

**AGENDA ITEM 1  
NEW BUSINESS**

**SEPTEMBER 1, 2011**

**SUBLETTE COUNTY PLANNING COMMISSION  
MEETING**

**REQUESTED HEIGHT VARIANCE TO ALLOW FOUR WIND TURBINES TO BE  
CONSTRUCTED TO A HEIGHT OF 45 FEET IN THE HIGHWAY COMMERCIAL  
ZONING DISTRICT**

**Applicant:** Lower Valley Energy

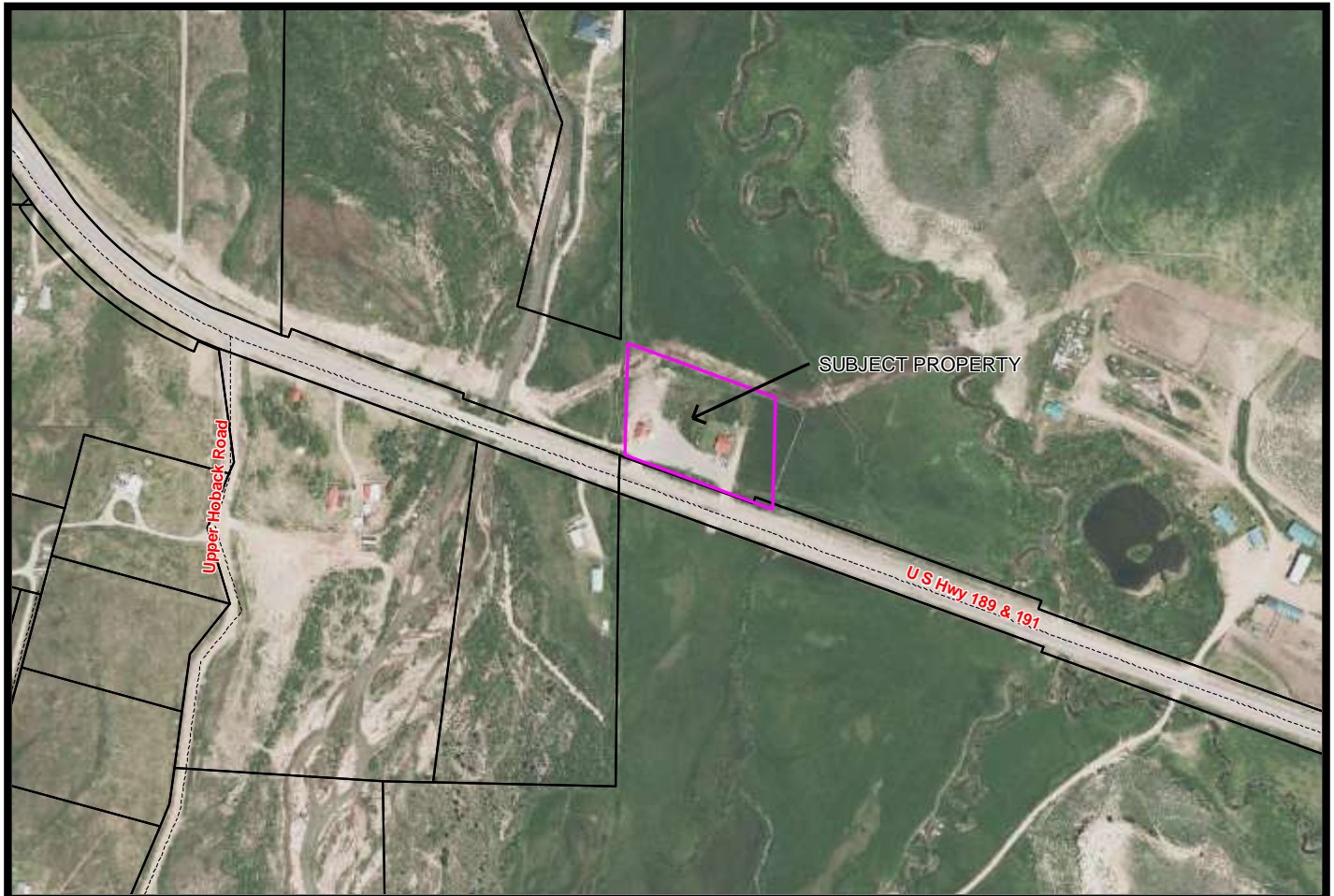
**Request:** Variance approval to allow four wind turbines to be constructed to a height of 45 feet in the Highway Commercial zoning district, rather than the 25 foot maximum allowed by the Zoning and Development Regulations.

**STAFF REPORT: Bart Myers**

## SITE DESCRIPTION

**Zoning District:** Highway Commercial  
**Property Size:** 3 acre portion of the 863 acre Riverbend Ranch property  
**Property Location:** Section 24, Township 37N and Range 113W; generally described as the Bondurant Post Office property located at 13855 U. S. Highway 189 and 191.

## VICINITY MAP



## BACKGROUND/HISTORY

The applicant, Lower Valley Energy, is the supplier of electrical power to the Bondurant area. As the Bondurant area is susceptible to voltage drops and power outages due to the closest substation being located at Hoback Junction, Lower Valley Energy would like to construct a wind and solar generation facility in the Bondurant area. The facility would provide supplemental power during voltage drops and is planned for the portion of the Riverbend Ranch property which is developed with the Bondurant Post Office and Branding Iron Café. The portion of the Riverbend Ranch property containing the post office and café is approximately three acres in size and is zoned Highway Commercial. The wind and solar generating facility will occupy 14,400 square feet of the three acre commercial portion of Riverbend Ranch. The maximum allowable building height in the Highway Commercial zoning district is 25 feet, with the four wind turbines proposed being 45 feet when the blade(s) are at their apex. Lower Valley Energy is seeking variance approval to allow the four wind turbines to be constructed at 45 feet.

In addition to the four wind turbines proposed, the wind and solar generation facility planned will also have 96 solar panels. The Zoning and Development Regulations have been interpreted to allow this type of utility use as an

authorized use in all zoning districts, making the only approval necessary the height variance for the wind turbines. In addition to the wind turbines and solar panels, the facility will include a small structure to house weather sensitive equipment, including the batteries associated with the use. All electric lines associated with the facility will be underground and in conduit. Lines will go from a transformer to a pole in order to feed electricity to the area and these lines will also be housed in conduit. This facility is not a high voltage station and the transformer associated with the facility is similar to a standard residential transformer.

## KEY ISSUE

**Issue 1:** *Why not place the facility on the portion of Riverbend ranch zoned agricultural?*

**25' height  
restriction in  
CH-1  
vs.  
60' height  
restriction in  
A-1**

In reviewing this proposal the first question from staff was why not move the facility off the Highway Commercial portion of the Riverbend Ranch property, as the remainder of the ranch is zoned Agricultural with a maximum allowable height of 60 feet. Having the facility on the Agriculturally zoned portion of the property would eliminate the need for the variance. With the exception of the three acres of Highway Commercial zoning, the remainder of the ranch is in a conservation easement, which prohibits the facility proposed. Additionally, the location of the facility is at the mouth of the Upper Hoback canyon, providing optimal wind generating capability in the Bondurant area and the facility is easily tied into the electric grid serving the Bondurant area.

## RELATIONSHIP TO APPLICABLE GOALS AND POLICIES FROM THE COMPREHENSIVE PLAN

*(Excerpts from the Comprehensive Plan which apply to the requested variance are shown in italics)*

### Land Use and Development

- ✓ *Work with developers to coordinate the adequate and efficient provision and delivery of services (e.g. utilities, water, sewer, solid waste)*

**Discussion:** With this proposal a facility will be developed which improves the provision and delivery of electricity to the Bondurant area, in keeping with this portion of the Comprehensive Plan.

### Natural Hazards/Environmental Considerations

- ✓ *The protection of public health, safety and welfare by discouraging development in areas of potential environmental hazards*
- ✓ *To generate and provide data on development limitation*

**Discussion:** Policies applicable to the goals identified in this Chapter include the consideration of site specific environmental features as part of land use decisions. These factors include natural hazards such as flood plains, slopes, soils and areas with high wildfire potential. Further environmental considerations include wildlife habitat and migration routes, riparian areas, wetlands, depth to water table, surface drainage patterns, the quantity and quality of surface and underground water resources. Additional policies related to this proposal include requiring interests wishing to develop land to demonstrate the suitability of land for the proposed development and requiring demonstration of adequate/appropriate mitigation measures before development on hazardous or environmentally sensitive areas is approved.

There are no environmental features or environmental considerations which would apply to this proposal.

### Facilities and Services

- ✓ *Encourage the grouping of public buildings close together whenever possible in order to foster community cohesiveness and convenience*
- ✓ *Support agencies and programs that provide services to residents of the County that are in need*
- ✓ *Include the following public utility/service considerations when reviewing proposed land use development plans and applications:*
  1. *The proposed development's proximity to available facilities and services*

2. *The anticipated demand for County provided services; and*
3. *The developer's plans for the provision and maintenance of required services*

**Discussion:** The goals and policies extracted from this Chapter of the Comprehensive Plan are met, as the proposed development is located on the same parcel as the post office and a café, in the area that best serves the needs of the Bondurant area.

**Natural Environment/Cultural Resources**

- ✓ *Wildlife Resources-Advance and employ those tools and techniques which enhance wildlife friendly development. Encourage early coordination among Sublette County and the Wyoming Game and Fish Department and projects proponents to enhance the inclusion of wildlife friendly recommendations into proposed developments.*

**Discussion:** Game and Fish was provided the opportunity and offered comments on the proposed variance. Those comments are attached and indicate the Game and Fish Department have no wildlife related comments to offer.

**RELATIONSHIP TO APPLICABLE LAND DEVELOPMENT REGULATIONS**

**Chapter III-Section 4: Setback Requirements**

The setback for the Highway Commercial zoning district is 25 feet for the front and 20 for the sides and rear. The applicable setbacks for the Highway Commercial zoning district are met and the turbines are setback approximately 180 feet on the left side, 40 feet for the right side, 25 feet from the rear and over 300 from the highway for the front. These are just the setbacks on the Highway Commercial portion of Riverbend Ranch. Because the commercially zoned portion of the ranch is not a separate or individual parcel, the setbacks to property boundaries with neighboring land owners are much greater. Should one of the turbines fall or collapse, it would be easily contained entirely on the Riverbend Ranch property.

**Chapter III-Section 9: Maximum Building Heights**

This section provides a maximum building height of 25 feet in the Highway Commercial zoning district. For the wind turbines to function efficiently a height of 45 feet is required, leading to the variance request.

**Chapter IV-Section 1: Zoning and Development Permit Required**

All proposed land development and use, construction and site improvement; including enlargement of existing uses and structures shall conform to all applicable development standards and only be permitted upon obtaining the necessary development (building) permit. The wind turbines are defined as structures because they are affixed to a permanent foundation; therefore, a building permit is required to construct the turbines.

**Chapter VI-Section 8: Variances/Lapse**

This section provides that a variance shall lapse and become void one year following the date on which it was granted unless construction or development is commenced prior to the expiration date and diligently pursued to completion. The Board of County Commissioners may extend its authorization for an additional six months for good cause.

**STANDARDS FOR APPROVAL OF VARIANCES**

**Chapter VI. Section 6. Variance Standards. The following standards shall apply to all variance applications:**

- a. *The granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to other properties in the vicinity;*

The granting of the height variance will not be detrimental to the public health, safety or welfare, or materially injurious to other properties in the vicinity. The proposed turbines are setback far enough that should they fall, they will not land on any neighboring property. The voltage generated by turbines is not high voltage, with the facility

being similar in nature to a residential electrical transformer. Additionally, all electric lines are underground and encased in conduit.

***b. The granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on use of other properties in the vicinity;***

If not for the conservation easement on Riverbend Ranch, the wind turbines could be moved approximately 25 feet to the north, in which case the turbines would be on the agriculturally zoned portion of the ranch property and could be constructed to a maximum height of 60 feet. There are numerous structures in the Bondurant area in excess of the 45-foot height proposed with this application, leading staff to find that the granting of this request is not a special privilege inconsistent with the height limitation imposed on other properties in the vicinity.

***c. The hardship which is the basis for the variance application was non self-inflicted by the applicant;***

The applicant for this proposal is Lower Valley Energy, not Riverbend Ranch. Because Lower Valley Energy is the applicant, staff is able to make this finding, as Lower Valley Energy is simply seeking the best location in Bondurant to provide supplemental power to the area. The hardship associated with the restricted height limit for the Highway Commercial zoning district is not a result of any action on the part of Lower Valley Energy. In fact zoning was not a factor in the decision by Lower Valley Energy on where to locate the facility, otherwise Lower Valley Energy would have sought a property zoned Agriculture with the 60 foot height allowance.

***d. The granting of the variance is justified for one or more of the following reasons:***

- (1) Strict interpretation or enforcement of the development standards would result in practical difficulty or unnecessary physical hardship inconsistent with the purpose of this resolution;***
- (2) Exceptional or extraordinary circumstances or conditions applicable to the site of the variance that do not apply generally to other properties in the same district;***
- (3) Strict interpretation or enforcement of the development standard would deprive the applicant of privileges enjoyed by other property owners in the same district.***

Strict interpretation and enforcement would result in practical difficulty and unnecessary hardship inconsistent with the purpose of the Zoning and Development Regulations. There is a public benefit associated with this facility to the citizens of Bondurant, with strict interpretation and enforcement resulting in the inability of the applicant to construct the facility. Given the location and stated need, not allowing the height variance is not consistent with the purpose of the adopted zoning and development standards, because the proposal provides a benefit to the public and surrounding property owners by affording a supplemental power supply to address voltage drops and power outages.

<b>OUTSIDE AGENCY REVIEW</b>
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**County Fire Board**

Stan Zierlein, Assistant Fire Marshall and Water Wise Superintendant, responded on behalf of the Fire Board. Staff spoke to Mr. Zierlien for clarification of his comments regarding concerns for public safety. Mr. Zierlein feels that with the Lower Valley Energy facility being in close proximity to the post office and café there is the danger of children playing on the solar panels or throwing rocks and damaging the panels. Mr. Zierlein said he could only support this proposal if the entire facility is fenced. Staff spoke to the applicant about Mr. Zierlien’s concerns and his request to fence the facility. The land owner will not allow the facility to be fenced, as fencing would interfere with snow removal at the post office. While fencing may keep children or others from directly accessing the facility, fencing would not prevent rocks from being thrown at the panels unless it was an extremely high solid fence. Lower Valley Energy’s representative is not concerned about public safety, as this is a low voltage generating facility with a building to be constructed to house sensitive equipment. Trespassing and vandalism have not been issues at similar facilities, with Lower Valley Energy being aware of the issues and not concerned. Mr. Zierlein’s comments are attached.

**County EMS**

Wil Gay, Director of the County Emergency Services, responded and expressed no concerns with the proposal. Mr. Gay’s comments are attached.

**Wyoming Department of Transportation**

Damon Newsome, District Traffic Engineer, indicates the Department of Transportation has no issues with the proposal, but would require a permit for Lower Valley Energy to work within the highway right-of-way. Mr. Newsome’s comments are attached.

**Wyoming Game and Fish Department**

Scott Smith, Wildlife Management Coordinator, reviewed the proposal and had no wildlife comments to offer. Mr. Smith’s comments are attached.

In addition this application was provided to the County Sheriff’s Department, County Weed and Pest, County Sanitarian, County Conservation District, County Road and Bridge Department, County Rural Health Care District, County Chamber of Commerce, Sublette Economic Resource Council and School District #1. As of the date of this staff report no comments have been received from these agencies.

**PUBLIC COMMENT**

This application was published as a legal advertisement in the Sublette Examiner and sent to all neighboring property owners within a 1,000 foot radius of the subject property. As of the date of this staff report no public comment has been received.

**STAFF RECOMMENDATION**

Planning Staff recommends that the Planning Commission take the following action:

Recommend that the Board of County Commissioners **APPROVE** the requested Variance on the basis of finding that the request meets all applicable standards set forth in the Sublette County Comprehensive Plan and Zoning and Development Regulations.

**ATTACHMENTS**

- 1) Site Plan
- 2) Reviewing Agency Comment
  - County Fire Board
  - County EMS
  - Wyoming Game and Fish Department
  - Wyoming Department of Transportation