

IDA 7-0 vote encouraging for wind opponents

BY ANNE ADAMS • STAFF WRITER

MONTEREY — Those opposing wind development in Highland County counted Monday's surprising 7-0 vote by the Industrial Development Authority as a positive sign that some Highland officials are beginning to agree with their conclusions.

On a motion by Austin Shepherd, the authority unanimously agreed to submit its list of pros and cons to supervisors, and recommend the board follow the existing comprehensive plan and zoning ordinance in making its decision on whether to grant permits to wind energy developers. The decision seemed to turn on legal advice that if one wind permit is allowed, there would be no way to prohibit approval of other applications.

Current land use regulations limit structures to 35 feet in height in almost all circumstances; industrial turbines as proposed here by Highland New Wind Development, LLC, tower some 400 feet high. If the recommendation is followed, it would effectively end the prospect of industrial-scale wind projects in the county.

"The reason I said that," Shepherd told The Recorder this week, "is that if you follow (the zoning ordinance) as it is now written, it would not permit that tall of a structure. It would rule out windmills. It's really their (supervisors') decision, but simply put, if they'd stick with the zoning ordinance, it can't be done at this time."

The vote came on the heels of a heated but civil discussion about whether commercial wind facilities were right for Highland. Most IDA members expressed a firm belief that by granting HNWD's project, other developments would also have to be approved. They concluded the proliferation of turbines on Highland's undeveloped ridge lines could not legally be stopped, or limited to just a few, unless this application was denied based on established land use regulations.

Even IDA chairman Dave Smith, who supports the idea that at most, three "wind farms" could be built here, voted with the rest of the authority on Shepherd's motion.

Smith said Wednesday that while he was a little surprised by Shepherd's position, and he still supports HNWD's plan, he wanted to see

the matter turned back over to supervisors. "I don't really think it did anything. Things are the same as before we started," he said. "I do think (wind development) needs to be addressed in the new comprehensive plan and zoning ordinance, one way or the other. If it's supported, then they ought to look at possible sites (for the utilities). If it's not, then that should be in there, too."

Smith was satisfied the IDA had held good discussions, and "nobody's feelings got hurt," he said. "To me, 35 feet is not high enough, but this is a long way from being settled and they may change that (in the future). I'm not sure the public is aware of how critical our comprehensive plan and zoning ordinance really are. They don't show up for the meetings, and then they don't understand (the land use regulations). We need to have many of these things changed. They (the public) need to be there when these things are discussed. A lot of them don't get involved and then they complain and blame our board of supervisors, but they need to realize how critical it is."

Supervisor Robin Sullenberger said Tuesday he felt the IDA's vote carried weight. "The fact that we asked them to look at this means we believe their comments and opinions are worthwhile and deserve serious consideration. If they've taken a position, we need to look seriously at that."

Sullenberger attended part of the meeting to get a feel for how the issue was being debated. "And I wanted some verification they were considering the same issues we have. What they covered was consistent with all the issues we're aware of and have researched ourselves. I didn't have any expectation the IDA would make a recommendation or vote on anything."

Most of the night's nearly three-hour session centered around a document submitted by Highlanders for Responsible Development, a citizens' group of more than 200 people. The group outlined its members' concerns at the IDA's request. Topics ranged from what HRD called inadequate site plans from the developer to environmental impacts and potential proliferation.

Three weeks ago, Smith asked for a legal opinion about whether a moratorium on further wind utilities could limit the number of

projects after one or two were approved. This week, the IDA was presented with an opinion from attorney David Bailey, who represents a handful of Highland landowners opposed to the plan. Bailey specializes in legal issues surrounding land use decisions.

In a letter to county attorney Melissa Dowd, Bailey stressed that Virginia law does not allow preferential treatment for any land use request, and it would be illegal to grant one or two permits and then prevent others. Several IDA members agreed, and felt supervisors should act accordingly, or they may face lawsuits from developers they could lose. IDA member Jim White said Bailey's letter was "enlightening" for him, and his points were hard to ignore.

HRD president Charlotte Stephenson clarified the group's position that no permit for wind development should be granted until the county addresses this kind of utility in its comprehensive plan and zoning ordinance.

Smith felt that would take too long to address the current application, perhaps up to two years for the county to move through the process, and pointed out HNWD owner H.T. "Mac" McBride applied for his permit under the existing ordinance.

"Given the seriousness of (this issue), I don't think that's too long," Stephenson said. "I wonder how that application was even accepted when there was no provision for (wind development)."

Smith said he would find out, but as for legal issues, "It doesn't make any difference. If the county turns (the application) down, it will get sued. If we grant it, we'll get sued. There's just nothing we can do about it."

HRD members disagreed, saying if the county turned down HNWD's application, it was making a decision based on its ordinance, and it would be unlikely a successful suit could be brought from the developer. If it grants the permit, however, the county would set a precedent for other developers, who could not be easily denied the right to construct similar projects.

HRD member Lucile Miller reiterated Bailey's point that local governments, as recognized by the courts, have a lot of power and discretion in making land use decisions; it's

inconsistent treatment of applicants that can lay open governments to successful lawsuits. "Someone would have a hard time succeeding (in a lawsuit) on a first application, but once a precedent is set by granting one," she said, "denying the second application would be harder (for local government) to defend," she said.

Shepherd and IDA member Olin Sponaugle agreed with that assessment, and Miller urged the IDA to solicit Dowd's opinion.

"The real problem is that there are threats on both sides," Smith said. "If I were on the board of supervisors or the county attorney, I sure would not say one word about anything, because anything they make comments on gets used against them."

Smith pointed out there was nothing in the current ordinance about wind development.

"Dave, I'm going to have to disagree with you on that one," replied Shepherd. "It is in there, in one word — height."

Throughout the meeting, Smith disagreed with most issues raised by HRD, including view shed impacts, threats to birds and bats, effects on tourism and property values, and the amount of land cleared for each turbine. For every document he presented as evidence there would be little or no impact, HRD members pointed out flaws or holes in his research. On some topics, like insuring broken turbines would be properly removed, Smith agreed.

After two hours of the debate, Shepherd said, "I want to make a motion. All this is really none of our business, except it has been a wonderful thing for the audience to participate in this discussion. But I move we turn the pros and cons over to the board of supervisors, and recommend the board follow the existing comprehensive plan and zoning ordinance."

"I second that," said IDA member Richard Shamrock. "There is so much conflicting information. The risk to our county is so great, and the impact could be devastating. The board should reject this application ... We're all concerned about the future of this county, and I can tell you people are coming here for the peace, quiet, and the views. It's too big of a risk for us ... (Wind energy development) is not in the comprehensive plan and the application never should have been accepted in the first place. Our three supervisors have to make this decision with three things, and I think they will — honesty, courage, and integrity. I hope they will do that."

"I agree," said IDA member Cindy Wood. "This is too open-ended. If we do let this one application in, we cannot deny others. We cannot limit the rest of them. I've lived here all my life and I hope to live the rest of my life here, and I don't want to see these turbines all

over this county."

The authority unanimously approved the motion.

Smith concluded, "I said in the beginning that I've got friends on both sides of this issue and I wanted to still be friends after this, and I think we are. This has been an educational process for me. We batted things around and I hope we've addressed most of your comments. I appreciate all the input. I don't want to see the county divided over this. I also recognize that this affects some of you greater than others, like Mr. (Tom) Brody and his wife. I understand that."

Tuesday, Shepherd said he decided he would make his motion several days before the meeting. He is not convinced HNWD's proposal created jobs, or that tax revenue is guaranteed.

Shepherd believes though a few people may have signed HRD's petition opposing the project just to avoid confrontation, most had signed post cards sent in the mail and the 1,500 some signatures represented a majority in opposition to the proposal.

The legal issues were strong arguments for Shepherd. "I feel once you permit this one, if they allow one person X number of windmills, how are they going to refuse someone else? If there were a lawsuit, (the developer) would win."

He also said he understands why so many people feel strongly about destroying Highland's view sheds. "I personally wouldn't want to see those things stuck on all these ridges. That would destroy what we're all about."

Sullenberger said in spite of the issues that carry "a great deal of substance," much about the debate is emotional. "And that's OK," he said. "Everybody in Highland County or who views Highland from the outside, has the same appreciation for what Highland County stands for. We're all on the same page in terms of wanting the best here."

Shepherd said he was a little surprised Smith and Sponaugle voted in favor of his motion, but said, "I'd made up my mind several days ago on this. A moratorium just wouldn't stand up."

Dowd agrees. Supervisors asked her for an opinion on whether a moratorium could be put on new developments after McBride's was approved. "And the answer is no," she said Tuesday. "The board has to treat every applicant as closely as it can to every other applicant, or it becomes arbitrary and capricious."

Dowd said Bailey has attended many meetings on the wind issue in Highland since the beginning, and "he seems to know what he's talking about. He doesn't come at this with emotion; he's very straightforward. His con-

cerns are very well-taken."

She agrees with Bailey that land use decisions made by a governing body are legislative acts, and they are given more weight in courts of law. "If an issue is fairly debatable," she says, "a court is not likely to overturn a legislative action. That's the line you walk. Boards have an obligation to look at the particular facts of each application and they're not all the same. That's why they have to have the flexibility. That said, they also need to have a set of guidelines that are clear enough that every applicant gets the same level of scrutiny. And you can't go too far afield. I've told the supervisors there has to be a clear reason to distinguish why they might approve one application over another."

Dowd referred to the need to balance private property rights with the rules a community has agreed to adopt — a comprehensive plan and zoning ordinance.

Sullenberger said supervisors are paying close attention to legal issues. "They are very challenging in terms of getting total clarity," he said. "All of us have had to ponder whether the proliferation of wind towers (will arise) and I have yet to hear anyone say they are in favor of that."

He stressed the pending height ordinance proposal, scheduled for public hearing April 21, is not related to the application from Highland New Wind Development.

All three supervisors, he said, "are at a point where we want to move to a conclusion" on HNWD's application. "At this point, we don't feel it's fair to anybody on either side of the issue not to come to a speedy conclusion."

Some IDA members will meet once more with HRD to collate the pro and con lists in a form suitable to submit to supervisors.