

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION: SPECIAL USE PERMIT FOR TOM HEIMES

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County Board of Commissioners has the authority to adopt a Zoning Regulation, which shall have the force and effect of law pursuant to Neb. Rev. Stat. § 23-114 (Reissue 2007); and,

WHEREAS, said Zoning Regulations require the County Board of Commissioners to approve Special Use Permits; and

WHEREAS, Rebecca Horner, Planning Director has reviewed the Tom Heimes Special Use Permit application, to install a 50 Foot wind generator for residential use for compliance with the Sarpy County Comprehensive Plan and the Sarpy County Zoning Regulations on the property generally located at Hwy 31 & Riha Road and legally described as follows:

Lot 6, Meadow Oaks South in Sec 10, Twp 12N, Range 11E of the 6th P.M.,
Sarpy County, Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS that this Board makes the following findings of fact:

- I. A public hearing regarding the Special Use Permit Application was held before the Sarpy County Planning Commission on July 15, 2009 and further, the Planning Commission gave their recommendation.
- II. A public hearing regarding the Special Use Permit Application was held by this Board.
- III. Notice of each of the Public Hearings described above was published at least once in the ten (10) day period immediately prior to each respective public hearing as required by Neb. Rev. Stat. §23-164 (Reissue 1997), and the proof of publication has been filed in the Office of the Sarpy County Clerk.
- IV. The Planning Director has made a recommendation as noted in the attached Exhibit "A", which Exhibit "A" includes the Planning Director report with an attached Nebraska Game and Parks Commission map and the site plan.
- V. The U.S. Fish and Wildlife Service opposes the application for a wind generation system due to the negative effect such a system may have on federally protected migratory birds.
- VI. The Special Use Permit Application is in compliance with the Comprehensive Development Plan.

FURTHER BE IT RESOLVED THAT this Board in light of the above recited findings of fact, after due deliberation and consideration, approves the issuance of the Special Use Permit to install a 50 Foot wind generator for residential use, on the above described property with the following conditions:

1. That the applicant comply with the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and the Endangered Species Act, as applicable,

2. That the Applicant enters into an interconnection agreement with the Omaha Public Power District,
3. That the Applicant enter into a development agreement with Sarpy County addressing issues of decommissioning of the structure, design standards as recommended by the Planning Director, and adequate liability insurance.

Dated this 6th day of October, 2009.

Moved by Rich Jansen seconded by Pat Thomas, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

Rich Jansen

None

Jon Jones

Tom Richard

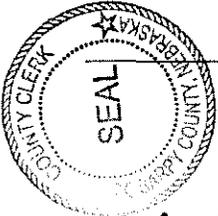
Patrick J. Thomas

ABSTAIN:

None

Approved as to form:

Mark A. B.
County Attorney



Paul J. Allen Deputy
County Clerk

Sarpy County
 County Board of Commissioners Report
 Meeting Date: September 15, 2009
 Staff Report Prepared: September 4, 2009

Subject	Type	By
Special Permit for a wind energy systems at the property owner's residence at 21162 Riha Road, legally described as Lot 6, Meadow Oaks South in Sec 10, Twp 12N, Rng 11E of the 6 th P.M., Sarpy County, Nebraska.	Resolution and public hearing	Rebecca Horner, Planning Director.

This is a request for approval of a special use permit for a wind energy system

- Comprehensive Development Plan
 - The Comprehensive Plan shows the area as Conservation Residential. (Figure 5.1)
 - The Comprehensive Plan indicates this is an area with high levels of environmental features. (Figure

- Zoning
 - The existing zoning is AGD, Agricultural Development District.
 - The proposed wind energy system is to be 50' in height and proposed to be setback from the east property line 80'.
 - The proposed system is to be setback from adjacent property lines a minimum of 80' as shown in the attached site plan.
 - There are existing tree masses on all sides of the property.
 - The applicant indicated they request the permit for residential electrical use.
 - OPPD indicated that there are existing underground power lines in the area. An interconnection agreement is required if the systems will connect to the power grid and a development agreement should be required addressing decommissioning, liability insurance and design standards.

- History
 - Planning Department received the application prior to adoption of the wind energy system design standards.
 - The application was originally heard June 17, 2009 and delayed by the Planning Commission to allow for further research regarding the wind energy regulations.
 - The Planning Department received a letter of opposition from the U.S. Fish and Wildlife Service indicating sensitive endangered species habitat is located in the area, and the area is a bird migration zone (see attached Nebraska Game and Parks Commission map). The U.S. Fish and Wildlife Service indicated that the intentional or accidental taking as well as displacement of habitat is a violation of the Endangered Species Act. The U.S. Fish and Wildlife Service believes the proposed wind energy system could cause a taking and opposes the request.

- Summary of Request
 - Generally the application conforms to the newly adopted wind energy system design guidelines.
 - There is endangered species habitat in the area of the request and the request is adjacent to the Scham Park area.

- Planning Commission Action

June 17, 2009

- Bliss moved, seconded by Stuart to table the special use permit to July 15, 2009, when further research has been completed concerning the wind energy regulations. **Ayes-** Bliss, Fenster, Stuart, Marquardt, Torczon, and Wees, **Nays** – Wear and Whitfield. **Abstain** – None. **Absent** Courtney Dunbar, Greg Gonzalez, and Stacen Gross –. **Motion carried.** (6-2)

July 15, 2009

- Wear moved, seconded by Torczon to approve the application for a special use permit for Tom Heimes for a wind energy tower. **Ayes:** Stuart, Wear and Wees. **Nays:** Bliss, Fenster, Marquardt, Torczon, and Whitfield **Abstain:** None. **Absent:** Courtney Dunbar, Greg Gonzalez and Stacen Gross. **Motion did not carry.** (3-5)
- Fenster moved, seconded by Bliss to deny the special use permit based on the environmental concerns expressed by the US Fish and Wildlife. **Ayes:** Bliss, Fenster, Marquardt, Torczon, and Whitfield. **Nays:** Stuart, Wear and Wees. **Abstain:** None. **Absent:** Courtney Dunbar, Greg Gonzalez and Stacen Gross. **Motion carried.** (5-3)

- Recommendation

Due to the existing endangered species habitat and the expressed concern by the U.S. Fish and Wildlife Service staff recommends denial of the request.

If the County Board wishes to approve the request, staff recommends the following conditions:

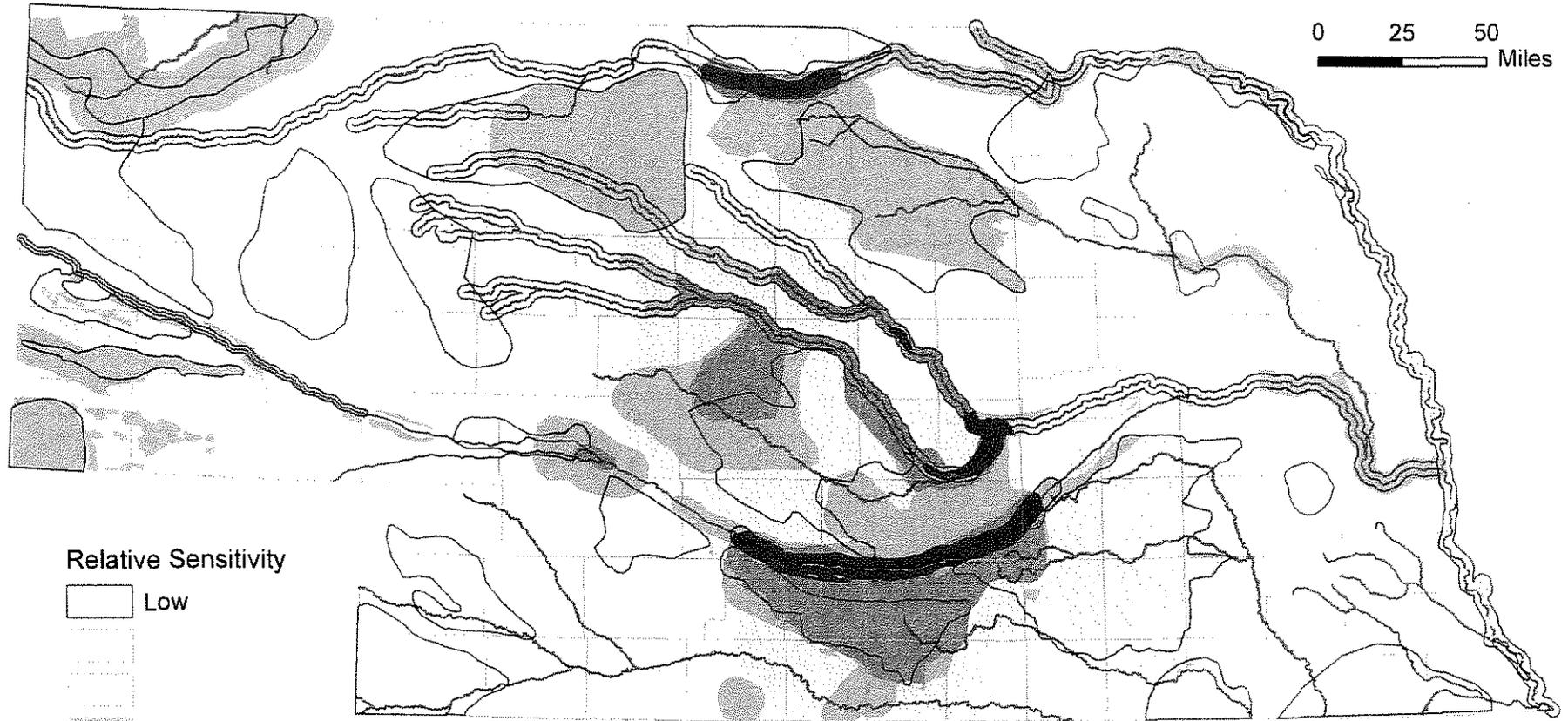
- Prior to final approval, the applicant sign a development agreement (to address design standards, decommissioning and liability insurance) as well as signs an interconnection agreement if interconnection to the power grid is desired.

Respectfully submitted by:



Rebecca Horner
Planning Director

DRAFT: Wind power and Nebraska's wildlife: An index of the sensitivity of wildlife habitats to wind power development, based on selected at-risk species



Relative Sensitivity

Low



High

Biologically Unique Landscapes



This map was designed to aid in planning for wind power development by identifying areas that are considered relatively more sensitive or less sensitive to such development, with respect to species of concern. This map is not designed to evaluate wind farm siting at specific locations. Even in "low sensitivity" areas shown, there will be specific locations where siting of wind power infrastructure can negatively impact significant biological resources (e.g. remnant tallgrass prairie, listed plant species, etc.). Contact the Nebraska Game and Parks Commission and the U.S. Fish and Wildlife Service for potential site-specific impacts and potential conservation measures to avoid "take" under the state Nongame and Endangered Species Conservation Act and the federal Endangered Species Act.

See attached document for a description of the information used to develop this map.

Map version date: April 30, 2009

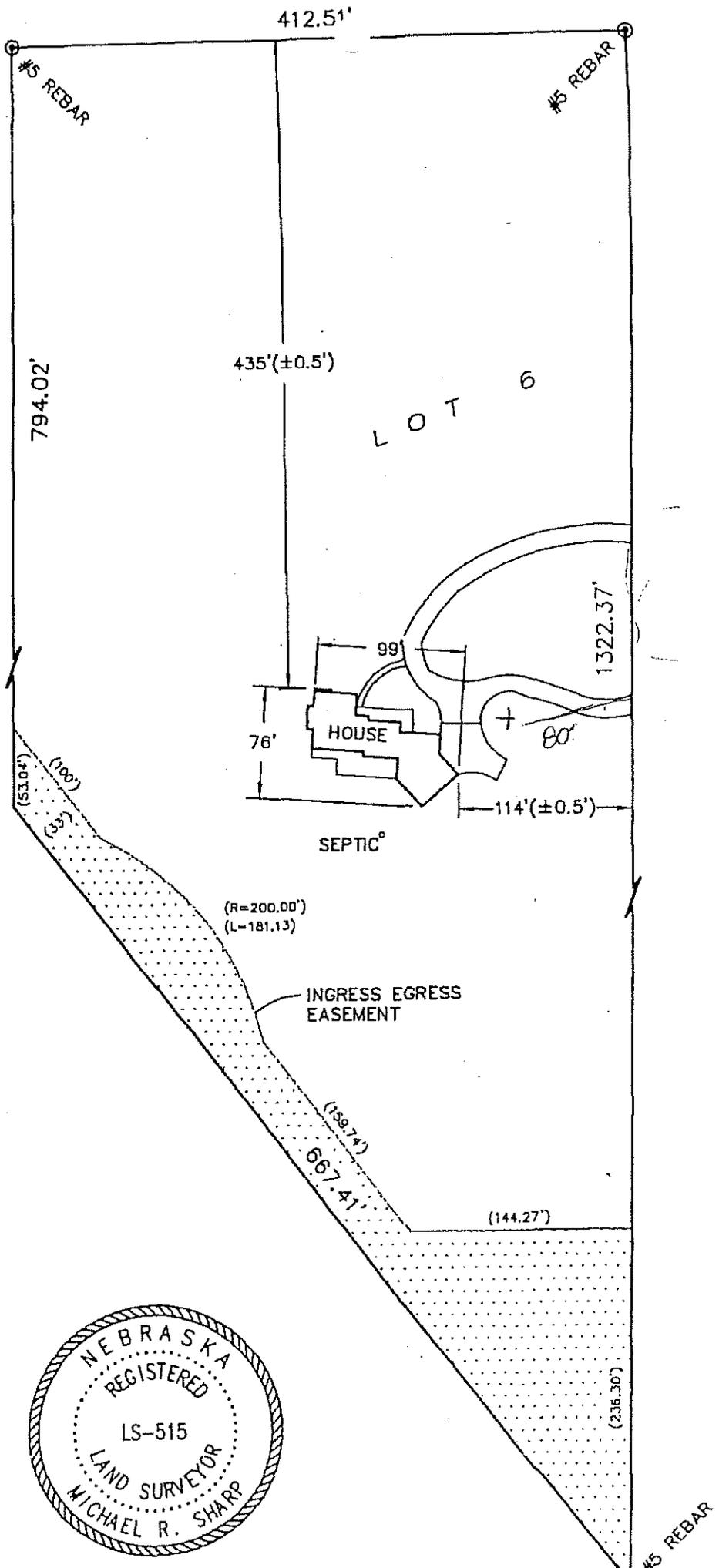




NORTH

SCALE 1= 100
W.O.#00-187
AUGUST 23, 2000

THIS IMPROVEMENT LOCATION REPORT IS A REPRESENTATION OF THE CONDITIONS THAT WERE FOUND AT THE TIME OF THE IMPROVEMENT LOCATION SURVEY AND THAT THIS REPORT DOES NOT CONSTITUTE A BOUNDARY SURVEY AND IS SUBJECT TO ANY INACCURACIES THAT A SUBSEQUENT BOUNDARY SURVEY MAY DISCLOSE. THE INFORMATION SHOWN ON THIS REPORT SHOULD NOT BE USED TO ESTABLISH ANY FENCE, STRUCTURE OR OTHER IMPROVEMENTS. THE MEASUREMENTS SHOWN ARE BASED ON PLAT INFORMATION AND VERIFIED AS SHOWN. THIS REPORT REPRESENTS ONLY VISIBLE BUILDING IMPROVEMENTS.



[Signature]
SIGNATURE OF LAND SURVEYOR

REGISTRATION NO. 515

DATE OF SURVEY 08-22-00

PROJECT NO. 00-187

BOOK & PAGE 00-6-12



Deb Houghtaling

Sarpy County Clerk

1210 Golden Gate Drive, Suite 1118
Papillion, Nebraska 68046-2895

Phone: (402) 593-2105
Fax: (402) 593-4360

Fred Uhe
Chief Deputy

October 13, 2009

Tom Heimes
21162 Riha Road
Springfield, NE 68059

Dear Mr. Heimes,

Action by the Sarpy County Board of Commissioners on October 6, 2009 is as follows:

(Tabled from 8/18/2009, 9/15/2009 and 9/29/2009) Resolution (2009-229): Special Use Permit, Tom Heimes for wind energy system at 21162 Riha Road, Lot 6 Meadow Oaks South.

MOTION: Public hearing having been held on September 29, 2009, Jansen resolved, seconded by Thomas, to approve the resolution with the following conditions; the applicant comply with the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act and the Endangered Species act as applicable, the applicant enter into an interconnection agreement with the Omaha Public Power District, and the applicant enter into a development agreement with Sarpy County addressing issues of decommissioning of the structure, design standards as recommended by the Planning Director, and adequate liability insurance. Ayes: Hike, Richards, Thomas, & Jansen. Nays: None. Absent: Jones.

Please find attached a copy of the approved resolution for your files.

Sincerely,



Debra J. Houghtaling
Sarpy County Clerk

Enclosure
DJH/tj