

CASWELL COUNTY WATERSHED REVIEW BOARD

In re: Appeals of Watershed Protection Permits)
and Special Non-residential Intensity Allocation)
Permits)
_____)

**RESPONSE IN OPPOSITION
TO CAROLINA SUNROCK,
LLC’S MOTION TO DISMISS**

NOW COME Community Members Edward J. Dougherty, Dawn Leith-Dougherty, James Wilkinson, Sheila Wilkinson, Susan Hester, Ed Williams, Sharon Williams, Karen Anderson, Robert Anderson, Jackie Tice, Theresa Newman, Charles Clotfelter, Randolph Hester, Marcia McNally, Patrick Tighe, Elizabeth Norman, Thomas Nicholais, Donna Nicholais, Dale Kemper, Howard DuBose, Jr., Tim Solomon, Glenda Solomon, Susan Chandler, Peter Christopher, Karen Meek, Mark Wrenn, Stephen Pietsch, Sylvia Hedrick, Stephen C. Long, Patricia Carver, Casey Kemper, Ashley Kemper, John T. Carver, Jr., Virginia Pietsch, Ben Solomon, Matt Solomon, Lydia Jernigan, Garry Massey, Herman Roberts Kim Merritt, Junior Merritt, Donna, Hudson, Timothy W. Hudson, Evangeline Vinson Gaudette, Sharon Vinson, Ronnie Vinson, Arthur W. Miller, Jr., and Joyce G. Miller (“Community Members”), and state the following in response to Carolina Sunrock, LLC’s (“Sunrock’s”) Motion to Dismiss (“Motion”):

INTRODUCTION AND BACKGROUND

The above-named Community Members who filed appeals to challenge the issuance of Watershed Protection Permit and Special Non-residential Intensity Allocation (“SNIA”) Permits (collectively referred to as “Permits”) to Sunrock lived, worked, and/or owned property in Caswell County at all relevant times. Many live in close proximity to Sunrock’s proposed Prospect Hill Quarry or the Burlington North Asphalt Plant. Sunrock applied for these Permits on January 8, 2020—two days *after* this County adopted a Moratorium Ordinance that prevented the County from issuing any approval for any Polluting Industry Development for one-year from the Moratorium’s enactment. Exhibit A. Sunrock’s proposed facilities qualified as Polluting Industry Developments under the Moratorium and these permits should not have been issued. The original Moratorium was extended on January 4, 2021 to be in force until July 6, 2021. Exhibit B.

Sunrock knew at the time it applied for and/or completed submissions related to these permits that this Moratorium had passed and was in effect.¹ Subsequently, the County replaced its

¹ North Carolina case law confirms that even knowledge of proposed ordinances can defeat vested rights claims. *Krieger v. Winston-Salem Bd. of Adjustment*, 281 N.C 715, 719, 190 S.E.2d 175, 178 (1972) (citations omitted) (“When, at the time a builder obtains a permit, he has knowledge of a pending ordinance which would make the authorized construction a nonconforming use and thereafter hurriedly makes expenditures in an attempt to acquire a vested right before the law can be changed, he does not act in good faith and acquires no rights under the permit.”). In the current case, Sunrock did not complete its applications for its Permits until after the Moratorium Ordinance had gone into effect, and did not receive its Permits until after the High Impact Development Ordinance went into effect.

previous Environmental Impact Ordinance with a High Impact Development Ordinance (“HIDO”) on December 21, 2020. The Moratorium remained in effect until July 2021, so that when the Moratorium expired, the HIDO was in effect and compliance with the HIDO was required.

Sunrock claims that it had vested rights and therefore neither the Moratorium nor the HIDO apply to it. Only if it had vested rights could the Permits have been properly issued, since otherwise there was a Moratorium in effect. To have vested rights, Sunrock would have to satisfy the State’s common law (court-made) vested rights test.

Importantly, Sunrock was well aware of the Moratorium. Before submitting or completing its applications for the Permits, Sunrock’s attorneys were in communication with the County, including Matthew Hoagland, the County’s Planning Director and Watershed Administrator, and County Attorney Brian Ferrell, in attempts to avoid needing to comply with several County Ordinance requirements.

These communications occurred before Mr. Hoagland issued the challenged Permits in January 2021. It would require this Board and everyone involved to suspend disbelief that these communications and legal conclusions relevant to the challenged Permits were not before Mr. Hoagland when he issued the Permits, and that the various legal considerations are divorced from the question as to whether he should have issued the permits given the Moratorium that was in effect. Even if they somehow were not, that does not prevent the Community Members from presenting the question of vested rights to this Board as a legal basis for reversing Mr. Hoagland’s decision.

The Community Members appealed Mr. Hoagland’s decision on February 3, 2021. Before this Board could schedule a hearing to consider these appeals, Sunrock separately sued the Community Members in Superior Court in an effort to have the Court decide whether Sunrock had met the common law vested rights requirements. As a result, this Board suspended further hearings until the Superior Court decided this question. This decision made sense since answering whether Sunrock had vested rights is a first step in determining whether Mr. Hoagland’s decision to issue the Permits was correct. However, after an Order from the Superior Court deciding it did not have jurisdiction to hear Sunrock’s lawsuit against certain community members, Sunrock decided to dismiss its lawsuit. For this reason, the Community Members’ appeals now are ready for this Board to consider.

The decision before this Board is a legacy decision; it will determine the future of the County’s character and the ability of its citizens to continue to use and enjoy their properties. It will directly impact the lives of the Community Members who have sought this Board’s review. The Community Members strongly urge this Board to deny Sunrock’s Motion, proceed to a

This response only briefly addresses the Community Members’ vested rights claims since Sunrock’s motion to dismiss is focused on purely jurisdictional issues and misstates the thrust of the pending appeals. However, the 49 Community Members reserve their right to present evidence and additional argument to further demonstrate that Sunrock has not met North Carolina’s common law vested rights test.

hearing on the merits, and to give the Community Members' appeals the consideration they have long deserved.

STANDARD OF REVIEW

Although Sunrock does not cite to a specific statute enabling it to file a motion to dismiss within its Motion, it references N.C. Gen. Stat. § 160D-406(d) in a separate cover letter as the basis for its motion challenging the Watershed Review Board's jurisdiction to hear the substance of the Community Members' appeals. Regardless, the standard used by North Carolina's courts for considering motions to dismiss based on jurisdictional issues provides helpful guidance.

In short, courts reviewing such motions may consider matters outside the pleadings, *Trivette v. Yount*, 217 N.C. App. 477, 482, 720 S.E.2d 732, 735 (2011) (citation omitted), and may resolve any issues of fact regarding jurisdiction. *See Burton v. Phoenix Fabricators & Erectors, Inc.*, 194 N.C. App. 779, 782, 670 S.E.2d 581, 583 (2009). Here, any questions about the Board's jurisdiction or ability to hear the Community Members' appeals may be resolved by referring to Chapters 153A and 160D of the North Carolina General Statutes which grant counties their powers and duties, as discussed in greater detail below.

ARGUMENT

A. This Board Must Either Reverse the Permits as Being in Violation of the Moratorium or it Must Examine whether Sunrock Had Vested Rights to Prevent the Moratorium Applying to It.

It was illegal for the Watershed Administrator to issue the contested Permits while the Moratorium was in effect unless there was an exception or vested rights applied. In reviewing the Administrator's decision, this Board must either reverse the issuance of the Permits as being in violation of the Moratorium or it must review whether vested rights caused the Moratorium not to apply to Sunrock. That review of vested rights could result in a decision that vested rights did not apply and a reversal of the Permits' issuance, or it could result in a decision that vested rights did apply and a confirmation of the Permits. The Permits cannot be affirmed without a determination that Sunrock had vested rights that caused the Moratorium not to apply. Otherwise, the Permits are certainly invalid.

B. The General Assembly Has Authorized This Board to Hear Appeals of the Watershed Administrator's Decisions and Those Based on Vested Rights

Counties and their various agencies and boards derive their powers from the General Statutes as enacted by the General Assembly. *Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142, 151, 731 S.E.2d 800, 807-08 (2012). Per the General Assembly, the County's authority under the General Statutes should be interpreted broadly:

It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter

and of local acts shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power.

N.C. Gen. Stat. § 153A-4; *see also id.* § 160D-110 (confirming that Section 153A-4 applies).

The General Statutes specifically grant this Board the authority to hear appeals of the Watershed Administrator's decisions:

Appeals. – Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a local government ordinance or code provision.

N.C. Gen. Stat. § 160D-405(a). This Board has been designated as the correct board per Caswell County's Unified Development Ordinance, discussed below.

Further, this Board also has the authority to hear challenges to the County's vested rights determinations:

Process to Claim Vested Right. – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo....

N.C. Gen. Stat. § 160D-108(h).

Conveniently, Sunrock sidesteps these statutory provisions in its Motion. However, neither Sunrock nor this Board can ignore relevant statutory language that resolves the question of whether this Board has jurisdiction to hear the Community Members' appeals. It does.

Perhaps obviously, appeals challenging the Watershed Administrators' decisions necessarily involve allegations of legal errors (e.g., those related to vested rights), the type of errors this quasi-judicial Board was established to hear. That is the nature of an appeal. The Community Members' only recourse to correcting a legally-deficient decision by the Watershed Administrator is to appeal that decision to this Board under N.C. Gen. Stat. § 160D-405, and in doing so further explain the legal basis for those appeals.

C. Caswell County’s Unified Development Ordinance Further Authorizes this Board to Hear Appeals of the Watershed Administrator’s Decisions

The County’s Unified Development Ordinance grants this Board broad authority to hear appeals of the Watershed Administrator’s actions: “*Any* order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board as specified in Section 10.10.6.” Caswell County Unified Development Ordinance § 10.10.2.1 (emphasis added).

This language is hardly a narrow limitation to only those “technical matters” suggested by Sunrock. Mr. Hoagland’s decision to issue the Permits was made while conflicting ordinances were in force. In carrying out his job as the Watershed Administrator, Mr. Hoagland only can do what is authorized under the Ordinances, as adopted per the General Statutes. If one ordinance is on hold due to a moratorium, it is Mr. Hoagland’s job to recognize this fact and not implement that suspended ordinance. It is this Board’s job to decide whether Mr. Hoagland’s assessment that those ordinances did not stop him from issuing the Permits was correct. The fact he made such an assessment is evidenced by the fact he issued the Permits, and is ready for this Board’s consideration.

D. The Superior Court Already Has Acknowledged that the WRB Is the Correct Forum for These Appeals.

As this Board already is aware, the current proceedings were put on hold so that the Caswell County Superior Court could address the question of vested rights, one of the issues that remains before this body. Before Sunrock dismissed its Superior Court lawsuit, however, the Court issued an Order that resolved the very jurisdictional question that Sunrock now asks the Board to decide—can the Watershed Review Board hear these appeals? Exhibit C.

The Court recognized that the appeals, in part, were based on the existence of the Moratorium at the time the Permits were issued. *Id.* at 2-3 (Findings of Fact ¶¶ 3-6). It then concluded that a final decision of the Watershed Review Board on whether Mr. Hoagland’s issuance of the Permits was correct would give the Court jurisdiction to hear an aggrieved party’s appeal. *See id.* at 4-5 (Conclusions of Law ¶ 6). For example, the Court reasoned that “[i]f a ruling adverse to [Sunrock] is issued, it will be issued by the Watershed Review Board,” and that “[t]he United States Constitution and the North Carolina Constitution protect an individual’s constitutional right to petition their elected official for redress of grievances. This Court will not foreclose NAACP Defendants’ legal arguments before the time has arisen to make them. That will only serve to dissuade petition activity, which is constitutionally protected.” *Id.* at 4-5 (Conclusions of Law ¶¶ 6, 8).

Therefore, it is the Superior Court’s role to hear appeals *from* this Board’s decisions on matters brought before it. It is the Board’s role to make the decision as to whether the Moratorium or vested rights applied, and whether the permits were properly issued.

Sunrock notified this Board’s attorney that it dismissed its Superior Court lawsuit for fear that the Court may dismiss its remaining challenge against the Community Members for lack of

jurisdiction. Simultaneously, it incorrectly argues that this Board cannot consider those appeals either despite the Court's Order.

In the end, a higher court has spoken. Accordingly, this Board should dismiss Sunrock's Motion.

E. Sunrock Misstates the Basis for Approximately Fifty of the Appeals to Avoid the Primary Issue in this Case—Vested Rights

Interestingly, Sunrock's Motion to Dismiss entirely excludes the key words in the present case—vested rights. Instead, Sunrock has re-cast the issue to shift focus to the potential effect of its failure to establish vested rights,² namely that a County Moratorium and High Impact Development Ordinance may apply to it. No matter how creative the wording, the legal question before this Board has remained the same: has Sunrock established that it had satisfied the common law (court-made) vested rights test³ so that it only must comply with the ordinances in place as of January 6, 2020? This is the legal basis for challenging Mr. Hoagland's decision to issue the Permits. As discussed above, this is the legal question properly before this Board to decide. The answer will determine whether Mr. Hoagland's decision was erroneous, and will resolve this dispute.

For reference, North Carolina's common law vested right test is stated as follows: "A party claiming a common law vested right in a nonconforming use of land must show: (1) substantial expenditures; (2) in good faith reliance; (3) on valid governmental approval; (4) resulting in the party's detriment." *Walton North Carolina LLC v. City of Concord*, 257 N.C. App. 227, 232, 809 S.E.2d 164, 168 (2017) (citation omitted); *see also Warner v. W&O Inc.*, 263 N.C. 37, 41, 138 S.E.2d 782, 785 (1964) (confirming that a vested right is created after a permit has been issued and an applicant makes expenditures in good faith at a time when the permitted activity was lawful); *see Town of Hillsborough v. Smith*, 276 N.C. 48, 56, 170 S.E.2d 904, 910 (1969) (confirming that vested rights only might accrue after issuance of a permit and when an applicant did not have notice of a pending, or actual, ordinance that would prevent it from acting).

As indicated above, Sunrock did not obtain such governmental approvals⁴ from the County by January 6, 2020, nor had it obtained necessary building permits for its quarry and asphalt plant sites. It had not even applied for the challenged Permits for the quarry site until after the Moratorium went into effect, and had not completed its applications for the asphalt plant until after the County adopted the HIDO. As a result, Sunrock has not met the basic requirements of the

² Under North Carolina law, the burden is on Sunrock to demonstrate that it has "satisfied the elements for common law vested rights." *Wilson v. City of Mebane Bd. of Adjustment*, 212 N.C. App. 176, 181, 710 S.E.2d 403, 407 (2011). Instead, Caswell County hired an outside law firm well known to represent the mining industry to assess whether Sunrock's largely unsubstantiated claims were correct.

³ Sunrock has not claimed that it has vested rights under a different, statutory vested rights test provided in Chapter 160D of the General Statutes.

⁴ The governmental approvals needed by Sunrock were codified into the Unified Development Ordinance and/or Code of Ordinances at all relevant times.

vested rights test, and cannot claim that it relied upon permits that it applied for after a change in the County Ordinances.

This Board must decide whether Sunrock has established vested rights before it can decide whether Mr. Hoagland correctly issued the Permits. Without Sunrock having vested rights, the Moratorium certainly applied and the permits were certainly improperly issued.

CONCLUSION

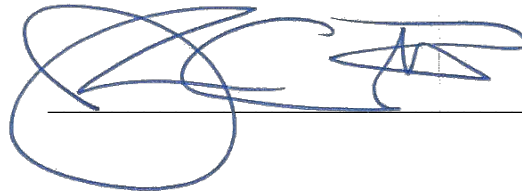
Requiring Sunrock to follow the County's Ordinance requirements does not mean that Sunrock ultimately cannot operate its proposed quarry and asphalt plant. What it does mean is that Sunrock would have to follow the law like everyone else, including the Community Members who have sought this Board's review of Mr. Hoagland's decisions. An additional statement from a few of the Community Members is attached to this Response as Exhibit D.

For all of the reasons previously stated, the Community Members respectfully request that this Board deny Sunrock's Motion to Dismiss and proceed to schedule a hearing on the merits of this case.

Respectfully submitted this the 28th day of October 2022,

CALHOUN, BHELLA & SECHREST, LLP

By:



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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Response in Opposition to Carolina Sunrock, LLC's Motion to Dismiss has been served on the other parties' counsel via electronic mail and/or the United States Postal Service, addressed as follows:

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This the 28th day of October, 2022.

By:



James L. Conner II
Attorney for Community Members

Exhibit A

**CASWELL COUNTY ORDINANCE
ESTABLISHING A ONE YEAR MORATORIUM
ON POLLUTING INDUSTRY DEVELOPMENT WITHIN
CASWELL COUNTY, NORTH CAROLINA**

Section 1. Jurisdiction

This Ordinance shall apply to all of Caswell County except for those areas included in incorporated municipalities exercising their own land use planning functions and their extra-territorial jurisdictions.

Section 2. Purpose

The purpose of this Ordinance is to establish a moratorium to allow the Caswell County Board of County Commissioners time to:

1. Protect the health of the citizens of Caswell County against potential adverse health effects from harmful emissions, noise, and contamination of both water and air; protect the public safety of the citizens against potential failure of containing and controlling of fires and explosions and increased traffic and damage to roadways; to protect the environment of Caswell County against air and water pollution, thereby protecting streams, tributaries and groundwater supplies; protect and retain local wildlife species including local marine life and protect a local non-profit community zoo from various environmental and aesthetic effects of such industries; protect and preserve local farm lands from potential contamination; preserve the aesthetics of the rural, peaceful and residential lifestyle of the citizens of Caswell County including promoting the peace and safety of local places of worship, cemeteries, historic properties, independent businesses, and institutions of public education; promote the rural population growth of Caswell County, appropriate economic development and protect the general welfare and property values of the citizens of Caswell County;
2. Receive information and conduct significant research regarding the potential impact of development activities within the County whose operation is restricted by state or federal permits relating to air or water quality regulations, not including development activities pertaining to animal confinement facilities, or which are currently subject to any provision of the County's Environmental Impact Ordinance (hereinafter "Polluting Industry Development") on Caswell County's infrastructure, natural resources, and on the health and safety of the residents of Caswell County;
3. Determine the adequacy of existing state and federal laws and regulations applicable to Polluting Industry Development activities;
4. Develop and evaluate potential standards and conditions to be implemented in the Caswell County Unified Development Ordinance and Environmental Impact Ordinance to address any impacts of Polluting Industry Development that are not adequately addressed by applicable state and federal regulations; and

5. Develop and evaluate potential zoning regulations and zoning maps to limit where Polluting Industry Development may occur.
6. For purposes of this Ordinance, "Polluting Industry Development" includes, but is not limited to fuel bulk storage, ready-mix concrete suppliers, medical waste incinerators, paper mills, nuclear waste storage facilities inert debris landfills, mining/resource extraction facilities, chemical manufacturing, waste facilities, hard mining/resource extraction/quarrying, asphalt plants, fossil fuel generating facilities, cement manufacturing, and metal recycling processing facilities.

Section 3. Factual Findings

WHEREAS, the Caswell County Board of County Commissioners, based on its own research and information and views expressed by the residents of Caswell County, makes the following findings of fact with respect to conditions necessitating a moratorium on Polluting Industry Development activities in Caswell County:

1. Recent industrial activity has revealed confusion and misunderstandings over County development regulations; and
2. Polluting Industry Development is a source of significant environmental, community, and human health impacts, the full extent of which the current County regulations and ordinances do not consider in a comprehensive manner; and
3. Caswell County's abundant resources, infrastructure, desirable location in the U.S. southeast corridor, and limited existing land development regulations, make it a natural choice for business and industry; and
4. Existing County ordinances and regulations and North Carolina statutes and regulations may not adequately protect the health and welfare of the residents of Caswell County; and also may not adequately protect the environment and natural resources within Caswell County; and
5. The Caswell County Board of Commissioners needs additional time to study the impact of Polluting Industry Development activities in other counties across North Carolina, and to determine the adequacy of existing state and federal laws and regulations; and
6. The Caswell County Board of Commissioners needs additional time to study the potential impact of Polluting Industry Development activities on Caswell County's infrastructure, natural resources, and health and safety of the residents of Caswell County; and
7. The Caswell County Board of Commissioners needs additional time to revise and update the county's existing Unified Development Ordinance, Environmental Impact Ordinance, and potentially enact zoning districts regulating uses of property in some or all areas of the County not currently located within zoning districts, to protect the health and safety of the residents of Caswell County as well as protect the

environment and natural resources of Caswell County; and

8. Due to above-mentioned issues involved in Polluting Industry Development, the Caswell County Board of Commissioners needs a moratorium of one (1) year within which to develop standards and safeguards to protect the health and safety of the residents of Caswell County, protect the environment and natural resources of Caswell County.

Section 4. Alternative Courses of Action Considered

The Caswell County Board of County Commissioners considered the following alternatives to a moratorium and determined that the following enumerated alternatives were inadequate:

1. The Board considered taking no action and letting the existing county regulations together with federal and state regulations regulate potential Polluting Industry Development in Caswell County. This was not considered to be a viable alternative because the current county regulations do not sufficiently address the potential problems presented by Polluting Industry Development. Also, the Board did not feel that existing state and federal regulations address the problems that Polluting Industry Development could present to a largely agricultural county such as Caswell County.
2. The Board also considered immediately creating zoning districts in a single township currently experiencing the most significant pressures from Polluting Industry Development; however, the Board determined that without further study and research, this would be premature and could result in standards that are inadequate to regulate or mitigate the impacts of Polluting Industry Development on a County wide basis. The Board determined that it needed more time to determine what conditions are necessary and reasonable to protect the County.

Section 5. Legal Authority

This Ordinance is enacted pursuant to (1) NORTH CAROLINA GENERAL STATUTE SECTION 153A-121, which grants Caswell County general ordinance making power; (2) NORTH CAROLINA GENERAL STATUTE SECTION 153A-123, which grants Caswell County authority to enforce its ordinances; (3) NORTH CAROLINA GENERAL STATUTE SECTION 153A-340, which grants Caswell County the authority to adopt zoning and development regulation ordinances to promote health, safety, morals, or the general welfare, including authority to adopt temporary moratoria.

Section 6. Establishment of Moratorium

There is hereby established a one (1) year moratorium on any approval required by Caswell County for any Polluting Industry Development. It shall be unlawful and a violation of this Ordinance for any person within the jurisdiction to which this Ordinance applies to engage in Polluting Industry Development activities that require a Caswell County development permit or approval or a state or federal air or water quality permit or approval. The Caswell County Board of County Commissioners will use this one (1) year moratorium period to study the impacts of Polluting Industry Development activities in other counties and develop a plan to

regulate and mitigate impacts from these activities that are not adequately addressed by state and federal laws and regulations, the existing Caswell County Unified Development Ordinance, Environmental Impact Ordinance, and other ordinances, giving consideration to the health and safety of the citizens of Caswell County, and the protection of the environment and natural resources, and in particular the rivers and groundwater resources of Caswell County.

Caswell County will revise its existing development standards and consider implementing one or more zoning districts in all or parts of the County during the regular scheduled meetings of the Caswell County Planning Board and during at least one of the regularly scheduled Board of County Commissioners meeting each month in from February 2020-January 2021. It is anticipated that multiple public hearings, community meetings, and works sessions will be scheduled and held by the Caswell County Planning Board and/or the Caswell County Board of Commissioners. Additionally, county staff will expend significant time on research and preparation of draft rules, ordinances, and maps. Caswell County may hire experts, meeting facilitators, and/or other professionals throughout the process of revising the rules relating to Polluting Industry Development. In the event that these steps require more time, Caswell County may extend the moratorium as allowed by G.S. 153A-340. The one (1) year moratorium period is reasonable given the fact the County has only limited regulation over Polluting Industry Development currently and researching potential development regulations, developing zoning maps and implementing zoning districts within Caswell County will require significant and concerted effort of the single County employee in the Caswell County Planning Department and other County staff. In addition, the one (1) year moratorium period is reasonable given the statutory requirements for implementing zoning districts, including, but not limited to, public notices, public hearings, and Planning Department reviews.

Section 7. Development Approvals Subject to the Moratorium

Absent an imminent threat to public health or safety, this Ordinance shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium.

Section 8. Enforcement and Penalties

1. This Ordinance may be enforced by any legal or equitable remedies available, including, but not limited to, injunctive relief.
2. Any person engaging in Polluting Industry Development activities in violation of this Ordinance shall be guilty of a misdemeanor pursuant to NORTH CAROLINA GENERAL STATUTES § 14-4, and shall be subject to a fine of \$2,000 per offense or the maximum amount permitted by North Carolina law if specifically prescribed. Each day that a person continues to violate this Ordinance after receiving notice of violation shall be considered a separate offense.

Section 9. Moratorium Expiration

This Moratorium shall expire one (1) year from the date of adoption of this Ordinance.

Section 10. Severability

If any portion of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

Section 11. Effective Date

This Ordinance shall be in full force and effect from and after adoption. Adopted the 6th day of January, 2020.

CASWELL COUNTY BOARD OF COMMISSIONERS

BY:


Rick McVey, Chair


David Owen, Vice Chair


Sterling Carter, Commissioner


William E. Carter, Commissioner


Nathaniel Hall, Commissioner


Jeremiah Jefferies, Commissioner


Steve Oestreicher, Commissioner

ATTESTED BY:



Paula P. Seamster,
Clerk to the Board



Exhibit B

**CASWELL COUNTY ORDINANCE
EXTENDING THE MORATORIUM
ON POLLUTING INDUSTRY DEVELOPMENT WITHIN
CASWELL COUNTY, NORTH CAROLINA**

Section I. Jurisdiction

This Ordinance shall apply to the following Townships in Caswell County except for those areas located in any of the named Townships included in incorporated municipalities exercising their own land use planning functions and their extra-territorial jurisdictions, and except for those areas already subject to County zoning regulations in the vicinity of Hyco Lake: Yanceyville Township, Anderson Township, Hightowers Township, and Leasburg Township (collectively the "Applicable Townships").

Section II. Purpose

The purpose of this Ordinance is to extend the existing moratorium to allow the Caswell County Board of County Commissioners additional time to develop and consider zoning regulations and zoning maps to limit where Polluting Industry Development and other types of development may occur within the Applicable Townships.

For purposes of this Ordinance, "Polluting Industry Development" includes any land use or industry regulated by Article III, Chapter 14, of the Caswell County, North Carolina Code of Ordinances.

Section III. Factual Findings

WHEREAS, the Caswell County Board of County Commissioners, based on its own research and information and views expressed by the residents of Caswell County, makes the following findings of fact with respect to conditions necessitating an extension of the moratorium on Polluting Industry Development activities in Caswell County:

1. Recent industrial activity has revealed significant concerns regarding the location of Polluting Industry Development within Caswell County; and
2. Polluting Industry Development is a source of significant environmental, community, and human health impacts, the full extent of which the current County regulations and ordinances do not consider in a comprehensive manner; and
3. Caswell County's abundant resources, infrastructure, desirable location in the U.S. southeast corridor, and limited existing land development regulations, make it a natural choice for business and industry; and
4. As a result of the foregoing findings of fact, the Caswell County Board of Commissioners enacted a one (1) year Moratorium on Polluting Industry Development within Caswell County on January 6, 2020; and
5. During the initial one (1) year period, the County:

- a. Enacted a High Impact Development Ordinance (“HIDO”) establishing certain criteria relating to high impact development and associated land uses; and
 - b. Sought approval for North Carolina Session Law 2020-22 authorizing the Caswell County Board of Commissioners to conduct an advisory referendum on the adoption of a countywide zoning ordinance (the “Advisory Referendum”); and
 - c. Conducted the Advisory Referend on November 3, 2020; and
 - d. Held four (4) community meetings on zoning, eight (8) meetings of the committee drafting the HIDO, conducted three (3) special Board meetings on land use issues related to the moratorium, and discussed issues related to the moratorium at eleven (11) regular Board meetings; and
6. The County as able to accomplish the foregoing efforts notwithstanding the significant disruption of day-to-day operations brought about by the global COVID-19 pandemic; and
 7. Based on the results of the Advisory Referendum, a majority of residents in the Applicable Townships voted in favor of countywide zoning; and
 8. The County does not intend to develop countywide zoning, but it does intend to consider implementing zoning regulations in the Applicable Townships; and
 9. The Caswell County Board of Commissioners needs additional period of six (6) months to prepare and consider a zoning ordinance for the Applicable Townships given the results of the Advisory Referendum and the delay of the County’s ongoing development regulation implementation due to the COVID-19 pandemic.

Section IV. Alternative Courses of Action Considered

The Caswell County Board of County Commissioners considered the following alternatives to a moratorium extension and determined that the following enumerated alternatives were inadequate:

1. The Board considered enacting, and did enact, the HIDO. However, the HIDO does not specifically regulate what uses can be located within a particular area if the standards of the HIDO are met. Areas within the Applicable Townships remain vulnerable to problematic Polluting Industry Development despite the enactment of the HIDO.
2. The Board considered implementing countywide zoning. However, due to the results of the Advisory Referendum, the Board elected not to pursue countywide zoning regulations.

Section V. Legal Authority

This Ordinance is enacted pursuant to (1) NORTH CAROLINA GENERAL STATUTE SECTION 153A-121 and , which grants Caswell County general ordinance making power; (2) NORTH CAROLINA GENERAL STATUTE SECTION 153A-123, which grants Caswell County authority to enforce its ordinances; (3) NORTH CAROLINA GENERAL STATUTE

SECTIONS 153A-340 and 160D-107, which grants Caswell County the authority to adopt zoning and development regulation ordinances to promote health, safety, morals, or the general welfare, including authority to adopt temporary moratoria.

Section VI. Establishment of Moratorium Extension

There is hereby established a six (6) month moratorium extension beginning on the expiration of the current one (1) year moratorium (January 6, 2020) on any approval required by Caswell County for any Polluting Industry Development in the Applicable Townships. It shall be unlawful and a violation of this Ordinance for any person within the jurisdiction to which this Ordinance applies to engage in Polluting Industry Development activities that require a Caswell County development permit or approval or a state or federal air or water quality permit or approval. The Caswell County Board of County Commissioners will use this six (6) month extended moratorium period to develop and consider a zoning ordinance for the Applicable Townships. A moratorium on approvals required by Caswell County for any Polluting Industry Development in the Applicable Townships will prevent the location of Polluting Industry Development in places where it may be prohibited by a future zoning ordinance.

The Caswell County Board of Commissioners recently directed County staff to prepare a zoning ordinance and zoning map for the Applicable Townships. County staff will expend significant time on research and preparation of a zoning ordinance and maps. Caswell County may hire experts, meeting facilitators, and/or other professionals throughout the process. It is anticipated that multiple public hearings, community meetings, and works sessions will be scheduled and held by the Caswell County Planning Board and/or the Caswell County Board of Commissioners during the moratorium extension period once a draft zoning ordinance and map are prepared. The six (6) month moratorium extension period is reasonable given the time it takes to develop a zoning ordinance, conduct required public hearings, allow for planning board reviews, and otherwise enact a zoning ordinance in North Carolina. Developing zoning maps and implementing zoning districts within the Applicable Townships will require significant and concerted effort of the single County employee in the Caswell County Planning Department and other County staff.

Section VII. Development Approvals Not Subject to the Moratorium

Absent an imminent threat to public health or safety, this Ordinance shall not apply to any project for which a valid building permit issued pursuant to G.S. 153A-357 or G.S. 160D-1108 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160D-108, to development for which substantial expenditures have already been made in good faith reliance on a prior valid development approval or administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the county prior to the call for public hearing to adopt the moratorium extension.

Section VIII. Enforcement and Penalties

1. This Ordinance may be enforced by any legal or equitable remedies available,

including, but not limited to, injunctive relief.

2. Any person engaging in Polluting Industry Development activities in violation of this Ordinance shall be guilty of a misdemeanor pursuant to NORTH CAROLINA GENERAL STATUTES § 14-4, and shall be subject to a fine of \$2,000 per offense or the maximum amount permitted by North Carolina law if specifically prescribed. Each day that a person continues to violate this Ordinance after receiving notice of violation shall be considered a separate offense.

Section IX. Moratorium Extension Expiration

This Moratorium, as extended, shall expire on July 6, 2021.

Section X. Severability

If any portion of this Ordinance is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder shall remain in full force and effect.

Section XI. Effective Date

This Ordinance shall be in full force and effect from and after adoption. Adopted the 4th day of January, 2021.


CASWELL COUNTY BOARD OF COMMISSIONERS

BY:



David Owen, Chair

ATTESTED BY:



Paula Seamster, Clerk to the Board



Exhibit C

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE

COUNTY OF CASWELL 2022 MAR 18 P 1:20 FILE NO. 21 CVS 125

CASWELL CO., C.S.C.
CAROLINA SUNROCK LLC;
CASWELL PROPERTIES LLC; and
PROSPECT HILL FARMS, LLC,

Plaintiffs,

v.

**ORDER GRANTING NAACP
DEFENDANTS' MOTION TO
DISMISS**

EDWARD J. DOUGHERTY; DAWN
LEITH-DOUGHERTY; JAMES
WILKINSON; SHEILA WILKINSON;
SUSAN HESTER; ED WILLIAMS;
ROBERT ANDERSON; JACKIE
TICE; THERESA NEWMAN;
CHARLES CLOTFELTER;
RANDOLPH HESTER; MARCIA
McNALLY; PATRICK TIGHE;
ELIZABETH NORMAN; THOMAS
NICHOLAIS; HOWARD DuBOSE,
JR.; TIM SOLOMAN; GELNDA
SOLOMAN; SUSAN CHANDLER;
PETER CHRISTOPHER; KAREN
MEEK; MARK WREN; STEPHEN
PIETSCH; SYLVIA HEDRICK;
STEPHEN C. LONG; PATRICIA
CARVER; CASEY KEMPER;
ASHLEY KEMPER; JOHN T.
CARVER, JR.; VIRGINIA PIETSCH;
BEN SOLOMAN; MATT SOLOMAN;
CHRISTOPHER WOERDEMAN;
JULIANNA WOERDEMAN; LYDIA
JERNIGAN; GARRY MASSEY;
HERMAN ROBERTS; JEAN
ROBERTS; SYLVIA SAUNDERS;
JENNIFER CONNOR; JOHN
CONNOR; HOMER SAUNDERS;
KIM MERRITT; JUNIOR MERRITT;
DONNA HUDSON; TIMOTHY W.
HUDSON; EVANGELINE VINSON
GAUDETTE; SHARON VINSON;

RONNIE VINSON; ARTHUR W.
MILLER, JR.; JOYCE G. MILLER;
ANITA FOUST; BYRON
SHOFFNER; and THOMAS DAY-
CASWELL HOLT BRANCH, NAACP,

Defendants.

THIS MATTER came on to be heard before the undersigned on Defendants Byron Shoffner, Anita Foust, and the Thomas Day-Caswell Holt Branch of the NAACP's (the "NAACP Defendants") motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6). Upon considering the pleadings, parties' briefs and submitted materials, arguments, pertinent case law, and the record established thus far, the Court finds and concludes as follows:

FINDINGS OF FACT

1. In 2018, Plaintiff Sunrock identified two parcels of land in Caswell County as potential sites for a rock quarry and asphalt and concrete plants.
2. The Caswell County community, based on concerns about noise, pollution, and effects on ground water, responded to these activities.
3. On January 6, 2020, Caswell County passed a one-year moratorium on the development of polluting industries within Caswell County.
4. On January 4, 2021, this moratorium was extended by 6 months.
5. Also in January of 2021, Caswell County issued certain permits to Plaintiff Sunrock for development of the two identified sites.

6. In February of 2021, members of the community began submitting letters to the Caswell County Watershed Review Board protesting the issuance of these permits. In these letters, the community members argued that the issuance of the permits ran counter to the moratorium.
7. Also in February of 2021, the NAACP Defendants submitted emails to the Caswell County Planning Department appealing the grant of the permits.
8. The matter is currently on appeal under N.C. Gen. Stat. § 160D-405. The Caswell County Watershed Review Board has indicated that it intends to conduct a quasi-judicial hearing during which it will receive evidence and determine whether the Watershed Administrator properly issued the permits.
9. On October 4, 2021, Plaintiff Sunrock filed the present lawsuit, requesting a Declaratory Judgment with respect to their rights.

CONCLUSIONS OF LAW

1. For a court to have subject matter jurisdiction to issue a declaratory judgment, “an actual controversy must exist between the parties at the time the pleading requesting declaratory relief is filed.” *Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 584, 347 S.E.2d 25, 29 (1986).
2. A request for declaratory relief will be dismissed under Rule 12(b)(6) when “the complaint does not allege an actual, genuine existing controversy” *Gaston Bd. Of Realtors, Inc. v. Harrison*, 311 N.C. 230, 234-35, 316 S.E.2d 59, 62 (1984). For there to be a genuine controversy, litigation must appear

unavoidable; “[m]ere apprehension or the mere threat of an action or a suit is not enough.” *Id.* at 234, 326 S.E.2d 62.

3. Standing “is a necessary prerequisite to a court’s proper exercise of subject matter jurisdiction.” *Aubin v. Susi*, 149 N.C. App. 320, 324, 560 S.E.2d 875, 878 (2002).
4. N.C. Gen. Stat. § 160D-1403.1 establishes procedures for disputes regarding land development. This statute confers standing only upon a person who (1) has a property interest in the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation, (2) was a development permit applicant before the decision-making board whose decision is being challenged, or (3) was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation. N.C.G.S. § 160D-1403.1(b). Plaintiffs are not conferred standing by any of these provisions.
5. N.C. Gen. Stat. § 160D-1401 dictates that the local development ordinance administrators, and not individual citizens, are the proper defendants to these types of disputes.
6. If a ruling adverse to Plaintiffs is issued, it will be issued by the Watershed Review Board, not by the NAACP Defendants. The declaratory relief sought will not require the NAACP Defendants to be named defendants. In fact,

Plaintiffs alleged vested rights are against Caswell County, not against the NAACP Defendants.

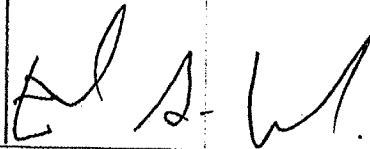
7. This lawsuit asks the Court to prevent the NAACP Defendants from making certain legal arguments during a hearing which has not yet occurred, and may not occur at all. As such, there is no present controversy between Plaintiffs and NAACP Defendants, making this lawsuit premature.

8. The United States Constitution and the North Carolina Constitution protect an individual's constitutional right to petition their elected official for redress of grievances. *Cheryl Lloyd Humphrey Inv. Co., LLC v. Resco Prods.*, 337 N.C. 384, 384-85, 858 S.E.2d 795, 797 (2021). This Court will not foreclose NAACP Defendants' legal arguments before the time has arisen to make them. That will only serve to dissuade petition activity, which is constitutionally protected.

It is therefore ORDERED, ADJUDGED, and DECREED that:

9. Defendants' Motion to Dismiss is GRANTED.

This the 18 day of March, 2022.



Edwin G. Wilson, Superior Court Judge

Exhibit D

October 28, 2022

TO: Caswell County Watershed Review Board
Matthew Hoagland, Planning Director of Caswell County
Robert Hornik, Special Counsel to Caswell County Watershed Review Board

FROM: Edward Dougherty, Evangeline Vinson Gaudette, Marcia McNally, and Theresa Newman

CC: Caswell County Board of Commissioners

RE: Caswell County Watershed Review Board (WRB) Appeal of Carolina Sunrock Permits

Sirs,

With this letter we are responding to the motion made by Sunrock's attorneys (Morningstar Law Group) that all appeals against granting Sunrock watershed protection and SNIA permits be dismissed. We are opposed to this motion and request that the appeals hearing be held.

We are among the 50+ people Sunrock sued on April 27, 2021. We are not marauders or imposters. Like you, we are old or young; with terminal illnesses or with good health; we own property or rent; we have land and homes long-held by generations of our families or are more newly arrived in Caswell County. We have businesses and ways of life that depend on clean air, clean water, a constant supply of water, and the serenity that life in rural Caswell County has promised for decades. We are among the citizens whose interests you promised to uphold when you agreed to serve on the WRB.

Since Sunrock first announced to the community in fall of 2019 that it intended to build a quarry-asphalt-rock crushing plant in Prospect Hill and an asphalt plant in Anderson, we have operated according to the rules of conduct laid out by the Caswell County permitting process, and in good faith. We have done so with the expectation that Caswell County would adhere to its processes, including a hearing on the issues before the WRB now so that both sides can be heard and considered .

At the same time, Sunrock has consistently moved to quiet our voices and intimidate us as individuals. You are no doubt aware of the lawsuit that Sunrock brought against the over 50 of us who wrote letters requesting that the WRB reverse the permits granted to Sunrock. You may know that the kind of lawsuit Sunrock filed is called a SLAPP suit (Strategic Lawsuit Against Public Participation), which is prohibited in many states, but not in North Carolina. Once Sunrock filed the lawsuit, we had no choice but to go to court. We waited patiently to have our case heard in Superior Court, only for Sunrock's attorneys to turn around and withdraw its complaint on August 22, 2022. In effect we were held hostage by this lawsuit for 16 months during which time we were forced to expend significant emotional energy and money to defend ourselves.

And so here we are, all this time later, still waiting for our appeal to be heard. We believe that Sunrock's proposed projects will personally and significantly harm our families and reduce the value of our properties. But once again Sunrock is attempting to silence us with this motion to dismiss. Please deny this motion and hear the appeal.

Please note: This response is supplemental to our attorneys' response and does not replace or substitute for it.