

**MINUTES OF THE MEETING  
OF THE  
ALLAMAKEE COUNTY  
BOARD OF ADJUSTMENTS**

**December 3, 2009**

**Board of Supervisors' Room, Courthouse, Waukon, Iowa**

Meeting was called to order at 4:30 P. M. by Chairman Dr. Bernard Pratte. Roll call was taken, board members present were: Dr. Bernard Pratte, John Goettel, Nancy Wallerer, Carlton Larson and Arne Beneke.

Others present were Tom Blake, Zoning Administrator.

All Board members voting "AYE" unless noted.

Motion by Larson and second by Goettel to **approve agenda**. Motion carried Unanimously (MCU).

Chairman Pratte presented modifications to the October 8, 2009 minutes as follows:

1. Mahr Variance Request 03-09, change "Based on the findings of Vested Rights ..." to "Based on the findings of Unnecessary Hardship ..."
2. Mahr Variance Request 03-09, eliminate posing condition "Abide by the existing setbacks of 1984."
3. Mahr Variance Request 03-09, change posing condition "Work the access issues for each lot through a covenant agreement." To "Prove access for each lot sold through a recorded subdivision agreement."

Motion by Larson and second by Goettel to **approve the minutes** of October 8, 2009 as amended. Ayes: Larson, Goettel, Beneke, Pratte. Nays: 0. Wallerer abstain. Motion carried.

**HANSON variance request 09-09**

Chairperson Dr. Bernard Pratte **opened the Public Hearing** on the variance request by Daniel Hanson and Kathryn Dodge Hanson.

Zoning Administrator Tom Blake presented the written staff report (attached). The Hanson's have requested a variance be granted to allow them to place an Eighty foot (80') tall wind generator tower closer to the Bluffland Protection District (BPD) than ¼ mile. The variance requests the required distance from the BPD be removed for this

site, Lot 4, Majestic View Subdivision. Blake's staff report had the following exhibits attached to it:

- Exhibit 09-09A (10 pages) List of adjoining property owners, notification letter and responses.
- Exhibit 09-09B (1 page) Copy of subdivision covenants.
- Exhibit 09-09C (4 pages) Comments from US Fish and Wildlife, DNR and Audubon's Mississippi River Initiative Coordinator regarding impact on migratory birds and raptors. Submitted by Linda Haugen.
- Exhibit 09-09D (2 pages) GIS print showing proposed location of wind generator tower, topographical lines and boundaries of BPD. Beacon print demonstrating area within 500' of site.

**Blake recommended the denial of the requested** variance, stating that Hanson's have demonstrated no hardship and no loss of use of the property if they cannot construct the tower. There are negative impacts to neighboring properties and the general public, possible negative impact to migratory birds and raptors present in the Mississippi River Corridor and negative visual impact to neighboring properties and general public and visitors to the area.

Orlo Mundorf, Installation Manager, High Plains Construction Inc., was sworn in by Chairman Pratte.

Mundorf: Stated appreciation of adjoining property owners input and would have been surprised if there would not have been opposition. People are opposed to anything new. Every source cited by Linda Haugen regarding raptors was research done for wind farms, not a single turbine and there was a lot of difference between a 240' tower typical in a wind farm and the 80' tower planned by the Hansons. Further, while lattice towers do contribute to avian kill by providing a place for birds to land (Upon takeoff they can be struck by the rotor blades,) the Hansons were constructing a monopole structure that did not provide a landing spot for birds. Citing Section 302.3.2 of the Zoning Ordinance "Platted building lots recorded prior to the final passage of this ordinance are exempt from complying with the BPD." We feel that, because of this language the BPD overlay requirements should not apply to this lot. Consequently, a variance would not be necessary. Further, Section 302.5.1 of the Ordinance states, "There shall be no structural construction in the Bluffland Impact Zone except for governmental public projects, public utilities, and fencing." The Hanson's generator tower meets the definition of a public utility and should be allowed without need for a variance. The turbine being proposed meets the PURPA code requirements and it is connected to the grid.

Pratte: Section 302.6.9 is very clear. "Towers greater than 35 feet in height shall not be placed within ¼ mile of the BPD.

Mundorf: That would not apply since the Hansons owned their lot and planned on developing it prior to the new zoning law. They have a property right that would allow this tower to be built.

Blake: The Hansons did not include a wind generator tower on any building permit application prior to the zoning code adoption in 2008, therefore, no right exists.

General discussion was held regarding sections of the code dealing with non-conformities (Section 114) and non-buildable lots as contemplated under the BPD (Section 302.3.2) and property owner rights. Discussion was held on where towers could be placed in the County, wind speeds, trees and their impact on wind tower performance.

Mundorf: We don't feel a variance is required for this site. We will contact legal counsel regarding the application of "public utility" designation to this tower. The tower will be classified as a small utility provider under PURPA, therefore, no variance is necessary. The tower would be placed on a 10' x 10' pad and the tower would be hydraulically operated. No need for a crane to install and tear up the area. The noise is about the level of a refrigerator and will not be a nuisance.

Both Dan Hanson and Katie Hanson were sworn in by Chairman Pratte.

Dan Hanson provided pictures of the property from the highway to help address issues regarding aesthetics. Dan Hanson stated that no one would be able to see the tower from the highway.

Katie Hanson addressed the Board stating that their intention is to preserve resources and materials. Their heating and cooling is geothermal, however, they need electricity to run the system. The wind generator would provide that electricity.

Dan Hanson stated that they wanted to preserve the area including trees, etc. The neighbors have downed many trees on their property.

Pratte: Regarding the visualization issue. One person's eyes vary from others. It is a hard subject to police or interpret.

Katie Hanson: Every other land owner up there is an absentee land owner. They don't live up there. It won't impact them. We discussed the information Linda Haugen presented with Linda. She had additional info. that was not presented to you that supported our tower. It showed that a single tower was not a significant impact on birds. And we are using the equipment designated as best for wildlife (monopole).

Dan Hanson: We are retired utility employees and have experience in utility distribution. Also, we have been around several Power plants. This wind tower will avoid 200 metric tons of carbon in the atmosphere. It is small compared to the total put into the atmosphere each year, but we are trying to do our part. We buy local, support the area.

Katie Hanson: This has been part of our long term plan. Our plan and dream, not only for ourselves but our kids, is to be enthusiastic about saving the planet. This is our philosophy.

Pratte: No one will argue with your philosophy, but location has a lot to do with where these towers can go.

Dan Hanson: We have already demonstrated you can't see it from the highway.

Pratte: However, it will be seen from the river or other properties.

Dan Hanson: We don't believe it would be visible from the river. It would be from Wisconsin.

Larson: Are you stating that your reason is Global Warming? Global Warming is a farce.

Katie Hanson: Global Warming is a fact.

Pratte: We will not debate Global Warming here. We are bound by zoning laws. In order to satisfy our higher authority we need to follow the ordinance. We can only act as authorized under the law. The Hanson's should have looked at the new ordinance when it was planned.

Katie Hanson: We are a public utility and the ordinance should not apply to this. This site has potential to produce more electricity than we need.

Pratte: You are producing electricity for your own use. Not for distribution to the general public.

Mundorf: The Hanson's could have put in a tower at half the price. They are going to a great extent to do it the right way.

Beneke: To grant a variance we need to have a clear reason. Are you stating that the reason you need a variance is because you are a public utility?

Mundorf: By definition it is a public utility. Excess power could go to the grid to be distributed.

Beneke: A public utility is not owned by a private person. I do know a lot about this (wind generators). I looked into putting one on my property. What is the reason we should grant a variance? Is it because you claim to be a public utility?

Katie Hanson: No, a variance would not be necessary if we are a public utility. We do have a unique situation, it won't disturb the neighborhood. The zoning code has sections that are hard to interpret. We have attended a lot of meetings. There needs to be more clarity in the ordinance. Since we cannot build, isn't it a non-buildable lot?

Pratte: Your lot is buildable because you have built a house on it.

Katie Hanson: Yes, but it is not buildable for the next step-building the tower. Our hardship is our need, our passion, to use our personal power to decrease our impact on the planet, to not produce carbon emissions, to reduce our carbon footprint. We cannot demonstrate financial hardship.

Mundorf: It is not buildable due to the new ordinance. The project would have been buildable under the old ordinance. They have a property right that was established under the old ordinance. Also, they should be considered a public utility. They meet the definition by Websters. Mr. Blake, what is your position on this?

Blake: It is my position as Zoning Administrator that the Hansons do not meet the generally accepted classification or requirements to be recognized as a public utility. Therefore, I would not issue a permit to you on that basis.

Mundorf: Will your statement be part of the minutes.

Blake: Yes, they will.

Pratte: Is there anything further? Since there were no further comments I hereby close the Public Hearing. Does anyone on the Board have any questions?

Discussion was held regarding the public utility issue. Blake informed the Hansons that their application was for a variance from the ordinance requirements and not to challenge a finding by the Administrator (whether or not they were a public utility). In order to have the Board of Adjustment address this issue would require the Hansons to re-apply as a public utility. Blake advised that if the application was denied, they could apply for a hearing in front of the Board of Adjustment again to address that issue. The Board could then research the issue and make a ruling regarding whether the tower would be considered as a public utility.

Board discussion was held regarding the whether the Hansons have demonstrated that a hardship exists or if property rights were evident. Further discussion was held regarding the input from neighbors and the perceived impacts on them.

Motion made by Beneke to deny granting the Hansons a variance from Section 302.6.9 of the Allamakee County Zoning Ordinance (Bluffland Protection Overlay District) based upon the finding that the Hanson's have failed to demonstrate that literal enforcement of the ordinance would result in unnecessary hardship per Section 507.1 of the Zoning Ordinance (Variances) . Second by Larson. Ayes: Goettel, Walleser, Larson, Beneke, Pratte. Nays: 0.

### **STRONG variance request 10-09**

Chairperson Dr. Bernard Pratte **opened the Public Hearing** on the variance request by **David and Angela Strong**.

Zoning Administrator Tom Blake presented the written staff report (attached). The Strong's had requested a variance be granted to allow them to construct a garage within the required 40' front yard setback. The variance would allow said garage to be placed no less than ten feet (10') from the Right-of-Way/property line on the front of the property. Blake's staff report had the following exhibits attached to it:

- Exhibit 10-09A (3 pages) List of adjoining property owners, notification letter sent to said owners and all responses to the notification letter.
- Exhibit 10-09B ( 3 pages) Beacon photo of property with topographical lines with proposed garage placement with fill placement. Same photo with placement and fill if setback is met. Applicant photo showing proposed placement of garage in relation to front property line.
- Exhibit 10-09C (1 page) Beacon print showing 500' boundary around site.

**Blake recommending the granting of the requested** variance, based upon the perception of a somewhat unique building site topography that would require large amounts of fill placement if the full setback was required, the variance will not alter the essential character of the neighborhood and the need for the variance was not due to the actions of the Strong's.

The evidence and the particulars of the site were discussed. There being no further testimony the public hearing was closed.

Motion made by Beneke and second by Larson to **approve the Strong variance request** to allow a garage to be placed 10 feet from the front property line as depicted in the building permit application. MCU.

**Old Business:**

None.

**New Business**

None.

Motion made by Beneke and second by Walleser to adjourn the meeting. Motion carried with all Ayes.

Meeting adjourned about 6:20 P.M.

Minutes Prepared and submitted by:

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Tom Blake, Zoning Administrator