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**Chowan County Planning Board
June 21, 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, and Bobby Winborne were present. William Monds and Wayne Parrish were absent. Administrative Assistant Karen Castelloe was present.

Mr. Leggett opened the meeting with a prayer.

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

There being none, the agenda was approved.

Mr. Hare asked for any changes or additions to the minutes of the May 17, 2016 meeting.

After some discussion, the minutes were approved as submitted.

Mr. Robison asked for more clarification on spot zoning and why the Top Notch Salvage Yard required a Conditional Use Rezoning but the proposed wind farm would not.

Ms. Bryant stated that in 2005 the North Carolina General Assembly passed legislation that allows for Conditional Use Zoning. She stated that it took what could only be handled in a quasi-judicial process and allowed for Conditional Use Rezoning to be done in a legislative process. She stated that it took what might be considered spot zoning and made a pathway for use-specific zoning to be done legally. She stated that the reason a Conditional Use Rezoning was required for the salvage yard was because a vehicle salvage yard was not a use that is allowed in the A-1 zoning district (where the salvage yard is located). She stated that when the commissioners drafted and then amended the Wind Ordinance in regard to wind energy facilities they made wind farms permissible in A-1 with a Conditional Use Permit and that is why they would not need a rezoning.

Mr. Hare expressed concerns over setting a precedent with allowing industrial uses in the A-1 district.

Ms. Bryant stated that she understood Mr. Hare's concerns and that a Conditional Use Rezoning is not something that should be used frequently.

Mr. Hare opened the floor to public comment. (there was none)

Mr. Hare noted the first item of new business, **Summary & Discussion of David Owens presentation to Chowan County Board of Commissioners on June 6, 2016.**

Ms. Bryant asked Mr. Leggett if he had any questions regarding the presentation or the materials provided at the presentation since he was unable to attend the presentation by Mr. Owens.

Mr. Leggett asked the Board if there were any issues addressed at the meeting that would be beneficial for him to know.

Mr. Hare stated that Mr. Owens gave a good presentation and that the Commissioners asked mostly simple questions.

Mr. Leggett stated that he would like to discuss the four criteria that needed to be voted on. He stated that he understood that they could be voted on individually or as a whole. He asked the Board if they felt that they should make it a mandate that the criteria be voted on individually and not collectively.

Mr. Robison agreed that was a good idea.

Ms. Bryant reminded the Board that the only time the four criteria would apply to the Planning Board was during a Special Use Permit review. She agreed that voting on the criteria individually would be a good idea in the interest of clarity. She stated that the Town UDO requires a vote that the application is complete, a vote on the four criteria, and a vote to approve or deny the application. She stated that the Board can pursue a text amendment to put the new requirement in the Zoning Ordinance or they could make it more informal and make it a procedural requirement for the Planning Board.

Mr. Robison noted that the Town requires a motion on each of the four criteria.

Ms. Bryant stated that it would make it clearer to vote on each item individually but that it was not required.

Mr. Leggett stated that he was in favor of a text amendment to the Zoning Ordinance requiring that each of the four criteria be voted on individually.

Ms. Peterson asked if the amendment would address both Special & Conditional Use Permits.

Ms. Bryant stated that was correct.

Mr. Robison stated that he felt that it needed to be made clear to the Commissioners that the Conditional Use Permit application from Apex needed to meet the four criteria as well as the requirements in the Wind Ordinance itself. He stated that making the change in the Zoning Ordinance would help with that.

Ms. Bryant asked the Board to keep in mind the timeline for the Board to hear text amendments. She stated that any text amendment would not go into effect until after the review of the Apex application.

Mr. Winborne stated that he felt that both Special Use & Conditional Use Permits should follow the same procedure.

Mr. Robison stated that the Planning Board could make a recommendation to the Board of Commissioners regarding voting on the four criteria individually without making a formal text amendment.

Ms. Peterson asked if there was a fifth vote after the four criteria were voted on individually.

Ms. Bryant stated that there was a fifth vote on the application as a whole after the four criteria were voted on individually.

Ms. Peterson asked what would happen if an application were to not pass one of the four criteria.

Ms. Bryant stated that she would need to check with the County Attorney to be sure what would happen in that situation. She stated that in her experience if an application did not meet all four of the criteria then the application did not move forward.

Mr. Robison questioned the approval of the application for the Top Notch Salvage Yard noting that it did not pass the last criteria, regarding the application being in conformance with the Land Use Plan, but the application was approved.

Ms. Bryant stated that General Statute allowed a Board to approve an application that was not in conformity with the Land Use Plan as long as it made a statement acknowledging that the application was not in conformity with the Land Use Plan when approving the application.

Mr. Robison moved to recommend that the Planning Board and the Board of Commissioners procedure for votes on Special Use Permit and Conditional Use Permit applications consider the four general findings individually and vote on them individually.

Mr. Leggett seconded the motion and amended it to add that the Planning Board also recommends that a text amendment to the Chowan County Development Codes reflecting this voting procedure be initiated.

Ms. Peterson stated that she was not comfortable making a recommendation until the Board found out for sure what would happen if an application failed one of the four criteria as far as whether or not the application could still be approved.

Mr. Leggett stated that it wouldn't hurt to go ahead and make the determination that the Planning Board was going to start voting on each of the criteria individually and then they could recommend a text amendment at a later time.

Ms. Bryant re-read Mr. Robison's motion with Mr. Leggett's amendment.

Mr. Hare called for a vote. The motion carried unanimously. (5-0)

Mr. Hare noted the next two items of new business, **Staff Report on the Timeline for the Conditional Use Permit Application from Apex Wind Energy and Note regarding Scheduling for the July 19, 2016 Planning Board Meeting**

Ms. Bryant informed the Board that the timeline for the Conditional Use Permit application from Apex has been adjusted. She stated that the Board of Commissioners directed Staff to go back out and send more Request for Proposals (RFPs) to some other expert firms to try to target some minority owned firms that might do this type of technical review. She stated that she had given a deadline of July 1st for a response so that it can be considered at the July 5th Commissioner meeting. She stated that the Technical Review meeting has been moved to week of July 11-15 and that she would let the Board know when a specific day and time was determined. She stated that County Staff was going to hold a public informational meeting the same week and that day and time was also to be determined. She stated that the informational meeting was to go over the process for public comment at the Planning Board meeting and testimony during the quasi-judicial hearing at the Board of Commissioners meeting. She stated that the type of public comment that would be appropriate at the Planning Board meeting would be addressed as well as the testimony that would be appropriate at the public hearing. She stated that the Planning Board meeting would be moved to July 26th and July 27th. She stated that the reason for scheduling two dates and advertising two dates was that it was expected that the meetings would be long and would require more than one night. She suggested that the Planning Board move their meeting to 6pm and possibly consider 5:30pm to allow more time on each night.

Ms. Bryant moved on to address the last item of new business, **Discussion of Meeting Procedure for the July 19th (and concurrent July 20th) Planning Board Meeting, specifically regarding the review of the Conditional Use Permit application from Apex Wind Energy.**

Ms. Bryant stated that the Planning Board meeting was a public meeting and not a public hearing. She stated that the Planning Board would make a recommendation to the Board of Commissioners on suggested action. She stated that the Planning Board could make a recommendation that the Commissioners approve the application as submitted, approve the application with conditions, or deny the application. She stated

that public comment at the Planning Board would be a general open public comment period. She stated that the Board may set time limits individually or as a whole. She stated that the Board could state that they would not allow repetitive comments and suggest that if a group of people shared the same viewpoint or opinion that they select a spokesperson for the group. She stated that when questions are fielded from the public then the Planning Board should make note of them and that it would be the Board's job to ask the questions of the applicant during the applicant's presentation. She stated that "crosstalk" between the applicant and the public was not recommended. She stated that after the public comment period she would present the Staff Report and findings from the expert firms that helped with the technical review.

Mr. Hare asked if the Staff Report would reflect the sources used to make the assessment.

Ms. Bryant stated that everything that she would use in her review and everything that the experts would be reviewing was included in the application binder submitted by the applicant.

Mr. Hare stated that what was in the binder was submitted by Apex. He asked if other data besides what the applicant submitted should be considered.

Ms. Bryant stated that what the Board would receive and what was required was the application. She stated that if the Board wanted to take in other information, such as what may be submitted during public comment, then they could do that. She stated that County Staff was neutral and that they were presenting whether or not the application complies with the four main criteria and the specific criteria of the Ordinance. She stated that the Board would receive documentation from the expert firm that puts the information in the binder in a more condensed, summarized, readable format. She stated that the burden was upon the applicant to prove that they have met the requirements of the Ordinance (both the four main criteria and the specific criteria). She stated that the burden to disprove anything that the applicant presents is on those who are in opposition, not on County Staff. She stated that when the Board of Commissioners reviews the application they would be acting as a judge. She stated that the Planning Board would be making a recommendation. She reminded the Planning Board that they served at the pleasure of the Board of Commissioners and that the Zoning Ordinance allowed the Commissioners to move on if they feel that there is an undue delay in the Planning Board review.

Ms. Peterson stated that research can be presented that makes both sides of a case. She stated that she anticipated that a lot of conflicting information will be presented. She asked if the expert who was hired to help in the technical review of the application would be given the opportunity to speak and to be questioned.

Ms. Bryant stated that needed to be determined. She stated that the Board of Commissioners would need to stipulate that in any contract that was made with an expert firm that they would like the expert to be present during the quasi-judicial hearing. She stated that the proposal received does not rule that out but that it is not stated specifically in the proposal.

Ms. Peterson asked if the expert will comment on the application.

Ms. Bryant stated that they would comment on the application but that they would not be making a recommendation.

Ms. Peterson asked if the expert would be present at the July Planning Board meetings.

Ms. Bryant stated that they would be present in a minor capacity to help explain technical jargon but not in an opinion capacity.

Mr. Hare asked if Ms. Bryant would issue an opinion based on the expert data.

Ms. Bryant stated that she would give a Staff Report but would not offer an opinion.

Mr. Robison noted that Commissioner Kehayes had stated that he did not want the expert to just look at what Apex had provided but that he wanted someone to look at the whole spectrum of each area. (such as infrasound, light flicker, etc.) He asked Ms. Bryant what the RFP would say and who it would be sent to.

Ms. Bryant stated that the RFP was already sent and that it was sent to the firm that was mentioned in the Commissioner meeting and the Department of Administration (DOA) for them to try and find minority firms that may address this type of review.

Mr. Robison stated that the RFP was supposed to be public. He stated that when it was originally put out it was not public.

Ms. Bryant stated that it was her understanding from the County Manager and County Attorney that it was an informal process and not a formal bid process. She stated that she can only explain what she was directed to do as Staff and what has been done up to this point. She stated that they had solicited proposals from four nationally recognized firms and one person in academia and that they had received one proposal back (from HDR) and that they were the only firm that did not have a conflict of interest on this project. She stated that the firm mentioned last night at the Commissioner meeting as well as the DOA was sent the same proposal that was sent out originally. She stated that the proposal said that the County was seeking expert assistance in the technical review of the application from Apex and how it complies with the requirements of our Ordinance. She stated that included the four criteria as well as the requirements included in the Wind Ordinance. She stated that the Board of Commissioners would review the proposals on July 5th and decide what they want the proposal to include.

Mr. Robison asked Ms. Bryant if she was going to make the RFP public by putting it on the County website.

Ms. Bryant stated that she would check with the County Manager but that she did not think that there would be a problem with that.

Mr. Robison noted that the one proposal (from HDR) that did not have a conflict of interest was from a company that was a builder of wind farms.

Mr. Hare suggested starting the July Planning Board meetings later rather than earlier to allow people who work more time to get to the meetings.

Mr. Leggett stated that he felt earlier would be better and that if it was important to you then you would make an extra effort to get to the meetings.

Ms. Bryant pointed out that mental sharpness tends to decline later in the evening.

Mr. Robison suggested setting a time limit for the meeting.

Ms. Bryant stated that could be done. She stated that the Board could state at the start of the meeting that the meeting would adjourn at a certain time and then reconvene the next night at a certain time.

Mr. Winborne suggested holding the meetings from 7-10pm with a 10 minute recess at 8:30pm.

Ms. Bryant stated that the Board should also determine whether they wanted to set individual time limits for public comment or an overall time limit for public comment.

Mr. Robison asked if there would be a public comment period after the presentation by Apex.

Ms. Bryant stated that if the Board wished to do that then the public comment period needed to be moved to after the Apex presentation.

Mr. Robison stated that he felt that would be the appropriate thing to do because it would be difficult to respond or ask questions about something that you hadn't heard yet.

Ms. Peterson asked for clarification that the public would not be able to ask questions directly to the applicant.

Ms. Bryant stated that the Board should do the entire public comment period and then have a question and answer period from the Board and at that time the Board members should ask the questions submitted by the public to the applicant.

Ms. Peterson asked if the presentation would be a highlight of the information included with the application or if there would be additional information presented.

Ms. Bryant stated that there would be more readable graphics and maps projected on a screen. She stated that the more in depth presentation would be at the Board of Commissioners public hearing.

Mr. Robison suggested having a public comment period after each segment if the applicant presentation was going to be broken down into segments such as sound, shadow, etc.

Mr. Winborne asked Mr. Robison if he was suggesting five or six public comment periods.

Mr. Robison stated that he was suggesting that.

Mr. Winborne stated that he did not agree with that and that it would take too long to do it that way.

Mr. Hare stated that he thought that the public comment period should be more structured than that.

Ms. Peterson asked if there would be an opportunity for the applicant to address the questions submitted from the public.

Ms. Bryant stated that there would be. She stated that the Planning Board should decide how they want to conduct the meeting. She stated that they should set a framework for the meeting and that they could change the order or procedure for the meeting if they wished.

Ms. Peterson suggested providing index cards to the public for them to submit their questions on. She stated that the Board could then organize the cards into categories and ask the questions to the applicant at the next night's meeting. She asked Ms. Bryant if she had any idea of how long the applicant's presentation would be.

Ms. Bryant stated that she could find that out and let the Board know. She stated that her Staff Report would be brief.

Mr. Hare stated that he thought that index cards were a good idea and that he also agreed that the public comment period should come after the applicant presentation.

Ms. Bryant stated that the Planning Board meeting would be held in the lobby of the Public Safety Center to allow more room for the public. She stated that the Board of Commissioner's hearing would be held at Swain Auditorium.

Mr. Hare stated that he and Ms. Bryant would meet prior to the July Planning Board meetings to set the framework for the meetings and then the framework would be sent out to the Planning Board members for their feedback.

Mr. Hare asked for clarification on the total public comment time frame.

Mr. Winborne stated that would be contingent on how many people wished to speak.

Ms. Peterson stated that if there was a time limit set for the public comment period then that needed to be made clear at the public informational meeting.

Ms. Bryant stated that the time limit didn't need to be determined at this time and that the Board could think about it and that she would poll them at a later time to get their decision.

Mr. Winborne stated that it would be better to have the applicant presentation and public comment in the first night but that was dependent on how long the presentation was.

Mr. Hare asked if there was a Board consensus on holding the meetings from 7-10pm.

The Board agreed on the 7-10pm time limit.

Ms. Bryant asked if the Board wished to set a time limit for the second night.

Mr. Winborne stated that was dependent on the first night.

Mr. Robison suggested putting something in the newspaper regarding the procedure for the meetings.

Ms. Bryant stated that she could put something on the County website and provide handouts at the public informational meeting.

Mr. Hare asked what time limit the Board would like to set for the public comment time.

Ms. Bryant suggested that the Board ask for groups of people with the same opinion or viewpoint to appoint a spokesperson to eliminate redundant comments or questions.

Mr. Robison suggested organizing the index cards by the tabs in the Apex binder.

Mr. Hare stated that many people will have concerns but no questions. He suggested allotting 1 ½ hours for public comment.

The Board agreed to set a 1 ½ hour time limit for public comment.

Mr. Leggett suggested a two minute time limit for individual public comment.

Mr. Robison suggested more flexibility and limiting the individual public comment to no more than 8 minutes.

Mr. Hare suggested taking the number of public speakers signed up and dividing it by 90 minutes to determine the individual time allotment. He stated that they would still be provided the opportunity to submit questions on the index cards.

Ms. Peterson agreed that was a good idea and would also send the message that the Board is interested in what the public has to say.

Ms. Bryant gave an update on the **Yeopim Solar Farm/O2emc** project. She stated that she has been attempting to get an update on the project from the developer but has had no response.

Ms. Peterson asked if there was a time limit on the Special Use Permit that was issued.

Ms. Bryant stated that the Special Use Permit would expire after one year if no work has begun unless the applicant came back and requested vested rights.

Ms. Bryant gave an update on the **Conditional Rezoning Application from Joey Nixon, Top Notch Service Center**. She stated that the Board of Commissioners approved the application with the condition of a six foot privacy fence to be located on the property line between the Top Notch property and the neighboring property owner (Ms. Patterson).

Ms. Peterson asked when the Board of Commissioners public hearing on the Apex application would be held.

Ms. Bryant stated that the dates right now are August 22nd and August 23rd but that they could change. She stated that the Commissioners would not be conducting any other business at those meetings. She stated that a court reporter would be hired for the Board of Commissioners hearing so that there would be a full transcript of the public hearing.

Mr. Robison asked if the escrow account would be used to hire the court reporter.

Ms. Bryant stated that was correct.

Mr. Robison questioned the 100 foot limit for contacting adjacent property owners of the Apex project. He stated when the structures in question would be 600 feet tall he thought that the adjacent property owners should be all the property owners within visible distance.

Ms. Bryant stated that would require mailing a letter to half of Chowan County.

Mr. Robison stated that was correct.

Ms. Bryant stated that the public would be made aware of the application and proposed project through the newspaper, informational meetings, as well as the posting of signs on the properties involved in the project.

There being no further business, the meeting was adjourned.

