
SPECIAL CALLED MEETING

November 14, 2016

4:00 p.m.

The Perquimans County Board of Commissioners met in a SPECIAL CALLED MEETING on Monday, November 14, 2016, at 4:00 p.m. in the Upstairs Courtroom of the Perquimans County Courthouse Annex Building.

- MEMBERS PRESENT: Janice McKenzie Cole, Chair Kyle Jones, Vice Chairman
Fondella Leigh Edward R. Muzzulin
Wallace Nelson Matthew Peeler (*Recused*)
- MEMBERS ABSENT: None
- OTHERS PRESENT: Frank Heath, County Manager Mary Hunnicutt, Clerk to the Board
Hackney High, County Attorney

After the Chair called the meeting to order, Commissioner Nelson gave the invocation and the Chair led the Pledge of Allegiance. She gave instructions to the public and asked that they refrain from any public comments or display of emotion. If they could not comply, she would ask the Sheriff to remove them from the meeting.

CONDITIONAL USE PERMIT NO. CUP-16-01

Chair Cole opened the Special Called Meeting stating that the purpose of the meeting was to deliberate over the proposed Conditional Use Permit No. CUP-16-01, 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. 3-003900011B; 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. She said that she needed some direction from the Board regarding the process they would follow. There is a list of specific conditions that the Board needs to review and consider for a conditional use permit as set forth in the Section 907.27 of the Zoning Ordinance.

She said that we could (1) go over these specific conditions and then get to the final approval of the CUP considering the Section 903 Findings of the Zoning Ordinance; or (2) integrate the discussion on these individual conditions and the impact that it would be on the four conditions listed in Section 903 of the Zoning Ordinance. It was the consensus of the Board to proceed with incorporating the discussion of the conditions. The discussion went as follows:

SPECIFIC CONDITIONS FOR REVIEW AND CONSIDERATION FOR A WIND ENERGY FACILITY AS SET FORTH IN SECTION 907.27 OF THE ZONING ORDINANCE

1. Does the proposed wind energy facility meet the RA zoning requirements for a large facility? Reviewing the application, Planning Board Minutes, and the Clarion Report, the Board agreed that this condition had been met by the Applicant.
2. Does the permit application and evidence for a Wind Energy Facility submitted by Timbermill contain the required items set forth in 907.27B(1)? The Board discussed each of the following items and determined that this condition had been met by the Applicant with some further discussion on possible additional conditions to satisfy item f.
 - a. Does the permit application and evidence contain a narrative describing the proposed wind energy facility, including an overview of the project? *Citing page 3 of the narrative and Clarion report, the Board agreed that it did.*
 - b. Does the permit application and evidence contain the proposed total rated capacity of the wind energy facility? *Again, citing page 3 of the narrative, the Board agreed that it did.*
 - c. Does the permit application and evidence contain the proposed number, representative types of height or range of heights of wind turbines to be constructed, including their rated capacity, dimensions and respective manufacturers, and a description of ancillary facilities? *Citing pages 3 and 4 of the narrative, the Board agreed that it did.*
 - d. Does the permit application and evidence contain the identification and location of the property or properties on which the proposed wind energy facility will be located? *Citing the Clarion report and Section 4 of application, the Board agreed that it did.*
 - e. Does the permit application and evidence contain a site plan showing the planned location of all wind turbines, property lines, setback lines, access roads, substation(s), electrical cabling from the wind energy facility to be substation(s), ancillary equipment, building(s), transmission and distribution lines? (The site plan must also include the location of all occupied buildings, residences, and other features sufficient to demonstrate compliance with the setbacks required by the ordinance.)? *Citing Section 18 of the application and updated information in Exhibit 2, Tab 3 of Don Giecek's testimony, the Board agreed that it did.*
 - f. Does the permit application and evidence contain any environmental assessment(s) required by state or Federal law? *Commissioner Leigh had some questions about this item. The Board cited David Phillips and Tracy Butler's testimony and the Clarion report. There was some questions about the required reports during their cross examination about reports not being available prior to receiving the CUP approval. Commissioner Nelson made a comment regarding the fact that there would be some permits that would be there or might not be there prior to the approval of the CUP. Mr. Nelson further stated that, without considering a more detailed plan, certain state and Federal permits would not be required until after the CUP is approved. Commissioner Jones agreed with Mr. Nelson and feels that, to the extent that they can obtain permitting, the applicant has done that. Commissioner Leigh said that this discussion cleared some questions she had about this requirement. Mr. Nelson further stated that this may not be the time that the Board needed to discuss adding something that may require the applicant to do to better satisfy this condition. Mr. Muzzulin concurred with these comments. Chair Cole stated that it looks like the Board agrees that this has been completed but feels that additional conditions may be required. Therefore, the Board agreed that it did but will discuss further requirements later if the CUP is approved.*
 - g. Does the permit application and evidence contain decommissioning plans that describe the anticipated life of the wind energy facility, the estimated decommissioning costs in current dollars, the salvage value of the equipment, and the anticipated manner in which the wind energy facility will be decommissioned and the site restored? *Citing Kendra Kalevig-Childers' testimony and Exhibits 24/25 Tab 5, the Board felt that this condition has been met.*
 - h. Does the permit application and evidence contain documentation of agreement between participating landowners and the applicant, facility owner, or operator? *Reviewing Tab 7 of application and Exhibit 19, the Board felt that this has been met.*
 - i. Does the permit application and evidence contain the signature of the applicant? *Per Tab 1 of the application, the Board feels that this condition has been met.*
 - j. Does the permit application and evidence provide for the establishment of an escrow account in the name of Perquimans County in the amount set forth by the Board of County Commissioners in separate fee schedules? *Citing the Clarion report, the Board agreed that this condition has been met.*
3. Does the permit application and evidence meet the setback requirements for a large facility set forth in 907.27B(4)? Reviewing Exhibit 9, Tab 18 and Tracy Butler's testimony, the Board agreed that this condition had been met by the Applicant.

4. Does the permit application and evidence meet the requirement in 907.27B(5)(a) that audible sound from a large wind energy facility shall not exceed fifty-five (55) dBA, as measured at any occupied building or residence on the property of a non-participating landowner? Clarion report did mention that it was their opinion that the information was included in the application. Reviewing Mark Bastasch (Timbermill Exhibits 12-18) and Robert Rand's (Opposition Exhibits 7-10) testimony, the Board agreed that they were accepted as experts witnesses in their field so Chair Cole began by comparing their qualifications. With regard to qualifications, Mr. Bastasch had better qualifications than Mr. Rand. Commissioner Nelson said that Mr. Bastasch gave compelling testimony and was not impressed that there was no solid proof that there would not be any side effects with the noise from the turbines. Mr. Nelson further stated that he was not impressed with Mr. Rand's testimony. There were some questions about his co-author. He just has some concerns about the accuracy of Mr. Rand's testimony. He feels that the applicant did comply with this condition. Commissioner Muzzulin agreed. Chair Cole also said that she had problems with Mr. Rand's testimony and his demeanor during his testimony. Commissioner Leigh felt that Mr. Bastasch's testimony was more concrete. It was the consensus of the Board that the applicant satisfied this condition.
5. Does the permit application and evidence meet the requirement in 907.27B(5)(b) that shadow flicker on any occupied building or residence on a non-participating landowner's property caused by a large wind energy facility must not exceed thirty (30) hours per year? Chair Cole said that this was covered under Mark Bastasch and Robert Rand's testimony. Commissioner Nelson made several comments and said that he would like to consider a condition to use available technology to cut off the turbines during heavy shadow flickering times on non-participant properties and feels that the Perquimans County Land Use Plan supports this condition. Commissioners Muzzulin stated that this report is based on the wind turbines operating continuously. With the cloud cover today, there would be no shadow flicker. He closed his remarks with stating that he would also like to see an additional condition to address this issue. Commissioner Leigh concurred with Commissioner Nelson to add a condition to cut off turbines during heavy shadow flickering times on non-participant properties. Chair Cole said that the Board would come back to address these issues after they had completed their review of the other conditions. They do feel that they met the burden of proof but would like additional conditions.
6. Does the permit application and evidence meet the installation and design requirements set forth in 970.27B(6)? Citing Tracy Butler's testimony, the Board feels that the applicant has satisfied this condition.
7. Does the permit application and evidence meet the decommissioning requirements set forth in 907.B(7)? Upon reviewing Kendra Kalevig-Childers' testimony and her exhibits, the Board feels that this condition has been satisfied.
8. Does the permit application and evidence contain a **Noise Evaluation Report** for each of the proposed wind turbine locations and any alternative wind turbine locations at the proposed site any alternative sites in accordance with the noise control regulations established by the Perquimans County Zoning Regulations? The Board discussed each of the following items and determined that this condition had been met by the Applicant.
 - a. Does the Noise Evaluation Report contain a detailed description of the potential noise levels that would be generated by the proposed wind turbines and any alternative wind turbines at the proposed site and any alternative sites (*Tab 9, Mark Bastasch's Exhibits 15 & 16 – complies to this condition*), including, but not limited to, existing sound levels at the proposed site and any alternative sites, projected sound levels to be generated by the operation of the proposed wind turbines and any alternative wind turbines (*Mark Bastasch's Exhibit 16 – complies to this condition*), the methodology used to monitor and evaluate sound levels (*Mark Bastasch's Exhibit 16 – complies to this condition*), the wind turbine manufacturer's technical documentation of the noise emission characteristics of the proposed wind turbines and any alternative wind turbines (*Mark Bastasch's testimony – Where available, the applicant complies to this condition*), and an analysis of compliance with the noise control regulations established by Perquimans County (*Mark Bastasch's testimony – complies to this condition*)?
 - b. Does the Noise Evaluation Report contain calculations in accordance with the noise control regulations established by Perquimans County for the projected maximum cumulative sound levels generated when the proposed wind turbines and any alternative wind turbines are in operation at the proposed site and any alternative sites measured at nearest existing occupied building, project maximum day-time and night-time sound levels generated when the proposed wind turbines and any alternative wind turbines are in operation measured at the nearest occupied building, and projected maximum levels of infrasonic sound, ultrasonic sound, impulsive noise and prominent discrete tones generated when the proposed wind turbines and any alternative wind turbines are in operation at the proposed site and any alternative sites measured at the nearest occupied building? *Citing Exhibit 14 and Exhibit 16 beginning on page 2, the Board agreed that the condition has been satisfied.*
 - c. Does the Noise Evaluation Report contain a study area map for the proposed site and any alternative sites depicting the noise analysis study area radius, site boundaries, sound level monitoring locations and nearest occupied building? *Citing Exhibit 15 and Tab 9 of the application, the Board agreed that it did.*
 - d. Does the Noise Evaluation Report contain an identification of any potential mitigation measures to minimize sound levels at the nearest occupied building, including, but not limited to, utilization of best practical noise control measures in accordance with the Perquimans County Zoning Regulations? *According to Mark Bastasch's August 24th testimony on page 131 line 23-24, there are none needed so the Board agreed that they have satisfied this condition.*

At this moment of the meeting, the Board discussed the testimony of Mark Bastasch, Timbermill witness, and Robert Rand, Opposition witness. Commissioner Jones felt that Mr. Bastasch's testimony was competent and felt that Mr. Rand's testimony could not rebut it. Commissioner Nelson agreed that Mr. Bastasch's testimony was more compelling and Mr. Rand's testimony was not compelling at all. Commissioner Muzzulin agreed. Commissioner Leigh said that Mr. Bastasch's testimony was more sound and concrete. Commissioner Jones referred to a tweet from Mr. Rand, not entered into evidence, where he stated that he was baffled that no public health agency in the U.S. has contacted him about the wind turbine motion sickness. This image caused Mr. Jones not to give as much weight to Mr. Rand's testimony as he would have Mr. Bastasch's testimony. Chair Cole said that Mr. Bastasch was cross-examined about the amplitude modulation, the whoosh, whoosh sound, but that was a rare happening. There being no other comments, the Board move to condition No. 9.
9. Does the permit application and evidence contain in **Ice Drop and Ice Throw Evaluation Report** for each of the proposed wind turbine locations and any alternative wind turbine locations at the proposed site any alternative sites? Citing Robert O'Neal's testimony including Tab 10/11, Exhibits 27/28, and the discussion of each of the following items, the Board determined that this condition had been met by the Applicant. Commissioner Nelson stated that he believes that the evidence provided the Board was credible. He said that, if his memory is correct, the maximum ice throw was 1235 feet and the nearest occupied dwelling is 1943 feet. The maximum blade throw was 742 feet and the nearest occupied dwelling is 1943 feet. He did ask that we need to set an additional condition to state that, to mitigate any ice throw or blade throw onto a non-participating property, it needs to remove any wind turbine within 1300 feet of any non-participating property owner. This is allowed by the Perquimans County Land Use Plan. This would be another item to come back to after our deliberation.
 - a. Does the Ice Drop and Ice Throw Evaluation Report contain a detailed description of the conditions at the proposed site and any alternative sites that may cause ice to be dropped or ice to be thrown, or both, from the wind turbine blades of the proposed wind turbines and any alternative wind turbines, the methodology used to evaluate and assess the risk of ice drop or ice throw, or both, and the wind turbine manufacturer's technical documentation relating to recommended ice drop and ice throw setback distances and installed ice monitoring devices and sensors? *Citing Robert O'Neal's testimony including Exhibit 28, page 2, the Board agreed that the condition has been satisfied. With regard to the technical documentation, that would be included on the bottom of page 1 of Exhibit 28. Thus, the Board agreed that the condition has been satisfied.*
 - b. Does the Ice Drop and Ice Throw Evaluation Report contain calculations in feet of the maximum distance that ice could be dropped from the wind turbine blades for each proposed wind turbine and any alternative wind turbines at the proposed site and any alternative sites when the wind turbines are stationary and calculations in feet of the maximum distance that ice could be thrown from the wind turbine blades for each proposed wind turbine and any alternative wind turbines at the proposed site and any alternative sites when the wind turbines are in operation? *According to Exhibit 29 – pages 3-4, the maximum distance for ice drop would be 900 feet and the maximum distance for ice throw would be 1235 feet. Therefore, the Board agreed that the condition has been satisfied.*

- c. Does the Ice Drop and Ice Throw Evaluation Report contain a study area map for the proposed site and any alternative sites depicting the ice throw study area radius, site boundaries and locations where ice could be dropped or locations where ice could be thrown from the wind turbine blades, or both, of each proposed wind turbine and any alternative wind turbines at the proposed site and any alternative sites when the wind turbines are stationary and in operation? *According to Exhibit 29, Epsilon Figure 1 and Tab 11 of the application, the Board feels that this condition has been satisfied.*
- d. Does the Ice Drop and Ice Throw Evaluation Report contain an identification of any potential mitigation measures to minimize the risk, occurrence and impact of ice drop or ice throw, or both, from the wind turbine blades of each of the proposed wind turbines and any alternative wind turbines, including, but not limited to automatic and remote manual shutdown of the wind turbines? *Citing Exhibit 28 – page 4, second paragraph, the Board agreed that this condition was satisfied.*
10. Does the permit application and evidence contain a **Blade Drop and Blade Throw Evaluation Report** for each of the proposed wind turbine locations and any alternative wind turbine locations at the proposed site any alternative sites? Chair Cole stated that this falls along the line of the Ice Drop and Ice Throw Evaluation Report. Again, citing Robert O'Neal's testimony, Exhibits 27 and discussing the following issues, the Board determined that this condition was satisfied with additional language that might need to be added.
- a. Does the Blade Drop and Blade Throw Evaluation Report contain a detailed description of the conditions at the proposed site and any alternative sites that may cause blade to be dropped or blade to be thrown, or both, from the wind turbine blades of the proposed wind turbines and any alternative wind turbines, the methodology used to evaluate and assess the risk of blade drop or blade throw, or both, and the wind turbine manufacturer's technical documentation relating to recommended blade drop and blade throw setback distances and installed blade monitoring devices and sensors? *Citing Robert O'Neal's testimony including Exhibit 27, the Board agreed that the condition has been satisfied.*
- b. Does the Blade Drop and Blade Throw Evaluation Report contain calculations in feet of the maximum distance that blade could be dropped from the wind turbine blades for each proposed wind turbine and any alternative wind turbines at the proposed site and any alternative sites when the wind turbines are stationary and calculations in feet of the maximum distance that blade could be thrown from the wind turbine blades for each proposed wind turbine and any alternative wind turbines at the proposed site and any alternative sites when the wind turbines are in operation? *According to Epsilon Report pages 4-5, the Board agreed that the condition has been satisfied.*
- c. Does the Blade Drop and Blade Throw Evaluation Report contain a study area map for the proposed site and any alternative sites depicting the blade throw study area radius, site boundaries and locations where blade could be dropped or locations where blade could be thrown from the wind turbine blades, or both, of each proposed wind turbine and any alternative wind turbines at the proposed site and any alternative sites when the wind turbines are stationary and in operation? *According to Robert O'Neal's testimony, the Board feels that this condition has been satisfied.*
- d. Does the Blade Drop and Blade Throw Evaluation Report contain an identification of any potential mitigation measures to minimize the risk, occurrence and impact of blade drop or blade throw, or both, from the wind turbine blades of each of the proposed wind turbines and any alternative wind turbines, including, but not limited to automatic and remote manual shutdown of the wind turbines? *According to Robert O'Neal's testimony, the Board agreed that this condition was satisfied.*

At this moment of the meeting, Chair Cole asked the Board if they had any further comments or discussion on Robert O'Neal's testimony. There being none, she moved on to condition No. 11.

11. Does the permit application and evidence contain a **Shadow Flicker Evaluation Report** for each of the proposed wind turbine locations and any alternative wind turbine locations at the proposed site any alternative sites? The Board discussed each of the following items and reviewed Mark Bastasch and Robert Rand's testimony. The Board agreed that this condition has been satisfied with the addition of a condition mentioned earlier.
- a. Does the Shadow Flicker Evaluation Report contain a detailed description of the conditions of the potential shadow-flicker producing features of each of the proposed wind turbines and any alternative wind turbines at the proposed site and any alternative site, including, but not limited to, an analysis of conditions that may cause shadow flicker, the methodology used to evaluate shadow flicker and the manufacturer's technical documentation relating to shadow flicker, if available. *The Board agreed that this condition has been satisfied.*
- b. Does the Shadow Flicker Evaluation Report contain calculations from each proposed wind turbine and any alternative wind turbines at the proposed site and alternative sites to each off-site occupied structure location within a one-mile radius, include, but not limited to, the following: (A) Distance in feet; (B) Shadow length and intensity; (C) Shadow flicker frequency; (D) Specific times shadow flicker is predicted to occur; and (E) Duration of Shadow flicker measured in total annual hours? *Information located behind Tab 8 provided sufficient evidence to allow the Board to agree that this condition was satisfied.*
- c. Does the Shadow Flicker Evaluation Report contain a study area map of the propose site and any alternative sites depicting the shadow flicker analysis study area radius, the site boundaries, locations of the proposed wind turbines and locations of any alternative wind turbines, locations of off-site occupied structures, and areas of shadow flicker occurrence identified according to total annual hours? *Information located behind Tab 8, Figure 1 provided sufficient evidence to allow the Board to agree that this condition was satisfied.*
- d. Does the Shadow Flicker Evaluation Report contain an identification of potential mitigation measures to minimize the impact of shadow flicker, including, but not limited to, vegetation, screening and fence construction? *Information located behind Tab 8, paragraph 8 provided sufficient evidence to allow the Board to agree that this condition was satisfied.*

At this time, Chair Cole requested a break in the meeting until 6:20 p.m.

After the break, Chair Cole returned to discussing the general conditions for review and consideration for a Conditional Use Permit as set forth in Section 903 of the Zoning Ordinance.

GENERAL CONDITIONS FOR REVIEW AND CONSIDERATION FOR A CONDITIONAL USE PERMIT AS SET FORTH IN SECTION 903 OF THE ZONING ORDINANCE

1. **That the use will not materially endanger the public health or safety, if located according to the plan submitted and approved.** *According to the testimony of Tracy Butler – design & setbacks; Robert O'Neal – Ice Drop/Ice Throw & Blade Drop/Blade Throw; Mark Bastasch – sound & shadow flicker; Kendra Childers – decommissioning; Christopher Ollson – environmental & health issues; and Robert Rand – sound, shadow flicker, and health issues, the Board agreed by a vote of five (5) to zero (0) that this finding was satisfied.*
2. **That the use meets all required conditions and specifications.** *After reviewing the above Specific Conditions as set forth in Section 907.27 of the Zoning Ordinance, the Board agreed by a vote of five (5) to (0) that this finding was satisfied.*
3. **That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.** *The testimony of Charles Moody and Mike McCann provided the evidence needed to evaluate this finding. Commissioner Nelson had concerns about the testimony and analysis used by Mr. Moody. Specifically, Commissioner Nelson found that Mr. Moody used a faulty assumption that people in the community were aware of the project in 2013 and 2014. Commissioner Nelson concluded that the applicant did not meet its burden on this factor. Commissioner Nelson also found that the expert testimony of Mr. McCann followed a more logical approach than that utilized by Mr. Moody. Commissioner Jones stated that both experts had a difficult task. Commissioner Jones did not find the testimony of Mr. McCann to be as credible as the testimony of Mr. Moody. Commissioner Leigh did not find Mr. Moody's testimony to be very convincing. Commissioner Leigh concluded that the testimony and report offered by Mr. McCann contained more information and was more credible on the issue. Commissioner Muzzulin was not impressed with either Mr. Moody or Mr. McCann but concluded that the applicant met its burden on this issue. Chair Cole agreed with Commissioner Muzzulin that both Mr. Moody and Mr. McCann were poor witnesses. Chair Cole specifically concluded that Mr. McCann was not a credible witness on the issue. Chair Cole found that Mr.*

Moody had more experience in North Carolina and was satisfied enough with Mr. Moody's testimony to conclude that the applicant met its burden. Three members of the Board voted that the applicant met its burden on this issue. Commissioners Nelson and Leigh voted in the negative finding that the applicant failed to meet its burden on this issue.

- 4. That the location and character of the use, if developed according to the plan is 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. The Board has discussed all the witnesses except for John Hecklau. Commissioner Jones said that he was surprised to find that a large portion of his information was from Chowan County. He did not give that information a lot of weight. He further stated that he took note of Ms. Scaff, Mr. Hunter, and Mr. Elliott's testimony on how they currently use their property and the character and use of their property and that their evidence was compelling. Based on all of the evidence presented, Commissioner Jones concluded that the project would not be in harmony of the area in which it is to be located. Commissioner Nelson spoke on the harmony component and considering where a good percentage of these wind farms are located in rural agricultural areas. This suggests to him that wind farms are permitted usages for these properties. He further spoke to the fact that a prior board approved the Amazon Wind Project to be in harmony with the Perquimans County Land Use Plan. Commissioner Muzzulin and Chair Cole concluded that this project would satisfy this finding. Four members of the Board voted that the applicant met its burden on this issue with Commissioner Jones voting in the negative finding that the applicant failed to meet its burden on this issue.

CLOSED SESSION: CONSULTATION WITH ATTORNEY

Pursuant to NCGS #143-318.11(3), Edward R. Muzzulin made a motion to go into Closed Session to consult with their attorney. The motion was seconded by Fondella A. Leigh and unanimously approved by the Board.

The Closed Session was adjourned and the Special Called Meeting reconvened on motion made by Edward R. Muzzulin, seconded by Wallace E. Nelson.

CONDITIONAL USE PERMIT CUP-16-01

As a result of the Board's previous action, Kyle Jones made a motion to deny the Conditional Use Permit No. 16-01 for a large scale wind farm project because the applicant has not met his burden on all of the General and Specific Conditions of the Zoning Ordinance. The motion was seconded by Fondella A. Leigh. The motion was approved by a vote of three (3) to two (2) with Commissioners Cole and Muzzulin voting against the motion. Chair Cole asked if anyone wanted to be heard regarding the motion. Commissioner Jones said that he would defer his comments until November 21, 2016.

ADJOURNMENT

There being no further comments or business to discuss, the Special Called Meeting was adjourned at 7:30 p.m. on motion made by Edward R. Muzzulin, seconded by Fondella A. Leigh.

Janice McKenzie Cole, Chair

Clerk to the Board

SPECIAL CALLED MEETING

November 21, 2016

7:00 p.m.

The Perquimans County Board of Commissioners met in a SPECIAL CALLED MEETING on Monday, November 21, 2016, at 7:00 p.m. in the Upstairs Courtroom of the Perquimans County Courthouse Annex Building.

MEMBERS PRESENT: Janice McKenzie Cole, Chair Kyle Jones, Vice Chairman
Fondella Leigh Edward R. Muzzulin
Wallace Nelson Matthew Peeler

MEMBERS ABSENT: None

OTHERS PRESENT: Frank Heath, County Manager Mary Hunnicutt, Clerk to the Board
Hackney High, County Attorney Doug Hanna, County Attorney

After the Chair called the meeting to order, Commissioner Leigh gave the invocation and the Chair led the Pledge of Allegiance.

AGENDA

On motion made by Edward R. Muzzulin, seconded by Matthew Peeler, the Board unanimously approved the Agenda as amended.

CLOSED SESSION: CONSULTATION WITH ATTORNEY

Pursuant to NCGS #143-318.11(3), Edward R. Muzzulin made a motion to go into Closed Session to consult with their attorney. The motion was seconded by Wallace E. Nelson and unanimously approved by the Board.

The Closed Session was adjourned and the Special Called Meeting reconvened on motion made by Edward R. Muzzulin, seconded by Fondella A. Leigh and unanimously approved by the Board.

ORDER: CONDITIONAL USE PERMIT NO. CUP-16-01

Chair Cole stated that the Board has had the opportunity to review the proposed order and asked if there was a motion. Wallace E. Nelson stated that, before us, we have an Order that summarizes the proceedings, the preliminary findings, the finding of fact, and the conclusion that reflects the Board's vote of three (3) to two (2) to deny Conditional Use Permit No CUP-16-01. He made a motion to approve the Order as presented. Kyle Jones

seconded the motion. Chair Cole asked for any discussion. There being none, she called for a vote which was unanimous to approve the following Order:

PERQUIMANS COUNTY BOARD
OF COMMISSIONERS

CUP-16-01

In Re:

Application by Timbermill)
Wind, LLC for Conditional)
Use Permit for a Large Wind)
Energy Facility)

ORDER

SUMMARY OF PROCEEDINGS AND PRELIMINARY FINDINGS

This matter came before the Perquimans County Board of Commissioners (the "Board") on the above-referenced application submitted by Timbermill Wind, LLC ("Timbermill" or "Applicant") for a conditional use permit to construct and operate a Large Wind Energy Facility in the Bear Swamp and Center Hill communities, permit application number 16-01 (the "Application"). A quasi-judicial hearing was commenced on August 24, 2016 to consider the Application. Testimony from numerous witnesses, and documentary and other evidence was received during the hearing that spanned over a total of seven (7) evening sessions, and the evidentiary record was closed on October 18, 2016.

After hearing closing arguments on October 22, 2016, the Board met on November 14, 2016 to deliberate on the Application. In its deliberations, the Board considered all the testimony and evidence submitted during the hearing, and the requirements for a Large Wind Energy Facility as set forth in Section 907.27 of the Ordinance. The Board also deliberated regarding each of the four general requirements set forth in Section 903 of the Ordinance. The Applicant has the burden of proving at all times that the proposed use would not violate the requisites of Section 903 of the Perquimans County Zoning Ordinance. In so doing, the Applicant is responsible for presenting competent, material and substantial evidence to support each of the following four requisites:

- (a) That the use will not materially endanger the public health or safety, if located according to the plan submitted and approved;
- (b) That the use meets all required conditions and specifications;
- (c) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (d) 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.

During its deliberations, the Board considered first the specific requirements set forth in Section 907.27. Following deliberations regarding the specific requirements, the Board considered separately the four (4) general requirements, deliberated over the evidence on each of the four (4) general requirements, and each individual Board member provided separate votes as to whether the applicant met its burden on each of the general requirements. Following the deliberations on the specific and general requirements, the individual Board members considered the record evidence, considered the prior determinations made as to the general conditions and voted on the ultimate issue: whether to grant or deny the Conditional Use Permit.

As to the first two general requirements, all five Board members concluded that the Applicant met its burden of proof based on the record evidence.

As to the third general requirement, Commissioners Leigh and Nelson concluded by vote that the Applicant failed to meet its burden that the use would not substantially injure the value of adjoining or abutting property and that substantial, competent and material evidence in the record demonstrated that the proposed use would substantially injure the value of adjoining or abutting properties. The remaining three Commissioners concluded by vote that the Applicant met its burden based on the record evidence.

As to the fourth general requirement, Commissioner Jones concluded by vote that the Applicant failed to meet its burden that the location and character of the use, if developed according to the plan as submitted and approved, would be in harmony with the area in which it is to be located and that substantial, competent and material evidence in the record supported this conclusion. The remaining four Commissioners concluded by vote that the Applicant met its burden on this requirement based on the record evidence.

The deliberations and the aggregate of the individual votes taken on each of the four general requirements in Section 903 revealed that a majority of the remaining five Commissioners (3 out of 5) concluded that at least one of these general requirements, all of which must be satisfied before the Application can be granted, were not satisfied by competent, material and substantial evidence in the record.

Pursuant to Section 903, a motion was then made by Commissioner Jones that based on the prior deliberations and actions of the Board that the Project be denied because the Applicant did not meet its burden on all of the general and specific conditions of the Ordinance. That motion was seconded by Commissioner Leigh and the motion passed by a 3 to 2 vote, with Commissioner Nelson joining Commissioners Jones and Leigh in voting in favor of the motion to deny the Application. Chairwoman Cole and Commissioner Muzzulin voted against that motion.

During the session held on November 21, 2016 to adopt this Order memorializing the decision reached by the Board on November 14, 2016, each of the three Board members voting to deny the Application (Jones, Nelson and Leigh), which constituted a majority, reviewed and approved the following findings of fact and conclusions of law as specifically identified and set forth below:

FINDINGS OF FACT

A. General Findings of Fact

1. In the Application, Timbermill requests a conditional use permit to operate a Large Wind Energy Facility in the Bear Swamp and Center Hill communities of Perquimans County (the "Project"). The Project, as proposed by Timbermill, would consist of 57 industrial wind turbines ("IWTs"), each proposed to have a maximum height of 599 feet. The IWTs proposed by Timbermill would be larger than any other IWTs currently operating in the United States.

2. The area in which the Project is proposed is zoned Rural Agriculture, and is currently used for both agricultural and residential purposes. While Timbermill presented evidence that the proposed turbines will be primarily located on timber land owned by the Weyerhaeuser Company and leased by Timbermill, much of the area adjoining and abutting the Project is owned by non-participating landowners, who live, farm, work and recreate in the area immediately adjacent to the Project area.

B. Findings of Fact concerning the requirement that the use will not substantially injure the value of adjoining or abutting property

3. Regarding whether the Project would substantially injure the value of adjoining or abutting properties, the testimony of Charles Moody ("Moody") and Mike McCann ("McCann") provided the primary evidence needed to evaluate this requirement. Both Moody and McCann provided expert witness testimony as real estate appraisers.

4. As to his examination of the Project, Moody performed two types of analyses: a prior sales analysis, which examined the alleged impact of the project on home sales within Perquimans County; and a review and analysis of several academic studies done by educational researchers who are not licensed appraisers qualified to make opinions as to value impacts.

5. In his sales analysis, Moody attempted to examine what, if any, impact the Project had on real estate values in Perquimans County. In doing so, Moody examined sales of real property within the Project area prior to 2013, and compared sales of the same property between 2013 and 2015 against paired sales outside the area to determine whether the anticipation and potential approval of the Project had any impact on sale price in the area. Moody's analysis assumed that the Project was known to the public in 2013, such that the resale price of the examined properties would reflect the impact of the Project.

6. The record contains substantial testimony from residents in the community that they were not aware of the proposed Project until the summer of 2015. Furthermore, Mr. Moody himself testified that the real estate professionals he spoke with in Perquimans County regarding the Project were not aware of the Project as late as the summer of 2016.

7. As to the second analysis conducted by Moody, his review of certain academic studies, two of these academic studies authored by Mr. Ben Hoen purport to examine the impact of dozens of operational wind facilities on real property values near wind energy facilities. These academic studies were not conducted by licensed appraisers and the data underlying these studies was never released to the public. As a result, Moody did not have the ability to review the underlying data. Moreover, these academic studies were not limited to, or focused on, those properties that actually adjoin or abut the studied wind turbine facilities. Finally, Moody could not articulate or explain the statistical measure (the R squared coefficient) in the hedonic regression analysis utilized in the 2009 and 2013 LBNL studies to determine their reliability.

8. Commissioner Nelson had concerns about the testimony and analysis used by Moody. Specifically, Commissioner Nelson found that Moody used a faulty assumption that people in the community were aware of the project in 2013 and 2014. Commissioner Nelson

concluded that the applicant did not meet its burden concerning the requirement that the use will not substantially injure the value of adjoining or abutting property.

9. Commissioner Leigh did not find Mr. Moody's testimony to be very convincing.

10. Based on the whole record, Commissioners Leigh and Nelson conclude that the methodology used by Moody does not reasonably support his conclusion that the Project will not substantially injure the value of adjoining or abutting property as set forth in Section 903(c) of the Ordinance.

11. Testimony was also received from McCann. In addition to his testimony, McCann provided a thorough report to the Board explaining and supporting his conclusions, including his conclusion that the value of adjoining and abutting properties would be substantially injured as a result of the Project.

12. It is undisputed that McCann is the only witness to testify before the Board who conducted a sales comparison/paired sales analysis regarding the property value impacts of operational wind facilities on adjoining or abutting properties.

13. McCann has personally examined the impacts of industrial-scale wind facilities on communities like Perquimans County, and has shown that, based on the similarity to the Project, data collected at those facilities will reliably predict the impact of the Project on adjoining or abutting property. Based on the methodology he described, McCann provided the opinion that the Project will have a substantial negative impact on the value of properties that adjoin or abut the Project. McCann also provided in his report that "in his professional opinion any value diminution that measurably exceeds typical negotiation range for an unaffected transaction must be considered substantial..."

14. Commissioner Nelson also found that the expert testimony of McCann followed a more logical approach than that utilized by Moody.

15. Commissioner Leigh concluded that the testimony and report offered by Mr. McCann contained more information and was more credible on the requirement that the use will not substantially injure the value of adjoining or abutting property.

C. Findings of Fact concerning the requirement 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

16. The Project proposes to construct 57 of the largest turbines in the United States. These turbines will be installed in an area with little-to-no industrial activity, and that is otherwise agricultural and residential.

17. Additionally, the Project plans, as well as the visual simulations presented by Timbermill itself, demonstrate that the proposed IWTs will rise far above all their surroundings, and will have a significant visual impact. This visual impact will change the nature and character of this rural and pastoral area indefinitely.

18. The visual impact of the project cannot be mitigated in any reasonable fashion, based on the sheer height of the proposed turbines.

19. Further, regarding the visual impact of the Project, evidence was presented by Tommy Stokely, a licensed surveyor experienced in preparing visual simulations, showing visual simulations of specific residential locations around the Project area. These simulations demonstrate the impact of the Project on, among other things, the residential property surrounding the Project area. Specifically, the visual simulations presented by Mr. Stokely showing the impacts of the IWTs on residential homes owned by Dabney Scaff, Dennis Hunter, Clyde Elliott and Kristi Copeland and other nearby property owners.

20. Commissioner Jones specifically took note of Ms. Scaff, Mr. Hunter, and Mr. Elliott's testimony on how they currently use their property and the character and use of their property.

21. As to the issue of harmony, Commissioner Jones found that the evidence presented by the residents, and opponents to the Project, was compelling. Based on all of the evidence presented, including but not limited to the evidence presented in opposition to the Application, Commissioner Jones concluded that the project would not be in harmony of the area in which it is to be located.

22. The Project as a whole would be in sharp contrast to the current surroundings in the Bear Swamp and Center Hill communities.

23. In addition, Timbermill presented evidence regarding the shadow flicker that will result from the operation of these turbines. In presenting that evidence, Timbermill contends that no residence will receive more than 30 hours of shadow flicker per year. Residents testified that the amount of shadow flicker projected in Timbermill's own evidence will severely limit and impair the harmonious use and enjoyment of these properties.

CONCLUSIONS

1. Based on the above findings and the whole record, three members of the Board (a majority) have determined that Timbermill failed to satisfy all four general requirements set forth in Section 903. Specifically, three members of the Board (a majority) found that at least one of the four general requirements in Section 903 were not satisfied by competent, material and substantial evidence in the record.

2. Timbermill failed to meet its required burden of proof to obtain the requested conditional use permit.

3. As demonstrated by the above findings and based on evidence contained in the whole record, Timbermill failed, as to Commissioners Leigh and Nelson, to present competent material and substantial evidence on the requirement that the proposed use will not substantially injure the value of adjoining or abutting property.

4. As demonstrated by the above findings and based on evidence contained in the whole record, Timbermill failed, as to Commissioner Jones, to present competent material and substantial evidence on the requirement that the location and character of the use, if developed according to the plan as submitted and approved, will not be in harmony with the area in which it is to be located.

5. A majority of the Board, in the aggregate, concluded that Timbermill failed to present competent material and substantial evidence on all four of the required general conditions contained in Section 903 and, as such, the majority voted to deny the Application.

WHEREFORE, based on the majority vote of the Commissioners to deny the Application for failing to meet its burden on all of the general and specific conditions of the Ordinance, and for the reasons set forth herein, the Application is hereby DENIED.

This the 21st day of November, 2016.

By: _____
Janice Mackenzie Cole, Chairwoman
Perquimans County Board of Commissioners

CONDITIONAL USE PERMIT NO. CUP-16-02 & CUP-16-04

Chair Cole stated that the next item of business was the following Conditional Use Permits:

A. Conditional Use Permit No. CUP-16-02 - Heath McLaughlin

➤ To approve/deny Conditional Use Permit No. CUP-16-02, requested by Heath McLaughlin (for Alpha Value Solar, LLC) for a Large Scale, ground-mounted Solar Power Energy System Facility in the 700-block of Ocean Highway South (US Hwy. 17), to include Tax Parcel Nos. 3-0049-00010A and 3-0049-00016.

B. Conditional Use Permit No. CUP-16-04 - Heath McLaughlin

➤ To approve/deny Conditional Use Permit No. CUP-16-04, requested by Heath McLaughlin (for Sun Farm V, LLC) for a Large Scale, ground-mounted Solar Power Energy System Facility in the 700-block of Ocean Highway South (US Hwy. 17), to include Tax Parcel Nos. 3-0049-00012 and 3-0049-00013.

Beth Trahos of Smith, Moore, Leatherwood, Attorneys at Law, introduced herself and explained that she represented the applicant for these Conditional Use Permits. She explained that she has some documents to distribute to the Board which includes affidavits from experts that they have present tonight and wanted to know if it would be appropriate to distribute them at this time. Chair Cole stated that it was her understanding that the only thing that was going to be discussed tonight was the response to Ms. Matthews' letter and the documents relating to those responses. Ms. Trahos stated that these documents were in response to Ms. Matthews' letter. Chair Cole directed Ms. Trahos to distribute the packets. The Board took the time to review the documents. Chair Cole stated that, if her memory is correct, Ms. Matthews' letter only applied to CUP-16-04. Commissioner Peeler stated that, when we authorized them to discuss CUP-16-02 and CUP-16-04 together, we allowed her to talk about both projects. He further stated that he did not know what to do with that. Chair Cole said that we allowed both to be

considered at the same time but it did not change the fact that only one of the projects directly affected her property. Commissioner Peeler further stated that she was introducing evidence that affected both properties. Chair Cole stated that, in a Quasi-Judicial Hearing, only those property owners abutting the project would be allowed to speak so, even though she was speaking during the hearing for both properties, the evidence was only allowed for the property that was abutting the project. County Manager Heath confirmed that her comments were only for the CUP-16-04 where her concerns were. County Attorney High stated that the way we receive comments does not affect whether or not she has standing on the second property where she is not adjoining. Mr. High understood where Mr. Peeler was coming from but her evidence would only relate to the one property in which she had standing. Chair Cole further stated that she has said what she said because what the Board had been presented with and what the Board should consider is the information on CUP-16-04. Commissioner Peeler stated that he was under the impression that all evidence had been presented at the November 7, 2016 Public Hearing so he was confused as to why they are looking at this information now. Chair Cole asked County Attorney High to respond to Mr. Peeler's question. Mr. High stated that what he would allow them to consider tonight in the packet that was presented to the Board are those things that were addressed in the property owner's letter that was presented at the November 7, 2016 Public Hearing. He further stated that they felt that the applicant should have the opportunity to address the issues that property owner brought up during the hearing and that they should only consider those items tonight in direct response to her questions. Ms. Trahos explained that they had experts present tonight that would be able to address the issue of property values and safety and would ask the Board to allow them to briefly address these issues in order to have a fair and balanced hearing. Ms. Trahos also stated that she would be remiss if she did not object to the testimony, which they believe, does not meet the statutory standards of competent and material evidence. Chair Cole said that the Board would get to that. After reviewing the documents, Chair Cole said that she is asking the Board to go back and consider that we had a statement that was made by Ms. Matthews that was made a part of the record which included articles and other information from a variety of sources. Ms. Cole feels that the Board needs to look at what she presented that the Board thinks was admissible or evidence that the Board would consider. Commissioner Peeler expressed his concern about the amount of evidence that was presented to them tonight and feels that a lot of this information should have been presented to the Planning Board. He further recommends that this be returned to the Planning Board for their recommendation to the Commissioners. Chair Cole asked the Board to look at what was presented by Ms. Matthews and determine what is valid and, if it is not valid, then we do not need to look at the applicant's response. Commissioner Peeler also expressed his concerns about the burden of proof that is the responsibility of the applicant, on behalf of the opposition - why are we holding this phase of the deliberation in conjunction with the opposition's concerns when most of this should have been presented regardless if there was opposition or not. Chair Cole stated that there is some validity to that which gives us the opportunity to decide that we would not consider it and base our decision on what has already been presented. Commissioner Jones asked if would be feasible for the Board to review Ms. Matthews' statement and see what is relevant or usable. He remembers, from their training on conducting Quasi-Judicial Hearings, that the Board could not hear, admit, or use any evidence on the elements of property values unless it was admitted by expert. Is that correct? Commissioner Peeler stated that it was correct. Commissioner Jones then said that the Board could not use the information presented by Ms. Matthews on the effect of resale value. Commissioner Peeler asked if this means that the applicant cannot bring in any of that information. Chair Cole asked Mr. Peeler what he meant by bringing in that information. Mr. Peeler stated that, if it wasn't an issue before Ms. Matthews brought it up, then there is no reason for the applicant to, at this time, bring that information in. County Attorney High stated that it doesn't mean that we do not consider it because there may be an argument that it might be overkill or unnecessary because the evidence that Ms. Matthews brought in was not going to be something that we can consider anyway. He further stated that it is the evidence that, as he sees it, the applicant is presenting tonight is in, large part, response to her concerns but it could be an argument that it is not even necessary. Commissioner Peeler stated that, from a procedural point of view, it is what he is looking at. He said that, if it was not presented and there was no opposition, there was no need to rebut and add additional information that may or may not have been missing. Mr. High said that the applicant does not know ahead of time what is going to be important or how the Board is going to rule and they should be given the opportunity to address those concerns. Mr. High said that, if the Board goes into Closed Session or Open Session, and states that they would not consider X, Y, and Z because it was a copy of an article off the internet, then that is the Board's right to do that. He further stated that, if for some reason we were leaning towards considering that evidence, then the applicant is exercising due diligence to let us know their response to that concern. Commissioner Jones did add briefly that were this a question of policy and not a quasi-judicial hearing, he would think, which is his opinion, his willingness to use articles that have been attached would be greater if we discussing a preference of policy. Chair Cole stated that this was another case of different standards for policy or legislative goals as opposed to quasi-judicial proceedings. Mr. Jones further stated that, because this is a quasi-judicial proceeding, he has a problem using printed articles because we have to ask ourselves if this is competent evidence. Chair Cole asked the Board what in Ms. Matthews' statement would they consider evidence and once you make that determination you would need to hear or review from the applicant's materials that address those issues. Commissioner Nelson asked if there was another packet for CUP-16-04 or do they just have the packet for CUP-16-02? Ms. Trohos explained that the two packets are substantially similar but they did seek to address the very broad issues that Ms. Matthews addressed and her experts are willing to answer any questions the Board had. And she asked that the Board accept both packets as evidence in each of the hearings. Commissioner Jones feels that in Ms. Matthews' letter in subsection 1, is relevant and is referring to harmony and intent and spirit of the ordinance and quotes Article VI, Section 604: "The Rural Agriculture District is designed to reflect the pattern of development in rural Perquimans County. The intent of this district is to preserve and protect current uses and way of life *and* also to protect property rights." He said that she further quotes the Zoning Ordinance, "Also Section 903 states: "...that the use in its proposed location will be harmonious with the area and with the spirit of this Ordinance." Commissioner Peeler agreed with Mr. Jones. Commissioner Peeler feels that the section entitled, "Effect on resale value and rental potential of adjoining property," should be deleted since she was not a competent authority to discuss property value issues. Commissioner Peeler also deleted number 3, "Effect on the future of farming." Chair Cole requested that number 4, "Effect on local and state economy," be deleted since it relies on articles. Commissioner Muzzulin feels that they need to consider the statement, "The proposed solar farms will have a negative visual impact on local and non-local people traveling on this major corridor to our county and town." included in number 5, "Effect on tourism, population growth, aesthetics of landscape, homeowners." Chair Cole stated that number 6, "Potential Effects", and number 7, "The Unknowns," can be eliminated. The Board agreed. Chair Cole said that the Board had narrowed her concerns to number 1, "Original Intent of RA Zone," and number 5, "Effect on tourism, population growth, aesthetics of landscape, homeowners". Commissioner Peeler asked if the Board can only accept information that addresses these issues from the applicant's packages. Ms. Cole asked the Board to review the applicant's packet for CUP-16-04 and determine which of the items addresses these two concerns. Ms. Trohos feels that these issues are addressed in Mr. Hester and Mr. McLaughlin's affidavits. Ms. Trohos and the Board review the documents and agree that the following pages addresses these two concerns: p. 1:6; p. 2:14-19; p. 3:21; pp. 13-19 [strike 2nd paragraph and last paragraph on page 19 because he was giving his opinion with regard to it being in harmony with the area.] [Ms. Trohos objected to deleting last paragraph in that he is an expert in the issue of harmony in the area and one of the key elements in being an appraiser is if the usage is harmonious.] *Chair Cole explained that we have just come through an extensive quasi-judicial hearing and the ruling was that the experts were not qualified to testify to harmony. Ms. Trohos asked if lay people were qualified to testify on the issue of harmony. Chair Cole said yes. Ms. Trohos renewed her objection;* p. 31:7; p. 32:9-12, 16-18; p. 33:19-20, 26 [stricken by Chair Cole due to addressing harmony] [Ms. Trohos objected to deleting 26 and stated that Mr. McLaughlin is not an expert in

harmony or property values but could address the harmony issue as a lay person] *Chair Cole explained that she was referring to lay persons living within the community that are allowed to testify*; pp. 36-39; p. 41; pp. 48-53 (picture only); pp. 54-55 (picture only); pp. 56-57; Site Plans 1 & 2.

Chair Cole asked the Board to review these pages. Commissioner Peeler asked them to review the pages from page 32 forward. Ms. Trohos noted the pages again. Chair Cole asked the Board to look at Ms. Matthews' concerns number 1, "Original Intent of RA Zone," and number 5, "Effect on tourism, population growth, aesthetics of landscape, homeowners" to determine if the Applicant has successfully addressed those issues. Commissioner Nelson feels that the buffer issue needs to be addressed but only if the conditional use permit is approved. Ms. Cole began reviewing each of the applicant's pages to determine if there was any objection. The following items were accepted as presented: p. 1:6; p. 2:14 [strike last sentence in #14 – deals with property values]; 2:15-19 no objections; p. 3:21 [strike first sentence in #21]; p. 13 [strike paragraphs #1 and #2 – addresses property values]; pp. 14-16 no objections; p. 17 [strike 3rd and 4th paragraphs]; p. 18 The Board reviewed Exhibit 1 which was mentioned in last paragraph on page 18. Commissioner Peeler had a problem with Exhibit 1. Because the Exhibit 1 addresses property values, the Board deleted the last paragraph on p. 18; p. 19 no objections with proposed changes; p. 20 no objections; Ms. Trohos asked that p. 24 be added to identify Mr. Hester's qualifications – the Board had no objections; p. 31:7 no objections; p. 32:9-12, 16-18 no objections; p. 33:19-20 no objections; pp. 36-37 no objections; p. 38 stricken – objections Matthew Peeler - not readable. Ms. Trohos asked that it remain in for harmony deliberation. Chair Cole asked if there were any members okay with leaving this page in. Mr. Jones & Mr. Nelson had no objections. Mr. Peeler did not mind but did not understand what the black lines represented. Ms. Trohos said that it was the vegetative buffer; p. 39 no objections; p. 41 no objections; pp. 48-52 no objections; p. 53 no objection with just the photograph. Commissioner Peeler had a question about where the property line was. Ms. Trohos says that the white line represents the property line and that zoning was not included in this photograph. Commissioner Nelson asked Donna Godfrey, County Planner, if this distance of 130' from road and 350' from property line to house could be the 500' highway corridor allowing for the house. Ms. Godfrey said that it was. Ms. Trohos referred to the last two maps in the packet which shows the property line between the center of the trees. With Mr. Peeler's question being answered, the Board had no objections to the picture on p. 53; p. 54 no objections; p. 55 – with the elimination of the word "harmony", the Board had no objections; pp. 56-57 no objections; and site maps 1 & 2 no objections. Chair Cole asked if the Board needed to hear any live testimony or is the written documents sufficient. It was the Board's decision to consider the written documents only. Ms. Trohos summarized by saying that, on behalf of her client, she is asking for their support in approving both of these Conditional Use Permits and submit that there is sufficient evidence to support your findings and, given that the uses are specifically permitted in the RA District, that this is evidence in itself that this usage is in harmony with the area. She further stated that the County currently has five solar farms already in the RA District that are similar to this and hope that the Board will support this project. She again explained that the expert witnesses were present if the Board had any questions.

Chair Cole stated that the Board would consider Conditional Use Permit CUP-16-04 first. Commissioner Nelson asked about the specific question that address the buffer. Donna Godfrey explained what they had and informed him that she provided them a sheet that had a change in condition No. H after the Planning Board approval. Ms. Godfrey showed Commissioner Nelson the following changes to condition No. H:

- H) ~~More specifically, all solar panels and related equipment will meet all required buffering and setbacks along property or leased project boundary lines. The buffering will consist of a security fence plus screening, as required by Sections 907B(3)(a) and (b), 1802 and 1803, and will be continuous around those portions of the perimeter of the project which are not shielded by existing woods or which are interrupted by vehicular access roads.~~ Mounting structures and solar panels will not exceed the maximum height of 15'. Outdoor lighting is expected to be minimal. Standard access gates will be used for any entrances to the Solar Farm and will be kept locked and secured at all times when authorized personnel are not occupying the property. The Facility will meet all Local, State and Environmental requirements.

Commissioner Nelson explained that there are two pieces of property that are shown on the plat: the White Property and the Riddick Property. Mr. Nelson further asked that there are two long narrow strips that looks like it is part White property, which is farmland, and part Riddick property, which is timberland. Mr. McLaughlin said that what Mr. Nelson said was true. Mr. Nelson asked Mr. McLaughlin what would happen to that piece of property should the timber be cut since Mr. McLaughlin was reporting that this would be used as a buffer. Mr. McLaughlin said that there was no plan to cut the timber on that property. Mr. Nelson asked if there were any guarantees to that. Chair Cole stated that Mr. Nelson was asking questions directly of Mr. McLaughlin and she reminded him that he was still under oath. Mr. McLaughlin said that it would not be a problem to make that part of the conditions. Commissioner Nelson said that he would be in favor of that condition since you are using it for the buffer. Just for curiosity sake, Commissioner Peeler asked Mr. McLaughlin if they could harvest the timber. Mr. McLaughlin said that the timber had already been harvested and it is to about six feet deep and it will be another 20 to 30 years before they harvest it again. Commissioner Nelson wanted to confirm what area was going to be included in the buffer. Mr. McLaughlin explained and stated that they would work with the property owner abutting the project and make sure they were satisfied with the buffering. Mr. Nelson confirmed it again with Mr. McLaughlin by showing it on the plat. Mr. McLaughlin said that he has met the buffering requirements for the Zoning Ordinance but, if the Board needed additional buffering, he would be happy to consider it. Mr. Nelson asked Mr. McLaughlin if the proposed buffering is similar to what he has used in his other projects in Perquimans County. Mr. McLaughlin said that he is willing to go far beyond what he has done in the past. With regard to the Manley property, Mr. McLaughlin said that it was still a work in progress and they are working on improving it. They have many lessons to learn within this area of the project. Mr. McLaughlin also stated that, as he mentioned at the November 7th meeting, he would be open to the lattice idea of buffering. Again, Mr. Nelson mentioned that it was the maintenance problem that he has observed with the Manley project. Mr. McLaughlin said that he is committed to working with the property owners. Because he has spent more time in Perquimans County, he further stated that whether or not it is the lattice with vegetation buffer or a buffer with big ass trees he will do everything to make sure that the community will be satisfied. Commissioner Nelson said that he has heard more complaints to the buffer and the upkeep of the property within the project and this is a reflection on his project. Mr. McLaughlin again stated that he is doing everything possible to correct these concerns on the Manley property. Commissioner Nelson had talked to other Commissioners from Currituck County and he said that they mentioned the use of a berm instead of the vegetative buffer. Mr. McLaughlin said that to do a berm he would have to get NCDENR involved so he could not address that issue at this time. There are some concerns about using a berm like impact on water shed. Mr. Nelson said that he has two concerns about this project one of which is that these projects need to be hidden. Mr. McLaughlin responded to his concern again and said that he is committed to do whatever he can to ease these concerns. Commissioner Peeler asked Mr. McLaughlin what is the distance from the property line to the fence line on the south border of the project. Mr. McLaughlin said that, conditionally, it is 50 feet so that the farmers can get their equipment alongside of the property. Commissioner Peeler and Ms. Godfrey discussed the requirement of the distance being required to be 30 feet from the property line to the project area. For disclosure purposes, Commissioner Peeler did obtain some information from staff by requesting copies of maps to clarify the boundaries of these solar farms but are not using them now.

Chair Cole said that the next step would be to have the Board consider Section 903 – Table of Findings for Conditional Use Permit No. CUP-16-04.

1. **That the use will not materially endanger the public health or safety, if located according to the plan submitted and approved.** *The Board agreed by a vote of six (6) to zero (0) that this finding was satisfied in that it would not endanger the public health or safety.*
2. **That the use meets all required conditions and specifications.** *Commissioner Peeler feels that he has some issues with the definition of agriculture on page 24-2 of the Zoning Ordinance. The two solar farms on these two pieces of property makes the sole use of these properties to be solar farms not agriculture. Commissioner Nelson said that solar farms are a permitted use in the RA District. Chair Cole agreed with Commissioner Nelson. Commissioner Peeler also had an issue with the CH District, Commercial Highway District. He read the definition of CH District on page 6-4 of the Zoning Ordinance. Part of this project is located in the CH District. Under 907.28, the only things allowed in the CH District is industrial light, industrial heavy, and under a conditional use RA. Without this road, this project does not exist in a commercial road. The Board approved a Resolution that said the County agreed to allow US Highway 17 to become an Interstate Road and the intent was that this Interstate Road would follow US Highway 17. How will this project affect this venture. Chair Cole said that she did not think that we need to make any decision now based on what we think will be happening with US Highway 17. Commissioner Jones echoes Commissioner Nelson's comment that it is a permitted use for the RA District. With regard to the Section 903.2, the Board agreed that this finding was satisfied by a vote of five (5) to one (1) with Commissioner Peeler voting against the motion.*
3. **That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.** *Commissioner Peeler feels that the applicant did not provide any evidence of impacts to adjoining or abutting properties. There was no factual data presented. As such, part of Ms. Matthews' concern about her property values being impacted negatively, there is no evidence presented to show that it would or would not impact her property values. The burden of proof is on the applicant. Commissioner Jones asked what evidence did they [the applicant] present to that element. Commissioner Peeler said there was none. Mr. Peeler continued saying that the only evidence presented was at the November 7th meeting but there were no expert witnesses and any evidence presented on the impact on adjoining or abutting properties would need to be received from expert witnesses. After reviewing the information presented, with regard to Section 903.3, the Board agreed that this finding was not satisfied by a vote of six (6) to zero (0).*
4. **That the location and character of the use, if developed according to the plan is 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.** *Regarding Section 903.4, the Board agreed that this finding was satisfied by a vote of six (6) to zero (0).*

CONDITIONAL USE PERMIT CUP-16-04

Chair Cole stated that the Board would need to vote on the approval or denial of Conditional Use Permit No. CUP-16-04. After Commissioner Peeler made several attempts to make the motion, he finally asked Commissioner Jones to make the motion. Kyle Jones made a motion to deny Conditional Use Permit No. CUP-16-04 to establish a 5 Megawatt Large Scale, ground-mounted Solar Energy System on a portion of Tax Parcel Nos. 3-0049-00012 and 3-0049-00013, occupying about 55 acres within the +/-65-acre subject property, located to the west of 708 Ocean Highway South (US Hwy. 17 South) because the Board did not adopt all the Section 903 Findings (the Board did not adopt Section 903(C) Finding). The motion was seconded by Matthew Peeler. Chair Cole asked for any comments or questions. There being none, the motion passed by a vote of six (6) to zero (0).

CONDITIONAL USE PERMIT CUP-16-02

Chair Cole stated, since the Board heard all the evidence at the November 7th meeting and Clerk to the Board, Mary Hunnicutt, has provided draft Minutes of that meeting, did the Board just want to state that they follow the comments made in CUP-16-04 and proceed with the vote. Commissioner Jones asked if Ms. Matthews' comments apply to this Conditional Use Permit. Commissioner Peeler asked that, for procedural sake, would we need to go through each of the findings. Chair Cole was trying to determine a way that we could shorten the proceedings. Kyle Jones stated that he would incorporate his comments from CUP-16-04 to CUP-16-02. Commissioner Peeler asked at what point can the applicant withdraw their request and if it needed to be in writing. Chair Cole said that is what she is discussing with County Attorney High. Chair Cole read from Commissioners' Rule No. 33 from their Rules of Procedures, "The Chair summarizes the evidence presented (Written findings of fact are required). However, in the case of a lengthy hearing and numerous witnesses, the Board may choose to table its decision to allow time for the findings of fact to be drafted. NOTE: This is the last opportunity for the applicant to request a continuance or to withdraw their application." Ms. Cole said that it seemed to her that the Board tabled the request at the November 7th meeting. So, it looks like then would have been the last opportunity for the applicant to withdraw their request. Chair Cole asked for a ten minute break. Returning from the break, Ms. Trohos requested that the applicant would like to withdraw Conditional Use Permit No. CUP-16-02. County Attorney High will research how it would proceed if they make the request in the future.

PERSONNEL POLICY AMENDMENT

County Manager Heath explained that last month, the Board discussed removing the word "continuous" from the following section of the Personnel Policy which was adopted in September, 2015 so it would read:

Retiree Health Insurance

The County will provide medical and dental insurance coverage up to age 65 for retirees from Perquimans County with 20 ~~continuous~~ years of service with Perquimans County who are eligible for an unreduced service retirement from the Local Government Retirement System.

On motion made by Kyle Jones, seconded by Edward R. Muzzulin, the Board unanimously approved change in the Personnel Policy making this Amendment No. 1.

PERSONNEL MATTER: RETIREMENT - SHERIFF DEPARTMENT

Chair Cole explained that the County has received a letter from Sheriff Eric Tilley letting the Board know of his intent to retire on February 1, 2017. On motion made by Matthew Peeler, seconded by Edward R. Muzzulin, the Board unanimously approved, with reluctance, his request to retire on February 1, 2017. Commissioner Peeler thanked Mr. Tilley for his hard work and the Board concurred with his comments. Sheriff Tilley thanked the Board for allowing him to serve the County. The Board wished him the best.

ADJOURNMENT

There being no further comments or business to discuss, the Special Called Meeting was adjourned at 10:08 p.m. on motion made by Matthew Peeler, seconded by Edward R. Muzzulin.

Janice McKenzie Cole, Chair

Clerk to the Board

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