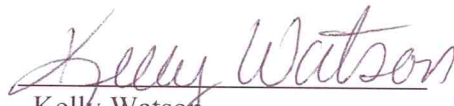
**NON-ACTION ITEM**

Chairman Judd thanked Commissioner Galyen for his service as chair and his ability to conduct the meetings in an efficient manner.

**VI. ADJOURNMENT**

Chairman Judd adjourned the meeting at 7:37 p.m., as there was no further business.

Minutes Clerk,

  
Kelly Watson

Date Approved, March 10, 2011