

January 11, 2024

**CITY OF HASTINGS, NEBRASKA  
MINUTES OF BOARD OF ADJUSTMENT  
Thursday, January 11, 2024**

Pursuant to due call and notice thereof, a meeting of the Hastings Board of Adjustment was conducted at the Hastings Municipal Airport, 3300 W 12th Street, City of Hastings, Hastings, Nebraska on January 11, 2024.

The meeting was called to order at 4:00 p.m. in Regular Session by Acting Chairperson Ann Hinton with the following members present: Ann Hinton, Dan Schwartzkopf, Byron Jorgensen, and Nic Dowling.

The following City Officials were present: City Administrator, Shawn Metcalf, City Attorney, Jesse Oswald, Chief Building Inspector, Kevin Kubo, Director of Development, Chad Bunger, and Administrative Assistant, Melissa Woodard.

Acting Chairperson Ann Hinton led the group in recital of the Pledge of Allegiance to the United States of America.

**Public Notice** - Official Notice of the Regular Meeting was published in the Hastings Tribune on Saturday, December 30, 2023. Pursuant to Nebraska Revised Statute Section 84-1412, the public is advised that a copy of today's agenda and all reproducible written material which will be discussed at today's meeting is available for public review. Also, a current copy of the Nebraska Open Meetings Act is posted and accessible to all members of the public.

Acting Chairwoman Ann Hinton made a motion to adopt the current agenda for the January 11, 2024, meeting. Moved by Schwartzkopf, seconded by Jorgensen. Voice Call-Ayes: Dan Schwartzkopf, Byron Jorgensen, Nic Dowling and Ann Hinton. Nays: None. The motion carried.

**New Business**

**a. Election of Chairperson and Vice Chairperson**

Acting Chairwoman Ann Hinton introduced the item and asked for nominations for the Board Chair and Vice-Chair.

Schwartzkopf moved to nominate Byron Jorgensen as Chairperson of the Board of Adjustment. seconded by Nic Dowling. Voice Call- Ayes: Ann Hinton, Dan Schwartzkopf, and Nic Dowling. Nays: None. Motion carried 3-0.

Dowling moved to nominate Ann Hinton as Vice Chairperson, seconded by Dan Schwartzkopf, Ayes: Nic Dowling, Dan Schwartzkopf, and Byron Jorgensen. Nays: None. Motion carried 3-0.

**New Appeals or Requests**

**a.** The Variance filed by Industrial Irrigation Service for two wind turbines to be constructed at 116 feet in height and as close as 30 feet to the north property line. The Variance is for the real property commonly known as 221 East J Street which is zoned I-2 Heavy Industrial District. This exceeds the maximum height and encroaches into the minimum rear yard setback for small

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wind energy systems, required by Hastings City Code Section 34-314.

Chairman Jorgensen opened the public hearing for the Variance filed by Industrial Irrigation Service for the two wind turbines.

Following the summary by Bunger, Chairman Jorgensen asked the applicant's representative if he had any comments to provide to the Board. Speaker-Kerry Kissinger, with American Wind Power, provided comments on behalf of the application. Kissinger noted a lot of business owners are looking at wind energy to improve their bottom line with incentives offering 50 percent grants and 40 percent tax breaks. Ordinances are mostly outdated in cities. There are several telecommunication towers that do not comply with the setback requirements, including two in the immediate area of the Variance Site. Kissinger commented that the towers are designed using the latest standards including the ability to handle wind speeds up to 100 mph and ice. The towers have a warranty to handle wind speeds up to 135 mph from the manufacturer. Kissinger stated since 1977, all 10,000 turbines that have been installed by the manufacturer have never had a liability claim. They are very safe. The city's ordinances are over 40 years old, and technology has changed. The City's ordinances do not accommodate the updated technology and he noted that the adjacent property is undeveloped and any impacts to future developments should be mitigated by that time.

Jorgenson and Kissinger discussed how often wind tunnels are inspected, which is suggested by the manufacturer to be annually.

Jorgenson and Bunger spoke about new codes coming out, but right now it's unknown, without doing more research on the topic.

Bunger stated the City's ordinances were from 2009, and discussed how cell towers also have a one-to-one setback. Some old towers, such as Telecom and radio towers, in the immediate area, were most likely built before the city adopted the ordinances.

Kissinger suggested that a condition of approval could be the turbines be inspected annually and the documentation must be provided to the City. Bunger stated the city does not have systems in place to check for that. The City judges on merits, trust of the property owners and making sure it's built correctly. The Board then asked if the property owner's private insurance would cover any damages if something happened.

Hinton then mentioned the comprehensive plan and remaining zoned as Light Industrial and thinks Communication Towers vs Wind Turbines, the size and weight are not comparable.

Kissinger stated with specifics that it weighs less than Communication Towers and it's zoned Heavy Industrial, not a lot of regulations apply and stated they are designed with the same standards as the Communication Towers.

Hinton brought up the rights of the North property owner.

Hinton asked Bunder about the height regulation being changed in the future. Bunger stated that the staff has not researched this topic, but it does conflict with the district having no height requirement.

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Jorgenson asked Kissinger if the turbines shut down at certain wind speeds. Kissinger stated they self-regulate and operate through any wind speed and monitor themselves. If utilities go out, they shut down.

Jorgenson inquired what percentage the turbines produce. Kissinger stated 100 percent most months, however 75-80 percent in other months.

Jorgenson wanted to know how hard or expensive it would be to move the tower to a different location and different site area from the middle where the concrete is to the property on the East were mentioned. Kissinger pointed out that would mean trenching under the concrete by a lot more feet, or on the east side of the site would require more wire. Both ways require more expense for the property owner.

Kissinger requested that the Board approve set-back and require annual yearly inspections instead.

The Board asked what the setbacks were for that property and zoning district. Bunger determined that the North property line is likely a rear yard, which has zero setbacks. It could also be considered a side yard, which requires a 3-foot setback for buildings in the I-3 District.

Metcalf asked Bunger if the North property owner was aware of this. Bunger was not aware if the applicant had discussed this issue with the adjacent owner.

Hinton stated that was one of her biggest concerns, considering the rights of the North property owner. Jorgensen brought up the rights of the North property owner would have future recourse.

Oswald read the State Statute **19-910** Board of Adjustment; powers; jurisdiction on appeal; variance, when permitted.

Jorgenson closed the Public Hearing and opened further discussion among the Board members.

Hinton suggested they trust Chad Bunger's recommendations. Height isn't the major one. It's undue hardship, as it's most cost effective. There are other alternatives, and suggested they stay within the setbacks. Dowling agreed that setbacks are very important. It could later devalue the ground in some way.

Schwartzkopf stated the alternative site to the East, the business owner owns it, in the middle, and inquired would that disrupt that property? Kissinger replied there would be North- South winds, so another location and 150-feet further out in that field, so 1,000 feet of electrical wiring instead of 50 feet. Kerry stated there are no setbacks for Communication Towers, so why discriminate against the tower?

The Board suggested other things Industrial Irrigation could do to stay within the setbacks.

A motion to approve the Variance to allow the maximum height of the tower to 116-feet, with one condition of approval, was made by Schwartzkopf, seconded by Hinton.

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Voice Call- Ayes: Byron Jorgenson, Dan Schwartzkopf, Ann Hinton and Nic Dowling. Nays: None. Motion carried 4-0.

Hinton made a motion to deny the Variance request to reduce the required setback for the two proposed turbines, seconded by Dowling. Voice Call-Ayes: Ann Hinton, Nic Dowling and. Byron Jorgensen. Nays: Dan Schwartzkopf. Motion carried 3-1.

Kissingler asked if they change the setback to at least 60 feet, to match the east tower, would that work? Bunger explained that the Board had made their decision and altering the request at this time is not possible.

**Other Business:**

Bunger discussed with the Board of Adjustment that a regularly scheduled monthly meeting would be best. City staff will send an e-mail to coordinate future meeting dates and times.

A motion to adjourn was made by Dowling, seconded by Hinton. Voice Call- Ayes: Byron Jorgensen, Dan Schwartzkopf, Ann Hinton and Nic Dowling. Nays: None.

Motion carried 4-0 to adjourn at 5:10 pm.

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Byron Jorgensen, Chair