

September 12, 2017 1:03PM
Antelope County Board of Commissioners
Neligh, Nebraska

The Antelope County Board of Commissioners convened for a public hearing to Update Antelope County's Zoning Regulations on Tuesday, September 12, 2017 at 1:03 PM in the County Commissioner's Room, Antelope County Courthouse Annex, Neligh, Nebraska. Meeting was called to order by Chairman Kerkman, with the following board members responding to roll call: Schindler, Jacob, Henery, Schwager, and Kerkman. Chairman Kerkman stated that the open meeting laws are posted on the east wall of the Supervisors' room with more copies available at the County Clerk's Office.

Notice of the meeting was given in advance thereof by publication in the four county newspapers, legal newspapers printed and in general circulation in Antelope County, Nebraska as shown by proof of publication filed in the County Clerk's office. Agenda for said meeting was sent to all members of the County Board of Commissioners.

Pledge of Allegiance was recited.

Chairman Kerkman opens public hearing meeting. States Open Meetings Law is on the east wall of the meeting room, with additional copies available in the clerk's office.

LEROY KERKMAN: At this time we will stop and salute the flag with the Pledge of Allegiance. All recites the Pledge of Allegiance. LEROY KERKMAN: Roll call. Henery? Schwager? Schindler? Eli? And I am here. (All respond here.) At this time, I would like you all to shut off your cell phones. Eddie, that goes for you too. ED SCHINDLER: Yeah, it is off. LEROY KERKMAN: And one person talk at a time please. And when you get up here to speak, please introduce yourself because this is recorded. Ok, Liz you want to start us off here? LIZ DOERR: Ok. Just a little background. The Planning Commission had started on this a year... KEITH MARVIN: A couple of years ago. LIZ DOERR: A couple years ago, and anyhow, Keith Marvin is our consultant we have been working with. We had the public hearing a month and a half ago, or so, where the Planning Commission voted to send it to here. So now we are at the point of taking comments on both in favor or against or anything that is in the regulations, the Zoning Map and the Subdivision Draft. And so I will let Keith take it from here. KEITH MARVIN: Ok. Ah good afternoon. I am Keith Marvin. A couple of key notes that if you have gone through here that you need to be aware of. One: you have a lot more definitions than you do in your current regulations. The districts themselves have not changed significantly. They are basically the same names. We have added a little expansion on the map. Especially the RCI. We put that along all of the corridors. What that does is that allows you to continue to farm, but it also allows for some mix used development to go in at intersections along those routes. They are all basically highway routes. You will notice in here that the livestock section is probably a little but friendlier that it has been in the past. What is proposed is that no major confinement will be required to get a conditional use permit, unless they exceed 2500 animal units. So anything below that, they still have to meet the requirements, but they would/can get a permit from Liz, as opposed to doing the public hearing process with both Planning Commission and the County Board. We have key updates in here with regard to the adult entertainment. In the last two to three years if you have been paying attention there have been several counties in the state that have been sued for \$150,000,000.00 each, by one individual. Claiming their regulations were unconstitutional. What you have in here is modeled off of what was coming out of the meetings, with like Hall County, and all that NIRMA was working with them on to develop. So that is what we followed on here. A couple of key items on that you will no longer see that they are a conditional use permit. We've got a page or so about different things they will have to meet up front. The courts have ruled that if you do that, you cannot do a conditional use permit. They have ruled that that is basically hitting the nail twice with the hammer, as opposed to just having one (1) set of rules. The other thing is you have got to have them in key locations. They have got to be able to locate that equals roughly 3 to 5 percent of your jurisdiction in this county. Now, as I have told other counties, just because they may be allowed in an RCI, does not mean that whole area is going to get a bunch of adult entertainment. You are going to probably, if you even see one in this direction, you will see one probably and it will go wherever they can find what they want to work with and it will be done. Most of these are required under these guidelines to be no more than a quarter mile of the highway. That helps law enforcement keep an eye on them. So, what you are regulating with

adult entertainment is not the actual business itself but the secondary effects that go along with that. That meaning prostitution, drugs, etc. So that is how, that is what we are allowed to do, and how we can regulate them. A key on here is anybody who would go in and they have dancers, the stage has got to be 18 inches off the ground and nobody can be closer than six (6) feet from the stage. That keeps the separation of individuals involved in those activities. Those are all things that are eligible and have been ruled to be constitutional. The other thing that has probably been the biggest thing that you are going to deal with today is wind. Your current regulations stipulate 2000 feet from a non-participating (land owner). The proposal you have in front of you is 2700 feet. We also have a regulation in here that I believe limits it to two (2) turbines per non-participating between 2700 foot setback and a 4000 foot setback. So what that does is it keeps those turbines from having several of them pleased around one non-conforming person. So, there is a number of other things that are taking place. At this point, the proposal, because of the distance would eliminate any issues with noise. Part of that is coming I believe – refresh me that has come from kind of the attorney as well, did it not Liz? Because of the issues you had with the noise studies. We are trying to use the separation distance as that buffer. As it has been noted in the other meetings – we are jumping to 2700 feet, your rules are 2000. We have not seen how the 2000 feet works yet, because they are being built as we are having this hearing. Ah, is there anything I missed Liz?

LIZ DOERR: Ah, maybe touch on the pipeline, and how we dealt with that. KEITH MARVIN: We did have some initial stuff on the pipeline. There was some belief; well there is some information that your attorney is not comfortable where it is at right now and trying to deal with the enforcement. The Feds can come in and override you on certain things. What the Planning Commission on wanted to do, and what I suggested was to eliminate it out of this draft, and once this gets approved I will go back and I am going to write a basic pipeline rule that deals with protecting that area around it based upon the pressure in the line and some other things so that there is nothing built in those areas and they have to stay so far back as well from different buildings of they come through. So, that is one thing that we may do. It is up to you gentleman, if you want to I guess, pursue that anyway, after this point as well. But, it is not in here at this point. I guess the last thing for the first time since you been doing this, since 1998-1999. We proposed some set of subdivision regulations, they are very basic. This gives you a better way of tracking what is going on out there when people divide the land. Just for basic information, the state defines a subdivision as anytime you take a parcel and divide it into two (2) or more parcels and the smallest resulting lot is ten (10) acres or less. So if someone comes in here and does an eleven – splits off an acreage that is twelve (12) acres – that is not a subdivision that continues as you have been doing. What we are trying to do – this also helps the assessor keep track of what is going on out there with land divisions. So there is some basic rules in here, but most of the time those aren't going to kick in unless you get someone wanting to do a major subdivision within your jurisdiction. Most of that is probably going to happen in the communities. So, questions from you guys?

LEROY KERKMAN: Not at this time. KEITH MARVIN: Ok. ED SCHINDLER: I've got one. KEITH MARVIN: Ok. ED SCHINDLER: 2700 feet? KEITH MARVIN: Yes. ED SCHINDLER: Where is that from? KEITH MARVIN: That's from the residence. ED SCHINDLER: To? KEITH MARVIN: To the center of the turbine. (Indistinct words) LEROY KERKMAN: Come up here you've got to be recorded. JUDY WILCOX: I just want you to clarify one of the statements I thought was wrong. You said you haven't tried the 2000 foot rule. Prairie Breeze II and III are 2000 foot. So, they have had experience. KEITH MARVIN: I thought the first one that they were doing that was being constructed was the one going up right now. JUDY WILCOX: Prairie Breeze II and III is 2000 feet. KEITH MARVIN: Ok. JUDY WILCOX: Correct me Liz, if I am wrong. LIZ DOERR: I am not sure. JUDY WILCOX: There is one (1) 2000 feet from our house which is the closest they could put it. LIZ DOERR: But, I think the setback at that time was 1500 feet. JUDY WILCOX: No it was 2000 feet. LEROY KERKMAN: Ok. JUDY WILCOX: It was 2000. JERALD SCHWAGER: It was 2000 at that time. LIZ DOERR: It was before me. KEITH MARVIN: Ok. Alright, I guess I was under the impression that that changed prior to the new one going up right now. LEROY KERKMAN: So where do you want to start with this? KEITH MARVIN: Well, it is up to you gentleman if you want to start taking testimony, or ask questions of like me or Liz. ED SCHINDLER: Start the testimonies. LEROY KERKMAN: Let's do the testimonies. Some of this is probably... the parts you read about the houses going in or whatever, why. Ok, where do we start at here? The zoning thing for the wind towers? KEITH MARVIN: Basically, you can just ask people to come up and state their name as you already asked them then they can state their comments and... ED SCHINDLER: And what issues. LEROY KERKMAN: Ok, let's do that on the wind. What's the issue? Ok, whoever wants to come up, why...? CHARLIE HENERY: Are you going to ask for and against? JERALD SCHWAGER: We should have them testify for and against. LEROY KERKMAN: We should have them do that by for and against. Should we do the against this time first, beings we did it the other way last time? (CHARLIE HENERY: You are the boss.) Let's do the against first. Ok. Holly do you want to come up here so she can hear you? HOLLY MEURET: Good afternoon everybody. I am Holly Meuret, from

Brunswick. I have lived there for 40 years. My family, or my husband's family have been there for several generations. I want to thank-you for doing a thankless job, once again. I know it is a headache, and everybody is tired of the subject, I am sure. I bet everybody is, including myself. I think the Zoning Committee, I thank them too, they did a wonderful job. But, they are tired of it as well. I think they were remise in leaving out the noise restrictions there. I was a little bit laxed in getting to all the zoning meetings. Primarily because I assumed, wrongly assumed, they would do what I would consider the right thing. I was wrong. So, I didn't attend many of the meetings, and I should have. So in that case I am here now, pleading with you to put in some zoning restrictions. I don't think the distance is enough. I think if you don't, if you avoid the zoning restrictions it is going to get abused. If not in ten years, it might be in twenty years. Who knows? But you just can't ignore it and let it go away. It is that important, you have to have some noise restrictions. Thank you! Short and sweet and two the point. JERALD SCHWAGER: Thank you. LEROY KERKMAN: I've got a question. Should the noise level be on everything out there? HOLLY MEURET: Um, I don't know what the zoning is for everything else. I don't... LEROY KERKMAN: Like irrigation motors, and so forth if they are against the house, or drying fans? CHARLIE HENERY: Or drying fans? HOLLY MEURET: I don't know on that one. But yeah, I think there should be some. I guess I am not familiar with what it is currently. That is up to our Zoning Board and you guys. Cause yeah, most of us have fans. Yeah you name it. It is out there. We are an Ag based county. This is not agriculture at all, it is industry and I would like to see it addressed as such. LEROY KERKMAN: Ok. HOLLY MEURET: Thank you. LEROY KERKMAN: You bet. Next person. JUDY WILCOX: Hello, my name is Judy Wilcox. I live in Prairie Breeze II. Which I believe, Mr. Marvin, was with the rules at that end; and it was changed to 2000 feet in Prairie Breeze II and III to clarify that. To comment on his clustering suggestion, I think around us, which we have complained many times about that clustering, it would maybe remove (2) at most from around our place. And there is, I don't know where do you want to draw the line at clustering. But we have a symphony around us that is created from the ones that are further than the 4000 foot. So taking two from around would not alleviate the clustering. So I guess the main thing we have come up here about time and time again, is the noise. And over the years you have had complaints about the noise at the 50dBa noise limit from people who live 1000 miles from a tower, or 1000 feet from a town. I wish it was 1000 miles. Slip there. 2000 feet, like us. 2,700 foot, which Susan Berg complained about at the 50dBa noise level. Now, instead of addressing the noise you are still addressing the distance. And he proposes to move it to a distance. And he proposes to move it to a distance where you already had house complaints. And where her noise levels were within perhaps a decibel of what it is at our house. So, I just feel that the logical way to handle all of these complaints to deal with the noise. Make it a reasonable level at the homes. The distance will probably take care of itself. Uh. And all of the complaints has not just been about the noise and infrasound. At past meetings we have asked you to follow GE's guidelines for setbacks and in ice lane control. They have setbacks from property lines, instead of homes to remove the shadow flicker from homes. Which they can do with a flip of a switch, or they don't have to flip a switch. There are controls that they can put on them when they know a flicker is going to be on a house. We do not have that problem. I know of others that do. That can be controlled. But it has never been addressed. So why aren't we addressing the problems that people have complained about? Ignoring them is not going to them go away. And it is compressing the health and safety of anybody else that they build a tower next to. So, to me, it is comparable to if a neighborhood is complaining that people are driving too fast past their homes and they ask for the speed limit to be reduced, or at least enforced. What happens? They remove the speed limit entirely because they do not want enforce it. That is what is happening with our noise limits. So, I am requesting that you do not approve the wind tower section of this at all for now. Continue it in a moratorium. Conduct a survey in the county, of the people who live in these projects and within a certain distance of the projects. The ones that have the experience to know what works, and what doesn't work. So, if you would consider doing this, I would willingly offer to help draw up a survey to put out to people for what they think have been the problems and what the corrections would be. Let's draw on the resources of our people who have lived through these problems to draw up guidelines that will work for the county. So instead of throwing the noise limits out, let's control the noise. Thank you. LEROY KERKMAN: Next. DEAN SMITH: Dean Smith, Brunswick. And I voiced my concerns to the Zoning Board at the final meeting that they made a grave error in removing of the decibels. I don't know if you guys have, you have it at your discretion, studied the decibel study that was done on the properties in Prairie Breeze II, or whichever project that is and look at the distance of those towers. Study the distance of those towers. So that you know yourself then that 2700 foot is going to stop it. By the studies that have already been done on existing towers. I don't know where anyone has, I mean, you will be making a... a... what do I want to say? Well, I can't come up with the word. But, you will be adopting an ordinance with no decibels on wind energy will make it a first. If that is what you want to be. If you think everybody has the ability and the knowledge to know what distance it

takes. I happened to be just five (5) days ago – I was in northern Holt County. I was on the north side of that project – I was a mile away – and I sat there in the middle of the road and I listened to a sound that I would equate to a jet or airplane getting ready to take off. But it never took off. I videoed it on my cell phone, and was able to, with the cheapness of a video machine on a cell phone, I could record that noise. And I was away from the closest towers. I was on the north side of that project. So, that is not 2700 feet. The shadow flicker was taken completely out. They think that 2700 foot will stop shadow flicker. That sense isn't any of the research I have done myself. Ah, in here, and I believe I printed this off this morning. Is that what the final document would like, would come off your website this morning, Liz, without any changes? KEITH MARVIN: That looks like it has got the red lines in it the way it is printed, so. LIZ DOERR: Yeah, what was on the... DEAN SMITH: Ok, I asked this question, and I still don't know, I see it is listed in here, Ice Breaking. I assume it is referring to the slinging. It is on page 114, of the resolutions. Ah, ice breaking; it is spelled the same as if I break a window – that kind of break. KEITH MARVIN: Purely an oversight. DEAN SMITH: Now, is that what that means? Um, it says... Ice Braking means built to an individual turbine to shut down the turbine to ice buildup is detected. Now, is there that technology available? And by braking, do we mean once it breaks something or do we mean B-R-A-K-E? As in attempting to stop it? So yes, I would agree with Judy. If you feel you are comfortable with all of the other changes that have been made in this document go forward. Leave the wind energy out of it. The Zoning Committee had gotten to where they didn't like wrestling with it any more. It is time consuming. As I have presented to them, and I have presented to you. As of right now, yes, Holt County has more towers than Antelope County does – in production. But once Upstream is completed we will be larger than them and larger than any other county in the state. Do we know what we are saddling our future generations with? And the comment on the decibels as an irrigation motor or a grain bin fan, that is always brought up. If any one of you want to feel that the noise of an irrigation motor or grain bin fan is as bad, than I will ask you, are any of those 24/7/365? Anyone, that has to listen to the neighbors irrigation motor? Is that 24/7/365? The grain bin fan? Same question. We are dealing with issues, I do not know the answers. By no means am I saying what needs to be done. All I know is the research that I have done in the other parts of the nation where wind towers have been an issue. And this all comes up. And, 50 decibel is not even adequate. But we have been at 50 decibel. And now they are taking that out, they are taking it completely out. So then, how rampant. I mean, as far as I am concerned, I am prepared, let's go to the Wild Wild West. That is what we are going to be. For the length and the duration of these contracts. The contracts that I have had access to on these developments are for 25 years renewable for another 25. So we are all saddling for 50 years, these decisions. As far as a moratorium, you know, I guess, I don't think that you should feel that you are inconveniencing anyone with a moratorium. Now, it did not make it out of committee, but it is being worked on. Senator Breuer last year introduced to the Natural Resources Committee to put a two (2) year moratorium on Wind Development will we know more across the state. So, now it did not make it out of committee, and it will be introduced again. So it is not just like if you put a moratorium on here until you do more fact finding, I don't think you need to, matter of fact I think you need to, matter of fact I think you need to feel more comfortable with yourself that you are doing a thorough job. Uh, there has got to be a decibel. I guess, that's all I got. Oh, no I am sorry; I do have one more comment. And I guess this has been in the Zoning Regulations from the beginning, and where it was placed I never noticed it. I had overlooked it all the time. But, I did bring it up when I finally did realize it had been in the Zoning I guess since we had wind regulations. And I will bring up to you now, and it is still in there. Uh, what we are requesting for the non-participating. Just the few people that have not signed contracts. Ok, why then in this ordinance, if we are not to have a concern about decibels or shadow flicker, why does a participating residence have a 1000 foot setback from a wind tower? There has always been all of this discussion, they spent tremendous amount of time on it in the Zoning. You know, well if we go 2700 foot from a house you can't have a tower built look at all those acres, look at all those places that we are saying towers can't be built. Now we are just talking non-participating. So you can't go to every residence, put 2700 foot on it, so if there is a shortage of area to build towers on, someone id benefitting financially from having signed agreement. Let's put them closer to them, to utilize more acres to get more. Give that residence the same setback as you give my property line. You are only going to set it back; I believe 1.1 from my property line. I would day that persons house deserves that. The same respect as my property line. But, if there is not a problem with shadow flicker, and they are gaining monetarily from having one there they should be more than happy to have them placed anywhere on their property. I see no reason not to. And then that gives them more area to build towers on. It allows those of us that choose not to have some happiness. Now, the comments going to be made, "Well maybe the person signed up – and didn't get a tower – you know – and that house didn't get a tower, but the neighbor across the road got one." If they signed up, they rolled the dice – you know. You buy a piece of property, you buy a house, you do anything you hope to make money on it. If you signed that contract, if the developer promised you a

tower by signing that contract – than that is between the developer and that property owner. But if you signed it knowing you might get a tower, you might get nothing, you might get underground line. You know that is between them. But I mean that is just rolling the dice – when you signed up. Unless they guaranteed you a tower. Then like I say that is between the, and that person. But anyway, if there is a concern, “Where are we going to build towers?” By giving the non-participating one 2700 or 3000 feet. 3000 feet is what we really requested you know, from a non-participating. Then look how much area you have opened up by building closer to those that are benefiting. I guess, think about that, if you would please. I appreciate your time. Thank you. LEROY KERKMAN: Thank you. Next person. Gary. GARY BORER: I will be pretty brief, I just wrote something up, I think it is worth considering. “If the Zoning Rules are approved without the noise limits the county will take on a liability for the wind tower noise. 50 decibels is the excepted limit through the World Health Organization says anything over 40 (decibels) is harmful. By approving these regulations, without a noise, approving these regulations without a noise limit will relieve the developer from all liabilities from wind noise and out it all on the County. It would also allow the developer to install larger and noisier wind towers – without taking responsibility for the noise. Again the county would be responsible because the industry standard is 50 decibels. Thank you. LEROY KERKMAN: Thank you. Anybody else? Come on up here. LEROY BECKER: I copied this off this morning. (Hands out paper *Science deniers in the wind industry*.) KERKMAN/DOERR: State your name. LEROY BECKER: Leroy Becker, You don’t need my address I guess. But I live west of Elgin. I just copied this off my computer this morning. I have had it there quite a while. You guys may have seen it. But uh. Who do I give copies to? You too? It is up to you. I do not know all of you here. ED SCHINDLER: We will take one and one down here. LEROY BECKER: I would like to have you read this over. Maybe you have seen it. JERALD SCHWAGER: Do you got an extra one? LEROY BECKER: You bet, I’ve got several copies. And, all that I can say is even half of what is on here is true, it is a cause for serious concern. And if even half of what is on here is true all that I can say is that these neighbors out here in the country must not like each other. And perhaps you guys don’t like the people that live out there in the country, if half of it is true. And I believe it is. I have talked to enough people that have similar experiences. Where your liability stands on this, I do not know. I do not like the lawyers. I have had to deal with a few of them in my lifetime. What you are dealing with though, I am sure like the wind industry are written by some very, very sharp lawyers. And I believe that is all I have to say. If you would study this so you know, and come to your own conclusions. I might add, there is, if you go to the computer and type in this title, there is a lot more information. Anybody else here need/want a copy of this here? KEITH MARVIN: I will take one and look at it. LEROY BECKER: Gentleman, we do not have to live out there in the country. I have lived there for 20 years now. And the beauty and the peacefulness of the countryside out there when we moved there was clearly one thing that motivated us to move where we are. We used to brag that we were 50 miles from the nearest red light, and loved it. Now we look out there on our Southeast horizon... Uh, not that I guess that makes anybody any difference. I guess I was looking for a place when I bought what we have and I am still looking. So we got one more thing. I have a distant relative that farms out southeast of you. Several quarters out there. As I understand he did not want a single wind tower on his property. He farms with big equipment; I guess he figured them towers would be in his way. Uh, speaking, I cannot speak for him, I guess I do not know what all went into his decisions. The point is, if you drive the small farmers out of there, and it all goes to 24 row equipment or bigger, I do not think that a lot of them guys aren’t going to be real happy either. So it is kind of a no win situation in my opinion... Thank you. LEROY KERKMAN: Ok, thank you. ... Anybody else? ANN SIMMONS: Hi. Ann Simmons. I did not really intend to talk about the wind too much, because I have done enough of that. But, you know they are still there. Um, and I still think there should be a decibel for them. You know, I think that is something that would benefit everybody sitting here. I think you guys, somebody has got to be liable if somebody makes a complaint. And if you have a decibel sitting there you know, you have at least done your job. I think by not having any... I do not know if there is anywhere in the whole United States that they do not look at the decibel systems, you know, while they are putting these up. I don’t know what you want to put it at, that is up to you. But, I think there needs to be something there just for liability reasons for yourselves, so, and for our county. Um, I just had a question on... are we doing the – are you voting today also, on like how many homes you can put on a quarter, and all those regulations today? KEITH MARVIN: That is part of it. LEROY KERKMAN: That is part of the hearing that we are going to have. Then we will decide what we are going to do. LIZ DOERR: Keith, but didn’t we take that out? ANN SIMMONS: Is it all; is it all in one big...? KEITH MARVIN: Well, it has been removed. There is no limit. ANN SIMMONS: There is none. That part has been removed then? LIZ DOERR: They took that part out. But it could go back in. Is that what you...? ANN SIMMONS: Yeah. So could that go back in today? LIZ DOERR: Are you wanting it or not wanting it? ANN SIMMONS: I am not wanting it because, I think that. LEROY KERKMAN: No, I don’t see any reason for it.

JERALD SCHWAGER: It is removed so you can build two or three houses if you want on a quarter? LIZ DOERR: Yes, the Planning Commission decided they didn't want to deal with the density. So they took that out. ANN SIMMONS: Ok. I just agreed. LIZ DOERR: But, if you wanted it back in, today is the... ANN SIMMONS: No, I just agreed that there should be, you know we should be able to decide a little bit what we want to do without own land is all. Uh, thank you. LEROY KERKMAN: That is a key point there. Decide what you want to do with your own land... Anybody else? ... Holly? HOLLY MEURET: One last comment if I could. Holly Meuret, Brunswick. I can't imagine why the wind industry wouldn't be ok with the decibel levels. They are beholding to the people. They want more wind turbines. I would think they would give us what we want. Given that, if anything I urge you to error on the side of caution. Put in those decibels, you have got nothing to lose, and neither do they. So please consider that. LEROY KERKMAN: Anybody else on the opposition side? If not, we are going to move to those in favor. Anybody want to start that off? JOSH FRAMEL: Good afternoon. My name is Josh Framel with Invenergy. I want to thank the commissioner board for the hearing today. And for the work they have done in writing this ordinance. A lot of review, it has gone back and forth. I am glad things are moving along. I wanted to basically hand out some comments for folks to review about the ordinance as it is written as it focuses on wind. As I go through that... In general... LIZ DOERR: Josh? JOSH FRAMEL: Yes. (5 seconds) The first page, I broke it down into a couple of key items. In general, we are happy to work with regulations. We want to try and strike a balance between what folks are looking at, and what will allow projects to be built economically. Obviously, there is folks who wants these big projects and will host wind farms. You guys have three (3) projects in your county already. Holt County has large projects. This is a good spot for wind. It is a good fit with farming. But we want there to be a balance so there can be safe ordinances and regulations which will not just drive business out of your county. I broke this down into a couple of things. The first one, um, during the process of going to the Zoning Commission they adjusted the setback from a right-of-way to 1.5 times the length of the blade, but did not match that to a property line. I feel that to be consistent through the setback, the following pages here show that attached, of that section. I referenced that on page 117. As it is now, the current zoning regulations again, the current regulations, we own a permanent project underneath that. So, in general I would like to recommend it stay the way it is. 1.1 times the blade. But, at a minimum, I request the property line match the right-of-way setback. Um, people have talked about further distance. The structure that the Zoning Board set up is one that is trying to simplify the ordinance where instead of having different measurements and enforcement action; they would be larger setbacks which would be 2700. You know, I would say if there is going to be changes to that, that is not to larger setbacks and limitations on sound or shadow, one or the other. Clustering, you know you have a larger set back from the non-participating houses. Clustering is sort of a new concept. It creates a – you know, basically a circle of 4000 foot; with a diameter of 8000 feet from a non-participating house. Where it really eliminating people's ability to participate in the project. Number four (4) is really about the decommissioning language. Going through the process and selling what was done with Upstream that was handled with the Commissioners. The proposed language is convoluted and overly complicated. And what you have now, you have already been through the process. The county has been through the process. It worked. The bond is in place. The language setting up that should go in. I think the proposed language is unduly burdened. The last couple of items are more cleanup items. You know some of the things that were mentioned regarding the ice breaking. I believe the intent is probably B-R-A-K-E. So there are a few things that I sort of broke out that are more cleanup. I would be happy to answer questions on those. My point out there to Liz before, just sort of gets them cleaned up. The main one is in the setback table. There are two (2) provisions, they contradict each other. I think there was some language that was accidentally removed. The way I believe the Planning Commission intended it is the first setback from a right-of-way is 1.5 times the blade, if the ice braking software is in place on a machine, the second one is if it is not. We will just list both of those now, so it does not need clarification language. Maybe there is some red lines I did not see. But, I wanted to mention that out of those comments, in general, it has been good working with the county. We would like to continue to do business in Antelope County. We are hoping to get started on Upstream in the near future and would like to do further projects. So I would ask that you adopt these changes, and look forward to answering any questions. CHARLIE HENERY: Keith, the first thing he addressed was the setback thing. Was that a typo, or was that meant by the Zoning Commission to put it is that language? KEITH MARVIN: That is based on a language that I was directed to use. I think with regard to the braking stuff, I am looking at the marked up copy that I sent back to the Planning Commission. It shows that ice braking procedures, as far as the setback being deleted. And it is just strictly 1.5 times the blade length from a property line. JOSH FRAMEL: Sure if that is the version then Netcom doesn't apply. The version I had, had two (2) different... KEITH MARVIN: Yeah. I mean. CHARLIE HENERY: Repeat that? Would you for me please on the ice braking? It has... JERALD SCHWAGER: So is it 1.1 or 1.5?

KEITH MARVIN: Originally, we had in there a suggestion to go 1.5 times the total height if the ice braking procedures are put in place during that conditional use process. Otherwise, the setback would be 1.5 times the hub height plus the rotor diameter. Which is a GE setback for ice throw. And based upon my notes, the Planning Commission had me go back to 1.5 times the blade length. (16 second pause) LEROY KERKMAN: The 1.5 times the blade length, is that considered (inaudible word) on ice throw too, or what? KEITH MARVIN: No, it was just based on, they went to simplified requirements. Liz, am I correct? LIZ DOERR: Um, I am going to have to do a little research back into that. I had thought the two different lengths, like for the road right-of-ways and other right right-of-ways. One was with the ice breaking procedures and one without. But, on the original copy that the Planning Commission got it shows it as crossed out. But that wasn't the copy we had at the hearing. KEITH MARVIN: Yeah. LIZ DOERR: I am not 100 percent sure. KEITH MARVIN: I mean it is up to you gentlemen if you want to put the ice breaking stuff back in. That is your prerogative. The reason there were two (2) at that point, it was an either/or situation. So they either have a procedure in place when it starts icing to shut the, down one way or the other. Or, they had to go further and meet the specs off of GE's. JOSH FRAMEL: Yeah, if it was recommended with just one, that is fine. The version I saw had two, so it was a little misleading. KEITH MARVIN: Yeah. ED SCHINDLER: That number three (3). You set one at 2700 feet. That means you cannot set another one, or... JOSH FRAMEL: So it is basically like you draw a line. It is almost like drawing two circles. So 2700 feet from a non-participating house, nothing is allowed. And then within 2700 to 4000 feet – the second circle... ED SCHINDLER: If you put another one up, then the one that was at 2700 would have to go back 4000 feet? JOSH FRAMEL: The third one would have to. KEITH MARVIN: Yeah. JOSH FRAMEL: The third one right. The two (2) could go in that circle. ED SCHINDLER: Of 2700 feet? JOSH FRAMEL: Between 2700 and 4000. ED SCHINDLER: Ok. JOSH FRAMEL: And, if there was a third one that would fall anywhere within that circle it would have to be pushed out to 4000. ED SCHINDLER: 4000? JOSH FRAMEL: So, you know that is effectively about a mile, because you got about 2700 feet on each side. A mile circle, and now you are increasing it to 8000 foot diameter. ED SCHINDLER: You think that is too restrictive? JOSH FRAMEL: I think that is too restrictive. ED SCHINDLER: Don't you think the more towers you have around the home the more problems you have? With the flickering and noise? JOSH FRAMEL: This is already with an increased setback distance further than what it has been. So I feel like those items are already addressed. (inaudible word) additional use too. KEITH MARVIN: And, I guess the background behind that is... if you look at the current project that is under construction, there were a couple, I believe, non-participating dwellings that had roughly five (5) or six (6) of them spotted within a half mile to a mile of that particular home. So that is one of the reasons it has been put in here to reduce that risk. ED SCHINDLER: Yeah. That is one thing I was against was putting too many by a non-participant. I mean... if you want to get rid of clustering go to 3000, would you – or would it be better for you to go to 3000 and forget the clustering? JOSH FRAMEL: It is really hard to say without looking at you know what a project looks like in general. Or, restrictions and setbacks already a project deals with hip corners, grazing areas, where it works, where folks want to have these projects. You're limited for airports, and so as you continue to grow those things, you shrink such limited points where wind turbines can be placed so far apart it is not complimentary for out projects. Or you increase the (inaudible word). ED SCHINDLER: I know the Steskal was saying it was a big problem. I was trying to find a distance that would almost eliminate it. I think 3000 feet would probably help. But, I am still worrying about the clustering. CHARLIE HENERY: They are not all in one line. LEROY KERKMAN: No. CHARLIE HENERY: You know if the wind is out of the north, and the ones on the north are making the noise the ones on the south ain't going. ED SCHINDLER: That is another thing I was going to bring up. By clustering, I mean, the one thing I don't like is the non-participant having one or two, this way, and two this way, and two this way. If somehow or another we could eliminate, or put them all in one direction, I think that would be. That would, I don't know. At least you could go on one side of your house and not have to look at them. CHARLIE HENERY: I don't understand it. ED SCHINDLER: You can put your patio on the side of the house. CHARLIE HENERY: That theory to me does not make sense. ED SCHINDLER: Well, if you sit in your house and look outside and not see nothing. If you want a tower then go to the backside. Yeah, there are quite a few of the, back there, I am not going to sit back there. I am going to sit out here. I mean, I just, if I was a non-participant I wouldn't like them all around me. That is what I am trying to say. I wouldn't mind, I would be more acceptable to have them in one direction. CHARLIE HENERY: So then this neighbor over here that wants one, you say, yeah, I don't like him, I like this one over here, is that what you are saying? ED SCHINDLER: Well no. No. I am talking for myself. I just don't want them all around me like that. LEROY KERKMAN: Most of the concern here is... ED SCHINDLER: How would you do it, I don't know. I am not sure what regulation you would have to come up with. LEROY KERKMAN: Is of the noise level. When you put the towers there... and say they are clustered that does not double the noise level on them. The noise level

is... ED SCHINDLER: The same, no matter what. But... LEROY KERKMAN: The further out they are, and the more of them. That noise level doesn't raise. JOSH FRAMEL: Just like anything the further away you are. ED SCHINDLER: But a lot of the, a lot of the people that made comments is they look out this door, look at this window, and look out across, and there is the noise, you know. JOSH FRAMEL: This came up during the Planning Commission meeting. As from any sound source, the further away you are the quieter it is. LEROY KERKMAN: Ok. Are you done? JOSH FRAMEL: Yes, I am. LEROY KERKMAN: Ok, I am going to have to ask you to hold that till the tail end. We are going to let the rest of the people that are for it. Ok, anybody else that wants to... LEROY BECKER: Can I make an additional comment? LEROY KERKMAN: No, later. Anybody that is for it. Anybody else want to say anything? ROBERT JOHNSTON: I will Mr. Chairman. Commissioners, good day. Robert Johnston. J-O-H-N-S-T-O-N, for the record. I came at different times to testify. Mainly, I testify for economic development. I have testified for animal ag, I have testified for pipelines, I am testifying for wind towers. Anything that will add economic development to the county. A comment I would make about the decibel level. I do not live by wind towers so I can't pretend to say that I understand what some of the folks are experiencing. But, my concern is that if we have a decibel is it going to set a precedence to anything we do in the county? We have what four (4) major highways that goes through the county. Is it going to set a precedence? Is it going to set a precedence of my tractor – I don't know about somebody else's, my grain bin fan, my combine, my irrigation engine, what about my truck engine brake? I don't know how many decibels that is. I know those aren't 24/7/365. When my neighbors ween calves. What is the decibels of bawling cows and calves? They are 24/7. They are not 365. So, that is just some. This time of year we are all going through tax hearings. You guys did one this morning. I am going to be involved in a fire budget hearing, here is a couple of days. Every one of those tax hearings are asking for revenue from every one of us. We are going to have to pay taxes. How many chances are we going to get in the county for economic development? I guess that is my main point. Liz, and her Planning Commission, I think you guys for all your time, and I thank you guys for your time. CHARLIE HENERY: Thank you. LEROY KERKMAN: Thank you. Anybody else that wants to testify in favor? ART TANDERUP: Good afternoon. My name is Art Tanderup, from Neligh. And I guess, um I was ok with the 2700 feet. I think that allows, you know 2700 feet is less than a half mile. So is somebody just has a quarter of land, you know sitting out there you can put a tower on it as long as you are away from a non-participating. You go bigger than that and a landowner is going to have to own a section of land in order to put towers out in the middle of that. I think if that sort of thing happens, you know wind development will probably leave Antelope County. So, I think we have to think about some of those things. I do have friends that live in the Elgin area. And I know some of the towers are too close to their homes, I know that is a problem. So, you know I thank the Planning Committee they have been wrestling with this issue for some time. You guys have been wrestling with it for some time. It is really a tough issue. Because you want to see positive development in the county. You know we have a prime opportunity in the renewable energy field here in Antelope County. When you look at the wind maps, you know we are right here where a lot of states would love to be. You know, for wind development. You know, it is something for the future, and we know that hopefully technologies are getting better, and better, and better. And hopefully they will eventually do something to solve these issues. But, right now, there are some issues with the wind development. I think I really feel that 2700 feet where people can still, where the setbacks so you can still put a tower on a corner is a good thing for Antelope County. And I guess that you know, I also do not have a problem with 50 decibel sound limit either. That is something that doesn't bother me at all to have that. So, um I guess that is kind of what I have to say today. If you have any questions, I guess I would be happy to answer those. Thank you for your time. LEROY KERKMAN: Anybody else that wants to testify? KATHY SCHULTZ: I am Kathy Schultz. And I am going to comment to Dean and to all of you. We have a pasture out by Page. And at least once a week I drive up through all those windmills. When my niece goes with me, we go on these backroads and we shut the diesel pickup off. And you can hear a noise. I am not there 24/7. But if I drive my diesel pickup I don't hear anything. If you shut it off me will hear a small hum. We even drove in the cemetery up there, because the thing was right across the fence from the cemetery, and it didn't make any difference in the noise level. But, we are up there at least once a week I drive through them, sometimes twice a week. Thank you. LEROY KERKMAN: Anybody else that wants to testify in favor? JIM KOENIG: My name is Jim Koenig, from Clearwater. My back is hurting, so I am going to sit down too, if that is all right. I was just down in Lincoln yesterday with my son. Come back through Albion. As usual I got irritated. There sits the Cargill over there. They wanted to build it right out here. A handful of people in this county got it stopped. What did Cargill say, "Fine." And headed to Boone County. We cannot afford to keep doing this. We have got to seize this opportunity. We have let it slip by so many times. Pillen Feed Mill, expressed interest in Antelope County. Same way, we basically drove them out, and I don't understand why. I realize there is a lot of controversy with these wind towers. I think the Zoning Board has done an adequate job.

They have put a lot, a lot of time into this thing. I would urge you guys to adopt the recommendations and move forward on this. Thank you. LEROY KERKMAN: Thank you. Anybody else who wants to testify in favor? If not, I have noticed, Ann, you had a comment? ANN SIMMONS: Yeah, just on the cluster thing, I have 5... LEROY KERKMAN: I am sorry I make you do that... but... ANN SIMMONS: That is all right. I have five (5) across the road, right directly across from my house, and then there is two (2) more on the section on the other side, then straight to the west of me starting at a mile to a mile and a half there is four (4) more. Well, the first ones that got done, were the ones there were straight to the west of me. And I am going to tell you, we were up all night for several nights. Those were at a mile to a mile and a half – four (4) of them. Those come on at that time, and then later, the ones across the road from me came on. Now I have them on the backside of me also. But, I am not a scientist or anything – but with the cluster thing. Um, if I was to turn my radio on at a certain loudness and ten more people came in the room and turned their radios exactly the same, at that same loudness, would there be a difference in the noise level? Would it be louder in there? I cannot understand them saying there isn't more noise with more at a distance. I am just disagreeing with that. By all means, it would be louder right? That is my only comment. I think the clusters are louder. And you will hear them. You know, no matter what distance so whether you set it or not set any noise level at all I am going to tell you, you will hear them. Anyway, thank you. LEROY KERKMAN: You had a comment too there. LEROY BECKER: Yes, if I may. And I appreciate it. LeRoy Becker again. A couple of things here. One guy mentioned noise from a grain bin. I had that experience once. I had a neighbor that was not a nice neighbor, who put a grain bin fan on his grain bin. And it was terrible. Everybody that drove on my place said it was terrible. The property changed hands and the new owner put some hay bales around that fan. It made all the difference in the world. You can't just put hay bales around a wind tower. I was out in the wind tower country southeast of Elgin, and had a flat tire on my pickup about half mile away from one of these machines. And I kept looking around, where was this freeway traffic? Must be just over the hill somewhere. Then I realized there was no big highway over the hill. But it was rattle – clatter, clatter, clatter – rattle, you know. No way would I want to live there, where I was parked with that flat tire. And uh, so now there is lots of these windmills around the county already. The question comes up is when in the world is enough, enough? When is enough, enough? When is enough, enough? Thank you. LEROY KERKMAN: You know, some years ago we had a person ask that too about a cattle feeder. LEROY BECKER: Totally different deal. KERKMAN: No, it wasn't either. SCHINDLER: Should have been on the Board when the hog confinements come. KERKMAN: Yeah, when the hog confinements come. SCHINDLER: We got somebody out to destroy the county. KERKMAN: Yeah, go ahead. DEAN SMITH: Dean Smith. I guess my comment is, and I guess it was raised by Invenergy representative to the Zoning People, to Liz and to Keith. I don't think everything is clear in it. I don't know. That's what I got. And I asked you that question myself, about the ice braking. That's just one issue. I mean, I don't see how the wind part of it can be passed because I don't think it is complete. I don't think it is accurately complete. Because I think Liz and Keith have a different idea of what happened at the last Zoning meeting. As far as this ice throw thing. I don't know where it has become ice braking instead of ice throw? My comment is if you think that you need to move on and pass something; exempt the wind energy portion of it for more research and future detailing. Because, if there is inaccuracies in it, how do we know what to come and comment on? How do we know if we have the correct information? That is why I asked the question at the beginning of my questioning. Ice braking, what does that mean? Ice braking? Invenergy themselves have questions on it. Thank you. ELI JACOB: We got more. KERKMAN: You got one? Get up. Come here. ?: What Dean just said. I'll just briefly comment. The Neligh Paper had the regulations. The Elgin Paper had the regs. KERKMAN: I have got one more comment, then we got to quit and move on. Come on up here. JUDY WILCOX: I just want to say that when Invenergy, Josh, stood up here and talked. They are looking for a balance, so they can build. The people of Antelope County elect you to do a job to protect our health and safety, are looking for a balance so you stop driving us out of the country. Because we have talked about moving, in March and April. That is close. The rest of the year is nip and tuck. But you need a balance for the people who live in the county. Not a balance for the people who build the towers. And I don't think they would build them for all this tax revenue we think the county is going to get, if they didn't get tax credits and subsidize to build them? And where do you think those tax credits and subsidies come from? From every tax payer in this room. So maybe you are going to get some money, but you are going to be paying out money too. It is a two (2) way street. Thank you. KERKMAN: One comment I did want to make. You know, I do live in the wind tower deal. And wind towers are not 24/7/365. They do not run every day. I walked out of my house this summer once, and I could not hear a wind tower, but I could hear several irrigation motors, mine too. But they do not run 24/7/365. DEAN SMITH: But, they are supposed to. KERKMAN: They are an efficiency thing, just like anything else. SCHINDLER: LeRoy, how close are you to one? KERKMAN: Oh, I don't know. 12-1500 feet. ANN SIMMONS: Do want farmers? It's their livelihood.

That's farming. Not industry. KERKMAN: I realize that. ANN SIMMONS: You know that farming. KERKMAN: But, you know it is going to take industry to make... Where are we going to keep our young kids here? Look at the jobs the wind tower people have brought. And they brought good jobs to the towns. ANN SIMMONS: How many? KERKMAN: There is probably 14 or 15 people that work there in that building. ANN SIMMONS: 14 or 15 working there. And how many did they bring in? They brought in. But how many of our area work there? KERKMAN: Of our area? ANN SIMMONS: Yeah. KERKMAN: I don't know... Ok it is beside the point. DAVE WILCOX: You talk about bringing our kids back – on my place, I know nobody will live there after I leave. They devaluated the land as far as I am concerned. Looking south of my house, I got 18 of them within a mile and a half. Do you think anybody is going to come there and live? I don't think so. I am putting up with it, because I wasn't wise enough when they started building in to do something about it. But we are here to help these people here that have had no experience. We had experience. That is all I got. KERKMAN: Ok. Do we want to go through the rest of this, and pass the rest of this stuff? I think we are going to have to have some discussion on the wind tower thing amongst ourselves, too. KEITH MARVIN: A couple of comments on the wind. Dean is right; I missed a spelling on the braking. It should be B-R-A-K-I-N-G. And two, going by my markups there was an inadvertent setback left in from the property lines with the 1.5 times the total height plus whatever the one was. Because I show the ice braking information being taken out of that setback from the Planning Commission from their last hearing. Those are two, in my mind they are typos and what we got in front of us should read 1.5 times the blade length. Because I remember the conversation, they wanted to go back to what they had, similar but up it a little bit. CHARLIE HENERY: From property line? KEITH MARVIN: From property line, yes. And as far as noise. Gentleman, if you want to put something in, I, we were going based up on what you county attorney was saying based upon the wind studies that were going – the noise studies that were going on because you had two (2) contradictory reports essentially. And, his concern was that it was just going to become a bigger issue with the county and costing the county more money, to prove one way or another. CHARLIE HENERY: It didn't cost us any money. KEITH MARVIN: Well, he was afraid it was going to be in long run. KERKMAN: At some point in time. LIZ DOERR: Court?? JERALD SCHWAGER: Let's say you put decibels on it. It is still going to cost us. KEITH MARVIN: I know. Well, he is saying not take, that is why he suggested getting rid of decibels completely. He said, you've got distance then that's what you got. You don't have to worry about how something is measured, versus what the read out results are in/or if a peer review confirms or denies what was done, or all that type of stuff. LIZ DOERR: What that boils down to is we need regulations that I can administer and can't be enforced. You know, it needs to be by the county attorney and he was concerned about how to do that because it wasn't clear. KEITH MARVIN: Um uh. LIZ DOERR: One option that we could do, if you want the decibels back in is do it, like have the acoustical analysis as part of the application, and then once it is approved that is what you live with. CHARLIE HENERY: Don't they have that prior to construction? LIZ DOERR: Yeah, but there is also the sound standard that we have in the current regs. There is the sound standard afterwards... JERRY SCHWAGER: Did they change that, or just put the other one in? LIZ DOERR: Right now there is nothing... you mean in the draft? JERRY SCHWAGER: Yeah. LIZ DOERR: No, there is nothing. CHARLIE HENERY: If you go the 2700 foot, there is no noise. LIZ DOERR: But they increased the 2700 foot because they took the noise out. So if you out the noise back in, do you want something different or not? That is the next question. KEITH MARVIN: The option could be is you could require the acoustical analysis up front as part of the permit, and basically what you do on the other side on the noise thing is just say at no time shall they exceed 50, I mean they shall not exceed 50 decibels. And you can put a time period on it, but what is the right time period. If you say at any time – there is too many variables there that would make it exceed it for five (5) or ten (10) minutes and then all of a sudden you got a violation. LIZ DOERR: Or a tenth of a second. Or something that would time itself out. From an enforcement stand point, just from my experience in Knox County. We have problems with campers in the lake area. If it is a violation, and they move the camper and they bring it back the next day, it is a new violation. That makes it very difficult to enforce. And like you said LeRoy, it is not 50 decibels every day, if that is what it shows. So can you have a series of violations, you know. I don't know. You just need to have something that is enforceable too if we are going to have some. I don't have the magic answer. It is just something to consider. CHARLIE HENERY: So in Knox County, what do they do on theirs then? LIZ DOERR: Oh, I think we have. Like what we have basically what was in there before. I think we have 1500, and we get... you know, no matter what it is whether it is wind or anything. You are going to have somebody who doesn't like what somebody else does. ED SCHINDLER: Yeah. LEROY KERKMAN: That's true. LIZ DOERR: But generally, the wind has not been a problem in Knox County. And we have a 1500 feet setback. ED SCHINDLER: That is what I thought this 2700 would take care of the (inaudible word). KEITH MARVIN: Nothing on the wind. The one thing I do agree with Dean on, if you are a participating person I can see why you should be able to put that anywhere in

there, so. LIZ DOERR: And I should add too, I have two (2) Planning Commission members in Knox County. One, his brother is participating, but he has turbines close to him, and the other lives on an acreage and he has turbines all around him. Neither one of them has said, they said yeah, you kind of notice it, but it hasn't been a problem for either one. So I don't know... LEROY KERKMAN: We can't pass this whole thing all together anyway. Because there is parts of it I don't know whether we completely understand some of that stuff you were briefing us before. KEITH MARVIN: You can even; I mean your options today are a couple. You cannot adjourn, but you can continue the public hearing to another date, and time specific. If you are satisfied, you can close the public hearing and then take time to move it to another meeting so you have a chance to read a little bit more of this, and understand it a little bit more. At that time you can come back but you don't take anymore testimony. Whatever you guys decide you want to do is what you guys end up doing. JERALD SCHWAGER: Well, I think we ought to close the public portion of the hearing and then go on down and let us look at this a little more. I would like to look at this decibels and this clustering a little bit more. LEROY KERKMAN: Do I need to read that thing again? Close the public portion. JERALD SCHWAGER: That way we won't have all the for and against, because we heard it all. LEROY KERKMAN: Is there anymore comments at all before we close the public hearing? DEAN SMITH: Yes. Dean Smith, one closing comment if I may. After I made my earlier comment, there has been some other comments made. I would like to, and I would share it with you, off of my sight, I don't want to do it, I don't think it is appropriate here. But, as I said when I was at the Holt County project, I was one (1) mile, 5,280 feet from the closest tower, and it sounded like a plane wanting to take off. ED SCHINDLER: See, this is a problem I have. Now... DEAN SMITH: That's 5,000 maybe a misstated when I said a mile. ED SCHINDLER: The next person gets up and says I am within 1000 feet and I can't hear them. DEAN SMITH: I will agree, I got closer to them and it wasn't that bad. ED SCHINDLER: Maybe that's the deal, you've got to live closer to them. Drop it back from 1000 feet then. JERALD SCHWAGER: Let's go on. LEROY KERKMAN: Ok, we have got one more comment then we are through. JIM KOENIG: I have heard this comment before. How these things are not free. Tax payer's dollars built them. I have a question for everybody in this room. What is the most efficient form of electric production there is today? Hydroelectric – water. Who built all the dams? ED SCHINDLER/LEROY KERKMAN: We all did. JIM KOENIG: Tax payer dollars. ED SCHINDLER: Well we will build them here or somewhere else. JIM KOENIG: Yeah. I mean. There are all sorts of dams from the east coast to the west coast. Tax payer dollars built. So when they tell me these aren't feasible because taxpayer dollars are paying for them – that's not even close. ED SCHINDLER: We will pay for them whether we get them or not. LEROY KERKMAN: Are there any questions from you Commissioners? I am going to close this portion of the public hearing. I need a motion and a second. CHARLIE HENERY: I make a motion to close the public hearing. LEROY KERKMAN: Do I have a second? JERRY SCHWAGER: I'll second. LEROY KERKMAN: Second by Schwager. Everybody understand it? Eli, Schindler, Schwager, Henery and I'll vote yes. ELI JACOB: Yes. ED SCHINDLER: Yes. JERRY SCHWAGER: Yes. CHARLIE HENERY: Yes. KEITH MARVIN: You have got to set another meeting. LEROY KERKMAN: Let's do that. We are going to need some time to talk about some of this stuff. I have some questions about some of the other stuff that you talked about here. What you elaborated about there. Do we just except the whole thing that you talked about, the prostitution house. KEITH MARVIN: Well, I will tell you, I think Joe had looked at the adult stuff too, hasn't he Liz? LIZ DOERR: I am not sure. LEROY KERKMAN: I mean it is something that we have never done before. Is it necessary, or? LIZ DOERR: I think this is why you need to have that adult entertainment. KEITH MARVIN: In the Zoning world, if something is not explicitly allowed, then it is not allowed. Then it is prohibited. So if you don't address it and allow it, then you are violating the first amendment. Because it is a freedom of expression that is being upheld under. So, we need to allow it in some way shape or form. And if you are going to allow it then you need to have the guidelines to do it right. And the stuff that I have got has come through NIRMA's attorney to Hall County – which is public information. I am comfortable, the attorney I work with, which is Dave Ptek, he has seen it and I think he has even adopted it, or looked at it from other places. He said it is good. So, it is a pain that you have to, but you have to protect your backside. Ah, the scary thing about this is the lawsuit that have been going on have been for \$150,000,000.00. They name anybody and everybody. Ok. Will it hold up for that in the courts, who knows? The problem is if you end up in court, and they find out that you are blatantly in violation of that law on this, it is a first amendment issue. It could be triple the fine, triple the lawsuit. Triple damages. So, you are not only talking \$150,000,000.00, you are talking \$450,000,000.00 plus all attorney fees. So, it is not worth the risk. LEROY KERKMAN: Not for it. Ok. CHARLIE HENERY: There was some comment about like structures to, like lean-to's or something like that. I mean not today, but the other day. Didn't you say something about...? LIZ DOERR: We haven't really dealt with is but we had a request from the Board of Adjustment. Because we had three (3) variances since I started on grain bins. Because of other existing grain

bins that are closer to the right-of-way. All three were a little bit different situation. But if you, it was kind of a little bit of a stretch that it is a unique situation and so usually what that means is... if you have something that is reoccurring, you need to consider whether you are going to put something in the regulations about it. So that is why the Board of Adjustment requested that we consider it. But we have not had a lot of discussion. We had some, but we didn't really... CHARLIE HENERY: There is something about carports too. A carport with such a sound footage, that... JERALD SCHWAGER: But, wasn't that all taken out of there?! CHARLIE HENERY: Was that all removed? JERALD SCHWAGER: Removed. Like the structures of carports? KEITH MARVIN: I think the only thing that would have been in there on a carport is that it had to be anchored, structurally anchored to the ground. CHARLIE HENERY: And then you talked about something about when we were talking up there. About if something was changed in... as far as how they could park or whatever in public area. You mentioned that a couple weeks ago. There was something about carports and if they were a certain whatever, you couldn't construct them, or something. Which people should have the right to build what they want on their properties. JERALD SCHWAGER: That is why I was thinking it was taken out. Maybe he is right, it just got to be structures down in the ground. Tied down, or cemented down. LIZ DOERR: Do we have something on size Keith? Where if it were under a certain size they don't need a permit. KEITH MARVIN: No, I am not finding anything. CHARLIE HENERY: I don't know where I came up with that, but it was something to that effect. JERALD SCHWAGER: I think you are right, we heard it. LIZ DOERR: But, keep in mind too, that we have all this in the Zoning Regs. But there is also a flood plain section, and so if you are building something in the flood plain then it has added conditions that you have to meet. Even if it is a carport. CHARLIE HENERY: Maybe that what... LEROY KERKMAN: That is probably where it is at. In that flood plain deal. JERALD SCHWAGER: More conditions to it then. LIZ DOERR: Yes, because a carport has to be anchored. Actually a propane tank is supposed to be anchored. You know everything that has to be elevated a certain amount. Um, there is a number of extra things that need to be done. LEROY KERKMAN: Are those part of the Zoning Regulations too? KEITH MARVIN: The flood plain? LEROY KERKMAN: Yes. KEITH MARVIN: The flood plain is in here as well, I believe isn't it, Liz? LEROY KERKMAN: Is that new compared to what we had? LIZ DOERR: I don't think it is much for changes. Because I think it is the minimum standards. Um, oh I know unless you are thinking like on pertinent structures. There is some language, I don't think you have it in here, and haven't in the past. But, you can add some language on pertinent structures, which is like garages and carports and stuff that are less than 400 square feet and they are enclosed, then you can out flood openings in. But, that just applies in the flood plains. Maybe that is what you are talking about. CHARLIE HENERY: Maybe that is what I, maybe what I was reading. LEROY KERKMAN: Yep. LIZ DOERR: And that. Otherwise, without that in there, if somebody wants to put a, like a garage, just a single car garage, and it is all enclosed, you have a door, and it is in the flood plain. You have to have an elevation certified to show that it is high enough. KEITH MARVIN: Yeah. LEROY KERKMAN: That makes sense. CHARLIE HENERY: What about structures that are already currently in there? LIZ DOERR: Well, the ones that are in there are considered non-conforming – and will continue. But, if they are damaged more than 50% and you are going to fix them up, you have to bring them up to compliance. Believe me I did enough of them after the flood. CHARLIE HENERY: I see. KEITH MARVIN: That is all State and Federal regulated. LEROY KERKMAN: Oh, that is all State and Federal regulated? Ok. KEITH MARVIN: Um huh. LIZ DOERR: And so, yeah the State and Federal dictates a lot of what is in the flood plain. KEITH MARVIN: All right. LEROY KERKMAN: Ok. LIZ DOERR: But, if you want the pertinent structure language in there. Knox County has it, we got it from the State. They told us how to write it. LEROY KERKMAN: Did you put that in? KEITH MARVIN: I don't know that it is in here. LIZ DOERR: I don't think so. LEROY KERKMAN: Is it wise for us to have it in the County level? Being its State? LIZ DOERR: Um. I think it simplifies things on these small buildings. But, if they choose to have flood insurance, it may make their rates a little higher. But, that is their choice. LEROY KERKMAN: Ok. LIZ DOERR: But it is something that is allowed. LEROY KERKMAN: Do you suppose that is something you should put in? KEITH MARVIN: Ok. I got a note. LEROY KERKMAN: I got a... Ok, are we done with that portion of it? I got another thing about the livestock deal. We really don't take care of that anymore. CHARLIE HENERY: No, DEQ does. LEROY KERKMAN: DEQ takes care of all of that stuff. So, why do we even want to get into that? KEITH MARVIN: Yeah. Well you still want to deal with the location of them. You have never dealt with them as far as if they are permitted or not. All the counties really have the ability to do is – if they are in the right location. Just like anything else. If the wind turbines in the right place. What we have done, what is proposed in here is, Liz help me. Is it 1000 or 3000? Right now that requires a conditional use. It is 301 that requires a conditional use, right? CHARLIE HENERY: Animal units you mean? LIZ DOERR: You mean right now? Yeah, because they changed it. KEITH MARVIN: I believe, right now at 301 animal units you are required, if I am a livestock producer and I meet the definition I have got to go through a conditional use permit,

even though I may only have 400 head of cattle. Under the new rules, that doesn't kick in until you hit 2501 cattle. So, if I am a smaller guy, I don't have to go through, as long as I meet the requirements, Liz can sign off and it is done. It is only the bigger guys that are going to have to come to a hearing. Where everybody had to basically in the past. LEROY KERKMAN: Well, I have got an issue there west of town where this guy has got the corner there and probably has 300 cattle or so. The slop is so when the rain comes it zips down into the neighbors' field and scatters out. KEITH MARVIN: Well, that is not something that is allowed to have happen, period. That is a DEQ issue. LIZ DOERR: Yeah, that one could be turned over to the DEQ. And, they could deal with that. Now, earlier today though I did have someone who called me – and Keith and I haven't even really had much of a chance to talk about this – but he is concerned about a feed lot going in. And it is just small, less than 300 animal units, next to a cemetery. So I am not sure if we dealt with that really. Because if you have a cemetery and somebody has 50 head of cattle right across the fence. Then there is dust and flies and smell and you want to go have some peaceful time in that cemetery. That could be a problem. So, is that something we added? LEROY KERKMAN: What about 10,000? KEITH MARVIN: Then you do have the things there. LIZ DOERR: Yeah, but I think it, I looked quick and... ED SCHINDLER: So does it matter the size of the lot they are in? 200 acre pasture and 50 animal units. LIZ DOERR: If it is a pasture, we don't regulate. ED SCHINDLER: Yeah, that's what I mean. You are talking about confinements. LIZ DOERR: This was... this was a small confined feed lot right by... ED SCHINDLER: Yeah. Ok. I was going to say, if it wasn't confines. If you have 50 head of cattle right beside the cemetery the cattle might bunch up right there. LIZ DOERR: Yeah. But this is... So do we want anything in there on that? LEROY KERKMAN: I don't know. Sometimes you pass more rules and regulations, and it makes it tough for everybody. DEAN SMITH: Don't cemeteries have some (inaudible word) now? LIZ DOERR: I was looking this morning and I wasn't finding cemeteries. Like churches, schools, public recreation areas. But I didn't see cemeteries in the current regs. But it is in the draft, so it will be when it is more than 300 I believe. 300 animal units. JERALD SCHWAGER: But if they stay under 250, then they can but it's close to the cemetery. LIZ DOERR: Yah, if they got 200 head. But they guy who called wanted to see 30 head. Or whatever, a really small number. LEROY KERKMAN: So are your regulations brought up to specs on the livestock deal that we are comfortable with, or do we need to change something? LIZ DOERR: The what? LEROY KERKMAN: Are you comfortable with the regulations that he has drawn up in the livestock deal for the county. LIZ DOERR: Yeah, they are somewhat similar to what Knox County has. So we have been using it for a while. LEROY KERKMAN: We could pass that portion of it, and be done with that. If everybody is comfortable with it, unless you got some other issues. JERALD SCHWAGER: What is the churches like, if the livestock is close to the church like that example – like under 50 head? LIZ DOERR: Well see that is the question he asked. KEITH MARVIN: Yeah, see that is not considered... Well yes, that does... JERALD SCHWAGER: I thought you said there is something in there for churches, and stuff like that. LIZ DOERR: Well right now it says churches, schools, public recreation areas. KEITH MARVIN: Over 300 or higher. LIZ DOERR: But in the new it includes cemeteries. KEITH MARVIN: Yeah, so at 300 or higher is when those separation distances kick in. CHARLIE HENERY: Yeah, I see it right here. And there again it is animal units. LIZ DOERR: Animal units. KEITH MARVIN: That's animal units. CHARLIE HENERY: So that means if they are 300 pounders it is different than if they are 900 pounders. KEITH MARVIN: Yeah. Animal unite is based upon 1000 pound steer... as far as passing this in pieces, I guess my recommendation would be wait, make all the changes and do everything at one time. It will make it a lot clearer. It will make your clerk's life a lot cleaner too. LISA PAYNE: I am all for that. LEROY KERKMAN: I like it difficult. Ok, what other portions of this do we need to address. KEITH MARVIN: The only other major thing that, I guess on the livestock, that Orval had it here, that you don't have any longer. North, south, east, west separation distances. It is all one distance, and what we did is we took, I believe the north-south one and it is all – it doesn't matter what kind of waste handling facility you have it is all treated the same way. Because you know it is a great idea to have a facultative system, but the realty and the economics of it is a farmer is not going to put in a facultative system. It is all going to be aerobic and it is all going to be done to what normal science is. So, we will just address it that way. CHARLIE HENERY: That probably simplifies it quite a little. LEROY KERKMAN: Yeah. KEITH MARVIN: Yes. And one of the things that you will note in here is there is not as much paragraph. And the other big thing is the districts. If you notice – instead of having everything listed in the districts that's allowed. They are now on the table. LEROY KERKMAN: What page is that? 97? KEITH MARVIN: Uh, it starts on page 56. LIZ DOERR: So there is a lot more uses listed in the table that way. It takes out some of that gray area. KEITH MARVIN: So what you do is you typically find the use that you want. Then you go over to the district and find out if it is allowed. If it is allowed it is permitted use or a conditional use. So it takes a lot of typing and a lot of text and stuff out of the document, so it makes it simpler. ED SCHINDLER: Yeah, I know. You don't have to read for a half a day to find out what you want to

know in five (5) seconds. LEROY KERKMAN: They got a lot of stuff in here don't they? CHALRIE HENERY: Just picking out one. Look at that brewery. It is a conditional use for one, and permitted in the other three (3). LIZ DOERR: Yes, it depends on the Zoning. Planning Commission approved these. ED SCHINDLER: Jeez cremini, still going to take you a half day to go through it. CHARLIE HENERY: I thought our Zoning was all Ag. LIZ DOERR: Huh, what? CHALRIE HENERY: I thought we was all ag? Why would it be permitted in three (3) and conditional use permit in one (1)? LIZ DOERR: Um... KEITH MARVIN: It is conditional only in the general Ag. Which is your white areas on the map. CHALRIE HENERY: Ok, that explains it to me then. I guess our zoning does include the cities. LIZ DOERR: Yeah. I have heard that comment before. That we are just zoned Ag. But already we have Ag. Ag river corridor; Ag transitional. So we do have more than one (1) zone. Granted they are all Ag district right now. KEITH MARVIN: And you put that RCI in at some point between now and when you originally adopted it, and the Planning Commission just wanted to expand it a little bit. So you might get, you can basically do a mixed use area. You might have a farm next to a convenience store along the highway. LIZ DOERR: All the pink on there is the RCI zone. It follows the highways. Because they would much rather see commercial type things, along the highway, here we have the infra structure and access. KEITH MARVIN: And your flood map, your flood plain would be on there, but they don't have that setup in the digital format yet. But you do have the airport zoning from the Neligh Airport. CHALRIE HENERY: What about the private airport west of Elgin? Is there some restrictions on it? KEITH MARVIN: There is no restrictions or protections. I have honestly... CHARLIE HENERY: So, you could build a structure at the end of his runway if you wanted to? KEITH MARVIN: You could. But see, there is no phys- I will tell you I have tried this in other counties, and it gets to really be a nightmare if you start trying to regulate and protect the private strips. The Department of Aeronautics has recommended that you don't do it because of some issues. You just got to. That becomes a civil suit. So... LEROY KERKMAN: Any other questions? I don't know it seems like we got a lot more paper work with this Zoning deal than we had with the last one. KEITH MARVIN: Yeah. A little bit. But a lot of it, I think you've got 40 plus pages of just definitions. Your definitions go to page 46. LEROY KERKMAN: I suppose you're right. LIZ DOERR: And if you are going to enforce it you need those definitions. ED SCHINDLER: Were there four (4) changes presented to the Zoning Board before they... KEITH MARVIN: Which changes? ED SCHINDLER: These four. KEITH MARVIN: Oh, I think they submitted some of that stuff to the Planning Commission discussed. KEITH MARVIN: They chose to push it on like they have. LIZ DOERR: But they haven't seen this paper per se. KEITH MARVIN: No, but they have seen similar stuff. Yeah, there is a couple things in here like permits and certifications that need to be probably fixed and those things can be done. Depending on what you folks want to do with this eventually. LEROY KERKMAN: Well do we wanna... LIZ DOERR: Oh, and like one more thing that is in here I guess, Josh. We didn't talk about it a whole lot, but somebody had brought this to my attention too. If you have a wind farm that they are shutting down. In here right now, we refused this. There is some place in here where it says they need to be taken out within 12 months, and another place where it says 180 days. We need to make that consistent. LEROY KERKMAN: Well, that deal as far as the wind towers, when they put them up, they make that with the land owners. Is there an issue with them? LIZ DOERR: Well it is in here and it has two (2) different timelines. 118, number 11, B and D. B, C, and D actually. It could be part of a decommissioning plan, but... KEITH MARVIN: What would you rather have, 12 months or 6 months roughly? LEROY KERKMAN: Well what was our other one? Do we have anything in the old one? LIZ DOERR: It was 180 days. After it has - is considered a discontinued use after one year. And then they have 180 days. LEROY KERKMAN: You know a lot of that depends on the number of towers and so forth. LIZ DOERR: And the time of year it is declared. LEROY KERKMAN: Some of that is a little bit unrealistic. ELI JACOB: That time of year, maybe you couldn't get there. CHARLIE HENERY: It should have something to do with the land owner. It is his issue. LEROY KERKMAN: It is his issue. He is the one that signed with the thing. Maybe he wants to take it down partway - and put a flag on it. CHARLIE HENERY: Put a light on it. LEROY KERKMAN: Yeah. LIZ DOERR: I think, pardon me if I am wrong, Keith. I think the reason why it is in there in the first place is because in other parts of the country they don't have anything about when it has to be taken down, and some of them don't and pieces are falling off. KEITH MARVIN: What you want is to make sure these things come down in a certain period of time, so they don't become deteriorated and dilapidated and everything hanging around. Cause, what is going to happen is if you don't have some sort of plan that you can at least hold somebody too, or have somebody there, you are going to get stuck with the bill probably. Because the land owner is not going to have the capability to get the crane in there to do it. Therefore, they are going to fall back on you guys. And you don't want that. JERALD SCHWAGER: I don't see how they can fall back on the county when it is their property. They signed the contract with the wind company. CHARLIE HENERY: It is their property and their wind towers. KEITH MARVIN: Well, I mean they could. I mean if its... I don't know the

costs of it, but I am just thinking what if they walk away and you guys are stuck with a lien against the property. Eventually it will or could become your issue. CHARLIE HENERY: How do we have a lien on the property, because we don't own it? KEITH MARVIN: Taxes or something like that. (Indistinct Conversations) Ed SCHINDLER: As long as it is in there, the time limit ain't no big deal. But I think it should be in there. ELI JACOB: Let's say 12 months. LEROY KERKMAN: Yeah. ED SCHINDLER: It doesn't bother me any. (More Indistinct Conversation) LEROY KERKMAN: Well it does say, this period may be extended by the Board of Supervisors by a written request by agent or owners. So. LIZ DOERR: (Inaudible) LEROY KERKMAN: It is not really in store that way. JERALD SCHWAGER: Say if you give them 12 months and they don't do nothing they come back here. LEROY KERKMAN: Then you have to give them time. Yeah. Ok. Put that in. CHARLIE HENERY: SO, you give them 12 months, and they can come in and ask us for another 12 months. But what if they don't come in and ask us? How do we enforce it? JERALD SCHWAGER: That's what I don't understand. LISA PAYNE: Well they have the decommissioning thing. LIZ DOERR: I think that is what the money for the... JERALD SCHWAGER: Decommissioning. LIZ DOERR: Decommissioning Board or whatever they have is there. If they don't do it, we come in and act on that and use that money to make sure that it does. CHARLIE HENERY: That is true. That is true. We would have to hire the crane to come in and take it down. JERALD SCHWAGER: That is what you use the bond for, then. LEROY KERKMAN: You know there is a lot of steel and so forth in there. And you know there might be some individual to hire that crane to take that down just for the steel. CHARLIE HENERY: Yeah. ELI JACOB: That may be worth a lot of money someday. LEROY KERKMAN: Take a lot of semis' to haul it away. What would work for a further date? KEITH MARVIN: I put down, I was looking up the 10th of October. But that is going to get into harvest. The other dates would be the 7th of November or the 14th of November. CHARLIE HENERY: I think the 10th of October would be fine with me. LISA PAYNE: I think so too. We are here anyway. LEROY KERKMAN: Ok, the 10th of October. KEITH MARVIN: At one o'clock? LISA PAYNE: Can we do 11 o'clock? LEROY KERKMAN: Yeah, I think we will have a shorter meeting there. LISA PAYNE: We should have. There shouldn't be a lot on the agenda. Knock on wood. JERALD SCHWAGER: One o'clock you said? LEROY KERKMAN: 11 o'clock. LISA PAYNE: That work? KEITH MARVIN: That works. LEROY KERKMAN: Are we done? You guys got anymore comments? Anybody got anything to say? Otherwise I am going to close. DEAN SMITH: What time on the 10th? LEROY KERKMAN: 11 o'clock. KEITH MARVIN: 11 o'clock. Does that work for you Liz? LIZ DOERR: Yes. LEROY KERKMAN: October 10th, 2017. LISA PAYNE: It's during the regular scheduled board meeting on the tenth. LEROY KERKMAN: It's at 11 o'clock. Ok, there's no further business. CHARLIE HENERY: I make a motion to adjourn. JERALD SCHWAGER: I second. LEROY KERKMAN: I've got a motion, and second. All in favor say aye. ALL: Aye.

Hearing ended at 2:54 PM.

ANTELOPE COUNTY BOARD OF COMMISSIONERS

By: _____
Chairman of the Board, LeRoy Kerkman

Attest: _____
County Clerk, Lisa Payne