

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Monday, October 10, 2011
6:00 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

PRESENT: Gary Rhinhart, Frank Kaminski, Clinton Reeder, Randy Randall, John Standley, Don Wysocki.

ABSENT: Tammie Williams, David Lee, David Lynde

STAFF: Tamra Mabbott, Carol Johnson, Gina Miller, Connie Hendrickson.

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

CALL TO ORDER:

Chairman Rhinhart called the meeting to order at 6:08 p.m. He read the opening statement.

APPROVAL OF MINUTES:

Chairman Rhinhart asked if members of the Planning Commission had reviewed the minutes from September 29, 2011. The minutes were approved by consensus.

Commissioner Rhinhart stated that he hoped the testimony tonight would be new and not what had been presented at the last hearing.

Commissioner Rhinhart stated that this is a continued hearing concerning Conditional Use Permit #C-1188-11. He then read the names of the landowners in the project area and also read a description of the location of the project. He noted that the review of WKN Chopin Wind Project would be under the Development Code standards in effect on February 23, 2011, the date that the project application was received. He went on to state that the applicable standards of the approval were found in the August 3, 2010 version of the Umatilla County Development Code, sections 152612, 152615 and 152061. He called for any abstentions, bias, conflict of interest, declaration of exparte contact and objections to jurisdiction. There were none.

Commissioner Rhinhart called for the staff to summarize the developments of the previous hearing allowing everyone to be current as to the starting point for this evening. Tamra Mabbott stated that this hearing was for the Conditional Use Permit for the wind project and the continued hearing regarding the Land Use Decision for the transmission line, which is part of WKN's overall project, would be held on November 17, 2011.

Mrs. Mabbott stated that at tonight's hearing the applicant would be responding to two items for which the Planning Commission sought more information to review; compliance with the noise standard with a condition to enforce that standard and the second was to address compliance with Oregon's Goal 5 and the highway 204 scenic issues raised by Ed Chestnut. Also at this hearing would be opportunity to provide testimony if anyone had new information. Mrs. Mabbott referenced the packets of information from WKN that had been emailed to the Planning Commission and the new letters submitted from Dave and Judy Price and Ed Chestnut.

Mrs. Mabbott said it was stated for the record at the conclusion of the last hearing that the burden of proof of the ability to be in compliance with the Goal 5 and noise standard issues was on the applicant. Planning staff had not addressed new findings or new conditions but had been in communication with WKN to help them interpret the Planning Code and decide which part might apply to their project. Their responses to those discussions are included in the Planning Commission packets and came prepared to address those questions. Mrs. Mabbott also stated that County Council, Doug Olsen, Carol Johnson and she had met with the WKN representatives that afternoon to discuss some of their proposed findings and conditions. She said that since Doug Olsen would only be there for approximately an hour any legal questions the Planning Commission had should be addressed first.

Commissioner Rhinhart started by asking Mr. Olsen if he had had a chance to review the packet submitted by WKN to which he answered that he had. He then asked Mr. Olsen what he thought about it. Mr. Olsen started by commenting on the second issue, relating to Hwy 204. He stated that he and Staff had looked over the submission by WKN and had not seen any major problems or changes to what they had proposed. Commissioner Rhinhart asked for confirmation that that addressed Goal 5 and Mr. Olsen said that it did, as far as State Hwy 204 was concerned.

Commissioner Rhinhart then asked Mr. Olsen to comment on the issue of the noise. Mr. Olsen stated that there was a proposal from the applicant as to that standard. The applicant said that they would be willing to have established a noise limit of 45dba. There was also some additional language in the proposal that Staff felt needed some additional clarification particularly with three and four which included terms or conditions that were not able to be enforced by the County.

Commissioner Kaminski then asked about a possible penalty that was referenced in 4-A of WKN's submission. He stated that the problem was that the source of the money was the SIP fund. He said those funds wouldn't be there until sometime later when they have been accumulated. Doug Olsen said that was unknown at this point and that it was nothing the Planning Commission had any control over. Commissioner Kaminski asked if there were any conditions that could be put in place and Mr. Olsen stated that there were not. He went on to say that there was not currently a SIP agreement for this project.

Commissioner Stanley asked if the Planning Commission were able to establish a fee that they felt would be more in line with non-compliance i.e. a dollar amount per non-compliance after follow-up had been done to prove non-compliance. He stated that WKN had not addressed non-compliance issues other than the SIP funds which he said left the door open for them to establish something for them. Mr. Olsen asked for clarification as to whether or not he was referring to an actual penalty and he answered that he was. Mr. Olsen stated that the Board of Commissioners would have to establish something regarding actual penalties and they have not. Mr. Standley then asked if that could be a recommendation from this body to move toward or were they to assume that would come later. Mr. Olsen said that as far as a recommendation, that would relate to some type of future Board action, but that the Planning Commission could make a decision on this application. He stated that it could not be made conditional on this application because it was not necessarily going to go before the Board of Commissioners for consideration unless it was appealed.

Commissioner Standley asked what possibilities the Planning Commission had to protect enforcement of the noise standard. Mr. Olsen answered that if the terms and conditions were not met the permit could be revoked. He went on to say that there were ordinances that had been adopted by the Board of Commissioners that allow for violations under the development code be cited into the circuit court. He said that potential fines for those are five hundred dollars for a one-time occurrence and one thousand dollars for continued violations. He also stated that there would be a possibility of penalties over and above that that the court could impose; up to five hundred per occurrence. Commissioner Kaminski then asked if the fines described were the limits of the fines that could be imposed and Mr. Olsen stated that they were.

Commissioner Standley asked Mr. Olsen if it was an all or nothing kind of thing as far as the Planning Commission was concerned; WKN would either comply or the permit would be revoked. Mr. Olsen said that that was their ultimate tool.

Commissioner Reeder referenced some ordinances that the county had; a nuisance ordinance and a noise standard. He stated that the county noise standard is considerably higher than the state noise standard that specifically relates to wind power. He said that there is a state standard for commercial that is different than the state standard for wind power specifically. Mr. Olsen asked if he were referring to the county noise ordinance itself; he said that he was. Mr. Olsen then stated that the county noise ordinance did not apply to industrial, agricultural or commercial activity.

Commissioner Reeder then asked for clarification as to whether or not the county had a standard for wind power and Mr. Olsen said that it did not. Commissioner Reeder asked if the state standard of 36db is the only standard specific to wind power that they had available for reference as far as enforcement is concerned. Mr. Olsen clarified that only the state could enforce that rule. Commissioner Reeder asked if the county could adopt the rule and Mr. Olsen said that it already had in a way with the new wind specific standards that were recently passed by the Board of Commissioners.

Commissioner Reeder asked if the Planning Commission could make a condition referencing the state standard which would be binding and make it clear that a violation of that would subject them to losing their permit. Mr. Olsen asked if Commissioner Reeder was asking for his opinion and he affirmed that he was. Mr. Olsen stated that his opinion was no, they could not do that.

Commissioner Reeder summarized then that the county effectively had no standard which could be enforced and Mr. Olsen said that that was correct and that was why the new standards were adopted. Commissioner Reeder said that there was no noise standard adopted and Mr. Olsen agreed and said that the only thing the county had was something general which said that the wind turbines were supposed to be designed to minimize noise.

Commissioner Reeder asked if they were able to make a decibel designation as the maximum level of noise that the turbines are permitted to generate. Mr. Olsen said yes, but only if the applicant has proposed to do that. Commissioner Reeder stated that that was not the question he was asking. He said that he was asking if they, the Planning Commission, could impose a decibel level standard as a condition. Mr. Olsen said they could if the applicant was acceptable with that. Commissioner Reeder said that meant the Planning Commission did not have any options and Mr. Olsen stated that was correct.

There were no other questions at this time. Commissioner Rhinhart then asked the applicants to present their proposal.

The first to speak for the applicants was Steve Corey, an attorney for WKN. He stated that his office was located at 222 SE Dorion, Pendleton, Oregon. He said that he was appreciative of the Planning Commission's time this evening and hoped that they would be able to finish this hearing. He stated that they would be talking about what they had been working on during the time since the last hearing and what they would be showing to them. They would then answer any questions they might have. He introduced Eric Johnston and Chris Copeland who had attended the previous hearing on September 29th. He also mentioned a sound level consultant who was in the audience, Bruce Walker, who did the acoustical study for WKN. He stated that Mr. Walker would be assisting Mr. Johnston and Mr. Copeland with accurately answering questions regarding sound issues.

Mr. Corey stated that their presentation at this hearing would be to address the Goal 5 issues that were raised with respect to scenic views on Highway 204 and the sound levels issue. He said that after listening to Mr. Reeder and the questions that he asked of Doug Olsen, he wanted to make it clear that they were not coming here and asking that the county not put any standard on their sound levels. He stated that they had a proposal that they would like to make that would be acceptable to them and hopefully responsible to the citizens and occupants that are in homes that are in the vicinity of the wind project.

Mr. Corey made a reference to a map that had been shown to the audience that was a two mile map of the project site. He stated that the residences shown were within a two mile radius of the site but not a one mile radius. He said that WKN was not applying under the

new two mile standard but that they had applied for this project before that standard was adopted.

Mr. Corey said that he would like first to address the scenic Goal 5 issue. He said that they had worked with Staff and that the county had a tech report that was done in the 1970's or early 1980's as part of the comprehensive plan which WKN had included in their information packet. That report shows Hwy 204 to be a scenic highway because of its vegetation which was in contrast to its views. He said that they did not look only at the vegetation but that Micah Engum who worked with WKN, spent time on Hwy 204 measuring the vegetation. Mr. Corey said that within the approximately twenty to twenty-five miles of that highway that is in Umatilla County from Weston to the Union County line there was about four miles, or about twenty percent or under, that actually would be considered a view out into the wheat fields to the west. He said that the scenic protection was for trees and greenery; which were important then as well as now.

Mr. Corey stated that Mr. Engum had taken pictures at four locations along Hwy 204. These were transmitted to San Diego and had been made into schematics which were presented to the Planning Commission. The pictures were then shown on the overhead screen so that the audience could view them.

Mr. Corey then asked Mr. Engum to join him. Micah Engum, 314 NW 4th, Pendleton, OR then offered testimony describing the photographs of the proposed project area from different vantage points. He also showed and described simulated photographs of the project, which included digitally created wind turbines, along the proposed route.

Mr. Corey then stated that they had done their best to replicate what would be viewed as one traveled down from Tollgate. He asked that the photos and maps they had submitted be made a part of the record.

Mr. Corey then addressed the sound level issue. He stated that even though the county did not have a noise standard in place at the time of submission of the WKN Conditional Use application they had attempted to pull together five conditions that they thought would address the concerns from the previous hearing. It was determined after meeting with the Planning Staff that conditions 3, 4 and 4A were not workable options. They said that they would go ahead with conditions 1, 2 and 5.

Mr. Corey stated that the state standard for noise says that if there is no ambient noise level taken you begin with 26 dba and then you can go ten above that to 36 dba unless there other unusual circumstance in which case there is a 10 dba cushion.

He said that after testing was performed, WKN had identified already within the existing gradient areas that are 30 to 35 dba and the state standard says to start from the existing ambient noise level dba and can go 10 dba above that. He said that WKN would have the 10 dba increase in ambient noise for the project but in the aggregate the 30 to 35 would not exceed 45 dba. He read from the notes that had been copied from the meeting WKN had with staff. He said that they would comply with the 10 dba increase in ambient noise

and the aggregate would not exceed 45 dba. He went on to say that if the then existing ambient dba exceeds 45 i.e. at some later time there was some other situation in that area that created more noise besides the noise of their project and the ambient noise level rose above 45 dba, they would not increase the sound level more than 3 dba beyond the existing level. If there were extraordinary or unusual circumstances which caused a spike in the sound level the applicant project would not be responsible for those spikes.

He also said that WKN would do noise sampling at representative residences which he would discuss in more detail when they talked about condition number two because they were also trying to make it work to do sampling of representative residences within a two mile area. He noted that he had written in his notes that this noise standard only applied to existing residences, existing owners and existing occupants, including those who are listed in condition five. Those would be measured at the time when the permit was issued. He said that the subsequent owners of residences, new occupants and new resident owner's tenants would not be protected by this condition. He stated that he did not believe that they would be above the noise level limits anyway.

Mr. Corey read some of wording of condition number two which stated that the applicant would provide Umatilla County updates on the noise assessment analysis within a reasonable period of time after the first, third and fifth years of the project operation. He said that right now and under the present application, they did not have the responsibility to do any annual studies. He said that WKN was willing not only to do annual studies on noise assessment but to add to that the language which states the first noise assessment analysis will occur within one year of the commercial operation date at representative locations and residences within two miles of the turbines. He said that they would be coming back at a later date and doing these operational readings at the company's expense. He said that if the applicant project owner was then out of compliance it would make operational changes to turbine performance to bring the sound level back into conformance within 180 days. He went on to say that WKN would then do a follow up study afterwards which would be given to the Planning staff so that they would know that the turbines were again in conformance. Mr. Corey stated that WKN was taking the noise issue seriously and trying to give the Planning Commission a standard to which they can agree.

Commissioner Kaminski commented that he wanted to confirm with County Counsel that 3, 4 and 4a were not options in putting some teeth into the enforcement of the commitments that the applicant made which means that because of legal reasons Umatilla County could do that. Doug Olsen confirmed that was correct. This was followed by discussion about the legalities of the reasons that was correct. Mr. Olsen explained why the court could not enforce any agreement between the applicant and the county since it was a land use matter. He stated that the court could make a ruling as to whether or not there was a violation and levy a fine but that would be the extent of their involvement.

Commissioner Stanley confirmed that if the applicant was found to be out of compliance with the conditions of their permit the County could take steps to revoke their permit to which Mr. Olsen said that was correct. Mr. Olsen said that the County could review and

attempt to revise the conditions that they were to enforce but that they could not add new conditions that were not already in place at the time of the issuance of the permit.

Commissioner Reeder commented that as he saw it, the County had no way to claim that there was any noise violation. Mr. Olsen said that in this situation, a noise violation would have to be proven when they could show evidence that it exceeded 45 dba.

Mr. Reeder commented that this was just a gentlemen's agreement. Mr. Olsen said that once the agreement is placed into the conditional use permit it would then become a condition.

Commissioner Rhinhart asked Mr. Corey what the operational changes would be made if the wind turbines went over the 45 dba sound level. Mr. Corey asked Chris Copeland to answer that question to which he responded that each wind turbine was essentially its own power plant and that the output controls could be adjusted to reflect a lower operating profile so that the turbine would not be generating as high a kW as was possible. He stated that those adjustments could be made inside each individual turbine.

Mr. Kaminski asked if those adjustments could be made before there would even be a complaint so that the turbines would not exceed the standards. Mr. Copeland said that WKN did not believe that compliance with the noise standards was going to be a problem and that Mr. Kaminski was assuming there would be a problem that they did not believe was there. He went on to state that making those adjustments in the beginning would be to restrict the performance an asset without having any indication that there was a problem. Eric Johnston then commented that that was why WKN was proposing to do the noise compliance tests at years one, three and five to ensure that the turbines were in compliance.

Corey said that if the studies showed that there was a problem and the turbines were out of compliance changes would be made to comply within 180 days. He said they may not need all of the 180 days but that any problem that arose would be taken care of in that time period and then they would retest.

Mr. Corey addressed two questions raised in a letter submitted by Dave Price regarding why the predicted sound level at the wind farm between rows was so much higher than at residences in the canyon with apparently similar distances. He said that the wind consultant stated that the farms between rows were directly exposed to numerous turbines from both rows and that residences in the canyons were shielded by the terrain and were more distant from the turbines except the end turbines on the rows.

The next question addressed asked why the noise contours closer to the turbines than on other area projects. Mr. Corey said that they had not done a case by case study on other projects as it would be cost prohibitive but as a general statement turbines on other projects may very well have higher noise emissions than these do and that turbines in other projects may be less shielded than those on this project because of the terrain.

Commissioner Reeder stated that the variance in the ambient noise was between 30 and 35 dba and asked Mr. Corey why they chose the higher number, the 35 dba, as the base figure. Mr. Corey stated that in short, they did not want there to be a violation and if they had chosen the 30 dba figure and the noise level went to 35 dba which had also been measured in their studies and they were 10 above that, they would be out of compliance. Mr. Reeder asked when the noise studies were done and Mr. Johnston answered that studies were done in January and February of 2011.

Mr. Reeder asked what would be the difference between 35 dba and 45 dba in terms of magnitude of noise. This question was addressed by Bruce Walker, 676 W. Highland Drive, Camarillo California. He stated that ten decibels in a sound level corresponds to about a two to one difference in sound loudness. Discussion followed.

Commissioner Wysocki asked about the dba scale and asked if the consultant could address the low frequency sounds that are possible with wind turbines. Mr. Walker said that in the many years of doing acoustical measurements of noise of turbines that the low frequency noise has been a minor issue. Discussion followed.

Commissioner Rhinhart asked for any other testimony in favor.

Public Testimony: Ernie Filan, 733 Francis Ave, Walla Walla came forward. He stated that he farmed for Filan Family trust on York Road. He referred to the Helix and Dayton wind projects and said that the WKN representatives are good people to work with and really try to jump through the right hoops and get the paperwork done correctly. He said that those projects have significantly helped those communities monetarily. He said that he and his father have figured out a way to use the wind to their advantage in their farming methods. He said that people he knows who live in other project areas are not bothered by the wind towers by sound or by the affect on their live stock from any vibrations that might be there.

Public Testimony: Mark Perkins from Athena, Oregon spoke in favor of the WKN project. He said that he had been under contract with them for three years. He said WKN had done considerable research on the project and he felt then and now that he had made the right decision to work with WKN. He said that there had been a large investment by everyone and that the criteria had been met and that the project should go forward.

Commissioner Rhinhart called for testimony from opponents.

Public Testimony: Charles Gillis, 601 "N" Avenue, LaGrande, OR. He stated that he was speaking on behalf of Norm Kralman and Richard Jolly. He said that in examining the material provided by the applicant and in their discussion earlier regarding the scenic vista he wanted to point out that the Goal 5 issue on Hwy 204 is more than just vegetation.

Public Testimony: Norm Kralman, 52151 Fruitvale Road, Milton-Freewater, OR. He stated that he lived at the 16.5 mile marker on Highway 204. He said that in his opinion the noise standard, even though it was the old standard, could not be overlooked. He said that there were a large number of people in the county who were represented when this same noise standard information was presented to the Board of Commissioners in a previous hearing.

He read from an article written by the Editor of the Walla Walla Union Bulletin and spoke about the comments made by Doug Olsen and by Tamra Mabbott. He talked about the scenic areas that may lose their beauty because of the wind turbines and referred to the photos in the Oregon II book that he had showed at the last hearing. He talked about contacting the Oregon Department of Transportation and getting a count on the number of vehicles that drive that highway. He said that most of those people travelled that highway for the scenic views it offered.

At that time, Commissioner Rhinhart thanked Doug Olsen, County Council, as he left the hearing. Mr. Rhinhart reminded the members of the audience that when testifying, they should try to stick to the criteria as much as possible.

Public Testimony: Dave Price, 80488 Zerba Road, Athena, OR. He said that he was concerned about the numbers used by WKN for the ambient noise levels. He talked about the rules and guidelines that are found in the OAR 340. He said that the OAR 340 stated that it was important that the data obtained was in time periods of interest. He said that it also stated that the measurements should not be taken in weather conditions which may bias the results and that the measurements should be taken on at least three separate dates. Mr. Price said that the dates selected by WKN were January 27, 28, 29. Mr. Price asked why those dates were particularly chosen stating that because of the wet year they had experienced this year, Dry Creek, where some of the noise testing was done, would have had a high level of noise while flowing. He felt that this did not address the part of the OAR 340 pertaining to measurements taken at a time that might bias the results. Mr. Price said that the creek runs much more calmly during the summer months when there is less water and the wind towers might be more of a noise issue at that time. He said that he doesn't think that the noise testing done was an accurate representation on which to base a decision on the wind project and how it will affect the residences along the bottom of Dry Creek.

Public Testimony: Debbie Kelley, 146 SE 11th Ave, Milton Freewater, OR. Ms. Kelley read a letter from Ed Chestnut, 812 Jacqueline Street, Milton-Freewater, OR which had been submitted to the Planning Commission. The letter cautioned the Planning Commission to verify the information submitted by WKN before making a decision on whether or not to approve the conditional use permit for the wind project.

Debbie Kelley offered testimony regarding the noise. She made reference to the differences in volume for television programming and the advertisements that come on. She said that after doing some reading on the subject she has learned that two different 45 decibel sounds will not in general have the same loudness. She stated that when

measuring in decibels it wasn't a true measurement of what was actually being heard. There are different ways of measuring sound including intensity and loudness. Ms. Kelley stated that sones measures in loudness and measuring in decibels does not. She made reference to parts of the WKN conditional use permit application and said that she did not agree with the method they used to measure the ambient noise and thought that it was hastily done. She stated that she agreed with WKN about needing to have an independent noise assessment analysis done. She also stated that if she or someone else were to file a complaint regarding the noise emitted by the turbines, a case study of the noise would be ordered. If the ruling was not found to be in their favor, they would then have to pay for that study which would be about two thousand dollars out of pocket per complainant. She said that would place a heavy burden on citizens. She said that if the Planning Commission were to allow the wind project permit, they as citizens, would be entered into an agreement with them as well and that would not, in her opinion, be right.

Public Testimony: Jim Burns, 78381 Hodgson Road, Weston, OR. Mr. Burns talked about the policies put in place to protect the land and the views on Highway 204. He said that the viewscape is one of the most valuable things that sells homes or property. He stated that conditional uses should be used to protect the scenic views and the land around Highway 204 and Highway 11.

Public Testimony: Granella Thompson, 51949 Johnson road, Weston, OR. She stated her home was not in Umatilla County but was within two miles of the proposed project site. She said that that they have a century farm which they have owned since 1908. She stated that she and her family like the view and the quiet, peaceful life there. She said that she does not want the quality of that life damaged and feels that it would be by the wind power project.

Public Testimony: Richard Jolly, 54462 Upper Dry Creek Road, Weston, OR. Mr. Jolly thanked the Planning Commission for the job that they do representing the public interest. He stated that he thought that Umatilla County was at a crossroads when it comes to decisions to be made regarding the view from highways, our wildlife issues and the welfare of the citizens who live here and try to make a living from the land.

He said that he had been involved with the Planning Commission and with Blue Mountain Alliance for several years. He spoke about the projected bat death, which was estimated at approximately four hundred annually, and what that would look like over the course of the life of the project. He stated that the bird studies were done in haste. He made reference to the fact that when WKN took a helicopter out to look for eagles they could not get into all of the vicinities, in the time frame that they had, to spot all of the nests of the Golden Eagles who live in that area. He said also that some Sandhill Cranes were in that area during the previous weekend and were less than one hundred feet from the top of the hills above his home which is located close to the project site. Mr. Jolly said that this project should not be allowed because there were many aspects of the future impact on the land and the people who live there that had not been thoroughly studied.

Public Testimony: Nathan Lee, 155 Leonard Street, Walla Walla, WA. He said that he grew up on Dry Creek. He was the fifth generation and hoped his children would be the sixth generation to come from the Lee family century farm. He said that his concerns were about the possible health impacts on the growth of children from wind projects. He has children who are twenty-three months and eight months old and was concerned about their auditory development and how their balance equilibrium will be affected. He asked whether or not anyone had done growth studies on children who lived in the vicinity of wind projects and what affects it had on their development. He stated that he concerned about the repercussions of this project and what the long-term impacts will be.

Mr. Lee also submitted a letter from his brother, Andrew Lee, who resides at P.O. Box 94, Carleton, Oregon and could not attend the hearing.

Public Testimony: Debra Lee, 81356 Lower Dry Creek Road, Milton-Freewater, OR
Mrs. Lee said she would be reading some points that she had written down. She stated that she would be speaking on her own behalf as well as her husbands. She said he was unable to attend the hearing due to farm work.

Mrs. Lee stated that she and her husband would like to go on record as being emphatically opposed to the proposed wind power project on Dry Creek. She said their opinion was that the project was offensive and hazardous on numerous levels. She said that they were concerned about the long-term effects it would have on their families' health, the local wildlife, and the destruction of one of the most beautiful views in Oregon.

Mrs. Lee went on to say that they would like to see list of the agencies that were contacted by WKN, who they talked with and when. She said that they were doubtful that a governmental or tribal agency would give approval and support of a project before it was approved by the people.

She noted the golden eagle population in the area of the proposed wind project and said that we should make sure we understand laws and rules that are in place to protect these birds and other wildlife from destruction by mechanical means.

Mrs. Lee brought up the subject of wind farms being constructed on earthquake fault lines. She said that they wondered if anyone had done research on what the vibration from the windmills will do if their supports are imbedded into the basalt on a fault line. She said that there is information regarding the earthquakes in the Dry Creek and Pine Creek areas on the internet.

Mrs. Lee said the view of the Walla Walla valley is beautiful. It is clear and pure and should be protected. She went on to say that it was the same view along the Oregon Trail that their ancestors saw that made them want to settle in this area.

Public Testimony: Arla June Ruthvin, 84547 Weiss Road, Milton-Freewater, OR. Mrs. Ruthvin said that she has been attendance at many hearings over the last three years and

watched the Planning Commission as they listened to all of the speakers give testimony on wildlife and wind and many other things that have to do with wind projects. She stated that in her opinion it was all going too fast and she thought that they could see it, too. She said that any mistakes that are made will ultimately rest with the Planning Commission.

She said that we need to protect the Blue Mountains and not be swayed by the money the wind companies have to offer. She also said the Pendleton Round Up would suffer if the wind turbines destroyed the view.

Mrs. Ruthvin stated that her husband was unable to attend the hearing. She submitted written testimony from him and spoke on his behalf saying that he was adamantly opposed, as was she, to the wind project.

Public Testimony: Mike Denney, 1354 SE Central Avenue, College Place, WA.

Mr. Denney stated that he is the vice president of Blue Mountain Audubon. He also said he worked as a field biologist with the U.S. Forest Service in the Blue Mountains and has been here for thirty years.

He stated that he met with WKN representatives in early May of 2010 and voiced concerns that Blue Mountain Audubon has about the wall effect with wind turbines stretching from Wallula gap to Highway 11 on migratory bird and bats. He said that nocturnal migration needs to be addressed. He stated that most Sand Pipers, song birds and some raptors migrate at night. He said there were hundreds of thousands of birds that travel along the western face of the Blue Mountains.

He stated that he has been dealing with the wind power since 1998 when the VanSycle Canyon Project was starting. He said that at that time he represented Blue Mountain Audubon and their primary interest was in protecting the migratory bird. He said they supported that project, which was thirty six turbines in the canyon, because they knew that it was of limited migratory value and there were very few birds in that particular site. He stated that Florida Power and Light approached them with a proposed project called State Line which would consist of four hundred and fifty four turbines. He said that was a completely different project because it was industrialization of the landscape. He said he is now dealing with Puget Sound Energy from Dayton, WA with seven hundred twenty four proposed turbines on their project and that company was doing nocturnal migration studies.

Mr. Denney said it is important to understand the long term impacts of the wind projects. He stated that as biologists, Blue Mountain Audubon doesn't know what affects the projects are having on bird or bat populations. He is concerned that down the road they will discover that they have impacted birds that are protected by the State and Federal Governments and that they have made a mistake. He stated that Blue Mountain Audubon had never had concerns about viewscape because it is subjective and cannot be quantified. He deals specifically with numbers and mortality rates of the birds.

Mr. Denney said that years ago the Blue Mountain Audubon drew a line in the sand and that line was Highway 11. They asked all of the wind companies that they dealt with in the Walla Walla Valley and in Columbia County not to even consider crossing Highway 11. He stated to their credit, they had not.

Mr. Denney said also that in the valley there were huge numbers of wintering raptors. He stated that they did a one hundred mile winter raptor survey from White Reservoir to Couse Creek once a month every winter. He said that they had discovered that the Walla Walla Valley and the Couse Creek area contain an average of two hundred seventy four raptors along that one route. If the wind projects cross hwy 11 there will be a serious increase in bird mortality rate.

Commissioner Rhinhart asked if Mr. Denney was satisfied with the bird studies that had been done by WKN. He said that although he had been told about the study in early May of 2010 when they showed him the maps and what they were proposing but he had not seen the results yet. Commissioner Rhinhart also asked if the all of the other companies had done a good job with the studies. Mr. Denney answered that every company was very different. He stated that he had dealt with Scottish Power who later became Iberdrola and they had been very careful with their studies and were very cognoscente of what the potential impacts were. He went on to say that he had also dealt with other companies in which he found it hard to believe that the person working for them was actually a biologist. He said that there was no uniform answer as to whether most of them were doing a good job. It varied from company to company.

Commissioner Reeder asked about the low level noise and its affect on the bird and bat population. Mr. Denney answered that in the mid-west starting in eastern Wyoming and going into north and south Texas, they had discovered that most ground nesting birds abandoned those sites and move out of the area. He stated that specifically those birds were songbirds and sparrows. He said that at State Line wind farm long-billed Curloos, western burrowing owls and short-eared owls have abandoned those sites because they are open plains birds and they view the turbines as a kind of forest. They don't live in forests so they leave.

Commissioner Reeder asked if the bats can be injured or killed simply by the force of the air of the wind turbines without being hit by a blade. Mr. Denney stated that they could. He said that it was the pressure differential at the leading edge of the blade. The bats will get close to inspect the moving blade and get caught in the pressure differential which bursts their internal organs and they die without ever having hit the blades. He said there is proven documentation regarding that subject.

Public Testimony: Zane Harris, 55256 Highway 204, Weston, OR. Mr. Harris had questions as to why the WKN application was accepted if it was submitted late. Mrs. Mabbott answered his question by referring to the previous hearing held on September 29, 2011. She stated that with the conference of County Council they had determined that the standards that were in place at the time the application was submitted were the applicable standards. Under Oregon law and the Umatilla County code they had thirty

days to deem it complete. She stated that they did their review and it was not complete but that the goal post did not change, it was still the submittal date.

Public Testimony: Debra Lee spoke again and said that there are other people who live on Dry Creek who have no income from this project but are forced to live close to the wind turbines and the noise they generate. She stated that all of those people should have some sort of compensation for the potential problems that may arise from the wind project. She requested that the Planning Commission give some thought as to what can be done to help those people. She asked what can be done to mitigate a noise problem that is driving people away from their farms.

Commissioner Rhinhart said that it is a struggle for everyone but that the State of Oregon says that wind farms are an allowable use of the land so the Planning Commission has to try to balance everything with the information they are given.

Public Testimony: Norm Kralman commented about seismographic studies done throughout the local area. He said there have been two hundred sixty two earthquakes around his property in one year. He also described the local fault lines and their locations

Commissioner Rhinhart asked for state agencies. None responded. He then called for rebuttal from the proponents

Proponent Rebuttal: Terry Enk, Western Ecosystems Technology, 38 East Main Street, Ste 211, Walla Walla, WA. Mr. Enk stated that he was the Project Manager for the wildlife studies that were done for the WKN wind project. He said the surveys that were conducted for WKN Chopin were standard in terms of protocols used, the extent of the survey and the survey intensity. He said that they conducted a study for over a year observing birds. He stated they took three hundred sixty nine point counts which calculated to two hundred forty six hours spent in the vicinity of the proposed wind turbines. He stated that their finding, and what the report indicated, was that there were birds in the area. He said they observed golden eagles and bald eagles in the project area in fairly low densities. Mr. Enk stated there were eleven golden eagles sighted over the course of the year of surveys. He said that based on the number of eagles and when they were seen, they were at a relatively low risk.

Mr. Enk said that not a lot was known about the bat mortalities. He stated that the numbers in the reports were based on the number of turbines and the number of bat fatalities at other facilities in Umatilla County and the Columbia Plateau Ecoregion. He said that the most of the fatalities occurred during the fall migration period, late July through October, and were not necessarily local bats. He said that was when they observed eighty percent of the bat mortality. Mr. Enk addressed a comment by Mr. Jolly regarding surveys done in haste. He referenced the issue of the helicopter survey and said that he had personally sat in that helicopter for twenty five hours. He said that they went up and down those canyons multiple times at different levels to complete that survey. He said that survey followed protocol and was not done in haste.

He said that the WKN report submitted showed that they had done their studies thoroughly and completely. He went on to say that the reports did not necessarily give all of the answers but he said he thought they gave a pretty good idea of what they saw at the project site and how it compared to other facilities.

Proponent Rebuttal: Eric Johnston, 43625 Executive Drive, San Diego, CA 92121.

Mr. Johnston stated that the geotechnical studies were done thoroughly and that there was no haste in the way they were conducted. He said that the noise studies they did were conducted by someone who is a consultant for NASA.

He said they spent over a year doing avian studies. He also said that the cultural studies were done by the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) and were done in very thoroughly and took over six months to complete.

He stated that WKN, along with their contractor who would be doing the grading, would be meeting with the Walla Walla Watershed in order to make sure there are no erosion sedimentation issues.

Mr. Johnston stated that the turbines are built to exacting specification and he is not aware of any turbines anywhere going down due seismic activity.

Proponent Rebuttal: Steve Corey then asked that the planning commission find favorably for the conditional use permit for the wind project. He reminded the Planning Commission that it was an allowable use subject to conditions and stated that there was already precedent because there are wind turbines in the area now. He stated that they had addressed the sound level issues and the Goal 5 issues that had been raised.

Commissioner Rhinhart closed the hearing at 9:05 pm and the deliberations began.

Commissioner Rhinhart called for any discussion.

Commissioner Kaminski said he is uncomfortable with the fact that the applicant has made an attempt to deal with one of our major concerns and it seems that there might be some question of whether or not we can do it under the laws as interpreted by county council. He asked the Commissioners if there was some way we can get around that and accept the offers and see if we can make it stick.

Mrs. Mabbott asked if Comm. Kaminski meant to accept the offer that they proposed for the conditions. He clarified that he was speaking about number 3, 4 and 4a.

Mrs. Mabbott said 3, 4 and 4a are off the table as per county council as they are problematic to enforce. She also stated that they could accept conditions 1, 2 and 5 or modify them.

Don Wysocki spoke about the 30-35 decibel taken at a certain time and referenced the testimony by the gentleman from Morrow County who said at the last hearing the

ambient noise bothers them most at night. He said he wondered what the lowest noise levels were during the day or night.

John Standley said that the Pandora's Box got opened because they presented information that did not have to be presented. He spoke about noise and how on a quiet evening it would probably be quiet because the wind wouldn't be blowing and the turbines would not be turning which would make the noise levels lower. He said he agreed with Commissioner Randall that the information sent by Commissioner Wysocki regarding testing had to do more with distance to mitigate noise than actually testing to mitigate noise. He said it would be subjective because two sound technicians would have different theories. He stated that he had a problem knowing what the rules were and not being able to enforce them. He said he respects the people's property rights enough that he cannot make a decision since the box was opened on mitigation until we have some teeth on mitigation. He noted that you can read through an explanation on 4a that you might like but why would the county want to use \$50,000.00 of our own money to pay a fine.

He commented that there would be fines but that there were no consequences for non compliance. He stated that he was addressing a document that has been scratched. Commissioner Stanley said that information presented in the WKN package was phenomenal. He said that as far as the project and the noise he would have to rule that the distance mitigates the db factor.

Commissioner Randall commented on the teeth to the enforcement by saying he feels legal council made it very clear with their addition to the item number 2. They are offering to do a noise study within the 1st, 3rd and 5th year at their own expense. He said that the permit could be revoked if they were not in compliance and he thought they would not give that offer if they were not going to comply. He said they could make adjustments and it probably wouldn't take 180 days.

John Standley commented 180 days would be a long time to deal with a problem. Commissioner Randall stated that this was their offer and that legal council rubber stamped it.

Mrs. Mabbott asked to clarify something. When staff conducted the completeness review of the application there were a few items that were outstanding, the cultural resources study and a couple other items. We also suggested they submit a transmission line application before the Planning Commission would review the conditional use permit. We also suggested that they do a noise study. By statute and by code WKN could have said that they did not want to do a noise study and asked the county to move ahead with processing the application. She said that Planning Commission over the past 10 years, and especially over the past 2.5 almost three years the commission has talked about noise. She asked if any of the commission members would have made a decision without some noise data to review.

Commissioner Kaminski said yes but it would have been negative, that the Planning Commission would have turned down the application.

Mabbott confirmed that staff suggestion to conduct a noise study was well founded. Staff did not identify any parameters for the study. The Planning Commission heard numerous times from the applicant that a noise study was not necessary but it is clear that Planning Commission would not contemplate a decision without a noise study.

Mabbott's other point was to clarify that County Council said that any part of the developers proposal could be modified. So, for example if you want to talk about a different threshold noise level, you can do that.

Commissioner Standley asked how the property owner would be protected so that there is compliance.

Mrs. Mabbott responded that county council had said it was all or nothing for us. She said staff had asked WKN to come back with a proposal to address compliance. She would propose to write some additional language to their condition and she checked with County Counsel before he left, so their proposed condition 1 and 2 would at a minimum need to be modified so that it is clear when they are out of compliance we revoke the permit. And you can have that done in front of the Planning Commission or it can be done at a staff level. That is not a position the county wants to be in of course but that might be our last resort. County Counsel also clarified Commissioner Standley's question about if the permit were to be revoked could the county use the bond and his interpretation is that yes the county could use bond monies to revoke the permit because once a permit is revoked that means retirement and dismantlement of the facility.

In the interest of moving things along Commissioner Reeder made a motion that they reject the proposed number one. He said that a three days study does not adequately characterize a year of noise generated. The upper end of the noise study results is the basis for establish the 45 dBA which is twice the state standard. So, Reeder said that as far as justification is concerned, he found that it was not a credible justification to establish a 45 dBA standard.

Reeder then made a motion to accept number one but only at the state standard level, the 36 dB level. Reeder also clarified that the assumption was that that would apply at the 3520 foot distance. Our setback standard is 3500 so if it is a state standard at a residence of the 36 that's within the 3520 feet, right? Mabbott responded with clarification on the applicable setback standard. The county setback standard is not at all tied to noise; county setback is independent of the state administrative rule standard.

Mabbott indicated that the way she would interpret the state standard, and it is certainly subject to interpretation and clarification but assumed the state standard would apply to any of the receptor sites which include those dwellings within the two mile area. This is because you would have to prove that they comply with the dB that the planning commission acknowledges. Reeder said he would not make reference to that at all then and just restate his motion to say that his motion is that the Planning Commission for this project, the state standard as the appropriate standard for this application. In spite of the complication in interpreting the state standard, it is, as far as he can determine, the only

existing state or local standard available relative to wind power projects. So I think they should be held accountable to that standard for lack of a better alternative.

Mabbott asked for clarification on the motion. Was it for the whole project or that condition? Reeder then said that to move things along and get a decision, he indicated that the noise issue is the critical issue relative to the neighbors. Otherwise, he would not have a problem saying yes to the whole project. We have an obligation to the neighbor and the neighbor deserves this project satisfy the state standard. And since the study was done when the creek was running at the high creek level, maximum noise level potential for the year and there are no data for other seasons of the year, the state standard remains the most viable, credible standard to apply to the application.

Commissioner Reeder stated that his motion was only on that issue. How to we resolve the noise issue; he made a motion to resolve the noise issue by indicating that for this application the state standard will apply as the noise standard to which they would be held accountable.

Commissioner Rhinhart asked for a second.

Commissioner Standley asked if this was precedent condition or a condition.

Commissioner Reeder said it was a subsequent condition and would apply after completion. The developer should build to comply with 36dB standard. "If I were the developer I'd build to comply with the 36decibal standard. I would not build to comply with the 45dBa; it is totally unacceptable to me personally."

Mabbott asked for clarification. Should the language of that condition, condition 1, be the language they have except where it said in the aggregate shall not exceed the state noise standard rather than the 45dBa?

Reeder asked if he should make a new motion.

Reeder recommendation is that the commission completely disregard the developers proposal [proposed conditions submitted October 10th . "I don't think it is going to be any good to us given what we've got in the way of information from County Counsel tonight. I don't think it's useful to us. If we want to decide what the standard will be for noise, my proposal is that since the state noise standard for wind power is the only standard I know of that applies in Oregon to wind power projects that we make it the applicable standard for this project in Umatilla County. In other words for this project we indicate that the accountability level relative to noise will be the state standard for noise."

Commissioner Rhinhart asked if that was a maximum of 36 or is that a maximum of 55.

Reeder replied that the state standard assumes a background level of 26. It allows a 10 decibel exceedance over the 26 which makes essentially the standard 36 decibels. It is a dBa standard. Reeder said "if this data was a year round study and if it had data for all seasons so it characterized the annual background noise I would probably accept that in

lieu of the assumed 26 at the state level. But since that does not exist and it appears that this data that's been submitted to us was taken during the loudest period of the year for Dry Creek at full flow or close to that I don't think in my own mind that it's a credible basis for a standard for a project that's going to effect people in that area. I think we have now an accountability level and the state standard is the standard being argued in the Morrow County situation. It's the only existing state standard and we've had no standard here in the county other than that state standard to refer to. So I'm proposing that we make that, I'm just making a motion that this conditional use permit be subject to compliance with the existing state wind tower noise standard."

Reeder withdrew motion and made a new motion. "My motion is to approve conditional use permit request number #C-1188-11 WKN Chopin, LLS applicant, as presented except that it must be subject to the state 36 decibel noise level and the associated regulations that accompany that in the state regulatory language. There's some other pieces of that that I'm just saying the state regulation for noise to be the applicable standard."

Mabbott asked if he wanted to address monitoring and enforceability with that condition. Reeder said yes, I would make number 2(tape is not audible)

Tape resumes with Reeder speaking and he says "effectively my motion now is to approve it in all respects that we would apply the state standard rather than their proposed standard." Commissioner Rhinhart asked if it included the 25 conditions. Mabbott asked if it included their (WKN's) condition 1 and 2. Reeder responded no, that "he would completely disregard the whole proposal except a reference that number 2 is acceptable as a condition of approval." Otherwise he would deny all of their suggested language.

Commissioner Rhinhart asked for a second.

Mabbott reminded the commission that the motion also needs to also include adopting of the Findings. Reeder confirmed that it was as presented and includes subsequent and precedent conditions. Mabbott referenced conditions on page 31 and indicated that staff would add Reeder's condition on page 26 but also address the state standard in the Findings. Reeder confirmed yes.

Commissioner Rhinhart asked if those conditions would be 26 and 27? Mabbott confirmed yes.

Standley interjected that he had one question but asked if there was a second? Rhinhart said we do not have a second yet. Commissioner Wysocki seconded the motion.

Standley then asked for discussion. Rhinhart acknowledged. Standley then clarified that we have a motion and a second. For my clarification for this discussion prior to our vote, if for any reason we determine that the site of the developer is in non compliance, and it is proven to be such, that the penalty would revoking of the permit and allow the collection of the bond to be brought back or brought forth to the county. Am I clear on

that? Do I understand that correctly? Mabbott clarified yes that was Doug's interpretation. She then said that, to restate in her terms, if their project is found to be out of compliance the county can revoke the permit and call the bond to dismantle the facility. Standley said thank you.

Reeder added that that is not something that is going to be done overnight or something that would be done lightly. And appropriate action would be taken to correct the problem within a reasonable time. Also assuming it would be rational. He said he has absolutely no problems personally pulling a permit for a wind tower project that does not comply with the standards. "I would not bat an eye to do that if the circumstances call for that. Otherwise, we cannot claim to have done our job and that is to protect the interests of all of the citizens of the county. I'm also not saying we don't appreciate the contributions of the wind power projects. We certainly do." Reeder said that he has a paper that he is thinking of releasing tonight or not. It deals very specifically with the two mile setback and why it was done. "The world needs to understand why we did that. And the reason we did that is to empower the neighbor to protect his interest the same way we're trying to protect other people's interests. Wind power developers the world over have been running rough shod over the neighbors and its time to put a stop to that. So if were going to have wind power in Umatilla County in the future and I'm still on this Planning Commission were going to have a standard to abide by somehow that's going to be enforceable. I don't like the idea of the permit being pulled being the only option we have. But were going to have to change the game so that we don't have a group of people around the world increasingly getting organized and complaining about how they were treated by wind power people as close neighbors. That's going to stop somehow. And I think the time is here, we're in a transition and that's the tone of my motion is, we're in this transition so I'm prepared to let this project proceed but only subject to the existing state standard for wind tower noise generation. I don't believe they've established a basis that's acceptable for any particular standard other than that."

Commissioner Rhinhart recognized the motion and the second. He then called for the question. The motion carried five to one.

Reeder announced that he had one last thing to say. "We need a community solution to wind power. There are a hundred ways to mitigate what is happening. People are not talking about it. They are signing confidentiality agreements so we can't do the research about health and what its like to live next to these towers. And I say that that has to stop. It's a public utility. Public utilities are managed with openness and full disclosure of all except the very pertinent private information. A public utility cannot be managed with secrecy as the primary was of communication. And I for one intend to do my part to make sure there is more openness and the sharing of alternatives problems dealing with wind power. So in the future we have a whole different discussion when we have a hearing. We talked about solutions to all the problems including the neighbors and the mitigation and so forth and I am a firm believer that can be done in advance. It can be put in writing. We can have guarantees. It's been tried in other places around the world. And we need to have a sit down session before the next application reaches this point and talk solutions and mitigation and we can put it in formula. So, my plea for you all is to

help us get to the place where we put this conflict with the neighbors and noise to rest somehow in a workable fashion.”

Commissioner Rhinhart thanked everyone for their testimony.

ADJOURNMENT:

Commissioner Rhinhart adjourned at 9:36.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant

(Adopted by the Planning Commission on November 17, 2011)