

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, October 19, 2017
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

PRESENT: Gary Rhinhart, Vice Chair, Tammie Williams, Clive Kaiser, Cecil Thorne, Suni Danforth, Tami Green, Don Marlatt

ABSENT: Randy Randall, Chair, Don Wysocki

STAFF: Bob Waldher, Planning Director, Carol Johnson, Senior Planner, Tierney Dutcher, Administrative Assistant

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NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING IS AVAILABLE AT THE PLANNING DEPT. OFFICE

CALL TO ORDER

Commissioner Rhinhart called the meeting to order at 6:30 p.m. and read the opening statement.

MINUTES

Commissioner Rhinhart asked the Planning Commission to review the minutes from the September 28, 2017 meeting. Commissioner Kaiser moved to adopt the minutes as written. The motion was seconded by Commissioner Danforth. Motion carried by consensus.

NEW HEARING

SCHUMANN WIND PROJECT CONDITIONAL USE PERMIT REQUEST #C-1289-17 & LAND USE DECISION #LUD-219-17, Schumann Wind, LLC, Applicant; A. Brooks Lieuallen, Patrick Kelly & Ferguson Ranch, Inc., Property Owners. The applicant requests a Conditional Use Permit to construct and operate an 8 MW wind project on land owned by A. Brooks Lieuallen located 6 miles north of the City of Athena, west of Pine Creek and east of Harris Road. The wind turbines would be on property identified as Tax Lot 1600 on Assessor Map 5N34 & Tax Lot 2700 on Assessors Map 5N35. The application includes a request for a Land Use Decision for an associated transmission line extending southeast from the Lieuallen property across lands owned by Patrick Kelly and Ferguson Ranch Inc. where the transmission line connects to an existing underground transmission line serving the wind project located on Ferguson Ranch property.

The Conditional Use Permit Standards applicable to the applicant's request are found in the Umatilla County Development Code Sections 152.616 (HHH), 152.615, 152.061. The applicable Land Use Decision Standards for the transmission line are found in Umatilla County Development Code Sections 152.617 (II) (7).

STAFF REPORT

Carol Johnson, Senior Planner, stated that the applicant, Schumann Wind, LLC requests a Conditional Use Permit (CUP) to construct and operate an 8 megawatt (MW) wind project on Exclusive Farm Use (EFU) zoned land owned by Brooks Lieuallen. The project would consist of either 4 or 5 turbines,

depending on their availability. The applicable Conditional Use criteria are found in the Umatilla County Development Code (UCDC) Sections 152.616 (HHH), 152.615, 152.061. Mrs. Johnson stated that the findings consist of a list of conditions for the Commissioners consideration.

The applicant is also requesting a Land Use Decision (LUD) for a utility facility necessary for the project transmission line. Standards for the transmission line are found in UCDC Sections 152.617 (II) (7). The transmission line would extend 2-3 miles (mi.) southeast from the Lieuallen property across lands owned by Patrick Kelly and Ferguson Ranch Inc. The transmission line would then connect to an existing underground transmission line serving the neighboring Chopin Wind project located on Ferguson Ranch property.

The project area is located approximately 5-6 mi. north of the City of Athena. The request follows the County's Land Use Public Hearing process with the Planning Commission making the decisions on both the CUP and LUD. The applicant is present and available to provide project details and answer any questions.

TESTIMONY

Applicant Testimony: Daniel Duke, VP Development, BayWa Wind LLC, 5901 Priestly Dr., Suite #300, Carlsbad, California and Joerg Beland, VP Constructions & Operations, BayWa Wind LLC, 3365 Executive Dr., Suite 1470, San Diego, California. Mr. Duke stated that the local project team is present including; Patrick Gregg, Corey, Byler & Rew, PO Box 218, Pendleton, Oregon; Micah Engum, Alexander Project Services, 404 SE Dorian, Suite 226, Pendleton, Oregon and Jerry Baker, Avian Expert, WEST, PO Box 662, Athena, Oregon. Joining the meeting via speakerphone is Bruce Walker, Acoustical Engineer, Walker Consulting, 676 West Highland Dr., Camarillo, California. Mr. Duke stated that Mr. Walker is a recognized noise expert who specializes in wind turbine noise control research and consulting.

Mr. Duke stated that the company's general approach to every project is grounded in the concept of being a good neighbor. They have projects throughout the entire United States, primarily in rural agricultural and ranching communities. They have built relationships with thousands of land owners, project partners, regulatory entities and government agencies in those rural communities. They believe they should be noticed as little as possible by the surrounding land owners with an effort to minimize impacts in development. Mr. Duke stated that the primary way they have avoided impacts on this project is to use existing facilities to the maximum extent possible. There is an existing BayWa project, Chopin, on the adjoining property. They will use the entire transmission line route from the point of connection on the Ferguson property all the way down to the existing substation on the west end. There will be no construction related to the proposed Schumann project because they will utilize the existing built facilities at the site allowing them to avoid installing a brand new alternative transmission line route. The Schumann Wind project will consist of a 2.3 mile transmission line, an overhead stretch over Pine Creek, then back underground from the project to the existing Schumann turbine #1.

Mr. Duke stated that the project planners have produced a well thought out transportation plan. The project team coordinated with Tom Fellows, Umatilla County Public Works Director and Nancy Parker, City of Athena, to ensure that their planned transportation route will have minimal impacts. On the east

side of the project site where they are building interconnection to the existing Chopin Wind Project, they will have a minimal amount of traffic that will occur, but no new construction. They understand the sensitivities of agricultural operations and will continue to work with land owners to ensure the best experience possible. The project team has followed the necessary steps to ensure compliance with various County Ordinances, Standards and Conditions of Approval. They have confirmed with their noise expert that they have met all requirements and setbacks associated with the noise ordinance. Their surveyor is doing some preliminary work on turbine locations at this time. They have kept in contact with the Denton family, at Waterman and Sanders Road, which is the closest home to the 2 mi. buffer. Mr. Baker has confirmed that there are no issues with avian species at this time. The avian monitoring plan has been reviewed and submitted to both the US Fish & Wildlife Service and Oregon Department of Fish & Wildlife.

Commissioner Rhinhart asked about the other sites they have looked at for their project that do not include high value farm ground. Mr. Duke stated that when you look at the constructible lands within the wind lease area and overlay that with the high value soils located on the property, finding somewhere to build becomes difficult. They have explored various alternatives on the site and considered the best to place the turbines. In looking at the available land within the County, when you consider the 2 mi. set back noise ordinance, the available land for this kind of project is significantly limited. The team has looked at alternative sites but was unable to find a better option.

Commissioner Danforth asked if the substation will be getting upgraded. Mr. Beland stated that the substation will not need upgrades. They will have a small metering yard on the first property where they intertie to the existing transmission line underground. The two projects will be separately metered by PacifiCorp. Everything that is currently in the substation will remain the same. Commissioner Danforth asked about how many H-Structures will be used for the transmission line crossing Pine Creek. Mr. Beland stated that they have not yet determined what kind of structure they will use. They may use an H-Structure or a steel structure, which may be a single pole. They will figure that out after they have more geotechnical engineering information. The project will consist of 4, maximum 5, total structures.

Commissioner Rhinhart asked how many acres of high value farm ground will be taken out of production, including the windmill sites and the new roads that will access the windmills. Mr. Duke stated that the only new roads will be onsite and used to access the turbines and transmission line. Mr. Beland stated that the total high value farm land that will be taken out of production will be less than 5 acres.

Commissioner Danforth asked if an ambient noise study has been done or if the data has been projected using computer modeling. Mr. Walker stated that they used computer studies because the computed noise levels of the turbine at the 2 mi. setback requirement is so low that it is impossible to measure ambient levels. Mr. Beland stated that the ambient noise level is already masking the noise that a turbine can produce in a 2 mi. distance.

Commissioner Kaiser stated that one of the biggest impacts of the project will be the environmental issues. He asked if they have been working with the Executive Director of the Blue Mountain Wildlife rehabilitation center in Pendleton, Lynn Tompkins, for bird rehab. Mr. Baker stated that there has been no need to work with them on this project. Commissioner Kaiser asked why they are working with Mike

Denny out of College Place, when we have a local resident expert available. Mr. Beland stated that a requirement under the Conditional Use Permit for the Chopin Wind Project was to include input from 2 local residents, unaffiliated with the project. It was a request by the Blue Mountain Alliance that Mike Denney be one of those people. The Schumann Project team feels he is very knowledgeable of the area and windfarms as he has been involved in a number of technical oversight committees. They support the idea of him being involved and consider him to be an asset when it comes to reviewing the impacts and making sure the correct measures are taken to achieve the proper conclusions. Commissioner Kaiser asked what the carcass count is. Mr. Duke stated that after 1 year at the site they have found 4 bats and 4 birds; 1 junco and 3 horned larks. Commissioner Rhinhart asked if they can expect a large amount of bat fatalities with this project. Mr. Baker stated that they have concluded the first year of monitoring of the Chopin Wind Project, but he is hesitant to discuss results because they have not done the analysis. He did confirm that there were several bat fatalities found on the project site, but the casualty count is well within the range of similar historical projects. Commissioner Rhinhart asked how often they check the sites. Mr. Baker said they conducted a survey monthly, and twice monthly in the fall. Commissioner Rhinhart stated that the Schumann site will be surveyed one a month and he feels that's the bare minimum. He asked if they would consider monitoring the areas more than once a month. Mr. Duke stated that they will commit to whatever the data supports. If the data supports the need to do additional searches, then they will do that. Commissioner Rhinhart stated that bats are endangered and most people feel part of the reason is because of the windfarms. Mr. Baker stated that he is very concerned about bats. They are a mammal and have one offspring per year, so if a pregnant female is killed it impacts the population. He assured them that the industry continues to do a lot of research and work to minimize bat casualties. Commissioner Rhinhart asked how they would manage the issue if they see a lot of fatalities. Mr. Duke stated that they would revisit the survey methodology and data collection efforts and have other agencies provide direction. Commissioner Kaiser asked if there is any way to mitigate the bats, in terms of sonar. Mr. Baker stated that they are constantly working to find ways to deter bats. Mr. Duke stated that they avoid the issues by doing pre-project surveys and studies to ensure there is not a bat migration corridor where they are siting their projects.

Commissioner Danforth asked about the oil in the turbine head leaking. She asked if it would be able to leak out of the turbine onto the ground. Mr. Beland stated that they have containment areas to catch any oil that may escape from the motor. The entrance door to the turbine is approximately 15 feet (ft.) above the ground. The bottom of the turbine is sealed with cement, silicone and foam so nothing can come in or out from the bottom. They are designed in a way that contains the oil and keeps it from contaminating the surrounding areas.

Neutral Testimony: Larry Nye, 245 South 3rd, Athena, Oregon. Mr. Nye stated that he is an activist in grass roots politics. He is concerned about windmill projects impeding on private land owners. He believes that windmills should be considered a manufacturing plant because it takes a natural resource, turns it into a product, and ships it out. He asked why these windmills have to be built on high value farm land. He wants to know if there is any cap on how many windmills can be located in a certain area. Commissioner Rhinhart stated that there is no cap. If the wind is out there, and they can prove that it is profitable, that's what drives the industry. Mr. Nye asked if the money produced stays in Umatilla County. Commissioner Rhinhart stated that some does, not all.

Commissioner Williams stated that the Umatilla County Planning Commission spent a lot of time working on the regulations for wind projects in Umatilla County. They have made the regulations for the County very strict and have limited numerous places for windmills in the County. Even though there is no cap on how many windmills can be in a certain area, the regulations have made it so there are very few locations where a windmill can be placed. An applicant must be very precise and careful in order to meet the criteria. Mr. Nye stated that it is very clear that somebody is doing a lot of work in evaluating these applications, but he wants to be sure everyone is aware that the momentum is not slowing down. He believes that we are a multiple use county and the windmills have an effect on us. Commissioner Rhinhart stated that he prefers to see projects like this, scattered between lots of land owners, rather than large projects where only one land owner benefits. The farming industry can be tough at times so a farmer that has a few windmills on his fields is diversifying.

Neutral Testimony: Jess & Granella Thompson, 51949 Johnson Road, Weston, Oregon. Mr. Thompson stated that they have some concerns. The BayWa project group have expressed that they do their best to treat the farmers well and being neighborly, but that is not what he experienced on Staggs Road during the Chopin Wind Project construction. The trenching project turned into a digging project which kept the road in construction mode for 6 weeks, which included their winter wheat harvest. They were held back 5-10 acres a day. They tried using 3 trucks but could not keep up because the road speed was reduced to 5-15 mph during that time. They requested the County and BayWa to grade and water the road to make improvements for harvest, but neither one would do it. Other farmers who farm along Sanders Road have contacted Mr. Thompson and asked how they were treated. He advised the land owners to get promises in writing because he feels that they did not follow through with many of the things they said. He suggests that the BayWa group work better with farmers, especially along Sanders and Waterman Roads and to be mindful of harvest. Mrs. Thompson asked if there is only one tower that will be hauled in on the Staggs Road side of Pine Creek. Mr. Beland confirmed that is the plan, one tower and no additional big hauls.

Commissioner Green stated that she is very disturbed that the Thompsons had to put up with this interruption during harvest, after they were told that would not happen. Mr. and Mrs. Thompson stated that they harvest around the first of August for approximately 4 days. They emailed the BayWa project staff as they got closer to harvest time. The trenching was supposed to take place in June for 2.5 days. Instead, it started July 19th and took 6 weeks to complete. Commissioner Danforth asked if the Thompsons contacted the County with the problem they were having on the road. Mrs. Johnson stated that she received several emails and shared them with BayWa. Commissioner Williams asked if they would be more comfortable if they had something in writing. Mrs. Thompson said yes, they would like to have a condition placed on the approval that states that they cannot be there during wheat harvest.

Applicant Rebuttal: Daniel Duke, VP Development, BayWa Wind LLC, 5901 Priestly Dr., Suite #300, Carlsbad, California and Joerg Beland, VP Constructions & Operations, BayWa Wind LLC, 3365 Executive Dr., Suite 1470, San Diego, California. Patrick Gregg, Corey, Byler & Rew, PO Box 218, Pendleton, Oregon; Micah Engum, Alexander Project Services, 404 SE Dorian, Suite 226, Pendleton, Oregon; Jerry Baker, Avian Expert, WEST, PO Box 662, Athena, Oregon and (via speakerphone) Bruce Walker, Acoustical Engineer, Walker Consulting, 676 West Highland Dr., Camarillo, California.

Mr. Beland stated that they had a project plan, but things do not always work out according to that plan. Originally, in construction of the Chopin Wind Project, they planned to trench the road on Staggs Road which would have been approximately a 2.5 day job. Instead, they were forced to excavate the cable trench and a trencher was not available. They had to find some other way because the turbines were lined up and could not wait. They tried to do their best to keep the neighboring land owners informed. They realize they caused an inconvenience, but it was not avoidable. He stated that it was unfortunate that it happened during the time period of harvest but they were under strict time constraints due to agreements made with PacifiCorp, which did not allow for much flexibility. Mr. Beland stated that the proposed Schumann Wind Project will require no construction on Staggs Road. The main reason the Thompsons were so impacted is because they had to add a mile of county road to extend to the Ferguson property and build the transmission line from the project to the substation. This will not happen again.

Commissioner Kaiser asked if they can wait to start the project until after August 10th to ensure they will not interrupt harvest again. Mr. Duke stated that he does not know when they will start the project. The start date depends on when the permits are obtained and turbines and equipment are ready. Mr. Duke stated that the intent is to get permits this year and begin the project in early spring, but there are many variables at play. Mr. Beland stated that nothing will be built on County Roads with the exception of small road improvements around corners so they are able to get large haul vehicles around, but those will be removed later. In being able to use the existing transmission line, impacts will be minimal and they will have greater flexibility. They have learned a lot from the Chopin project and intend to continue to improve.

Commissioner Danforth stated that last year at the hearing for the Chopin Wind Project, she asked the BayWa project team if they had any possible other projects. She was told there were no additional upcoming projects, even though she believes this project may have been in the preliminary planning stages at that time. She asked again if there are any other projects coming up on any of the surrounding properties. Mr. Duke stated no, the available land that remains is not enough to do any kind of additional development in the area.

Commissioner Danforth stated that she would like to make sure that after the build they will provide proof that they have placed the turbine outside the 2 mi. setback from the closest residence. Mr. Beland stated that they do a survey before and after to prove the turbines comply with the ordinance.

Commissioner Danforth is disturbed by the fact that there was only a computer model study done for noise, and no actual real data used. She pointed out that Condition of Approval #7 states that a credible noise study may be required to verify that noise impacts in all wind directions are in compliance with state standards. Mr. Duke stated that they did do a noise study and there is no value to taking noise measurements at locations beyond the 2 mi. setback. Commissioner Danforth is concerned that the results are based on calculations with no baseline to start. Mr. Walker stated that the fact that the existing Chopin turbines are so close to residences, they already put the level so high that they mask all other noise. There are no circumstances in which this project will not be compliant with the state regulations. Mr. Beland stated that there is no need to make that measurement when it is already certain. He believes the standard set for a 2 mi. setback makes noise studies obsolete. Commissioner Danforth stated that she knows two property owners that live greater than 2 mi. away from wind projects. Depending on the wind direction, they do hear the turbines. She is concerned about the cumulative effect

and feels that if there is no base or fact for ambient wind noise in a certain area then you have nothing to base anything off of, regardless of computer modeling. Mr. Beland disagreed and stated that the computer modeling that is in place is based on a number of measurements and there is a lot of fine tuning involved to make them project specific, so cumulative effects have been taken into consideration. Additional discussion about ambient noise and calculations for scientific measurements were discussed.

Commissioner Danforth stated that she is sorry there are not additional neighboring property owners present at the meeting because she wants to be sure the project will not disrupt the common farming practices in the area.

Commissioner Rhinhart closed the hearing for deliberation.

DELIBERATION

Commissioner Rhinhart stated that on page 57-58 of the commissioner's packet they outline the Precedent and Subsequent Conditions of Approval for the project. He asked if any of the conditions protect the farmers on the roads. Mr. Duke stated that #7 requires that the project staff to consult with land owners prior to construction and to implement measures to reduce or avoid impacts to local farming practices. Commissioner Rhinhart asked if that condition could be strengthened. Mrs. Johnson stated that it is difficult to express to one group they cannot use the public road, while another group can.

Commissioner Williams made a motion to approve Schumann Wind Project Conditional Use Permit Request #C-1289-17 and Land Use Decision #LUD-219-17 and approve the information presented for the record as well as the correction from Commissioner Danforth (page 58 under Subsequent Conditions "Chopin" should be "Schumann") and the Precedent and Subsequent Conditions of Approval for the project. The motion was seconded by Commissioner Marlatt. Motion passed with a vote of 7:0.

OTHER BUSINESS

Mr. Waldher stated that the Planning Commission Bylaws were adopted in 1980 and not much has been changed. He provided a copy of the Bylaws to the Planning Commission and asked them to review them for any changes that may need to be considered.

Mr. Waldher asked the Planning Commission if they would be open to meeting at 6 pm instead of 6:30 pm. We have already sent notice for the November meeting to start at 6:30pm, and we do not plan to have a hearing in December, unless something changes. He proposed that we try out a 6 pm start time starting in January 2018. The group agreed that they would rather meet earlier, if possible.

Mr. Waldher stated that the Bylaws require election of officers at the October meeting. Commissioner Williams recommended Commissioner Danforth to be the new Chair. Commissioner Marlatt nominated Commissioner Rhinhart. Commissioner Rhinhart stated that Commissioner Danforth would be a great Chair. A vote was made and the group unanimously approved Suni Danforth as the new Chair. Commissioner Rhinhart will remain Vice Chair.

Next meeting of the Commission is moved up one week to Thursday, November 16, 2017 to be held at the Justice Center, 4700 NW Pioneer Place, Pendleton.

ADJOURNMENT

Commissioner Rhinhart adjourned the meeting at 8:34 p.m.

Respectfully submitted,

Tierney Dutcher
Administrative Assistant

Minutes adopted by the Planning Commission on November 16, 2017