

Perquimans County Planning Board
MINUTES

Tuesday, December 8, 2015

The Perquimans County Planning Board held its regular monthly meeting on Tuesday, December 8, 2015 at 7:00 PM in the Court Room located on the 2nd floor of the Perquimans County Courthouse Annex Building.

MEMBERS PRESENT: **Paul Kahl, Chair**
 A.O. Roberts
 Brenda Lassiter
 Lewis Smith
 Donald Manley

MEMBERS ABSENT: **none**

OTHERS PRESENT: **Frank Heath, County Manager**
 Donna Godfrey, County Planner
 Rhonda Money, GIS
 Many Interested Parties (see attached Exhibit "A" Sign-In Sheet)

Chairman Paul Kahl called the meeting to order at 6:59 pm and opened with prayer.
Agenda Item II, Consent Agenda/ Approval of Minutes: Ms. Lassiter made a motion to approve the agenda as presented. Mr. Smith seconded it. The motion carried. Donald Manley made a motion to approve the Planning Board Minutes of November 10, 2015 as presented. Mr. Roberts seconded it. The motion carried.

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Agenda Item III, Consideration of Administrative Text Amendment No. TXT-15-01, to revise standards, conditions, procedures and definitions for Large-Scale Wind Energy Facilities in the unincorporated County, with proposed changes to Articles IX & XXIV of the Zoning Ordinance. Chair Kahl asked Ms. Godfrey to explain the agenda packet with its list of attachments. It consisted of maps by Perquimans County GIS Mapper Ms. Money and corresponding Table 907.27 by Planner Godfrey. Ms. Godfrey explained that any new change to this ordinance will not apply to the Iberdrola site, but the maps showing the estimated setbacks on the Desert Wind project and the informally known Apex project located in the Bear Swamp community were used in the maps as two hypothetical examples of the effects caused by the various setbacks. The Draft Ordinance with 5 tables corresponds to the 5 map scenarios. The 5 scenarios came out of the scenarios discussed by the Planning Board Subcommittee at its last meeting.

- Setback Exhibit A-1 shows the current setbacks in the County’s Zoning Ordinance;
- Exhibit A-2 shows a ½ mile setback from residences but all other setbacks are as per the current Zoning Ordinance;
- Exhibit A-3 shows a ½ mile setback from residences but a setback of 2.5 times the height of the turbine from all other protected locations;
- Exhibit A-4 shows a ½ mile setback from all protected locations; and
- Exhibit A-5 shows a setback of 2.5 times the height of the turbine from all protected locations.

Ms. Lassiter pointed out to the rest of the Planning Board that the subcommittee was looking at setback option A4 at its last meeting. Planner Godfrey explained that the subcommittee also recommended escrow account language similar to what was recently approved by Chowan County. The escrow

account is for the County staff to hire third party experts to research any subjects that staff does not have enough knowledge in to determine compliance. In her research on why Chowan had picked \$50,000, she learned they had no formal basis to use that particular amount, it was just deemed a reasonable number. Chair Kahl asked to go through just one point at a time and let the board discuss as they go along, so the topic jumped back to maps and turbine setbacks.

Mr. Kahl had previously asked why some setbacks were 1.5 and others 2.5. Planner Godfrey said partly because some of it was in the Model Wind Ordinance. Mr. Kahl reported that in his research for a scientific reason he found that 1.3 is the multiplier normally used and that 1.5 and 2.5 already have safety factors built in. Based on good, sound, engineering practices Mr. Kahl believes the current setbacks are adequate.

Mr. Roberts asked why the Planning Board subcommittee was entertaining the idea of a ½ mile setback. Ms. Lassiter explained it was based on what they had been hearing from the community citizens. When Iberdrola's project was coming through the Planning Board there was very little opposition. Apex is a different situation because Weyerhaeuser owns most of the land and the other landowners involved do not live in the county.

Mr. Kahl acknowledged that he was not concerned with 3 nor 33 property owners when he is writing legislative ordinance language. Whether 3 or 33 property owners do or do not live in the county is not a concern of his when it concerns a legislative ordinance.

Mr. Roberts brought up that the room was full of solar farm opposition at the time solar farm projects were being discussed but it did not change the Planning Board's opinion at that time.

Mr. Kahl discussed safety and chances of hazardous events. He used analogies of space shuttle explosions and the Peter Pan recall several years ago (2007).

Mr. Smith reasoned that the Board needed to try to meet Perquimans citizens half way so they would feel appreciated.

Mr. Manley agreed that the Board needed to compromise with the County citizens.

Mr. Smith asked Planner Godfrey to verify that any change in the ordinance at this time would not affect the continuation of the Desert Wind project. She said the only way for it to affect Iberdrola is if they made a major modification or did not show progress in a certain time frame, resulting in revocation of their Conditional Use Permit which provides a vested right under the current ordinance and the CUP-11-01 itself.

Chairman Kahl asked if any of the audience wanted to briefly discuss only the setback issue.

- Alan Lennon introduced himself as one who turned in a self-written text amendment with a table consisting of one mile setbacks. Mr. Lennon announced that he had over 880 signatures that wanted a 1 mile setback from residences.
- Leary Winslow: He said he felt like a 2.5 multiplier was not enough to protect the citizens nor was it a compromise. He personally feels like a ½ mile is a compromise for both parties and did not see where the other options were even coming from because he was at the subcommittee meetings and the ½ mile was what was decided upon. He asked a rhetorical question about the citizens being the ones we are here to protect and emphasized the 880 signatures that Mr. Lennon had mentioned.

- GIS mapper, Rhonda Money: pointed out that if you use a half-mile setback on the address points and kept all other protected areas at their original setbacks, Apex will only lose 10% of their useable land compared to having all current setbacks.
- Walker Rayburn: acknowledged that he does not live in the Bear Swamp area but does live in the County. Mr. Rayburn has been involved in a lot of regulation writing in the past. He said, “when you try to write a regulation for or against a specific project, which is what this looks like, you’re going to get in trouble legally.” The current ordinance was backed up by engineering data. The county authorized one construction project with that engineering data. If the county starts trying to change it mid-stream he thinks the county will have problems.
- Alissa Cale of Weyerhaeuser: The major difference she hears about and would like to address between the Apex project and the Iberdrola project is that in the Iberdrola project there were multiple landowners so it was “no big deal”; but with Apex it’s just Weyerhaeuser (in Perquimans County). So it feels like a ‘taking’ from Weyerhaeuser’s point of view if the County is going to limit this project with a different set of regulations from the Iberdrola project.
- Heath McLaughlin: As a property lease holder he takes offense to citizens saying they trump property rights. He encouraged the Board to give great consideration to property rights. He drives around and sees silos, chicken coops, and broken down cars but he doesn’t go knock on the person’s door and tell them to remove it. He is against this pitchfork bully mentality trying to override property rights.
- Rita Saunders, Perquimans County property owner: feels that with all the cement underground the turbines should be secure. Her family has owned property in the county since 1946 and she is in favor of Exhibit A-1 with the current setbacks and technology.
- Tommy Harrell: Said he lives within the midst of this project and wanted a 1 mile setback but feels like a ½ mile setback is a compromise and would offer more safety than current setbacks.
- Tommy Stokely: Said he lives on Bear Swamp Road. This is being portrayed as a huge taking from Weyerhaeuser but keep in mind the original area encompassed 25,000 acres. Apex had a lot more land they could have looked at but did not. He is concerned that Apex is acting like there is no land other than what is already signed up. He wants the setbacks for property lines to be the same as setbacks for residences because it could affect his future building plans on his property if not.
- Don Giecek with Apex Clean Energy: The County already has setbacks in place for cell towers which is 1.1 times the height of the tower which is to protect from the fall of the tower. He asked Ms. Godfrey if setbacks apply to water towers. She said that question would need to be researched further. He asked people in the audience to raise their hands if they were in favor of the current setbacks. Mr. Giecek feels like the area that Iberdrola’s project is in and the area the proposed Timbermill project is in are very similar because they are both zoned as rural agriculture, both utilize the largest and most remote agricultural forestry tracts in the county and they were both ditched and drained showing a history of improvement by the landowners. The population density is similar also. He wants setbacks to be based on science not people’s opinions. Mr. Giecek also mentioned that Apex has opened up an office in Hertford next to the Perquimans Weekly office and has hired Patsy Miller to man it so the public could go in and look at maps and ask questions about the project.
- Mel Atkins: One person’s property rights ends where someone else’s property rights begin. (Some of) the citizens are afraid to lose the rural residential character. Not trying to stop a project, just trying to be safe. What will the County gain from the (Apex) project?

Chairman Kahl ended the setback discussion for then and moved onto the following:

- Adequate property value guarantees: It is subjective and he wants to stay away from the subject. Mr. Smith asked if the Board needed to go to the background subcommittee recommendations and

move through them. Chair Kahl and Ms. Lassiter said the subcommittee decided to let the County Commissioners work that out amongst themselves and that the subcommittee did not have an opinion on that subject.

- Protection from Sound and Shadow Flicker: Chair Kahl said shadow flicker can be monitored and controlled easily by turning off individual turbines during certain times of day. He felt the monitoring of this would be better if put in the conditional use permit and just leave the ordinance as it is.
- Decommissioning criteria: Discussion started about adequate decommissioning and financial security in regards to decommissioning plans. The subcommittee drafted some potential changes in the ordinance re-wording. The question is do we put it in the ordinance or do we add extra conditions to the conditional use permit. Ms. Lassiter said to change the words in the zoning ordinance. Chair Kahl was leaning toward putting the extra language as a condition in a conditional use permit. Mr. Manley asked Planner Godfrey which way will make it more enforceable? County Manager Heath felt that it would be more effective in the actual ordinance.
- ❖ **Ms. Lassiter made a motion to keep decommissioning in the zoning ordinance with the changes Planner Godfrey provided in “12-4-15 Draft – revisions to Wind Energy Regulations”. Mr. Smith seconded it. The motion carried unanimously.**
- ❖ **Mr. Kahl recommended leaving sound as it is in the current ordinance. Mr. Roberts made a motion to leave the ordinance as it is in respect to sound and shadow flicker. Mr. Smith seconded. The motion carried unanimously.**

Ms. Godfrey discussed adding additional language under Table 907.27 on page 5 of 14 in the 12-4-15 Draft – revisions to Wind Energy Regulations [Setback requirements may be waived by a property owner so long as such waiver is in writing and signed by the property owner and recorded in the Perquimans County Register of Deeds Office, “*and does not diminish the setback required from other protected locations*”] The Board decided that the current wording in the ordinance was adequate as it is.

- ❖ **Mr. Kahl brought up the subject of Property Value Protection. The Planning Board decided to leave that topic alone and let the County Commissioners deal with it if they wished.**

Escrow Account: Section 907.27 (B)(1)(i) was discussed relating to an escrow account. Mr. Roberts asked if the escrow was pre- and post-project. Planner Godfrey recommended the escrow amount be put into a separate fee schedule determined and approved by the County Commissioners annually. Mr. Roberts wanted to know if the escrow was to remain in the account for the duration of a 25 year project.

- ❖ **Ms. Lassiter made a motion to adopt the wording as Planner Godfrey had written in the 12-4-15 Draft – revisions to Wind Energy Regulations. As discussion ensued, Ms. Lassiter amended her recommendation to let the \$50,000.00 escrow amount be on a separate fee schedule determined by the Board of County Commissioners annually. Donald Manley seconded it. The motion carried unanimously.**

Ms. Lassiter asked Don Giecek of Apex Wind Energies if the Apex project would be knocked out if ½ mile setbacks were used on just the residences. Mr. Giecek said it looks like they would have somewhere around 35 or 45 turbines in Perquimans County and 10 turbines would be knocked out if exhibit A-2 was used. He was not sure if that was enough to kill the project, but it would be close. He said about 30 would be knocked out if the County chose option A4 and that would kill the project.

- ❖ Mr. Roberts made a motion to keep the ordinance setbacks as they are, but the motion died due to lack of a second.
- ❖ Mr. Smith was in favor of option A2 in deference to the homeowners of Perquimans County, and made a motion that the Planning Board adopt Exhibit A-2 as a compromise between the existing ordinance and the choice that had ½ mile setbacks on all protected areas. The motion died due to lack of a second.
- ❖ Ms. Lassiter made a motion to approve Exhibit A-3. Mr. Manley seconded it. After much discussion the motion failed by a vote of 2 to 3 (2 in favor, 3 opposed). Mr. Manley and Ms. Lassiter were for it; Mr. Roberts and Mr. Smith opposed it; Chair Kahl voted against it to break the tie. The motion failed.

Mr. Roberts asked how this option affects the other two landowners besides Weyerhaeuser and how it affects others that may want to be involved in the project in the future. Mr. Smith asked Ms. Lassiter what value she sees in option A3 over A2, because he did not see anything of value in that extra area. Planner Godfrey brought up that the buffers on the maps were from address points in general, not residences versus occupied buildings individually. She read the definition of “occupied structures”. Mr. Kahl thinks that option A3 would kill the Apex project. Chair Kahl pointed out that there is a sizeable acreage difference between options A2 and A3.

- ❖ There was a general consensus among the Board for Mr. Smith to put his earlier motion back on the floor. Mr. Smith made a motion, seconded by Ms. Lassiter, that the Planning Board recommend the ½ mile setback from residences and the existing setbacks for other protected locations, as per Exhibit A-2. The motion carried by a 4 to 1 vote, with 3 votes in favor, 1 vote opposed, and one vote abstained (Ms. Lassiter, Mr. Manley and Mr. Smith voted in favor and Mr. Roberts voted opposed. Chair Kahl did not vote).

Mr. Roberts stated that he needed more information about the effect on other nearby properties before he could vote for this option. Ms. Godfrey noted that an abstention is recorded as a vote in favor. Mr. Roberts stated that the chair only voted in the case of a tie in Roberts Rules of Order. Ms. Godfrey stated that the Planning Board has never adopted rules of procedure outside the regulations contained in Article II of the Zoning Ordinance. Mr. Roberts asked that the topic be placed on the Planning Board’s agenda for discussion.

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Agenda Item IV, Status Report on Previous Planning Board Recommendations: CAMA Land Use Plan Update. Ms. Godfrey reported that the CAMA Land Use Plan Update was approved by both Town Councils on November 9th and by the BCC on the 16th. Holland Consulting Planners (HCP) is working on editorial changes as we speak, and the County is on track for the Coastal Resources Commission to consider its certification of the Plan in February. The CRC’s meeting location will be made known as soon as it is available.

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Minutes approved this 12th day of January, 2015. Chair Paul Kahl adjourned the meeting at 8:43pm.

Chairperson

Recorder

Attachment: A (Sign In Sheet)

- ❖ The Planning Board’s recommendations on Case #TXT-15-01 are highlighted due to lengthy discussion and multiple motions and consensus actions.