

No rush, board says

Year-end deadline on utility declined

BY ANNE ADAMS • STAFF WRITER

MONTEREY — County officials decided Tuesday to take their allotted time to consider whether a wind energy utility will be permitted to operate here. After a volley of offers and counter-offers, supervisors and planners were faced this week with a last offer from Highland New Wind Development, LLC, on extending the time allowed by ordinance to hold public hearings and vote on the company's requests for a permit and zoning amendment.

"More and more people are starting to come forward all the time, both pro and con. It's been an interesting mix, enlightening," said supervisors' chairman Robin Sullenberger. "But I have not had anyone say to me on either side of this issue: Rush to judgement on this."

Sullenberger's comment was met with a round of applause from the more than 35 residents and landowners in attendance. Ultimately, officials declined the offer to decide any earlier.

The planning commission will forge ahead with a public hearing Oct. 21, as required, and try to make a recommendation to the board on the zoning amendment.

The conditional use permit pending before the commission, however, will move forward to supervisors without a hearing. Planners agreed it would not be in the county's best interest to hold hearings with supervisors on these requests since that would force a final vote from them too soon.

Planners received two applications from HNWD in August — one for a change in the zoning amendment to exempt its 400-foot wind turbines from the 35-foot height limit, the other for a conditional use permit to construct and operate the electric utility in an agricultural zone. Planners had 60 days, until Oct. 25, to hold a hearing on the zoning amendment request and make recommendations on both requests.

Sullenberger told planners, after reviewing the latest series of events, that supervisors had been doing a lot of research in recent weeks, building "a huge portfolio on this issue." County administrator Roberta Lambert had discussions recently with both the county assessor, Harold Wingate, and a principal utility assessor with the State Corporation Commission, to learn how HNWD's proposed 39-

megawatt utility might be assessed for potential tax revenue. The SCC assesses electric utilities producing over 25 megawatts contributing to the nation's power grid. Based on a series of calculations, the taxable value of such a utility is determined. Lambert provided several options to officials based on the project's value in ranges from \$30 million to \$60 million, and had Wingate review those. He said the county, if those numbers were accurate after a project was built, could average \$200,000 to \$250,000 annually in tax revenue. Sullenberger cautioned those estimates were "very preliminary."

County attorney Melissa Dowd pointed out the estimates were based on the assumption that Virginia's General Assembly would not create its own tax breaks for the utility, taking steps which would reduce or eliminate that revenue altogether.

Questions from county officials, submitted to Lambert last week for compilation, asked whether potential long-term tax revenue for the county would depend on actions at the General Assembly, and whether an "outside" agreement could be struck with HNWD to provide county revenue independent of what happens at the state level. Sullenberger said questions about that are being researched by the company.

Others wanted to know how the National Radio Observatory in nearby Green Bank, W.Va., which has a "quiet zone" for its listening satellites, the Federal Aviation Administration, and the military, which conducts low-flight training in the area, felt about the project. Other questions pointed to assurances for removing broken equipment, whether an environmental impact study could be conducted, whether computer simulations could be created, whether the company had a development partner with expertise in the field, and whether transmission line upgrades were needed to make way for a second project.

Lambert spoke with consultants at the observatory recently, who told her they did not foresee any interference with their work from the turbines, she said.

She also consulted a supervisor for Allegheny Power, who explained HNWD's project had been studied for years, and it was required to meet certain milestones to put its power into the system. Apparently HNWD has dropped out of that review process twice. Allegheny

Power said it's the only project currently proposed in the immediate area of Allegheny Mountain. The next closest project is one under way in Pendleton County, where U.S. Wind Force intends to construct a 200-megawatt "wind farm" on Jack Mountain, with 112 turbines on ridges right up to the Virginia border in Doe Hill.

HNWD's attorney, John Flora, was invited to address county officials. "My client felt we've been working on this a long time and by Dec. 9, everything we could provide we would provide," he said, explaining why HNWD hoped for a decision by the end of the year to try to take advantage of production tax credits. "To be honest, it's probably less than a 10 percent chance my client can accomplish an operational project by the end of next year."

He said, however, that since this is an election year, and elections are usually followed by legislation, they hoped lawmakers would extend the production tax credit. "My client's very anxious," he said.

Dowd asked Flora whether HNWD could have FAA approval by Dec. 9. "No," he said. "It's one of many chicken-and-egg problems." Flora explained the FAA will not give approval to the project yet, since by the time it's constructed, the number of turbines could change. "The FAA has different rules," he said, explaining HNWD could not even get criteria from the FAA to explain to the county.

Sullenberger said typically FAA would require lights on every third turbine, but "circumstances may cause that to be different."

Kodger asked Flora whether the 18- to 24-month schedule for construction HNWD described in its application was achievable.

"It's not likely but we're going to try," Flora said. He said required environmental reviews may hold up the company's progress, especially with studies under the Migratory Bird Treaty, U.S. Fish and Wildlife, and the Endangered Species Act.

What next?

Sullenberger told planners he felt the county had been trying to reach a compromise with HNWD, and had the company agreed to the county's offer of a December joint public hearing, a decision could have been made in February — six to seven months after the company's application. "I still don't think that was unreasonable," he said, but with HNWD's

request for a decision by year's end, "My major concern is that we'd be holding a Dec. 9 public hearing and then we'd be committed to making a decision in a two-week period." Information could arise from a hearing that would require more time to consider, he said. As for production tax credits, Sullenberger said "that issue should not be a driving force in our planning process. I don't think we should make our decision based on that."

Supervisor Jerry Rexrode agreed. "I don't think the county needs to look at that either way."

Dowd asked Flora whether HNWD wanted to regroup and consider other alternatives. "I'm trying to find out if you want to be in a box or not," she said.

"I don't like being in a box," Flora replied. "We were hopeful the board would be willing to condense the decision-making time."

Planning commission chairman David Johnston asked whether planners could return to their original schedule, hold a hearing on the zoning amendment request, and choose not to hold one on the conditional use permit.

"Yes," Dowd said, "and that would mean the board of supervisors has all the time they want ... You can blow right past the conditional use permit."

Sullenberger told planners, "We need to give you the latitude to make your own decision ... Our reasoning (for holding joint public hearings) was that given the magnitude of this issue we felt comfortable doing that. That may not be as viable now."

Kodger said in all fairness to the county she felt planners had "no choice but to bypass (the permit request). I think it's in the best interest of the county to take more time ... all the time you need. We're not trying to skip out, but it appears like that might be the best thing for the county." She felt it was important for the planning commission to have the permit request on its agenda, however, "and to hopefully make a recommendation with the information we have at that point."

Sullenberger asked Flora again whether he saw any alternatives. "We generally accepted your (first offer)," Flora replied. "We think you'll have enough time. The production tax credit, you don't care about. But there's money involved. To stay in that queue (for study in the PJM power grid), money goes out. Timing is not irrelevant. It could be two weeks, but we don't know when we're going to have to send them another \$50,000 check. There are reasons why we think it's time to move on."

Kodger reminded Flora that HNWD has been working on its project for six years or more, compared to the short period of time planners and supervisors have had to assess

it.

"I've been working with members of the board of supervisors for two years," he replied.

"Not from the standpoint of an applicant," Kodger said.

Flora said he's worked so long on wind energy, "I'm getting tired of it. I know you all are."

Planner Harry Sponaugle said, "Lisa, if you'll put what you just said into a motion, I'll second it." Kodger made the motion, which was approved unanimously, to proceed as follows: Planners will hold a joint public hearing with supervisors Oct. 21 on the zoning amendment request. In addition, planners will ask supervisors to consider new language for the zoning ordinance, as drafted by Dowd, that says any structure more than 200 feet in height (including wind turbines and communications towers) will require FAA approval as well as approval by either the board of zoning appeals or board of supervisors. The ordinance change, if made, will apply only to the county, not to the town of Monterey.

Planners will not hold a hearing on the conditional use permit, but will have the request on their agenda in hopes of making a recommendation to supervisors.

Just before supervisors took their vote agreeing to a joint public hearing on the zoning amendment, Rexrode asked to consult with Dowd on a legal issue and the two stepped outside the conference room. When they returned, Rexrode asked Flora to clarify whether HNWD had accepted the board's original offer of a joint public hearing on both requests in December.

"What we sent you was not an acceptance," Flora said. "It was a counter-offer."

Sullenberger asked whether there was potential to change the planners' Oct. 21 hearing even after it had been advertised.

"They'd have to have a called meeting," Dowd said. "I think they made their decision."

Supervisors voted unanimously to hold a joint hearing on the zoning amendment request with planners Oct. 21. The board will then have 90 days from the hearing date to approve or deny the request. Planners will attempt to make a recommendation to the board on the permit request Oct. 21.

Opponents raise questions

During the public comment portion of the meeting that followed officials' decisions, Highland landowner Chuck Neely spoke about his family's love of Highland County. "We plan to invest in this community," he said, "and we do agree it's the last, best place in America."

Neely, who has publicly stated his opposi-

tion to HNWD's proposal, asked the board, "Doesn't a place like this ... deserve all the recommended studies and analyses completed before the project is approved?" Neely pointed to the 26-page set of recommendations given the board by the Central Shenandoah Planning District Commission, and the advice of the board's attorney. "Why the hurry?" he said. He pointed to last Sunday's Charleston News-Gazette article explaining another huge bat kill at a project in West Virginia. "That's why this stuff needs to be completed," he said.

Resident Rick Webb, a research scientist with the University of Virginia, was concerned about HNWD's hope of "piggy-backing" its environmental reviews with the U.S. Wind Force project in Pendleton. He outlined several questions he believed supervisors should be asking about the studies, such as: Who is conducting the studies? What federal agencies are involved? What is the design of the study and who is reviewing? How will the results be published and presented to the public? "The answers," he said, "will go a long way to assure us that this project is being developed in a responsible manner."

Mill Gap resident LuAnne Scott asked whether there was a way Highlanders could be polled during the primary election in November. Dowd said because of strict rules on polling places, such a "vote" could not be taken near where precincts will vote. That does not preclude an arrangement whereby citizens are asked to drop a "vote" on wind energy somewhere else.

An official referendum, however, was not possible because the Code of Virginia outlines "very specific topics" that localities can address in a referendum. "And this is not one of them," she said.

© Oct. 8, 2004, Anne Adams, Recorder Publishing of Va., Inc.