

RESOLUTION 2023-09

WHEREAS, on December 13, 2022, this Board referred to the Buffalo County Planning and Zoning Commission, hereinafter simply referred to as “Planning Commission” or “Commission”, requests for review of potential amendments to Wind Farms provisions in the Buffalo County Zoning Resolution., and

WHEREAS, on February 16, 2023, the Commission at public hearing considered amendments to Buffalo County’s Zoning Resolution regarding Wind Farms, and

WHEREAS, on February 16, 2023, following public hearing and comment, and a review of evidence submitted to the Commission, the Commission made changes in suggested amendments of this Board with no person present at the Commission hearing speaking in opposition to the following provisions, and forwarded to the Buffalo County Board of Commissioner a favorable recommendation of adoption of the following amendments to the Buffalo County Zoning Resolution:

“1. LOCATION AND DISTANCE REQUIREMENTS-WIND FARMS:

A. A Wind Farm, as herein defined within the Buffalo County Zoning Regulations:

i. Shall not be located or expanded within:

- a. Three-miles of Agricultural Residential (AGR) zoned property.
- b. Three miles of any owned in whole or in part by a non-applicant of the wind farm, unless the applicant secures consent of all property owners of parcels within three miles of the parcel boundaries containing the proposed wind farm. This can be waived, with an agreement in writing filed with the Register of Deeds, executed and filed prior to submittal of the application.
- c. Three-miles of any church, synagogue or temple, hospital, public school or public park, or any licensed day care center or day care home.
- d. Five-miles of any incorporated village or city.
- e. Two Miles of a private or public burial site.
- f. The south river bank of the Platte River to three miles from the north right of way for Highway 30 and three miles from the centerline of Highway 2.
- g. Three miles from the thread of the stream of the South Loup River.
- h. Five miles from any Federal or State wildlife preservation or management area.

B. Measurements pursuant to the foregoing section shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of a Wind Farm to the following distances, whichever applies:

i. The nearest property line of any real estate situated in the Agricultural Residential (AGR) use district by the Zoning Map of Buffalo County; and

ii. The nearest portion of the building or structure used as a part of a Wind Farm; and

iii. The nearest property line of the premises of a windfarm non-applicant property line, church, synagogue, temple, hospital, public school, public park, licensed day care center, and day care home, and

iv. The nearest grave marker at a burial site.

v. The nearest property line of a Federal or State wildlife preservation or management area.

vi. The nearest municipal corporate limit line, exclusive of areas annexed for economic development.

C. Distance certifications: An application for a Wind Farm shall be accompanied by a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures within two miles of the property to be certified; that shall minimally include the property lines of any church, synagogue or temple, hospital, public school or public park, or any day care center or day care home within two-miles of the property to be certified; and the property lines of any property zoned Agricultural Residential (AGR) by the Zoning Map of Buffalo County within two miles of the property to be certified.

D. For purposes of this sub-section, a use shall be considered existing if it is in existence at the time an application is submitted.

WHEREAS, after providing notices as required by law, this Board held public hearing for the consideration and potential adoption of the foregoing language at meeting held March 14, 2023.

WHEREAS, no one spoke in opposition to the above recommendations at the public hearings before the Planning Commission and this Board.

WHEREAS, this Board has reviewed and considered the:

1. Minutes of the Planning Commission for meeting held February 16, 2023.
2. Exhibits 1-10 and 12 were received by the Planning Commission at the February 16, 2023 hearing, Exhibit 11 was discussed at that meeting then added after the public hearing, with the record before the Commission being left open for submittal of additional Exhibits 13 through 18.
3. Additional Exhibits 19 -21 were received at the public hearing before this Board.
4. Currently existing and adopted Comprehensive Plan of Buffalo County together with the revised Comprehensive Plan submitted to this Board for consideration and adoption at the February 16, 2023, meeting of the Planning Commission.
5. Testimony given by the public at the Planning Commission's public hearing held on this issue where no one present voiced opposition to the distancing recommendations of the Planning Commission.
6. Testimony and evidence given at the public hearing held before this Board.
7. Existing zoning regulations of this county.

WHEREAS, based upon the foregoing, and in the best judgment of this Board for the public good and wellbeing, this Board finds the adoption of the foregoing language should occur. However, certain items of evidence are irrefutable. These irrefutable items are:

1. The maps published and produced by several sources, including but not limited to American Bird Conservatory, U.S. Game and Wildlife and Nebraska Game and Parks, indicate that most of Buffalo County is in the migration route of Whooping Cranes, an endangered species.
2. Also based upon a map and information published within Smithsonian magazine, Kearney, Buffalo County, Nebraska, is the center of an 80-mile east to west conduit for 200 Million migrating birds belonging to 300 or so species. Kearney roughly sits centered east to west in Buffalo County, with Buffalo County being Six (6) townships wide, east to west, or thirty-six (36) miles.
3. Within the suggested setback distance areas from the Platte and South Loup Rivers there exist wetlands as inventoried by U.S. Fish and Wildlife all as set out on this map: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>) The density of the inventoried wetlands is notable. The minimum distancing requirements of the proposed amendment are consistent with a need to protect the wetlands located along the named rivers from encroachment of wind farms.
4. Highway #2 has been designated a scenic byway by the State of Nebraska and preservation of the scenery of that route should be protected. It has been popularly referred to as "Nebraska's Sandhill's Journey Scenic Byway". According to an article posted in The Fencepost on June 10, 2010: "The late Charles Kuralt called Nebraska's Highway 2 "one of America's 10 most beautiful highways" exclaiming, "This road will take you to one of the last unexplored frontiers where vast treasures can be discovered." Additionally, since 1984, the Nebraska Sandhills has been designated a National Natural Landmark. See: Wikipedia.

WHEREAS, based upon the foregoing findings, the Board believes the areas around the Platte and Loup Rivers, together with Nebraska Scenic By-Law (Highway #2), and Federal State wildlife preservation or management area should be afforded distancing protection from wind farms. Further, that the distances recommended by the Planning Commission for these situations, as outlined above in (A) (i.) subsections f, g, and h, are reasonable and are based upon scientific reasoning. Also, there is a need for public policy stated in the form of zoning regulation to protect these areas.

WHEREAS, this Board believes that the Planning Commission's recommendations regarding required minimum distancing do have sufficient factual and scientific information to merit adoption by this Board. In this regard the Board notes that many of the noise study distancing studies studied wind turbine towers that were smaller height than the height of towers that more prevalent in high the previous wind towers. This Board believes that the increased height of the more modern, more power generation potential towers, would in turn increase the distancing requirements for sound derived complaints. Additionally, a taller

tower would correspondingly cause more people be exposed to flicker, shadow flash of the blades, and similar unpopular, unaesthetic aspects of wind towers for residences and uses that are in the vicinity of Wind Farms.

WHEREAS, it is in the public interest that proper respect be given to burial sites within Buffalo County and the need to keep these areas away from disturbing sounds that could be generated by Wind Farms that are within two (2) miles of these places of remembrance and respect.

WHEREAS, according to a 2017 review of cemeteries in this county for purposes of determining the tax- exempt status of some of the cemeteries within Buffalo County, the following cemeteries were listed together with section, township, and range, as being ruled tax-exempt status due to cemetery use, with the cemeteries marked with a * being within municipal zoning jurisdiction:

Armada (Miller) 9-11-18
Black Hills Creek 6-11-18
Burgess 28-11-14
Dove Hill 30-9-16
Dow (Pleasant Ridge) 30-11-14
Elm Creek Catholic 28-9-18*
Elm Creek 28-9-18*
Fairmont 34-11-16
Fairview 32-10-18
Gibbon-Riverside 15-9-14*
Immanuel 20-11-17
Kearney 25-9-16*
Majors 15-11-15
Old Stanley (Amherst) 22-10-17
Old Zion 22-11-13
Peak (Grace) Lutheran 30-11-16
Pleasant Valley 18-12-16
Pleasanton 26-12-16*
Prairie Center 18-10-15
Ravenna 6-12-14*
Ravenna Protestant 7-12-14*
Riverdale 5-9-16*
St. John's (Grace) Lutheran 33-11-15
St. Joseph 21-11-14
St. Mary's Catholic of Prairie Center 7-10-15
St. Mary's Catholic Pleasanton 26-12-16*
St. Wenceslaus (Bohemian National Catholic) 23-11-14
Sod Town 32-12-17
Sweetwater 5-12-15
Zion Evangelical Lutheran 22-11-13
Watertown 12-11-18

Also, private burial sites were noted in 2017 by the Board in the following sections within townships, all as disclosed in a rootsweb.ancestry website based type listing, which said document was used for County Board review of exemptions in 2017, listed as follows:

Beaver, Section 4
Cedar, Section 8
Collins, City of Kearney
Gardner, Section 8
Odessa, Sections 8 and 21
Rusco, Sections 18, 20 and 31
Sartoria Section 5
Schneider, Section 2
Scott, Section 34

WHEREAS, provisions relating specifically to distancing Windfarms from inventoried wetlands was not included in the Planning Commission's recommended amendments. The Board believes that many of these inventoried wetlands are probably contained in the provisions relating to setbacks from the South Loup and Platte Rivers. However, inventoried wetlands located within the Wood River Valley might need further study and review by the Planning Commission to determine whether all inventoried wetlands within Buffalo County should be added to setback/distancing provisions and the appropriate distancing measurement.

WHEREAS, some of the areas of protection from incursion from Wind Farms by use of proposed setback distancing provisions overlap each other. This overlapping indicates the multiple needs of areas that need zoning protection in order to preserve property valuations, preserve natural habitat and beauty of the areas, and the standard of living within those areas.

WHEREAS, this Board believes that the Planning Commission's recommendations are well taken and should be adopted in its' entirety. In approving the Planning Commission's recommendations, this Board will pass the amendments in two portions. The first portion will relate to zoning protection of migratory bird areas and scenic by way zoning setback provisions and the other portion will relate to all other item that need setbacks.

NOW THEREFORE, BE IT RESOLVED BY THE BUFFALO COUNTY BOARD OF COMMISSIONERS THAT THE Buffalo County Zoning Resolution shall be amended to add the following language regarding Wind Farms, to read as follows with underlined wording indicating the added language:

"1. LOCATION AND DISTANCE REQUIREMENTS-WIND FARMS:

A. A Wind Farm, as herein defined within the Buffalo County Zoning Regulations:

Shall not be located or expanded within:

- a. The south river bank of the Platte River to three miles from the north right of way for Highway 30 and three miles from the centerline of Highway 2.
- b. Three miles from the thread of the stream of the South Loup River.

- c. Five miles from any Federal or State wildlife preservation or management area.

B. Measurements pursuant to the foregoing section shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of a Wind Farm to the following distances, whichever applies:

- a. The nearest portion of the building or structure used as a part of a Wind Farm;
- b. The nearest property line of a Federal or State wildlife preservation or management area.

C. Distance certifications: An application for a Wind Farm shall be accompanied by a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures within two miles of the property to be certified; that shall minimally include the property lines of any church, synagogue or temple, hospital, public school or public park, or any day care center or day care home within two-miles of the property to be certified; and the property lines of any property zoned Agricultural Residential (AGR) by the Zoning Map of Buffalo County within two miles of the property to be certified.

D. For purposes of this sub-section, a use shall be considered existing if it is in existence at the time an application is submitted.”

With renumbering and indentation to be done to integrate the language of this Resolution into the existing Zoning Resolution as necessary.

IT IS FURTHER RESOLVED that the following amendments are also additionally added to Buffalo County’s Zoning Resolution, based upon the public testimony provided, with these regulations being found to be in the best interests of public for the preservation of property values and maintenance of a standard of rural living. In adopting the following language this Board finds and notes that Buffalo County spatially has a considerable Agricultural Residential (AGR) Zoning District, existing in several areas of this County. The AGR Zoning District does not allow Wind Farms uses. Also, the now-existing and current planned Comprehensive Plan indicate planned growth of the AGR Zoning District. That would mean that this county’s future growth is expected to grow for residential uses. Further, as a future use, Agricultural Residential, or simply more residences in rural areas, will increase in various areas of rural Buffalo County. Wind Farms are incompatible use as compared to the uses outlined in the AGR District and/or increased rural residential use. Accordingly, due to foregoing reasons, among others, the following amending language, with underlining reflecting added language, all as recommended by the Planning Commission are adopted:

“1. LOCATION AND DISTANCE REQUIREMENTS-WIND FARMS:

A. A Wind Farm, as herein defined within the Buffalo County Zoning Regulations:

a. Shall not be located or expanded within:

- c. Three-miles of Agricultural Residential (AGR) zoned property.

- d. Three-miles of any owned in whole or in part by a non-applicant of the wind farm, unless the applicant secures consent of all property owners of parcels within three miles of the parcel boundaries containing the proposed wind farm. This can be waived, with an agreement in writing filed with the Register of Deeds, executed and filed prior to submittal of the application.
- e. Three-miles of any church, synagogue or temple, hospital, public school or public park, or any licensed day care center or day care home.
- f. Five-miles of any incorporated village or city.
- g. Two-miles of a private or public burial site.
- h. The south river bank of the Platte River to three miles from the north right of way for Highway 30 and three miles from the centerline of Highway 2.
- i. Three miles from the thread of the stream of the South Loup River.
- j. Five miles from any Federal or State wildlife preservation or management area.”

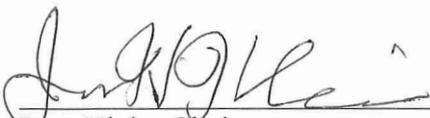
With renumbering and indentation to be done to integrate the language of this Resolution into the existing Zoning Resolution as necessary.

IT IS FURTHER RESOLVED that the following items and issues are referred back to the Planning Commission for further study, review, recommendation, and report, all as seen best by that Commission, with this Board not committing itself to enactment or non-enactment of the following items:

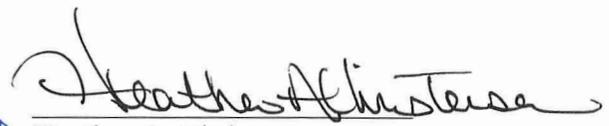
1. That based upon the maps and other matters, relating to flyways and other environmental and economic issues, whether the entire county should simply not consider Wind Farms as an acceptable land use within Buffalo County.
2. Based upon the review of U.S. Fish and Wildlife’s mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>), whether a fact-based minimum distancing requirement should or should not be implemented for each of, or some of, the inventoried wetlands that exist in the named inventory.
3. Whether Buffalo County should or should not enact a perimeter county bordering minimum distance requirement. A similar provision is being discussed in Dawson County.
4. Whether an overall height limitation should be enacted.

PASSED AND APPROVED THIS 14TH DAY OF MARCH 2023

ATTEST:


Ivan Klein, Chairperson
Buffalo County Board of Commissioners




Heather A. Christensen
Buffalo County Clerk

RESOLUTION 2023-34

WHEREAS, on May 18, 2023, the Buffalo County Planning and Zoning Commission held a public hearing for an amendment to Buffalo County Zoning Regulations, Section 6.6, Wind Farms' Location and Distancing Requirements, to add language, requiring setbacks from inventoried wetlands.

That Commission voted unanimously, with two absences, to recommend that this Board adopt the proposed amendment, and

WHEREAS, no protests have been filed with the Buffalo County Clerk against such proposed amendments, and

WHEREAS, on June 13, 2023, this Board conducted a public hearing concerning proposed amendments to Buffalo County's Zoning Regulations and no parties appeared to oppose such proposed amendment,

NOW THEREFORE, BE IT RESOLVED BY THE BUFFALO COUNTY BOARD OF COMMISSIONERS in regular session with a quorum present, that the following amendment is adopted with amending language generally shown by underlining as additions and strikethrough as deletion, as reflected below, and renumbering as necessary:

Amend Section 6.6, Wind Farms' Location and Distancing Requirements:

"1. LOCATION AND DISTANCE REQUIREMENTS-WIND FARMS:

A. A Wind Farm, as herein defined within the Buffalo County Zoning Regulations:

Shall not be located or expanded within:

- a. Three-miles of Agricultural Residential (AGR) zoned property.
- b. Three miles of any owned in whole or in part by a non-applicant of the wind farm, unless the applicant secures consent of all property owners of parcels within three miles of the parcel boundaries containing the proposed wind farm. This can be waived, with an agreement in writing filed with the Register of Deeds, executed and filed prior to submittal of the application.
- c. Three-miles of any church, synagogue or temple, hospital, public school or public park, or any licensed day care center or day care home.
- d. Five-miles of any incorporated village or city.
- e. Two Miles of a private or public burial site.
- f. The south river bank of the Platte River to three miles from the north right of way for Highway 30 and three miles from the centerline of Highway 2.
- g. Three miles from the thread of the stream of the South Loup River.
- h. Five miles from any Federal or State wildlife preservation or management area.
- i. One-quarter mile from any and all inventoried Wetlands, as set out in the U.S. Fish and Wildlife's mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>).

B. Measurements pursuant to the foregoing section shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of a Wind Farm to the following distances, whichever applies:

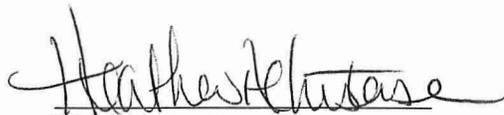
- a. The nearest property line of any real estate situated in the Agricultural Residential (AGR) use district by the Zoning Map of Buffalo County; and
- b. The nearest portion of the building or structure used as a part of a Wind Farm;
- c. The nearest property line of the premises of a windfarm non-applicant property line, church, synagogue, temple, hospital, public school, public park, licensed day care center, and day care home, and
- d. The nearest grave marker at a burial site.
- e. The nearest property line of a Federal or State wildlife preservation or management area.
- f. The nearest municipal corporate limit line, exclusive of areas annexed for economic development.
- g. The nearest edge of inventoried Wetlands as set out in the U.S. Fish and Wildlife's mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>)."

PASSED AND APPROVED THIS 13TH DAY OF JUNE 2023.


Ivan H. Klein, Chairperson
Buffalo County Board of Commissioners

ATTEST:

(SEAL)


Heather A. Christensen
Buffalo County Clerk



Wind Farm Code Amendments: June 13, 2023

Code amendments, under Buffalo County Zoning Regulations, generally shown by underlining as additions and strikethrough as deletion, as reflected below with renumbering as necessary, to the following sections:

“1. LOCATION AND DISTANCE REQUIREMENTS-WIND FARMS:

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- d. Five-miles of any incorporated village or city.
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- g. Three miles from the thread of the stream of the South Loup River.
- h. Five miles from any Federal or State wildlife preservation or management area.
- i. One-quarter mile from any and all inventoried Wetlands, as set out in the U.S. Fish and Wildlife’s mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>).

B. Measurements pursuant to the foregoing section shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of a Wind Farm to the following distances, whichever applies:

- a. The nearest property line of any real estate situated in the Agricultural Residential (AGR) use district by the Zoning Map of Buffalo County; and
- b. The nearest portion of the building or structure used as a part of a Wind Farm;
- c. The nearest property line of the premises of a windfarm non-applicant property line, church, synagogue, temple, hospital, public school, public park, licensed day care center, and day care home, and
- d. The nearest grave marker at a burial site.
- e. The nearest property line of a Federal or State wildlife preservation or management area.
- f. The nearest municipal corporate limit line, exclusive of areas annexed for economic development.

- g. The nearest edge of inventoried Wetlands as set out in the U.S. Fish and Wildlife's mapping and inventory of Wetlands, namely the mapping contained at: (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>).

C. Distance certifications: An application for a Wind Farm shall be accompanied by a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures within two miles of the property to be certified; that shall minimally include the property lines of any church, synagogue or temple, hospital, public school or public park, or any day care center or day care home within two-miles of the property to be certified; and the property lines of any property zoned Agricultural Residential (AGR) by the Zoning Map of Buffalo County within two miles of the property to be certified.