

**Town of Ancram
Zoning Board of Appeals
April 13, 2010**

Present: Chair Leah Wilcox, Sheldon Waldorf, Fred Schneeberger, Sue Bassin, Alyson Kozlowski, alternate William Lutz and Attorney Warren Replansky

Others: Daniel Block representing Anne Holler, Joan Roberts, Doug Passeri and Greta Barlow from Hudson Valley Wind Energy, LLC, representing Michael Gershon

Chair Leah Wilcox called the meeting to order at 7:00 pm.

A motion was made by Mr. Waldorf and seconded by Mr. Schneeberger to accept the minutes of the previous November 4, 2009 ZBA meeting as read and placed on the record. Motion carried.

Chair Leah Wilcox read the following statement:

We have an application that was submitted by Hudson Valley Wind Energy, Doug Passeri and Greta Barlow, who are representing Michael Gershon. The application is for a special use permit to erect two wind turbines on Mr. Gershon's property at 143 Carson Road, tax parcel 225.-1-7.

Mr. Passeri appeared before the ZBA informally in November of last year. On February 6, 2010, Mr. Passeri applied to the Building Inspector for a building permit. At that time the Building Inspector determined that the wind turbines could be considered transmission towers which require a special use permit. (Copy of Building Permit Application and referral to ZBA in file) Mr. Passeri's application is dated March 13, 2010, and was submitted to the ZBA on March 17, 2010.

The zoning regulations were adopted in June of 1972, and with few exceptions, have not been amended. Although "Radio, television and other electric transmission stations & towers" are included in the use table as a business use (page ZO-8), there is no definition of a transmission tower. Referring to Section V, there are no supplementary regulations specifically enumerated for transmission towers. The closest would be "Electric or gas utility substations, transformer stations, or sewage pumping station and other similar structures" (page ZO-42).

According to our zoning regulations, under Additional Conditions, it says "In issuing a special use permit the Board of Appeals may require any walks, fences or landscaping or attach such condition which it deems necessary to protect the value of adjacent properties or to prevent any hindering of the appropriate use of adjacent land." (page ZO-45). In addition, "Whenever the Board of Appeals grants a Special Use Permit, appropriate conditions and safeguards and/or time limitations may be attached thereto." (page ZO-57). Also, Town Law §274b(4) provides that a Board in issuing a Special Permit "shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the Special Permit."

Tonight the Board will review the application for completeness and determine what, if any, additional information or documentation will be needed in order to consider the application. Also, tonight the Board will schedule a date for a public hearing for this application.

Because the Gershon property is located within 500 feet of an active farm operation in an Ag District, the application has been referred to the County Planning Board as required under General Municipal Law §239(m). The

County Planning Board meets the third Tuesday of each month, i.e., next Tuesday, April 20, 2010. (Previous meeting was March 16) Their determination will be forwarded to us after the meeting.

As required under our Zoning Ordinance, the application was referred to the Town's Planning Board which met on April 1, 2010. Their recommendations are included in the memo that is being distributed.

Mrs. Wilcox stated that the front page of the application is complete. She stated that the Agriculture Data statement is included as well as the application to the building inspector and his denial of a permit. The EAF has been submitted to NYSERDA. Mrs. Wilcox stated that it has been suggested that the ZBA take the lead agency role in the SEQRA process.

Shel Waldorf stated that he has never known the ZBA to take the lead agency for a SEQRA process. Attorney Warren Replansky stated that it is a normal procedure for the ZBA to declare itself lead agency and that this can be done during the earliest possible stage of the process. Some towns declare lead agency after the public hearing. Mr. Replanski recommend the ZBA be the lead and get a full EAF.

Greta Barlow stated that in her past business dealings with this issue the lead agencies have always been the towns in which the towers were erected. Mr. Replansky stated that the ZBA can declare themselves lead agency by resolution at the current meeting.

A motion was made by William Lutz and seconded by Sue Bassin to resolve that the Town of Ancram Zoning Board of Appeals the lead agency in the SEQRA process for the Gershon Wind Turbine project. Resolution carried.

Mrs. Wilcox stated that each ZBA member received a copy of a letter from the Planning Board concerning set back requirements. The letter shows that the Planning Board has shown concern in this matter. Mrs. Wilcox stressed that the board wants to expedite the process. At this time Mrs. Wilcox stated that the board still has not received a copy of the letter from the Pulvers that Mr. Passeri submitted with the application to NYSERDA.

Mrs. Wilcox stated that she would like to get an opinion from the Town Board regarding the nearness of the wind turbines to the town road. Mrs. Wilcox also suggested that the ZBA ask for a letter from the property owner Mr. Gershon pertaining to his being responsible if the tower falls on the town road. Mrs. Wilcox questioned what would happen to the agreement if the property was sold in the future. Mr. Passeri was encouraged to go before the Town Board at its upcoming meeting to discuss the issue of the turbines being located close to the road.

Ms. Barlow stated that the tower is Tornado proof and that the turbines do not fall. Mr. Replansky asked if there are documents from the manufacturer. He stated that it would help the Town Board and the public should see this. Doug Passeri stated that according to NYSERDA towers can be sited up to 20 ft of the resident's house. Mrs. Wilcox stated that she does not see in the literature where this is stated.

Warren Replansky stated that at the public hearing the applicant would present the application, address the issue of safety and point to the portions of the project which support the issue that it doesn't create a danger. The public and abutting neighbors may have questions. Mrs. Wilcox stated that if the ZBA

feels it is important to have a setback the board will want to have letters from the abutting property owners. Mr. Replanski stated that it would be better to have a falldown easement. He stated that he hasn't seen this in the past but that this could put the board at ease. He stated that the ZBA wouldn't want to approve a project which could harm people or their property. Mr. Replansky stated that he felt an easement would be the best and that this would be in the record, attached to the deed which will be important if the property is sold someday.

Sue Bassin asked if there could be an agreement of the tower being cleaned up if it falls down. Mr. Replansky stated that this could be a condition of the permit as well as a requirement that the tower be removed if it is abandoned.

Mrs. Wilcox stated that the ZBA has the Ag and Markets and NYSERDA recommendations from Mr. Passeri, recommendations that the ZBA should take into consideration when reviewing the application. She stated that most towns forbid the hanging of signs or banners from them. Mr. Passeri questioned this and stated that signs are hung from telephone poles. Mrs. Wilcox stated that a telephone pole is public property.

Fred Schneeberger asked what the maximum height of the cell towers is. Mr. Replansky stated that he has not dealt any that have exceeded 200 feet. Fred Schnegberger asked about the fall down easements for the cell towers. Mr. Replansky stated that some just collapse. A setback of 1 ½ times the tower is the usual rule of safety. These towers though have always been on large tracts of land and met the setbacks.

Mrs. Wilcox stated that the property is 160 feet and the tower proposed is a height of approximately 130. The Town of Ancram Comp Plan encourages wind and solar power and that it is the intent of town to allow this green industry with appropriate safeguards for the community.

Warren Replansky asked about a visual impact addendum. Leah Wilcox stated that this site is not seen from a designated scenic area.

Leah Wilcox stated that the ZBA would want the applicant to explore with the abutting property owners a fall down easement. Mrs. Wilcox asked for a letter from the Town Board in support of the project and to have the Highway Superintendent to look at it as well. Mrs. Wilcox stated that there needs to be a procedure for cleanup for the town and private property owner. She stated that the ZBA would also like the applicant to address safety measures to prevent unauthorized climbing.

Will Lutz asked who is qualified to make the inspections of the tower. Greta Barlow stated that the company would work together with the building inspector. Leah Wilcox asked if the company would come for periodic reviews. Ms. Barlow stated that the company does inspect the towers yearly. Unless the owner calls the company, the first two years are the time when the company comes to inspect. After that it is the property owners that keep track of the tower. The tower is greased once in 7 years and then they are good for 30. The installer is certified for this work. The company is Bergey Wind Power. Warren Replansky asked that the installer will apply for the building permit and then will have all of the information. Mr. Replansky stated that the town building inspector, to the best of ability, can inspect the tower for purposes of issuing a final approval. He stated that the Building Inspector should be able to look at the plans and make sure they are the same.

Mr. Schneeberger asked how the tower is fixed in the ground. Mr. Passeri stated that it is on 3 foot concrete piers.

Leah Wilcox stated that given the fact that the wind energy authorities recommend tower plus one blade for a setback, even after asking for letters from abutting property owners, she questioned if the attorney felt the applicant needs area variance. Mrs. Wilcox read from the zoning law. Warren Replansky stated that under the ZBA's authority, they have the power to deal with the issue of the height. Mr. Replansky stated that the ZEO should decide if area variances are needed. If they are, then the application can be amended.

Leah Wilcox stated that the ZBA cannot make a decision without a public meeting and a hearing with the abutting property owners notified. The ZBA set May 11, 2010 at 8:00pm as the date for a public hearing on this application. Mrs. Wilcox reminded the applicant that he had not paid the \$50 application fee and that the application was not complete until the fee has been received.

A motion was made by Shel Waldorf and seconded by Sue Bassin to adjourn. Motion carried.

Respectfully Submitted,

Monica Cleveland, Town Clerk