

Wind vote delayed

BY ANNE ADAMS • STAFF WRITER

MONTEREY — To the visible relief of a standing-room only crowd, Highland supervisors Monday voted against proposed zoning amendment changes, opting instead to write something different addressing height issues.

The move effectively postponed a decision on whether to approve Highland New Wind Development's proposal for a 35-megawatt industrial wind energy utility on Allegheny Mountain. That decision will likely be delayed for at least several weeks, and the public hearing set for the end of this month on the developer's conditional use permit has been cancelled for now.

"I have to say at this point," said supervisor Robin Sullenberger, "that I am not overly enamored with either of these proposals we have before us."

HNWD requested that wind turbines, which can stand as high as 400 feet, be included as one of the exemptions on height limits in Highland's zoning ordinance. Currently, the height limit on any structure in the county is 35 feet except in agricultural zones, where the limit is 60 feet. The ordinance lists exceptions for things like church spires, as long as they are approved by the Federal Aviation Administration and the county.

County attorney Melissa Dowd had drafted new language to consider, along with HNWD's request, which added wind turbines and communications towers to the ordinance's exemptions as long as they had those approvals.

"I feel very strongly we have to have a baseline from which to operate here," Sullenberger said. He said the ordinance cannot be so restrictive that there are no exceptions to height limits, but it cannot be open-ended either. "I'm not very comfortable what we've got is what we want to adopt." Sullenberger reminded those who might feel the board is procrastinating on the decision that "we've been saying repeatedly, let's get this right." He suggested looking at similar ordinances, particularly one recently adopted in Rockingham County, which is relatively clear and simple. That county's ordinance limits structures to heights between 45 and 60 feet. Anything other than agricultural or airport structures above that height requires a special use permit only obtained from the county board. "They have summarized things in ways we'd do well to follow," he said. "We need to

go back to the drawing board, and ask our counsel to draft new language."

Dowd said she would write something that instead of listing exceptions, makes Highland's ordinance clear, so that "anyone who looks at our ordinance will know what they're supposed to do."

"I found Rockingham's ordinance to be clear and concise," Sullenberger said. "We need to be aware of counties close to us. They have strong feelings toward the agricultural part of this."

"I think Robin pretty well expressed the opinion of the board," added supervisor Lee Blagg. "Maybe we need to do something different. If we're going to do this, we need to do it right."

"I need to get a sense from you all that what you're looking for is more than a generic approach," Dowd told the board. "One that will deal with more than this applicant." Dowd clarified the board's options, saying supervisors can bring about a variance change as an amendment on their own. The board authorized Dowd to rewrite the ordinance text, which she said she could do in the next few days. Supervisors will meet at 5 p.m. in the courthouse Thursday, Jan. 20 to review her work. The new draft will then be examined by the planning commission at its Jan. 27 meeting and set for public hearing. Usually, hearings scheduled by planners are held jointly with supervisors, though Dowd told the board it could hold a separate hearing as long as a final decision was made within a reasonable time frame. Virginia's code does not give deadlines on when to schedule such hearings, but does warn that longer than 12 months for any applicant to wait may not be reasonable. And, she said, the board was entitled to postpone its Jan. 26 public hearing on the conditional use permit request from HNWD to build and operate the plant. "You can push back the conditional use permit public hearing to let the planning commission address new height regulations," she said. "The public hearing (for the permit) date was set, but it has not been authorized, so I don't see any problem."

Dowd said HNWD was aware that postponing a decision may be an issue, and stressed that county officials are always open to receiving input. "There will be at least one public hearing and the potential for two. There's plenty of room for receiving public comment."

County administrator Roberta Lambert, who had been in contact with HNWD's legal counsel, told The Recorder the developer did

not have a problem with the delay.

Tuesday, Sullenberger further explained the board's decision. He said that during a series of meetings with Dowd and other planning experts, he kept asking questions about various scenarios that could evolve from the current ordinance, and kept getting different interpretations. "I got different answers depending on who I asked," he said. "My mission is to make sure what we have is simplistic enough that any one applicant with height issues can understand what they need to do ... Clarity has been an issue for me from the very beginning. If I have a problem understanding this ordinance, then I know other applicants do, too. We're not equating this only to Highland New Wind. More than just the wind energy issue is involved.

"If I seem totally in a fog about this, to some degree I am." Sullenberger said it wasn't clear to him what the board of zoning appeals' role might be with the current language. "I wanted to make sure the ultimate decision was with the board of supervisors," he said. "We want to use due diligence here."

The main difference between the current ordinance and what the board hopes to draft is that height issues are not treated separately in the ordinance. The idea is to keep the current height limits (35 feet across the board; 60 feet in agricultural zones for accessory buildings). Anyone wanting to construct something higher will need to apply for a conditional use permit, and fire safety will be a deciding factor on whether to approve any request. Consequently, applicants will only need one process, the permit application, and all the characteristics that do not meet ordinance standards will be rolled into one request. The application will go through only one process: A review and recommendation by planners, a public hearing by supervisors (which may or may not be held jointly with the planning commission), and a vote by the county board.

Dowd elaborated Tuesday, saying there are now three sections under height, and what the board wants to do is eliminate the list of exempted uses like church spires and make it a blanket process for any structure over the current height limits. "(Supervisors) are uncomfortable setting rules for either communications or wind turbines in the face of one applicant," Dowd said. "It is never good to legislate for one applicant; it's not favored by the law and it always comes back to haunt you. The general rule is, according to state code, if you're drafting for the exception rather than

the rule, it's not good." And, local fire departments have expressed concern about their limits, and Rockingham County's ordinance includes language about fire protection, Dowd explained.

She stressed the change would not take away anything that people in Highland can already have. "The idea is to treat as many people the same way as possible," she said. "My understanding from these three gentlemen is that they're not sure where they want to go with communications towers and windmills. So let's change the ordinance and adopt something generic before the conditional use permit consideration (for HNWD), so the new rules will apply to (the developer)."

HNWD will not need to re-apply for its conditional use permit, Dowd said. The company will simply piggy-back its height issue onto its current application. Dowd said supervisors want to move through the process with HNWD as it needs to, but continue to fine-tune the county's plans in a broader way. "They want to deal with this applicant, and then, once that's over, hit wind energy head-on with an overlay and anything else." She said it's possible the board could approve a permit for HNWD, and require a number of conditions be met for the utility, which the company may or may not choose to meet. "The interesting thing to me is, and I find it very comforting, this falls back to government at its best," Dowd said.

When the Central Shenandoah Planning District Commission gave Highland supervisors a 20-page list of recommendations for a wind energy permit request, she said, "Supervisors barely paid any attention to it, and then no one heard anything else about it. But now they have boxes of material (research). And if you asked the supervisors to list the critical issues to consider, their lists would be almost identical to what (CSPDC) recommended." Supervisors have come full circle, she said. "They don't always follow a straight line in making their decisions. But over time, if they mull on things awhile, you find they really are listening."

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