

**Caswell County Planning Board Meeting  
March 28, 2023**

Members Present: Russell Johnston, Scott Oakley, Steven Harris, Ron Richmond, Antonio Foster, Jason Daniel, Stephen Thompson, Commissioner Tim Yarbrough (ex-officio)

Also present: Planning Director Matthew Hoagland, Attorney Bob Hornick representing the Caswell County Watershed Review Board, Attorney Jeff Roether representing Carolina Sunrock, LLC, Caswell County Attorney Brian Ferrell, Attorney Jim Conner representing Community Members, Attorney Valerie Bateman representing Foust, Shoffner, and Day-Holt NAACP.

Members Absent: Michael Poteat

**Called to Order**

Chairman Johnston called the meeting to order at 1:00 p.m. Mr. Johnston took a moment to recognize the passing of former Planning Board member Leon Richmond who passed away last week.

**Approval of Agenda**

Mr. Foster made a motion to approve, seconded by Mr. Daniel. Approved unanimously.

**Approval of February 28, 2023 Meeting Minutes**

Mr. Johnston asked if everyone had a chance to review the previous meeting's minutes. Mr. Harris made a motion to approve, seconded by Mr. Thompson. Motion passed unanimously.

**Public Comments**

Mr. Johnston recognized Mr. George Dorgu, who had signed up for public comments. Mr. Dorgu stated his name and address for the record (George Dorgu, 7892 Elizabeth Drive, Oak Ridge, North Carolina 27310). Mr. Dorgu stated that is he excited to be back again for the solar plan consideration. After the last board meeting he had researched the manufacturing of the materials that make the solar panels. It is a fusion of silicates within an aluminum casing. They do not contain any materials that can contaminate that can destroy the soils. That should eliminate any concerns and this should be a valuable project for the county and for the community. Based on the amount of power generated, he said, he will be able to negotiate with Piedmont Electric for rates that will benefit the community.

**Unfinished Business**

**A) Watershed Review Board appeal of the Chairman's Motion to Dismiss**

Mr. Johnston recognized Board Attorney Bob Hornick to give some background information on how we arrived here and procedures moving forward. Mr. Hornick explained that the appeals were filed for the permits issued back in 2021 for the two Sunrock facilities, Prospect Hill and Bulington North. After various proceedings, Sunrock made a motion to dismiss the appeals. That motion to dismiss was granted based on an order signed by the Chairman on January 17 of this year. Then we had appeals filed by the appellants, appealing the Chairman's decision to the full Watershed Review Board as is provided by statute. So what had happened was that the chairman's decision was to dismiss the appeals and now we have an appeal to the full board

whether to affirm or agree with Mr. Johnston's decision, to reverse or completely disagree, or to modify somehow.

Now we've given everyone a chance to submit briefs and we have a brief from the citizen appellants and some information from the NAACP appellants – that's the calendar and the timeline. I think the appropriate process today would be to give the appellants an opportunity to address the board—to iterate or reiterate your arguments--and then to give the county and Sunrock an opportunity to address the board should they desire and then we as a board can deliberate. We may need to go into closed session so I can give you some legal advice if you feel it is necessary. The goal is to try and make a decision here today. But I also want to reiterate to the Board that if you're not comfortable with that; if something needs more discussion or thought, there's no rule that compels us to make a decision today. I know we all want to get this over with, but we want to give this as much attention as we think it needs in order to make a proper decision.

Mr. Johnston asked: "Mr. Hornick, once a decision is made by the Board can that decision be appealed?"

Mr. Hornick responded: "Yes, it would be appealed to Superior Court. What the process would be is... Once a decision is made it will be reduced to writing and have it signed by the Chairman of the Board on behalf of the Board and then we will circulate the decision. That will become the appealable decision to Superior Court if there's a will to appeal it further.

Mr. Johnston thanked Mr. Hornick then recognized the appellants to address the Board, specifically Mr. Connor, to present his arguments before the board.

Mr. Connor introduced himself and stated that he represented most of the folks in the audience and others; about 55 citizens of Caswell County to start with but they did have some drop out of the appeals. Now there are still more than 40 citizens who have appealed to this Watershed Review Board for some relief here. He recalled that two permits were requested by Sunrock and were issued by Mr. Hoagland, the dates of those permits are detailed in his brief. Mr. Hoagland issued those permits after the moratorium that the county commissioners passed went into effect. He noted that Mr. Hoagland is an intelligent and diligent man who did not issue the permits by accident. Rather, Mr. Hoagland was convinced by Sunrock that they had vested rights and that they didn't have to pay attention to the moratorium; that they could get their permit anyway. Because that's the argument Sunrock has made. Mr. Connor believes as an attorney that that argument is incorrect. They did not have vested rights.

[Audience interruption]

Mr. Connor said he will speak louder in order to be heard. His brief states that the permits should not have been issued because they were issued during the moratorium and that this board should invalidate those permits. That's what they came here to start with a year or two ago but, as they may remember, Sunrock sued his clients and then they spent months and months going back and forth in Superior Court before Sunrock dismissed that case; having wasted his clients' time and money. The delay has not been the fault of the appellants; they've been trying to be heard before this board. Sunrock filed a motion to dismiss and that motion to dismiss said that this board does

not have...the jurisdiction (a legal term meaning the power or the right) to hear this case. Superior Court has already said that before that court is not where they need to be, before this board is where they need to be. Unfortunately, Mr. Johnston as chair did grant that motion in his initial order. As Mr. Johnston and Mr. Hornick have said, this board has the power to reverse that motion, modify it, or affirm it. But what I would urge you is... that the initial order did a couple of things. One, it did not decide the question explicitly of jurisdiction. It didn't say there is or there isn't. But it did go ahead and decide the whole case. Which means that that Mr. Johnston and Mr. Hornick must have felt that this board does have jurisdiction, otherwise he couldn't have decided the whole case. And so implicitly, that decision decided there is jurisdiction here. But the problem with that decision is that it went further than it should have because the statute says that when an appeal like this comes to this type of board that there has to be an evidentiary hearing. I've cited that law in my brief and I've tried to keep that short and to the point. On page two, I've cited N.C. General Statute 160D-406, subparagraphs A, D, F, and G. That states that the hearing shall include the opportunity to present evidence, that witnesses will be sworn, and if necessary subpoenas may be issued. It's a court like or "quasi-judicial hearing." The statute goes on to say: "every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record." So, it would be improper for this board to make a decision that does not allow the appellants to put on evidence so that you can make the decision properly.

Beyond the procedural things, the decision also decided that permit choice statute applied here but nobody had argued permit choice. There is a permit choice statute by nobody had argued that. I've attached a most recent court of appeals case saying why and that is you must have a complete application before the moratorium starts for permit choice to apply. If you recall, permit choice is that very odd statute—and I tip my hat to developers and their lobbyist because no one else has this right—where they have the right if a county changes their ordinances to pick whether they want to follow the old ordinance or the new ordinance. That's extraordinary because that takes the power away from the county commissioners because a certain component of the population, the developers, can say we don't want to follow *that* rule we want to follow *that* rule. But for better or worse the legislator passed that and the developers have that right. The statute specifically says and the court of appeals in *Asheville vs. Asheville Planning Board* says they've got to have a complete application on file before the moratorium for permit choice to apply. I keep saying two permits; what I mean is really four permits (two for each site). But none of those were complete because the moratorium started. For the Prospect Hill site they didn't even apply for those permits at all until two days after the moratorium started. January 6<sup>th</sup>, it started, January 8<sup>th</sup> they applied. Burlington North was a little more complicated because they submitted some permits before the moratorium but the county; Mr. Hoagland said it's not complete, you've got to get more plans in and things like that, and everyone agrees the permits were issued after the moratorium had started.

So, the motion to dismiss asked this board to say it doesn't have the power to hear this case. The initial draft decision, if you will, didn't really get to jurisdiction but seemed to assume jurisdiction and the statute says clearly don't do that without having an evidentiary hearing so that you're making a good decision based on evidence and not based on what you read somewhere or what you assume. And then even if you get past those two things the decision was incorrect because permit choice did not apply. So we would ask this board to make a different decision than the initial draft decision to say: Yes, this board does have jurisdiction and set up for

a hearing and not decide (or reverse) the draft decision that decides the whole case because that shouldn't have happened. The statute says you have to have the evidentiary hearing first and even if you have that hearing if the evidence is what we all think it's going to be then the permit choice statute doesn't apply and you're really going to look at the vested rights and moratorium. Now, the county's Unified Development Ordinance grants this board broad authority to review all types of decisions of the Watershed Administrator, who is also Mr. Hoagland, and it says "any order, requirement, decision, or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board (that's you) as specified in Section 10.10.6." That's section 10.10.2.1 of the Caswell U.D.O. Likewise, the NC General Statutes (the laws of the state) say that this board has the authority to hear challenges to the county's vested rights determination. And again, I'm not particularly wanting to talk about vested rights but I know Sunrock does. They say that's why they don't have to abide by the moratorium. NCGS 160D-108 (h) says if you're claiming a vested right, you submit that information 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. And then that gets appealed to a board like this. It doesn't get down to specifics, but the employee makes the decision and then the board hears that appeal. Then if further appealed the Superior Court but right now we're not in Superior Court, we're here and we're simply asking this board to say that it does have jurisdiction and to deny the motion and then set this for a hearing so that you can hear evidence and make a decision that was brought before you by your neighbors. Fifty five of them about a year and a half ago.

I do want to address one sort of red herring that's been thrown out. There's been a lot of talk by Sunrock that we would all have to spend two weeks just hearing claims of standing for these folks. Maybe that's sincere but it isn't true. I've been doing this for 37 years and I've never seen a standing argument take more than an hour. That's something you argue to the judge or in this case this quasi-judicial board. We can do it on affidavits, we can take a lot of live evidence, or we can do a witness stand. Standing is the issue of... you guys have the jurisdiction and the power and you determine are these folks the right people to bring these issues before this board. It's a fairly complicated legal doctrine but when you do environmental law, land use law like I do in every case you have I have dealt with it 100 times and there's never even been a two week, one week, or even a one day hearing. Bob may have had that but I haven't. So we will find a way that you folks are not taking away from your jobs or retirement or farm, whatever it may be, just to hear standing. We'll find a way around that; all the attorneys can discuss and we'll figure that out. We would spend an hour or two dealing with that. And then you'll hear the evidence and that won't take that long either. There's not that much evidence to be heard. We have folks who want to be heard and they're mad about this and they'll want to talk some but not hours and hours. I think we can get in and out of there in a day; maybe two days. But it won't be two weeks to get started or anything like that. If you've been worried about being called in here for two weeks, I don't have any intention of that. We would find a way to do it quicker but in a proper way.

Again, we ask you to deny the motion to dismiss and to say "yep, we've got the power to hear this." That's what the statute and the ordinance say and then after that we'll talk about setting up a hearing so we can get this thing resolved and done with and y'all can stop worrying about it. Thank you very much.

Mr. Johnston then recognized Mrs. Valerie Bateman to make arguments.

Mrs. Bateman said she is not going to make many, if any, legal arguments. She just wants the board to look at the calendar she gave them. Even her Sunday School students, she said, when discussing Palm Sunday can understand that in the Jesus was once a baby and then he grew up. All they need to understand is that one day comes in front of another. In this case, all you need to understand is what happened when. There are a few important dates in this calendar and only a few of them are called out. Only a few are important.

The first date she wants them to remember is that your environmental regulations existed in 2013. These were passed in 2013 and were in effect every day before Sunrock submitted their applications. Those regulations require a Spill Containment Plan. So they can't say they didn't know they needed a Spill Containment Plan in order to have a complete application. They submitted this application in December of 2019; a Watershed Protection Permit, a set of plans, and a check. Then on December 16 Mr. Hoagland stamped it "received" and then three days after he got it he told them they will need a S.N.I.A. Permit, DEQ Determination of on-site ponds, a Spill Containment Plan, an Environmental Assessment Application, and a Site Plan demonstrating a 30-foot undisturbed buffer and 70-foot vegetative buffer from all perennial waters due to the S.N.I.A. He told them they needed all these things six days after they submitted their application. If I had been Sunrock I would have gotten all this together as soon as I could but that's not what they did. I would have submitted stuff and asked "when is my application going to be complete?" Because your rules say Mr. Hoagland only gets 15 days to decide this. But I haven't seen any evidence that Sunrock did that or any evidence that they submitted an Environmental Assessment.

If you look on page 5, it wasn't until December 21 of 2020—that's a year later—that Caswell County passed the H.I.D.O. So the HIDO is... if you're going to do permit choice they didn't have a complete application in December so this is all they get to choose between. They have to comply with that HIDO and that's what Mr. Hoagland didn't make them do. All I'm telling you is that in December 21, 2020 the HIDO was adopted and Mr. Hoagland did not tell them they had to meet that HIDO before he issued those permits. If you look at it, the moratorium was not adopted until January. And I don't know anything about the moratorium or what it did, I just know that you can't put something in place that says we're never going to decide your permit. I think it's more of a smoke screen.

But in January 2021 Mr. Hoagland says it looks like you have a Sediment and Erosion Plan which contains stormwater management because again back in 2013 you told them they had to do that. So when they submitted their thing they had to do that. I don't know when they gave it to Caswell County but their erosion plan didn't exist until April so they couldn't have given it to Caswell County before April. And then the Spill Prevention Containment Plan, that didn't exist until April either. So, I don't know when they gave it to the county but it didn't exist at the time they filed their application. Their application was not complete in December. I don't know when you want to call it complete but Mr. Hoagland called it complete in January but by the time January rolls around you've got the HIDO in place. I don't know of any suggestion that the

HIDO is not valid and the HIDO has specific things that Sunrock has to do. And as far as I can tell they didn't do them.

So, if you look at the dates in here, the Spill Containment Plan had to be submitted in the beginning but wasn't submitted with the permit applications but Mr. Hoagland was still waiting for other things because it wasn't until January 4<sup>th</sup> and 5<sup>th</sup> of 2021 he said look...you still need to submit these things. By golly, they submitted them on the 7<sup>th</sup> and he issued those permits and here we are. I'm just saying all you just have to look at the calendar. He should have made them comply with the HIDO and he didn't and it's just as simple as looking at the dates on the calendar.

Mr. Johnston then recognized council for Carolina Sunrock. Mr. Jeff Roether from Morningstar Law then introduced himself.

Mr. Roether cited that we are here because of the appeal of Mr. Johnston's ruling and the procedure laid out in NCGS 160D-406. He thanked the board for their continued patience and stated they have submitted papers supporting their motion to dismiss. In short, they are asking that the board uphold chairman Johnston ruling because there was no error in making that ruling. Their argument is that this board lacks jurisdiction over the issues raised by these appeals and therefore should be dismissed. Sunrock's motion to dismiss is based on jurisdiction, a pure issue of law, which is the power any board or court has to hear a case. In other words, boards like these one has a specific job to do and anything beyond that is not the responsibility of that board to take on. Sunrock's position always been that the appellants brought their complaints to the wrong place. The Caswell County UDO is plain and states that this board's job is to hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of the county's watershed protection regulations. This board's only job is to decide appeals of decision or determinations made by the watershed administrator based on the application of the watershed regulations. In this case, Mr. Hoagland issued permits as the watershed administrator pursuant to the watershed protection regulations in Article 10. This board's job, therefore, is to decide whether Mr. Hoagland properly issued those watershed permits. If an appellant wants to argue that Mr. Hoagland made a mistake in interpreting or applying to watershed regulations, then that appeal belongs here. On the other hand, if the challenge is to state or federal law, or the HIDO, or building code, or the moratorium, or any other law other than Caswell County watershed protection regulations then that must be dealt with elsewhere. Sunrock submitted this notion of jurisdictional objection because the appellants are exerting arguments under various statutes, ordinances, and recognitions that are not part of Caswell County's watershed protection regulations. Sunrock's view is that before this board is not the right venue for these people to make these arguments. They point to rules and regulations that the ordinance that Mr. Hoagland applied when reviewing Sunrock's permit applications. This board therefore is not the right place to determine if Sunrock's permits comply with the rules and regulations that are separate from those applied by the watershed administrator. The board chair agreed with that position and the bottom of page four states: "the WRB Chairman finds that the Watershed Administrator's authority under the watershed protection regulations extends only so far as the UDO allows, and that review for compliance with State of Federal regulations or with other County regulations which are not found in UDO Article 10 are beyond the authority granted by UDO Article 10 to the Watershed Administrator and the Watershed

Review Board.” Based on that conclusion and other the board chair dismissed the appeals. We’ve heard many arguments today and some of which were contained within the written submission by Mr. Connor. The first one is premised on Mr. Connor’s conclusion that Mr. Johnston did not decide the jurisdictional issue raised by Sunrock’s motion to dismiss and that is an incorrect premise. I just read you a passage from the decision that squarely addressed the basis for our motion. Sunrock argued that the board does not have jurisdiction to review other rules and regulations and the chairman expressed the fact that he and Mr. Hoagland did not have the authority to review rules and regulations other than those in UDO Article 10. That conclusion alone was enough to support the dismissal of these appeals. Mr. Connor and Mrs. Bateman are strong advocates for their clients, but they want to continue to focus on everything else, including permit choice statutes, the HIDO, vested rights, but there’s no need for this board to consider those issues. If the board agrees with the conclusion that it lacks jurisdiction or lacks authority, as Chairman Johnston described it, then the board should uphold the chairman’s decision to dismiss them.

Mr. Conner next argues that the chairman improperly decided the merits of the appeal without a hearing by addressing certain issues on permit choice statutes but that is not correct. The permit choice statutes and vested rights have nothing to do with the merits of any issues that can be considered by these appeals. Again, these appeals of the Watershed permits say the merits of this matter, the permits and the arguments about whether they were properly granted, have to do with issues under the application of Article 10 of the UDO. Chairman Johnston did not address any substantive arguments under Article 10 on the merits as Mr. Connor described it because none of the appellants have raised any of those issues. Chairman Johnston’s decision did not touch on any merits of any argument that could properly be before this board.

Mr. Connor and Mrs. Bateman also argued that Mr. Johnston incorrectly interpreted the permit choice statutes and cite a Court of Appeals case from Ashe County to support the argument but again this is beyond the fundamental premise of Sunrock’s motion to dismiss the appeals. And actually, the argument proves Sunrock’s point. This board was organized to review decisions based on the application of Article 10 of the UDO, specifically the watershed protection regulations. And now the appellants are asking the board to analyze and rule on the most intricate details of the permit choice statutes. The Court of Appeals in the Ashe County case was not unanimous on those issues. It is now being addressed by our state’s Supreme Court. This is not the place for this issue to be decided and this argument on unsettled and complicated issues of law is exactly why Sunrock has consistently maintained this dispute they’re trying to bring belongs in Superior Court. Mr. Connor described it just now as looking down the road and that’s exactly what he’s doing. But he’s looking down the road to an argument that doesn’t belong here and that this board has no authority to address. We know the Ashe County case, that case is currently on appeal to the Supreme court because there was a dissent in the Court of Appeals. Mr. Brian and I have submitted briefs in that case. So, the legal principles cited by Mr. Connor are far from settled and we understand that. We also understand cases like *Robbins* and others that pre-dated the permit choice statutes but lead to the exact same conclusion that were addressed on the permit choice statute by Mr. Johnston. We also know the facts of the Ashe County case and the circumstances of that case in Ashe County are far different than the kind that Mr. Connor stated. But this is not the time and the place to get into those details. It’s not the board’s job to decide the permit choice issues and arguments that are made now by the appellants on these complicated issues of law and the appellants are simply trying to make this issue more

complicated and to double back on that. So we urge you to disregard those arguments and leave them for the courts to address at the appropriate time.

And Mrs. Bateman makes a point about the HIDO and a timeline and she doesn't know why Mr. Hoagland didn't address and apply the HIDO. That exactly goes to our point. The HIDO is not in Article 10 of the UDO. It's not a watershed protection regulation. These permits that are being appealed are not HIDO permits. It's a completely different issue and it's conflating the issues that are supposed to be what this board was organized to hear. The arguments they want to make against Sunrock's permits belong elsewhere.

In short, we are asking the board to uphold Chairman Johnston's decision to dismiss all of the pending appeals for lack of jurisdiction. If the board upholds Chairman Johnston's decision, then these proceedings before the Watershed Review Board are complete and if they so choose the appellants can take all to Superior Court all the arguments they have made today. I thank you all for your time, attention, and patience in this matter and if you have any questions, I'll be happy to address them.

Chairman Johnston then recognized County Attorney Brian Ferrell.

Mr. Ferrell introduced himself and cited that he is representing the Watershed Review Administrator in this hearing today. His job, he stated, is not to argue one way or the other on the application. It is simply to argue that his client did his job and followed the rules in issuing the permits according to the Unified Development Ordinance. That's his role here and they've heard it from him before but he's mentioning it again today.

He first wants to say that he appreciated the time and effort that went into the Chairman's Order. It did very well to address the questions presented in the motion to dismiss. Does this board have jurisdiction to hear issues on vested rights, federal rules or state rules on environmental matters, or things like the HIDO that aren't contained within the watershed review regulations? And the order did a good job of answering that, "no." It answered that jurisdictional question, "no," and I'll point to the same part of that order page 4 which is really clear to him: "the Watershed Administrator's authority under the watershed protection regulations extends only so far as the UDO allows, and that review for compliance with State of Federal regulations or with other County regulations which are not found in UDO Article 10 are beyond the authority granted by UDO Article 10 to the Watershed Administrator and therefore to the Watershed Review Board." That was really the crux of the motion to dismiss as argued to you. It was answered clearly in the order and for that reason I think the order should be upheld by the full board. And again, I appreciate the time and attention that went into the order, Mr. Chairman.

Chairman Johnston thanked Mr. Ferrell and then asked if any board members had any questions for the attorneys. Hearing none, Mr. Johnston asked Mr. Hornick if now might be a good time to go into closed session.

Mr. Connor asked the chairman if it might be a good time for him to respond to the most recent arguments.

First, Mr. Connor said, they did not ask the board to decide anything about permit choice. That came up in our view out of the blue in the Chairman's Order. But they have never mentioned permit choice or asked the board to decide on it until now when they have to argue that it doesn't apply because it came up. Again, they are not asking the board to do that. What they are asking is to simply deal with this motion which is about jurisdiction. Do you have the power to hear this? Honestly, no disrespect to Mr. Ferrell or Mr. Roether, to say you can only look at some technical deficiency and not that the county had an order saying "no permits shall be issued" when these permits were issued is absurd. I have never heard that argument in a courtroom before...or a quasi-judicial board. The law is the law. And the law in this county at the time these permits were issued was 'thou shalt not issue permits.' So, to say that you can approve permits that were issued clearly in violation of the law--unless you consider an argument by Sunrock that there were vested rights and you didn't have to pay attention to the law--then these permits were issued absolutely, unquestionably issued in violation of the moratorium law that was in effect in this county. And to suggest that this board should ignore that and put its stamp of approval on permits issued in violation of the law is absurd. That's not what any court does, that's not what any quasi-judicial agency does, that's not what you're about. You're supposed to make the right decision.

Now, if we have a hearing and Sunrock wants to argue that they had vested rights and the moratorium didn't apply then we can get into all that if we need to. But on its face, as it's been presented and what you know right now, is that these permits were issued during a moratorium that said 'thou shalt not issue permits.' So, you certainly have jurisdiction if your being asked to either put your stamp of approval on these permits and says 'yes, they're good permits,' or to say 'no, they're not good permits.' You've got jurisdiction absolutely, beyond question to do that. You have to have an evidentiary hearing to do that. You don't decide this based on lawyers talking to you. You have a hearing and hear evidence. That's what the law required you to do and that's what we're asking. These folks, you neighbors, have been waiting and waiting for a hearing and that's all we're asking you to do.

Mr. Bateman then raised her hand to address the board once more.

She said she found it fascinating that the previous argument was that Sunrock didn't have to comply with state or federal law and now they're saying we don't even have to comply with Caswell County law. I mean, that's just crazy. We don't even have to comply with our own ordinances. Mr. Hoagland wears multiple hats, and he can't just ignore that there's a HIDO out there or a moratorium out there. You can't just ignore your own law. Now, Sunrock is arguing we don't have to follow any law except for the watershed regulations which we met. But the thing is they didn't meet them until January. And the problem with not meeting them until January was that other laws came into effect because Sunrock was dilatory—which is a big, fancy word for slow and lazy—in getting their paperwork done.

Chairman Johnston asked if there were any other rebuttals or counter arguments. Hearing none, he asked Mr. Hoagland if it would be proper for the board to have a closed session meeting in the current room or if they should find another room in the library. Mr. Hoagland said there is probably another room in the library available though it may be a little bit tight, but he would be happy to ask library staff. If not, it may just require a little time for everyone to leave the room

and then the board can have it to themselves. He also asked Chairman Johnston if the chair could ensure that minutes are kept of the closed session meeting since he would have to leave the room as well.

Mr. Horning said now would be the time to entertain a motion to go into closed session and to consult with their attorney pursuant to NCGS 143.318.11(a)(3). Chairman Johnston asked for such a motion which was made by Mr. Thompson and then seconded by Mr. Harris. The vote was unanimous.

[The Watershed Review Board went into closed session]

Upon returning, Mr. Honrick addressed the public and counsel to let them know that the board simply discussed process and the Board's options. They did not discuss the details of the case in closed session.

Mr. Johnston asked Mr. Hornick if they needed a motion to go back into open session. That motion was made by Mr. Thompson and seconded by Mr. Daniel. The vote was unanimous.

Mr. Hornick then told Chairman Johnston he could now entertain a motion from any board members on a decision or motion they would like the board to hear or discuss. Mr. Johnston asked for clarification that the decision today was essentially to confirm or deny his order from the previous hearing. He then asked if there was any action on the appeal at this time. Mr. Harris made a motion to confirm the chairman's decision and it was seconded by Mr. Daniel. Chairman Johnston asked Mr. Hornick if that was proper procedure and Mr. Hornick confirmed that it was. Mr. Johnston asked if there was any further discussion and there was none. He then asked for a vote from the board. The vote to uphold the Chairman's Order was unanimous.

Mr. Johnston then asked for clarification from Mr. Hornick if the decision was appealable. Mr. Hornick confirmed that it was and said he would soon get the decision in written form and have it circulated to the chair and the board and that written motion will be what is appealable.

## **B) Watershed Review Board legal consultation**

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### **C) Solaris Renewable Energy Facility**

Mr. Johnston recognized Mr. Hoagland who then addressed the board.

"As you will recall, there were three items not specifically addressed during and after the public hearing for this solar farm development. Specifically, those were the Groundwater Study, the Traffic Impact Analysis, and the Stream Buffer Setback requirement.

Included in your packet is an engineer's letter addressing traffic impacts and groundwater analysis for the Solaris Renewable Energy Facility. However, the stream buffer requirement is still up for interpretation. Today, the Planning Board's task is to interpret High Impact Development Ordinance's stream buffer requirements and to make a recommendation to the Planning Department on the Intent to Construct Permit. The Planning Board's options are to 1) recommend approving the development, 2) request modifications to the development, 3) recommend denial of the development.

Please note that the HIDO requires this recommendation be made within 30 days from initial consideration, which took place on Tuesday, February 28th."

Mr. Johnston then recognized Engineer Chad Huffine, who developed the plans for the solar facility. He asked Mr. Huffines about the easements to the property, especially those that connect the electrical lines to the power transmission lines. Mr. Huffine said he did not know the answer to that but there are essentially two options, one to the north and one to the south. He said perhaps Mr. George Dorgu could address that, and Mr. Dorgu referred to Mr. Keith Hardt who joined the call via webinar. Mr. Hardt said the facility will be connected to a distribution system the same as any line which runs up and down a standard road within the county. However, Piedmont Electric will not determine how the facility will interconnect until they submit an "Interconnect Application" which cannot be done until the county approval has been granted. When asked by Mr. Johnston, Mr. Hardt said it is possible that Piedmont does an underground connection as well, but it would be up to them to make that determination. However, he really has no way of knowing at this stage of development.

Mr. Foster asked about the facility as it relates to internet expansion throughout the county. Mr. Hoagland replied that he did not think there would be much strain on the electrical system for standard residential connections. Mr. Huffine said if there's a data center or server farm, for example, then there could be a power strain on that. But home internet connections do not

require much additional power. Mr. Hardt confirmed too that the data streams on these types of sites is very, very low.

Mr. Harris asked about easement width to the property and Mr. Huffine confirmed that it is a 30-foot easement. Mr. Harris also said he believes traffic will be quite minimal for these facilities.

Mr. Oakley asked about the stream buffer setbacks for the plan. Mr. Hoagland confirmed that the site plan as drawn shows a 50-foot stream buffer on either side, resulting in a 100-foot total buffer, excluding the width of the stream and banks. However, the question really before the board today is the intent of the ordinance. Is the intent to have a 100-foot buffer in both directions, thus resulting in a 200-foot buffer, or is the 50 feet on either side sufficient to meet what the H.I.D.O. spells out as the 100-foot buffer requirement? Mr. Hoagland said he can also show the portions of the ordinance at question up on the screen for the board to view. Mr. Oakley said he thought it would be worth the board's time to look at it to see what the language is. As he looks at it, he's not sure it's clear and maybe that's something they can take up in the future. Mr. Hoagland responded that they certainly could. For example, they could make a determination today and simultaneously seeking clarification from the commissioners on this item in the ordinance.

Mr. Hoagland then displayed an excerpt of the ordinance on the screen which is the land use table in Section 14-71. In particular, the table reads: "Stream setback 100 feet" for Class 1 uses, which solar facilities are classified as. He then showed the ordinance's definition of a stream setback, which read: "All uses and industries regulated by this article shall be required to maintain a minimum "stream setback" from any perennial or intermittent stream as specified in the land use table in Section 14-71 (1) (the "stream setback"). Stream setbacks shall be measured from the area of operations to the bank of the stream.

Mr. Johnston asked Mr. Hoagland about his understanding of the ordinance when reading it. Mr. Hoagland responded that by reading the strict letter of the ordinance it does seem to be 100-feet on both sides. However, as Mr. Huffine mentioned during the last meeting that it would mean our county standard would be stricter than the state's requirement on these perennial streams. Mr. Huffine said to the chairman that essentially they need guidance as to the mindset of the folks who created this ordinance in order to clarify but they do not have the ability to do that without the guidance from the board at this point.

Mr. Harris asked: "If your project only went to one side of the stream, wouldn't it be 100 feet?" Mr. Huffine said if that was the case then the 150-foot operations setback would control at that point and the stream buffer would be irrelevant. Mr. Huffine also said that in his view this takes the state's rule and doubles it. If that was the intent of the county when they wrote this, then that's what they need to go by. If not, and the intent is essentially 50 plus 50 is 100, then we need to know that so we can submit that plan to Mr. Hoagland.

Mr. Oakley added that he could give his opinion on what the intent was which was not to exceed the state's requirement. But he thinks the fact that you have operations on both sides of a stream is not really something the language of the ordinance got into. He again said they probably need to do some clarification here for it a stream is passing through. But if he strictly interpreted it today then it would be 200 since it didn't contemplate a stream passing through the middle of a development. He didn't think the intention was to try and make it more strict than what the state requires.

Mr. Johnston asked Mr. Hoagland if clarification would come in the form of a recommendation for amending the ordinance to the commissioners. Mr. Hoagland said yes, but at the end of the day the commissioners control these things ultimately. However, he thought there would be great benefit in having uniformity in this Planning Board decision, the permit in line with the ordinance, and clarification in the ordinance.

Mr. Daniel asked if they could waive this requirement now in their decision. Mr. Hoagland said this board cannot grant a variance during this process. There was some other minor discussion about what other counties require in this circumstance.

Mr. Johnston asked Mr. Hoagland if he felt everything had been addressed in the application. Mr. Hoagland reiterated that he thought everything was satisfied other than the stream buffer. He also noted that if the board wanted to take action on the permit and then seek clarification or make a recommendation to work with the commissioners he thought the board would be safe to do that. Mr. Oakley made a motion to approve of the plan as is and then work on clarification at a future date. It was seconded by Mr. Foster. Commissioner Yarbrough said, in his opinion, it should be 50 feet on each side though he certainly doesn't speak for the full board. Mr. Oakley said they could come up with a proposal at their next meeting and send it to the commissioners. Mr. Johnston called for a vote on the motion to recommend approval of the permit and it passed unanimously.

### **Planning Department Updates**

#### **A) Broadband**

Mr. Hoagland told the board he doesn't have much of an update on this issue other than he believes they are still turning on areas regularly throughout the county. Mr. Foster added that he had spoken with folks in the Park Springs Road and Ashland Road areas, and he knows they are getting people hooked up there. Mr. Harris said he knew that had put in cables along Brown Road as well. Mr. Hoagland then displayed the county map of the RDOF Grant internet coverage areas on the screen and spoke about which areas should receive coverage.

#### **B) Cell towers**

Mr. Hoagland said he has still not heard back from Doug Barker about when the Casville and Prospect Hill towers will be active. He also displayed pictures of the Stephentown Road tower on the screen and said he had received an email from George Davis of TowerCom

saying there were delays in the construction process due to delays from the manufacturer, but it should be standing by the last week of April.

### **Adjournment**

Mr. Harris made a motion to adjourn. The vote was unanimous.