

To: Stark County Planning and Zoning Board
From: Steve Josephson, AICP, County Planner
Subject: Staff Recommendation for Agenda Item #2, Melissa Hochmuth, for the Stark County Planning and Zoning Board Meeting of December 22, 2015
Date: December 17, 2015

AGENDA ITEM #2 - Melissa Hochmuth is requesting a conditional use permit for wind energy facilities, including an electrical substation, on parcels located in Sections 35 and 36 of Township 138, Range 95, Sections 1, 11, 12, 14,15,16, 21,22,23, 24, 27, 28,29, 31,32,33 and 34 of Township 137, Range 95, Sections 25, 26, 29, 30, 31, 35 and 36 of Township 137, Range 96 and Sections 25, 26, 27,28, 32, 33,34,35, and 36 of Township 137, Range 97 on approximately 17,665.01 acres.

REQUEST

The applicant is requesting a conditional use permit for a maximum of 87 wind turbines and an electrical substation as well as required infrastructure. The wind turbines and substation will be part of a 17,665.01-acre wind farm located on property. The applicant proposes to enter into wind easement agreement with 46 area landowners. Energy generated from the project is to be provided to Basin Electric Power Cooperative.

The subject properties within the project area are 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 17,665.01-acre project is located in southern Stark County. The applicant is proposing to build up to 87 wind turbine facilities in Stark County. All wind turbines would be connected together with an underground collection line system that would in turn connect into approximately 18.5 miles of overhead transmission lines and a collection substation enabling connection into Basin Electric Power Cooperative's transmission system. The project will also include access roads, a 7,500 square foot operation and maintenance (O&M) building, and 40-acre temporary storage area and a 22-acre temporary construction laydown area.

Height of the turbines will not exceed 431 feet. The turbine rotor diameter will not exceed 338 feet. The blade tip of the turbines shall, at its lowest point, have a ground clearance of not less than 90 feet.

The applicant will also be submitting an application to the North Dakota Public Service Commission (NDPSC) for a Certificate of Site Compatibility. The NDPSC will review the application for compliance with criteria in Section 69-06-08-01 of the Century Code. The applicant has also been coordinating with the Federal Aviation Administration.

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.

Staff has reviewed the conditional use permit application and has determined that information from the applicant dated October 27, 2015 adequately addresses the appearance, lighting, facility footprint, roads and power lines listed in Section 6.19.5.

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 proposed setbacks and finds the following:

- Proposed turbine setbacks from occupied structures and facilities range from 2,121 feet to 9,919 feet. The setbacks exceeds the minimum setback of 2,000 feet;
- Proposed turbine setbacks from public roads range from 558 feet to 4,131 feet. The setbacks exceed the County's minimum road setback of 200 feet as well as the State of North Dakota's required minimum setback of 1.1 times the turbine height plus 75 feet;
- Proposed turbine setbacks from the nearest non-participating property line ranges from 850 feet to 5,167 feet. This exceeds the County requirement that turbines be place not less than 2.5 times the rotor diameter from the wind energy perimeter.

The blade tip of the proposed turbines have a ground clearance of 90 feet. This exceeds the County's minimum ground clearance of 75 feet as found in Section 6.19.6.

The applicant has submitted a decommissioning and property restoration plan that meets the minimum requirements Section 6.19.7 of the Stark County Zoning Ordinance. Upon approval of a siting permit by the State of North Dakota the applicant shall post a bond with Stark County in an amount determined by the County Commission.

Staff finds the proposed wind turbine locations and feasible turbine placement areas are surrounded by land in agricultural use with no habitable structures within at least 2000 feet. Staff also finds the applicants meets or exceeds the minimum requirements of Chapter 6.19 of the Stark County Zoning Ordinance.

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 to limited through the inclusion of the following conditions:
 - a. **Development shall be limited to a maximum of 87 wind turbines, an electrical substation, and an operations and maintenance building as well as any required infrastructure.**
 - b. **Development shall be in accordance with the application material dated October 27, 2015.**
 - c. **The location of the wind turbines shall be as generally shown on the drawings dated October 27, 2015. Any significant change to the location of the turbines and/or the addition of turbines shall require approval by the County Commission.**
 - d. **The maximum turbine height shall be 431 feet. The maximum ground clearance for each turbine blade tip shall be 90 feet.**

- e. **The maximum square footage of the operations and maintenance building (O&M) shall be 7,500 square feet. The exterior of the O&M building shall use materials, colors, and textures that will blend the building into the natural setting and existing environment.**
- f. **The laydown yard and storage area will only be utilized during the construction phase of the project. The laydown yard and storage areas shall be restored by the developer within 180 days after the end of the construction phase.**
- g. **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.**
- h. **The developer shall be responsible for all maintenance associated with the turbines and private roads accessing the turbines during the operation of the project.**
- i. **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.**
- j. **Prior to the project's development, the developer shall contact the County Road Superintendent and request an inspection of the haul routes.**
- k. **The developer shall contact the County Road Superintendent no later than November 1 of each year to request a subsequent inspection of the haul routes.**
- l. **The developer shall be responsible for dust control along the haul routes.**
- m. **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 if necessary for law enforcement and emergency responders.**
- n. **Upon approval of the siting permit by the State of North Dakota Public Service Commission, the applicant shall post a bond, a letter of credit, or a parent guarantee for restoration of property in an amount as determined by the County Commission. The bond shall be posted and received by Stark County prior to the issuance of building permits for structures that are part of the approved wind energy facility;**
- o. **Building permits for structures that are part of the wind energy facility will be issued only after the following documents have been submitted to Stark County:**
 - 1) **determinations of no hazard issued by the Federal Aviation Administration (FAA) based upon the final turbine array;**
 - 2) **proof of approval of a siting permit by the North Dakota Public Service Commission;**
 - 3) **a copy of the signed decommissioning and restoration bond agreement with the State of North Dakota;**
 - 4) **a signed road maintenance agreement with Stark County;**
 - 5) **evidence that a wind energy facility map identifying wind turbine locations and numbers have been filed with local fire departments, law enforcement, and county emergency managers;**
 - 6) **a plan with dates for meetings with law enforcement and emergency responders and provisions of special rescue equipment and training necessary to accommodate high-angle rescue; and**
 - 7) **a summary of anticipated decibel output of each wind turbine.**

- p. Within 90 days of wind energy facility construction, the developer shall submit to the Zoning Administrator an updated and final USGS topographical map; or survey if available, demonstrating actual compliance with the requirement and conditions of this conditional use permit.**
- q. The developer 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.**
- r. 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.**
- s. 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 properties are currently zoned Agriculture. As the surrounding area is largely undeveloped and appears to be in agricultural use, and as no wind turbines are proposed within one mile of the jurisdictional limits of any incorporated cities, the proposed conditional use is consistent with the following objectives 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.**