

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, October 28, 2010
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

PRESENT: Frank Kaminski, Clinton Reeder, Tammie Williams, Don Wysocki, David Lee.

ABSENT: David Lynde, Gary Rhinhart, John Standley.

STAFF: Heather Haueter, Richard Jennings, Tamra Mabbott, Gina Miller.

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

CALL TO ORDER:

In the absence of Chairman Rhinhart, Vice Chairman Kaminski called the meeting to order at 6:30 p.m.

The introductory statement was read.

NEW HEARING:

CONDITIONAL USE PERMIT, #C-1173-10. Applicant is American Wind Group, LLC; Landowner is Madison Ranches, LLC. Property is described as tax lot 4701 of Assessor's Map 3N 27 and is located approximately 8 miles southwest of the City of Hermiston adjacent to the Morrow-Umatilla County boundary. REQUEST is to construct a 10 MW wind energy generation project consisting of four or five wind turbines and associated electrical equipment, transformers and utility switchgear. Request also includes the construction of a small modular structure that will serve as the on-site office facility, maintenance crew headquarters and research center. Applicable review criteria include Umatilla County Development Code Sections 152.061, 152.615 and 152.617(HHH).

Staff Report: Planning Director Tamra Mabbott presented the staff report, displaying a map of the subject property including the location of turbines. There will be four 2.5 MW towers or five 2 MW towers. Ms. Mabbott explained access to the site.

Page 2 of the staff report was a list of standards for conditional uses in the EFU zone. Page 3 was additional restrictions that the county may impose. The focus of the Planning Commission began on page 4; UCDO 152.617 (HHH) standards. Ms. Mabbott reviewed these standards and staff findings, as described in the Preliminary Findings and

Conclusions. She noted that, because County Code cross references Administrative Rule, some of the standards in our Ordinance may seem redundant.

Commissioner Reeder felt the language of 17(5)(D) might not be specific enough for Oregon Department of Fish and Wildlife (ODFW) in regards to discouraging bird nesting in our language. Ms. Mabbott explained that she had written the findings to indicate the turbines should comply with recommendations of ODFW and recommended that as a condition of approval.

Ms. Mabbott noted (H) regarding onsite buildings. The applicant was requesting a multipurpose building for an office and research facility. As part of required notice to state agencies she had notified the Oregon Department of Land Conservation and Development (DLCD). Their Goal 3 Farm/Forest Planner had reviewed the request and did not think it would be possible as proposed. A letter was submitted explaining those findings. Ms. Mabbott added that the County's Code specifically says that maintenance and operations buildings shall be located in an appropriately zoned area.

(7)(E) required a bond or letter of credit acceptable to the county. The applicant and land owner preferred not to have to put up a bond, so Ms. Mabbott included their language in the findings, which asks for a waiver. However, she consulted with County Counsel whose interpretation was that it is not a standard that can be provided a variance because it serves the public interest.

Ms. Mabbott concluded that it was staff's opinion that, overall, the Planning Commission could approve the wind project, but not the research facility.

Commissioner Kaminski asked about the bonding issue. Ms. Mabbott explained that the ordinance says that they shall put up some bond, and the County typically defers to County Counsel to work with the applicant's bond counsel to come up with a reasonable amount. Commissioner Reeder explained that the clear intent of the bond requirement is to protect the County's interest and provide capitol should the project go under and the County is left with cleanup.

Applicant/Proponent Testimony: Kent Madison of Madison Farms and Madison Ranches Inc. testified as a partner with American Wind and as the landowner. There is an existing project already out there, which includes turbines to the west of the proposed site. They may consider using the avian study from that project to expedite the study for this project.

Commissioner Lee asked about the proximity of a home to the closest existing turbine. Mr. Madison explained that the home is his residence and it is 1,600 feet from the turbine. The closest downwind dwelling is about 1 ½ to 2 miles away.

Mr. Madison explained that he understood the concern regarding a decommissioning plan, and he was not opposed to the plan for their original project because he did not own all of those turbines. In this case, he is a full vested partner with the project. He gave the

example that one doesn't put up a bond to tear down a grain bin or shop. As the landowner and owner of the turbines themselves, why would he put up a bond to tear down turbines that have greater salvage value than the cost to take them down? The existing project spends about \$17,000 a year on a bond that goes to a bank somewhere else. They will abide by the rules, but if possible they would like to waive the bond requirement.

The research project would be an opportunity to allow future generations to learn more about wind energy. They don't want to slow the process down for the turbines, so if they need to remove the request for the research center, they would be willing to bring that request back at a later date if it can't be addressed tonight.

Brian Jackson with American Wind Group provided the background of the project and how he came to know Mr. Madison. Ward Butte was not included in original project, but they have continued to talk about having a project there because there are several unique things about it. The difference is it's a true community project because Mr. Madison and Mr. Jackson are partners in building and owning the project. It also connects to a distribution grid instead of going through a transmission system, which Mr. Jackson felt would be a key element of future projects across America. There are great constraints on transmission grids, yet the Department of Energy (DOE) has national objectives to achieve 20% of the nation's energy from wind turbines by the year 2030. Wind is one of the most optimistic industries in the nation.

Mr. Jackson explained that he installs turbines for schools in Idaho, where there is a whole curriculum and training program for students. The DOE has said that the biggest constraint for the nation is achieving the workforce and the key driver is education. The design for the proposed building includes internet and networking to the turbines, but would ideally provide overnight accommodations for the biologists and environmental people researching the project. It would include an open room in the center for students, to include an educational component, and would pull in college wind technology programs as a local field site.

It would be a modular facility, so it would not be permanent, but it is expensive and can be built into the budget of the wind farm upon initial construction of the wind facility. Coming up with the funds to build the facility at a later date would be difficult. It would also be easy to view the wind farm in general from the building without impact activity on the farm.

The turbines themselves will be built with the newest technology, including sound sensitivity upgrades. Commissioner Kaminski commented that it is a small operation, but it seems like more of a business venture as opposed to a project for generating power for the farm. Mr. Jackson replied that there will be 4-5 turbines that will be connected to the Umatilla Electric Cooperative grid, selling energy to PacifiCorp. Mr. Madison added that he is the actual landowner in partnership with the developer, and Madison Farms would like to be energy positive within the next couple of years. They want to create more energy on their farm than what they consume. The farm uses about 4 MW, so this project

along with some solar units they will be putting in would get them to their energy positive goal.

Mr. Madison added that he doesn't know of any facility where local students can go and study. Also, the existing farm employs four full-time people and this project would have at least two.

Commissioner Kaminski asked about maintenance. Mr. Jackson explained that they will be contracting directly with the manufacturer, which is required for the first five years. They will probably then add their contract to the contract with the neighboring facility.

Ms. Mabbott suggested Mr. Jackson explain the design of the project related to PURPA requirements. Mr. Jackson explained that, up to 10 MW, the utility is required to buy the energy. Otherwise you have to wait for the next RFP or bid into an open process. PURPA stands for the Public Utility Regulatory Policy Act of 1978, which encourages diversity of energy supply.

Commissioner Wysocki asked who is responsible for shaping for the utility to accept the power. Mr. Jackson explained that this projects falls under the category of distributed generation. He believed the nation would start seeing more of these types of smaller projects, which would be spread out across the region.

Mr. Jackson noted that the main reason for the requested building was use as an onsite office facility for the wind farm. They could ask for that specifically now and later apply to open it up for educational purposes. Their goal would be that community colleges and universities could eventually use it for meaningful research and apply for DOE grants, etc.

Commissioner Reeder asked if they were anticipating being more involved with solar energy production. Mr. Madison replied that they won a bid for PacifiCorp for a 9.9 KW array that will be located at "the Walker Place", which is a PacifiCorp net metering site, and would probably go to a ½ MW solar array that PacifiCorp goes out to bid on soon, through a bid process. Commissioner Reeder noted that the office facility could then potentially embrace both solar and wind. Mr. Madison added that they have also been experimenting with the technology of ASR hydro-generation with the possibility of using it as a pump/storage concept in the future, so there could actually be three sources of educational opportunities.

Commissioner Williams asked about turbines that might impact county roads. Mr. Madison replied that there would be no turbines on county roads. All are located on private property and would be accessed by private roads.

Commissioner Williams stated that she is very pro-education so she would only feel comfortable approving the building if education is mentioned in the approval. She thought the research center was a great idea.

Commissioner Williams asked if their neighboring project had had complaints of noise. Planning staff replied that there were none that they were aware of.

Mr. Jackson pointed out that the employment opportunities that wind energy provides, in addition to energy.

There was discussion with Commissioner Reeder about the public and higher educational opportunities that the experimental renewable energy projects on Mr. Madison's property could provide. Working with universities and/or renewable energy grants could provide funding.

Senior Planner Richard Jennings pointed out that it is a good idea, but the EFU zone is governed by ORS 215. We can't add uses that aren't listed. Commissioner Reeder noted it could be changed through legislation, but Mr. Jennings replied that it doesn't fit anything allowed currently. Mr. Jackson said it would still be allowed under onsite office. Ms. Mabbott corrected that it actually states that it should be located offsite in an appropriate zone. This is not the forum to discuss the concept. It is positive, but the Code says all should be done offsite. There is nothing precluding a school from going to the site, but they don't need the structure. Mr. Jennings added that, locationally, the project has plenty of zoning nearby that would allow for a research center. Mr. Madison stated he would feel comfortable eliminating reference to a research facility. If they need to come back with another application later they would be happy to.

Mr. Jackson asked if they could still permit as onsite office if it is consistent with the surrounding uses. Ms. Mabbott replied that they could permit an office, if there is a specific statement that it shall not be permitted as dwelling. She added that there are lots of opportunities to talk to colleges about research. The Planning Department works hard to "think outside the box" and accommodate, but we have to follow the code as well.

Another point Ms. Mabbott brought up was relative to the bond issue. A grain bin is a normal use in the EFU zone, but a turbine is an industrial use in the EFU zone. There is a big difference. The bond should not be unduly burdensome. Mr. Jackson commented that it is just frustrating to them to pay bond money to a big bank. It would make more sense to them to pay into a county wide bond fund. Commissioner Kaminski noted that that thinking is appreciated, but the concern is being left in a situation like in California and Texas, where the valuable part of the turbines are removed when a company goes out of business and the land is left with silos sitting on huge concrete pads.

Commissioner Reeder pointed out that wind facilities are also sold, and if that's the case how would the County go about getting bonding after the fact. Commissioner Williams argued that in this case the turbines are on the owner's private property. We can make exceptions in cases like this if it's not impacting the public.

Opponent Testimony: Charles Little testified that he was concerned with making sure there is a bond. He noted the Boyd hydro project that the County now has to deal with.

A bond would ensure that the County would never have to go to the taxpayers to fund decommissioning.

Agency Testimony: None.

Rebuttal Testimony: None.

Commissioner Kaminski asked for requests for a continuance or to keep the record open. There were none.

Hearing Closed; Deliberation and Decision: Commissioner Lee felt the onsite office should be permitted. Commissioner Wysocki commented that, if it meets the criteria for a building in the EFU zone he would be comfortable with approval of an office building. The Planning Commission agreed.

Commissioner Reeder suggested going through the conditions of approval and Ms. Mabbott reviewed. Commissioner Reeder asked what type of insurance was required. Ms. Mabbott would clarify that it is general liability for the contractors. There was discussion about bond funding and keeping bond money in the county.

Mr. Jackson asked about the ODFW requirement under condition #5. It seemed to have an open ended definition and he wondered if it was required of other projects as it is worded in this case. Ms. Mabbott replied that it is, and it is also a precedent condition so it won't be evolving. Commissioner Reeder added that the ODFW request tends to go beyond monitoring. The county has a provision for a committee to moderate the requirements of ODFW for the avian study.

Commissioner Reeder asked what changes were to be made to the conditions. Ms. Mabbott explained that she would make the discussed change to #8 and she had struck the last two sentences of condition #11. She also took out the reference to the note that the applicant had requested a waiver on #16. In the findings she made a note that #22 of the findings could read that approval includes an onsite office as consistent with allowed structures in the EFU zone. So the Planning Commission's motion could be to adopt the findings as amended and #22 would approve the project consistent with the findings as revised and including the office structure.

Commissioner Reeder moved to accept Conditional Use Request #C-1173-10 as presented in the staff report and relative to precedent and subsequent conditions, as outlined in #22, including authorization to proceed with establishing an office facility that meets the zone standards. Commissioner Wysocki second. Ms. Mabbott added that the findings must be approved and accepted as amended. Commissioner Reeder agreed. Question called. Motion carried 5:0.

APPROVAL OF MINUTES:

Commissioner Lee moved approval of the minutes of August 26, 2010 and September 23, 2010 as submitted. Commission Williams seconded. Approved by consensus.

Recess.

OTHER BUSINESS:

Storage Container Policy Work Session.

Senior Planner Richard Jennings explained that the main reason for concern with the permitting of cargo containers is that they are becoming more prevalent and the county doesn't have a policy to permit them. It is important to establish a definition and permit process. For the most part they are a valuable asset as an inexpensive, secure source of storage.

The proposed permit process is to allow as an accessory use, which is how we typically permit garages and shops. This requires a zoning permit to allow staff to review setbacks, floodplain status, etc. It is important to apply objective standards.

Mr. Jennings displayed examples of containers around the county, noting they are not always attractive, but are again, a secure means of storage. He also displayed examples of containers that have been converted or become unsightly.

Mr. Jennings described the proposed definition. They must be new or used, prefabricated, metal, wood or composite type container in excess of 120 square feet manufactured for the purpose of storage of agricultural, commercial, industrial, or residential products and materials accessory to the principal building use. They must be enclosed, and manufactured for their defined purpose. We must have a clear definition so there is no question, and we don't have to permit everything. This is better for administration of the Code and handling code enforcement issues.

Commissioner Reeder asked why wood was included in the definition. Ms. Mabbott explained that it allows more flexibility so that they don't have to be made of just metal. Mr. Jennings added that they are typically made out of metal anyhow. Commissioner Reeder noted that wood would probably be less structurally sound, such as van bodies.

Guest Richard Jolly asked how the new policy would affect Humbert and other businesses that use them as rental units. Staff explained permits would be required under this definition to make sure the container meets setbacks and isn't in a flood plain.

Proposed Review standards:

1. Accessory Use: Storage containers are a permitted accessory use and must meet the regulation as specified by the underlying zoning district.
2. Storage Container Location: Storage containers shall be located within the buildable area of a lot or parcel and meet the setback

requirements for structures and buildings of the underlying zone. May not be located on utility or drainage easements. Containers to be placed within a floodplain must obtain a Floodplain Development Permit. Commissioner Reeder suggested easements in general; not naming specific types of easements.

3. Maximum Permitted Heights: Shall not be stacked.
4. Site improvements: Shall be located on a level surface to prevent shifting, rolling, or other movement.
5. Maintenance: a. must be free of graffiti, posters or advertising signs/lettering of any kind; b. must be free of corrosion, rust, rot, holes or leaks; c. containers in residential and commercial zones shall be painted to blend with the color of the principal structure or use. Discussion about "graffiti". Could remove that language.
6. General Standards: Shall not be modified to be used for any other purpose than storage, unless land use and building permits are obtained.

What happens to containers currently being used? Mr. Jennings asked if we should consider these non-conforming uses, or un-permitted uses that are in violation of the zoning ordinance. Commissioner Lee thought they should possibly be grandfathered because they were sited prior to policy. Mr. Jennings explained that non-conforming uses are lawfully established, but don't conform to the requirements of the zone in which it is located. Staff followed the code interpretation of County Counsel that a container is not allowable, so existing containers are not lawfully established. Thus, a container would be designated an unpermitted use and would require a permit in order to continue its use.

Commissioner Williams felt this would cause a huge problem and was not comfortable with it. Commissioner Reeder explained that it is an unanticipated use that mostly developed since the Comprehensive Plan was developed. The problem will be the transition. He suggested that if considered a non-permitted use, Code Enforcement could be primarily education for a while, and mailers and public notices could be sent out, and give people a deadline by which they must meet the standards of the code.

Mr. Jennings explained that there will be a notice to the public. They are not specifically prohibited, but the Code is silent, which is prohibitive. Code Enforcement is not going to go to every parcel to assess if it is a violation. It will be complaint driven. Commissioner Williams agreed that they need to be permitted, but not retro. She felt it would "punish" the citizens of the county.

There was discussion about how to handle transition. Commissioner Reeder noted that we need a standard because if they are located in a flood plain for example, it could endanger the public, so asking people to comply with the standard is not unreasonable. He suggested a "grace period" of a year to allow time to inform people and correct, without penalty.

Commissioner Williams was concerned about implementing new policy without public input. Ms. Mabbott explained that this is just a work session. We would still have to go through a hearing to implement and the public would be notified.

Mr. Jolly asked if they could be exempt in the EFU zone, because they are really temporary. Mr. Jennings explained that people are still required to receive a zoning permit for farm buildings and receive exemption at the state level through a farm exempt permit. The process would be the same for containers.

Ms. Mabbott commented that County Counsel was not comfortable with the language that David Hadley had proposed about grandfathering. She wondered if there was a consensus among the Planning Commission to give general amnesty to the containers that exist and meet the definition of a storage container. Several Commissioners expressed an end date. Ms. Mabbott would talk with Counsel about a possible policy interpretation for the ones that were in place as of a certain date. Mr. Jennings noted the difficulty in verifying the placement date.

Ms. Mabbott suggested the January code update could be the beginning effective date of the provision for people to come in and get a permit on existing containers prior to enforcement being enacted.

Commissioner Wysocki asked if there were other jurisdictions with the same problem. Yes. Staff polled other counties and there are several with specific regulations. Commissioner Williams noted that a lot of the other counties that responded are on the west side of the state and she would like to see what adjacent counties are doing. Ms. Mabbott would inquire again with local counties and ask more about how counties have dealt with them during the transition period.

Commissioner Kaminski asked about lot coverage. Mr. Jennings explained that there is already a standard for lot coverage in the underlying zones, but we could make it more restrictive.

Attorney David Hadley commented that he believes there is a “whole world” of containers out there and a difference of opinion about whether it is an un-permitted use or if they could be considered a legitimate non-conforming. He agreed that it would be good for the public to be able to share their thoughts.

Guest Stuart Bonny brought up the issue of safety of containers, and the potential for people getting locked in them. It was noted that the containers lock from the outside, not the inside like a deep freeze as Mr. Bonny suggested, so it would be difficult for someone to accidentally get locked in.

Another guest noted quality of containers. By the time they are used for storage, they are at the end of their useful life. They are made of heavy metals, and chemicals that could leach.

Ms. Mabbott stated she would take the issue of grandfathering back to Counsel for his opinion and would remove the graffiti reference. We will then take the new draft to a public hearing.

ADJOURNMENT:

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Heather Haueter
Secretary