

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular meeting, Wednesday August 26 at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Chairman, Jim Crafton, Vice-chairman, Tony Engel, Ann Pouch, Dean Bonessi, Zoning Administrator Toby Linville, Deputy County Attorney Sarah Zambon, and Zoning Board Secretary, Karen Ann Antonucci. Alternate Board Janice Brown did not attend.

Chairman Phelps called the meeting to order at 4:04 PM. He introduced the board.

Chairman Phelps: First order of business is to review and approve the July 29 Minutes. Have all of you had a chance to review the minutes? I realize we got them late. Are there any comments or corrections or additions to the minutes? If not, do I hear a motion that we approve as submitted?

JCrafton: So moved.

TEngel: Second.

Chairman Phelps: All those in favor, Aye.

All board members indicated they were in favor of adopting the minutes.

Chairman Phelps: Unanimous. Minutes are approved and accepted.

Chairman Phelps: We also have the Order V-09-04, McGill Associates, P.A. requesting a variance for French Broad River Raw Water Intake for City of Hendersonville, before you. And has everyone had a chance to review that? Are there any questions or additions or whatever? Karen Ann, you and Toby had reviewed these too, this order? Sarah?

Deputy County Attorney SZambon: Toby and Karen Ann reviewed it and so did Natalie Berry.

Chairman Phelps: Do I hear a motion that we accept it?

TEngel: I'll motion.

APouch: I second.

Chairman Phelps: All in favor, aye, opposed, no. Unanimously accepted. Those two orders of business of the old business are complete.

Chairman Phelps: Now we have new business which is case SUP-09-05, David VanVoorhis, requesting special use permit for Wind Turbine less than 40 feet in height required in Residential 2-Rural zoning as defined by SR 3.16 in the Land Development Code. Location: 81 Denise Drive, Flat Rock (PIN 9597374444). This is quasi-judicial so we have to go through that?

Deputy County Attorney SZambon: Yes, Mr. Chairman.

Chairman Phelps: This is a quasi-judicial hearing. A quasi-judicial proceeding is much like a court proceeding where an individual's rights and interests are being decided under specific rules of procedure. Parties to this case have the right to present evidence and cross examine witnesses. The burden of proof in these cases typically lies with the applicant. The extent to which the Rules of Evidence used in court apply is up to the discretion of the board. Quasi-judicial proceedings are different from other public hearing in that not everyone has the right to present evidence before this board and to become a party to this proceeding. Only those we can demonstrate that they will be affected by the outcome of the hearing may become parties. After a description of the person's interest in this case, the board will determine whether they will be allowed to present evidence as a party. Please note, you do not have to be a party to testify if someone who is a party calls you as a

witness. All parties and witnesses who intend to present evidence to testify before this board must be sworn in. So at this point we call forward all those who wish to become parties to this case and ask that they state their name and address.

JCrafton: We need to open the hearing first.

Chairman Phelps: Ok. Do I have a motion we now open the hearing since I have read what the...

TEngel: I move we open the hearing.

DBonessi: Second.

Chairman Phelps: All in favor, aye.

All board members indicated they were in favor of opening the hearing.

Chairman Phelps: Ok. We are now have opened the hearing and so now we'll call for the parties to come forward and state their name and address at the podium so that we can determine or not whether or not they will have standing.

DVanVoorhis: David VanVoorhis, property owner.

Chairman Phelps: And the address?

DVanVoorhis: 81 Denise Drive, Flat Rock.

Chairman Phelps: Thank you.

RWhite: I'm Robert White, 508 Old Haw Creek Road, Asheville. I am the contractor for the wind turbine that Mr. VanVoorhis would like to purchase.

CHaring: I'm Christian Haring, I'm the neighbor to David VanVoorhis, 109 Denise Drive.

Chairman Phelps: Now, wouldn't the contractor be a witness rather than a party?

Deputy County Attorney SZambon: It's up to this board to decide who would be a party versus a witness. But Mr. VanVoorhis could clearly call the contractor as a witness unless the contractor has a specialized interest or a specialized interest in asking the other parties questions, it seems like he would be a better witness. You might want to just ask the contractor.

Chairman Phelps: Sir?

RWhite: I'm fine being a witness.

Chairman Phelps: Yeah, because the owner could call you, unless you have an interest in questioning other people, there's no need really for you to be made a party.

RWhite: I understand.

Chairman Phelps: Because you're really hear to support the proposal as I understand it.

RWhite: That' correct.

Chairman Phelps: Questions or comments from the board? So we think the other two would be considered parties. Ok.

JCrafton: I think that and we might just reassure if there's anybody else in the audience that wants to speak to the issue because they've got to have a means to get to the microphone.

Chairman Phelps: That was my next point. Is there anyone else that would want to speak on this matter? If not would the two of you please come – we need all three to be sworn in and not just...

Deputy County Attorney SZambon: Everyone, all witnesses and parties.

Chairman Phelps: So will the three of you come back to the podium and we will swear you in at this point.

Zoning Board Secretary KAAntonucci: Do you swear or affirm that the testimony you shall give the Zoning Board of Adjustment shall be the truth, the whole truth and nothing but the truth, so help you God?

All parties and witness were sworn in.

Case SUP-09-05 David VanVoorhis requesting special use permit for Wind Turbine less than 40 feet in height – required in Residential 2-Rural zoning as defined by SR 3.16 in the Land Development Code. Location: 81 Denise Drive, Flat Rock (PIN 9597374444).

Parties:

David VanVoorhis – property owner

Christian Haring - adjoining neighbor

Witnesses:

Bob White – Contractor

Chairman Phelps: Thank you. Please be seated. At this time we will begin our first hearing. Decisions of this board are based upon the Henderson County Code. After we hear all the evidence, the board will discuss the matter and may either vote on the case or continue the case to another date. The board may direct staff to bring back a draft order for the board to review at our next meeting. The board's decision must be made in writing within 45 days of the conclusion of the hearing. We are now open and Toby, would you want to begin the presentation?

Zoning Administrator TLinville: Thank you, I will go through your packets and show you the information that you have here. First is a staff memo that went to the Technical Review Committee. That committee gave a unanimous recommendation for this project. You'll see in it that it discusses supplemental requirement 3.16. The Board of Commissioners just approved these rules because the Land Development Code did not address wind mills. And there are two categories, less than 40 feet and greater than 40 feet. Both are permitted in all districts. Both require a special use permit. This one is under the 40 foot maximum height. The major regulations in that SR are the height limit, the size of the rotor blades. And this is not a traditional wind mill like we think of with normal rotors. This is a vertical wind spire. And I'll let the applicants address that later. But it meets all of those requirements of the setbacks. It has to be 110% of the height which is the fall zone. And their site plan meets those requirements. On the back of that letter you've got the site plan of the property showing his house there. Then a zoning report showing the same aerial and the zoning is Residential 2 Rural. Then the special use application. On the back where the specific requirements are the applicant has addressed those, after that, specifically on a separate sheet. Then there is a site plan showing the home and the position of the wind turbine, in front of it. Again, it meets the fall zone – the 110%. Next are several diagrams describing what the wind spire, wind turbine is. And then some structural detail from a larger set of drawings. You've got the structural notes, electrical detail. And then finally another map at the end that they had provided showing the property location. If it pleases the board I'd have you accept this into the record.

Chairman Phelps: So ordered. Any questions of Toby by any of the board members? Sarah, do you have anything?

Deputy County Attorney SZambon: I would like to enter the packet into evidence.

TEngel: He already did.

DBonessi: Toby I had a question about – you were saying that all wind mills require a special use permit? Because I'm looking at a notation here that says if the blade, the radius of the rotor exceeds eight feet it will require a special use permit. It would be item 3 under SR 3.16.

Zoning Administrator TLinville: It says, *and also shall meet the requirements for SR 3.17*, which is the larger wind mill. There are more stringent requirements for those.

DBonessi: Just wasn't sure if it was, since it's new, ok.

Chairman Phelps: Did we have a recommendation when this went through the committee?

Zoning Administrator TLinville: Yes, sir. It went through the Technical Review Committee and they voted to approve.

Chairman Phelps: Good. Anyone else, questions? If not then Mr. VanVoorhis, if you'll come forward and present your case for your application. What would you like to tell us?

DVanVoorhis: Just let's get going on it. I don't know what the problem is, what the hang up is. It's all over the news, wind power, solar power.

APouch: How much noise does it make?

DVanVoorhis: Pardon me?

APouch: The noise, is it...

DVanVoorhis: I can't hear you ma'am.

APouch: I was wondering about the noise.

DVanVoorhis: It is very low decibel. I haven't heard one either.

Chairman Phelps: I noticed in part of the application materials it mentioned a noise study, but that was not included.

DVanVoorhis: Bob White can probably....

Chairman Phelps: It says a report, but that was not part of our packet.

DVanVoorhis: Bob White can probably answer that better than I can.

Chairman Phelps: Do you want to call him?

DVanVoorhis: Bob.

RWhite: Specific to the ordinance, under 40 foot turbines as I read the restrictions, the turbines under 40 feet are not obligated to demonstrate a noise standard. Is that right, Toby?

Zoning Administrator TLinville: There's nothing mentioned in that Supplemental Requirement.

RWhite: It's over 40 feet as I read it. I think the last paragraph had to do with noise. It's not required, but I do have a noise study for this particular machine. I'd like to show it to you or would you like me to just read it before I pass it to you? This was an independent study by Summit Engineering Corporation. And it's from their Structural Department Manger,' Dillon Means, Professional Engineer in Reno, Nevada. The manufacture of the wind spire is Mariah Power and their headquarters is in Reno, Nevada. In summary it says that there's and 8.8 decibel above normal noise levels at 50 miles per hour, which we don't get here very often except in gusts.

Chairman Phelps: Wind speed of 50 miles?

RWhite: Yes. At five feet away the manufacture reports a five decibel, a five DB noise level at five feet away. So at 20 feet away it would essentially be noiseless. And that's how we promote the machine, as noiseless.

DBonessi: According to the technical specifications here it specifically says that 20 DB at 50 feet.

RWhite: Um-hm. That's what they're reporting there. It doesn't say what the wind speed...

DBonessi: No, I understand.

RWhite: But 20 DB is a very low noise level. I don't know if you've had to review noise levels before but it is. Does that answer your question?

APouch: Um-hm.

Chairman Phelps: Do you have any idea what the prevailing wind speed would be at this site?

RWhite: I expect it to be; well what I expect is the annual average wind speed because wind is seasonal. We don't have much right now – to be somewhere between 10 and 12 miles an hour. If we get some 80 mile an hour gusts in here like we've had then that will be a different story, but...

Chairman Phelps: And it has to be nine miles an hour to generate power?

RWhite: Well, that data's been revised to eight since that was published. It actually starts generating power as soon as it begins turning at about three miles an hour. But usable power starts in at about eight and nine. At ten you get significant power production. At 12 you get very good power production. A difference of two miles an hour in a wind turbine is about a 30% increase in the electrical power production. It's an exponential relationship so very small increases as we understand them make a big difference in how much power it can produce.

Zoning Administrator TLinville: Mr. White, will you explain to the board where the power is going? I've forgotten if you're selling back to the company or if it's just for personal generation.

RWhite: It's for personal generation. We have the option to sell back but we haven't made that decision yet. This particular wind turbine is what they call *grid ready*, meaning that it produces 120

volt AC power, single phase that syncs with the electricity that the residence receives. The machine, by virtue of being *grid ready* there has to be a device, a safety device built into any wind turbine or photo voltaic for that matter that will disconnect from, disconnect their power production into the grid should the grid itself go down. Now this is a safety measure for line-men that are making repairs to the grid. This device, this wind spire does contain, has one of those devices built into it. So when you hear the term *grid ready* you should assume that it produces 120 volts of AC power and that it has the grid disconnect circuitry built into it for line-men's safety. So typically what we do with the wind spire is we run the electrical output into the structure's electrical panel. And attach it to a 20 amp breaker. So in the case of small wind turbines like we're representing, and if it's a residence and certainly a business, we'll use the power. The idea of having excess power may occur in the early fall when we have our good winds, and in the spring, and certainly in the summer months like we're in now, there'll be very little production. Someone that is depending on wind power is going to be using it primarily, especially if one of these machines produces only enough power that will be, it will primarily be consumed. Especially if there's any heat being used in the home to have a fan, that sort of thing. So there's an option that residences can elect to have and that is what's called a *sell all option* and in that situation a totally separate meter is installed on the property. And the power company reads that meter and determines how much power was produced from that device. If it's wind power or photo voltaic or hydro power or geothermal, there are others, and they assess the amount produced, they calculate that against the retail rate that the producer has negotiated with them and then they literally send them a check for the power that they purchased, that was produced. So there's two different options. If you're going to produce a significant amount of power and have excess then that's the way to go because the power companies will pay more per kilowatt hour for a *sell all* meter than for the former option which is referred to as *net metering*. The concept is that the meter runs backwards. And they used to in the old days when they were the electrical mechanical meters. Of course they are primarily digital now, so it's all done electronically but – does that answer your question?

APouch: Can you store power?

RWhite: You can. You can store power in batteries, currently. There are certain applications where that's an economical way to go. You may have heard the term, 'people want to be off the grid', and in that scenario they would require a storage medium and primarily that's batteries. Economically, from an economic point of view it's not a good investment because the batteries are very expensive. So they dramatically add to the cost of the total installation. The conventional wisdom, for renewable energy, for residential, is to generate electricity with the idea of offsetting the total expense of your electric bill. To be off the grid for the average home is still pretty cost prohibitive. The average home, I want to add, is said to consume about 10 to 12,000 kilowatt hours per year. One of these wind spires operating at 12 miles per hour average wind speed will produce about 2,500 kilowatt hours a year. So that is approximately 25% of the average home's electrical consumption. Certainly you could have more than one wind turbine on your property if you could meet the requirements of the ordinance. And that's how you would further reduce your costs with this particular product.

Deputy County Attorney SZambon: Mr. Chairman I may have some questions. Mr. White, does this wind turbine cause any shadow flicker?

RWhite: No. I think you may have a brochure there.

Deputy County Attorney SZambon: I do.

RWhite: Do you have a picture of what it looks like?

JCrafton: Um-hm.

APouch: Yeah.

RWhite: Ok. It's a vertical access turbine. The total height up to this point is 30 feet from the ridge to the ground. And this turbine, this hoop here...

JCrafton: Could you hold that up so we could see it?

RWhite: Yes. This hoop here, for reference is four feet in diameter. So it's relatively small structure. And it's 30 feet off the ground. The shadow flicker that you're referring to primarily applies to horizontal access wind turbines which are the ones with the propellers on them. And they typically are on much higher towers. And when you get up 100 feet and higher then there could be some shadow flicker from the blades turning. But this one's so short that any shadow flicker would be on the property of the property owner with the 110% setback.

Deputy County Attorney SZambon: So would it be, are there any effects of noise or glare or solar access or anything like that do to the wind turbine, for other property owners.

RWhite: No. That would be negligible. The only thing that could reflect light at all is this very narrow strip of metal that goes up, actually air foils that cause, create lift and cause the turbine to spin around. So if there were any it would be very minimal.

Deputy County Attorney SZambon: In your research of this product have you heard any complaints about excessive noise, dust, glare, anything like that?

RWhite: no. The vertical access wind turbine we just mentioned is virtually noiseless. In addition it is what we call 'bird friendly, bat friendly'. And the reason for that is that it only turns at 400 RPMs. Any object spinning starts becoming invisible at a little over 400 RPMs. So the maximum speed this will turn is that speed, it would be at about 50 miles an hour, when it would get up to 400 RPMs. It's bird friendly and bat friendly because they can see it. They can avoid it.

Deputy County Attorney SZambon: Can you describe for me where on the property this is going to go? Is it going to go in the back yard?

RWhite: It's basically the front yard. You have the plat that's in the handout. It's located in the front of the structure, in front of the existing residence.

Deputy County Attorney SZambon: And if there are any applicable Federal, State, Local laws regarding this, this will comply with this once you've – if you get this permit?

RWhite: Yes. In regard to FAA regulations it's only 30 feet tall so there's no obstacle situation there. I mean, it's shorter than a two story house, to put into perspective. And it does not generate, in terms of FCC, it does not generate any RF. It's an electrical generator but it doesn't generate radio waves that could interfere with communications in the area.

Deputy County Attorney SZambon: And in the case of a windstorm or a thunderstorm or a tornado or anything like that how is this structure going to effect safety for the community?

RWhite: Of course it has a fall zone, you know, 110% of the height. Which, if it were to fall, I've never known one to fall but, if it were to fall it would fall within the property of the resident and the owner. The engineering for the wind spire is warranted for 105 mile an hour wind. That's a warrantee. You may see it on your sheet, data sheet there. It has been tested for survivability above 160 miles an hour. And these numbers are from independent testing and not strictly from the manufacture. So they're very safe.

Deputy County Attorney SZambon: According to the packet of information provided these can be lowered and taken down by a crane or whatever. So if there was some kind of instance, for safety reasons or what have you, they needed to be taken down...

RWhite: Yes. This is an illustration of the apparatus used to raise and lower it. This is a detachable lever that hooks to the base. We call it a J-pole, they are our applications for using this. There is a cable placed here and comes down here to a vehicle, a heavy truck, pick-up truck, SUV or a winch, that will allow them to tip it down like you see here. And this is very important for North Carolina, for the Outer Banks that's susceptible to hurricanes. And so the property owners there are encouraged to maintain one of these J-poles so they can take matters into their own hands and put it on the ground and tie it down in those extremely high wind conditions. I think we've had at least 80 mile an hour wind gusts in the last few years here. Caused quite a bit of tree damage and power outages, but as I mentioned earlier that that wouldn't necessarily require the lowering of the wind spire. Those

wind speeds – it would be the prerogative of the property owner as to how he would want to deal with that.

Deputy County Attorney SZambon: And for the record again, I'm looking at these pictures, the structure's going to be in the front yard. How far away is it going to be from the property line with the adjacent, with the house on it?

RWhite: 61 feet from the western border and about 90 feet from the eastern border and about 80 feet from the residence. And I didn't measure the distance down to the road there at the north but by scale it looks like it's close to 100 feet.

Deputy County Attorney SZambon: Is the – I can't tell from the map I have I guess – is the residence that's on the pictures, that's on the 96 side, right? The side with the 96 setback?

RWhite: Excuse me, are you looking at this one?

Deputy County Attorney SZambon: Yeah. I'm looking at this one. It's on that side, right? Where the 15 is, is the other house?

RWhite: Um-hm.

Deputy County Attorney SZambon: Is that correct?

RWhite: Well the structure is...

JPhelps: You're talking about his neighbor's house.

RWhite: Oh, this is the one that...

DVanVoorhis: I'm practically in the middle of the acre.

RWhite: That lot next to it is also an acre lot and it's shaped similarly. So it's approximately 160 feet narrow. So from the – that dimension's not on here but it's something on the order of 200 feet.

Deputy County Attorney SZambon: Ok. Mr. Chairman, I don't have any further questions.

Chairman Phelps: Thank you.

DBonessi: I've got a question or two. I guess just to put it in perspective, I mean, you've talked about kilowatt hours and so forth like that, I'm looking at some of the specifications here, in your opinion what can a person actually expect to see out of this unit as far as – what is this thing going to be able to run in the household? Because I'm looking at a 20 amp breaker or 20 amp main line breaker 12 to direct burial cable with instantaneous power rating to 1.2 kw and I'm just wondering, I mean it doesn't seem like it's going to do a whole lot.

RWhite: Well it will produce - it will lower their electric bill by about 25 percent. And they're not going to be off the grid.

DBonessi: I understand that but I'm just thinking the 20 amps, it's a hair dryer and a vacuum.

RWhite: Well over time it adds up to quite a few kilowatt hours. It offsets the power that they're normally using in the home. To describe exactly what that powers, I'm not sure how that...

DVanVoorhis: It boils down to a monetary issue. If my bill is 80 bucks, I'm going to save 20 bucks. It's not a lot of money. Am I going to go through all this when I put up solar panels? I'm trying to do what everybody's talking about, energy and saving electricity.

Deputy County Attorney SZambon: Sir, if you want to speak you have to talk in the microphone for the record. I didn't mean to cut you off. You can keep talking I just need it in the microphone.

Chairman Phelps: Just come to the podium, thank you. You have further questions, Dean?

DBonessi: No, that's fine.

DVanVoorhis: Am I going to have to go through all this when I put up solar panels?

Zoning Administrator TLinville: No, that'll just require an electrical permit.

DVanVoorhis: So I can do that and be done with it?

Zoning Administrator TLinville: Right.

Chairman Phelps: So Mr. VanVoorhis I'm getting that you're looking for a combination of ways to really reduce your power bill?

DVanVoorhis: Yeah, it's aggravating because everything you hear about and read about in the news is wind, solar, you know? I'm trying to do my part. I own a piece of property, it's right smack dab in

the middle of the acre, and it seems like it's, you know, 25 bucks, 30 bucks. I probably won't even pay for this thing.

JCrafton: Sir, just in response to your apparent concern over the hassle that you're having to go through here...

DVanVoorhis: Yeah, it is a hassle.

JCrafton: Well, it's not meant to be. The reason for this process is so that the County can maintain control over what kinds of things occur. And so that something doesn't happen on one piece of property that an adjoining property owner may find highly offensive. And a special use permit is required where the zoning requirements don't specifically allow a person to do a certain thing, such as this. So you have made application to the County. And the staff has examined your application. And now it is required by County ordinance for this board to hear your application and then render a decision.

DVanVoorhis: So nobody ever put up a wind turbine before in the County?

Zoning Administrator TLinville: Not since the Land Development Code...

JCrafton: Well even if they did each piece of property would require it. The first one doesn't open the entire County to wind turbines. The process is just designed to ensure that inappropriate things do not happen, alright?

DVanVoorhis: Um-hm.

JCrafton: Most of the things we hear are very good things. But never the less there has to be some means to measure them. And that's the only reason for the process.

DVanVoorhis: It's aesthetically good looking. You know, you drive around the County you see junked cars all over the place and I just, you know, I just want to get going on it.

JCrafton: We understand. Further questions? Sir, would you like to speak and address the board? Just come up and give us your name.

CHaring: I'm here to support Dave on it. I live right beside him on the left side of the property. And I don't know whether that falls in the 90 or what that is, but I have no problem it being on the property, on his property. I think it's kind of neat, myself.

Deputy County Attorney SZambon: Sir, can you state your name again?

CHaring: Sorry, Christian Haring. Christian, as in the religion.

Deputy County Attorney SZambon: Haring? He-

CHaring: H-a-r-i-n-g. One r. I think it's kind of neat, myself.

Chairman Phelps: Wait just one moment. Any questions from the board? Thank you, sir. Any other comments or questions?

JCrafton: Alright, I have some conditions that I would suggest if we move forward to approve. I'm gathering while the hearing is open and I can speak directly to the applicant, is that appropriate to see...

Deputy County Attorney SZambon: Yes, as long as this hearing is still open you are...

JCrafton: Mr. VanVoorhis, could you come to the microphone for a minute? I have – if this board chooses to approve your application today I'm going to suggest to the board some conditions on that application. Things that you would have to adhere to in order to have this. And I wanted to review them with you and see if before we talk about them they are something you could live with or it would make it untenable for you. The first one would be that as you stated in your application you would agree to remove the unit if you left that house.

DVanVoorhis: I'm not moving.

JCrafton: But I'm asking you if you were ever to leave that house...

DVanVoorhis: I'm not moving.

JCrafton: Would you agree to remove that unit?

DVanVoorhis: I'm not moving.

JCrafton: But you haven't answered my question, sir. If you ever leave for any reason, I know you don't intend to but if you ever...

DVanVoorhis: Why would I do that? Why would I want to do that? I mean, explain your reasoning behind that. I have to take it with me?

RWhite: Yeah, you can take it with you.

DVanVoorhis: It would be advantageous for the next property owner. Saves energy.

Chairman Phelps: Sarah, excuse me, does this go with the land? If we approve this wouldn't it stay with the property, the right to have it?

JPhelps: He would own it.

Deputy County Attorney SZambon: A special use permit doesn't necessarily travel with the property. Like a variance travels with the property but depending on the special use permit and the conditions you set on it, it may or may not travel with the property.

DVanVoorhis: It increases the value of the house.

Chairman Phelps: So it could be, either way, it could be removed or...

Deputy County Attorney SZambon: You can make a condition that if he moved he has to take it with him.

Chairman Phelps: But if we didn't make that a condition then it could remain or it could be removed.

Deputy County Attorney SZambon: Yeah. If he left it there the next property owner could leave it up or take it down.

Chairman Phelps: Ok. It would be at his option though.

Deputy County Attorney SZambon: It would be the new property owner's option.

Chairman Phelps: But I mean the present one to where he took it down or...

Deputy County Attorney SZambon: Yes, it's his property.

Chairman Phelps: Hypothetically, you did sell it you could see which way you're getting your better price, you know, with or without the thing, it would be net to you.

Deputy County Attorney SZambon: Right. He is not required to keep it and the future property owner would not be able to keep it. Similar to when we do a special use permit for a child care facility, right? As long as the child care facility is there they have to meet these conditions. If the person decides they do not want to have a child care facility anymore we are not going to make them do it. And if the next person who buys it does not want a child care facility we are not going to make them do it either. Does that make sense?

Chairman Phelps: Yes, thank you.

TEngel: Now if he wanted to put two up, he would have to come before us again?

Deputy County Attorney SZambon: He would have to come before us again or he would have – I mean either as a separate special use permit or as an amendment to this permit, if you gave it to him.

JCrafton: The other item I would raise before the board, Mr. VanVoorhis, Mr. White had indicated that you could use the unit to supply power only to your house or you could have an arrangement where you could do a sell back to the power company.

DVanVoorhis: I'm not set up to do that.

JCrafton: My question is going to be, I would suggest to the board, and of course these are all for discussion such as the first one was, that this be for your use and not a commercial enterprise to sell power.

DVanVoorhis: Absolutely.

JCrafton: The other one would be, your application is only for one turbine, is that correct?

DVanVoorhis: Let me ask you again about that. You're saying if I sell the house the new owners have to come through this and get a special use permit?

Deputy County Attorney SZambon: That is not what we're saying. We're saying if you sell the house, which you've already stated you are not, you have no plans to, if you sold the house you have the option as the owner of the wind turbine...

DVanVoorhis: To take it with me.

Deputy County Attorney SZambon: To take it with you. And the new turbine, if you left the wind turbine has the option as the new property owner to leave it up...

DVanVoorhis: Or take it down.

Deputy County Attorney SZambon: Or take it down.

DVanVoorhis: That's fair enough.

TEngel: If it's set up that way.

DVanVoorhis: I mean, I'm not renting the land.

Deputy County Attorney SZambon: If we don't make any further conditions, that's the way it will be.

DVanVoorhis: That's fair enough. I don't rent the land. I own the land so whatever's on that property stays on the property, I would think.

Deputy County Attorney SZambon: Yes, but just like you want, you know, you own the house, if you wanted to knock down the house you as the property owner can do that. And who ever the next property owner is if they didn't like the house and wanted to build a new house, they could tear that down. But if you get this permit the wind turbine will be there until someone takes it down. Or if the board sets any conditions and those conditions are violated. Does that make sense?

DVanVoorhis: Yeah.

TEngel: Why is it that you've decided to get just one turbine?

DVanVoorhis: That's all I can afford. Pure and simple.

TEngel: You're not getting the government credit and the...

DVanVoorhis: Well I hope to if this thing doesn't drag on forever. I hope to get the credit, 35% Federal and 30% North Carolina.

TEngel: Right, and then the remainder you can get one percent loan for? Which sounds pretty good to me, I don't know.

DVanVoorhis: I would like to get two but I can't afford it.

JCrafton: That's all I have.

Chairman Phelps: Any other questions?

DVanVoorhis: I'll go solar panels next.

Chairman Phelps: Thank you, sir. You may be seated. Do I hear a motion that we close the hearing?

Deputy County Attorney SZambon: Close the hearing to the public.

TEngel: I motion the hearing is closed to the public.

Chairman Phelps: Second?

APouch: Second.

Chairman Phelps: All in favor? Unanimous. We are now closed and open to discussion of the board members. Comments?

TEngel: Well I have a question for our attorney. If we didn't put a regulation on it and he was able to sell it, sell the power back which a lot of people that's what they want to do and that's how a lot of them are set up now, is there any zoning problems with that? Because it is sort of like manufacturing electricity and putting it into the grid. I know that's very popular right now.

Deputy County Attorney SZambon: I'm going to defer to Toby. My instinct is that, no, that it would be – it's not his main source of income. It's not even a large source of income, again based on...

TEngel: One turbine.

Deputy County Attorney SZambon: One turbine. Based on the type of turbine and the current zoning regulations that we have and anytime you talk about wind turbines there's – people always talk about selling it back. I kind of think of it more, and I'd be interested to see what Toby says, what he thinks, but I think of it more as, kind of selling stuff on EBay. You know what I mean, like just because I sell stuff on EBay or Toby sells stuff on EBay doesn't make us, where we live a commercial thing. Now if we open an EBay store or whatever, then we would become commercial. Just because we sell stuff on EBay or have a garage sale doesn't make us a commercial endeavor. But you should ask Toby since he is the Zoning Administrator.

Zoning Administrator TLinville: The board has already made that determination. That's why there's a special use permit required. I would think your question would be more, rather than whether or not it's saving money, making money is, is this structure in this yard going to meet the residential character of that neighborhood? I don't think you need to consider whether...

TEngel: Well if we put restrictions on we do.

Zoning Administrator TLinville: Right. But I don't think you need to. In my opinion you wouldn't restrict that. If it made enough power that he just strictly sold back to the power company and that was his savings that would be fine. I wouldn't consider that in this decision, personally. Whether he uses it himself or sells it back to Duke Power.

Chairman Phelps: He'd have to have five or more really to make more than 20%, the commercial application.

DBonessi: But he's not going to do that.

TEngel: That would only pay for the house if you're lucky.

DBonessi: I wouldn't, like Toby, I say that wouldn't be a concern of mine that he's putting it in there. It's going to save \$100, so I mean...

TEngel: My suggestion as far as restrictions go, the only one should be is that it should be white.

Chairman Phelps: Well I think that was the color specified.

TEngel: Right, but as long as it's in there he doesn't put bright orange or day-glow colors or something like that. If it's white I don't think we should restrict it on the other two items because that's part of the future. Really, and to be progressive I think that we should allow him to sell it if it works that way because they'll still be buying back from the company. And he should be able to leave it on the site because he's investing so much money on it. It will add to the value of the house. If you make a house efficient it raises its value and of course that should be considered. That's my suggestion – only one restriction, white.

APouch: I agree with you.

TEngel: Anyone else?

JCrafton: No, I'm fine. The only thing that had run through my mind in terms of, alright, this is the first such unit in our County and I'm starting to develop the question in my mind –well, are we setting a precedent and do we need to measure? But then it occurred to me in special use matters there are no precedence.

TEngel: It stands on its own.

JCrafton: That's essentially correct. Every special use stands on its own.

Deputy County Attorney SZambon: Yes. Because everyone has unique features that make it its own thing.

JCrafton: We need not have the concern what kind of a precedence we're now setting that now everybody would want to put up a wind turbine in their front yard and sell power to Duke or whatever because we've given Mr. VanVoorhis a permit. That's not our – we don't need to worry about it.

Deputy County Attorney SZambon: Right because even if you had two applications for wind turbine, one might be in a dense subdivision. One might be in a rural area and they are not really necessarily comparable. And that's why you have all these factors you look at. Because everyone is different that's why it's a factor thing and not an objective yes, no thing.

TEngel: When you look at them it has sort of a sculptural look to it.

Chairman Phelps: It certainly wasn't as ugly as cell towers.

TEngel: Well they don't go high enough like a cell tower.

Chairman Phelps: Anything else? Do I have a motion that we approve or reject the application?

DVanVoorhis: Ya'll can come over and see it when I get it up. So you can know for your next hearing.

Chairman Phelps: Sorry, sir we're closed to the public.

TEngel: I motion that we approve it as it stands expect for the one, that it will be white.

Chairman Phelps: And it will remain white.

TEngel: And it will remain white and be maintained so we don't have a big rusty thing that's broken down. If it breaks down then you have to remove it. Can we have that in there, if it breaks down or if it's sitting there non-operational? I wouldn't like it to be like old cars, junked and broken down by the side of the road.

Chairman Phelps: You could specify that if it becomes un-operational that it be removed.

TEngel: Be removed, yeah. And that it'll be maintained as being white. I don't know whether it can rust or not.

Deputy County Attorney SZambon: So the two conditions I have if I'm understanding correctly are: that it's white and that it be maintained and kept in operable condition or taken down if it becomes in-operable.

TEngel: Yeah.

Chairman Phelps: Is there a second to the motion?

JCrafton: I'll second it.

Chairman Phelps: Motion made and second. Any discussion on the motion? If not shall we come to a vote? All in favor raise your hand. Opposed, no. It's unanimous. Mr. VanVoorhis, if you will come forward please to the podium. As you heard we've approved your application.

Mr. VanVoorhis: Thank you.

Chairman Phelps: Certainly. We'll have an order at our next meeting.

DVanVoorhis: I heard something about it being white. It's, Bob knows what color it is but...

RWhite: The standard color is white.

Chairman Phelps: And we just wanted to be sure...

DVanVoorhis: And I hope it doesn't rust for all the money I'm paying. But I appreciate it.

Chairman Phelps: We just want to let you know at the next meeting we'll have the final order signed.

DVanVoorhis: I have to come back again?

Deputy County Attorney SZambon: Well you don't have to come back to this meeting. Once this board approves the final order, like you heard in the beginning, they have 45 days to approve an order. But we usually do it at our next meeting, which would be the end of next month. And then Toby or Karen Ann will call you. You can come in and get. You sign your name saying that you've gotten it and looked it over, that you understand it and then you are all set.

DVanVoorhis: Ok. Appreciate it. Thank you.

Deputy County Attorney SZambon: Mr. Chairman, before we start the next matter can I run to the bathroom?

Chairman Phelps: We'll take a 5 minute break here.

Chairman Phelps: Ok. We're reconvened. We're all back here. Could I have a motion to completely close the previous hearing before we move on?

JCrafton: So moved.

TEngel & DBonessi: Second.

Chairman Phelps: So moved. All in favor? The meeting has been closed. Now we have another request before us, Sharon Tolles v. SUP-09-02 Joseph (Andy) Petree special use permit for heliport, private accessory. I would assume that this is a challenge to what has been going on. I need some clarification here. Toby, has any evidence been presented to you that Mr. Petree has in any way violated the provisions of his permit?

Zoning Administrator TLinville: No, sir. This is a – this is an unusual case for us because by right Mrs. Tolles does not have the right to appeal of the special use permit that was granted to someone else. But she didn't get heard at the last meeting and wanted to get before the board so I made her this offer – that she can present evidence to you. You all decide if she has the right to an appeal, in

which case they would have to open the special use permit back up to discuss evidence again. So your decision today is whether or not she has the right to appeal. If you grant them that right then they have to pay like they were the applicant, for the application for a special use. Because it would have to be advertised just like it was a new special use permit. So that's the offer I made to her. I'll go through the evidence that's in your packet and then you can ask Mrs. Tolles or any of the other witnesses here for their testimony.

Deputy County Attorney SZambon: Mr. Chairman, if I may, before Toby starts in with any of this stuff. And again, it's in your packet. This is not exactly an appeal. First of all, it's not, she's not appealing necessarily what the order stated. I have several problems with this proceeding, or going forward with this proceeding. And I will tell you all of those if you would like to know right now.

TEngel: I would like to know.

DBonessi: My question with this Sarah, is what we talked about originally, who was going to be the governing board and if we're going to do this I don't know, you know, I don't know that we hear evidence to decide on whether we do it or not, as far as this. Or if we make the decision that we are the right ones to do that or somebody else is the right one to do that.

Deputy County Attorney SZambon: I will clarify all these matters for you.

Chairman Phelps: Please.

Deputy County Attorney SZambon: First of all this is not an appeal. That's not the form it was in. Second of all arguing that it was – is an appeal. This decision was made in March. The original hearing was in February. You have 30 days to appeal the decisions to this board. Those decisions have to be appealed to a court of relevant jurisdiction, not to you all. So for those reasons she's not really asking for an appeal. She is asking for you all to reconsider your decision. She, Ms. Tolles as a – the County followed all its notice requirements, it was published in the paper for the hearing and again when the order was heard, ah, the order was voted on in March, she received a letter. In the information she presented to you she states that she knew about it and she even discussed it with someone to decide whether or not she wanted to go. Just because she decided not to go and now has changed her mind or doesn't like the decision you all have made does not give her the right under any quasi-judicial rules of procedure or any constitutional basis for her to speak now. In fact reopening this case would violate Mr. Petree's due process rights because he had his hearing and he did what he was supposed to do. The County did what we were supposed to do in terms of notifying people. And just because somebody doesn't like the decision now does not make it alright to reopen the matter. What else did I have? Again, she didn't show up at your first hearing. The other problem with even hearing this evidence, seeing this video or anything like that is that it opens the door for people to start to think that they can come back and question any of your decisions. And then this board will spend all of its time just hearing people complain about things that have already been done. I understand Ms. Tolles doesn't like the decision. I understand, but she had the right to come and speak to you all. Mr. Petree has not violated any of the provisions of his order. And besides that she had the availability to come to the first hearing and then the meeting where the order was voted on, she had the opportunity to appeal. So it would be my strong advice to this board that this board do not go any further with this matter, do not hear any evidence, because you do not have the authority or the ability to reopen this matter.

Chairman Phelps: And too, at the original meeting even those who didn't have standing, we made it clear could be called as witnesses. So that was even more, if there had been others at that time that wanted to be heard they could have through a witness process.

Deputy County Attorney SZambon: And Karen Ann gave me today the transcripts from that meeting. That's a 23 page transcript. That was a long meeting where several of the issues Ms. Tolles brings up were covered in depth. I myself asked Mr. Petree about safety, about travel, about lighting. So the County's duty and the board's duty has been fulfilled on this matter and to hear anything further from Ms. Tolles would violate Mr. Petree's rights. But ultimately it is the decision of this board. That would be my legal advice.

TEngel: I see. I suggest we follow our attorney's advice.

JCrafton: I'm in agreement.

APouch: I agree.

Chairman Phelps: Do we make a formal motion then that we decline to hear it?

TEngel: Do we do a formal motion or do we just...

Deputy County Attorney SZambon: I would make a formal motion that you have decided not to hear this matter, that it is not in your authority. And then at the next meeting I will write a one page order like we've done in the past saying that this matter was discussed by the board prior to hearing any evidence and it was decided by this board, unless I'm putting words in any of your mouths, decided by this board that it was not under the purview and the authority of the board to hear the matter. And the only reason I would want to do that is so that we have something for the record because this part is not – because it's not a quasi-judicial decision there's no transcript from this part. So it would just be a matter of record keeping.

Chairman Phelps: And as I understand it too the normal recourse would be a regular court of law.

Deputy County Attorney SZambon: Yes, sir.

Chairman Phelps: So that is still available.

Deputy County Attorney SZambon: It is not available anymore.

TEngel: Because she waited too long.

Chairman Phelps: Waited too long.

Deputy County Attorney SZambon: Because it is now – the decision was made in March and it's a 30 day appeal window. So unless Mr. Petree violates the order that you all prepared there's really no reason...

Chairman Phelps: No other recourse. Ok.

Deputy County Attorney SZambon: I mean no other recourse involving this board.

Chairman Phelps: Do you want to make the motion, Jim or Tony or...

DBonessi: I'll make a motion. I make a motion that we do not hear any evidence, that this board doesn't have jurisdiction in this matter.

TEngel: I'll second.

Chairman Phelps: The motion has been made and seconded. Is there any discussion on the motion? If not shall we come to a vote? All in favor of the motion raise your hand. Opposed, it's unanimous.

All board members were in favor of not hearing the matter.

Chairman Phelps: We will not hear this matter. We do not feel that it is under our purview to do so.

Is there any further business to come before the board at this time?

Deputy County Attorney SZambon: There is not Mr. Chairman.

Chairman Phelps: If not then we'll have a motion we adjourn.

TEngel: I motion that we adjourn.

APouch & DBonessi: I second.

Chairman Phelps: All in favor leave. All in favor say aye. Unanimous.

All board members were in favor of adjourning the meeting at 5:15 p.m.


Chairman, Jim Phelps


Karen Ann Antonucci, Secretary