

Burleigh County Wind Turbine Facility Meeting
January 21, 2009 at 9:00 a.m.

Committee Members Present: Commissioner Brian Bitner, Gregg Greenquist, and Ray Ziegler.

Others Present: David Andahl, Baldwin; Commissioner Doug Schonert, Baldwin; Ervin Mund, Bismarck; Jamie Crane, Baldwin; Kiely Spilde, Baldwin; Rebecca Ternes, Baldwin; Matt Wald Bismarck; Joyce Wald, Baldwin; Geralyn Laurie, Baldwin; Bill Delmore, Mandan; Tim Sievert, Mankato MN; Todd Steffenhagen, Red Wing MN; Gerald Waltos, Baldwin; Dean Goetz Bismarck; Vernon Spitzer, Baldwin; Commissioner Mark Armstrong, Bismarck; Tara Vesey, Baldwin; Michelle Klatt, Baldwin; Catherine Erickson, Wilton; John Spitzer, Wilton

Call to Order: Gregg Greenquist called the meeting to order at 9:00 a.m. Copies of the draft ordinance were handed out. Gregg noted that the purpose of this meeting is to go over the proposed amendments to the draft. If someone has comments on something new we will try to address them, but mainly we will discuss the changes of the draft.

The revisions are shaded on the draft. On Page 1 at the bottom, there is a strike out to omit access roads being built parallel to section line roads. The original intent was from concerns in Ecklund Township, in which it was tough to get farm equipment around, but after some discussion it was felt that the wind company can work with each landowner on an individual basis – the Committee felt the language was a little bit too restrictive.

The next item was added language on low profile roads. Low profile was not specific, the County Highway Engineer requested that we add language to clarify. It was suggested that a 10:1 ratio be specified which means for every 10 feet horizontally there is one foot of vertical change so that farm equipment can cross the roadway. On number 2 we struck the access road as again this was thought to be best decided between the company and the landowner. The County Highway Engineer also recommended the standard approval of a petition from the township board if an access road is to be on a section line, and if the access road was on a section line it would have to be built according to county specs.

Commissioner Bitner asked that on the last line regarding the road being built according to the township, in the case of an unorganized township, it should be according to the county specs. It was suggested contacting Marcus. Ray Ziegler also noted approaches require a permit and we need to get that language in there also. Gregg noted that access roads are roads which cross private land to provide access to the turbines.

Gregg noted on Page 4 – based on comments from the County Engineer, two paragraphs should be struck as it was overly restrictive and a moving target. Paragraph T covers overweight loads. On paragraph W it had required all equipment be located underground, however it was noted that junction boxes need to be above ground. On Page 5 paragraph Y – the language was struck regarding television signal reception as one of the components of electromagnetic interference as TV reception would not be evident until the tower was up, so on page 6, section 4 it required that if there was interference it would be corrected in 30 days, also language was added as to what types of interference would be covered. On Page 6 paragraph Z, to avoid doubling up, some wind farms do fall under 60 megawatts. Larger wind farms require review by the PSC, any wind farms smaller than 60 megawatts would be unregulated by the PSC, which would be a reason for this ordinance. The PSC does require an archaeological survey, in this

ordinance we do require it, however if the PSC requires it based on size, the county would not need to also have it as a requirement and double up.

Commissioner Bitner questioned Section bb on extraordinary events in which the language states would include but not be limited to – and felt that the language “large number of dead birds or bats” is not clear perhaps should have a specific number. Commissioner Bitner noted that at one meeting, NextEra had stated that because of the new turbines and slow speeds, we should not have dead birds from the current turbines, and asked if any were seen.

Ted Weissman from NextEra noted they still encounter dead birds, however efforts are made in the site process for the avoidance of migratory waterfowl.

Discussion was held amongst the audience regarding this section. Scott Scovill of Nextera noted the wind turbine company does have protocol on the birds and he will provide it. Gregg noted the wind farm located west of Baker Montana where they had reported a large number of dead bats, it was not taken into consideration that bats migrated at night. Ted stated he believed the ND Game and Fish Department is already tracking this, but he will submit their protocol that they have.

Gregg noted that the meeting is scheduled to go to 10:30 a.m. and noted there will be ample opportunity to give public input at the March meeting at the Baldwin School. Moving on to page 7, added language as SPL (Sound Pressure Level) was not spelled out, and added language for construction noise or reasonable maintenance activities being allowed to exceed the sound limits except between the hours of 11 pm to 7 a.m.

Commissioner Bitner noted the reason behind the 35 db was so as not to interrupt sleep. At 30 db it is a quiet rural area and 40 db is a quiet residence, 45 is a typical neighborhood, and 30 db is totally quiet nighttime in desert, 35 is an anechoic hearing test room. The sound studies that they had done were discussed and feels that 35 may be too quiet. Gregg noted that the ordinance sound standards matched a half mile set back and that was the basis of them.

Discussion was held as to the night time ordinances for the City of Bismarck. Gregg noted it is under Article 8 of the City code, but does not recall what those numbers are. Commissioner Bitner noted that in the ordinance a sound produced in a small wind farm – residential and rural residential daytime is 55 db, nighttime is 45 db. In commercial and industrial zones it is allowed to be higher and questioned if for the purposes of consistency, if it was appropriate to match those sound levels. Gregg noted the small wind ordinance is for the rural residential and ETA area. But once you get into the county, I believe the biggest attraction to move into a rural area is the peace and quiet. The figures in paragraph ee match the ½ mile setback and match the sound produced at a half mile. This corresponded with an ordinance that had a half mile set back, the ambient background noise is another factor, as whenever the turbine is operating there is wind and the ambient wind noise masks turbine noise.

Discussion from the audience was held, overall it was felt that the reason for moving to a rural area is the peace and quiet – also a question was raised as to if the ambient background noise will be defined. The concerns being that when there is little wind you can still hear the turbines and asked if the db level be related to the ambient level. Bill Delmore spoke regarding his involvement with two lawsuits in communities that have noise problems and don't have ordinances. In both incidents the people are claiming it is at 60 db, and they are unable to sleep. Bill also noted he did the assessment for the state health department, and noted you

don't want the db any higher. A question was raised referencing the low frequency sounds. Commissioner Bitner noted there is a paragraph referencing dbc's.

After considerable discussion it was decided to leave that paragraph as is for now and do more research. Gregg recommended the Committee get input from a sound expert at some point as we have a lot of varied opinions, but none of us are professional audiologists.

Gregg noted that on, the next item is paragraph dd on page 7, earlier we had included that required a setback from a vacant farmstead in the event a future resident would build. This was struck as it was outside of the realm of the ordinance. Zoning is based on health, safety and welfare, the setback from a vacant farmstead was more based on probabilities and speculation that they would build and that speculates on possible future land values. In the paragraph ff, setbacks from non participating properties was changed from 1400 feet to 1 ½ tower heights because it was also speculative on property values and financial issues. A set back of 1.1 tower heights allows a 3.2 rotor diameter separation, so the wind waking issue based on Nextera's own array not as much of an issue. Gregg noted the basis of these regulations is health, safety and welfare so we are staying away from values, and prospective values. Commissioner Bitner noted that where we struck the non participating parcel if someone had a section of land and built a house in the middle of it, it would be a ½ mile away from the properties and a person would not be able to put a wind turbine anywhere on the land. Gregg noted the half mile is based on health and must be applied uniformly and to make an exception would weaken the requirement. A reverse setback requires that once a dwelling goes up, it still has to be a half mile away from an existing turbine and this language is based on a health issue. If a landowner lives on a quarter of land and wants a turbine closer, should he be able to have one – that is a difficult question, but land ownership is only temporary, some future owner will be in that house and subject to a health issue at a future time. If it gets rented out we are subjecting future residents to health issues. We need to stay uniform, and the half mile setback works with what NextEra is proposing given their array.

Discussion was held with the audience members, Commissioner Bitner asked if they felt the ordinance should have a difference between participating and nonparticipating. Bill Delmore noted that with feed lots they do, but if you are involved there is an assumption of risk – it can have a health issue whether you are paid for it or not, so I don't know the answer, I do worry that it can be challenged if someone owns the property should be allowed to assume their own risks. Some of the audience members felt it was too restrictive to landowners rights. A question was raised as to clarification, if the turbine was located a half mile from our dwelling would the rear of our property be restricted from building a barn, or riding stable, the language is ambiguous.

Gregg noted that the reverse setback would only apply to inhabited structures, and uninhabited structures could be built within the half-mile reverse setback. He said when we look at developing regulatory statements and standards – in this case we have a proposal for an industrial use in an agricultural area – we have to look at compatibility, not the finance issues. Here we have a health issue which is the low frequency sound levels produced by turbines.

Doug Schonert raised the issue of the highest and best use of the property and questioned if that wasn't part of the zoning? Ray Ziegler noted that land use has to be compatible and deals with safety. The big picture is protecting life safety issues. Existing owners benefit more, but the overall intent is to protect future landowners which is why we have regulations on sewer, gas lines, etc. the current owner benefits, but the next owner also needs protection along with the neighbor across the road.

Gregg noted that as a committee, we don't have to solve this issue. We just do the best job we can with the information we have and make a recommendation to the Planning Commission, at some point we have to recommend language and move ahead. We need to exercise due diligence and proceed. On Page 8 item hh – the Missouri River corridor study done in 2003 defined the Missouri River Corridor. It is not a parallel line that follows the river, it is the bluff line outwards to the nearest quarter line. It protects the bluff line that protects the scenic areas of the Missouri River and Lake Oahe. Item jj the preconstruction meeting should be opened to all parties – page 9 paragraph oo deals with the Reclamation Bonding Requirement, this added language requires a bond at the beginning of the project with the option for the applicant to bond phases rather than the entire project. On the bottom of page 9, section pp is an insurance requirement which is fairly standard language and continues on page 10. Page 11 is the submittal items that the applicant has to submit for a special use permit. Page 13 the Electromagnetic Interference Assessment was moved and does not need to be submitted at the time of application for the special use permit, but rather at the time of applying for the building permits. Section h deals with fees which still need to be determined.

Commissioner Bitner noted that since Marcus is here, on page 2 where the changes he recommended were included, however, on paragraph 3 the last sentence questioned the standards we are applying and if they should not be under the supervision of the township road committee. Marcus noted that section lines go to the road authority in that township. Commissioner Bitner asked if the appropriate language be the "road authority". Marcus noted that they used the language to match case law that defined it.

Gregg also noted that we are using two different measurements, feet and tower height, tower height is approx. 400 feet and one and a half tower height is 600 feet and asked Marcus if he had an opinion. Marcus noted he would prefer the feet versus the one and a half tower height and it would verify each site. An audience member noted that if you use specific foot distance and if this ordinance should last for a few years, and if the towers change over a period of time we should use the 1.1 height to keep with the changes.

Commissioner Schonert noted that on Page 8, Section gg his concern is on using interstate and questioned if it shouldn't be township. Gregg noted that it township is in the second paragraph suggested that the setback should be 1.1 tower heights to keep it uniform. Ray asked if that would still work if someone came up with a 100 foot tower. Marcus noted that the reason for the setback is so it doesn't fall on the road – but perhaps check with Kevin Levi of the DOT and make sure they can live with that.

Vern asked if someone should be held responsible for earlier notification – people need to be aware earlier if a neighbor is putting up a tower. Gregg noted that if the concern was the notification – if you look at the top of the draft which is Article 8 which designates wind farms as a special use, that would make notification a requirement as part of the process for the wind farm developer to get a special use permit. The process includes notification of property owners and a notice in the paper and a public hearing. There is a provision for notification and public input. Once the application is made it is official.

Commissioner Bitner asked if we want to make changes based on what we discussed today. Gregg noted that we can tweak some of the issues we discussed, and it should be reviewed by the State attorney's office prior to going to the Planning Commission.

Commissioner Bitner noted that some of the items that need further discussion include:

1. Clarify bird strike protocols
2. Sound level standards
3. Weighting characteristics
4. Contacting an audiologist
5. Make sure setback language is uniform
6. Highest and best uses
7. River setback
8. Review submittals one more time for what is submitted with building versus special use
9. Further information with regards to fees.

Ray also noted that we need to include clarification on structures that would not apply to the ordinance, ie. attached garages, barns, shops, etc.

Gregg also noted that Tony Gleich, Crofte Township Officer phoned and Gregg asked his concerns. One was the setback from unimproved section lines, which should be protected, and that is in this draft ordinance. It applies to even a fence line through the field on a section line and it will require a setback of 1.1 times the tower height plus 33 feet for right-of-way. Tony's other question was on a property owner wanted a turbine closer to his house than ½ mile. He wasn't necessarily advocating for this, just asking about it.

A question from the audience was asked. If they purchased 40 acres with an established tree row would this be considered abandoned even if he planned to build down the road, if it already has curb stop and water. Ray noted you would need to get a building permit. Ray also noted it would have to be an active permit – if you take it out and do nothing it does not constitute an active permit and there are provisions as to what it is and when it is considered inactive.

Commissioner Bitner thanked everyone for attending and noted if they have further input to provide to contact Gregg or him.

With no further business, the meeting adjourned at 10:47 a.m.