



**EDENTON-CHOWAN  
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**Chowan County Planning Board  
April 19, 2016  
Chowan County Public Safety Center  
305 West Freemason Street  
7:00 pm**

Chairman Marvin Hare called the meeting to order. He asked Planner Elizabeth Bryant to call the roll. Jim Leggett, Marvin Hare, Jim Robison, Linda Peterson, Wayne Parrish and Bobby Winborne were present. William Monds was absent. County Manager Kevin Howard, County Attorney Lauren Arizaga-Womble, and Administrative Assistant Karen Castelloe were present.

Mr. Leggett opened the meeting with a prayer.

Mr. Hare asked for any changes or addition to the agenda.

Mr. Leggett stated that he would like the Board to address the need for members to speak loudly and clearly when making comments or asking questions so that all people present could hear them. He also asked that Board members sit up straight at the table and treat other Board member with respect when addressing them or engaging in conversation with them.

The agenda was approved with the addition from Mr. Leggett.

Mr. Hare asked for any changes to the March 22, 2016 minutes.

Mr. Leggett noted that he did not open the meeting with a prayer.

Ms. Peterson moved that the minutes be approved with the correction noted by Mr. Leggett. Mr. Winborne seconded the motion. The motion carried unanimously. (6-0)

Mr. Hare opened the floor to public comment.

Harriet DeHart, 112 Horniblow Point Road, stated that she had read the Planning Board minutes and listened to the audio transcript from the August 18, 2015 Planning Board meeting and that there was no mention of or voting on the findings of fact that were supposed to be voted on. She stated that per North Carolina laws and the Chowan County Zoning Ordinance, a vote on each one of the findings is mandatory. She stated that if the application fails to meet even one of the findings then the application must be denied. She stated that since the findings of fact were omitted from the evidentiary hearing the outcome was flawed. She stated that the issuance of the permit should be considered illegal. She stated that the statutory 30 days to appeal was not germane to the issue and that the statute would only apply if the hearing were conducted in accordance with the law. She asked that the Planning Board admit that they made a mistake and to hold another evidentiary hearing.

Robert Kirby, 236 White's Landing Road, stated that County Attorney, Lauren Arizaga-Womble, had issued a memorandum to the County Commissioners concerning the solar development hearing. He stated that Ms. Womble had stated that the County could not take unilateral action to revoke an issued permit without violating the applicant's constitutional rights. He stated that Ms. Womble had stated that the

applicant had a common law vested right in the issued permit. He stated that as a property owner he (Mr. Kirby) had a common law vested property right in expecting the County to perform its duties in accordance with the law. He stated that by impermissibly granting a Special Use Permit to one entity the County has violated the rights of all property owners in Chowan County. He stated that the memorandum also stated that Ms. Womble had discussed the contents of the memorandum with the School of Government and that it concurs. Mr. Kirby stated that he had located a document online on vested rights that was written by the legislative research committee from the UNC School of Government. He stated that the document discusses common law vested rights and stated that NC courts have long recognized vested rights and can set forth an establishment of vested rights. He stated that the document stated that in order to show vested rights the owner must first obtain a valid governmental approval. He stated that the document goes on to say that the owner must obtain an affirmative government action concerning the property or project. He stated that the affirmative action could be a Conditional Use Permit, a subdivisional plat, a building permit or some other site specific affirmative action by the local government. He stated that it was more than just relying on the general zoning district or advisory zoning compliance letter. He stated that the document goes on to say that if a permit was mistakenly issued then the permit is insufficient for establishing vested rights. He stated that there was a case that was 65 years old involving the City of Raleigh removing permission for an individual to run a business out of his home. He stated that the judge had stated that a municipal corporation is dual in nature and exercises two classes of powers, governmental and proprietary. He stated that any activity of the municipality which is discretionary, political, legislative, or public in nature and performed for the public good on behalf of the State rather than for itself comes within the class of governmental functions. He stated that while acting on behalf of the State and promoting or protecting the health, safety, security, or general welfare of its citizens it is an agency of the sovereign. He stated that the judge concludes saying that undoubtedly this conclusion entails much hardship on the defendants (the people who were operating the business illegally), the law must be so written for a contrary decision would require an acceptance of the paradoxical proposition that a citizen can acquire immunity to the law of his country by habitually violating such law with the consent of unfaithful public officials charged with the duty of enforcing it. Mr. Kirby stated that he agreed that the County should vacate the permit and start the process over.

There being no further public comment, the floor was closed.

Mr. Hare noted the next item on the agenda, **Discussion of County Attorney's Findings and Opinion Given to the Chowan County Board of Commissioners and County Manager regarding Complaints Filed by Mr. Jim Robison and Mr. Robert Kirby.**

Ms. Womble summarized her opinion that she had issued to the Board of Commissioners. She stated that initially she was not present at the March 22, 2016 meeting but that Ms. Bryant had notified her that there were some questions about the Special Use Permit that was issued to O2emc. She stated that she had not reviewed the Special Use Permit hearing. She stated that she worked at the pleasure of the Board of Commissioners and that she has not been instructed by them to do so. She stated that her analysis of the permit hearing was based on what can be done moving forward. She stated that the whole point of an appeal process was to challenge the procedure and whether the permit was issued in compliance with the law or not. She stated that the 30 day time limit was set to have a cut off time for someone to challenge a ruling. She stated that the 30 day time frame had expired and that her opinion was that there was nothing that could be done. She stated that after the March 22, 2016 meeting she was told that there were more questions regarding the 30 day statute of limitations and what that meant. She stated that a Special Use Permit was appealed by going through Superior Court. She stated that the Planning Board and Board of Commissioners could not do anything with the Special Use Permit. She stated that even if the statute of limitations had not run out it would still have to be appealed through Superior Court and could not be done at the County level. She stated that the 30 day statute of limitations period was established because the applicant would be taking actions based on having the permit. (expending resources, funds, investing in the property, etc.) She stated that the statute of limitations allowed some closure on the issue so applicants could move forward with their project. She stated that she had not contacted O2emc to know what, if any, steps they have taken. She stated that she was pointing out that it could be an issue if the County were to take any action. She stated that the County did not have any jurisdiction to do anything with the Special Use Permit. Ms. Womble stated that based on the issues that have come up, she will be attending all quasi-

judicial proceedings from now on to aid in the process and make sure all steps are adhered to. She stated that Administrative Assistant Karen Castelloe will now be present at all meetings to keep the minutes. She stated that she had spoken with the School of Government and anything that was to happen to challenge the permit would have to go through Superior Court.

Ms. Peterson asked if it was still possible to challenge the decision through Superior Court.

Ms. Womble stated that her opinion was that the 30 day statute of limitations has passed and that if someone were to challenge the decision the defense would be that the statute of limitations has passed and that it would be dismissed based on those grounds. She stated that she could not say that someone could not file an appeal but that the statute of limitations has run and so there was no route for the County to take. Ms. Womble stated that the County was taking steps to make sure that things were done to a "T" in the future.

Mr. Howard agreed that running the meeting, keeping the minutes, as well as keeping up with all that went on during the meeting was a lot to ask of one person. He agreed that additional staff would help to ensure that things went smoothly and according to procedure.

Mr. Leggett agreed that additional staff was a good idea. He stated that he was under the impression that the findings of fact could be voted on as a group and not voted on individually. He asked if that was correct.

Ms. Womble stated that each finding of fact must be voted on individually in a Special Use Permit hearing.

Mr. Robison stated that when he was going back through the minutes from the hearing for the Recycling Center he had noted that the findings of fact were voted on individually. He stated that on the Chairperson's Script that was provided for the August 18, 2015 permit hearing there was no mention of the findings of fact and that is why it got overlooked.

Ms. Womble stated that whether the procedure was followed at that hearing or not there was a timeline to challenge that decision and that time has expired.

Mr. Robison stated that illegal was illegal and that there was no timeline for that.

Ms. Womble stated that the County issued the permit and in order to challenge the legality of the permit then you would have to go through Superior Court.

Ms. Peterson stated that she thought that this was a good learning experience for everyone involved.

Mr. Robison suggested correcting the Chairperson's Script to include the findings of fact.

Ms. Womble stated that she had a copy of the script and would make sure that it meets all statutory requirements and that she will be present at all future quasi-judicial proceedings to help with procedure.

Mr. Robison stated that he had attended the Town Planning Board meeting when they were considering a solar farm and that is how he found out that the County had not conducted the hearing correctly.

Ms. Peterson thanked Mr. Howard for providing additional staff for future Planning Board meetings.

Ms. Womble excused herself. She asked that any more questions or concerns be forwarded to her and that she would glad to address them.

Mr. Hare noted the next item on the agenda, **Update on Progress of Development; O2emc Solar Farm Project.**

Ms. Bryant stated that she had spoken with Adam Foodman who was the Chief Operating Officer with O2emc. She stated that he had indicated that they were moving forward in pursuing the project. She stated that he had provided a timeline with dates that listed all the things they had done in the last several months to move forward with the project. (attached and included in April 19, 2016 meeting file) She stated that currently the thing that they were waiting on to close on the property was the final wetlands delineation from the Corp of Engineers. She stated that they were now in discussion with the Corp of Engineers about some discrepancies that the Corp feels are present with what their delineation stated. She stated that they had to finalize their interconnection agreement and power purchase agreement. She stated that after those things were completed it could be 30-60 days to close on the property. She stated that they had a subcontract with Sunraise Farms for the sheep grazing and that they have been working closely with the Town regarding the updates that are needed to connect with the Town's system. She stated that they have had soil analysis done based on comments that were presented at the hearing regarding the soil type being corrosive. She stated that it was found that the soil was typical and that nothing was found in that particular location to be corrosive. She stated that they had gotten a Finding of No Significant Impact which was issued from the US Department of Agriculture but includes review from a variety of federal agencies. She stated that Mr. Foodman had showed her their monitoring system and that they could view all of their locations remotely to see how much output they are generating on any given day or any given time.

Mr. Leggett asked if 60% of the design work had been completed as indicated on the timeline.

Ms. Bryant stated that the percentage was divided up according to cost.

Mr. Robison stated that he had spoken with the Corp of Engineers yesterday and that there has been no application for a wetlands permit submitted and that the entire area is wetlands. He stated that if they start any construction it will be shut down immediately.

Ms. Bryant stated that O2emc are in discussions with the Corp of Engineers but that she did not imagine that they would submit an application for a permit until they were sure that it would be approved.

Ms. Peterson asked if the Corp of Engineers decision was based on the percentage of wetlands and if that decision would determine if the developer would proceed with the project.

Ms. Bryant stated that that was correct. She stated that the Corp of Engineers decision may include mitigation also. She stated that the site was clear-cut and the wetland delineation that was made by the Corp was in some of the ruts that were generated by equipment going in and out of the site.

Mr. Robison stated that the entire area was wetlands.

Ms. Peterson stated that Mr. Foodman had said at the hearing that if there was a certain percentage or greater of wetlands on the site then the project may not move forward. She stated that may become a critical issue.

Ms. Peterson asked if they had provided a timeline for a resolution.

Ms. Bryant stated that they were optimistic that they could have something resolved by late summer.

Mr. Parrish stated that it did not take long for the Corp to make a decision once they got involved.

Ms. Peterson asked Ms. Bryant if she would provide an update on the status of the project in a few months.

Ms. Bryant stated that she would do that.

Mr. Hare noted the next item on the agenda, **Items Considered Timely & Important.**

Ms. Peterson asked Ms. Bryant if she heard anything regarding the grant application for the Land Use Plan update.

Ms. Bryant stated that she had not heard back from Charlan Owens yet but that she understood that the Town was asked to provide further documentation to CAMA for the review process.

Mr. Robison asked if anything could be done to address the problem of abandoned mobile homes.

Ms. Bryant stated that the County was always responding to complaints and doing follow up on complaints throughout the county. She stated that if the property surrounding the mobile home is cleaned up and the mobile home itself was secured then there was not much the County could do about it. She stated that she was pursuing a grant to be used to clean up abandoned mobile homes and that hopefully the money would be available in June. She stated that the Town was included in the grant application and that they had requested 1-2 mobile homes be cleaned up and the remainder of the money would be used to clean up 6-7 mobile homes in the county.

Ms. Peterson asked if there was any grant money for homes that had been declared inhabitable.

Ms. Bryant stated that the County could pursue action on that but that it is different for structures located in the county versus the town. She stated that the structure must be an imminent danger to surrounding properties and to the public health and safety and that is difficult to establish when a structure is located in a rural area without any nearby buildings.

Ms. Peterson asked Mr. Leggett if he felt that his addition to the agenda had been addressed.

Mr. Leggett stated that the issue was greatly improved.

There being no further business, the meeting was adjourned.