

Supes discount planners' advice

BY ANNE ADAMS • STAFF WRITER

MONTEREY — Most of the 100 or so people leaving the courtroom last Thursday were either shaking their heads in disbelief or clenching fists in frustration.

A nearly three-hour public hearing on new height language for Highland's zoning ordinance brought overwhelming opposition. On a 3-2 vote, the planning commission did not recommend the change. Subsequently, supervisor Robin Sullenberger said he was not prepared to make a decision after hearing what the planners and the public had to say.

Nevertheless, board chair Jerry Rexrode and supervisor Lee Blagg voted in favor of the change to the ordinance and it was approved 2-1. Blagg, who made the motion, said he wasn't sure whether it was good zoning practice. Rexrode said he would feel foolish if they did not approve it after all the hours that went into researching the change.

The zoning ordinance now has new paragraphs to address height. The 35-foot limit on structures (60 feet in an agricultural zone for some buildings) remains the same. Anyone wanting to build something higher must now get a conditional use permit from the board of supervisors instead of a variance from the board of zoning appeals.

Much of the opposition was generated by those who do not believe industrial wind energy is right for this county. When Highland New Wind Development, LLC, applied for a permit to construct its 39-megawatt project, it also asked for an amendment change to address height. The commercial turbines, if built, would be roughly 400 feet high — taller than the Statue of Liberty.

County attorney Melissa Dowd, upon reviewing the ordinance language on height, found it could be interpreted several ways. So she asked supervisors for guidance, and at their request, drafted the new language for consideration.

Several who spoke against the change Thursday said that by changing the ordinance now, it appeared supervisors were only accommodating HNWD. Officials seemed to be giving the developer and its owner, H.T. "Mac" McBride, preferential treatment, they said.

Others criticized the new language as being too vague. Without defining any kind of structure, some said, the ordinance became too open-ended. By eliminating the current language, they argued, every situation and every

applicant would have to be treated differently, on a case-by-case basis.

Larry Held said he believed the change would open the door to consistency problems. He reminded Blagg of what he had said when he was running for office. The September 2003 article states, "Blagg believes zoning will only work 'if you make the rules stick.' Reasonable zoning is necessary and the idea that people should be allowed to do whatever they want with their own property, he says, is foolish. 'Civilization has rules for a reason ... and zoning is proper, within reason.'"

"Mr. Blagg, I couldn't agree with you more," Held said.

Sandra Bratton spoke passionately about preserving Highland's natural beauty. "This is still an agricultural area, and I want future generations, my grandkids, to enjoy the same things I have enjoyed here."

Changing height exceptions from a variance to a conditional use removed the layer of protection provided by the board of zoning appeals, some argued. Lucile Miller implored officials not to take that process out of the hands of the BZA since it has strict rules to follow when considering variances.

Randy Richardson said not only did he want officials to toss out the current height language, but to revamp it further. "I'd like the ordinance that's very specific, that says we'd never want (industrial wind utilities) here," he said. The ordinance is so open-ended, he said, that every applicant will undergo this kind of debate and officials will be strapped with meeting after meeting to treat exceptions to the rules on a case-by-case basis.

John Sweet begged planners not to dismiss their advisory function. Making the ordinance change, he said, would give more power to the three supervisors, and less to the planners and the BZA. "This is worse than bad planning," Sweet said. "This is no planning at all."

Fran Davenport, a realtor, told officials that by passing the change, they'd be "inviting chaos." She said since the comprehensive plan is currently under review, "amending any portion of the ordinance goes against all established order."

David Bailey, an attorney specializing in land use, spoke for a group of citizens he represents in Highland. He said he understood what supervisors were trying to do, but the new language was so vague that "anything can happen to your property." Bailey said the county should first finish developing its comprehen-

sive plan, then revise the zoning ordinance, and then consider this application. "There's a right way to do this," he said.

Resident Judy Skeen said the only way to maintain local control of development is with regulations like zoning ordinances. The current ordinance, she said, does not "regulate anyone to death," but the proposed change "is about letting windmills in here," she said. "This will impact a way of life we'll never have again ... This is a democracy, and the local democracy has spoken loudly and clearly."

One of many compelling statements came from Mike Armstrong of McDowell, who has lived in Highland all his life. Armstrong said like many county natives, he used to think "new-comers" would bother him, and have a negative effect on Highland. But in the last few years, he realized he was wrong, and that new residents are having a positive impact. "This isn't just about the height of the turbines, it's about everything that's going to go with it," he said, referring to industrial development that's grown in the Shenandoah Valley. "I'm opposed to this. I would just as soon (Highland) stay like it is."

Allegheny Mountain residents Tom Brody and Patti Reum have a home and business adjacent to the proposed project site. "This is too emotional an issue for me," Brody said. "I'm directly impacted." Reum said she was so upset she couldn't speak — the project would impact her life, her business and home, and everything she loves, she said.

Industrial development authority member Austin Shepherd said he was dismayed about a list of "pros" compiled by IDA chairman Dave Smith, and assured supervisors it did not represent the IDA's position (see related story). He remained opposed to the project, and said supervisors should follow the existing ordinance.

Smith was one of two people who supported the ordinance change, and told supervisors they should approve what was drafted.

The other supporter was McBride's attorney, John Flora, who said his clients defer to the "wisdom and judgement" of the board and were prepared to work with whatever the board decides.

BZA member Joe Brock told the audience, his board was appointed, not elected, and did not deserve to have something of this magnitude dropped in its lap. He supported the idea that height exceptions be left in the hands of supervisors.

Leo Schwartz, who opposed the change and the project because of federal subsidies that burden taxpayers, challenged supervisors, saying he had a gut feeling the board was going to approve McBride's facility. "If there is any tax revenue (from the project), will the three of you commit that money specifically to reducing taxes on agricultural land?"

The board declined.

Ske Ellington said he heard Rexrode was telling people the board made a deal with McBride — that if the project were approved, McBride would pay for a new county recreation complex and/or swimming pool. "I assure you there's no deal," Rexrode said. "We'll raise our own money for the pool."

After the hearing closed, the planning commission took up the discussion. Col. Jim Cobb said, "All the paragraphs are more stringent than the current ordinance," he said, endorsing the board's new language. "I understand all the tactics and positions, and I believe the proposed amendment to be far more restrictive."

Planner Lisa Kodger, however, did not agree, and did not like the idea that the change would remove an extra layer of review from the board of zoning appeals. "I know the intent is to protect," she said, "but I'm concerned the proposed language offers no guidance ... it leaves height entirely subjective." Kodger felt McBride's application should be considered under the existing zoning ordinance, and felt the comprehensive plan did not support the new amendment. "We are a democracy — we have an obligation to the majority, and I think the majority has spoken," she said.

Commission chair Dave Johnston agreed. "You don't change the rules in the middle of the game." He said the board should give McBride an answer based on the current ordinance, and address any changes after the comprehensive plan is completed.

Rexrode defended the new language, saying the board wanted lots of flexibility in handling applications on a case by case basis.

Planner Harry Sponaugle said, "I agree with Col. Cobb and at the same time, I agree with Lisa. I don't know."

Kodger pointed to the process the county used to design an ordinance for poultry houses. It had taken a lot of work, but neighboring landowners' concerns were taken into consideration, and it was specific enough that "everyone knew what to expect," she said. "We came up with an ordinance everyone could live with. The open-endedness (of the new language) concerns me. I don't know why we can't look at a more detailed view."

Cobb then moved to send the amendment to supervisors with no recommendation either way; it died for lack of a second.

Kodger moved to recommend supervisors not approve the change. On the 3-2 decision, Kodger, Johnston, and Tony Stinnett agreed; Cobb and Harry Sponaugle dissented. The commission told supervisors they did not recommend approving the amendment.

When supervisors took up the discussion, Rexrode asked for Dowd's opinion on the new height language, and whether she felt it was defensible in court. "Yes," she said. "It's legal and it's defensible ... Are there issues with it? Yes. It's not perfect."

Given the "no" vote from the planners and Dowd's comments on the change, Sullenberger said he was not prepared to vote that night.

However, Blagg said, "I don't see anything wrong with (the new language). I haven't heard the three of us say they'd made up their minds yet (about the project) but I don't think we can come up with anything better ... We can't pass this on to anybody else. I believe in democracy where people's opinions count, but we're on the clock here. I don't know what else you could put in (the language). I move to accept it for the general welfare of the public. Whether it's good zoning practice or not, I don't know."

Rexrode said county officials had spent a lot of time drawing up the new language and he would feel like a fool not approving it now. The ordinance change gives the board a lot of discretion, he said. "It's simple. It's not complicated."

With that, Rexrode and Blagg voted in favor; Sullenberger dissented, and the new language on height was approved 2-1.

The town council voted to table its decision on the change for 90 days.

Monday, Sullenberger said he wasn't surprised his colleagues had approved the ordinance change. "I don't particularly share the feelings of the other board members," he said, "and I felt we need more time to digest the implications. Also I'm not prone to going against the wishes of the planning commission, especially when they were thoughtful in their deliberations ... But the decision has been made and that's the way the process works." Sullenberger said he while he could have lobbied harder for holding off on the change, he doesn't believe it would have made any difference. "The other two seemed to have their minds made up."

McBride was pleased with the board's decision, though he noted the ordinance change was not made for his project. "The reason it was changed was because our attorney and the county attorney didn't think it was well-written," he said. Though some of those opposed felt the change only accommodated McBride's efforts, he says that's not at all true. "The

county hasn't accommodated us at all. If they had, we'd have our permit by now, wouldn't we?"

McBride does not believe the majority of Highlanders oppose the project, nor does he feel the appointed boards oppose it. He does not put stock in the petition signed by 1,500 some who oppose it, either. "I guess 1,500 people signed something, but I don't know what it is. I've never seen it."

When asked whether the outcry of opposition has affected his plans, McBride said, "You'll have to figure that one out for yourself." He said he would not consider withdrawing his application. "I wouldn't have applied for it if I was going to withdraw it," he said. "I've said enough."