

# Perquimans County Planning Board

## MINUTES

Tuesday, Aug 2, 2016

The Perquimans County Planning Board held a Special Called Meeting on Tuesday, Aug 2, 2016 at 6:00 PM on the second floor of the Courthouse Annex Building.

MEMBERS PRESENT: Paul Kahl, Chair  
Brenda Lassiter  
Donald Manley  
Lewis Smith

MEMBERS ABSENT: A.O. Roberts, Vice Chair

OTHERS PRESENT: Frank Heath, County Manager  
Donna Godfrey, County Planner  
Rhonda Money, GIS/Planning Assistant  
Hackney High, County Attorney  
Don Giecek, Representing the Applicant, Apex Clean Energy  
Many Interested Citizens

**Chair Paul Kahl called the meeting to order at 6:02 pm and opened with prayer.**

**Agenda Item I, Approval of Agenda: Mr. Smith made a motion, seconded by Ms. Lassiter, to approve the agenda as presented. The motion passed unanimously.**

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**Agenda Item II, Consent Agenda/Approval of Draft Minutes of Previous Planning Board Meetings: Regular meeting of November 12, 2013; Rescheduled meeting of December 19, 2013; Regular Meetings of February 11, April 8, and September 9, 2014 and *June 14 and July 12, 2016.***

**Ms. Lassiter made a motion, seconded by Mr. Manley, to approve previous minutes of Regular Meetings June 14 and July 12, 2016. The motion passed unanimously.**

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**Agenda Item III, Business Item: Continued Review of Conditional Use Permit No. CUP-16-01, requested by Timbermill Wind, LLC, c/o Apex Clean Energy Holdings, LLC, for a Large Wind Energy Facility in the Bear Swamp and Centerhill Communities [to include Tax Parcel Nos. 3-0039-00011B; 3-0047-00001, -00002, -00014 and -00028; 3-0048-00001 and -00003; 3-0049-00009, -**

**00024A, -00025, -00026, -00038 and -00039 (part); 3-0058-00004 (part), -00007 and -00013; and 3-0059-00012A(part)], and extending west into Chowan County.**

Ms. Lassiter opened the discussion by expressing her concern for road bonding. She has been observing the current wind farm project under construction (Iberdrola's Desert Wind) to research good and bad qualities of large scale wind farms in general. One of the big issues is that roads are being torn up by heavy truck traffic. She feels the burden of fixing the roads should be on the project developer; not the truck driver, not the taxpayers. She wants a contingency that all roads be bonded in regards to ingress and egress to the project.

Mr. Smith discussed the water quality report from Dwane Hinson. He asked if water quality, watershed and water movement are going to be addressed by Timbermill Wind. Don Giecek, representing Apex Wind Energy, responded that his company received that letter late last week and Apex's engineers have looked at it. Mr. Giecek offered to discuss the engineer reports but warned it would take a long time. He noted that a National Pollutant Discharge Elimination System (NPDES) permit is still needed as well as an Army Corps of Engineer permit and those should address stormwater concerns.

Ms. Lassiter said she worked for a legal firm ten years prior to working with public schools for twenty and she was concerned about 'materialism/materialman/mechanic liens' on property that was abandoned by Apex. She read a newspaper article about a project in Illinois that claimed Apex sold a project to Ikea and when Apex and Ikea failed to pay some of the contractors on that project, the contractors filed liens against the landowners. Ms. Lassiter asked Mr. Giecek if he was aware of that case and did those landowners have to pay those liens. He said he did not know the specifics but thought it dealt more with the subcontractors and that the issues were already resolved. He said there were a variety of different clauses in different leases that protected the landowner, so he read a clause directly from a lease that was written to prevent mechanic liens and protect landowners here. After reading that section, Ms. Lassiter asked County Attorney, Hackney High, if that language protects our landowners. Mr. High asked for a few minutes to look over the clause before responding.

Mr. Manley asked Mr. Heath if this application was complete enough to make a recommendation. Mr. Heath said yes.

Ms. Lassiter asked if we are putting a contingency on noise in the CUP. What do we do if Iberdrola is too loud after operations start? Ms. Godfrey said the company will have to take steps to remedy the situation if there is a problem. Mr. Smith said our wind ordinance requires the project applicant to provide the sound level of each piece of equipment, but the developer has to sign a non-disclosure agreement with the manufacturer to keep that same information private. That puts our wind ordinance at odds with what the company is able to do. Mr. Heath reminded the Board that the current Zoning Ordinance requires noise reports *before* construction. Whether the sound reports are good enough will be determined at the quasi-judicial hearing.

Ms. Lassiter has been to Perquimans County Register of Deeds (ROD) to look up Apex leases and only the acknowledgements of signing a lease are currently recorded; not the actual leases. She asked about a waiver of nuisance clause that was in one of Iberdrola's agreements; then asked who is responsible for measuring the sound levels after operations begin. Mr. Heath said it would be up to the County to scientifically measure sound levels using our own expert to verify data that developers report to us.

Ms. Lassiter asked Mr. Heath if he was comfortable with the decommissioning bond amount. Mr. Heath said he recommended that the maximum amount the company had published be submitted to the County in the form of a cash bond. He also recommends a condition be added to the CUP stating that the Decommissioning Study be updated every 5 years to account for inflation.

Planner Godfrey discussed adding a condition to the CUP acknowledging a potential access point from Ocean Highway via a CH-Zoned portion of Chicken Road. She also noted that Emergency Services staff met with Don Giecek at the EMS building this afternoon.

At this point County Attorney, Hackney High had reviewed several provisions of the lease where Apex is the tenant and property owners are the landlords. He stated that two particular provisions provide some protection; however the extent of the protection that would be provided can only be decided on a case-by-case basis. One provision states that Apex shall not permit any lien to be enforced against the property. Another provision states that Apex shall keep premises free and clear of any liens. There are also other provisions where Apex may, in good faith, withhold payment and contest a lien. In that case, Apex would need to put up a bond in a sufficient amount to protect the landowner. If Apex were successful in contesting that lien then there would not be a lien against the landowner. If Apex were not successful in contesting that lien then the bond would take care of the landowner. Are there situations where landowners could get in a bad situation? Mr. High said sure there are, but those are the two protective features that he found in those clauses. He also said landowners should be made aware that a line in one of the provisions states property owners can post notices of non-responsibility on the property. This puts contractors on notice that landowners are not responsible for payment of anything and they are not allowing their property to have a lien placed on it. Then it would be up to the contractor to decide if it wants to take the risk of working on property that does not allow liens.

Ms. Lassiter spoke with a local aerial applicator regarding comments made by a citizen at a previous Planning Board meeting. In the discussion, she discovered that the farmers near turbines in the 'Desert Wind' area will be able to get aerial applicator services, however the cost will increase from what they may be used to paying. Prior to turbines, the farmers received a discounted price because there were few trees, power lines, etc., which made it easy to spray by air. The service will still be available but the farmer will have to pay what others pay with smaller fields surrounded by lines, trees, etc. She also discussed property values. It is her opinion that either side can make numbers work for their own benefit. The Board of County Commissioners (BCC) should decide that issue, not the Planning Board.

Mr. Smith agreed that the Planning Board is advisory and the quasi-judicial hearing is a better place for experts under oath to address the property value issue.

Chair Kahl summarized by saying we are going to add Chicken Road CH/RA zoning language, road bonding and 5-year updates on decommissioning as extra conditions in the CUP.

Much discussion ensued among all Board members about the geographic area encompassed by the road bonding condition. On a previous day Ms. Lassiter spoke with Jim Hoadley, the local Assistant District Engineer at NCDOT, and he told her that DOT drives and videotapes the roads. Mr. Heath suggested wording such as “bond any road utilized by the applicant for the project”. Mr. Manley commented that trucks are everywhere; are you going to bond every road? Mr. Manley also made it clear that truckers already pay a heavy-use fee. Ms. Lassiter clarified she is saying bonding should not fall on the pockets of the truckers; it should be on the project developer. County Manager Heath stated we need a mechanism to compare the road lists. For example, DOT does a ride with the applicant and they determine which roads will be used; then we need to require the applicant to agree to further bonding after construction if it’s determined by DOT that *additional* roads were used.

Motions --- Table of Findings

- 1) **Motion was made by Mr. Manley, seconded by Mr. Smith, to recommend approval finding that the CUP will not materially endanger the public health or safety if located according to the plan submitted and approved. Motion passed unanimously.**
- 2) **Motion was made by Mr. Manley, seconded by Mr. Smith, to recommend approval finding that the use meets the required conditions and specifications. Motion passed unanimously.**
- 3) **After much discussion, motion was made by Ms. Lassiter, seconded by Mr. Manley, to recommend approval finding that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity. Motion passed unanimously.**
- 4) **Motion was made by Mr. Manley, seconded by Mr. Smith, to recommend approval finding that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Perquimans County Land Use Plan. Motion passed 3 to 1, with Ms. Lassiter voting against.**

**Mr. Manley made a motion, seconded by Chair Kahl, to recommend approval to the BCC of CUP-16-01 with an added clause to recommend the BCC address property value issues above and beyond the quasi-judicial setting. Also:**

1. Add condition or statement in the CUP to acknowledge potential access point from Ocean Highway via CH- and RA-zoned portions of Chicken Road for construction and operation activities, subject to approved CUP and Traffic Management Plan. Other access points to be proposed by Applicant with submittal of detailed Site Plans at the Zoning Permit stage.
2. Add condition to require 5-year updates to the Decommissioning Study pursuant to Sections 907.27B(1)(e), (g) and (7)(a) through (d), and adjusted bond amount, if applicable.
3. Add condition to ensure that all roads within the community be bonded by NCDOT or that we have a mechanism put in place to ensure they are paid for.

**Motion passed 3 to 1 with Ms. Lassiter voting against.**

Minute Taker, Ms. Money asked to clarify Ms. Lassiter’s votes due to the wording being somewhat confusing. County Manager Heath verified Ms. Lassiter’s intentions for the record. They were corrected to read as stated above.

Perquimans County Board of County Commissioners will hear this case as a quasi-judicial proceeding on August 24, 2016 at 5:30pm with the option to continue it on August 25<sup>th</sup> if necessary.

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**Agenda Item IV, Other Items: A. Status Report on Previous Board Recommendations:** Planner Godfrey reported that there was nothing to report.

**Agenda Item IV, Other Items: B. Chair’s signature on approved minutes, subdivisions, etc., and special Courthouse Notice for new meeting time.**

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**Meeting adjourned at 7:16 p.m.**

**Minutes approved this 11th day of October, 2016.**

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*Paul Kahl*

Chairperson  
Attachments: A (Sign In Sheet)

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*Rhonda Money*

Recorder