

**OFFICIAL PROCEEDINGS OF THE
BOARD OF ADJUSTMENT AND APPEALS**

REGULAR SESSION

SHAKOPEE, MINNESOTA

AUGUST 4, 2011

MEMBERS PRESENT: Gorton, Seidensticker Magin, McQuillan, Klemm, and Collins

MEMBERS ABSENT: Mangan

STAFF PRESENT: Mark Noble, Planner II

1. ROLL CALL:

Chair Gorton called the meeting to order at 7:00 p.m. Roll call was taken as noted above.

2. APPROVAL OF THE AGENDA:

Motion: Magin/Collins moved to approve the agenda. No discussion.

Vote: Motion carried 6-0.

3. RECOGNITION BY BOARD OF ADJUSTMENT AND APPEALS OF INTERESTED CITIZENS:

Chair Gorton recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE MINUTES OF THE JULY 7, 2011 MEETING:

Motion: Magin/Klemm moved to approve the July 7th, 2011 meeting minutes.

Vote: Motion carried 6-0.

5. PUBLIC HEARING - CASELOG #11008: APPLICATION FOR CONDITIONAL USE PERMIT TO ALLOW FOR A WIND TURBINE LOCATED ON THE HIGH SCHOOL PROPERTY LOCATED AT 100 17TH AVENUE WEST IN THE URBAN RESIDENTIAL (R-1B) ZONE. APPLICANT: ISD #720.

Mr. Noble addressed the Board regarding Caselog #11008. He stated that this public hearing was continued from the July 7th meeting in order for the applicant to provide additional information. The applicant is the Shakopee School District and they propose to construct a wind energy conversion system (WECS) at their high school site on 17th Avenue, west of Spencer Street. The subject site is located within the Urban Residential (R-1B) Zone. The proposed WECS meets the definition of a commercial WECS. Any commercial WECS requires the review and approval of a Conditional Use Permit (CUP).

The Shakopee High School is an existing facility southwest of 17th Avenue/Spencer Street. The proposed WECS would be constructed just east of the under construction Environmental Learning Center (ELC), and south of the main parking lot. The applicant has provided copies of the site plan and other plans specific to the subject site, in addition to several documents, which address the purpose of the WECS, which is tied to the ELC in that it is one of several elements of renewable resources being used as part of this project. The WECS proposed would have a total height of approx. 51 feet (45' pole, and 12' diameter blades). For reference purposes, the WECS constructed at the Shakopee Public Utilities (SPUC) site is 115 feet overall height, with the tower itself being 71.17 feet. The WECS is proposed to be located approx. 60 feet east of the ELC, and 25 feet south of the parking lot. It would be located approx. 200 feet from the south property line and 900 feet from the Spencer Street property line. The proposed setbacks and height do meet the City's required standards. Access to the WECS would be from the school parking lot. Section 11.71 of the City Code lists specific conditions that should this CUP be approved, will be reviewed for compliance at time of building permit, and should concerns arise (such as noise level concerns), can be evaluated by city staff after construction to ensure compliance with the City Code regulations.

Outside agencies and other City departments have been provided with the application materials for review and comment. Comments have been received from Engineering, Shakopee Public Utilities, and the City Clerk. The comments from Engineering have been included as recommended conditions of approval.

A letter from an adjacent property owner south of the school property, and a petition that includes names of seven (7) families that live east of the school property were provided for informational purposes. Principal concerns raised by these property owners were with property devaluation, noise levels, and visual clutter. The petitioners also included a number of attachments, addressing issues associated with living near much larger wind turbines or wind farms. It does not appear that this information relates well to the proposed small installation. In addition, the previous review of, and experience with the taller (but still small) wind turbine at the Shakopee Public Utilities site, suggests that the concerns related to a much larger tower and wind farm installations.

Section 11.85 (Conditional Use Permits), Subd. 1 (Criteria for Granting Conditional Use Permits) states "In granting a conditional use permit, the Board of Adjustment and Appeals shall consider the effect of the proposed use upon the health, safety, and general welfare of the occupants of surrounding lands and the City as a whole." The Board of Adjustment and Appeals shall not grant a conditional use permit without making certain findings. The criteria required for the granting of conditional use permits are listed below with staff findings.

Criteria #1 The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity;

Finding #1 While the Board of Adjustments and appeals received material related to the impacts of wind turbine installations of much greater size (tower heights up to 400 feet) and living adjacent to or near industrial wind farms, it did not receive evidence suggesting that a single wind turbine with a total height of 51 feet would have the same or similar impacts. Thus, the City has not received evidence that the proposed use would be injurious to the use and enjoyment of other property in the immediate vicinity, nor that it would substantially diminish or impair property values in the area, provided the conditions included in the resolution are complied with.

Criteria #2 The establishment of the conditional use permit will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area;

Finding #2 The area surrounding the high school site on which the 51-foot tall wind turbine is proposed to be installed is currently developed. The City has not received any evidence that the conditional use permit would impede any future development and improvement in the area.

Criteria #3 Adequate utilities, access roads, drainage and other necessary facilities have been or will be provided;

Finding #3 Adequate utilities, access roads and drainage exist or will be provided to the site.

Criteria #4 The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use; and

Finding #4 The use of the subject property is consistent with the purposes of the Urban Residential (R-1B) Zone. Shakopee City Code Sec. 11.71. WIND ENERGY CONVERSION SYSTEMS. Subdivision 4. Provides that such systems shall be permitted in "...all zoning districts..." with the issuance of a conditional use permit, and compliance with the underlying district standards. The proposed installation complies with the underlying Urban Residential (R-1B) Zone standards.

Criteria #5 The use is not in conflict with the Comprehensive Plan.

Finding #5 The use is not in conflict with the Single Family Residential Plan.

1. Must comply with the applicable requirements of Section 11.71, Wind Energy Conversion Systems of the City Code.
2. Security funds, to ensure the removal of the structure and the restoration of the site, shall be in an amount determined by the City at the time notification is provided by the applicant or their assigns as to their intent to remove and/or refurbish the wind energy conversion system.
3. Prior to any land disturbing activity, the applicant needs to obtain a grading permit and/or building permit.
4. An annual review of this CUP shall be conducted by City staff. Information necessary to conduct the annual review shall be provided to staff by the applicant

or their successors. City staff shall then provide the findings of the annual review to the Board of Adjustment and Appeals (BOAA).

5. The manufacturer's or owner's name and/or logo may be placed on the nacelle of the WECS. No other signage shall be permitted.
6. Shall comply with the plans submitted with the CUP application except to the extent that compliance with Zoning and/or Building Codes shall require modifications to the plans.
7. All Federal, State, and Local regulations shall be met regarding location, height and design. Any required permits or approval from regulatory agencies shall be obtained and renewed as required.
8. The WECS shall comply with all Zoning Ordinance Performance Standards for noise, non-interference, and other applicable rules at all times.
9. The Environmental Learning Center building was shifted to the west in order to provide adequate access to the public sanitary sewer and storm sewer systems to the south. The placement of the wind turbine can be located as shown, but should not be located in the aforementioned access area.
10. The wind turbine should be located at or above the 739 contour with no fill being placed below the 739 contour.
11. Prior to any land disturbing activity, the applicant needs to contact the engineering department to verify the proposed location does not conflict with access area and public utilities.
12. Approval of the CUP does not constitute approval of the submitted plans.
13. Shall comply with all applicable building codes.

Staff recommends that the Board, approve Resolution No. PC11-008, a resolution approving the conditional use permit for a wind turbine at 100 17th Avenue West, as presented.

Mr. Noble asked the Board for their comments, questions or concerns.

The Board requested a change in Criteria #10 from "739" to "839". Discussion ensued regarding the proposed annual review of the CUP. It was determined that the Board had the ability to revise or modify conditions of the CUP at a later date if they so desired.

Chair Gorton invited the applicant to address the Board. Mr. Paul Nettesheim, of 1722 Caspian Lane in Shakopee, is the Assistant Principal of Shakopee Senior High School. Mr. Brian Christian, of 214 East Mound Street in Shakopee, is an Industrial Technology teacher at Shakopee Senior High School. On behalf of the applicant, they discussed the wind turbine and the Shakopee Environmental Learning Center, as pertains to the impact on students, neighbors and the community. In particular, they addressed the noise level concerns and the actual noise levels produced by the turbine. Research indicates that the noise levels were less than a vacuum cleaner when standing within 1 meter. Discussion ensued about continual use of the turbine and alternative construction locations of the turbine. The applicant stressed the positive impact the Environmental Learning Center will have on the students. The alternative energy sources as well as information gathered from the turbine will be invaluable to the students and the community.

Chair Gorton asked for comments or concerns from the audience.

Mr. Joe Franek, of 12690 North Shannon Drive in Shakopee, addressed the Board with his concerns regarding the wind turbine and other construction issues regarding the school. He was concerned with the property devaluation from this project, as well as other aspects of the school.

Mr. Sherwood “Woody” Johnson, of 12725 Creekside Lane in Shakopee, felt that the turbine had an unfortunate placement.

Ms. Jennifer White, of 229 Arabian Avenue West in Shakopee, inquired why they couldn’t share information with Chaska and why the school has to place the turbine in a residential neighborhood.

Motion: Seidensticker/Magin moved to close the public hearing. No further discussion.

Vote: Motion carried 6-0.

Chair Gorton asked for a motion regarding the application for the conditional use permit.

Motion: Seidensticker/Klemm moved to approve Resolution No. PC11-008, a resolution approving the conditional use permit for a wind turbine at 100 17th Avenue West, as presented.

Chair Gorton asked for further discussion of the Board.

Discussion of the Board revealed that their questions and concerns regarding noise levels and decisions regarding location of the turbine were answered in the discussion phase of the meeting. They did empathize with the residents and understood their concerns, however the Board stated that their job was to determine if the application was valid based on the City zoning laws and State statutes. The Board felt that the school has done a good job of explaining their plans and have followed the necessary requirements. They felt that some of the other concerns expressed by residents were unrelated to this application and were being presented too late in the building process.

Chair Gorton allowed additional comments from the audience.

Ms. Jennifer Juntilla, of 236 Arabian Avenue West in Shakopee, inquired if there were going to be ongoing projects at this site and expressed her concern with the current project’s impact on their property values.

Mr. Franek also commented that residents were not given proper notification of the initial building process.

Mr. Noble stated that he would check to see if proper notification was given to residents for all projects relating to this site. He reported that proper notification was given for this project. In addition, Mr. Noble wanted to clarify that the motion contained the change in contour numbers mentioned in the earlier discussion.

Chair Gorton noted the change and the members agreed to include the change in the motion.

Vote: Motion was carried 6-0.

Chair Gorton advised that if any member of the audience would like to appeal this decision to the City Council they should contact Mr. Noble. Mr. Noble noted that they could contact anyone in the Planning Department and submit an application within 10 days of this discussion.

6. PUBLIC HEARING - CASELOG #11010: APPLICATION FOR CONDITIONAL USE PERMIT TO ALLOW FOR AN OVERSIZED ACCESSORY STRUCTURE ON PROPERTY LOCATED AT 514 WEST 5TH AVENUE IN THE OLD SHAKOPEE RESIDENTIAL (RIC) ZONE. APPLICANT: GEORGE BREEGGEMANN.

Mr. Noble presented this item to the Board. He stated that George Breeggemann has submitted a Conditional Use Permit application for an over-sized accessory structure in the Old Shakopee Residential Zone. The proposed use of the structure is a garage for parking of personal vehicles.

The applicant owns a single-family home, a single car detached garage that accesses 5th Avenue, and a shed occupy the 0.20-acre site. The total square footage of accessory structures on the site is 448 square feet. The applicant is proposing to construct a 24' x 24' (576 square-foot) two-stall garage and the existing structures would remain on the site. The City Code permits the total area of accessory structures to be 75% of the footprint of the principal structure, or 10% of the lot area, whichever is less. The principal structure has a footprint of 1040 square feet, and the lot area is 8,520 square feet. The total amount of square footage permitted on this lot by code is 810 square feet, based on 75% of the footprint of the principal structure. The total area of accessory structures proposed is 1024 square feet.

City Code requires a Conditional Use Permit to exceed the standard regulations in the RIC Zone; all other zones require a variance to exceed the square footage requirement. The Conditional Use Permit regulations do not permit accessory structures to exceed the footprint of the principal building. As proposed the square footage of accessory structures is 16 square feet less than the principal structure. A proposed site plan and building plans were provided.

City Code Sect. 11.86, Subd. 2. A. provides the following standards for the requested over-sized accessory structure:

1. Shall meet all setback requirements for accessory structures;
2. shall not exceed the total square footage of the principal structure;
3. shall not exceed 50% impervious surface on the lot;
4. shall not be used for any commercial or leased storage;
5. shall not impede or alter natural drainage flow;
6. shall not increase runoff to neighboring properties;
7. shall provide a scaled elevation of the proposed structure; and
8. the architecture and exterior materials must be compatible with the principal structure and neighboring properties.

As the applicant has proposed, all standard conditions have been met. For this specific request, staff and other agencies are requesting the following conditions in addition to the standard conditions as set forth by code:

1. The roof overhang toward the property to the east must not exceed 12”.

The criteria required for the granting of conditional use permits (per City Code Section 11.85, Subd. 1) are listed below along with draft findings for the Boards consideration.

Criteria #1 The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity;

Finding #1 No evidence has been presented that the uses will be injurious to the use and enjoyment of other property in the immediate vicinity for purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.

Criteria #2 The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area;

Finding #2 The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses allowed in the area.

Criteria #3 Adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided;

Finding #3 Adequate utilities, access, drainage and other necessary facilities have been or will be provided to the site.

Criteria #4 The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use; and

Finding #4 The use is consistent with the purposes of the Old Shakopee Residential (RIC) zone.

Criteria #5 The use is not in conflict with the Comprehensive Plan.

Finding #5 The use is not in conflict with the Comprehensive Plan.

Staff recommends that the Board approve Resolution No. PC11-010, a Conditional Use Permit to allow an over-sized accessory structure, as presented.

George Breeggemann, of 514 West 5th Avenue in Shakopee, addressed the Board with the purpose of building the oversize structure. He stated that he had lived at the residence for many years with only a single-car garage. He would like to build a garage for his wife to park her vehicle in a garage.

No further comments.

Motion: Magin/Seidensticker moved to close the public hearing.

Vote: Motion carried 6-0.

No further comments from the Board.

Motion: Magin/Collins moved to approve Resolution No. PC11-010, a Conditional Use Permit to allow an over-sized accessory structure, as presented.

Vote: Motion carried 6-0.

7. **OTHER BUSINESS:**

No other business was noted.

8. **ADJOURN:**

Motion: Magin/Seidensticker moved to adjourn the meeting.

Vote: Motion carried 6-0. Meeting adjourned at 8:05 p.m.

OFFICIAL PROCEEDINGS OF THE PLANNING COMMISSION

REGULAR SESSION SHAKOPEE, MINNESOTA AUGUST 4, 2011

MEMBERS PRESENT: Gorton, Seidensticker, Collins, McQuillan, Klemm, and Magin

MEMBERS ABSENT: Mangan

STAFF PRESENT: Mark Noble, Planner II

1. ROLL CALL:

Chair Klemm called the meeting to order at 8:05 p.m. Roll call was taken as noted.

2. APPROVAL OF THE AGENDA:

Motion: Gorton/Magin moved to approve the Agenda.

Vote: Motion carried 6-0.

3. RECOGNITION BY PLANNING COMMISSION OF INTERESTED CITIZENS:

Chair Klemm recognized anyone in the audience wishing to speak on any item not on the agenda. There was no response.

4. APPROVAL OF THE MINUTES OF THE JULY 7, 2011 MEETING:

Motion: Gorton/Seidensticker moved to approve the minutes of the July 7th, 2011 meeting.

Vote: Motion carried 6-0.

5. PUBLIC HEARING - CASELOG #11009: TO CONSIDER AN APPLICATION FOR PRELIMINARY PLAT AND FINAL PLAT OF SHENANDOAH EAST. SUBJECT PROPERTY IS LOCATED SOUTH OF C.R. 101, EAST OF SHENANDOAH DRIVE AND NORTH OF 4TH AVENUE EAST IN THE LIGHT INDUSTRIAL (I-1) ZONE. APPLICANT: UNITED LAND L.L.C.

Mr. Noble addressed the Commission and stated that staff recommends the continuance of this agenda item to the September meeting.

Chair Klemm noted that he did not open the public hearing for this agenda item. He asked for a motion to open the public hearing.

Motion: Magin/Seidensticker moved to open the public hearing for Caselog #11009.

Vote: Motion carried 6-0. The public hearing opened at 8:08 p.m.

Mr. Noble continued to address the Commission. He reported that United Land, LLC, has submitted an application for Preliminary and Final Plat approval of property located north of 4th Avenue East, east of Shenandoah Drive, and south of CSAH 101. The applicant is proposing to plat three (3) industrial lots, ranging from 13.332 acres to 28.720 acres in size, and a new public right-of-way (Shenandoah Lane), with the northeast lot the site of the proposed development at this time. No specific building plan has been proposed for this lot; development of this site will be subject to any city review requirements, whether Conditional Use Permit review and/or building permit review. The developer also proposes the removal of approx. 859 trees from the site, predominately in the northerly portion of the property, and intends to install 288 trees on the property.

Planning staff has received comments from a number of city and utility reviewing agencies, with several of them providing comments that should be incorporated into any determination by the Commission. City Engineering have reviewed the application materials and have noted that the storm water management plan for the site cannot be approved at this time since it does not address the fully developed conditions of the entire site. Due to the issues that remain concerning the comprehensive site design and its corresponding storm water management plan, and the potential for these to significantly impact the construction plans and the Preliminary Plat and Final Plat, City Engineering recommends a continuance of the public hearing until these items are adequately addressed.

Staff recommends that the Planning Commission continue the public hearing to September 8, 2011, to allow the applicant additional time to submit the requested information for city staff review.

Motion: Seidensticker/Magin moved to continue the public hearing until September 8, 2011.

Vote: Motion carried 6-0.

6. OTHER BUSINESS:

Mr. Noble provided information from Michael Leek regarding Due Process Issues with Land Use. Information has been forwarded by the City Attorney regarding a recent court decision on improper factors to consider in making determinations on land use cases. The Commission is asked to review the material and if there were any questions, comments or concerns to bring them forward at the next meeting where they can be addressed.

7. ADJOURN:

Motion: Gorton/Collins moved to adjourn the meeting.

Vote: Motion carried 6-0. Meeting adjourned at 8:13 p.m.

Amy Hulet
Recording Secretary