

**IN THE DISTRICT COURT FOR CHERRY COUNTY, NEBRASKA**

**PRESERVE THE SANDHILLS, LLC and  
CHARLENE REISER-McCORMICK,**

**Plaintiffs,**

**vs.**

**CHERRY COUNTY, NEBRASKA,  
CHERRY COUNTY BOARD OF  
COMMISSIONERS, JAMES WARD,  
MARTIN DeNAEYER, and TANYA  
STORER,**

**Defendants.**

**Case No. CI 19- \_\_\_\_\_**

**COMPLAINT AND APPLICATION  
FOR INJUNCTIVE RELIEF**

Plaintiffs Preserve the Sandhills, LLC and Charlene Reiser-McCormick respectfully request that this Court enjoin Cherry County Commissioners Martin DeNaeyer and Tanya Storer from hearing, discussing, considering, influencing, or voting on the Conditional Use Permit Application submitted by BSH Kilgore, LLC (“the CUP”), including at the public hearing scheduled for July 16, 2019. The CUP seeks to erect and maintain commercial grade wind towers and related facilities in the Sandhills.

Commissioners DeNaeyer and Storer possess serious conflicts of interests because they and/or their family members have significant and personal stakes in the outcome of the CUP, stand to financially benefit if the CUP is approved, and stand to financially suffer if the CUP is denied. The law, fairness, and justice require their recusal.

**PARTIES**

1. Plaintiff Preserve the Sandhills, LLC (“PTS”) is a Nebraska Limited Liability Company organized for and dedicated to the education and preservation of the Nebraska Sandhills. PTS consists of approximately 500 ranchers, taxpayers, property owners, business

owners, residents, and concerned citizens of Counties located within the Sandhills, including Cherry County, Nebraska.

2. Plaintiff Charlene Reiser-McCormick is a concerned citizen, landowner, and taxpayer of Cherry County that will suffer harm and detriment if the CUP is approved.

3. Plaintiffs' standing to prosecute this suit is authorized by law and equity, including § 1202 of the Cherry County Zoning Regulations.

4. Defendant Cherry County, Nebraska is a political subdivision of the State of Nebraska.

5. Defendant Cherry County Board of Commissioners ("the Board") is the governing body and board of Defendant Cherry County, Nebraska.

6. Defendant James Ward is an individual residing in Valentine, Nebraska and a Cherry County Commissioner.

7. Defendant Martin DeNaeyer ("Commissioner DeNaeyer") is an individual residing in Seneca, Nebraska and a Cherry County Commissioner.

8. Defendant Tanya Storer ("Commissioner Storer") is an individual residing in Whitman, Nebraska and a Cherry County Commissioner.

### **BACKGROUND FACTS**

9. The foregoing paragraphs are incorporated as if fully stated herein.

10. The Nebraska Sandhills area is one of the most unique and fragile places in the United States and was established in 1984 as a National Natural Landmark. The Sandhills are comprised of the largest and most intricate wetland ecosystem in the United States, where people live and visit for their natural beauty, world-class golf, abundant recreational opportunities, scenic views, animal watching, and stargazing.

11. BSH Kilgore, LLC (“BSH”), upon information and belief, operates under other names and alter egos, including Bluestem Sandhills, LLC, Bluestem Wind Energy, LLC, and Bluestem Energy Solutions to develop and place large-scale and commercial grade windfarms, turbines, and related facilities in other areas of the United States.

12. BSH, upon information and belief, was created to portray the impression of a Nebraska connection and roots and obscure the fact that primarily out-of-state interests are behind the effort to place wind turbines in the Sandhills.

13. Beginning in approximately 2011, BSH began orchestrating efforts to place large-scale and commercial grade windfarms, turbines, and related facilities throughout the Sandhills for profit.

14. BSH engaged in its customary practice of soliciting (beginning with mostly absentee landowners) local property owners to invest in its proposed wind developments and profit, including by leasing portions of their properties indirectly to BSH through a straw entity to erect, maintain, and operate wind turbines.

15. Acting in concert with BSH, an entity named Cherry County Wind, LLC (“CCW”) was created in 2012 to serve as the shell entity connecting the investor landowners with BSH as the developer. BSH is seeking to place a total of 170 wind turbines within the Sandhills.

16. CCW entered into an agreement permitting BSH to serve as its exclusive developer for wind development in the Sandhills. CCW then sought out individual landowners in Cherry County and elsewhere in the Sandhills to become members of a cooperative to share in profits from BSH’s wind developments and enter into lease and easement agreements allowing BSH to erect, maintain, and operate wind turbines and related facilities on their properties.

17. The investment in the cooperative and CCW is lucrative and allows all members to earn a \$100 yearly dividend for every turbine in all of BSH's developments in the Sandhills and allows members with turbines on their properties to earn additional annual lease payments of \$10,000 per turbine.

18. In April of 2016, BSH submitted its first application for a conditional use permit to erect and maintain 30 wind turbines and related facilities in Cherry County.

19. BSH's original application was vehemently resisted, including by the Plaintiffs, because the wind turbines would, among other things: 1) forever alter and tarnish the natural beauty, landscape, and uniqueness of the Sandhills; 2) constitute obnoxious nuisances and eyesores; 3) diminish the property rights and values of the ranchers and residents and their ability to maintain the quiet use and enjoyment of their properties; 4) cause a substantial amount of traffic, pollution, noise, vibration, light, and dust; 5) disturb and kill wildlife; 6) harm ranching operations, including through erosion and blowouts; 7) be detrimental to the health, safety, morals, and general welfare of the area; and 8) be incompatible with the uses and character of the surrounding areas.

20. One of the proposed development sights is depicted below:



21. The development area for the first intended phase only is estimated to cover approximately 8,441.6 acres of land, plus an additional 54.55 acres of transmission right-of-way. The proposed wind turbines have a hub height of 80 meters (263 feet) and rotor diameter of 100 meters (328 feet). The wind turbines would also have a turbine generator mounted on a tubular tower between 69 meters (226 feet) and 80 meters (263 feet) tall and a rotor diameter ranging from 100 meters (328 feet) to 117 meters (384 feet), depending on the model selected.

22. The approximate total height of the wind turbines would be between 403 feet and 452 feet when the tip of the blade is at the 12 o'clock position. The proposed facility would also house a 30-foot radar tower that would activate the lights on all turbines every time an aircraft is detected. Construction of the facility would require the widening and paving of 1.94 miles of

existing county gravel road, along with the construction of 12.5 miles of new road at 40 feet in width for temporary turbine access, for a total of 14.44 miles in road construction/modification.

An image of one of the proposed turbines is depicted below:



23. BSH's original application for a conditional use permit was denied.

24. BSH subsequently submitted the CUP at issue on June 4, 2018 to a new Board of Cherry County Commissioners. The CUP is virtually the same in substance as the 2016 application that was rejected, but the number of turbines being sought was reduced from 30 to 19.

25. The Board has set a public hearing to consider the CUP for July 16, 2019.

26. The Plaintiffs ask this Court to restrain and enjoin Commissioners DeNaeyer and Storer from participating in the CUP proceedings on account of the significant involvement by many of their family members with the CUP and the fact that they and/or their family members will be financially and personally benefited or detrimented as a direct result of the outcome.

#### **COMMISSIONER DeNAEYER'S KNOWN CONFLICTS OF INTEREST**

27. Commissioner DeNaeyer cannot ethically or legally be involved in consideration of the CUP because of the existence of glaring, material, and significant conflicts of interest.

28. Commissioner DeNaeyer's wife, Bree DeNaeyer ("Bree"), is a member of the Board of Directors for CCW, which, in itself, automatically disqualifies him from considering the CUP.

29. In her capacity as a member of the Board of Directors of CCW, Bree testified before the Nebraska Legislature's Natural Resource Committee on March 1, 2017 in opposition to LB504, which was crafted to "Provide for a moratorium on industrial development of wind energy projects and for a task force study as prescribed" so the health and other impacts of wind turbines could be investigated and fully determined.

30. Bree confirmed that all members of CCW are expected to receive a share of the profits from any wind development in the Sandhills that CCW was involved in, including the wind development being considered through the CUP.

31. Bree further testified:

I completely concur with Senator Brewer's statement of intent included in this bill, and that is that wind energy development in the Sandhills is a divisive, contentious issue. ***However, it's one that we must be allowed to deal with at a local level.*** (emphasis added).

32. Bree asked the State of Nebraska to defer legislation prohibiting wind energy and instead allow her husband to be one of three people making a crucial decision that directly and

materially affects the entity she represents and her and her husband's financial and other interests.

33. In addition to his wife, Commissioner DeNaeyer's mother, Lyn Joanne Messersmith ("Lyn"), has a significant financial interest in the CUP. Lyn is a member of the cooperative and has leased land to CCW for the wind development subject to the CUP. Commissioner DeNaeyer's mother, her lease and easement agreement, and the specific legal descriptions of her property are detailed in the CUP Application.

### **COMMISSIONER STORER'S KNOWN CONFLICTS OF INTEREST**

34. Commissioner Storer also cannot ethically or legally be involved in the consideration of the CUP because of the existence of glaring, material, and significant conflicts of interest.

35. Commissioner Storer has acknowledged that she has "several family members," who are invested and have financial stakes in CCW and the passage of the CUP.

36. In fact, at least Commissioner Storer's brothers, Todd Adamson and Taylor Adamson, sister, Tracy Olson, sister-in-law Kerri Adamson, parents, Jerry and Deloris Adamson, cousin, Bret Adamson, and uncle Rex Adamson, are all members of the CCW, proponents of the CUP, stand to benefit financially if the CUP passes, and stand to be harmed financially if the CUP does not pass. References to Commissioner Storer's family members, interests in the wind development project at issue, and lease agreement are found throughout the CUP Application.

37. Commissioner Storer's brother, Todd Adamson, is a member of the Board of Directors for CCW.

38. Taylor Adamson, Deloris Adamson, and Jerry Adamson are owners, directors, and/or officers of Rocking J Taylor Company. The Rocking J Taylor Company has leased land



to CCW for the wind development subject to the CUP. The CUP also specifically designates the project site to be on portions of property owned by Rocking J Taylor Company. The Rocking J Taylor Company, its lease and easement agreement, and the specific legal descriptions of its property are detailed in the CUP Application.

39. Rex Adamson and Bret Adamson are owners, officers, and/or directors of the Broken Box Company, now known as the Broken Box Bret Company, along with Evalyn Adamson and Velda Adamson, additional relatives of Commissioner Storer. Broken Box Bret Company has leased land to CCW for the wind development subject to the CUP. The CUP also specifically designates the project site to be on portions of property owned by the Broken Box Bret Company. Broken Box Bret Company and the CCW also entered into the “Project Lease Memoranda” for the CUP. The Broken Box Bret Company, its lease and easement agreement, its Project Lease Memoranda, and the specific legal descriptions of its property are detailed in the CUP Application.

40. Taylor Adamson and Kerri Adamson, individually, have leased land to CCW for the wind development subject to the CUP. The CUP also specifically designates the project site to be on portions of property owned by Taylor Adamson and Kerri Adamson. Taylor Adamson and Kerri Adamson, their lease and easement agreement, and the specific legal descriptions of their property are detailed in the CUP Application.

41. Rex Adamson is an owner and officer of Yeager Ranch Land, Inc., along with Evalyn Adamson. The CUP specifically designates the project site to be on portions of property owned by Yeager Ranch Land, Inc. Yeager Ranch Land, Inc. and the specific legal descriptions of its property being used for purposes of the CUP are detailed in the CUP Application.

42. Todd Adamson, Deloris Adamson, and Jerry Adamson are owners, officers, and/or directors of the Rocking J Todd Company. The Rocking J Todd Company has leased land to CCW for the wind development subject to the CUP. The CUP also specifically designates the project site to be on portions of property owned by the Rocking J Todd Company. The Rocking J Todd Company, its lease and easement agreement, and the specific legal descriptions of its property are detailed in the CUP Application.

43. Todd Adamson, individually, has leased land to CCW for the wind development subject to the CUP. Todd Adamson, his lease and easement agreement, and the specific legal descriptions of his property are detailed in the CUP Application.

#### **FIRST CAUSE OF ACTION – INJUNCTIVE RELIEF**

44. The foregoing paragraphs are incorporated as if fully stated herein.

45. Commissioners DeNaeyer and Storer possess serious, significant, multiple, and material conflicts of interests. Several of their family members, including parents, siblings, and a spouse are not only proponents of the CUP, but actively invested in, involved in, germane to, and repeatedly referenced within the CUP Application.

46. Commissioners DeNaeyer and Storer and/or their family members have significant personal stakes and vested interests in the outcome of the CUP, stand to financially benefit if the CUP is approved, and stand to suffer financial detriment if the CUP is denied.

47. The family members of Commissioners DeNaeyer and Storer are in positions and relations that enable them to assert and exercise pressure and influence over Commissioners DeNaeyer and Storer related to the CUP.

48. Commissioners DeNaeyer and Storer must be disqualified from having any involvement or influence over the CUP. Their involvement or determination of the CUP would

be improper, unlawful, create the appearance of impropriety, jeopardize the independence, fairness, integrity, and impartiality of the Board and result in a determination that is tainted and void.

49. The Plaintiffs have made demands, including on September 26, 2018 and June 18, 2019, upon Commissioners DeNaeyer and Tanya Storer to disqualify themselves from being involved in the CUP and to recuse themselves from participating in the public hearing scheduled for July 16, 2019.

50. Commissioners DeNaeyer and Storer have ignored Plaintiffs' demands and intend to participate and vote on the CUP on July 16, 2019 despite their obvious conflicts of interests and the fact that the CUP decision will unquestionably cause financial benefit or detriment to them, their families, and/or their associated businesses and interests.

51. Plaintiffs will suffer great and irreparable harm if Commissioners DeNaeyer and Storer are allowed to participate regarding the CUP and the Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

- a. Temporarily and permanently enjoining and restraining Commissioners Martin DeNaeyer and Tanya Storer from hearing, discussing, considering, influencing, or voting on the CUP, including at the public hearing scheduled for July 16, 2019.
- b. Such other and further relief as the Court finds appropriate under the circumstances.

PRESERVE THE SANDHILLS, LLC,  
CHARLENE REISER-McCORMICK,  
Plaintiffs,

By: /s/ Jason M. Bruno  
Jason M. Bruno #23062  
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ATTORNEYS FOR THE PLAINTIFFS

**VERIFICATION**

STATE OF NEBRASKA    )  
  ).SS  
COUNTY OF CHERRY    )

I, Judith Rath, being first duly sworn upon oath, depose and state, that I am an officer of Plaintiff Preserve the Sandhills, LLC, have read the foregoing Complaint and believe the same to be true and correct to the best of my information and belief.

/s/ Judith Rath  
Judith Rath

Subscribed and sworn before me, a General Notary for the State of Nebraska, by Judith Rath, as an officer of Plaintiff Preserve the Sandhills, LLC on this 5<sup>th</sup> day of July, 2019.

/s/ Andrea Thomas  
Notary Public