

Minutes

August 29, 2022

Special Planning Commission Meeting

The agenda for this meeting was posted in the legal paper of record, the Plattsmouth Journal, on August 18, 2022. The Chairman, Alan Mueller, opened the public meeting at 7:00 pm & stated that the open meetings act is posted on the wall. Planning Commission Members Althouse, Mueller, Staben, Tesar, Felthousen and Oehlerking met as advertised. Dennis, Sullivan and Widick were not present.

The first item on the agenda was a presentation by Michaela Valentine from OPPD. The subject was their Plan for the Future and Power needs. Michaela turned the meeting over to Courtney Kennedy – Alternative Energy Manager. Kennedy brought a presentation to watch. This was about the first solar facility for OPPD located east of Fort Calhoun in Washington County. It's 5 megawatts and has been operational since 2019. The video was to help understand what it looks like. She also mentioned that it was available on YouTube if anyone wanted to watch it. She then gave an oral statement about "What is Solar". It is new for many of us – you may have seen it on a rooftop – but likely not in a commercial scale. There are panels, steel piles driven into the ground and the panels sit on top of these piles. Then there are wires connecting the panels. There is a central power inverter and step-up transformer. The panels create direct current power which has to be alternating current or AC - so the inverter is key to getting it on the grid. They are inside of the facility and have very minimal noise. There is a fence around the perimeter of the facility not only to keep the plant safe but also to keep public safe. The panels are made out of glass (85%), aluminum, silicon and wire. There are some panels that have chemicals – Thin Film panels have some small components of a few different chemicals. These are designed to never leach into the air or the ground. She then went over a project timeline. Development is the biggest upfront portion. They have to find the land and willing landowners which could take multiple years. Then construction which could take 1 to 2 years. Pulling all the permits for from the Conditional Use permit to the construction permits also takes time – next comes the commissioning exercise which test the panels to make sure they are operating like they should - then operation which is fairly quiet except for maintenance and usually lasts about 25 years. There are a lot of different regulations that they have to comply with at the state and federal level which is a very long process as it is highly regulated. OPPD has been talking a lot about "Power with Purpose". They are modernizing their generation to meet the needs that are growing their service territory – that is constructing two natural gas plants – one in Douglas County and one in Sarpy County with 81 megawatts of solar energy in Saunders County and 519 megawatts spread out around the rest of the territory. They are actively working to seek projects that will allow them to meet that need. She then opened the floor for questions. Jensen asked how much is recyclable. Kennedy stated that currently 85 – 90% of the product is recyclable. As the industry gets larger and there are more panels, there will be more recycling programs developed – but today those materials are used in other industries so they are able to be recycled. Mueller asked if we are running up against a load where we would be unable to add any more businesses or future development if we don't expand our power sources. Kennedy stated that we have needs that need to be met so they are trying to bring on this power to meet the growing load. So they have to match the load and the generation. Valentine stated they measured an all-time peak high on August 2nd in the afternoon of 2550 megawatts and they only 3200 megawatts on the whole system – so they really need diversification. Kennedy stated that the clear message is that this is not optional – we need the solar power. Felthousen stated that – according to what it showed on the presentation – it takes 6 to 7 years before you are producing energy with solar – so this is not a fast source. Kennedy stated not necessarily – if they were starting from the very first step in the process that would be the case. However – in their service territory, there are multiple projects that started the development process many years ago. As they mature, the solar companies bring projects to OPPD that are ready to go. Mueller stated that the Fort Calhoun plant is 5 megawatts. Convert that to a number of houses. Kennedy put this statement into perspective by stating that 81 megawatts services 14,000 homes. Mueller asked what stage they are in with the battery storage system in Weeping Water. Kennedy stated that the project should be online by the end of this year. Mueller then asked if there were any questions from the gallery. Eight people came up with the following questions:

- Is OPPD affiliated with NextEra Energy? OPPD claims they are not affiliated. Kennedy stated that NextEra Energy is a large project developer – they have multiple projects in the state. OPPD has in the past contracted for wind and solar projects with NextEra. The project that you are asking about in Cass County they do not have any formal relationship or contract executed. However, they do go to multiple other counties in support of the projects. Once they have any formal arrangement, then that would be opened to the public.
- Isn't it true that OPPD has a memorandum of understanding with NextEra? Kennedy stated that she was not familiar with what he was talking about.

- You stated that OPPD has been out there with “Power with Purpose” – where have those meetings been and how has this been communicated? Have there been any public forums? Did you actively advertise for people to attend in the Cassgram or the Plattsmouth Journal? How many solar projects have the decommissioned? How do you know about decommissioning? Valentine stated these have been communicated before the Planning Commission body and the Board of Commissioners. They have had handouts available at multiple meetings with numerous communications with the Chairman and the Planning Commission. She stated that they haven’t had any community meeting because they are at open board meetings open to the public that can be attended by the public. She stated that this has been ongoing since November 2019 and all has been available at OPPDCommunityConnect.com and also at the OPPD Board meetings. They were not actively advertised beyond all of their OPPD web properties, social media and their Board meetings. She stated they don’t usually have community meetings until they have an active solar project. She also stated that they have not decommissioned any solar projects yet because they haven’t even built any yet. She stated there’s a large solar industry; national groups, SEIA (Solar Energy Industries Association), SEPA (Smart Electric Power Alliance), Engineering firms around the country that have projects, specifically in the southwest for 10 – 15 years. All of that data is aggregated and available. There are also resources at the state level that put our decommissioning rules.
- Why are you limited to 100kw – as an electrical engineer, he has lots of clients that want to invest millions of dollars to put Photovoltaic systems on the roof, but because it’s over 100kw, they have to sell it to OPPD for pennies on what they actually pay for it. Kennedy stated – at the State level – historically they have been at 25kw – OPPD and the Board have done a lot to move that to 100kw over the last couple of years. The challenge with putting the larger systems on everyone’s roofs is the speed to do that and the magnitude they are after. They are after 600 megawatts – that’s a lot of power – right now, they are solving for issues on the transmission system and they need that in a very short time frame. They know they are going to need more solar. This is more about scale and speed.
- Was any of the power on the peak date of August 2nd that they mentioned going out of state? She wants to understand how much we are benefitting Nebraska and how much we are benefitting people outside of the area. Valentine stated that she didn’t know – she would have to find that out. She would get back to her on that. Kennedy stated that each year they have to submit what their load is going to be and they have to plan for a little bit extra called a reserve margin to make sure they meet their customer’s needs.
- Staben stated that their customers are outside of the OPPD map – they sell to the ski resorts in Colorado and other sources outside of the OPPD map that is taking power. Kennedy wasn’t here for that specific – but her interpretation of that would be that they are connected to everyone so their power does not stop at the border of Nebraska and Iowa. It’s a big interstate system – what each state does impacts the other states – so they have to be cognizant that any one thing happening in one place can impact another place and they have to be thinking the same way. Staben asked who is priority in the event of a brown out? How is the distribution of power handled? Kennedy stated that part of it is regulated federally, part by Southwest Power pool. From a physics standpoint, there are certain things that have to happen to keep it online.
- Are you planning on buying the power from the Solar Farm once it’s established or buying the whole Solar Farm after it’s built? Kennedy stated they have no contracts in place. That can go different ways. They buy the power – however, there are some arrangements where a company would build a project and a utility can buy that project.
- Felthousen asked if their ultimate plan is to get out of the coal business. Kennedy stated that they have not announced any specific plans around getting out of the coal business. Felthousen stated that he believes the Federal Government is pushing more and more to get out of the coal business. Kennedy stated that they have a study to get to de-carbonization net zero by 2050.
- Net Zero by 2050 was mentioned – does the Federal Government have any incentives if you meet that goal? Kennedy stated that was not mandated by the government – it was set by their Board of Directors. There are incentives for types of power which are passed on to the customers.
- Is the project that NextEra is planning in Cass County fit with the Power with Purpose that OPPD is promoting? Kennedy stated that yes – it does. They are seeking 600 megawatts of utility scale solar across their footprint.

Mueller asked if there were any more questions or comments. Since there were none, he moved on to the next item on the agenda, regulations update. He stated that at one of the Board meetings, he was directed to go back and review some of the changes that weren’t made properly and correct them. The County contracted George Tesar to assist with this. This hearing will cover anything in the book that he changed and some items that he wants to discuss. Tesar stated that they wanted an idea from the Board on what their direction is on these items. Jensen stated that he was directed

by resolution to provide the Planning Commission with a set of regulations and he fulfilled that at the last meeting. He was unable to attend because of illness. The set of amendments he provided for that evening was based off of the list that they had at the last meeting. There have been some additions and edits made to it including definitions, sections and subsections. Some of these subsections and page numbers may change as things are moved, deleted or changed. The hearing was opened for this at 7:40 pm.

The list included:

- Add Brew Pub and Brewery/Wine tasting room. Definitions page 10 – Shall be a combination of a Brew Pub that sells its own beer to the public, and/or a wine tasting room that sells its own wine to the public. AG – Section 5.07 – Permitted Conditional Uses – Subsection BB; TA – Section 5.08 – Permitted Conditional Uses – subsection Z. Add to Matrix. All agreed.
- Delete Self Storage. Definitions page 32. All agreed.
- Add Indoor Storage Unit Definitions page 22 – Shall be enclosed storage units rented inside a building. AG – Section 5.07 – Permitted Conditional Uses – subsection CC; TA – Section 5.08 – Permitted Conditional Uses – subsection AA; I – Section 5.11 – Permitted Uses; IA – Section 5.13 – Permitted Conditional Uses – subsection FF. Jensen asked what are the least desirable. Tesar says overall land area it would cover over 80% of the county. Staben wanted to something covering the overall look of the storage areas. Jensen and Tesar will discuss further and bring back more language. Mueller suggested getting with legal for verbiage. Althouse asked if they want it in AG. Staben suggested a smaller size of 5 acres.
- Junk yards/salvage yards – these are currently in both AG and IA. The nature of salvage and auto wrecking today it's probably not the right place in AG anymore. This is more of an Industrial type use. The only one that we had was under a Conditional Use and since it was out of service for 6 months it is done. Jensen recommends they take auto salvage out of the AG district and leave it in I and I/A. All agreed.
- Delete Storage Facility. Definitions – page 36; Matrix – page 52.
- Add Outdoor Storage Facility to Definitions, page 27 – Shall be a visually shielded, fenced, graveled and lighted lot of at least 5 acres. AG – Section 5.07 – Permitted Conditional Uses – subsection D; TA – Section 5.08 – Permitted Conditional Uses – subsection BB; C – Section 5.10 – Permitted Uses; I – Section 5.11 – Permitted Uses; I/AG – Section 5.13 – Permitted Conditional Uses – subsection GG; C/AG – Section 5.14 – Permitted Conditional Uses – subsection FF. To be discussed more.
- Add Short Term rentals. Definitions page 33 – Shall mean a furnished house, condominium or room for rent to the general public for a period of less than 30 days. Must be primary structure. AG – Section 5.07 – Permitted Conditional Uses – subsection EE; TA – Section 5.08 – Permitted Conditional Uses – subsection CC; R – Section 5.09 – Permitted Conditional Uses – subsection K; REC/AG – Section 5.12 – Permitted Conditional Uses. Short Term rentals would include "AIR B&B's" as a CUP gives neighboring property owners opportunity to express concerns. Felthousen asked why these came up. Jensen stated AIR B&B's is something that's been going on in the County – historically they have not been regulated. But if we don't at least mention them in the regulations, it's considered not allowed. Tesar added that State statute states that we cannot deny an AIR B&B's existence. They have to be allowed. HOA's can put something in their regulations, but the County can't deny them. They are putting the definition in the regulations so they have it defined.
- Add Rental Cabins – Definitions page 30 – Shall be a furnished 1 bedroom cabin of 500 square feet or less with a rental limit of no more than 30 days. AG – Section 5.07 – Permitted Conditional Uses – subsection FF; TA – Section 5.08 – Permitted Conditional Uses – subsection DD; REC/AG – Section 5.12 – Permitted Conditional Uses – subsection P. Jensen stated that Mueller had some concerns with the 500 square feet, but the objective on these rental cabins is you need to make them small enough to discourage long term rentals – because these are tough to police. Felthousen asked if they would have all utilities on these. Jensen stated they would. Althouse asked what the difference is between these and the glamping site. Jensen stated nothing – they are both furnished. Jensen stated that they are currently allowed in R/A. This would add them in AG & T/A. All agreed that they should keep them in R/A only.
- Delete Compatible Use Categories in all districts. These were intended to give readers additional guidance – but created confusion. Jensen stated that he feels strongly that these should be removed. They will not be delineated within each district. He recommends that they should have the permitted uses and the permitted Conditional uses in the text – not the compatible use categories. All agreed.
- Section 8.07 – subsection F – Add comfort station waiver. Seasonal long term RV parks typically don't use comfort stations.
- Section 8.07 – Delete pay phone requirements. Predominant use of cell phones makes this obsolete.

- Section 8.09 – Replace updated Cell Tower requirements with previous Cell Tower requirements. This has already been implemented by request of the Engineer through Board Resolution. Jensen stated this has already been implemented through a Board Resolution. The consultant let Jensen know that proposed new regulations were far less restrictive than the previous ones. They needed switched out immediately.
- Section 6.03.4 – Standards for Floodplain Management – subsection F – Appurtenant Structures – line 3 – change maximum square footage from 400 square feet to 800 square feet before elevation to 2 feet above Base Flood Elevation is required. This is a State mandated change. Althouse asked if the 2 feet above was ours. Jensen stated it is. Any pole buildings below 2 feet will need to be vented.
- Section 5.07 – Agricultural District – Permitted Conditional Uses – add “G” – the remainder of the existing parcel shall be platted in an Agricultural Preservation Easement and an agreement shall be entered into between Cass County and the original owner to be prepared by the County Attorney as a Deed Restriction identified as an Agricultural Preservation Easement and recorded in the office of the Register of Deeds. Said agreement shall prohibit further division of land for residential development. Jensen stated that historically – if there was still 40 acres - the zoning office would let them split it. A deed restriction would stop this from happening. Jensen stated – to reiterate – that under recommendation – in AG, 1 split per 40 acres; agricultural preservation easement all remaining tillable up to 40 acres with a 20 acre three house limit non-tillable ground exception. That would give a total of 4 residences in AG. In TA, 1 split per 20 acres; Agricultural Preservation Easement all remaining tillable up to 20 acres with a 20 acre three house limit non-tillable ground exception for a total of 4 residences. Discussion followed. They decided it needs some fine tuning yet. Jensen and Tesar will work on that. They would take any suggestions from the board.
- Section 5.08 – Transitional Agricultural District – Add “F” (same language as in 5.07 – “G”). Agricultural Preservation Easements are necessary to prevent excessive land splits in our Agricultural district.
- Matrix page 53 – Separate Neighborhood Solar and Commercial Solar. Retain Neighborhood Solar “C” in AG, TA, R, I, I/AG and COM/AG. Jensen stated that the Neighborhood Solar and Commercial Solar were originally combined in error. His recommendation is to allow Commercial Solar in TA as a Conditional Use permit with additional setbacks to non-purchasing residential uses. This additional setback would be a minimum of 300 feet but may be increased based on the site line study and topography.
- Add – Commercial Solar in definitions – Shall be a large photovoltaic solar array that supplies electricity to the power grid. AG – Section 5.07 – subsection R; TA – Section 5.08 – subsection K; I – Section 5.11 – subsection U; I/AG – Section 5.13 – subsection U. Neighborhood Solar and Commercial Solar were in one column in the Matrix and should have been delineated. Jensen’s recommendation is to allow Commercial Solar in T/A as a Conditional Use Permit with additional setbacks to non-participating residential uses. This additional setback will be a minimum of 300 feet but **may** be increased based on the site line study and topography. Tesar stated that the more they push the setbacks means they will have to go after more land because of these setbacks. Discussion followed. Tesar asked where would the 300 feet start? House or lot line? This will be discussed more at the next meeting.

Tesar will be working on formatting and wordsmithing throughout the month of September. They will be doing adjustments before September 12 so they have more options available to discuss.

*******Please note that the page numbers and subsections may not be accurate. Their location is reflected in our current draft and may change in the final draft.*******

Mueller then asked Jensen if he had anything else. Jensen stated that he didn’t. Mueller opened the meeting for public comment. Twelve people came up from the gallery with the following comments/concerns:

- Do not allow solar in TA or AG.
- Solar is about making big money, not saving the planet.
- OPPD admitted that solar generates zero power in the winter.
- Asked for clarification on solar in the Matrix – Jensen went over this with them again.
- Stated neighborhood solar is not allowed in residential.
- What is the difference between an amendment and a resolution.
- Neighborhood solar would be an amendment – Jensen stated that 5.08 is adding it in as an amendment.
- Why would you change your mind and allow Commercial Solar in TA? Jensen stated that under the resolution, he was to bring a list of recommendations and address the inconsistencies in what was adopted to the Planning Commission – the Planning Commission then had 180 days to bring that to the County Board. It was never clarified that the Matrix was the guiding document. That led to the inconsistencies and that’s what they are

trying to fix now. In reviewing the document and the work done by the previous consultant, there are numerous things discovered that need to be amended. The Commercial Solar in TA – even though technically it's in the book as a Conditional Use in the Matrix – it's not represented in the text. They are trying to clean that up.

- This is just muddling things up with the Solar.
- What is their reasoning for allowing this in TA? Jensen stated that he believes it would be a reasonable recommendation to the Planning Commission to add Commercial Solar in TA with additional setbacks to residential uses. The word may was added because based on the site line studies and the topography of the land, that 300 feet may not be enough. They may have to go to 1200 feet in certain cases. He thought this was a reasonable resolution. He stated that as the Zoning Administrator, he has to make reasonable recommendation to the Board. He realizes that they just voted in August to not allow it in TA – but he still has to look at it as a recommendation. If they don't feel it's a good recommendation – based on our public hearings – then it won't go forward. It's just a recommendation. The decision is made by the County Board and that is why it's absolutely critical that the public speak out and articulate their argument on why it shouldn't be allowed in TA.
- TA is meant to be a buffer zone between AG and other things allowed in AG. TA is prime real estate property to allow other people to build homes in and not be in AG where they could potentially get a solar farm right next to them.
- Storage facilities should not be in TA either.
- This whole thing is confusing. Nobody understands the process. Whose job is it to represent the will of the people? Jensen stated that they recommend to the County Board, the County Board is the voting body. They are the representatives of the will of the people.
- How do the line items get proposed? The Planning Commission described the steps taken to add items to the regulations. Jensen added that he has been in Planning and Zoning for 20 years. The regulations he was working on was from 1998/1999. He tried small amendments here and there and finally got to the point that we needed to look at this document as a whole. That's when JEO Consulting was hired to fix them. After a year of working with JEO, they realized that things were not syncing up. The Board asked Jensen if he could do the regulations – and Jensen agreed that with some help, he could get them straightened out. They are currently working on trying to get the regulations cleared up. They will produce a before and after draft to present to the Board.
- Feels that TA should be protected at all costs. Storage facilities in TA should not be allowed without stringent lighting guidelines. Jensen stated that there is actually a lighting study done.
- As far as the 85% recyclable on the solar panels, he feels they should ask about the other 15% because that is what's going to cause problems.
- How will you present the documents to the Board of Commissioners?
- The resolution that the Board of Commissioners passed said they had 60 or 90 days for chairman Mueller to present to the Board his recommendations. Has there been another resolution passed extending that time? Jensen stated he believed she was misinterpreting the resolution. Jensen didn't have a copy of it with him so the speaker brought up the one she had. Jensen stated there were actually 3 resolutions passed. She read the resolution – and it stated that that the review with recommended changes should be to the Planning Commission within 90 days from the date that the motion is approved – which was May 10th. That would make the deadline August 10th. Was there another resolution to extend that time? Jensen stated that it was provided on the last meeting which was August 8th Planning Commission meeting and that would have met the stipulation even though these amendments are continuing. Since then they have discovered more areas that need work. She asked if the Board amended the resolution giving them more time. Jensen stated that if she continued to read, the Board gives 180 days for the Planning Commission to supply that recommendation to the County Board. She continued to read it and asked if they met the 180 days? Jensen stated that the Planning Commission is within the 180 day now. Jensen stated there was a set of recommendations submitted at the last meeting that met the obligation. They are currently still within the 180 days. He actually calendared this out and it is toward the end of September or the first part of October that the 180 days is up.
- Where are the people that are for the Commercial Solar that are not on NextEra's payroll? Why don't they come to the meetings? Tesar stated that he can't answer or speak for them.
- The conversion to solar renewable energy provides a way to diversify and transition our country's current energy sources. The decision to consider the solar project was not taken lightly – as the solar lease

commitment expands several decades. NextEra also encouraged land owners to seek legal counsel with energy expertise prior to signing the contract. They were in approval of the solar farms.

- As a participating landowner and farmer, they would like to see TA included in the Commercial Solar farms. He toured the facility at the Fort Calhoun plant and stood by the panels and saw no reason to be concerned. He intends to live on the property the rest of his life and has family members that hope to live there after he's gone. They have studied this carefully and feel it's the best decision to go with. When you compare the amount of power you can get from an acre of solar compared to corn for ethanol, it's not even close. Solar providing electricity can produce multiple times the power than an acre of corn can. When he plants corn for ethanol, he is putting on a lot fertilizer and chemicals that are required – but the thing that solar energy and corn have in common is they both require sunlight. He sees this as an opportunity for the County. He also believes the 300 feet setback is a good number.
- Dealing with NextEra was not good. He was told they would cover part of the attorney fees. They changed the total they wished to purchase from 40 acres down to 32 acres. They couldn't reach an agreement. Attorney told him NextEra would not pay attorney fees unless they reach a deal. Price changed per acre. Doesn't believe they are a reputable company.
- Believes if this doesn't go through, there should be a 5 – 10 year moratorium on letting another company like NextEra come in and rock the boat in Cass County.
- A NextEra representative came up and stated that they would be happy to pay the legal fees and would still like to work on an agreement with the previous gentleman. They don't intend to leave them hanging.
- Member of the OPPD board and former Conestoga School board member. We don't know all of the fallout of the Inflation Reduction Act – but we do know that is that direct payments will be available to public power districts. This is important because the previous negotiations they've been able to use for renewable energy had to go through a separate contractor. If public power gets direct payments, then they don't have to go through a third party. If there is a requirement to serve and a need for energy, then OPPD can move forward on its own. If OPPD moves forward on its own, it has the authority to move forward without Planning & Zoning (by condemnation). It's not something he would advocate. There is definitely a need. Jensen stated that if he understand him correctly, Conestoga gets paid XXXXX for nameplate capacity tax, Cass County gets paid XXXXX for nameplate capacity tax. So they operate for a few years – OPPD decides to come in and operate on their own. That nameplate capacity tax would go away? Those contracts are written for many years. Regardless of ownership? Conestoga School would be budgeting on XXXXX every year – and then that goes away. We will have some very concerned citizens. This is a big project that is going to affect a lot of people in Cass County. Mueller believes that this can be addressed in the Conditional Use permit.

Mueller asked if there were any more comments or questions. At this point, David Begley, an attorney from Omaha, came up to speak. He talked with Jensen about this issue under the IRA whether a governmental subdivision can get direct payment like OPPD. He first seen a blurb from one law firm that said yes but then seen a blurb from a giant Washington DC New York law firm stating that other governmental subdivisions were not eligible – so there would be no direct payment from the Federal Government to OPPD. The law has been passed. He believes the OPPD board will use the power of eminent domain to condemn all the land they can in order to build out their 3000 megawatts of solar. Mueller then asked if there were any more public comments. Since there were none, Mueller closed the public hearing at 9:29 pm.

Linda Brouhard
Recording Secretary

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