

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
October 5th, 2010
7:00 PM

Members Present: Clifford Kirk, Carroll Harder, William Wilson, Ron Peters, Dorothy Thiessen, Chad Fuqua, Wayne Alison, Bonnie Wendling, Jack Bender, Larry Emmel, Harlan Foraker & Al Heine

Members Absent: Larry Goering, Robert TenEyck & Alan Beam

Staff Present: Scott Davies, Planning & Zoning Administrator

Others Present: Terry & Elyse Gowin, David Taylor, Larry Wiens, Troy Holdeman & Dwight Claassen

At 7:00 pm Chairman Kirk called the meeting in order.

Chairman Kirk asked for any additions or corrections to the September 7th, 2010 minutes, there being none, the Chairman accepted as submitted.

Staff Report: Thirty five building permits were issued during September for a total construction estimate of \$25,611,500.00.

Case No. CUP 16-24-1E, Request from David Taylor on behalf of Terry Gowin, landowner for a conditional use permit to construct a residential wind turbine in the A-1, Agricultural zoning district.

Staff Report:

An application has been submitted from David Taylor on behalf of Terry Gowin, landowner for a conditional use permit to erect a residential wind turbine approximately 45 feet in height on property in the A-1, Agricultural zoning district.

The property is located approximately ¼ mile east of S. Webb Rd. on the north side of K-196 highway.

I have evaluated the request in light of the criteria to be reviewed when considering a conditional use permit and have the following comments.

All of the criteria require subjective judgments on the part of the Planning Commission.

A. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort, or general welfare.

This particular proposed use should not be detrimental to or endanger the public health, safety, or general welfare.

B. The uses, values, and enjoyment of other property in the surrounding area or neighborhood for purposes already permitted shall in no foreseeable manner substantially be impaired or diminished by the conditional use.

The property the applicant wishes to construct the wind turbine on is zoned agricultural; the properties surrounding the property are also zoned agricultural.

C. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district, and will not represent an invasion of an inappropriate use

The proposed use is located in the agricultural preservation area as designated by the adopted countywide comprehensive plan. Development in this area is to be primarily agricultural uses.

It is felt the proposed use would not be an invasion of an inappropriate use since provision is made in the regulations for such a use provided a conditional use permit is obtained. As you are aware, the fact that such a use may be located within the agricultural zoning district does not mean it has to be allowed at any particular location. Each application should be considered on its own merits including a determination that the use is appropriate for the site requested.

D. Adequate utilities, access roads, drainage and other necessary improvements are present on the site or planned to be made.

The proposed use is essentially an open-air use with very little paved or impermeable surfaces to be constructed. Because of this, access roads and drainage should not be an issue.

E. Adequate measures have been made or planned to provide ingress and egress designed so as to minimize traffic congestion in the public streets or highways.

The site will be accessed from K-196 highway, which is a state highway and has heavy use.

F. The conditional use shall conform to all applicable regulations of the district in which it is located.

If approved, the conditional use must conform to all applicable regulations of the agricultural zoning district and with any additional conditions that are placed on it by the Planning Commission and Board of County Commissioners.

SUMMARY:

As you are aware, your task in evaluating a conditional use permit request is to determine if the proposed use is appropriate for any particular location. The fact that the regulations make provision for such a use does not necessarily mean a use has to be allowed at any location. I would remind you that whatever your decision is, it has to reflect the reasons for making that decision. Those reasons are to be based solely on those criteria outlined above, and any motion must document those reasons by including the appropriate criteria within it. I have included an aerial of the property, a map showing the location of the property in the county, the application, and specifications for the turbines.

Staff Recommendation: Staff recommends approval of the request with the condition that the towers be setback at a minimum, the height of the turbines from all property lines.

The Chairman asked for questions of staff. Mr. Bender asked why the turbine was going in the cultivated area and not the grassland area. David Taylor, representing the landowner, said that there were too many trees in the pasture area and that the cultivated area provided better wind movement for the turbine.

Mr. Emmel asked about the distance the tower would be from the west property line. Staff referred the question to Mr. Taylor; Mr. Taylor said that it would be about 150 feet from the west line.

Next to speak was the applicant, Mr. Gowin. He explained that because of environmental and economic purposes he wanted to install a wind turbine. He said it would reduce his electrical needs from the utility company and reduce emissions to the environment.

At this time the Chairman opened up the public hearing. There was none to speak for or against the request. The Chairman closed the hearing and opened it up for discussion from the commission.

Mr. Foraker asked how long does a permit last. Staff said that with a conditional use permit, they have two years to obtain a building permit, if no building permit is obtained in the two years after it is approved, the permit is void. Staff also said that a building permit is valid for one year.

Mr. Foraker moved to approve the request and including the recommendation of staff to setback the turbine the height of the tower and based on staff report letters A-F. Mr. Emmel seconded, Chairman called for a vote, the vote was 12 for and 0 opposed, motion carried.

At this time the planning commission adjourned and the Board of Zoning Appeals was called to order.

Case No. VAR 26-22-1E. Request from Larry Wiens on behalf of Troy Holdeman for a variance from Section 9.05. Mr. Wiens is requesting that a single family residence be allowed on cultivated ground.

Staff Report:

With this particular request you will be sitting as the Board of Zoning Appeals. The authority of the Board of Zoning Appeals is somewhat different from that of the planning commission in that actions taken are the final decision. These matters are not sent on to the Board of County Commissioners. The Board of Zoning Appeals is authorized to issue variances to the regulations in instances in which it is felt the variance would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations would, in an individual case, result in an unnecessary hardship, provided the spirit of the regulations is observed, public safety and welfare secured, and substantial justice done.

An applicant must show that the property in question was acquired in good faith; and, where by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prevent the use of the property in the manner similar to that of other property in the zoning district where it is located.

In this particular instance, an application has been submitted by Larry Wiens on behalf of Troy Holdeman for a variance from Article 9.05 (3) of Harvey County's Unified Development Code that requires residences be located on non-cultivated land when a parcel less than a quarter of a quarter section or approximately 40 acres is legally split. The applicant is requesting a variance so the residence may be built on cultivated ground. The split off was approved based on the presence of a preexisting house (see attached letter from Rod Compton, dated January 24th, 2005).

I have reviewed the application in light of the specific criteria to be considered for any variance request. Those criteria and my comments are as follows:

1. ***Whether or not the variance requested arises from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.***

This particular parcel is zoned A-1 for agricultural uses and contains approximately 17 acres. The proposed parcel is located in the northwest quarter of Section 26 in Highland Township. This is not unique to the

district, all structures located in the A-1 Agricultural zoning district are required to have the residence located on non cultivated ground when there is a split off of less than 40 acres.

2. ***Whether or not the granting of the variance will adversely affect the right of adjacent property owners or residents.***

In this particular instance, I do not feel the granting of the variance would adversely affect the right of adjacent property owners or residents.

3. ***Whether or not the strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.***

I believe the strict application constitutes an unnecessary hardship due to the watershed dam breach area.

4. ***Whether the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.***

The granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

5. ***Whether the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.***

I feel the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations.

In summary, I would have no objections to a variance being granted for the reasons stated above.

The Chairman asked for any questions for staff. Mr. Bender asked about staff's report that stated the applicant must show that the property was acquired in good faith and if the applicant is the owner in this case. Staff said that the applicant is not the owner in this case, however, the owner Mr. Claassen who has approved the variance request, has shown that he is the owner through tax records. Mr. Bender asked if the requirement that the applicant must show that the property was acquired in good faith is a state statute. Staff said that is no a state statute, that is a part of the report and that the BZA only needs to concern themselves with numbers 1-5 on the report. If the variance is approved, and the applicant acquires the property, he will need to show proof that he acquired it in good faith prior to a building permit being issued.

Mr. Emmel asked about color representations and location of where the house would go on the property. Staff said that because the aerial picture was taken during the winter some of the vegetation is showing up brown and the winter wheat is green. The house would be located on the cultivated area which is showing up green in the winter picture. Mr. Emmel asked if the house would be located out of the dam breach area, staff said that the applicant would need to show proof that the house would not be located in the breach area before a building permit would be issued.

Mr. Foraker asked about the size of the split off parcel from the quarter section parent parcel. Staff said that he understood the split off would be about 16 acres. Mr. Wiens, the applicant said that it would be about 15 acres. Dr. Holdeman said that if it wasn't for the floodplain and breach area, he would only need 13 acres and build his house on the non tillable land.

Mr. TenEyck asked for clarification for what the variance was for. Staff explained that when there is a split off of less than 40 acres, the regulations require the house go on the non cultivated ground. The applicant is

HCRPC/BZA
October 5th, 2010

requesting a variance from that requirement to put the house on the cultivated ground, staff said. Mr. Foraker asked if the house must go on non cultivated ground when there is 40 acres, staff said no, the house can go on the cultivated ground when there is at least 40 acres attached to the house. Mr. Alison asked if the cultivated ground is 2 acres, Dr. Holdeman said that it would be about 2 acres, just enough to get out of the flood zone. Dr. Wilson asked how wide is the drive way. Mr. Wiens said that the drive would be about 20 feet wide. Mr. Foraker asked if a deed would need to be shown before a building permit would be issued. Staff said that they would be required to show a legally recorded deed before a permit would be issued. Mr. Heine asked about the drive, staff said that there is currently a drive running along the west side of the proposed split and runs back to the south end of the lot.

At this time the Chairman asked for a motion, Dr. Wilson moved to approve the variance and Mr. Alison seconded, the Chairman called for a vote, the vote was 12 for and 0 opposed, motion carried, variance approved.

The meeting adjourned at 7:50 pm.