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Chowan County Planning Board
August 24, 2015
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, Bobby Winborne, William Monds, and Linda Peterson were present. County Attorney Lauren Arizaga-Womble was present.

Mr. Hare asked if there were any additions or subtractions to the agenda.

Mr. Leggett stated that he would like to amend the agenda by adding that a Bible should be present for the swearing in of speakers. He stated that he felt like it was important just as it was in the judiciary system in the courthouse, attorney's office, etc. He stated that the Bible was the final authority in all rulings and society.

Mr. Robison stated that he would like to add that the Board consider members that should not be voting on the subject of wind ordinances due to conflict of interest.

Mr. Winborne moved to accept the agenda as amended. Mr. Leggett seconded the motion. The motion carried unanimously. (6-0)

Mr. Hare stated that the Board had received a copy of a letter from Civitas Institute Center for Law and Freedom. (included in Case File CC-TA 15-02)

Ms. Bryant read the letter aloud for the benefit of the Planning Board and public.

Ms. Womble stated the first thing she would like to note was the statement in paragraph 2 of the letter that stated that the "recommendations are now back before you on a legal technicality". She stated that was not entirely accurate about what has happened and why it came back to the Planning Board. She stated that the matter was before the Board of Commissioners on August 3rd. She stated that she had recommended to the Board of Commissioners that they move forward with a vote giving instruction regarding the citizen's petition that was received. She stated that the Board of Commissioners took a vote on whether they were going to instruct Staff to evaluate what recommendations were made by the Planning Board Committee to draft a text amendment in the proper format based on those recommendations. She stated that in addition the Board instructed Staff to evaluate those recommendations and make a Staff Report based on those recommendations and a recommended amendment based on Staff findings. She stated that she also wanted to point out a statement in paragraph 3 that the "composition of the Planning Board was abruptly changed". She stated that the new appointments were based on vacancies or lapsed terms and that they were not done on a whim by the Board of Commissioners. She stated that the Board of Commissioners could, at any point, make a change to the Planning Board because the Planning Board is appointed at their pleasure. She stated that in reference to the paragraph on conflicts of interest, you either have a conflict of interest or you don't have a conflict of interest. She stated that the Board members have a duty to vote and that the members had been appointed to the Board to be a voice. She stated that a member could not just elect not to vote in a situation that is uncomfortable. She clarified that there was an option under NC Statute 153A-

44 that allowed a member to request the Board to excuse them from voting but unless the Board votes to excuse them then the member has to vote and could not simply abstain. She stated that an abstention was counted as a "yes" vote. Ms. Womble stated that there was a big difference in conflicts of interest between a quasi-judicial setting and a legislative setting. She stated that the decision before the Board tonight was a text amendment which is a legislative decision. She read a portion from Land Use In North Carolina by David Owens: "Legislative decisions require policy judgement by elected officials. (Ms. Womble stated that includes Planning Board members because they are appointed by elected officials) These officials personal knowledge, positions on issues of importance to the community, and judgement about the preferred course for the community are important and valid components of the decision making process. As a general rule the individual or personal motives of the Board members are not examined in judicial review of legislative decisions". She stated that board members were going to have a position and ideas about the best course for the community. She stated that was much different than the quasi-judicial standard for a conflict of interest where a member was supposed to come in with a clean slate and open mind about what would be presented. She noted that the Planning Board was an advisory board to the Board of Commissioners and that the text amendment would be going to the Board of Commissioners. She stated that whatever was sent to the Board of Commissioners was reviewed all over again and that the Commissioners could make changes to what is recommended. She stated that she wanted to clarify that she did not think that the Planning Board could "permanently taint" Apex Clean Energy in the community as was suggested in the letter from Civitas.

Mr. Leggett asked Ms. Womble if she was saying that, at the Planning Board level, a conflict of interest was not as much a concern as at the Commissioners level.

Ms. Womble stated that she was not saying that and that she did think that conflict of interest was a big concern. She stated that the whole purpose of the process was that everyone should be able to partake in a transparent legal process. She stated that conflict of interest did need to be addressed but that she was just clarifying that she felt that portion of the letter from Civitas was misleading.

Mr. Hare stated that his interpretation of what the Commissioners asked Ms. Bryant to do was to take the recommendations and incorporate those into an ordinance and then to review, amend, etc. the proposed amendment with the Planning Board. He stated that he understood that when Ms. Bryant does that she also writes a Staff Report giving her opinion on the matter.

Ms. Womble stated that it was her understanding that the point was for the matter to come back before the Planning Board so that the Planning Board could recommend a formatted text amendment. Whether it be exactly what the committee had or something in the middle. She stated that without having the Commissioner minutes available she could not say what exactly what language was used in the instruction given to Ms. Bryant.

Mr. Hare asked Ms. Bryant if that was her interpretation.

Ms. Bryant stated that was her interpretation and that she agreed with Ms. Womble. She stated that the issue before the Planning Board was that they had a spectrum of options and that the Planning Board could approve exactly the language that was presented by the sub-committee in ordinance form, recommend that it not be amended at all or that the Board could make some changes to what was presented.

Mr. Hare stated that they could chose to accept the draft amendment that Ms. Bryant included in her Staff Report.

Ms. Bryant stated that was correct.

Mr. Leggett stated that the sub-committee started the process several months ago and since then the Planning Board has lost a couple of people who were involved in the process. He asked if that would alter or effect the final decision.

Ms. Womble stated that the Board would have to vote on recommended language. She stated that was certainly a position that the Board could take on what amendments they recommend. She stated that the fact that there was a change in the make-up of the Board did not necessarily mean a change in the voting outcome.

Ms. Peterson stated that she was unclear on the fact that the Board did not have approved County Commissioner meeting minutes for exact reference. She stated it would be difficult to have this very important conversation without the approved Commissioner minutes.

Ms. Bryant stated that the Board of Commissioners would be meeting after Labor Day and they were scheduled to hear the text amendment to the wind ordinance on September 21st. She stated that there had not been a meeting for the Commissioners to approve the minutes in question.

Mr. Robison stated that there was a meeting on the 17th where they could have been approved.

Ms. Bryant stated that the Commissioners meet twice a month and that usually they don't approve the minutes from the previous meeting at the very next meeting.

Ms. Peterson asked if they chose to delay the meeting until the Commissioner minutes are approved if the Planning Board would have a chance to do the work on the table in time for the September 21st meeting.

Ms. Bryant stated that if the meeting was delayed the Commissioners would not be able to hear the text amendment at their September 21st meeting because there was a 2 week advertising period that had to be done before the public hearing. She stated that the Board of Commissioners could only hear text amendments 4 times year, which was September, December, March, and June unless there was some sort of extreme circumstance.

Mr. Robison stated that the Daily Advance could be used for advertisement.

Ms. Bryant stated that the ordinance states that the hearing had to be advertised for 2 consecutive weeks.

Mr. Hare noted that the people who made up the sub-committee that were no longer on the Planning Board were the same people who were on the Planning Board when the original wind ordinance was approved. He stated that it was up to the Board members to catch up or slow down.

Mr. Hare asked the Board members if there was any difference of opinion among the Board members as far as what the direction was from the Board of Commissioners.

Mr. Robison stated that he thought that the Planner was told to take the recommendations from the sub-committee and to put them into a text amendment form.

Ms. Peterson stated that she thought that they were directed to take the draft language back to the Planning Board to receive confirmation that it met the intent of the sub-committee's recommendation and that would provide opportunity to make amendments to the language. She stated that the Commissioner minutes would take the debate out of the matter.

Mr. Hare stated that he felt that the Board should proceed and review the various drafts and make a recommendation to the Commissioners.

Mr. Hare opened the floor to public comment.

Patti Kersey, 3065 Conner's Drive, stated that until last week she was the Acting Chair of the Planning Board and that she was one of the members of the sub-committee that participated in the wind energy ordinance review. She stated that the outcome of the review was voted on and approved by the Planning Board on April 2, 2015 and was then submitted to the Commissioners on April 6, 2015. She stated that as of noon today the minutes of the August 3rd Commissioners meeting were not available. She stated that she

felt that the minutes should be available because of the differences of opinion on the directions given by the Commissioners. She stated that the Commissioner minutes should have been available well in advance of this meeting because the minutes have relevance to how the planning staff should proceed on the wind amendment. She stated that she had quotes that she had obtained from the Chowan Herald that were consistent with the notes that she had taken in regards to the Commissioners direction to planning staff. She stated that the article in the Chowan Herald stated that "the County Attorney stated that recommendations submitted by the Planning Board on April 6th were not in the form of a text amendment to the ordinance and for that reason the Commissioners will not be able to schedule a public hearing on those recommendations. The recommendations should be drafted as a text amendment before a public hearing can be scheduled". Neither the Commissioners nor the Attorney directed anything besides putting the prior recommendations into the ordinance appropriate language. She stated that means reformatting and clearly means that nothing of substance should be added or subtracted. She stated that after the reformatting is done there is nothing for the Planning Board to vote on. She stated that she was concerned about Planning Board members with apparent financial conflict of interest. She stated that in the case of a financial conflict of interest the member "shall not vote" in both quasi-judicial and legislative proceedings. She stated that if any Planning Board member is financially associated with a proposed wind development should not vote on matters pertaining to wind energy. She stated that Mr. William Monds had a financial benefit situation with the Apex developer that is almost identical to the situation with Commissioner Smith who was recently told by the County Attorney that he could not vote on the text amendment. She stated that in her opinion Mr. Monds also should not vote. She stated that Ms. Linda Peterson also appears to have a conflict of interest. She stated that there was enough public information available for a reasonable person to conclude that Ms. Peterson was not going to be objective in this matter. She stated that Ms. Peterson was the project manager for the Albemarle Resource Conservation & Development Office which has received grant monies to encourage community scale wind projects in Northeastern North Carolina. She stated that in Ms. Peterson's capacity as project manager and staff she reported to an advisory board of directors and that those individuals are responsible for determining her salary and direction. She stated that Commissioner Jeff Smith was the Chowan County representative on that advisory board of directors. She stated that essentially Ms. Peterson is a contractor that is responsible for delivering results for particular initiatives, in this case a community industrial wind turbine development. She stated that Ms. Peterson is on record vying for the Apex developer in several Commissioner meetings and via e-mail to Commissioners, County Manager, and the Planning Board. She stated that in view of these facts a reasonable person would come to the conclusion that Ms. Peterson has a vested interest to protect her employment and cannot be expected to be objective on the matter.

Hardy Gillam, 211 Lakeside Drive, stated that he was at the original meeting when the sub-committee presented their recommendations. He stated that he would lay the blame for the Board having to go through this with the County Attorney at the time. He stated that if the recommendations had to be in text amendment form then the Attorney should have been aware of that fact. He expressed concern over Mr. Monds "badgering" of one of the Planning Board members over that members decision to abstain from voting on the sub-committee recommendations. He stated that Mr. Monds had overstepped his bounds and was trying to change the member's mind and get the member to vote "yea" or "nea" instead of abstaining which is counted as a "yea" vote. He stated that there were a lot of people involved in the process that have financial interest and want the project regardless of what other people say. He stated that 600 people signed a petition saying that they were in favor of the recommendations like they were submitted by the sub-committee. He stated that anyone with a financial interest did not need to be voting on the text amendment. He expressed concern over the replacement of Planning Board members at this particular time. He stated that the County Commissioners were "smoke screening" and trying to lay the blame on the Planning Board. He urged the Planning Board to do what they were appointed to do and to do it in good faith and conscience.

Carolyn Browning, 3413 Rocky Hock Road, stated that she had no interest in the politics of the matter. She stated that there had been no 600 feet wind turbines put up anywhere in the United States. She stated that there were very few statistics on them as far as how they affect the environment and property values. She stated that she supported the sub-committee recommendations because no one knows what the future holds in the matter.

Harriet DeHart, 112 Horniblow Point Road, stated that at the August 3rd Commissioner meeting the County Planner and staff were tasked with crafting the sub-committee's recommendations from April into text amendment form and returning them to the Board of Commissioner's for a vote. She stated that she would like to respectfully request that the Board do just that and not take it upon themselves to change the recommendations or decide not to draft the text amendment language. She told the Board to let the elected officials be responsible for deciding whether or not there will be a change to the current county wind ordinance and not the Planning Board.

Amelia Bond, 667 Virginia Road, concurred with what the previous speakers said and pointed out that everyone had voted down the OLF that the Navy wanted to locate in the area because of the bird population that would be decreased. She expressed concerns over the wind turbines effecting the bird population. She urged the Planning Board to put the sub-committee's recommendations in text amendment form and send them back to the Commissioners for a vote.

C. Tommy Harrell, 279 North Bear Swamp Road (Perquimans County), stated that it was sad that something like this could divide a county. He stated that he owned property within a mile of the proposed wind development. He stated that the Commissioners and Planning Board had been tasked with protecting the health, safety, and welfare of the community. He stated that the County needed to require a property value guarantee for the land owners in the area and that a mile setback from any property line should be required. He stated that a 35 decibel acoustical limit should be required 24/7 because of the noise generated by the turbines. He stated that meaningful environment assessments should be done and a decommissioning plan should be in place. He expressed concern over damage to the land that would be left even after the turbines are decommissioned and removed.

Amy Ziolkowski, 118 Lloyd Overton Lane, expressed concern over Ms. Peterson's possible conflict of interest.

(tape ended, had to be flipped)

Ms. Ziolkowski stated that the Board should ask if Ms. Peterson had made up her mind to the point that it couldn't be changed. She stated that a member should not be able to vote on a matter where there is a financial conflict of interest or when the member's opinion is such that they are not open to change.

Ron Cummings, 317 Center Hill Road, stated that he had intended to read the Civitas letter that Ms. Bryant had read earlier to the Planning Board.

Don Giecek, Apex Clean Energy, stated that Apex had been reviewing the staff report and text amendment language since receiving the documents from County Staff on Friday afternoon. He stated that Apex believed that the staff recommended text amendment represented a thorough job by staff and provides facts, protects the health, safety, and welfare of the citizens while providing a clear path forward. He stated that they believed that the staff report was a positive step in the right direction for the County.

Martin Drees, 124 Nowell's Landing (Hertford), expressed concerns over property values. He stated that he had read studies from around the world on the effect of wind turbines on property values and that were done by licensed appraisers and realtors. He stated that the best outcome you could hope for was a loss of 15% of your property value according to those studies. He stated that was for properties up to 3 miles from the closest wind farm. He stated that allowing the wind turbines would destroy the tax base and that was the lifeblood of the county. He stated that he understood that a lot of the people who had signed up to allow the wind turbines on their land did not live on the land and were absentee landowners. He stated that those people would not be affected as far as health was concerned but their land values would be going down although they are being compensated. He stated that a survey done by Save the Eagles International said that annually 30 million birds are killed around the world by windmills. He said that is probably an error by a factor of 10 because that is only the number of birds reported within the local area of the turbines and that the birds that actually struggled away from the area were never counted. He stated that 50 million bats per year are destroyed by windmills and that bats reproduce very slowly and had long lifespans and that they would be destroyed in the areas with wind turbines in just a matter of a few years.

Alissa Cale with Weyerhauser, 537 Summerby Road (Roper), stated that Weyerhauser would like to respectfully request that the wind ordinance that was approved in December 2013 remain as is. She stated that the ordinance is equivalent to or stricter than neighboring counties and to the North Carolina model wind ordinance that was developed by North Carolina Clean Energy Technology Center at NC State University. She stated that Weyerhauser had thoroughly vetted the viability of a wind farm with their forest management practices and that they feel that wind energy is safe and has very little impact to their operations and the communities Weyerhauser operates in. She stated that they would be able to continue their forestry operations as well as their hunting allowances in the area of the wind farm. She stated that she has been on more than one wind farm because she was personally concerned about a possible wind farm close to her own house. She stated that she had no concern with a wind farm possibly locating near her home and encouraged others who were concerned to visit a wind farm for themselves. She encouraged the Planning Board to allow Apex to continue their investment in Chowan County.

Frank Miglorie, 1222 Soundshore Drive, stated that he was the director of the Edenton-Chowan Partnership. He stated that they had been in a relationship with Apex since day one and that they had introduced Apex to the Commissioners and to the County Manager as well as exposed them to the zoning requirements. He stated that as part of the process they had visited with researchers at the University of Delaware specifically to talk about their findings with regard to wind energy. He stated that some members of the Planning Board went on that trip with them and that he felt that it was a good experience in terms of getting field work done and talking to people who have hands on research activity going on. He stated that he had discovered that if you are for wind energy you look at the literature and look at certain components and that if you were against wine energy there was a whole body of literature that you could refer to in that regard. He stated it was hard to get a consensus among people who had that fundamental disagreement. He stated that recently he sent out a research document that was given to him by an uninterested party that was the result of a MIT study. He stated that he sent it to the Commissioners and the editor of the paper. He stated that one of the responses he received within a day of sending it out was that the report was classified as “junk science”. He stated that it was impossible to have an open discussion about wind turbines because of the existing biases that are out there. He stated that the Partnership had supported the project from the beginning and supports the ordinances that are in existence now because they are modeled after those suggested by the State of North Carolina. He noted that the representatives from NC State had said that the Chowan County Ordinance was not only as good as the model and surrounding areas but exceeds the model and surrounding community ordinances.

Lin Bond, 667 Virginia Road, asked if it was allowable for him to ask Mr. Giecek a question.

Ms. Womble stated that Mr. Bond could ask Mr. Giecek any questions that he had for him after the meeting but that Mr. Bond was welcome to address the Board at this time.

Mr. Bond stated that the only reason that Apex wanted to locate here was for tax credits. He suggested that the Board ask Mr. Giecek how much the expenditures are for the wind farm and ask him how much federal and state tax benefits and subsidies will be received for the project.

Bill Elliott, Edenton/Chowan resident, stated that he worked with Weyerhauser for 42 years. He stated that he would love to see the Planning Board and Commissioners go out to the property and see where the wind turbines would be located. He stated that it was hard to resolve the issues around a table; he stated that it would require a site visit.

Mr. Drees expressed concerns over the possibility of Apex choosing the region because it was poor.

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

Mr. Hare stated that the Board would now address the additions to the agenda.

Mr. Leggett restated his reasons for wanting a Bible present at all meetings.

Ms. Womble stated that in terms of statements or testimony that may be given under the law a person could affirm and that they can't be required to swear on a Bible which is why there is that option. She stated that Mr. Leggett was welcome to bring a Bible but she cautioned the Board regarding requiring someone to swear on a Bible for a testimony or statement.

Mr. Leggett stated that a Bible has always been used but that no one is required to put their hand on the Bible and that they could affirm rather than swear. He asked Ms. Womble if the Bible was used in the court system to swear in people testifying.

Ms. Womble stated that they do but that the person has the option to affirm and not swear on the Bible.

Mr. Robison stated that Mr. Leggett was not suggesting that everyone have their hand on the Bible to be sworn but to have a Bible present.

Mr. Robison moved that a Bible be present and available at all meetings. Ms. Peterson seconded the motion. The motion carried unanimously. (6-0)

Mr. Robison moved that Mr. Monds be recused from voting on any wind ordinance due to a financial conflict of interest.

Ms. Womble stated that her understanding of Mr. Monds' involvement with Apex was that it was substantially similar to Chairman Smith's so her opinion was that he should not vote. She stated that her opinion was that he could participate in the discussion because it was a legislative decision and not quasi-judicial.

Mr. Robison stated that he had been reading David Owens and that he didn't seem to be saying the same thing.

Mr. Hare stated that, according to the map, the area involved was around 12,000 acres. He asked if that meant that anyone living in that 12,000 acres would not be subject to vote on the text amendment.

Ms. Womble stated that was not her opinion. She stated that her opinion was based on multiple factors. She stated that you had to be able to tie the person in question directly to the project. She stated that when something began to affect a member more specifically than it does the community at large then there was a conflict of interest. She stated that the Statute that controls the financial conflict of interest when it relates to land use decisions says that "a member of the Board of County Commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct substantial and readily identifiable financial impact on the member". She stated that the second part of the Statute says "Members of appointed boards providing advice to the Board of County Commissioners shall not vote on recommendations regarding any zoning map or text amendments where the outcome of the matter is considered to be reasonably likely to have a direct substantial and readily identifiable financial impact on the member". She stated that the fact that Mr. Monds had been approached and had talks with Apex means that he does have a financial interest in whether this text amendment passes or doesn't pass. She stated that she was not suggesting that Mr. Monds would make his decision based on that but that the Statute requires that if the financial interest was there then "you shall not vote". She stated that you would add the fact that Mr. Monds had been approached by Apex to the fact that his property is located within the ideal project area and it was substantially likely that there would be some effect on Mr. Monds personally more than there would be another community member.

Mr. Leggett stated that this matter had been discussed previously at earlier Planning Board meetings and that it had been decided that Mr. Monds could participate in the discussion and not be allowed to vote.

Mr. Monds stated that he agreed with Ms. Womble's opinion and that he would not be participating in the vote.

Mr. Hare asked for clarification that Mr. Monds could excuse himself from the vote and that the Board did not need to vote on the issue of Mr. Monds excusing himself.

Ms. Womble stated that the Board of Commissioners or any appointed Boards had a duty to vote. She stated that there were multiple Statutes that deal with duty to vote. She stated that there was also a Statute that stated that "you shall not vote" and at that point there was not duty to vote. She stated that if Mr. Monds had not agreed to excuse himself from voting then her recommendation was that the Board take a vote on whether not to excuse him.

Mr. Hare asked if Mr. Monds excusal would count as a "yes" vote.

Ms. Womble stated that his excusal would not count as a "yes" vote. She stated that if someone were to just abstain from voting it would count as a "yes" vote.

Mr. Leggett asked if Ms. Peterson should be excused as well, because of similar reasons.

Mr. Hare asked Mr. Leggett why he felt that Ms. Peterson should not vote.

Mr. Leggett stated that he felt that way because of the conflict of interest.

Mr. Robison stated that Ms. Peterson was program director for RC&D Commission. He stated that the RC&D Commission was a lobbying organization for Green Energy.

Ms. Peterson stated that was not correct.

Mr. Robison stated that the way he read it, it was correct. He stated that Ms. Peterson had come before the Board of Commissioners in the past in support of Apex and the wind farm.

Ms. Peterson stated that she was an employee of Albemarle Resource Conservation & Development Council. She stated that RC&D was a private not for profit organization whose mission is to work on local land and water conservation and protection activities in a 10 county area of the Albemarle region. She stated that her organization had been in business since the mid-80s and has embraced over 500 projects from those 10 counties. She stated that the primary activity of RC&D is to meet with the local county government who has identified a project need. She stated that they worked with the local government to identify a grant source that would fund the project and that they provided technical grant writing to obtain funds and also may or may not be contracted to then provide technical assistance for implementing a project. She gave some examples of projects that RC&D is currently working on. She stated that one of the 500 projects that RC&D had been involved with did relate to wind energy. She stated that in 2011 they had received a grant from the NC Rural Center to do a focused wind energy installation project on school campuses. She stated that 3 were in Dare County, one was at COA in Edenton and that there was a meteorological tower in Camden County. She stated that the purpose of the grant was to try to bring the awareness of wind energy measurement into the curriculum of K-12 students so that they could do graphing and charting. She stated that they did teacher training for K-12 teachers to be able to bring techniques into the science classrooms to study wind. She stated that part of the grant paid for a website development that is www.sustainableenergysolutionsnc.com that was created to be a resource for information about wind and solar energy and other renewable sources. She stated that the website had recent legislation and recent advancements in the field as well as feedback from teachers. She stated that the path stone of that grant was a meeting that county managers and county commissioners from 10 counties were invited to where RC&D was able to share the wind measurements that had been gathered to identify the current legal and measurement issues around wind and solar energy and to hear the leadership of those 10 counties about a community wind scale project. She stated that that is not what was being discussed as far as the text amendment before the Planning Board. She stated that a community scale project was something that would generate enough energy to power a waste treatment plant or potentially the lighthouse down at the waterfront. She stated that one of the things that NC State had provided for the website was links to research that they have done. She stated that on behalf of RC&D she did forward those articles to the Commissioners and the Planning Board as well as all county commissioners in the 10

county area in an effort to be a source for information that was being generated by academic institutions. She stated that she presented the information before the Commissioners urging them to be aware of those articles as they were going through their review for the wind energy issue. She stated that she had never testified on behalf of Apex but that she did encourage the County to use the website and that linkage of information for their ongoing self-education. She stressed that RC&D had never lobbied nor were they a lobbying organization.

Mr. Robison asked Ms. Peterson if she was aware that the Clean Energy Technology Center at NC State was not associated with any academic portions of the university. He stated that nobody on their staff was an engineer or has anything to do with the school. He stated that they are a lobbying organization.

(tape ended, had to change tapes)

Mr. Robison stated that he still submitted that Ms. Peterson was a lobbyist.

Ms. Womble stated that because the text amendment was a legislative decision a member could have an opinion on the matter one way or the other. She stated that the question about a legislative conflict of interest is whether or not there is direct, substantial, identifiable financial interest by the member as it relates to wind energy or the project itself. She stated that after listening to Ms. Peterson's explanation she did not think that Ms. Peterson was benefitting financially from wind energy. She stated that based on that information she did not see a financial interest that Ms. Peterson has.

Mr. Robison stated that having an opinion that can't be changed was another aspect that requires the member not to vote.

Ms. Womble stated that was a quasi-judicial standard and not a legislative standard.

Mr. Monds stated that if having an opinion that can't be changed was a cause for not voting then Mr. Robison just recused himself.

Mr. Hare stated that Ms. Womble had made it clear that there was no financial conflict of interest in regard to Ms. Peterson and that he considered that matter closed.

Mr. Robison stated that he disagreed with that because Ms. Peterson had an opinion that couldn't be changed. He stated that the Zoning Ordinance gave a list of things that included that Planning Board members have an honest, unbiased opinion.

Ms. Bryant stated that information was in the section on quasi-judicial decision making.

Mr. Robison stated that it was for all decision making.

Ms. Womble asked Mr. Robison if he was referring to the Duties and Responsibilities section in Article II.

Mr. Robison stated that he was.

Ms. Womble asked if Mr. Robison if he was alleging that Ms. Peterson was unable to have an open mind about the amendment.

Mr. Robison stated that he was saying that because it was her job. He stated that he also thought that she had a financial interest in the amendment because she has to do what her commission wants.

Ms. Peterson stated that the grant that dealt with wind energy was over and that project ended in 2013.

Mr. Hare stated that he would not stand for adults to bicker back and forth and name call in a public meeting. He stated that unless there was something he was missing in the conversation other than allegations, it was time to move on.

Mr. Leggett stated that he thought that the issue was whether or not Ms. Peterson could remain objective in voting.

Mr. Hare stated that he thought that all of the Planning Board members needed to answer that question.

Ms. Womble stated that the section the Mr. Robison was referring to from the Zoning Ordinance references the Statute 153A-345E1 which has been repealed and that aspect is not a "shall not" anymore. She stated that is where the catch all statute comes in saying that if a member feels that they cannot make an objective decision whether they have an opinion one way or the other with the information in front of them then they may consider recusing themselves under the catch all which is 153A-44 and ask the Board to excuse them. She stated that if a Board member is saying that they can be objective, even with their opinions, then they could vote. She stated that it was her opinion that it was up to Ms. Peterson to decide whether or not she needed to ask to be recused.

Ms. Bryant reminded that Board that there were two motions on the floor. Mr. Robison had moved that Mr. Monds be recused and Mr. Leggett had moved that Ms. Peterson be recused. She stated that those two motions needed to be addressed.

Mr. Leggett stated that he had not made a motion and that he had just asked a question regarding Ms. Peterson's recusal.

Ms. Bryant noted that Mr. Leggett had not made a motion but that Mr. Robison's motion was still on the floor.

Ms. Womble stated that motion did not need to be voted on because Mr. Monds had voluntarily recused himself from voting.

Mr. Hare suggested using the original wind ordinance as a base document to work off of in reviewing the proposed text amendments.

Ms. Bryant gave an overview of the proposed amendments. (drafts included in Case File No. CC-TA-15-02)

Mr. Robison noted that the sub-committee recommendations were on a PowerPoint.

Ms. Bryant stated that the last page of the sub-committee's PowerPoint contained the recommendations that were voted on by the Planning Board. She stated that those recommendations stated that any amendment should:

- Require a property value guarantee
- 5,280 foot setback from all non-participating property lines
- Acoustical limit of 35 dBA at all non-participating property lines
- Incorporate the best practices found in the ordinance review for protection of the environment
- Strengthen decommissioning requirements
- Require a developer funded escrow account to pay all county expenses

Ms. Bryant stated that there was also a table at the end of the PowerPoint that gave a summation of the various ordinances that were reviewed by the sub-committee and that there was also a scoring system of those same ordinances as compared to Chowan County's Ordinance. She stated that she took the sub-committee's information and tried to make her best interpretation of ordinance appropriate language that reflected those recommendations as well as the scoring table and the ordinance comparison table. She stated that in interpreting "incorporate the best practices found in the ordinance review for protection of the environment" the only direction she could take was that the sub-committee scored a certain ordinance at a high level for protection of the environment. She stated that she also used the scoring to interpret

“strengthen decommissioning requirements” and used the ordinances with the highest scoring in her interpretation of that requirement. She stated that Carteret County was the highest scored ordinance so a lot of the language came from Carteret County’s ordinance.

Ms. Bryant went through the changes made to the wind ordinance based on her interpretation of the sub-committees recommendations. (included in Case File CC-TA-15-02)

Ms. Bryant read the staff report into the record. (included in Case File CC-TA-15-02)

Ms. Bryant went through the changes made to the wind ordinance in her staff recommended version of the text amendment. (included in Case File CC-TA-15-02)

Mr. Hare asked for clarification on the purpose of the materials required to be submitted with the conditional use permit for a wind farm.

Ms. Bryant stated that those materials were required to obtain a conditional use permit and that the applicant would have to submit all of the materials prior to the Planning Board or Board of Commissioners review of the application. She stated that the Board would use those materials in the review of the permit and if the Board felt like reasonable conditions needed to be added or denial of the permit needed to be given based on statements that were made in the impact statements then the Board would have grounds on which to make their decision.

Ms. Peterson asked for clarification that the information required provided a general framework for the Planning Board to review the application but that the Board still had the opportunity to ask for more specificity and additional study as a part of the review process.

Ms. Bryant stated that was correct.

Ms. Peterson asked if “wind energy facility” referred to all of the turbines or a specific turbine that is not functional.

Ms. Bryant stated that she would interpret it as the entire facility but that if the Board was concerned about individual wind turbines not working then that should be addressed in the review of the text amendment.

Mr. Leggett stated that he was surprised at some of the information that had been taken out of the original wind ordinance when it was amended in 2013.

Mr. Robison went through the changes made to the wind ordinance in his version of the text amendment that he felt reflected the intent of the sub-committee. (copy included in Case File CC-TA-15-02)

Mr. Robison stated that the sub-committee deliberately stayed away from Carteret County’s ordinance because it was so restrictive that it would not allow any wind facilities to be built. He stated that they did not want to prohibit wind energy facilities but to provide safety for the citizens of the county. He stated that the sub-committee felt that an escrow account was absolutely essential and that they did not want the County to be responsible for any regulatory expenses. He stated that salvage value could not be estimated and that the escrow account should contain enough money for decommissioning and that it should not be the County’s concern what the salvage value is. He stated that his version contained regulations for both private and commercial wind energy facilities.

(tape ended had to be flipped)

Mr. Hare stated that he would like to choose one of the proposed text amendments and work on amending that one document rather than working with more than one document.

There was some discussion on what document to use as a base for the text amendment.

Ms. Bryant stated that the version included with her staff report contained specifics that were not included in the amendment that she wrote based off of the sub-committee's recommendations.

Mr. Leggett stated that he thought that the specifics that were included in the version included with the staff report were important and should be included.

Ms. Womble stated that whatever version was used as the base for the text amendment, the Planning Board could still make amendments to that version and that Ms. Bryant would put together the revisions in the appropriate form to present to the Board of Commissioners.

Mr. Robison moved to set aside the first draft that Ms. Bryant had written based off of the sub-committee recommendations. Ms. Peterson seconded the motion.

Mr. Winborne commented that when the sub-committee had presented their report to the Planning Board that they had said that Chowan County was just like Carteret County.

Mr. Robison stated that was not true and that the sub-committee had stated that Chowan County was a similar county to Carteret County.

Ms. Bryant noted that when the text amendment went to the Board of Commissioners the Commissioners would see the entire record including the three versions of the text amendments, the minutes of the Planning Board meeting as well as any version of the text amendment that comes out of the discussion.

Mr. Hare called for a vote. The motion carried 4-1 with Mr. Winborne opposing.

Mr. Hare suggested continuing the meeting and that Ms. Bryant take the two documents and incorporate them into the ordinance so that the Planning Board could compare the two.

Mr. Robison stated that he was suggesting discarding the old wind ordinance and using the format that he used on his version of the text amendment.

Ms. Bryant stated that the Zoning Ordinance was a huge document that consisted of various articles and subsections and that it would be best if the formatting were to be kept consistent throughout.

Mr. Hare stated that he wanted something that he could use to compare one version to the other version.

Mr. Robison stated that you could not have a meeting without advertising.

Ms. Bryant stated that you had to give notice.

Ms. Womble stated that a meeting could be recessed and reconvened but that it did need to be posted on the website. She stated that it did not have to be published in the newspaper.

Mr. Winborne asked if Mr. Robison's version was in the format of a text amendment.

Ms. Bryant stated that most of the language was fine but it was a matter of formatting.

Ms. Peterson agreed that more time to review the text amendment would be helpful.

Mr. Winborne moved to recess the meeting until Wednesday, August 26th at 7pm. Ms. Peterson seconded the motion. The motion carried 5-0.

(August 24th meeting recessed until August 26th at 7pm)

Mr. Hare called the meeting recessed on August 24th back to order. Ms. Bryant called the roll: Linda Peterson, Bobby Winborne, Jim Robison, Marvin Hare, and Jim Leggett were present. William Monds was absent.

Mr. Hare stated that at the August 24th meeting Ms. Bryant was tasked with taking the two versions of the text amendment and putting them in a form where the two could be compared in ordinance appropriate language and format.

Mr. Robison stated that subsequent to the last meeting the County Clerk, Susanne Stallings, had provided a draft copy of the minutes from the August 3rd Board of Commissioner meeting. He read a portion of the minutes stating "Commissioner Bonner moved to instruct the County Planner to bring the text amendment back to the Planning Board for their review based on the proposed recommendations of the Planning Board sub-committee in a text format to be in compliance with the Chowan County Zoning Ordinance procedures". He stated that Ms. Stallings noted that "There was a great deal of discussion before the vote was taken. The minutes will reflect the following comments before the vote: Commissioner Nixon asked if staff will look at the subcommittee recommendations and re-negotiate with the PB members. Ms. Bryant noted she would look at the committee language and make changes and ensure compliance with the ordinance. Commissioner Nixon asked if she would alter or review what was recommended. Ms. Bryant stated that the text amendment will include the Planning Board Committee's intent however it would need to be in compliance with the ordinance. Commissioner Nixon stated he would like for the Planner to look for any holes in the committee's proposal and bring that back to both Boards for their review. Ms. Bryant noted that the Planning Board may change what was proposed by the committee, and she stated she may present the Commissioners with both the committee recommendation, her draft amendment (her staff report) and any changes from the Planning Board. Chairman Smith asked why the ordinance would have to go back to the Planning Board. Ms. Bryant explained that the proposed language is currently not in ordinance format. She noted the zoning ordinance lays out a procedure for formally adopting a proposed text amendment. Ms. Stallings and Ms. Bryant discussed the necessary time frame for review and approval. It was decided that the second meeting in September (September 21, 2015) is the likely date for the proposed text amendment to come back to the Commissioners for consideration. (4-2 Winborne and Mitchener) (Smith recused)".

Mr. Robison noted that the motion was that Commissioner Bonner moved to instruct the County Planner to bring the text amendment back to the Planning Board for their review based on the proposed recommendation of the Planning Board sub-committee in a text format to be in compliance with the Chowan County Zoning Ordinance procedures. He stated that motion was approved 4-2. He stated that the motion clearly directs the Planner to put the previously approved recommendations into text format and to present that text format to the Planning Board for their review based on the proposed recommendations. He stated that there was no direction or authorization that the Planner prepare her own version of a draft amendment or provide a staff report. He stated that the Planner's comment that the Planning Board may change what was proposed by the sub-committee and approved by the Planning Board is not supported by the motion and is incorrect. He stated that Commissioner Nixon's comments as well as those by the County Attorney and the Planner are just comments and do not authorize or direct action.

Mr. Robison moved to set aside the staff suggested version because it does not incorporate all the Planning Board subcommittee's recommendations. He recommended using the version that included all the changes recommended by the Planning Board and only modify the formatting.

Ms. Bryant noted that in the motion by Commissioner Bonner she was instructed to put the text amendment in a format "to be in compliance with the Chowan County Zoning Ordinance procedures." She stated that there was a chapter in the Zoning Ordinance on amendments and that it laid out a procedure for formally adopting a text amendment. She stated that part of that procedure was that the Planning Board may make amendments to the proposed language. She stated that was the procedure that the Board of Commissioners instructed staff and the Planning Board to follow. She stated that Ms. Womble had stated that at the meeting when the Commissioners hold a public hearing on the text amendment it will be *de novo* which means that the Commissioners get the entire record and that they will see everything from the PowerPoint from the sub-committee to the final recommended version of the text amendment from the Planning Board. She stated that it would be the Commissioner's decision to approve a revised version, that the Commissioners themselves revise, or the Planning Board's revision, or to deny approval of the text amendment.

Mr. Leggett stated that he was also present at the Commissioner's meeting and that he had understood the Commissioners instructions to be for staff to go back and put the recommendations in a text amendment format for the Planning Board to vote on. He stated that he was surprised that another version had been written that had been "softened". He stated that in particular he was concerned about the setbacks and the decibel level. He explained his reasons for abstaining from the vote on the sub-committee's recommendations but stated that he did agree with the recommendations. He stated that he felt that the sub-committee's recommendations were tainted due to the fact that the report was sent to John Droze who he considered to be biased and anti-wind. He stated that he felt that the text amendment had been tainted again by in-house revisions using softer language.

Mr. Robison stated that there was a motion on the floor.

Ms. Bryant stated that there was no motion on the floor.

Ms. Womble stated that Commissioner Bonner's motion was for the recommendations to be put in a format in compliance with the ordinance and procedures. She stated that her interpretation was that the Commissioners were asking the planner what that meant as far as putting the recommendations in a format compliant with the ordinance and procedures. She stated that Ms. Bryant then explained what would be involved in the process. Ms. Womble stated that she did not believe that was evidence that the Planning Board needed only a draft that was the sub-committee's recommendations. She stated that it was unclear what the recommendations represent. She stated that Ms. Bryant had taken the recommendations and attempted to put them in a text amendment format. She stated that the sub-committee had recommended topics or areas that needed to be addressed and as long as those areas are addressed in whatever version goes to the Commissioners then her opinion was that it was in line with the motion from the Board of Commissioners.

Ms. Peterson suggested that, given the difference of opinion on the Commissioners directions, that the Planning Board work on both documents and send them both forward to the commissioners.

Mr. Winborne asked for clarification that Ms. Peterson was suggesting that the Planning Board go through both documents and make revisions and send them both on to the Commissioners.

Ms. Peterson stated that was correct.

Mr. Robison stated that the Planner did not have the authority to write her own version of the amendment. He stated that Ms. Bryant did not include all the recommendations that the Planning Board approved in April and that she was told by the Commissioners to bring a text amendment back to the Planning Board based on the proposed recommendations by the Planning Board in a text format in compliance with the County Zoning Ordinance. He stated that Ms. Bryant did not understand what the intent of the recommendations was and that she used the PowerPoint presentation rather than the recommendations that were given to the Commissioners. He stated that the Power Point was just giving the variety of things that the sub-committee had looked at in making their recommendations. He stated that he had composed a text amendment that included all the recommendations.

Mr. Leggett stated that he thought that it would be more helpful to just send one version to the Commissioners because in the end it was their decision to accept, revise, or deny the proposed text amendment.

Mr. Winborne stated that he appreciated all the hard work that Ms. Bryant had put into the text amendment.

Mr. Robison stated that there was a motion on the floor to set aside the staff suggested version because it does not incorporate all the Planning Board's recommendations and that the Planning Board review only the staff version of his amendment that incorporates all of the Planning Board's recommendations. He stated that the review should deal only with the formatting and not with the substance of the recommendations.

Mr. Leggett seconded the motion.

Mr. Winborne expressed concerns over the version that Mr. Robison recommended using being so strict that no wind farms would be built in Chowan County. He stated that any business man would run from this county if they saw the restriction regarding property value guarantee.

Ms. Peterson stated that she felt it was important to strike a balance between allowing economic development and also protecting the citizens of the county. She expressed concern about the tone of Mr. Robison's proposed version of the text amendment. She stated that it was not welcoming to developers. She stated that there were steps in the process of approval that would allow for the request of additional data and that the tone of Mr. Robison's recommended version said to her that "we don't trust you so we're going to tell you who's going to conduct the study but you're going to pay for it." She stated that was not the tone that she would like to see in an ordinance. She stated that at this point she was not sure about the 35dBA noise level and that she was not sure what noise existed in the development area already. She stated that a baseline noise level would be helpful in determining an acceptable noise level. She stated that there may be times that the noise level exceeds 35dBA from naturally occurring sounds not related to the development.

Mr. Leggett stated that he would like a baseline noise level as well. He stated that most of the ordinances reviewed by the sub-committee contained a 35dBA noise level restriction and a mile setback.

(tape ended, had to be changed)

Mr. Robison stated that his version contained the recommendations that the sub-committee and Planning Board had decided was important to protect the health, safety, and welfare of the county. He stated that it was up the Commissioners to make the final decision but that is what was recommended. He stated that it was important to require experts to do the studies and that a large company would tell you whatever they wanted to tell you. He stated that details about the noise levels were very complex. He expressed concerns about transmission lines, infrasound, radiofrequency interference, flicker, etc. He stated that he had read recently about a requirement that turbines be shut off and the area surrounding the turbines be evacuated if winds got above a certain level. He stated that is why an independent organization needed to look at all the factors and make a recommendation.

Mr. Hare expressed his concern that Mr. Robison's version was too restrictive to allow any business to locate in Chowan County. He stated that a normal conversation is 45-50 dBA and that 35 dBA is too restrictive for any business to operate. He stated a mile setback from any public road was too restrictive. He stated that if Mr. Robison's version was used it would kill all industrial business in Chowan County. He stated that wind turbines did not produce toxic waste nor noxious odors. He stated that wind turbines were not new technology and that they were distributed all over the country and in Europe. He stated that the wind turbines would be using a renewable resource called wind. He stated that Mr. Robison's version would be an injustice to individuals that would benefit from the project and would give an open checkbook to our County government. He stated that the escrow account requirement was out of reach and that no businessman would ever consider that. He stated that Mr. Robison's version was wrong for Chowan County.

Ms. Peterson stated that she was not objecting to the use of independent experts but that her objection was to the tone of the draft. She stated that she felt that the applicant could be trusted to bring in independent data and independent studies. She stated that she had looked for precedent on guaranteeing property values and that there were so many variables involved that she could not see how it could be enforced or measured.

Mr. Leggett stated again that he felt that the draft was tainted because of the inclusion of a staff suggested alternative version. He stated that he had thought that the text amendment would just include the recommendations approved by the Planning Board and that he did not understand why they were

considering a different version with softer language. He stated that the recommendations given by the sub-committee were sufficient and would protect the safety and well-being of the public. He stated that he was considering abstaining from voting again.

Mr. Robison stated that it was up to the Commissioners to approve whatever version the Planning Board sent to them. He stated that it was the Planning Boards job to send the recommendations on to the Commissioners for their decision.

Mr. Hare asked Ms. Bryant to restate the motion that was on the floor.

Ms. Bryant stated that Mr. Robison's motion was to set aside the staff recommended version of the text amendment and to approve only the format presented by the Planning Board sub-committee as translated by Mr. Robison and formatted by Staff. She stated that Mr. Leggett had seconded the motion.

Mr. Hare called for a vote. The motion failed 2-3 with Mr. Leggett abstaining and his voting counting as a "yes" vote and Mr. Hare, Mr. Winborne, and Ms. Peterson voting against the motion.

Mr. Winborne moved to send the staff recommended version to the Commissioners.

Ms. Peterson asked if there would be an opportunity for discussion.

Mr. Hare stated that there would be opportunity for discussion before a vote was called for.

Ms. Peterson seconded the motion.

Ms. Womble asked for clarification that Mr. Winborne's motion was to send the unamended staff report to the Commissioners.

Mr. Winborne changed his motion to reflect that he was moving that the Planning Board move forward reviewing the staff recommended version of the text amendment. Ms. Peterson seconded the motion.

Ms. Womble noted that the Planning Board would need to vote again on a final version of the revised text amendment.

Mr. Robison stated that the staff report did not incorporate all of the recommendations of the previous Planning Board and was unacceptable.

Ms. Peterson asked if the Board could take the document section by section and talk through how it could be amended to reflect the recommendations of the sub-committee.

Mr. Hare called for a vote. The motion carried 4-1 with Mr. Leggett abstaining and his vote counting as a "yes" vote and Mr. Robison opposing.

Mr. Hare noted that the first revision on the staff recommended version of the text amendment was addressing information that should be required with a permit application for a Wind Energy Facility.

Ms. Peterson recommending adding language from Mr. Robison's version of the text amendment stating that "The applicant must meet all requirements listed in Chapter 143 Article 21C of the NC General Statutes and any other applicable State or Federal law" to the section detailing requirements for obtaining a permit for a Wind Energy Facility.

Ms. Peterson stated that in item K she would like to see language that addressed including independent experts where necessary and also including baseline values in relation to noise level.

Mr. Hare asked Ms. Peterson if she was suggesting that the experts used should be chosen by the applicant as well as the County.

Ms. Peterson stated that she would expect the applicant to identify who conducted the study. She stated that in a conditional use permit review the Board would have the ability to request additional studies if the Board was not satisfied that an independent expert had been used.

Mr. Hare asked for confirmation from Ms. Bryant if that was correct.

Ms. Bryant stated that a conditional use permit would not be granted until the Board had received such studies and that would be at the cost of the applicant.

Mr. Robison stated that needed to be spelled out and that is why he recommended an escrow account.

Ms. Bryant asked Ms. Peterson if she had specific language that she would like to propose.

Ms. Peterson stated that she did not.

Mr. Hare stated that he felt that it was obvious that if the studies were required in order to obtain a conditional use permit that it would be at the cost of the applicant. He asked Mr. Robison if he had a reason why he felt that it needed to be spelled out in the ordinance.

Mr. Robison stated that at a previous Board of Commissioners meeting flyers were handed out by lobbyists for the wind industry and that the NC Clean Energy Center had turned out to be a tenant organization on NC State University and was not associated with the university. He stated that was an example of what he didn't trust. He stated that he didn't trust the companies to provide the County with accurate information because they are working in their own self-interest. He stated that he did not trust the "pseudo" government organizations because they are working in their own interest.

Mr. Hare stated that the question was who pays for the studies.

Mr. Robison stated that was why an escrow account was put in so that the County could go out and independently hire people to get an independent opinion.

Ms. Bryant recommended including in item K that "an analysis by an independent expert, where necessary" be added and that under item ii. Noise, adding the language "including an established base line dBA value for the noise produced by the site's currently existing environment and use".

Ms. Peterson suggesting adding a sub-note establishing a minimum setback of 1,000 feet to the setback table regardless of tower height. She stated that did not meet the mile recommendation from the sub-committee but that she believed that it provided some additional recognition of what she had been hearing from the community.

Mr. Robison stated that the Planning Board was instructed to send the text amendment forward using the recommendations approved by the Planning Board. He stated that the recommendation was a setback of one mile. He stated that if that recommendation was not put in in then the Board was not following the direction of the Commissioners.

Mr. Hare agreed with Ms. Peterson's suggested revisions.

Mr. Leggett stated that the recommendations of the sub-committee had already been approved by the Board and that he did not understand why the Board was now revising the recommendations.

Mr. Hare stated that the Board had voted at this meeting to take the version of the text amendment that included only the sub-committee's recommendations off of the table.

Mr. Robison restated that the Board was not allowed to change the recommendations of the sub-committee that were approved by the Planning Board. He stated that the format could be changed but not the recommendations.

Mr. Hare suggested changing the setback from non-participating property lines to 2.5 times the height of the turbine for large facilities.

Mr. Leggett stated that he felt that the effects like noise and flicker tend to dissipate over a distance. He stated that from he understood from the studies that the effects didn't dissipate until over ½ of a mile.

Mr. Robison stated that most of the ordinances the sub-committee looked at had a mile setback or more. He stated that if you started looking at the ones in Europe, England, and Australia the setbacks were generally more than a mile.

Ms. Peterson stated that one of her concerns was that there would be sensitive areas in the community that needed to be considered in a project proposal. She stated that locations of schools, hospitals, churches, etc. needed to be considered. She stated that was where a site plan indicating the location of the turbines in relation to the community would be necessary.

Ms. Bryant noted that the title was "minimum setback requirements" and that it was a starting point. She stated that it would be a reasonable condition for a sensitive area that was close to a specific site for there to be a greater setback than the minimum. She stated that would be up to the Planning Board to recommend and the Commissioners to decide in the conditional use permit process.

Mr. Robison stated that the multiples were originally put into the model ordinance as a fall distance. He stated that it did nothing to protect the public from sound, flicker, etc. He stated that was why the Planning Board approved the one mile setback.

Ms. Bryant stated that was true but that other portions of the ordinance regulate shadow, sound, and flicker.

Mr. Robison stated that the original recommendations took all that into consideration by setbacks.

Mr. Winborne moved to accept the amendments to the staff recommended version of the text amendment up to the setback table. Ms. Peterson seconded the motion. The motion carried 4-1 with Mr. Leggett abstaining and his vote counting as a vote in the affirmative and Mr. Robison opposing.

(tape ended, had to be flipped)

Mr. Robison stated that he thought that the Planning Board was wasting their time and wasting his time. He stated that he had told the Board that they did not have the authority to change the recommendations and that they went ahead and did it anyway. He stated that he had given the Board a draft that included all the recommendations that the Planning Board had recommended. He stated that this was "bogus" and left the meeting.

(Mr. Hare called a 5 minute recess)

Mr. Hare called the meeting back to order. He noted that the next section to be addressed was dealing with sound and shadow flicker.

Ms. Peterson stated that it seemed to her that there should be language in this section that mirrored the language in the setback table which identified it as a minimum requirement. She stated that there should be some language in this section that would allow for changes in those levels either lowering the level overall or specifying reduction at night or recognizing where the towers were. She stated that something indicating that 55 dBA would work during the day but at night it needs to go down to 35 dBA would be an example. She asked if that could be addressed during the conditional use permit process.

Ms. Bryant stated that the language was “shall not exceed 55 dBA” so the Board could put in some language that definitively says that is the maximum sound level that can be reached. She stated that as staff during the conditional use permitting process she would advise the Board that it was a reasonable condition to require stricter measures than 55dBA that was site specific.

Mr. Hare stated that 55dBA is low conversation. He stated that, however, he didn’t think that people who lived in the country expected to have that level of noise continuously. He asked what would happen if an adjoining land owner were to sell a lot that is still on his property but is closer to the project. He asked if that noise level was still 55dBA from the new house. He stated that he was in favor of limiting the noise level to 55dBA at the property line of a non-participating landowner.

Ms. Peterson asked for clarification on the idea of future changes to property lines.

Ms. Bryant stated that typically once a permit is issued it is public record. She stated that if someone buys a piece of property as long as the permit was approved before the person bought the property then it should have been disclosed and it was “buyer beware”.

Ms. Womble stated that if the wind farm was permitted first then the setbacks and sound limits would apply to the time at which the project was permitted.

Ms. Peterson asked for clarification that any changes in subdividing property would not impact the restrictions.

Ms. Womble stated that was correct.

Ms. Bryant clarified that Mr. Hare was suggesting striking the language “Occupied Building or Residence on the property” and inserting “property line of a Non-Participating Landowner”.

Mr. Hare stated that was correct.

Ms. Peterson stated that would raise the bar as far as protecting surrounding property owners in regards to sound, etc. She asked if a provision should be put in stating that a stricter sound restriction could surface in a conditional use permitting process based on the type of buildings in the area during certain hours of the day.

Ms. Womble stated that if a provision like that was put in the ordinance then an applicant wouldn’t know the rules because there could always be a change in the way that they’re supposed to function. She stated that either there was a minimum level or not.

Ms. Bryant asked if the site was in an area where there was a fair number of residences around a proposed project and at the time the conditional use permit was issued and the Board decided that 55dBA during the day was reasonable but at night it needed to be lower if Ms. Womble felt that was a reasonable condition that the Board could attach to the conditional use permit.

Ms. Womble stated that she would have to look into that.

Ms. Peterson stated that another scenario would be if a school was the bordering property line for the project and potentially during school hours there would be a benefit in lowering the decibel levels because of the impact on the school. She stated that there were a lot of “ifs” that would depend on the specific project.

Mr. Winborne stated that some of the conditions could be addressed during the issuance of the conditional use permitting process. He stated that more than the minimum setbacks could be required if the Board felt it was necessary.

Ms. Bryant stated that was correct.

Ms. Peterson stated that the issues could be addressed through setbacks rather than reducing the noise levels.

Ms. Bryant stated that was correct. She stated that would also be cleaner than the variable decibel levels.

Mr. Leggett agreed that a lot of the effects could be addressed through setbacks.

Ms. Bryant noted that Installation and Design was the next section to be reviewed.

There being no changes suggested to Installation and Design, Ms. Bryant noted the next section, Maintenance.

Ms. Peterson stated that the issue of the definition of what a wind generation facility was had come up earlier. She asked if that was one turbine or the entire project. She state that this was an opportunity to clarify whether the language was addressing a single turbine or the entire project as far as the requirement that any non-functional wind generation facility be repaired or removed within a 6 month period.

Mr. Winborne stated that a wind farm would probably be built in sections. He stated that one section may need to be shut down for a period of time for maintenance. He stated that those sections would not be producing electricity during the routine maintenance schedule and that was his concern.

Ms. Bryant stated that the way she read it the entire facility was considered a wind generation facility. She asked the Board if they would like different language to clarify or change that.

Ms. Peterson asked if the proposed language was part of the original ordinance.

Ms. Bryant stated that it was part of the 2011 ordinance that was amended in 2013. She stated that the language was removed during the 2013 amendment.

Ms. Peterson questioned the purpose of the Maintenance section.

Ms. Bryant stated that it was addressing maintenance but was saying that if it was shut down for more than 6 months then the County would send a notification asking for a written response and the developer would list reasons for the operational difficulty and provide a timetable for corrective action. She suggested inserting something into the first sentence clarifying that a wind generation facility could be a turbine or turbines. Ms. Bryant stated that the first sentence could be changed to read “Any wind generation facility or portion thereof”.

Mr. Winborne stated that it could also be addressed during the conditional use permitting process that if a section of a wind farm were to be shut down for maintenance that the Planning Department be advised.

Ms. Bryant stated that the next section was Decommissioning.

Ms. Peterson stated that Mr. Robison had made a comment at the Monday night meeting that the salvage value of the turbines was minimal. She recommended taking the language “less salvage value” out of section D.

Ms. Peterson questioned who would be reviewing the surety bond cost calculation every 12 months and making the adjustment.

Ms. Bryant stated that the adjustment must be approved by the County and would be a combination of staff including the planner, finance director, and county manager.

Mr. Winborne asked if the 12 months could be extended to 2 or 3 years so that the applicant would not be continually renewing since the language regarding salvage value had been taken out.

Mr. Hare stated that he didn't have a problem with extending the time to 24 or 36 months.

Ms. Peterson asked if it was possible to consult with the Finance Officer or County Manager.

Mr. Hare asked County Manager Kevin Howard what the more workable number was from the County's perspective.

Mr. Howard stated that he would not recommend going further than 24 months. He stated that he would recommend staying with the 12 month time frame.

Ms. Peterson made a motion to accept the second half of the text amendments with the noted revisions. Mr. Winborne seconded the motion.

Mr. Leggett stated that he would be abstaining from voting because he felt that the text amendment was tainted.

The motion carried 5-0 with Mr. Leggett abstaining (and his vote counting as a "yes" vote) and Mr. Robison leaving the meeting without being excused (and his vote counting as a "yes" vote).

Ms. Bryant stated that the next step would be to compile all the materials related to the text amendment as well as the new text amendment and a revised staff report to be submitted to the Board of Commissioners for their September 21st meeting where there would also be a public hearing. She stated that the Commissioners would receive the entire file and would see everything from start to finish. She stated that it would be up to the Commissioners to approve what the Planning Board has recommended, approve some other form, or to deny the text amendment.

There being no further business, the meeting was adjourned.