

CASWELL COUNTY WATERSHED REVIEW BOARD

In re: Appeals of Watershed Protection Permits
and Special Non-Residential Intensity
Allocation Permits Issued to Carolina Sunrock
LLC

MOTION TO DISMISS APPEALS

Caswell County, by and through its undersigned counsel, hereby moves to dismiss appeals filed in this matter for lack of jurisdiction on the basis of the Argument and Conclusion set forth in that certain Motion To Dismiss Appeals dated the 19th day of September, 2022 filed by Carolina Sunrock LLC, a copy of which is attached hereto and incorporated herein by reference (the "Sunrock Motion"). Exhibits referenced in the Sunrock Motion (the "Exhibits") have been intentionally omitted from this filing to avoid duplication of materials. Reference is hereby made to the original Sunrock Motion for copies of the Exhibits.

Respectfully submitted, this the 26th day of October, 2022.

KENNON CRAVER, PLLC



Brian M. Ferrell
N.C. State Bar No. 27819
bferrell@kennoncraver.com
4011 University Drive
Durham, NC 27709
Telephone: (919) 490-0500

Attorney for Caswell County

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MOTION TO DISMISS APPEAL** was this day served by email and by United States mail, first class, postage prepaid and addressed as follows:

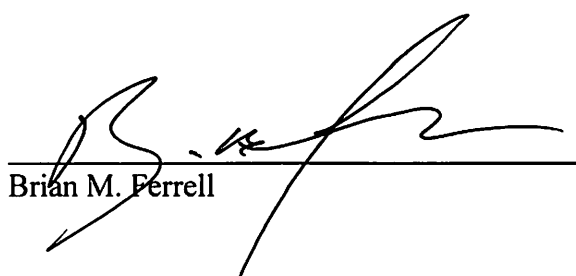
James L. Conner II
jconner@cbsattorneys.com
Shannon M. Arata
sarata@cbsattorneys.com
CALHOUN BHELLA & SEACHREST, LLP
4819 Emperor Boulevard, Suite 400
Durham, North Carolina 27703

Valerie L. Bateman
valerie@newsouthlawfirm.com
New South Law Firm
209 Lloyd Street, Ste. 350
Carrboro, NC 27510

William J. Brian, Jr.
bbrian@morningstarlawgroup.com
Jeffrey L. Roether
jroether@morningstarlawgroup.com
Morningstar Law Group
700 West Main Street
Durham, NC 27701

This the 26th day of October, 2022.

KENNON CRAVER, PLLC



Brian M. Ferrell

CASWELL COUNTY WATERSHED REVIEW BOARD

In re: Appeals of Watershed Protection Permits
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MOTION TO DISMISS APPEALS

Carolina Sunrock LLC (“Sunrock”), by and through its undersigned counsel, hereby moves to dismiss appeals filed in this matter for lack of jurisdiction.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Sunrock is the developer of, and its affiliates are the owners of, two industrial development projects located in Caswell County: (i) 1238 Wrenn Road, Prospect Hill (the “Prospect Hill Project”); and (ii) 12971 Highway 62, Burlington (the “Burlington Project”).

In January 2021, in response to applications filed by Sunrock, Matthew Hoagland, in his capacity as Watershed Administrator for Caswell County, issued a Watershed Protection Permit and Special Non-Residential Intensity Allocation (SNIA) Permit for the Prospect Hill Project and the Burlington Project (the “Permits”). There are fifty-eight (58) appeals pending before the Watershed Review Board which challenge the issuance of at least one of the Permits. Each appellant is represented by counsel for purposes of their respective appeals:

James L. Connor of Calhoun Bhella & Sechrest represents appellants (1) Edward J. Dougherty, (2) Dawn Leith-Dougherty, (3) James Wilkinson, (4) Sheila Wilkinson, (5) Susan Hester, (6) Ed Williams, (7) Sharon Williams, (8) Karen Anderson, (9) Robert Anderson, (10) Jackie Tice, (11) Theresa Newman, (12) Charles Clotfelter, (13) Randolph Hester, (14) Marcia McNally, (15) Patrick Tighe, (16) Elizabeth Norman, (17) Thomas Nicholais, (18) Donna Nicholais, (19) Dale Kemper, (20) Howard DuBose, Jr., (21) Tim Solomon, (22) Glenda Solomon, (23) Susan Chandler, (24) Peter Christopher, (25) Karen Meek, (26) Mark Wrenn, (27) Stephen Pietsch, (28) Sylvia Hedrick, (29) Stephen C. Long, (30) Patricia Carver, (31) Casey Kemper, (32) Ashley Kemper, (33) John T. Carver, Jr., (34) Virginia Pietsch, (35) Ben Solomon, (36) Matt Solomon, (37) Christopher Woerdeman, (38) Julianne Woerdeman (39) Lydia Jernigan, (40) Garry Massey, (41) Herman Roberts, (42) Jean Roberts, (43) Sylvia Saunders, (44) Jennifer Connor, (45) John Connor, (46) Homer Saunders, (47) Kim Merritt, (48) Junior Merritt, (49) Donna Hudson, (50) Timothy Hudson, (51) Evangeline Vinson Gaudette, (52) Sharon Vinson, (53) Ronnie Vinson, (54) Arthur W. Miller, Jr., and (55) Joyce G. Miller (the “Conner Appellants”).

Valerie Bateman of the New South Law Firm represents (56) Anita Foust, (57) Bryon Shoffner, and (58) Thomas Day-Caswell Holt-Branch, NAACP (the “Bateman Appellants”).

The Conner Appellants challenge the Permits on the grounds that the Watershed Administrator should not have issued the Permits as a result of the limited development moratorium effected by an ordinance adopted by the Board of Commissioners on January 6, 2020. [See Ex. A] The moratorium was extended in January 2021 by a period of six months, but

subsequently expired by its terms and has not been renewed. [See Ex. B] Although the Conner Appellants initially had advanced additional arguments in support of their appeals, they since have withdrawn their appeals on those other grounds. [See Ex. C]

The Bateman Appellants challenge the Permits on three separate grounds. (i) that the Watershed Administrator misapplied UDO Section 10 because the Jordan Lake watershed has been designated as a “critical area” by the State of North Carolina; (ii) that the County should have applied the High Intensity Development Ordinance (HIDO) to the Permits; and (iii) that Sunrock’s projects do not comply with regulations promulgated by the North Carolina Department of Environmental Quality. [See Ex. D]

ARGUMENT

The Appellants ask the Board to answer questions that the Watershed Administrator did not answer, and that this Board has no authority to review. The majority the appeals should be dismissed in their entirety, and the hearing on the remaining appeals should be limited to those issues that are within the scope of the Board’s authority.

The Caswell County Watershed Review Board is a “specialized board” that Caswell County created under N.C. Gen. Stat. § 160D-302(b) to “hear technical appeals.” As a “specialized board,” the Watershed Review Board is obligated under North Carolina law to “comply with all of the procedures and the process applicable to a board of adjustment in making quasi-judicial decisions.” *Id.*; see also N.C. Gen. Stat. § 160D-405(a). Quasi-judicial process and procedures dictate that the reviewing board limit the scope of its review to the decision made by the administrative official who made the decision that is the subject of the appeal. N.C. Gen. Stat. § 406(j) (“The board shall have the same powers of the official who made the decision.”); see also *Dobo v. Zoning Bd. of Adjustment*, 149 N.C. App. 701, 706, 562 S.E.2d 108, 111-12 (2002), *adopted in pertinent part per curiam* 356 N.C. 656, 576 S.E.2d 324 (2003) (recognizing that a board tasked with reviewing an administrative decision lacks authority to address issues not within the scope of authority of the administrative official who made the initial decision). Therefore, as a “specialized board,” the Watershed Review Board only has jurisdiction over matters arising under the ordinances it was created to interpret and apply.

Caswell County UDO Section 10.10.6.1 vests the Watershed Review Board with authority to “hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of” Article 10, Part II of the UDO (hereinafter, the “Watershed Protection Regulations”). [See Ex. E] The Watershed Administrator’s authority under the UDO similarly is limited to the “administration and enforcement of” the Watershed Protection Regulations. [See Ex. F] In other words, the UDO expressly limits the Watershed Administrator’s authority to applying and enforcing the Watershed Protection Regulations, and confers upon the Watershed Review Board the limited appellate authority to review decisions made under the Watershed Protection Regulations. Neither the General Statutes nor the Caswell County UDO confer authority on either the Watershed Administrator or the Watershed Review Board to apply or enforce any state or local law or regulation other than the Caswell County Watershed Protection Regulations.

In this case, the Watershed Administrator issued the Permits based on his administrative determination that Sunrock met the objective requirements contained in the Watershed Protection Regulations for the issuance of those Permits. In doing so, he did not have the authority to consider any other factors beyond those contained in the ordinance, and in fact was compelled to issue the Permits as a “matter of right” once he found that the objective criteria had been met. *Cty. of Lancaster v. Mecklenburg Cty.*, 334 N.C. 496, 506-07, 434 S.E.2d 604, 611-12 (1993).

Appellants seek reversal of the Permits based on ordinances and regulations other than the Watershed Protection Regulations, namely the moratorium ordinance, the HIDO, and the NCDEQ regulations. The Watershed Administrator did not have the authority to review and decide whether the moratorium ordinance applied to Sunrock’s projects, and the Permits do not reflect any such decision; he did not have the authority to review and decide whether the HIDO applies to Sunrock’s projects, and the Permits do not reflect any such decision; and he did not have the authority to review and decide whether the Sunrock’s projects satisfy NCDEQ regulations, and the Permits do not reflect any such decision. Accordingly, the Board lacks jurisdiction to decide any of those issues now, and it lacks the authority to reverse issuance of the Permits on any of those bases.

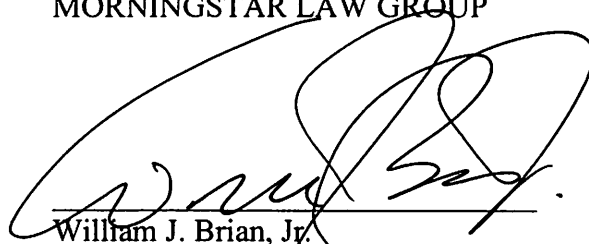
CONCLUSION

For the foregoing reasons, Sunrock respectfully submits that:

- The Board should dismiss the appeals filed by the Conner Appellants for lack of jurisdiction because the sole issue remaining in those appeals (*i.e.*, whether the County correctly exempted Sunrock’s projects from the application of the moratorium ordinance) was not a decision made by the Watershed Administrator; and
- The Board should dismiss the appeals filed by the Bateman Appellants to the extent they are premised on the HIDO and NCDEQ regulations because the Watershed Administrator did not make a decision relating to either of those regulations and the Board lacks jurisdiction to interpret those regulations. Thereafter, the Board should limit the hearing on those appeals to the remaining issue of whether the Watershed Administrator misapplied UDO Section 10 as a result of the State of North Carolina’s designation of Jordan Lake as a “critical area.”

Respectfully submitted, this the 19th day of September, 2022.

MORNINGSTAR LAW GROUP

A large, stylized handwritten signature in black ink, appearing to read 'W. Brian, Jr.', is written over a horizontal line.

William J. Brian, Jr.

N.C. State Bar No. 16570

bbrian@morningstarlawgroup.com

Jeffrey L. Roether

N.C. Bar No. 48229

jroether@morningstarlawgroup.com

700 West Main Street

Durham, NC 27701

Telephone: (919) 590-0364

Attorneys for Respondent Carolina Sunrock LLC