

DICKINSON COUNTY BOARD OF ADJUSTMENT

Monday, June 28, 2010

7:00 P.M.

The Dickinson County Board of Adjustment met Monday, June 28, 2010 at 7:00 p.m. in the community room, Dickinson County courthouse.

Members present were Don Oleson, Jeff Ashland, Bill Sackett, Bob Duncan, and Dennis Jackson.

Don Oleson, Chairman, called the meeting to order at 7:00 a.m.

First on the agenda was roll call.

Second on the agenda was new business.

- 1st item of new business was Scott and Sandra DeGeest, variance, Lot 5, Plat of North Bay. Oleson read the description of the variance.

All members had viewed the site.

Scott DeGeest said he bought the lot from Paul Thompson and had a house plan drawn. When the snow melted in the spring, they had a surprise. They found that the Beaches Condos swimming pool next to them was installed at an angle and came close to their west lot line. They had planned to use the west side of their house for lake access, but had to move their garage entry door to the east side. The original plan was to have the air conditioning units in front in the corner, but they thought since the condo owners have no access on the west side, they wouldn't be using it, so it might be okay to place them on that side. He went to the recent condo owner's association meeting and talked with the owners. He informed them they have upgraded the A/C units to a Trane high efficiency with more insulation around the condenser, trying to be sensitive to noise issue.

Oleson asked if Beaches swimming pool encroaches in the setback?

DeGeest thought there was a 5 feet setback on all sides, but the pool is right on the lot line. They are going to have grading and landscaping on that side.

Oleson said a few years ago a very large home was built with 4 commercial size air conditioning units in the side yard which was noisy for the neighbors, so the ordinance was changed to require 5 feet from the side lot line.

Oleson asked if he had considered mounting it on the roof.

DeGeest said the builder and air conditioner dealer advised against it. It works okay on a flat roof, but brackets can be hard on the shingles. The units also vibrate which could eventually cause leakage. That would be their last option.

Sackett asked when the pool was built.

DeGeest said about two years ago.

Sackett said they knew of this problem when they started to build their home.

DeGeest said he didn't know of this problem until snow melt in the spring. What prompted the change when the pool was so close to the lot line.

Jackson asked why in planning he didn't make a notch in the house or move the units two feet around the corner and he wouldn't have to be here for a variance.

DeGeest said that's option #2. If they move them 3 feet, they won't gain anything. The air conditioner units would be sitting next to a pool pump, and no one is using the pool 9 months of the year. They thought that was a nice spot because they can't walk there and the condo owners can't walk there. Technically, there was supposed to be a privacy fence there, so that would cut down on the noise.

Jackson said he doesn't see it as a hardship.

Duncan asked if the air conditioner placement would affect the drainage flow. The site plan shows that it flows north and south. Would it spill any onto the neighbors?

DeGeest said the units would be on two cement pads and they will be doing some landscaping. He didn't think so, but it would certainly be something they would look at.

Oleson asked for comments from the public in attendance. There were none.

Oleson read correspondence from the file.

Phone calls received: Terry Veldman, Jud Pins, Larry Shaffer, Wayne and Jacqueline Henry – all opposed.

Letter from Beaches Condos Association Owners who objected for several reasons.

Sackett said it appears the Beaches Condo Association didn't have the same surveyor as DeGeest. Why can they come with all these objections when they didn't place the pool like they should?

Kohlhaase said the pool is okay as it is placed and he will explain it to DeGeest if he would call tomorrow.

There being no further questions, Jackson moved to vote on the application as presented. Duncan seconded. All were in favor.

The vote was recorded as 5 – 0 to deny the application. Oleson read from the vote result form.

- 2nd item of new business was High Point Wind LLC and various landowners, a conditional use application to place a WECS project in an agricultural district.

Richard Lozier, attorney from Des Moines, was representing High Point Wind LLC. He said this project is part of a 170 wind turbine project in Clay, Osceola, and Dickinson Counties. They received unanimous approval in Clay and Osceola. He is here on behalf of High Point Wind and the 22 landowners.

The plan is approximately 49 turbines in the southwest corner of the county. There will be access roads and collection lines where they interconnect to the electric grid. The ordinance provides a six month period to start construction and they are requesting an extension to two years.

There was a public information conference on May 27, 2010.

They have provided their information to various agencies as required by the ordinance.

They have a decommissioning plan.

The project fully complies with the County Comprehensive Plan.

The application discusses how they will comply with the standards of the zoning ordinance.

He introduced NextEra Energy directors: Ted Weismann, Jason Utton, Project Director, Rick Reiter who heads up the Endeavor project, and Tom VonBische, Land Specialist.

Jason Utton and Ted Weismann gave a power point presentation.

1. Background information on the NextEra Energy Company.
2. The development process.
3. Outlined the required environmental studies.
4. Map showing the modeling for wind data to help them plan the array. After finding out where the best wind is, they then eliminate locations where they can't put them: project boundary, setbacks from homes, wetlands and unfavorable terrain.
5. Information on the turbines which are a GE1.6 MW. The tower portion is 262' tall, with an overall height of 398' to the top of the blade. Weismann commented that farmers can farm right up to the turbine.

When the application was submitted, they believed there would be 57 total sites, but since that time they talked to more landowners and some declined, so the final count of proposed turbines is 49. When the board members viewed the sites, there were some stakes for turbines that weren't there because they were staked before some landowners dropped out.

Utton continued with the presentation.

6. High Point Wind setbacks.
7. Interconnection requirements.

Weismann said the landowners are co-applicants on the project. They are shown where the turbines, roads, and interconnection would be located. The wind farm is very much a cooperative effort. There are 22 co-applicants and 35 lease holders in the High Point project.

8. Addressing frequently asked questions and concerns:
Effect on valuation of nearby homes. There have been exhaustive studies with no strong statistical evidence of effect on valuation.
Scenic vista.
Benefits to county. Capital investment, property taxes, easement benefits, salaries and benefits to wind farm employees, purchase of local goods and services.
Noise concerns. They do an acoustic model and conduct sound studies based on a decibel chart. Their standard is 45 db maximum allowed. 50 db is a library, 40 db is in a bedroom. A/C's in a house is above 45 db.
9. Low frequency sound. They have done research and the turbines are designed so they don't have low frequency sound.
10. Lighting, flashing lights. They submit their plan to the FAA who dictates a lighting plan.
11. Shadow flicker. They do careful studies for every home and if there are problems, they offer to plant trees, pay for awnings, etc.
12. Falling ice off turbine blades. There are one to two icing events per year. There are sensors on the turbines and they shut down when ice builds up. In their 20 year history, they have never had an ice related injury.
13. Decommissioning. They have a contractual agreement with every landowner to guarantee that landowner that they will remove the entire wind farm when no longer operational.

Weismann said they also would like to have two years to build the WECS. They have found out if they have to go through the IUB (Iowa Utilities Board) process, it can take up to a year. They would have to go through the IUB if they plan an overhead transmission line. For the landowner, the contracts are not time based and if it takes longer, they would get their option payment.

Oleson said it sounds speculative to ask for a two year time period.

Weismann said they are a big company. They have enough funding to be flexible up until they can build. Other companies have to have permits in hand to go to the bank. It looks speculative because most of the things the board handles are homes and businesses.

Duncan said he looked at the sites and found some marked where there were no turbines shown on the map, and other turbines on the map that weren't marked. There were 56 sites marked.

Weismann said the map showed 52 turbines. They took three off for a landowner that changed his mind after they submitted the application.

Duncan asked if they are given a two year time period, are the numbers of turbines going to increase.

Utton said nothing changes. If it does, they would have to come to the Board of Adjustment.

Sackett asked what happens if ownership changes or someone wants to opt out in that time period after they get their permit.

Weismann said the agreement runs with the land.

VonBische said when the application was submitted, some of the landowners were not under signed agreement, so some changed their mind.

Oleson said they still have to meet the FAA requirements.

Weismann said for every turbine location, they pull up a database. No turbines can be built without FAA approval.

Jackson asked for copies of the FAA approvals to be sent to the zoning office.

Oleson asked if the roads to the turbines would be gated.

Weismann said they leave that up to the landowner. The turbines also have a lockable door on them.

Oleson said the board is concerned with safety. Are each of the sites issued a 911 address?

Weismann said yes. Each turbine is numbered where the access road meets the county road.

Sackett asked what is the size of the foundation of the turbine.

Rick Reiter said the access roads are built 36 feet wide for the crane, and the turbine foundation is 36 feet.

Oleson asked if there is fire suppression equipment on site or in the tower, and have they had communication with fire departments and first responders.

Reiter said each technician carries an extinguisher with them, so they know they are good. There are no extinguishers stored in the towers. The company mandates that they give local fire department and emergency personnel a tour of the site and what to expect. Their personnel would have to go with them to the tower.

Duncan asked about the planning of the access roads.

Jackson said the company has to work with the County Engineer on the roads.

Sackett asked about a substation.

Weismann said they will have a substation, but it won't be in Dickinson County. They install transmission lines at 48" below ground minimum. They take care where they have to go through tiling and repair any damage.

Oleson said several years ago in California wind farms he noticed lubricating oil dripping down the turbines and brown oil stains on the ground.

Reiter said the GE turbines they are proposing have Mobil synthetic oil, 110 gallons in the gear box. There is a spill deck built in that will hold 55 gallons of oil. The turbine shuts down once the oil level drops to 55 gallons. Anything extra would drip inside the tower. Their units are the same as those at the Flying Cloud site, just a little bigger.

Jackson asked about minimum distance from the nearest occupied building.

Weismann said 1200 feet is their minimum standard.

Jackson mentioned a letter High Point Wind received from FSA that all landowners have to notify FSA before start of construction. Also, the NRCS requires a wetland delineation.

Richard Lozier said they have notified all the various agencies and have met all requirements of the zoning ordinance. It requires that they provide copies that they have corresponded with all these agencies. They know they can't proceed until they hear from all these agencies.

Oleson asked Assistant County Attorney Lonnie Saunders his advice.

Lonnie Saunders said that the applicants have met the letter of the ordinance. The board will recall in previous applications that they hadn't received answers from all agencies at the time of the hearing. That in itself doesn't make a faulty application. The Board of Adjustment has the right to move to another time to get answers to questions they are unsure about. It is his opinion they (the applicants) have complied with the letter of the ordinance of what they are required to provide.

Jackson said a letter was written to the Iowa Historical Society and it referenced Hancock and Kossuth County projects, not Dickinson County. He said the EMS administrator asked for information to be provided before construction commences. Has that been provided?

Weismann said probably not yet.

Ashland asked Saunders if the board approves the project, the applicants can't construct anything until they have approval from the various agencies.

Saunders said yes.

There was discussion of the request to extend construction time to two years.

Kohlhaase said the conditional use permit gives them 6 months to start. If they ask to hold the zoning compliance permits until 5 months and 29 days, then they have a year to finish, that would give them a total of 18 months.

Weismann said they would have a discussion with the County Engineer about what assurances they want and give them a letter of agreement. A formal agreement is not done until all haul routes are approved by the Engineer and even when they bring in a crane.

Saunders said there are templates that they use as agreements with roads to bring them back to original condition.

Oleson asked about the life expectancy of the turbines and if they can be renovated.

Weismann said the normal life expectancy is 25 to 35 years, but their company replaces parts and keeps them maintained. The landowner agreements allow for repowering if the location doesn't change.

Oleson asked for an explanation of the decommissioning plan.

Weismann said they are contractually obligated with each landowner to take out the turbine, blades, tower, take the foundation down to 48" below ground, remove roads and cover with soil. At the end of life, the turbines have a good scrap value.

Questions were taken from the public in attendance.

Bruce Lorch said he was at the meeting in Osceola County and their board decided it should be 1500' distance from the nearest dwelling instead of 1200'.

Donna Schmidt asked what is different with this request than with the other wind farms.

Oleson said there are different numbers of turbines, the board is more informed than they used to be, the county has a new WECS ordinance in place, and the applicant is requesting a longer period of time for construction.

Mark Schmidt, Westport Township, said the letter he received, some of the legal descriptions were not correct.

David Lorch asked how many acres are going to be taken out of production.

Weismann said for each turbine, one acre is taken out of production. The maximum of 4 turbines per 40 would be 4 acres, and the farmer is compensated for crop value and any damage done.

Oleson asked Kohlhaase if any directives came from the State of Iowa on land out of production.

Kohlhaase said nothing from the State. The county comprehensive plan states one goal is to not take prime agricultural land out of production, but another goal is to support clean energy.

Lozier said the board has asked how they can approve this application without assurance of approval of the various agencies notified. He said the application can be approved subject to compliance to certain conditions and completion to the satisfaction of the board from various agencies.

Correspondence was read from:

J. E. Harms, Harms Implement in support of the project.

Midwest Land Management representing Merlyn and Maxine Brammer – in favor of the project.

Board members discussed the request for an extended time frame on the Conditional Use Permit.

Jackson said he would be willing to approve with an extension to 12 months.

Sackett asked once they start construction, what is the estimated time to complete?

Weismann estimated 6 to 8 months.

Ashland said he feels confident that this is subject to approval from the various agencies.

The members discussed stipulations to attach to the approval.

Sackett said the conditional use approval should be subject to compliance with Dickinson County Zoning Ordinance 102, specifically Article 21 Conditional Uses and the WECS requirements, and these must be met before zoning compliance permits are issued.

Jackson stipulated the Conditional Use Permit to be good for one year and at that time zoning compliance permits will be issued.

Duncan stipulated a progress report to be presented to the board six months from the date of approval.

Jackson moved to vote on the conditional use application for High Point Wind LLC and various landowners with the stipulations as agreed. Sackett seconded. All were in favor.

The vote was recorded as all approve. Oleson read from the vote ballot sheet.

- 3rd item of new business was ITC Midwest request for extension of substation Permit #116-09 to March 31, 2011. Oleson read the letter from Dan Hagen of ITC Midwest. All members were in favor of extending the permit to the date requested.

Third on the agenda was approval of the minutes of May 24, 2010. Ashland moved to approve the minutes as written. Duncan seconded. All were in favor.

Fourth on the agenda was communications. There were none.

Fifth on the agenda was report of officers and committees. There were none.

Sixth on the agenda was old or unknown business. There was none.

Seventh on the agenda was other. Duncan said the board should make it policy for any sites that must be viewed out in the agricultural area to specify a height of the markers, to get above crop level.

Eighth on the agenda was adjournment. Duncan moved to adjourn. Sackett seconded. All were in favor. The meeting adjourned at 9:50 p.m.