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LOUIS MORALES ON BEHALF OF
AFFECTED PERSONS OF
BINGHAM COUNTY

Appellants,

)
) **APPEAL OF PLANNING COMMISSION**
) **DECISION APPROVING**
) **APPLICATION FOR SPECIAL USE**
) **PERMIT SUBMITTED BY**
) **RIDGELINE ENERGY LLC**
)

Attorneys for AFFECTED PERSONS AGAINST SPECIAL USE PERMIT EFFECTING
WOLVERINE CANYON

**Application for Appeal from the Decision of Planning and Zoning Regarding the Special
Use Permit Submitted by Ridgeline Energy, LLC Rendered on September 26, 2007.**

COMES NOW the Affected Persons of Bingham County by and through Dr. Louis Morales, affected persons as defined in 2.2 Zoning Ordinance of Bingham County, Idaho, and hereafter referred to as “Appellant,” by and through their attorney of record, the firm of Blaser, Sorensen and Oleson, Chartered, and appeals the approval on September 26, 2007, of the Special Use permit submitted by Ridgeline Energy, LLC (“Ridgeline”) as follows”

1. *The Planning and Zoning Commission failed to properly consider the factors set forth in Bingham County Zoning Ordinance 10.3.*

In determining whether or not a special use permit should be approved, the Planning

Commission is required to consider several factors set forth at Bingham County Zoning Ordinance 10.3. The subsection most applicable to Ridgeline's application is 10.3.8 which states that prior to approving a special use permit, the Commission must find adequate evidence that such use at the proposed location will: "Not result in the destruction, loss or damage to a scenic or historic feature of major importance." Ridgeline's application for special use permit fails to adequately address this section.

The first argument Ridgeline sets forth in support of its argument regarding this section is that not all of the towers will be visible from Blackfoot or Shelley. Ridgeline goes on to claim that there are numerous other man-made structures that can be viewed in the area and so the towers will add nothing new and will not reduce the "scenic quality" of the area. Apparently, this claim is based upon some standard used by the US Department of Transportation and Forest Service, but is not fully explained. The second argument is that Ridgeline will use "larger" towers, to increase the space between the towers, apparently in an attempt to claim the larger, bulkier towers create a better view than numerous towers. Finally, Ridgeline argues that "numerous studies" have determined that wind farms do not decrease property value. However, no examples of how these studies reached their conclusion are found, and only one study is cited. Additionally, the study which supposedly supports this argument was not included, and as such, cannot be reviewed.

Ridgeline attempts to gloss over the impact the proposed wind farm will have on the scenic nature of the land in question. The wind farm, by Ridgeline's own admission, is going to effect 17,640 acres in a Natural Resource/Agricultural District ("NR/A"). This includes towers, substations, equipment sheds and 50+ miles of roads. These roads will be cut through NR/A

zoned land, for no other purpose than to service the towers. The very purpose of NR/A zone is to protect “recreation and scenic areas” along with “wildlife habitat.” (See Bingham County Zoning Ordinance 4.2.1). The Idaho Department of Fish and Game (“IFG”) has recognized the impact motor vehicle travel can have on both big game and upland game animals. In particular hunting unit 69, which is in part of the area Ridgeline wishes to develop, has been placed under Motorized Vehicle Use Restrictions by IFG. This issue was not addressed in Ridgeline’s application and it obviously raises concern when 50+ miles of road is proposed in an area which has historically been used for recreation and hunting, and in which the IFG has deemed motorized vehicles to be unwanted. Ridgeline is proposing a permanent alternation to a large amount of land, in a protected area, solely for a commercial purpose. A purpose that inherently conflicts with the very basic idea behind the NR/A zone and the IFG has deemed worthy of protection. Further, Ridgeline’s proposal fails to satisfy the requirements of 10.3.8, and in fact, provides evidence showing Ridgeline’s proposed development directly impacts the scenic and historic features of the area in question.

Even more troubling is the fact that Wolverine Canyon is the only area of its kind within Bingham County. No where else in the county are the scenic and wildlife opportunities provided by Wolverine Canyon available. Hundreds, if not thousands, of both Bingham County residents and outside individuals visit Wolverine Canyon each year. Wolverine Canyon is widely known for the scenic and wildlife opportunities which it provides. Wolverine Canyon has been used, historically by those wishing to enjoy the outdoors and the unique scenery it provides. If 150 wind towers are built within this area, the scenic and historic nature of the canyon will forever be destroyed.

Ridgeline claims that only 120 acres of land will be developed. While this number appears to underestimate the amount of land that will be developed if one runs the calculations, it does lend itself toward comparison. If Ridgeline stated that they wished to bulldoze, level, and cover 120 acres or 5,227,220.88 square feet in gravel, in an NR/A zone, for commercial use, it is certain that the Planning Commission would deny such a special use permit, as such a request directly contradicts the basic reasoning found behind the NR/A zone. This is exactly what Ridgeline will be doing if the special use permit is granted.

Further Ridgeline does not address the additional maintenance costs the increased use of the roadways will require or what maintenance of the roadways is expected in the winter. Historically during winter, the road through Wolverine Canyon has purposely went unplowed and has been officially closed to vehicle traffic so that snowmobiles can utilize the area. Is this long standing historic use going to be done away with, so that Ridgeline can maintain its towers? If so, countless residents of Bingham County will be negatively impacted, so that Ridgeline can turn a profit in a unique wilderness area found nowhere else in Bingham County. Further, if winter plowing is required, not only will it change the historic winter use of the area, but will also greatly increase the public expense, as this new expanse of road will require plowing.

If Ridgeline is granted a special use permit, the scenic quality of the area, will be greatly effected. Also, the wildlife in the area, which IFG has deemed worthy of protection will be negatively effected. Not to mention the fact that decades of historic use will be forced to an end. Clearly, upon a closer review of Ridgeline's application, the evidence dictates that the special use permit be denied, as the negative impact on this unique area cannot be allowed.

2. *The decision of the Planning and Zoning Commission was arbitrary and not based upon a full view of all the evidence, as only Ridgeline's side was presented.*

The public hearing on Ridgeline's special use permit did not start until 11 pm on a Wednesday night. It is believed that several people who wished to dispute the special use permit, left due to the lengthy delay in the hearing taking place. Additionally, even one of the Planning and Zoning Board members stated that she was "ready to vote yes, because she was tired." Such a statement shows, that this decision was not based upon the evidence presented or the lack thereof, but was simply a decision made due to the personal convenience of the Commission members.

It is also troubling that no basis was given for the reduction of the number of towers from 300+ to 150 and that no restrictions on the placement of the towers were considered. 17,640 acres is going to be effected. Obviously, there are places and areas a turbine, along with the required supporting roads, can be placed that would have less impact on the scenic aspects of the area along with wildlife, erosion, and the like. However, the Planning Commission failed to consider setting such restrictions and simply left it up to Ridgeline to determine where the towers be placed. Again, this approval is clearly arbitrary. Ridgeline is not going to place the towers according to lack of scenic and wildlife impact, but upon the profit of each location. If the Planning Commission had properly considered the impact of the special use permit, at the very least, restrictions as to where within the 17,640 acres the towers were to be placed, would have been made. The fact that no such restrictions were made not only shows that the Planning Commission's decision was arbitrary, but that the Planning Commission improperly failed to consider the facts and evidence presented. Once again, evidencing the invalidity of the special use permit which has been granted.

3. *Ridgeline's application does not satisfy the requirements of Bingham County*

Ordinance 10.2 and must therefore be denied.

At a minimum, the application shall contain the following information:....

10.2.6 A Site Plan Drawing showing the location of the following:

- a. All buildings, parking and loading area;
- b. Traffic access and circulation;
- c. Open spaces, landscaping, refuse and service areas;
- d. Utilities, signs, yards;
- e. Any other information that may be required to determine if the proposed special use meets the intent and requirement of this Ordinance; and
- f. A statement evaluating the effects on the adjoining property that may include, but is not limited to such elements as noise, odor, fumes and vibration. A general statement of the general compatibility with adjacent and other properties in the district and the relationship of the proposed use to the Plan.

Upon review the application submitted by Ridgeline fails to comply with the requirements of this Ordinance. No where in the application packet can one find a Site Plan Drawing of “All buildings” let alone parking and loading areas. Ridgeline’s application is purposely vague on the location of the towers as they have not yet determined where the towers will be placed. Even assuming *arguendo* that the towers do not meet the definition of a building, Ridgeline’s application states that both equipments sheds and substations will be built. Again, Ridgeline failed to provide any drawings as to where these buildings will go. Ridgeline’s application also failed to indicate where traffic access will occur, simply stating that 50+ miles of road will be required to service the towers. Again, no indication of where within the 17,640 acres these roads will be placed, has been provided.

It is apparent from a close review of Ridgeline's application that it does not meet the minimal requirements of a special use permit application set forth by Bingham County Ordinance.

As Ridgeline failed to provide a Site Plan Drawing, its application is insufficient under the governing Ordinance. Accordingly, it was error to issue the special use permit and it must be voided.

4. *Ridgeline is simply in the business of procuring wind farm sites and has no interest in how the wind farm is actually developed or maintained.*

Ridgeline, the entity which applied for the special use permit, will have no involvement in the development or maintenance of the wind farm at issue. According to Ridgeline's website, The Wolverine Creek wind farm has been sold to Invenergy Wind, LLC. This would explain the vagueness and shortcomings of the special use permit application. Ridgeline will not be involved in the development, let alone the maintenance, of the wind farm. They are simply purchasing a commodity to be passed on to the highest bidder. Ridgeline fails to provide the required detail for a special use permit, as these are not issues with which Ridgeline is concerned. Further, it is to Ridgeline's advantage to obtain the broadest and least restrictive special use permit possible, as they want to make their commodity as attractive as possible to buyers. It is disingenuous for Ridgeline to claim they will do everything to protect the area in question, when they will not even be involved with the development. Due to this misdirection on behalf of Ridgeline, the special use permit must be denied.

5. *A wind farm is not either a natural resource or agricultural use under the definitions found in the Bingham County Ordinances.*

Definitions of certain terms as used in the Bingham County Ordinances is found at section 2.2. Under this section Agriculture is defined as "A tract of land that shall be used primarily for

farming, pasturage, cultivation, animal or poultry husbandry, dairying, forestry, raising crops, fisheries, horticulture and truck gardening.” Farming is defined by *Merriam-Webster* as “to devote to agriculture.” The Bingham County Ordinances define Natural Resources as:

Land and/or water in a natural, unimproved state including that which may be growing on or found in the land. Natural Resources include, but are not limited to, mineral deposits, timber, rangeland, watersheds, recreation areas and wildlife habitat.

At the hearing on Ridgeline’s special use permit, one of the commissioners stated that since the application was for a “wind farm” it fell within the allowable uses within a NR/A zone. Wind or wind farming is not mentioned in either of these definitions. It is clear that the definition concerns the land and what can be raised or produced from the ground. However, recreation areas and wildlife habitat clearly is within the definition of natural resource. If a commissioner voted to approve the wind farm upon the belief that it was agricultural in nature, such an approval failed to apply the clear-cut definitions set forth in the applicable Ordinances. As such, such an approval cannot be allowed and the special use permit must be denied.

6. *The notice provided to landowners was insufficient and invalid.*

As discussed above, Ridgeline proposed the development of 17,640 acres of land. Under Bingham County Ordinance 10.4, notice is required to be posted on the premise two (2) weeks prior to the public hearing. The term premise is not defined by the Bingham County Ordinances. However, *Blacks Law Dictionary* defines parcel “as used with reference to land generally means a contiguous quantity of land in possession of **an owner**.” 1112 (6th Ed. 1990) (emphasis added). Parcel is defined by the Bingham County Ordinances as “a legally created ownership of real property, as defined in a recorded document and is totally contained within any one section of land.” (See 2.2 *Bingham County Ordinance*).

Pursuant to the exhibits provided to the Planning Commission, notice was only posted on Blackfoot River Road and Wolverine Road, just below the narrows (Exhibit S-13). Both postings occurred on property owned by the Lloyd Stolworthy Limited Family Partnership. Five (5) other land owners were involved in the application for special use permit. Bingham County Ordinance 10.4 specifically uses the term premises, which it does not define. However, *Black's Law Dictionary* defines parcel as land in possession of an "owner." So, at the very least, notice should have been posted on the land owned by all six (6) landowners who were part of the special use permit application.

Based upon the Ordinance definition of parcel, notice should have been posted on each section of land addressed by the application. According to Ridgeline's own application, 47 parcels of land were affected by the application. However, only two (2) postings were made on a request for a special use permit addressing 17,640 acres. Even more troubling is the fact that nothing was posted on Bone Road or Seller Creek Road which run along the edge of the subject property miles away from where the postings were placed. It lacks common sense to argue that putting two signs, on land owned by one (1) land owner, for a special use permit affecting property owned by six (6) different individuals and covering 47 sections of land, and 17,640 acres, constitutes adequate notice to the public at large of what Ridgeline was requesting. Further, by the very definitions of the terms used within the Bingham County Ordinances, at a minimum, the land of each owner requesting the special use permit was required to be posted, and probably each section effected. At the very least, the land which bordered public access should have been posted. Since Ridgeline failed to properly post notice as required by the Bingham County Ordinances, their application for a special use permit is invalid and must be denied.

7. *Appellant reserves the right to raise additional issues as they come to light.*

At this time, it is unknown whether there are additional basis for objection to the granting of Ridgeline's Special Use Permit. Appellant's counsel was denied access, illegally, to the paperwork utilized in the action, including the application for special use permit and supporting documentation, until eight (8) days after the special use permit was granted. In addition, the minutes of the public hearing are not expected to be available until after the ten (10) day period to appeal has passed. As such, it is likely that further facts exist to support the denial of the special use permit, but until the minutes are available, Appellant is simply relying on the supporting documents which his counsel had two (2) days to review and his memory. Upon receipt of the minutes, Appellant reserves the right to supplement this appeal.

8. *Appellant does not dispute that a renewable energy source is desirable, but that certain considerations must be made before such a large land area is effected for such a purpose.*

Appellant wishes to make it clear that they do not object to utilizing wind farms and other renewable energy sources. However, in the present situation, it is clear that the Planning Commission has failed to consider the facts and evidence, along with the elements required by the Bingham County Zoning Ordinance. The decision to grant Ridgeline's special use permit was reached arbitrarily without needed limitations and restrictions. Under the present decision, Ridgeline has been given free reign to place 150 towers anywhere it desires on over 17,000 acres. They have been given this ability absolute. Ridgeline need not consider the scenic impact, the wildlife detriment or any other factor. They can place 150 commercial units in a NR/A zone, anywhere they please. Such a determination clearly violates both the spirit and the letter of the Ordinances established by Bingham County. Until the proper standards and evidence are considered, the special use permit

cannot stand and must be denied.

9. *Affected person's contesting the grant of special use permit.*

A. Affected Land Owners

George McDaniel

- Gordon & Rhonda Steffler
- Nick Barnard
- Lamar Grover
- Deloy & Jeanine Nelson
- Stacy & Holly Lilya
- Fred Carlson
- Rulon Jones
- Louis & Susan Morales
- Harrison Gerstlauer
- Frank VanderSloot - Melaleuca
- Alma Cram
- Valeria Crapo
- Robert & Doris Cox
- Dee & Blanka Stacey
- Orin Morgan
- Calvin & Barbara Slater
- Donald & Susan Gosswiller
- Noal & Valerie Messick

- Eduardo & Candy Gonzales
- Janet Orchard
- Linda Black
- Bradley & Jolene Chaffin
- Gregg & Lynette Bybee
- Steven M. & Debra Wilson
- Frank & Bridgett Stanger

B. Affected Non-Land Owners

- Lavar Jolley
- Larry & Diana Allen
- Kristy Bromley
- Paul & Susan Fullmer
- Paul & Jo Jones
- Ray Harris
- Jerry Harris
- Dwayne & Carol Swearingen
- Shawn & Lisa Lilya
- Shawn & Wendy Schild
- Darwyn & Deana Jolley
- Bruce & Lori Jolley
- Brandon & Emily Jolley
- Jamie & Leslie Hansen

- Bucky & Steviek White
- Darrel & Barbara Peterson
- Melvin & Bobbi Lilya
- Mitch & Wendy Curtis
- Andy & Jacqueline Mabry
- Richard & Dixie Peterson
- Ray and Janet Fillmore
- Stella Webb
- Rhonda Watts
- Francis & Bonnie Bybee

10. *Conclusion*

It is apparent that the Planning Commission improperly approved Ridgeline's special use permit. First, the notice was deficient as only two signs were posted for a permit which was to affect land owned by six (6) separate individuals and covered 17,640 acres. Second, the application did not contain a Site Plan Drawing as required. In addition the application was vague and misleading as it did not provide information required by law. Third, the Planning Commission failed to adequately consider the factors set forth under Bingham County Ordinance 10.3, and particular the impact the granting of this special use permit will have on the scenic and historic uses of the area, along with the impact on wildlife. Fourth, the decision of the Planning Commission was arbitrary as it misinterpreted the applicable standards and definitions and failed to consider the appropriate factors as set forth by the Bingham County Zoning Ordinances. A claim made clear by the fact that Planning Commission gave Ridgeline absolute discretion on the placement of towers and roads, after

arbitrarily cutting the number of towers in half. Due to the numerous and glaring deficiencies in both Ridgeline's application and the Planning Commission's decision making process, it is clear that the granting of the special use permit was in error, and the special use permit must be denied.

DATED this _____ day of _____, 2007

JUSTIN B OLESON
Attorney for Appellants