

Approving the wind permit

Editor's note: The following resolution, one of two prepared before the vote on Highland New Wind Development's permit request, was written to outline reasons to approve the project's conditional use permit. The board did ultimately approve the request with a 2-1 vote.

Whereas, Highland New Wind Development LLC is the potential lessee of the real property owned by Tamarack of Highland LLC and Red Oak Ranch LLC (collectively, "the applicant");

Whereas the applicant has applied for a conditional use permit to use the property, which is zoned agricultural general district (A-2) for electric generation and substations (the "application") pursuant to 6.03.03-8 of the Highland County Zoning Ordinance;

Whereas, the real property that is the subject of the application lies on Allegheny Mountain in the Blue Grass Magisterial District of the county and is more particularly described in Exhibit A to the application;

Whereas the board of supervisors ... held a duly advertised public hearing on the application on May 19, 2005, at which all persons affected were afforded the opportunity to appear and present their views;

Whereas the board has carefully considered the application, the applicant's letters of May 16 and May 17, 2005, along with the exhibits and attachments to all of the foregoing, and the statements of all persons and the materials presented at the May 19 public hearing; and

Whereas this board has reserved unto itself the right to approve conditional use permits, and the board desires to approve the conditional use permit requested by the applicant under suitable regulations and safeguards deemed by the board in the exercise of its legislative discretion to be appropriate;

Therefore be it resolved by the board ... as follows:

1. The board makes the following findings with respect to the application:

a. The use of wind to generate electric power will not pollute the air or water and constitutes clean industry that will benefit the area without degrading the environment.

b. The property is located in a remote and sparsely populated area of the county, and the proposed use, under suitable regulations and safeguards, is compatible with surrounding uses.

c. The use will not have any undue adverse effect on the character of any existing neighborhood or the area.

d. The proposed use will generate little traffic, and any effect on traffic volumes in the area will be negligible.

e. The proposed use will not adversely affect property values in the area.

f. The proposed use is consistent with the comprehensive plan which encourages diversified economic growth and the attraction of other forms of technology to the county (pages 5-6).

g. The proposed use is consistent with the goal of the comprehensive plan that the county protect atmospheric quality by seeking clean industries (page 163).

h. The proposed use will provide an alternative source of tax revenues for the county and increase the tax base as encouraged by the comprehensive plan (page 105).

i. The proposed use will meet a need of the county for jobs that require highly skilled employees and which will pay higher wages.

j. When permitted under reasonable conditions imposed by the board, the proposed use is consistent with the intent of the county to protect its unique natural environment and maintain its predominantly rural character.

k. The property has very few trees in the areas in which the proposed and facilities will be constructed, and wind turbines can be constructed without significant tree clearance.

l. The property is located in close proximity to an existing electrical transmission line and will not require the construction of any material transmission line facilities.

m. Sources of clean energy are needed worldwide and generation of electric power by wind turbines will protect the natural environment of the county and the commonwealth in the future.

n. The proposed facilities and use are an "electric generation and substation" use within the meaning of Section 603.03-8 of the zoning ordinance.

o. The proposed use is compatible with surrounding uses, is consistent with the intent of the zoning ordinance and the land use element of the comprehensive plan, is in the public interest, and will comply with all other provisions of law and ordinances.

p. The proposed use is consistent with public health, safety, convenience and welfare and good zoning practices.

2. The board hereby grants a conditional use permit to the applicant for the conduct of electric generation and substations on the property subject to the conditions set out in paragraph 3 of this resolution.

3. The conditional use permit granted to the applicant (hereinafter the "permittee") shall be subject to the following conditions:

a. **Height** — No wind turbine shall exceed 400 feet in height as measured from finished grade to the highest point of the blade.

b. **Number** — The number of wind turbines shall not exceed the number required to produce 39 megawatts of electricity, utilizing the best available technology at the time of construction, and in no event, shall more than 22 wind turbines be constructed on the property.

c. **Use of existing KV lines** — The wind turbines shall be connected to existing KV lines only, and new transmission lines connecting the turbine sites to the existing KV lines shall be underground.

d. **Setbacks** — Each wind turbine shall be set back from the nearest property line by a distance equal to 400 percent of the height of the structure (for example, the minimum setback for a 400-foot turbine would be 1,600 feet); provided, however, an adjoining landowner may consent to a lesser setback by a recorded easement. All setbacks for buildings and structures on the property shall meet minimum setback and other standards of zoning ordinance except when this resolution requires a higher standard.

e. **Lighting** — No turbine shall be lighted unless required by the Federal Aviation Administration or other regulatory authority, and if lighting is required, lighting shall be the minimum required by the (FAA) or other regulatory authority.

f. **Color** — All wind turbines and any accessory building or structures shall be painted off-white, gray, or other neutral, non-reflective color approved by the Technical Review Committee as part of the site plan review process pursuant to paragraph 3. m., infra, subject to (FAA) regulations.

g. **Fencing** — The substation and any equipment storage area shall be secured by chain link fencing of not less than six feet in height, and all gates shall be locked except when necessary for access by authorized personnel. The outside of the wind turbines shall not be climbable, and all access doors to the turbines and electrical equipment shall be locked.

h. **Screening** — The substation, any accessory building, and any storage yard shall be adequately screened from off-site view by vegetation and/or solid fencing. The screening by vegetation and/or fencing shall be subject to approval of the TRC in the site plan

review process. All fencing shall be maintained in good condition and any vegetation that is a part of the approved vegetative buffer that dies shall be promptly replaced during the next growing season.

i. **Signs** — No signs shall be placed on the property except that “No trespassing” signs, warning signs, signs indicating ownership and 24-hour contact information, signs required for safety reasons, and signs required by federal, state or local regulatory agencies shall be permitted. All signs shall be subject to the sign ordinance of Highland County.

j. **Access** — Access to the turbine sites shall be limited to existing access roads. If expansion of existing access roads is required to accommodate machinery or equipment during the construction and installation phase, any areas disturbed by such expansion shall be restored and revegetated upon completion of the construction and installation phase.

k. **Operations** — All turbines and the substation shall be maintained in good working order in accordance with best practice standards of the industry and manufacturer recommendations in order to promote the highest safety standards and reduce any noise to the lowest practicable level.

l. **Erosion and sediment control** — In constructing, operating and maintaining the permitted use, the permittee shall comply with all applicable state and local erosion and sediment control regulations and stormwater regulations.

m. **Site plan** — The permittee shall submit a detailed site plan addressing turbine structure, substation and accessory building locations, height of structures, setbacks, screening and color of all structures, fencing, and other security measures, erosion and sediment control measures, signage and location and construction standards for access roads. The site plan shall be designed to mitigate the impact of the permitted use on nearby property owners and the natural environment and shall include computer simulations or other visual representations of each wind turbine at its proposed location. The location of the turbine structures shall be shown on the site plan based on minimizing the overall visual impact on nearby property owners and the area to the extent reasonably practicable. For example, where multiple location options for turbine structures exist, the least visually obtrusive location, but operationally efficient location will be selected. The site plan shall be reviewed and approved by the (TRC) comprised of the county administrator and the zoning administrator. The TRC shall approve the site plan based on compliance with the requirements of these conditions. No building permits shall be issued and no construction or installation of

any turbine or substation shall commence on the property nor shall any equipment be stored on the property until the site plan has been approved by the TRC.

n. **Federal and state approvals** — The authority granted by this permit shall be conditioned on the receipt of all required state and federal approvals and review pursuant to Virginia Code 15.2-2232. In connection with obtaining required federal and state regulatory approvals, the permittee shall file with the county administrator, prior to or at the time of initial filing, copies of any environmental impact statement or environmental assessment filed with any federal or state agency in order to allow the county the opportunity to comment or otherwise participate in the applicable regulatory review or proceeding.

o. **Permit and restrictions run with the land** — The conditional use permit granted by this resolution and the applicable safeguards and regulations set out in this resolution shall run with the land and shall be binding on the successors and assigns of the permittee. The permittee shall file a copy of this resolution in the land records maintained by the clerk of the circuit court of Highland County and this resolution shall be referenced in any deed conveying any interest in the property.

p. **Non-operation and abandonment/removal** — Any wind turbine that is not operated for 12 consecutive months shall be considered abandoned and shall be removed by the permittee within nine months of receiving notice from the county instructing the permittee to remove the abandoned turbine. If all turbines are abandoned and required to be removed, then in addition to removal of the turbines, the permittee shall remove the substation, any accessory buildings, fences and any other above-ground structures on the property relating to the electric generation and substation use. In the event that all turbines are required to be removed, the permittee shall also remove turbine foundations to at least two feet below grade and cover the foundation with soil.

q. **Bond** — Prior to the issuance of any building permit, the permittee will submit to the county a performance bond, irrevocable letter of credit, or other equivalent form of security acceptable to the county conditioned upon the repair and removal obligations of the permittee under this permit. During the first partial calendar year of operation and the next five full calendar years of operation, any bond, letter of credit or other security shall be in the amount of \$2,500 per turbine. For the sixth calendar year and thereafter, the required security shall be in the amount of \$6,000 per turbine. Permittee may substitute one form of

security for another form of security from time to time provided the substitute form of security shall be approved by the county.

r. **Duration** — This conditional use permit shall be valid for a period of two calendar years from the date of this resolution at which time it shall expire unless construction of the project has commenced or the board of supervisors has granted an extension; provided, however, that the two-year period shall be automatically extended by one calendar day for each calendar day that any court action filed to challenge the issuance of this permit is pending.

s. **Compliance with laws** — Permittee shall construct, install, maintain, and operate the electric generation and substation use authorized by this permit in compliance with all applicable federal, state and local laws, ordinances and regulations.

t. **Compliance access** — Permittee shall allow the county administrator and zoning administrator and other designated agents of the county access to the property at reasonable times and with reasonable notice in order to inspect, monitor and enforce compliance with this conditional use permit.

4. This resolution shall be in full force and effect upon its passage.

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