



BROWN COUNTY KANSAS

DATE	Jan. 10th, 2025	TIME	9:00 a.m.	LOCATION	Commissioner's Room : BR Co Courthouse
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MINUTES : BROWN COUNTY PLANNING COMMISSION			
Bill Vonderschmidt, Chair <u>P</u>	Clif Heiniger, Vice-Chair <u>P</u>	Lafe Bailey, Reporter <u>A</u>	Bill Seckler <u>P</u>
Wyatt Kerl <u>P</u>	Rex Lockwood <u>P</u>	Shawn Lloyd <u>P</u>	P=Present / A=Absent / V=Virtual

TIME	ITEM	OWNER
9:00	<p>Public Hearing Call to Order pursuant to Public Notice of proposed zoning regulations for Brown County, KS</p> <p>Procedures and context for the Public Hearing: (as follows; Exhibit A) by Bill V.</p> <ul style="list-style-type: none"> • Presentation of considerations impacting the development of the regulation • Description of the Zoning regulation under consideration (Exhibit B; copies made available for attendees) • Opening for Public comments • Closure of Public comment period • Planning Commission deliberation and decision • Develop recommendations to be provided to the Board of Brown County Commissioners • Rules of civil order for the Public Hearing meeting <p>Conclusion of Planning Commission remarks and invitation to Public Hearing comments.</p> <p>Citizen comments (not verbatim):</p> <ul style="list-style-type: none"> • Glen Hennigen: Zoning regulations already exist in Brown County, limited to the Regional Airport consideration and FAA zoning restrictions still in effect. • Annette Hoskins : Survey showed citizen concern for many of the same reasons stated, and support for limited zoning regulations. • Brian Hoskins: I've helped put some of the turbines in down south, south east Kansas and the toll that the construction puts on roads and road beds by the weight of the equipment needed to erect is tremendous and Brown County can't afford that kind of damage. • Call for other comments <p>Hearing no other comments; Public Hearing portion of the meeting is closed (9:20 approx)</p> <p>Planning Commission: Request for further discussion - hearing none, is there a motion?</p> <ul style="list-style-type: none"> • Motion made (as follows; Exhibit B) by Clif H. • Second by Bill S. • Call for discussion • Hearing none, call to vote. Motion carries 6:0 with one member absent <p>Planning Commission will forward the proposed limited zoning regulation to the Board of County Commissioners for their consideration in their next meeting.</p>	Bill V.
	Public Hearing meeting is adjourned.	Bill V.

Exhibit A

CHAIRPERSON COMMENTS

Brown County Planning Commission Public Hearing

January 10, 2025

Welcome, I am calling this public hearing of the Brown County Planning Commission to order. This is a hearing regarding a proposed zoning regulation for Brown County Kansas, pursuant to a published public notice. The planning commissioners present today are [state the names of those in attendance]. We will proceed with this hearing as follows: I will provide considerations impacting development of the zoning regulation and a description of the zoning regulation under consideration. Printed copies of it are also available. We will then open the hearing for public comments. After Public comments are heard we will close the public comment period, deliberate, and decide. Then we will develop what recommendations we recommend to the Board of County Commissioners. The role of the planning commission is only to make recommendations to the Board of County Commissioners. It is the Board of County Commissioners that will make the final decision. To ensure that this is both an open process and an orderly one, there are certain ground rules for the public-comment portion of this hearing that I ask all of you to respect:

If you are going to speak, please sign up in advance on the sign-up sheet we have available. When you begin your remarks, please state your name and where you live. All your comments should be directed at the Planning Commission. It is not appropriate in this proceeding to direct comments to other speakers or to get into a back-and-forth conversation with others during your comment time. Please confine your remarks to three to five minutes, If I ask you to wrap up your comments, please do so to accommodate the next speaker. We want to hear from all who sign up to speak.

We hope to complete this hearing in an hour or so this morning, although that might not be possible. Everyone will have an opportunity to speak. The Brown County Planning Commission was appointed by resolution of the Board of County Commissioners of Brown County to develop a comprehensive plan for Brown County and to make recommendations about what zoning regulations the County should adopt. Our sense, as the Brown County Planning Commission was, that the need for zoning regulations in Brown County is limited. Zoning does not, and by law cannot, regulate agricultural uses of land. Therefore, most land uses in Brown County, other than in our cities and towns, could not be regulated by county zoning and there is no reason for them to be regulated by the County. However, it has been validated by the comprehensive plan and the survey conducted when it was developed, that the potential adverse impacts of utility- scale wind energy projects justify zoning controls. In Kansas, the county is the governmental unit that has the authority to control where these projects can be built. Neither the federal nor the state government regulates such local land-use questions—if regulation is going to happen, it falls on us to develop that regulation. We felt that the need to regulate utility-scale wind energy projects is an urgent one. Once the construction of a project is substantially underway, it may be too late to avoid its adverse impacts. The planning commission is concerned about utility-scale wind energy projects because their impacts include significantly changing the character of areas in which they are built; adversely affecting residential land uses as a result of noise and visual impacts; posing significant risks to road and bridge infrastructure during construction. Medium and long-term risks that are associated with what happens to the equipment as it wears out, and also the potential impairment of aerial spraying.

The planning commission has considered that some of these impacts might be reduced or controlled by regulations that place requirements on developers before a project can be built. The planning commission has also considered that some of the adverse impacts cannot be controlled by such requirements and that, for some adverse impacts, the restrictions that would be necessary to control them might prevent any wind project from being viable. The planning commission has considered the approaches taken in other Kansas counties, and the experiences of those counties with the results. We have also considered that wind projects will produce income for the owners of the land on which they are built, some of whom are likely to be residents of Brown County.

After considering these factors, the planning commission developed a proposed zoning regulation for Brown County to address, as quickly as practically, the risks posed by wind energy development. That is the regulation on which we are having a public hearing today. That regulation is limited in scope and addresses only wind energy projects. Any more comprehensive zoning code is a matter for future consideration. The regulation under consideration today would affect all unincorporated areas in Brown County subject to the jurisdiction of Brown County to zone. That means it does not affect cities nor any portion of tribal lands that might be outside of Brown County's authority to regulate. The regulation would essentially prohibit utility-scale wind energy facilities in Brown County. Specifically, the proposed restriction reads as follows:

No land shall be used for a Commercial Wind Energy Project or any portion thereof. A "Commercial Wind Energy Project" is defined as a combination of mechanical and structural elements used to produce electricity by converting kinetic energy of wind to electrical energy of equal or greater than 500 kilowatts in total nameplate generating capacity. "Commercial Wind Energy Project" includes powerlines, cables, transformers, and similar equipment within the zoning jurisdiction of Brown County, Kansas, used to convey or process electricity generated from a Commercial Wind Project outside the zoning jurisdiction of Brown County, Kansas, except for such equipment that conveys or processes such electricity incidental to conveyance of electricity generated from other sources.

If this zoning regulation is adopted by the Board of County Commissioners of Brown County, you will not see miles of tall turbines in Brown County. In addition, to the extent federal and state law allows Brown County to decide, you would also not see miles of new privately owned powerlines in Brown County carrying electricity generated from wind projects that might be developed in any surrounding counties. This does not necessarily mean no new power lines will be built in Brown County, because as to power lines, our zoning power is limited. At this time, we will hear from any interested members of the public.

[Allow all speakers to speak]

Thank you for your participation today and for your comments. At this time, we will close the public-comment portion of this hearing.

Exhibit B

Planning Commission Proposed Brown County, Kansas, Zoning Regulation Pursuant to K.S.A. 12-741 et seq.

1. Jurisdiction: This regulation shall apply to all unincorporated territory within Brown County, Kansas. Such territory shall be designated on the official Brown County zoning district map incorporated herein by reference. The application of this regulation to tribal trust lands within Brown County, if any, is subject to limitations/exemptions of federal law as may be applicable from time to time.
2. Purpose: The purpose of this regulation is to preserve and protect agricultural land, aesthetic values and quality of life within Brown County, Kansas.
3. Number of zoning districts: The unincorporated territory within Brown County, Kansas, shall comprise a single zoning district uniformly subject to the regulation herein.
4. Restrictions: No land shall be used for a Commercial Wind Energy Project or any portion thereof. A "Commercial Wind Energy Project" is defined as a combination of mechanical and structural elements used to produce electricity by converting kinetic energy of wind to electrical energy of equal or greater than 500 kilowatts in total nameplate generating capacity. "Commercial Wind Energy Project" includes powerlines, cables, transformers, and similar equipment within the zoning jurisdiction of Brown County, Kansas, used to convey or process electricity generated from wind energy projects outside the zoning jurisdiction of Brown County, Kansas, except for such equipment that conveys or processes such electricity incidental to conveyance of electricity generated from other sources.

Exhibit C

Planning Commission motion: Clif Heiniger, Vice-Chair

Mr. Chairman,

I move that the Brown County Planning Commission recommend to the Board of County Commissioners of Brown County that it adopt the Zoning Regulation as to which we held the hearing today, as the zoning regulation of Brown County, Kansas, subject to such future amendments as the Board of County Commissioners may adopt.

I provide the following reasons for this recommendation:

1. The adoption of this zoning regulation is consistent with and furthers the Brown County Comprehensive Plan. It is consistent with the will of the people of Brown County as expressed in the survey conducted in connection with the development of that plan.
2. The adoption of the zoning regulation is consistent with and supports the agricultural nature of rural Brown County. The zoning regulation does not and cannot regulate agricultural uses of land. However, it prevents the threatened development of the land use that would significantly adversely alter the character of agricultural and rural areas in Brown County.
3. Commercial wind energy projects pose an imminent threat to the public interests of a nature and extent not currently presented by other land uses existing or known to be planned in Brown County. Prompt action to impose zoning regulation governing commercial wind energy projects is reasonably necessary to address that threat. Therefore, the focus and limited scope of the proposed zoning regulation is reasonable. If more comprehensive regulations are or become desirable, the amendment process allows for the expansion of the zoning regulation to address other land uses or threatened land uses.
4. Commercial wind energy projects, as currently developed in other communities, occupy large tracts of land, often in proximity to and interspersed with residential land uses. Commercial wind energy projects can have adverse effects on pre-existing residential land uses because of the change they produce in the character of the areas in which they are located, the noise they generate, and their visual dominance. Such projects also commonly cause damage to road and bridge infrastructure during their construction and pose an ongoing risk of future damage to road and bridge infrastructure from their maintenance, replacement, and decommissioning.
5. The construction of commercial wind energy projects involves bringing in large fiberglass/composite components, such as turbine blades, that have a limited expected lifespan, limited recyclability, and limited disposal options. The long-term presence of damaged, obsolete, or otherwise non-operational components in Brown County is not in the public interest.
6. The presence of operating wind turbines in Brown County would be expected to limit the areas in Brown County in which aerial spraying is available or practical in support of agricultural operations.
7. Efforts in other Kansas counties to allow but regulate commercial wind energy projects have (a) introduced divisions in the community; (b) resulted in the public incurring litigation costs; (c) failed to assure the level of protection from adverse impacts we believe is appropriate in Brown County; and (d) not been tested throughout the lifespan of projects to assure that they (i) adequately identify all of the dangers commercial wind energy projects create that it may in the public interest to address or (ii) adequately address the dangers they are designed to address. Zoning regulations that prohibit commercial wind energy projects have survived judicial review and have proven effective as a mechanism to avoid the adverse impacts of such land uses. Therefore, the approach of prohibiting such land uses is favorable to allowing such land uses subject to regulations.