

PLANNING COMMISSION HEARING



March 27, 2019

Crook County Planning Commission Chairperson Michael Warren II called the hearing to order at 6:00 p.m. Commissioners present in addition to Warren were George Ponte, Gary Bedortha, Susan Hermreck, Bob Lundquist, Linda Manning, and Laquita Stec.

Crook County Planning staff present were Planning Director Ann Beier and Planner Katie McDonald.

Warren led all persons present in saying the Pledge of Allegiance.

OPENING STATEMENTS

Warren read the opening statements. He called upon the Planning Commissioners to state any conflicts of interest, or ex parte contacts other than during the site visit. He asked if any member of the public wished to challenge any Commissioner on any item on the agenda.

Conflicts of Interest – None.

Ex Parte Contacts – None.

Challenges – None.

APPROVAL OF MINUTES

The Commissioners present reviewed the draft minutes for the meeting of March 13, 2019.

Hermreck moved for approval of the minutes and Bedortha seconded.

The Commissioners present approved the motion by a vote of 5-0. Lundquist and Stec abstained, as they had not been present at the March 13 meeting.

PUBLIC HEARING

Record Number 217-19-000029-PLNG – Bryan Sproat (owner) and Jake Stephens (applicant) are requesting a conditional use permit to construct and operate the West Prineville Solar Farm LLC, a photovoltaic (PV) solar power generation facility on up to 320 acres. A Commercial Energy Facility is permitted as a conditional use under Crook County Code 18.24.020 and Oregon Revised Statutes (ORS) 216.283, and is subject to review under Crook County Code 18.160 (Conditional Uses) and 18.101 (Commercial Power Generation Facilities). The property is identified as T 15 S R 15 EWM TL 2900, 3000.

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Beier said that the site measures 320 acres. She said that there were multiple statutes to look at, and that the proposed use is permitted as a conditional use in an agricultural zone, with findings. Gen-tie lines can be an associated use. A power generation facility cannot be located on high-value farmland or arable land.

Beier said that the proposed facility is to be located on non-arable land with no high-value soils. She said that there are 39 acres of Class IV soils on the edge of the site which are not to be disturbed, and which can be found to be non-arable.

Beier said that the general conditional use conditions apply. The Commission must look at mitigation. She said that the applicant has provided evidence that the facility will not impact agricultural operations in the area.

She said that County Code Chapter (CCC) 18.161 includes criteria for solar energy facilities, including weed control and wildlife protection. A decommissioning bond is required before groundbreaking for the facility.

Beier stated that the Crook County Department of Fire and Rescue has requested a more complete Emergency Management Plan.

She said that the site is not in a Goal 5 area, but the Oregon Department of Fish and Wildlife (ODFW) requires wildlife access to water. The U.S. Department of Wildlife has provisions for protection of migratory birds.

Beier said that input had been requested from the Oregon Department of Transportation (ODOT).

Bedortha asked if a decommissioning permit is required.

Beier said that it will be required at the time of decommissioning.

Bedortha said that he had a question about the business name provided on one of the documents.

Beier said that the applicant would be asked to clarify that. She said that the site is not in an airport approach zone.

Warren asked if comments had been received from ODOT.

Beier said none had been received to date.

Hermreck asked about two emails received by the Commission.

Beier said that staff had just received the emails.

Hermreck if an inquiry had been received from the Oregon Facilities Siting Council.

Beier said that none had been.

Hermreck asked if the applicant would need land use approval for additional facilities.

Beier said there was no other permit pending. She said that the emails received would be entered in the record.

Bedortha asked if the County Counsel had seen the decommissioning bond.

Beier said that the applicant had not yet submitted the bond, but had submitted a decommissioning plan which was to be evaluated by the County Counsel.

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Stec said that the emails received should be attached to the staff report as Exhibits 1 and 2.

Beier said that this was appropriate.

Warren asked if there had been any other state or federal agency comments.

Beier said there had not been. She said that the Prineville Airport Manager had received notice but had expressed no concerns. She said nothing had been received from ODOT.

Jake Stephens, the applicant, provided testimony. He said that he had founded the New Sun Company, and had started a total of three companies. He said that he had been involved with solar power generation for ten years. He said that he had obtained eight or nine permits for solar facilities in Oregon. He said that he operates a small company, and wants to have a presence in Crook County. He said that the company will offer County Fair exhibits, and scholarships for local students.

Stephens said that the site does not include more than 40 acres of arable land, and that applications for interconnections with power lines had been submitted, in accordance with the land use criteria. He said that the interconnection mandate had been met. He said that construction might be in phases. He said that most of the comments received were not in opposition to the proposal, but seemed to be neutral. He said some comments were inconsistent. He pointed out that the provisions for interconnection are flexible, with the possibility for connections in more than one location. He said that PacifiCorp needs more power, and can be expected to be favorable toward the proposal. He said that the business issues are separate from the land use issues.

Stec asked Stephens about construction in phases. She asked if the present proposal would be the beginning or the ending phase.

Stephens said it would be the ending phase. He said that each phase might involve twenty acres.

Ponte asked if the facility could be connected to the grid in different locations if the proposed location does not work out.

Stephens said that it could be. He said that the Bonneville Power Administration (BPA) is in charge of connection lines.

Bedortha asked if approval would be conditioned on the availability of multiple connection locations.

Beier said that multiple routes have been approved for flexibility. She said that the area occupied by connecting lines counts toward the 320 maximum acres.

Stephens said that the company is not focused on gen-tie lines. He said that the current footprint for the facility permits flexibility. He said that the state encourages shared interconnections. He commented that Crook County is the only jurisdiction which requires interconnections as a condition of approval.

Bedortha asked Stephens if he could explain the business name listed on one of the documents.

Stephens said that it was a typo.

Warren asked for additional proponent testimony.

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Ron Raasch testified that he owns property to the east and south of the site. He said that he had no problems with the application.

Hermreck asked Raasch how much property he owns.

Raasch said that he owns 9000 acres.

Lundquist asked Raasch if his land borders another solar generation site.

Raasch said that he borders one on the south.

Warren asked for opposition testimony.

Kristy Cooper testified in opposition. She stated that she is concerned about reflectivity impact on the Prineville Airport. She said that she wants the FAA to evaluate reflectivity from the proposed solar generation site. She said that reflections from a solar site can blind pilots for several minutes. She said there must be input from the airport sponsors and the FAA. She said that County approval of the site would deny the public the right to appeal. She asked why the County wants to make itself immune from legal action.

Beier said that the applicant would be required to sign an agreement of nonremonstrance to farm operations.

Warren said that this is to protect farmers.

Cooper said that there are plans to expand the airport. She said that solar panels can disrupt airport communications. She said that this should be addressed. She said that she seconds the Pacific Corp request to keep the record open.

Hermreck asked Beier if the proposed conditions of approval for the facility were posted on the County website.

Beier said that they were.

Cooper said that she had no chance to review and comment on plans requested for the application that were not completed but a part of conditioning for an approval.

Bedortha said that the Planning Commission does not write the Emergency Plan. He said that is done by Crook County Fire and Rescue, and the Commission has no authority to review the plan.

Beier said that the applicant is required to submit mitigation plans to the appropriate agencies. She said that these plans are not necessarily subject to public review. She said the Commission does not second-guess Fire and Rescue.

Beier commented that she had served on an energy council which reviewed plans for solar generation facilities. She said that state agencies and local governments do not feel that reflectivity is an issue. She said that solar panels are designed to absorb solar energy rather than reflect it.

Cooper said that she only cares about the impact on aviation. She said that standards must be followed, and the FAA must be notified.

Bedortha pointed out that the proposed facility will not be in the airport approach zone.

Cooper insisted that it would be in the approach zone.

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Hermreck pointed out that the Commission often has to make decisions to permit applications which require land use approval to proceed. She said that agencies often do not submit comments when asked to do so.

Beier said that the Airport Master Plan approach zone was included in the record.

Lundquist asked if the public was invited to participate in the site visit.

Beier said that owners of property within 750 feet were notified.

Lundquist pointed out that solar panels are designed to minimize glare.

Russ Cooper offered opposition testimony. He said that he had contacted pilots who use the airport, and they had not heard of the proposal. He said that there is a safety factor. He said that the airport is used for training by foreign pilots who do not speak English well, and fly erratically. He said there have been near misses. He displayed an area map.

Beier pointed out that the map showed solar generation facilities which have already been approved, and did not show the proposed facility.

Cooper displayed the airport approach on the map to the Commissioners. He said that reflectivity is a big issue in the air, and he had personally observed blinding reflections from solar generation facilities while flying. He said that the County and taxpayers will be liable for aviation accidents if a signoff is not obtained from the FAA. He said that the facility will push student pilots to the other side of Powell Butte, and a major accident is likely to occur. He said that the proposed site is too close to the rimrocks.

Beier commented that the site is not within 200 feet of the rimrocks, as required.

Cooper requested that the record be kept open. He said that he had a call in to the FAA.

Manning asked how other counties handle conflicts between airports and solar generation facilities.

Cooper said that panels are pointed away from airports, and facilities are smaller.

Ponte asked how pilots deal with reflectivity from water bodies.

Cooper said it is not the same. He said that reflections from water bodies go straight up, and are not as intense.

Stec asked Cooper if he is a flight instructor.

Cooper said that he is not, but is around flight instructors.

Stec asked if he was talking about the approach zone, or the control zone. She said that the Prineville Airport has no control zone.

Beier confirmed that the airport does not have a control zone, and said the proposed site is well out of the approach zone. She said that she believed that the Planning Department had received a letter from the FAA, on previous solar sites.

Stec said that it is not up to the County to request input from the FAA.

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Cooper said that the site is under the approach zone. He said that foreign student pilots will fly over the facility, and do not follow the same rules as American pilots. He said that the airport is busy.

Lundquist pointed out that there is a solar generation facility near the Bend Airport.

Cooper said that facility is not in the approach zone for the Bend Airport.

Beier pointed out that the quality of student pilots is not a land use issue.

Cooper requested that the record be kept open.

Warren said that would be addressed by the Commission.

John Aniello offered testimony. He said that he represented PacifiCorp, which is neutral concerning the application. He said they are required to allow interconnections with solar generation facilities. He said that PacifiCorp works closely with BPA, and wants to work with the applicant. He said that he was requesting an extension to permit PacifiCorp's land use people to review the application.

Beier pointed out that the applicant's relationship with the BPA is not a land use issue.

Aniello said there is a possible conflict with the location of gen-tie lines.

Lundquist asked for a definition of gen-tie lines.

Aniello said that the term means generator tie lines.

Stephens testified in rebuttal. He said that he appreciates that there are separate issues. He said that the applicant must get a crossing permit approved. He said that the industry is continually improving the efficiency of solar panels in absorbing solar energy, which reduces reflectivity. He said that the panels have an antireflective coating in addition. He said that he had been involved with a solar generating facility on airport property in California, which was approved by the FAA. He said that solar panels are commonly located on airport property. He said that he will seek an FAA permit if necessary, but it is only required in an airport approach zone. He said that the FAA Airport Guide addresses all kinds of solar generating technologies, including those involving mirrors, which are very different from the photovoltaic systems he installs. He said this leads to confusion regarding airport impacts. He said that flight instructors can make students aware of the situation.

Warren asked if all solar panels have antireflective coatings.

Stephens said that they do. He said that solar panel manufacturers are ruthlessly seeking greater efficiency, and the most efficient panels have the least reflectivity.

Beier commented that the megawatts produced by approved sites often exceed those initially applied for, because of the increasing efficiency of the panels being installed. She said that banks providing funding want total compliance with all regulations, and engineers look at everything.

Lundquist asked Stephens if the applicant is willing to have an FAA study done.

Stephens said they would have one if required to, but they have met all of the criteria for approval.

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Beier said that solar generation facilities must not be in or adjacent to an airport control zone, but the Prineville Airport does not have one. She said that FAA letters have been obtained on projects which are closer to the airport. She said that height of structures is the primary concern in airport approach zones.

Stec asked if a ten day extension would be detrimental or favorable to the applicant, or change the facts.

Beier said that the criteria would not be changed. She said that she does not think she can request an FAA permit, as the site is well away from the airport approach zone. She said she would follow up with the FAA on closer projects.

Stec asked if testimony would be limited to land use issues.

Beier said it would be limited to issues discussed at the present hearing.

Stec pointed out that these are not land use issues. She said that the Coopers' concerns were actually with facilities which had already been approved.

Lundquist commented that he was disappointed that there had not been more input from Powell Butte residents.

Stephens said that he has good relations with the neighbors of the site. He pointed out that the closest neighbor had testified in favor.

Bedortha said that he had a question about fencing. He asked what type of fence would be used.

Stephens said there would be a security fence. He said that he was willing to discuss the type.

Stec moved that the public hearing be closed.

Kristy Cooper objected that she was entitled to rebut the applicant's statements.

Hermreck called for a five minute break, to permit staff to look up the County Code provision concerning rebuttals.

Warren called a five minute break at 7:57 p.m.

Warren reopened the hearing at 8:02 p.m.

Stec withdrew her motion that the hearing be closed.

McDonald reported that the County Code states that rebuttal testimony may be heard first from the applicant, and then from opponents, but that redundancy is to be avoided.

Kristy Cooper offered rebuttal testimony. She stated that if the Prineville Airport had a control zone, the site would be in it. She said that she had a right to testify about additional issues. She said that residents who were affected had not been notified.

Hermreck moved to close the public hearing, and Ponte seconded. The Commissioners approved the motion by a vote of 7-0.

Warren stated that the regulations concerning control zones are irrelevant, since the Prineville Airport does not have one.

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Hermreck said that parameters must be observed, and the County had gone above and beyond its responsibilities. She said that the Airport Manager had been notified, and it was his responsibility to inform pilots.

Beier said that the applicant can get an FAA letter, but the County is under no obligation to do so, as the site of the proposed facility is not in an approach zone.

Hermreck commented that the reflectivity issue had been discussed in connection with previous applications.

Bedortha said there was no reason to extend the comment period.

Ponte moved to deny the request to extend the comment period or keep the record open.

Bedortha seconded.

The Commissioners voted to approve the motion by a vote of 7-0.

Beier proposed two additional conditions: that federal regulations concerning migratory birds be observed, and that the applicant consult with ODOT concerning construction signage on Highway 126, and inform the County of the results.

Bedortha said that the project should not be delayed if ODOT does not respond.

Manning said that she wanted a berm between the fence and the road to reduce the visual impact of the facility.

Beier commented that berms may become weed-grown and unsightly, and that a berm might not be effective in reducing the visual impact.

Manning said that she did not want the facility to look like an industrial area. She said she did not want the public to have to look at solar panels.

Hermreck said that a berm could be a traffic hazard.

Ponte commented that fence slats are unsightly. He said that a berm could be an option if it is landscaped with vegetation.

Beier said that landscaping with native vegetation could be required.

Ponte said that the solar panels would still be visible due to the slope.

Hermreck said that a three-board fence could be put in, rather than a berm.

Stec suggested a chain link fence and gate.

Hermreck said that a gate should be installed in the corner of the enclosure to permit wildlife which might be trapped in the enclosure to be allowed to escape.

Beier recommended that the applicant be required to consult with ODFW concerning fencing and report back to the County.

Bedortha proposed that a chain link fence and consultation with ODFW be required.

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Beier said that Condition 2 requires a permit prior to construction. She said that the other conditions were standard.

Stec said that the recommendations of the Oregon Historical Preservation Office should be followed in the event cultural resources are found on the site.

Hermreck moved for approval of the application with the nineteen conditions stated and the staff report attached.

Stec seconded.

The Commissioners approved the motion by a vote of 6-1, Lundquist voted no.

Beier said that a draft decision would be prepared by the following Wednesday.

Hermreck moved for adjournment and Bedortha seconded.

Warren adjourned the meeting at 8:35 p.m.