

**RENO COUNTY COMMISSION
SPECIAL MEETING**

Tuesday, May 21, 2019 at 6:30 P.M.

ATRIUM HOTEL & CONFERENCE CENTER

1400 N. Lorraine, Hutchinson, KS 67501

POSTPONED

1. Roll Call

2. Action Items

- a. Consider Planning & Zoning Case 2019-01; a request by Pretty Prairie Wind, LLC, representing various property owners, for a conditional use permit to construct a commercial wind energy conversion system consisting of 52 turbine sites and one alternative site for the purpose of converting wind energy into electricity. The properties are currently zoned AG – Agricultural District.

Action – Motion to *Approve/Not Approve* the Planning Commissions' recommendation to deny Case 2019-01; a request by Pretty Prairie Wind, LLC, representing various property owners, for a conditional use permit to construct a commercial wind energy conversion system consisting of 52 turbine sites and one alternative site for the purpose of converting wind energy into electricity.

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3. Adjournment



AGENDA REQUEST

AGENDA ITEM: Planning Department Case #2019-01 - A request by Pretty Prairie Wind, LLC, representing various property owners to construct a wind energy conversion system consisting of 52 turbine sites and one alternative site. The properties are currently zoned AG - Agricultural District.

PRESENTED BY: Staff report and presentation by Russ Ewy, AICP Baughman Company

RECOMMENDED ACTION: Consider the Planning Commission recommendation to deny the petition.

AGENDA DATE: May 21, 2019, 6:30 p.m. Atrium Hotel and Convention Center

EXECUTIVE SUMMARY *(Title or Description, Impact or Goal, Dollar Amount and Funding Source, and Timeframe). Please limit to four (4) sentences.*

The purpose of this item is to approve or deny the conditional use permit request by Pretty Prairie Wind, LLC. Approval of the conditional use permit is required for the applicant to construct the project.

Portions of this project are located in the unzoned area of the county and not subject to review under the Conditional Use Permit request.

After the decision by the Board of County Commissioners, a County Resolution will be placed on a future agenda which will journalize the decision by the Board.



Public Works
600 Scott Boulevard
South Hutchinson, Kansas 67505
620-694-2976

Road & Bridge • Planning & Zoning • Noxious Weed • Utilities

Date: May 9, 2019

To: Reno County Board of County Commissioners

From: Russ Ewy, AICP, Baughman Company

Subject: Case #2019-01

Who: Owners: Various Property Owners
Applicant: Pretty Prairie Wind, LLC

What: This is a conditional use permit request to establish a commercial wind energy conversion system.

Why: The parcels are currently zoned AG – Agricultural District. The applicant is requesting a conditional use permit for the purpose of establishing a commercial wind energy conversion system. All proposed land use activities other than agricultural and single family residential require a conditional use permit.

Pretty Prairie Wind, LLC (a subsidiary of NextEra Energy Resources, LLC), is requesting a Conditional Use Permit to construct wind turbines and other ancillary structures to serve as a Commercial Wind Energy Conversion System (WECS) in the southeastern portion of Reno County, Kansas. The specific properties comprising the application area can be found within the submitted application packet.

Pretty Prairie Wind has obtained authorization to act on behalf of all participating property owners within the designated project area. In conjunction with the application review, all lease agreements and authorization forms were reviewed for verification of proper authorization.

The project is called “Pretty Prairie Wind Energy Center” and proposes a total of eighty-eight (88) wind turbine sites and three (3) alternate sites within the County. Of these, fifty-two (52) turbines are located with that portion of the County currently under the jurisdiction of the Reno County Zoning Regulations. Accessory components of the project are two SCADA met tower locations, a temporary laydown yard and concrete batch plant, as well as an operation and maintenance facility all located within the un-zoned portion of the County. There are approximately 170 landowners participating in the project. Pretty Prairie Wind is planning to begin development upon approval of the Conditional Use Application, with operation by the end of the year.

According to Pretty Prairie Wind’s application submittal, parent company NextEra Energy Resources is North America’s largest producer of wind energy, and operates 120 wind facilities in Canada and 21 states. The applicants’ submittal provides project information in greater detail, and is available for review at the Reno County Public Works Department.

The Reno County Zoning Regulations contain three sections which deal with submittal requirements for a Conditional Use Permit request. The first section requires that a Development Plan be included with the application. The standards for submittal of a Development Plan are outlined in Article 8, and listed below.

The Development Plan shall include and/or display the following information:

1. *When deemed necessary, a topographic survey indicating the legal description, property boundary, existing contours, existing utilities and easements, and natural and manmade features of the property.*

These features are shown on the Conditional Use Permit Site Plan submitted as part of the application. The application packet also contains Notification Area maps of the participating properties. Additional detail may be required with construction plans and prior to issuance of construction permits.

2. *A Development Plan, drawn to the same scale as the topographic survey, indicating:*
 - A. *existing contours (shown as dashed lines);*
 - B. *proposed contours (shown as solid lines);*
 - C. *location and orientation of all existing and proposed buildings;*
 - D. *areas to be used for parking, including the number and arrangement of stalls;*
 - E. *areas to be developed for screening, including the location of plant materials, and screening structures and features;*
 - F. *pedestrian and vehicular circulation and their relationship to existing streets, alleys and public right-of-way;*
 - G. *points of ingress and egress;*
 - H. *location of all existing and proposed utilities (sanitary sewage systems, water systems, storm drainage systems, gas lines, telephone lines and electrical power lines);*
 - I. *drainage controls (retention or detention ponds);*
 - J. *location, size and characteristics of identification and business signs;*
 - K. *lighting layout, appurtenances, and intensity of illumination;*
 - L. *proposed finished floor elevations of all buildings and structures.*

These features are outlined on the Conditional Use Permit Site Plan, and are consistent with the requirements outlined in Article 15-105(14) for the development of a WECS facility. Additional detail is provided in the application packet, and compliance will be required once construction plans are submitted prior to issuance of construction permits.

3. *A statement of intent shall accompany the Development Plan to explain the measures used to achieve compatibility of the proposed development with surrounding properties through the planning of the site and the location and design of structures.*

The majority of the project area is agricultural in nature with rural homesteads interspersed throughout this area of the County. Structures included within the Development Plan include wind turbines, permanent meteorological towers, substations, and other operational facilities. Access roads are also included which cross private property to connect with public right of way. These roads will be constructed so as to minimally impact the current state of the property. Access road routes have many determining factors, including row crop alignment, existing contours, and construction staging areas. Conceptual plans submitted include alternate access road routes, and it is likely that not all roads depicted will be constructed. The final impact or disturbance of agricultural ground should be kept to a minimum. The intent of the applicant is to work in conjunction with and act supplementary to the agricultural economy in the area.

Article 20 of the Reno County Zoning Regulations states the factors to be considered for a Conditional Use Permit. The Reno County Planning Commission may recommend approval of a Conditional Use Permit, and the Governing Body may approve such Conditional Use Permit, using the following factors as guidelines. Those factors and staff comments where appropriate, are as follows:

- A. Whether the change in classification would be consistent with the intent and purpose of these Regulations;*

It is staff's opinion that the proposed use is consistent the Reno County Zoning Regulations' requirements for the development of such facilities.

- B. The character and condition of the surrounding neighborhood and its effect on the proposed change;*

The primary land use in the area is agricultural with rural residences located throughout the area. It is the belief of staff that the proposed land use is suitable to the location.

- C. Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;*

Staff does not believe this factor is applicable.

- D. The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;*

The areas surrounding project boundaries are either zoned AG – Agricultural District, or un-zoned, and are primarily developed with rural homesites and agricultural uses.

As with any relatively new land use, attitudes toward WECS facilities can vary significantly. Upon a review of relevant research related to commonly claimed impacts on area properties by these developments draw no definitive conclusions that they negatively influence property values, create health issues, are a safety concern, or are otherwise universally perceived in a negative light.

In the absence of any consensus on effect, or any nationally-accepted standards of mitigation beyond what is recommended in this report, staff is of the opinion this land use is appropriate within this portion of the County. Specific requirements recommended by staff are intended to further ensure safety and compatibility of this land use with those in the area. Therefore, it is the opinion of staff that the proposed land use is suitable to the

locations under consideration.

- E. *Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;*

While this question addresses the various permitted land uses with a proposed zoning district classification, the request is for just one use – a WECS complex. Specific requirements intended to further ensure safety and compatibility, and mitigate any potential impacts, are addressed in the recommended conditions of approval.

- F. *The suitability of the applicant's property for the uses to which it has been restricted;*

Staff believes the proposed project area is suitable for a WECS facility. The primary land use in the project area is agricultural, with relatively low population density. While there are homes and structures located throughout the area, the proximity of these to WECS operations and structures is limited by the recommended conditions of approval and will be addressed specifically during construction permitting.

- G. *The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped;*

Staff does not believe this factor is applicable.

- H. *Whether adequate sewer and water facilities, and all other needed public services including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;*

Significant impacts to the County's roads are anticipated with the development of a project of this magnitude. A road maintenance agreement is a standard condition for WECS projects and is further addressed in the recommended conditions of approval. The proposed use should not have any other appreciable impact on public infrastructure.

- I. *The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;*

There are no other such facilities in the County, therefore this factor is not applicable.

- J. *The recommendations of permanent or professional staff;*

See below.

- K. *Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan;*

It is the opinion of staff that the proposed use would be consistent with the goals and objectives of the Reno County Comprehensive Plan (2018). The primary land use goal of the Plan recommends the County "provide opportunity for the orderly and efficient development of land which will achieve a fiscally sound and environmentally safe County, while maximizing compatibility among land uses."

It should be noted the Plan was developed with substantial consideration given to WECS projects in particular, and the appropriate level of regulation of such land uses the County felt was reasonable. This application is consistent with the objectives of that discussion.

The Plan leaves the siting of such facilities up to the marketplace and developers, while retaining the ability to impose conditions upon these facilities in an effort to mitigate any potential impacts. Staff believes, with the inclusion of appropriate conditions, approval of this project would achieve the goals of the Plan, while protecting the health safety and welfare of the general public.

- L. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such a reclassification; and,*

Specific areas of concern are addressed in detail in the recommended conditions of approval. It is the opinion of staff that these concerns do not outweigh the value of the proposed development to not only the applicants and participating property owners, but to the County as a whole.

- M. Such other factors as may be relevant from the facts and evidence presented in the application.*

Additional factors are addressed in detail in the recommended conditions of approval.

Staff recommends the following special conditions for approval of the application by Pretty Prairie Wind, LLC for a Conditional Use Permit to construct a Commercial Wind Energy Conversion System:

1. Prior to the issuance of a zoning permit and the commencement of construction, Pretty Prairie Wind, LLC shall enter into a development agreement or series of agreements with Reno County addressing the following:
 - a. That Reno County Zoning Regulations pertaining to commercial wind energy conversion systems and the special conditions attached to the Conditional Use Permit shall be applicable to that portion of the Project Area situated in the unzoned portion of the County.
 - b. A road maintenance, repair and replacement agreement.
 - c. A decommissioning agreement with surety acceptable to the Board of County Commissioners pertaining to wind energy conversion system improvements.
 - d. Providing and maintaining throughout the life of the Project an indemnification agreement with Reno County and a policy of general liability insurance with policy limits satisfactory to the Board of County Commissioners which identifies Reno County as an additional insured.
 - e. Establishing a complaint resolution form, policy and process acceptable to the Board of County Commissioners.
 - f. Filing and maintaining with the Reno County Public Works Department, Planning and Zoning Division, a current FAA Determination of No-Hazard to Air Navigation letter verifying that each wind turbine in the Project Area, when constructed in accordance with the construction plan submitted with the

Application for a Conditional Use Permit is not and will not constitute a hazard to aircraft.

- g. Providing to the Public Works Department, Planning & Zoning Division, a written certification by a licensed and qualified professional engineer, approved by Reno County, verifying compliance with all set back requirements,
 - h. A Payment in Lieu of Tax Agreement (PILOT) which adequately compensates Reno County for governmental services provided in the Project territory during a ten-year period of tax exemption.
 - i. All the above referenced agreements shall be executed within ninety (90) days following the adoption of a County Resolution approving a Conditional Use Permit, or failure to do so shall render the Conditional Use Permit null and void.
2. A minimum setback of 2,000 feet shall be required for any wind turbine located from any non-participating property owner's residential structure. The distance shall be measured from the center of the wind turbine to the nearest wall of the residential structure. All setbacks shall be complied with at the time of site development, and any other development within the area of the original setbacks thereafter shall not cause any future nonconformity.
3. No wind turbine shall be located closer than 500 feet or the total height of the turbine plus 50 feet, whichever is greater, from the nearest edge of the public road right of way, whichever is greater. The wind turbine distance separation shall be measured from the center of the turbine.
4. No wind turbine shall be located closer than 1,400 feet from a participating property owner's residential structure unless a written agreement is signed between the current property owner and Pretty Prairie Wind, LLC stating the wind turbine may be located closer than 1,400 feet. Each such signed agreement shall be on file at the Reno County Public Works Department, Planning & Zoning Division. The wind turbine distance separation shall be measured from the center of the turbine to the nearest wall of the residential structure.
5. All wind turbines and blades shall be either white or pale grey in color. No part of the wind turbine shall display any logos, pictures, words, or advertising other than the manufacturer of the nacelle.
6. No telecommunication antennas or similar devices shall be installed on any wind turbine.
7. No lighting shall be illuminated on a wind turbine except that which complies with and does not exceed minimum FAA requirements.
8. No wind turbine shall interfere with the transmission or receiving capabilities of any public or emergency telecommunication tower or device. Any interference shall be mitigated by Pretty Prairie Wind, LLC at its expense.
9. If the Conditional Use Permit is transferred from Pretty Prairie Wind, LLC to another entity, written notice shall be provided to the Reno County Board of County Commissioners prior to the effective date of such transfer or assignment. Prior to the effective date of such transfer or assignment, the new owner or assignee shall enter into an indemnification agreement with Reno County and provide a substitute Certificate of Insurance in the same form and manner as required of Pretty Prairie Wind, L.L.C. Further, prior to commencement of construction and the issuance of zoning permits, Pretty Prairie Wind, LLC shall enter into a development agreement with Reno County wherein any such transfer or assignment of the Conditional Use Permit, as the same may be amended from time to time, shall obligate the new owner and assignee to the same

terms and conditions to which Pretty Prairie Wind, LLC is obligated by the terms and conditions of the Conditional Use Permit and all development agreements between Reno County and Pretty Prairie Wind, LLC.

10. Due to unforeseen circumstances such as high ground water or bad soil types, each wind turbine location as shown on the submitted site plan as may be permitted to be re-located no farther than 100 feet from the original site location as measured from the center of the wind turbine, without the need for additional conditional use permit review. In furtherance of the same, the owner shall submit an amended zoning permit application. Each relocated wind turbine will still be required to comply with the all conditions of approval.
11. Prior to the issuance of a zoning permit for any wind tower, in the event the County becomes aware that the Applicant is not in compliance with all applicable Federal, state, and local regulations, the County shall refer the matter to the appropriate governmental agency for disposition and shall not issue the zoning permit until the non-compliance has been resolved.
12. Reno County reserves the right to rescind this conditional use permit upon any violation of County Regulations or conditions governing this approval.

On April 4, 2019 the Planning Commission conducted a public hearing on this petition. Due to the length of the applicant's presentation, the staff presentation, public comments, and rebuttal statements, the public hearing was continued to the dates of April 9, 2019, April 10, 2019, April 11, 2019, and April 23, 2019. A video and audio tape of the entire public hearing is available and should be considered as part of the record of this petition.

The meeting commenced with representatives from Pretty Prairie Wind, LLC presenting their petition to construct a wind energy conversion system consisting of 52 wind turbine sites and one alternative site. Other wind turbine sites, alternative sites, met towers, and an operation and maintenance facility are a part of the overall project but not part of the conditional use permit application because the locations are unzoned.

After the applicant's presentation and questions by the Planning Commission, Mr. Ewy presented the staff report which concluded with a recommendation to approve the conditional use permit with several conditions of approval. The Planning Commission questioned Mr. Ewy on contents of the staff report. Next, the Planning Commission commenced with the public comment portion of the public hearing.

Following the public comment portion of the public hearing the applicant and staff were afforded an opportunity to rebut any statements made at the public hearing. The rebuttal statements also included time for the Planning Commission to question the applicant and staff on statements made at the public hearing or ask for clarification on the application.

On April 23, 2019, Mark Trumbauer from NextEra Energy Resources reported to the Planning Commission they have made modifications to the original site plan based on comments at the public hearing. Mr. Trumbauer stated turbine numbers six, seven, 41, 75, 77, and a met tower have been removed from the application. This leaves a total of 80 turbine sites and three alternative sites throughout the entire project. After staff rebuttal comments and questions by the Planning Commission, the public hearing was closed on April 23, 2019 and the Planning Commission commenced discussion on this petition.

Chairwoman French discussed in detail the factors used to make recommendations in all land use cases. Ms. French requested each Planning Commission member discuss in detail the factors they will use in making a motion or voting on this petition,

At the conclusion of the initial discussion, Commissioner Buchanan moved to approve the conditional use permit based on the factors and reasons as stated in the staff report and including all conditions of approval. Commissioner Buchanan made five amendments to staff's conditions of approval. Those amendments are:

1. The affected townships shall be included in the road maintenance agreement between Pretty Prairie Wind, LLC and the Reno County Board of County Commissioners (Condition 1B).
2. The affected townships shall be included in the indemnification agreement between Pretty Prairie Wind, LLC and the Reno County Board of County Commissioners (Condition 1D).
3. Pretty Prairie Wind, LLC shall enter into an agreement with the Reno County Board of County Commissioners regarding the night time construction of the project.
4. Pretty Prairie Wind, LLC shall enter into an agreement with the Reno County Board of County Commissioners regarding the monitoring of noise emitted from the turbines and a mitigation plan for noise complaints occur on non-participating residences.
5. Pretty Prairie Wind, LLC shall make available to the public all bird mortalities caused by any aspect of the wind energy conversion system.

The motion was seconded by Commissioner Macklin.

After the motion was seconded, discussion ensued and several amendments were made to the original motion regarding turbine setbacks from churches/schools, airstrips, Kansas Department of Wildlife, Parks, and Tourism (KDWPT) property, and property lines. The setbacks proposed were:

1. Three miles from Cheney Lake as recommended by KDWPT.
2. Five miles from airstrips.
3. Three miles from churches and schools.
4. One mile from all property lines. Subsequent discussion and motions by the Planning Commission amended this request to 2,500 feet from all property lines.

All motions to amendment Commissioner Buchanan's original motion failed to pass the Planning Commission. After there were no other proposed amendments to the original motion, the Planning Commission voted on the original motion by Commissioner Buchanan and seconded by Commissioner Macklin.

The original motion failed by a 4-3 vote: (Yes: Macklin, Buchanan, and French; No: Baker, Jorns, Westfahl, and Goertzen).

In support of their respective positions on the motion to approve the conditional use permit each Planning Commission provided the following reasons:

Commissioner Macklin: His recommendation to approve the application was based on the factors, conditions, and amendment to conditions contained in the motion. Commissioner Macklin requested the County Appraiser attempt to determine the potential tax revenue for the project in years 11-30 and provide that number to the County Commissioners in order to compare that number to the cost benefit study presented by NextEra on tax revenue. Commissioner Macklin was confident the County Commissioners will have appropriate language for a decommissioning agreement.

Commissioner Buchanan: His recommendation for approval was also based on the factors and conditions as outlined in the staff report. He stated his belief that conditions included in the staff report are adequate to protect the health, safety and

welfare of county residents. He cited development of green energy and the avoidance of fossil fuels as favorable environmental considerations.

Chairwoman French: The application was recommended for approval by her based on the factors and conditions as outlined in the staff report. Although she has some reservations with the application, the additional conditions of approval placed on the application by Commissioner Buchanan addressed some of her concerns.

Commissioner Baker: The application and the record of evidence do not provide enough information to show how this proposal benefits the general public welfare as defined in the Comprehensive Plan and Zoning Regulations.

Commissioner Jorns: The application is not compatible with other land uses in the surrounding neighborhood and the change the land use would have on the population in that area (letter B of the factors). In addition, if the application is approved more harm will be imposed on the health, safety, and welfare of the general public versus upgrading the value of the applicant's property (letter I of the factors). This project would be better suited in other parts of the county.

Commissioner Westfahl: Article 15 of the Zoning Regulation guidelines references conditional uses and states that after a public hearing the Planning Commission shall, after careful study of the effects, make a decision. There is enough material on this subject and many Planning Commission members have not had enough time to study some of these issues. For the following reasons the application is recommended for denial: The location of the proposed land use is not compatible to other land uses in the surrounding area (letter B of the factors). The proposed use is not made necessary or desirable because of changed or changing conditions in the area affected (letter D of the factors). This is backwards. The change that is being put on the area is making it necessary. The applicant's property is not suitable for the proposed use (letter F of the factors). In Reno County, this area is the highest population we have and the most potential for growth which is what the county needs. The proposal is not in conformance with the Comprehensive Plan (letter H of the factors). Commissioner Westfahl indicated he was not convinced the Project is a fiscally sound and environmentally safe. The relative gain to the health, safety, and welfare of the public does outweigh the hardship imposed on the applicant by upgrading the value of the property (letter I of the factors). There is no relative gain to the public health, safety, and welfare of the public with this project.

Vice-Chairman Goertzen: The proposed use is not compatible to other land uses in the surrounding neighborhood (letter B of the factors). This land use is not compatible with the rural residences of southeastern Reno County. The proposed use is not made necessary or desirable because of changed or changing conditions in the area affected (letter D of the factors). The public has stated through testimony that this type of land use is not desirable in that part of the county. The applicant's property is not suitable for the proposed use (letter F of the factors). A big portion of the project area is farm ground but a small portion of the project area has the population density that we have to keep in mind for future growth of the area. The relative gain to the public health, safety, and welfare of the general public does outweigh the hardship imposed on the applicant by not upgrading the value of the land (letter I of the factors). There is no relative gain to the public if this application is approved.

After the motion to approve the conditional use permit failed, Commissioner Westfahl moved to deny the conditional use permit; seconded by Vice-Chairman Goertzen. The motion passed by the following 4-3 vote (Yes: Baker, Jorns, Westfahl, and Goertzen; No: Macklin, Buchanan, and French)

The factors and reasons each Planning Commission member respectively used to approve or deny the second motion were the same factors and reasons each used to approve or deny the original motion.