

**To:** Stark County Planning and Zoning Board  
**From:** Steve Josephson, AICP, County/City Planner  
**Subject:** Staff Recommendation for Agenda Item #4, Sunflower Wind Project LLC, for the Stark County Planning and Zoning Board Meeting of February 27, 2014  
**Date:** January 30, 2014

Listed below is the staff recommendation for Agenda Item #4.

**AGENDA ITEM#4- Public Hearing- Sunflower Wind Project, LLC is requesting a Conditional Use Permit for Wind Energy Facilities on parcels located in Sections 24, 25, 26 and 35 and 36 of Township 139, Range 91, and in Section 1, Township 138, Range 91 on approximately 3,200 acres.**

## **REQUEST**

The applicant, Sunflower Wind Project, LLC, is requesting a conditional use permit for a maximum of 25 wind turbines. The wind turbines will be part of an 11,000-acre wind farm located in both Stark and Morton counties.

The subject property is zoned Agriculture. Per Section 5.1.2. of the Stark County Zoning Ordinance, a conditional use permit is required in the Agriculture zoning district prior to the construction of a communications tower. Per Chapter 8.3 of the Stark County Zoning Ordinance, a conditional use permit application requires a public hearing before the Stark County Planning and Zoning Commission and approval by the Stark County Commission.

## **BACKGROUND INFORMATION**

The 3,200-acre site part of an 11,000 acre site spanning eastern Stark and western Morton counties. The developer is proposing to build up to 55 wind turbine facilities in Morton County. All wind turbines would be connected together with an underground collection line system that would in turn connect into a project substation with additional connection to a new switchyard facility on the existing Western Area Power Authority (WAPA) transmission line. Basin Electric will be purchasing the power generated by the new wind farm. Construction is expected to begin in early 2015 with operation commencing later that year.

Sunflower Wind Project, LLC will also be submitting an application to the North Dakota Public Service Commission for a Certificate of Site Compatibility. The applicant has also been coordinating with the following agencies:

- Federal Aviation Administration;
- US Fish and Wildlife Service;
- North Dakota Game and Fish Department; and
- Federal Communications Commission.

As WAPA is a federal agency, the project must comply with the requirements of the National Environmental Policy Act (NEPA). The applicant is participating in a number of studies required by the NEPA.

## **ANALYSIS**

Chapter 6.12 of the Stark County Zoning Ordinance states that no wind energy siting permit shall be recommended by the Planning and Zoning Commission or approved by the Commission unless the applicant shall have met all the following items in Section 6.19.5.

### **6.19.5 General Requirements for Wind Energy Facilities**

- 1) Appearance, Lighting, Facility Footprint, Agricultural Operations, Roads and Power Lines**
  - a) Wind turbines shall be painted a non-reflective, non-obtrusive color.**
  - b) Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.**
  - c) Each wind turbine shall be marked with a visible identification number to assist with provision of emergency services, and a permittee shall file with local fire departments, law enforcement and the county emergency management coordinator a wind energy facility map identifying wind turbine locations and numbers.**
  - d) Wind turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.**
  - e) At wind energy facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the wind energy facility into the natural setting and existing environment.**
  - f) At wind energy facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the county. Prior to construction, the applicant shall make satisfactory arrangements (including obtaining permits) for road use access road intersections, maintenance and repair of damages with governmental jurisdiction with authority over each road. The applicant shall notify the county road superintendent on request.**
  - g) A permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected landowner. When the**

permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.

h) A permittee shall ensure that, following completion of construction of a wind energy facility, county roads will be repaired or restored to a condition at least equal to the condition prior to construction of such facility.

i) A permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. [This paragraph does not apply to feeder lines.]

j) A permittee shall place overhead feeder lines on public rights-of-way, if a public right-of-way exists, or a permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public rights of way and approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.

## 2) Setbacks

The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility.

a) **Occupied Structures and Facilities:** Each wind turbine shall be set back from the nearest occupied dwelling, commercial building or publicly-used structure or facility at a distance not less than two thousand (2,000) feet.

b) **Public Roads and Above Ground Communication and Electrical Lines:** Each wind turbine shall be set back from the nearest public road or above ground communication and electrical lines at a distance not less than two hundred (200) feet, determined from the center of the existing right-of-way.

c) **Wind Energy Facility Perimeter:** Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than two and one-half (2.5) times the rotor diameter of the wind turbine. A variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights signs a formal and legally-binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

Staff has reviewed the conditional use permit application and has determined that information from the applicant dated February 14, 2014 adequately addresses the general criteria listed in Section 6.19.5.

Staff finds the proposed wind turbine locations and feasible turbine placement areas are surrounded by land in agricultural use with no habitable structures within 2000 feet. Staff is proposing a number of conditions meant to further promote and protect public health, safety and the general welfare of Stark County residents.

**STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:**

1. The location of the proposed project should not adversely impact the existing agricultural uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
  - a. **Development shall be limited to a maximum of 25 wind turbines as well as any required infrastructure.**
  - b. **Development shall be in accordance with the application material dated January 17, 2014 as well as with the additional material dated February 13, 2014 and February 14, 2014.**
  - c. **The location of the wind turbines shall be as generally shown on the drawings dated February 13, 2014.**
  - d. **Development of wind energy facilities shall be performed in accordance with Chapter 6.19 of the Stark County Zoning Ordinance as adopted on October 2, 2012 as well as with all applicable County, State and Federal rules and regulations.**
  - e. **The developer shall be responsible for all maintenance associated with the turbines and private roads accessing the turbines during the operation of the project.**
  - f. **The developer shall enter into a road maintenance agreement with the Stark County Road Department to ensure that all County roads shall be repaired or restored to a condition at least equal to the road condition prior to construction of the project.**
  - g. **Prior to the beginning of operations, the applicant shall contact the County Road Superintendent and request an inspection of the haul routes.**
  - h. **The applicant shall contact the County Road Superintendent no later than November 1 of each year to request a subsequent inspection of the haul routes.**
  - i. **The applicant shall be responsible for dust control along the haul routes.**
  - j. **The developer shall work in concert with law enforcement and emergency responders to facilitate public safety. This includes the provision of additional special rescue equipment and training necessary to accommodate high-angle rescues for law enforcement and emergency responders.**
  - k. **Prior to building permit issuance, the developer shall submit evidence of permit approval for the project by the State of North Dakota Public Service Commission.**
  - l. **Prior to building permit issuance, the developer shall submit to the County determinations of no hazard issued by the Federal Aviation Administration (FAA) based upon the final turbine array.**
  - m. **The applicant shall report to the Zoning Administrator should the termination or abandonment of leases or easements for the wind energy facilities occur.**

**Reclamation of the sites shall be completed within 180 days of termination or abandonment of leases or easements.**

- n. The applicant shall post a bond in an amount to be determined by the County Commission.**
- o. Any proposed change of the conditional use permit, including location of the facility, shall require a hearing before the Stark County Planning and Zoning Board and approval from the Stark County Commission.**
- p. The permit may be revoked by the County Commission anytime the applicant is in non-compliance with any of the conditions set by the Planning and Zoning Board or the County Commission for the issuance of the permit.**

The subject property is currently zoned Agriculture. As the surrounding area is largely undeveloped and appears to be in agricultural use, the proposed conditional use is consistent with the following objective of The Stark County Comprehensive Plan:

- LAND USE-Avoid conflict between land uses.**
- LAND USE- Ensure orderly and desirable energy development.**

The proposed conditional use permit is consistent with the following implementation strategies in the Stark County Comprehensive Plan:

- GOVERNMENTAL-Stark County supports coordination with state, federal and regional agencies and companies and associations involved in energy development to ensure appropriate planning.**
- NATURAL RESOURCES-Stark County supports proper planning for impacts resulting from, coal, oil, natural gas, wind, uranium, or other natural resource development.**