

# COCHISE COUNTY PLANNING & ZONING COMMISSION MINUTES

Wednesday, April 10, 2013

## REGULAR MEETING at 4:00 p.m.

The regular meeting of the Cochise County Planning & Zoning Commission was called to order at 4:00 p.m. by Chairman Lynch at the Cochise County Complex, 1415 Melody Lane, Building G, Bisbee, Arizona in the Board of Supervisors' Hearing Room.

Chairman Lynch admonished the public to turn off cell phones, use the speaker request forms provided, and to address the Commission from the podium using the microphone. He explained the time allotted to speakers when at the podium. He then explained the composition of the Commission, and indicated there was one Special Use request and one Special Use Revocation request on the Agenda in addition to the Work Session regarding the proposed changes to the Zoning Regulations. He explained the consequences of a potential tie vote and the process for approval and appeal. Mr. Lynch asked several speakers for additional information on their speaker's forms.

## ROLL CALL

Chairman Lynch noted the presence of a quorum and called the roll, noting the presence of a new Commissioner, asking the Commissioners to introduce themselves and indicate the respective District they represent; nine Commissioners (Tim Cervantes, Pat Edie, Jim Lynch, Jim Martzke, Carmen Miller, Gary Brauchla, Liza Weissler, Ron Bemis, and Joe Garcia) indicated their presence. Staff members present included Beverly Wilson, Deputy Director; Dora Flores, Permit and Customer Service Coordinator; Peter Gardner, Planner I; Britt Hanson, Civil Deputy County Attorney; Michael Turisk, Planning Manager; and Pat Hoefler, Planning Tech.

## APPROVAL OF THE MINUTES

**Motion:** Approve the minutes of the March 13, 2013 meeting as presented.

**Action:** Approve **Moved by:** Mr. Martzke, **Seconded by:** Mr. Brauchla

**Vote:** Motion passed (**Summary:** Yes = 8, No = 0, Abstain = 1)

**Yes:** Mr. Martzke, Ms. Miller, Chairman Lynch, Ms. Edie, Ms. Weissler, Mr. Cervantes, Mr. Brauchla, Mr. Bemis

**No:** 0

**Abstain:** Mr. Garcia

## NEW BUSINESS

### Item 1

**PUBLIC HEARING -- Docket SU-13-04 (Red Horse Wind 2, LLC; Torch Renewable Energy, LLC):**

A request for Special Use authorization for a 51-megawatt wind energy power plant west of Willcox. The proposed project would include up to 28 turbines each up to approximately 487-ft. in height. The subject properties are zoned RU-4 and includes nine Sections of AZ State Trust Land and a small portion of private land. Chairman Lynch noted that additional correspondence regarding the docket had been received by Commissioners and had been distributed prior to the meeting. He called for the Planning Director's report. Mr. Michael Turisk presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Turisk explained that the request was to allow the construction of a wind energy plant on the subject parcels. He noted that a proposed substation shown on the concept plan would not be constructed. Mr. Turisk explained that the docket was transmitted to various State agencies for comment. He addressed the access to the site as well as the existing infrastructure to handle the power generated. He also demonstrated how sparsely populated and undeveloped the area is, and noted that the majority of the site was State Trust land that is currently under a grazing lease. Mr. Turisk did explain that exact siting of the units was pending a number of studies. He explained other issues that will be addressed, including dust mitigation and lighting, as well as noise and view shed concerns. He also explained the issues regarding decommissioning of abandoned towers and noted that the County had a recommended Condition to enforce the removal of defunct towers should the project be approved. Mr. Turisk also explained the correspondence that Staff had received regarding the proposal. He closed by listing the factors in favor of and against approval, explaining several conditions to offset factors against, and invited questions from the Commission. Mr. Brauchla asked if the County was taking action to protect Airport Road. Mr. Turisk affirmed that Condition three addressed the potential road damage. Mr. Bemis asked if the project required County approval based on the project being on State Trust Land and also asked if private land had to be used for the project or if it could be entirely on State land. Mr. Hansen stated that the issue has rarely come up but explained the County's position is that private commercial uses on State Land were regulated by the Zoning Regulations, but noted that the Courts had never settled the question. He recommended that the Commission proceed under the assumption that the regulations did apply. Discussion continued between Mr. Bemis, Mr. Turisk, and Mr. Hansen regarding uses on State versus private land. Ms. Weissler asked about the bird and bat studies and wondered if the project should be placed on hold until after the studies were completed or if conditions speaking to the studies be enacted. Mr. Turisk noted that the studies were indeed ongoing and that there were several pieces of legislation that the Applicant must abide by. He also noted that several State and Federal agencies would have environmental oversight over the project. Ms. Weissler asked if construction could begin before the studies were complete. Mr. Turisk indicated that it could not. She also asked about the anemometer that was installed on the site and if there was currently sufficient data to justify the project. Mr. Turisk noted that the Applicant would not be pursuing the project if they did feel that it was a viable site. Mr. Lynch noted that the Commission's charter was land use, and reminded Commissioners that there were other agencies tasked with considering other factors of projects such as this and asked them to focus on the land use issues.

Mr. Lynch invited the Applicant to make a statement. Torch Energy owner Jonathon Killberg and project managers Rocky Ray and Glen Holliday spoke in depth about the company and their experience with wind energy. They explained that they are careful with their investments and are concerned with environmental impacts. Mr. Killberg explained that they were obligated to adhere to various Federal guidelines regarding bird and bat mortality and have conditions regarding guidelines with their State lease agreement.

He explained new technology and how it applied to the project. He then invited questions from the Commission. Mr. Martzke asked where they were with the Corporation Commission siting committee. Mr. Killberg noted that the siting committee did not apply, but their application with the Corporation Commission was in process. Mr. Holliday gave more details pertaining to the project. He noted that Fort Huachuca had reviewed and approved the project. He explained the economic benefits that the project would bring to the County. Mr. Holliday explained their rationale for this site, and gave more information regarding the environmental studies. He noted that the intent was to begin construction prior to the end of 2013 to capture a federal tax credit. Mr. Bemis asked for clarification of the tax credits and asked if the biological studies were unfavorable how that would impact the project. Mr. Holliday explained that they felt the studies were promising and felt comfortable that construction could begin on their desired schedule. Mr. Killberg stated that if they needed to stop they would do so. Mr. Bemis asked if that meant that no ground would be disturbed until all studies were completed. Mr. Killberg explained that their agreement with Fish and Wildlife noted that studies would be ongoing after construction was complete and that the statement that studies would be completed prior to construction was not correct. Mr. Bemis asked if US Fish and Wildlife would be rendering a biological opinion prior to construction. Mr. Killberg explained that the agency did not render opinions but rather would issue risks to wildlife. He noted that they did not give approval per se, but would note potential risks. Ms. Weissler asked about the recommendation from Game and Fish that two years of data be presented and asked about the potential for recovery if Game and Fish required turbines to be relocated based on the environmental data. Mr. Holliday went into detail about their relationship with Game and Fish and noted that they had already provided the agency with some of the requested information and reiterated that the environmental studies would continue well into the life of the project.

Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of the project.

Mr. George Scott spoke representing the Southeast Arizona Economic Development Group regarding the economic benefits the project would bring to the County. He noted that the cities of Benson and Willcox, in addition to their Chambers of Commerce and economic development agencies supported the project. He also based support on the location of the plant adjacent to existing transmission lines and the existing agreement with Tucson Electric Power.

Mr. Lynch then asked for speakers in opposition.

Mr. Homer Hansen introduced himself as a resident of Willcox, and an environmental biologist. He is also the chairman of the Wings over Willcox nature festival. He stated he felt that the project was being rushed and that the mitigation measures were not presented in sufficient detail. He spoke about the available wind power data and stated that he felt the project was not economically feasible based on that data. He noted again that he felt important information regarding the project was not disclosed. He stated that the only other wind farm in Arizona was not meeting its objectives. He stated support for alternative energy, but felt this project carried unacceptable consequences. He stated that he felt the bird studies were inadequate based on the short duration of the studies. He advocated slowing down on the project and also addressed cultural resources regarding ranching. He stated that he felt that birding was a larger economic impact than the wind farm would be.

Mr. David Omick introduced himself as a 16-year resident of Cochise County and a supporter of renewable energy. He voiced concerns regarding the project including view sheds and open space, Nature Conservancy visitors, and the speed of the project. He stated he felt that the Applicant did not propose a means to contact visitors to the area regarding their feelings on the project. He also addressed Game and Fish's response to the anemometer request and questioned the ability of the Applicant to gather sufficient data regarding the site's feasibility. Mr. Omick stated he felt the request was premature and urged staff to investigate this and questioned the Applicant's assertion that they were "on a tight development schedule". He also stated that the Todd Family had ranched the site for decades, and this fact alone merited careful consideration of all factors involved in the Special Use. He also questioned the economic impact and stated that the Special Use process should include an analysis of the offset created by the deleterious effects of the project on outdoor recreation.

Ms. Anna Lands introduced herself as a resident of Cascabel. She read a letter from a neighbor, Nick Meader. The letter expressed concern about visual impacts and shadow flicker for the ranch house. It also stated that there was not sufficient wind data to evaluate the economic potential of the project. The letter also stated that the wind was not of sufficient quality for the project, particularly in the summer. Ms. Lands then asked to speak again on her own behalf. She expressed concerns about vibration and produced claims that vibration from wind turbines was detrimental and caused illness to humans and animals.

The Applicant then spoke in rebuttal to the previous speakers. Mr. Killberg expressed appreciation for people's concerns regarding the economic viability of the project and pointed out that this issue was of greater concern for his company since they were the ones paying to construct the project. He explained flaws in the arithmetic wind models that were referenced by the speakers. He explained that the referenced data worked in large-scale models, but they were looking on a micro scale for a specific site that produced a convection flow. He also explained that they had been collecting data for a long time prior to the anemometer and had more data than the speakers realized. He further expounded on the economic benefits of a similar project in Deming, New Mexico. Mr. Ray went into detail regarding the environmental studies and wind data gathering. He also addressed the economic issues and emphasized their focus on them. He stated that he felt this project would supplement rather than harm the ranching heritage of the area. He also addressed the flicker and noise concerns referencing several medical studies. Mr. Holliday expanded on the land use and noted that the disturbed area was very small compared with the overall site.

Mr. Lynch closed the Public Hearing and invited discussion from Commissioners. Mr. Bemis noted that he had spoken with the Nature Conservancy and that they expressed no opinion and expressed faith in State agencies in protecting the environment. Ms. Weissler noted that she had spoken informally with a few members of the Huachuca Audubon Society and that they were taking no position on the project. Mr. Brauchla asked about protecting the roads. Mr. Turisk explained the County's position and the relevant proposed Condition of Approval. Mr. Lynch then called for the Planning Director's summary and recommendation. Mr. Turisk recommended Conditional Approval and explained the Conditions requested by staff. He also explained the two requested Modifications. Mr. Lynch called for a motion. Mr. Martzke commented regarding the timeframe from other agencies still ahead of the Applicant and expressed faith in Staff's efforts. Mr. Bemis expressed concern for the roads and stated that he felt there would be great deal of oversight from other agencies and then expressed support for the project. Mr. Lynch expressed the difficulties with power plant dockets and noted his support for this project. Mr.

Martzke made a motion for recommending Conditional Approval. Mr. Brauchla seconded the motion. Mr. Turisk asked for clarification that the Modifications were included. Mr. Martzke clarified, Mr. Brauchla seconded, and Mr. Lynch called for a vote. The motion passed 8-0, with Ms. Miller abstaining.

**Motion:** Motioned to approve with Conditions and Modifications the Special Use authorization for Wind Energy Power Plant

**Action:** Approve **Moved by:** Mr. Martzke, **Seconded by:** Mr. Brauchla

**Vote:** Motion passed (**Summary:** Yes = 8, No = 0, Abstain = 1)

**Yes:** Mr. Martzke, Chairman Lynch, Mr. Cervantes, Mr. Brauchla, Ms. Weissler, Mr. Bemis, and Mr. Garcia.

**No:** 0

**Abstain:** Ms. Miller

## Item 2

**PUBLIC HEARING -- Docket SU-09-22A (Infinity Farms):** This Docket was a staff-initiated request to revoke the Special Use authorization granted in 2009 (Docket SU-09-22) by the Planning and Zoning Commission for a solar energy power plant for failure to comply with a Condition of Approval. The subject properties total 1,590-acres and are located approximately four miles east of Kansas Settlement Rd. in the Kansas Settlement area.

Chairman Lynch called for the Planning Director's report. Mr. Peter Gardner presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Gardner explained that the request was driven by the Commission's denial of an extension of the sister project at a previous meeting. He also noted that the current property owner was unaware of the entitlement, had no intention of developing a solar plant, and was not contesting the revocation. Mr. Gardner closed by listing the factors in favor of and against approval and invited questions from the Commission.

Mr. Lynch noted that the property owner was not present.

Mr. Lynch also noted that there were no members of the public wishing to speak regarding this item and invited discussion from Commissioners. Ms. Edie complimented Staff on proactively bringing this item to the Commission. Mr. Lynch then called for the Planning Director's summary and recommendation. Mr. Gardner recommended Revocation. Mr. Lynch called for a motion. Mr. Martzke made a motion for Revocation. Ms. Edie seconded the motion and Mr. Lynch called for a vote. The motion passed unanimously (9-0).

**Motion:** Motioned to revoke the Special Use Authorization.

**Action:** Revoke **Moved by:** Mr. Martzke, **Seconded by:** Ms. Edie

**Vote:** Motion passed (**Summary:** Yes = 9, No = 0, Abstain = 0)

**Yes:** Mr. Martzke, Ms. Miller, Chairman Lynch, Mr. Cervantes, Mr. Brauchla, Ms. Weissler, Mr. Bemis, Ms. Edie, and Mr. Garcia.

**No:** 0

## **CALL TO THE PUBLIC**

Chairman Lynch expounded on the law and policy regarding “Call to the Public” and then opened the “Call to the Public.” Jack Cook spoke about various matters. Jere Fredenburgh thanked the Commission for slowing the adoption of the proposed zoning regulation changes and for addressing the issue of a Public Advisory Board. She stated that she felt that the Board had to be in place prior to the adoption of any Zoning Regulations. Chairman Lynch closed the “Call to the Public.”

## **PLANNING DIRECTOR'S REPORT**

Chairman Lynch then called for the Planning Director’s report. Deputy Director Beverly Wilson reported that there would be three Special Uses at the May meeting. She expounded on the Board’s Work Session regarding the Building Code Advisory and Appeal Board. Mr. Turisk added that the Board had approved the rezoning that the Commission had heard the previous month.

## **CALL TO COMMISSIONERS**

Mr. Martzke spoke on computer issues and noted he may miss the next meeting. Mr. Bemis noted that he expected to be back on May 8. Ms. Weissler indicated she would not be present on May 8. Mr. Lynch asked Staff to provide further information regarding the proposed water conservation changes that would be addressed at a future Work Session.

## **WORK SESSION**

The Commission held a Work Session to continue reviewing proposed changes to the Zoning Regulations. Article 19 was covered. Chairman Lynch noted that the Work Session was open to the Public, but was not a Public Hearing. He reiterated that there would be no action taken at this time. Ms. Wilson presented and explained the proposed changes. There were numerous requests for clarification and suggestions for minor changes from the Commission. There was also a discussion regarding what constituted regulating content of signs. Another Work Session was proposed to review proposed water conservation changes.

## **ADJOURNMENT**

Mr. Martzke moved to adjourn, Mr. Bemis seconded, and the meeting was adjourned at 6:40 p.m.