

Mr. Steven L. Kidd, Chairman, called the September 14, 2021 meeting of the Botetourt County Board of Zoning Appeals to order at 9:00 AM in the Auditorium of the Botetourt County Administration Building in Daleville, Virginia.

PRESENT: Mr. Steven L. Kidd, Chairman
Mr. Hunter Young, Member
Mr. J. Scott Caldwell, Member
Mr. S. E. Cash, Member
Mr. Darrin Hill, Member
Mrs. Nicole Pendleton, Director of Community Development
Mr. Mike Lockaby, County Attorney
Mr. Drew Pearson, Zoning Administrator
Mrs. Laura Goad, Secretary to Board of Zoning Appeals
Mr. Nick Baker, Code Enforcement Officer

ABSENT: Mr. Jon McCoy, Planner

ALSO PRESENT: Mr. Watts Burks, IV, Attorney for the Board of Zoning Appeals

After Mr. Kidd introduced Staff and the Board of Zoning Appeals, he announced that because this meeting was not a public hearing, neither public comments nor questions would be taken. The general public has been provided an opportunity to observe today's meeting by attending in person, and members of the public are also invited to call into a dedicated phone line where anyone may listen to today's meeting by calling +1 301 715 8592 or +1 929 205 6099 Meeting ID: 851 1484 0782. He noted the phone line opened at 9:00 AM this morning, and this option would be available only during the course of this meeting. He then gave instructions to find the Board of Zoning Appeals information, and procedures for today's meeting.

Consideration was given to the February 9, 2021 minutes.

Mr. Young motioned to approve the February 9, 2021 minutes. Mr. Caldwell seconded the motion, which was approved 5:0:0:0 with the following recorded vote:

YES: Mr. Young, Mr. Kidd, Mr. Caldwell, Mr. Cash, Mr. Hill
NO: None
ABSTAIN: None
ABSENT: None

Mr. Kidd noted that there was a motion to go into closed session, and that he would make that motion as he brought up a point that had arose between the attorneys regarding discovery of evidence. When Mr. Kidd asked if there was an attorney on the phone, Mrs. Goad explained the phone line was configured so that callers could hear, but did not have capability to comment.

Mr. Burks suggested taking this under advisement, they would discuss how the Board of Zoning Appeals wanted to receive evidence in this case, during closed session.

Mr. Kidd agreed and then motioned to go into closed session for the purpose of consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Section 2.2-3711A(8) of the Code of Virginia of 1950, as amended in regard to an appeal of the Zoning Administrator's determination on the validity of Special Exception Permit authorizing a Utility Wind Energy System.

Mr. Young seconded the motion, which was approved with the following recorded vote:

YES:	Mr. Young, Mr. Kidd, Mr. Caldwell, Mr. Cash, Mr. Hill
NO:	None
ABSTAIN:	None
ABSENT:	None

At 11:05 AM, Mr. Kidd motioned to return to regular session and adopted the following resolution read by Mr. Kidd:

BE IT RESOLVED, it is certified that to the best of each Board of Zoning Appeals member's knowledge only public business matters lawfully exempt from open meeting requirements and only such matters as were identified in the motions to go into Closed Session were heard, discussed or considered during the Closed Session.

Mr. Caldwell seconded the motion, which was unanimously approved 5:0:0:0 with the following recorded vote by roll call:

When some members responded with "present" instead of "yes", Mr. Burks requested a roll call with a response of "yes" or "no" to be given.

YES:	Mr. Hill, Mr. Young, Mr. Kidd, Mr. Caldwell, Mr. Cash
NO:	None
ABSTAIN:	None
ABSENT:	None

Mr. Kidd confirmed with Mrs. Goad that the phone issue had been resolved.

Mr. Kidd asked Ms. Anne Neil Cosby from the McGuire Woods LLP law firm in Richmond, VA if she wanted to address the Board.

Ms. Cosby asked about procedures and counsel's proposals.

Mr. Burks asked her to outline her preferred method of briefing, the County could then give its preferred method and the Board of Zoning Appeals would make the decision.

Ms. Cosby proposed some process to try to condense that information so that it would be in a summary document, and her clients' preference would be some sort of equal opportunity for the parties to provide the findings of fact and conclusions of law for each party, which she said she wanted the formal submittal

to be something like she described, and she thought this was primarily a legal issue before the Board of Zoning Appeals. Ms. Cosby said she did not want to give an overabundance of facts that weren't going to go into that legal issue. She suggested a short and clear document that enforced the points of law for consideration. Ms. Cosby thought the findings should come in simultaneously or with a little bit of a staggered approach because Apex had filed its petition to the Board of Zoning Appeals of the Zoning Administrator's determination, and so would suggest perhaps findings coming from the other parties bringing forth their decision and Apex being able to respond within a week thereafter, so that everybody could address everybody's portion. Ms. Cosby said the findings could be addressed in writing and at the hearing, put it all out on the table and address it, and that she was trying to get information in a concise way before the BZA. Ms. Cosby suggested to have some documents staggered and perhaps county and other parties could file their findings by September 28, and other parties by October 5th. She said they were wanting to compromise and wanting to cooperate and to be helpful.

Mr. Lockaby stated that he saw this from a different perspective. He further stated that the county did not think written submissions were necessary at this point. Mr. Lockaby stated that the Bylaws did not require written submissions after the appeal; historically the Zoning Administrator oftentimes submitted a short here's-how-we-got-here history and suggested motion, and they would be happy to waive that. Mentioning Ms. Cosby's request, Mr. Lockaby said the County could file a general denial of all allegations, and the County had a responsibility to argue the points orally at the public hearing and not to provide in writing; the public had a right to hear what the county had to say at the public hearing and to comment intelligently at what we are calling a public hearing. He stated this was 76 words of history at issue, 40 words in a SEP and 36 words of statute, and you already have administrative record of 413 pages. He further stated the county had submitted a letter, Apex/Rocky Forge had submitted a letter, their positions were not a secret and Mr. Lockaby said he did not mind arguing the case the day of the public hearing.

Mr. Burks stated he did not have anything to add or correct to either party's position. He said that Mr. Lockaby was right that the Bylaws did not require submission of evidence, the Board had already thought about this issue, as he submitted that he did not think there was anything the Board of Zoning Appeals had heard that would change the Board's discussion, and there was nothing wrong with continuing with what you've heard and the developed consensus.

Mr. Young motioned to set a deadline for the submission of all evidence, including findings of fact, and all arguments, be due to the Board of Zoning Appeals Secretary by 5:00 PM on September 21st.

Mr. Kidd seconded the motion, which was approved with the following recorded vote:

YES:	Mr. Young, Mr. Kidd, Mr. Caldwell, Mr. Cash, Mr. Hill
NO:	None
ABSTAIN:	None
ABSENT:	None

There being no other business, at 11:16 AM, Mr. Young motioned to adjourn, seconded by Mr. Caldwell, which was approved 5:0:0:0 with the following recorded vote:

YES:	Mr. Young, Mr. Kidd, Mr. Caldwell, Mr. Cash, Mr. Hill
NO:	None
ABSTAIN:	None
ABSENT:	None