

Stutsman County Planning and Zoning Commission Minutes – November 13th, 2012

At 8:06 a.m. the meeting was called to order by Planning and Zoning Commission Chairman Harold Bensch. Present were Dale Marks, Katie Andersen, Harold Bensch, Dave Schwartz, Ryan Odenbach, and Dustin Bakken, Zoning Administrator. Absent were Dan Buchanan, Brian Amundson, and Duane Anderson. Fritz Fremgen, Casey Bradley, Jay Hesse (Geronimo Wind) were in attendance with Patrick Smith (Geronimo Wind) and Molly Smith (Fredrikson & Byron Law) attending via phone.

Chairman Harold Bensch recognized new board members Katie Andersen and Dan Buchanan. A motion was made to re-organize the board by Bensch.

Motion was made by Dale Marks to keep the board in their current positions. Second by Ryan Odenbach.

Motion was made by Dave Schwartz to approve the minutes of the August 20, 2012 meeting. Second by Marks.

Discussion to possible amendment to the wind zoning ordinance.

Fritz Fremgen, States Attorney, explained the methodology for a road maintenance agreement and proposed changes to the wind turbine zoning ordinance to include language of a road maintenance agreement. He introduced an agreement used in Illinois for a template.

Fritz explained potential changes of the ordinance to include the financial vehicles that could be used in a road agreement, engineering, road protection and repairs. These include removal of language regarding road protection but to include language of a road agreement and that a road agreement must be a requirement of the application by the permittee. If a violation of the road agreement is found, a permit can be revoked.

Potential good implications are flexibility of multiples financial vehicles for permittees. Could also be a negative to have such flexibility.

The more information is “frontloaded” the better from an enforcement perspective is better but practicality is limited.

Katie questioned how to enforce the permit.

Fritz explained a road enforcement officer and overweight permits could be used. Companies would be looking at steep fees for violations.

Katie inquired about the road agreement and how it is different than what is in place now.

Fritz explained common practices to measure and inventory roads.

Casey also added input to the overweight permits and the repeated use of the roads involved in the projection. The road agreement and the finance options would be used as an enforcement tool. Engineers will be the authority on the road condition.

Katie inquired about the definition of road agreement and wanted consistency in the use of the language.

Dale inquired about the standards of road repairs. DOT will be the standard and must conform to those as well as Federal Aid requirements.

Casey relayed the importance of following the federal aid transportation plan and federal highway aid as well as the finance vehicles.

Board discussed the possibility of having different financing options with different permit applications.

Casey brought up a line of credit from a financial institution vs from a company. He thought a bank is more reliable than a company for financial responsibility to protect the county's infrastructure.

Casey said that Ashland Township has not yet relinquished their zoning authority of wind turbines to the county. They are concerned about getting their roads protected as well whether they fall under the county maintenance agreement or on their own. Harold agreed that their roads should be covered.

Jay Hesse (introduced Patrick and Molly) explained the history of the project. He handed out possible suggestions to original draft. He stated the many of the concepts were the same and had been addressed in the most recent copy of the draft. Discussion was had regarding Geronimo's proposed changes.

Duane Anderson arrived at 8:30am.

Jay continued discussing the timing of the road agreement. Prior to construction vs at the time of the permit application would be more fair.

Casey had concerns regarding Geronimo's standard of road upgrades. He stated that some roads may already exceed the DOT specs but the proposed language states "as good or better" than DOT standards. His concerns are those roads may not be put back in the original condition. Fritz stated the language states "will consult the current DOT standard" meaning they looked at it but then did whatever they felt would "as good or better" condition. Molly Smith stated roads not at current standard should have to be upgraded to preconstruction condition and not just standard. Fritz agreed the county should not be unjustly enriched but roads still need to be repaired and be covered by DOT standards. Patrick Smith stated that the best practices should be used and the pre-construction inspection should be used. Schwartz inquired about the "as good or better" and if it would cover the improvements to the roads.

Katie inquired who determines the as good or better condition. Discussion followed the selection of the engineer and the preconstruction inspections. The engineer should be selected by the county and the loyalty is questioned. The engineer is going to side with who is contracted with the engineer. The county should be responsible for the selection or approval of the engineer. The contract should lie with the county.

Marks stated the townships should be covered by the road agreement. Katie asked how township zoning would cover their roads. Casey stated that they can relinquish their authority and that the townships can either fall under the county agreement or their own with the developer. Fritz says that language must state that the developer have an agreement with all affected townships. Casey stated that Ashland wanted their roads covered and their concern was with utility trucks.

Duane Anderson asked if the transportation plan included the utility trucks. Casey stated they were not included but were permitted at a local level. Duane expressed concern for the utility traffic damaging the township roads. Fritz explained the language concerning overweight trucks. Jay said a big benefit of the project will be upgraded roads.

Patrick discussed the road right of way and the transportation plans normally associated with the hauling companies. The hauling company has specs for hauling and may require additional easements. Road upgrades requirements will be based on their transportation plan.

Dale inquired about the utility trucks and how to regulate them. Casey stated that they could be added. Fritz relayed language that was proposed in regards to contractors, subcontractors, etc.... Again it was stated about overweight and not legally permitted roads. The repeated use will be damaging as well.

Dale also inquired about a timeline for the road repairs. Fritz stated that there hasn't been a date

that is set to cut off the road repairs. A definite date could be set from time that power gets to the grid. When does the post engineering inspection started. Patrick stated that a project goes operational and a punchlist is developed 30 days after major construction. Katie stated that a hard date should be set to aid in the post engineering inspection.

Fritz left at 9:08am

Patrick discussed a possibility of a warranty period on the roads for larger projects.

Jay inquired how to encompass the townships in the road agreement. Molly stated that they should only be covered if they agree to the county ordinance. Casey believed that is best and that a blanket coverage of townships shouldn't be done because they control their roads.

Ryan Odenbach inquired if spring load restrictions had any impact on the agreement. Schwartz stated the traffic would not be allowed until restrictions were lifted or the county board approved the load.

Duane inquired if the townships relinquish their zoning if they were covered in the road agreement. Casey stated that townships can be covered under the county or have their own road agreement. Katie clarified if the townships draft their own agreement if it would satisfy the permit conditions.

Fritz returned at 9:17am

Dave stated that utility trucks will be minimal traffic. Casey stated that the project should be completed when power is sent to the grid. Katie inquired what happens if power is never sent to the grid. Fritz stated a drop dead date could be incorporated into the maintenance agreement.

Fritz discussed the revoking of a permit once it is out the door. His concern is in the enforcement and getting the permit back. "Promissory Estoppel" was discussed as a potential. Molly said the road agreement should be a condition of the permit and if it is not engaged the permit is not valid. It therefore would be enforceable. Molly also stated the permit application fees could be used to recover and use as an enforcement tool. Duane stated that it could be a condition of the permit. Casey asked if conditions of the agreement could be finalized prior to commencement of construction. He stated that provisions of the agreement are mostly met right away and then finalized prior to construction it would be acceptable. Further discussion on provisions of the agreement was had.

Motion to Adjourn by Marks. Second by Schwartz

Meeting Adjourned at 9:35am