

# ZONING BOARD OF APPEALS

**MAY 13, 2013**

## MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, May 13, 2013 at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:40 p.m.

<b>PRESENT:</b> Vincent Cestone	- Chairman
Robert Dee	- Member
Bill Flaherty	- Member
Lenny Lim	- Member
Adam Rodd	- ZBA Council
Tina Andress- Landolfi	- Secretary

<b>ABSENT:</b> Paula Clair	-Member
----------------------------	---------

**received**  
6/13/13 JC

**THE PLEDGE OF ALLEGIANCE WAS SAID.**

**Vincent Cestone-** First item on the agenda is approval of minutes from April 8. Are there any corrections or changes? I will make a motion to accept them as submitted.

**William Flaherty-** I will second.

**Vincent Cestone-** All those in favor?

**ALL MEMBERS WERE IN FAVOR.**

**APRIL 8, 2013 MINUTES WERE APPROVED.**

**Vincent Cestone-** Now we are going to go back into the Public Hearing for the wind turbine. We reviewed the Town Code, and I am going to ask our attorney Adam Rodd if he could explain some of the things that are required that this board has missed. If you would please Adam.

**Adam Rodd-** Yes, just in reviewing the zoning codes that would be applicable for this application, it is our recommendation at this point in time, that there are various items to be supplied to the board before the board is actually authorized to act on this approval. Under the proposed provisions given the height of the wind energy conversion system that is proposed, this would be considered to be a major project under the provisions of the code as opposed to a minor. What that requires for the board to act and proceed, would be for the applicant to prepare a long form EAF, which we don't have as of yet, and that would need to be prepared by the applicant. We would also need a Engineered Site Plan of the project, and again that is something that is needed before the board can proceed. In addition given the complexity of the issue and the engineering concerns that are involved, we recommend that it would be appropriate to ask that professional planners and consultants, specifically there is a firm in White Plains that would be appropriate for the task. A firm called AKRF to view this matter to provide some guidance to this board and to the applicant to allow this

matter to move forward. Those are basically the highlights of what would be required to allow this board to continue to process this application. It is our recommendation that the Public Hearing of course be kept open, as it needs to be so that those materials can be supplied. I recommend that to the extent that there are members of the public that want to be heard on this, and that is fine, with the understanding that additional documentation will be presented, will be made available to the public, and the public can comment further at that time.

**Vincent Cestone-** That also means that the height. Does the variance need to be amended, not to be a height variance, but a special use permit?

**Adam Rodd-** Yes, the way the code is written, it contemplates that a wind energy conversion system can have a height for example that exceeds forty feet, but that would turn it into a major project, which would require a special permit, which of course requires this board to approve. It is not per say a height variance, but the height of the project, according to the code provisions, classifies it as a major wind energy conversion system project as opposed to a minor one.

**Vincent Cestone-** Ok, so the whole height issue we should basically abandon for now?

**Adam Rodd-** Well, again they don't need an area variance, but the height is.

**Vincent Cestone-** Makes it a major application.

**Adam Rodd-** Is relevant to the special permit criteria which is defined in the code.

**Vincent Cestone-** Anything else Adam?

**Adam Rodd-** That is it.

**Vincent Cestone-** Does the applicant want to say something?

**Connor Kays-** Connor Kays, Hudson Wind. Long form EAF is no problem at all. The engineered Site Plan is also not a problem, although Bergy does provide state licensed PE, stamped drawings for these through them. I am

going to assume is considerably less, then having a third party do it. The engineer, they have a number of them on staff, they are state certified in numerous different states. I ask that the engineered specifications from them be acceptable. A special use permit versus, we are all talking about the same thing here, we are obviously looking at a height. You guys deemed this as a major when we started I believe, so that does not change it a whole lot. You are looking for just these two pieces of information that has come to light that you are looking for.

**Adam Rodd-** The other bit of housekeeping, because it is a major project, the property would need to be posted. There is a sign you can get from the town clerk indicating that the property is under consideration for major special permit.

**Connor Kays-** Sure, also not a problem.

**Vincent Cestone-** There is the issue of a tear down bond.

**Connor Kays-** Yes, we did, Doug spoke to the Code Enforcer regarding the bond, and we have submitted an email from him. He has not been brought in on any of these meetings as of yet, so he did not make a determination one way or the other. The only thing that he mentioned was that it should not be a parameter for your decision at this point in time, it will be something taken care of afterwards. I don't know, that will be up to the board whether they want to bring him in, so that he can start making that.

**Vincent Cestone-** We are going to ask the engineering company to make a recommendation for the bonding, and what would be needed for that.

**Connor Kays-** Ok, I am sure Bergy has a lot of experience with this, so I don't think the engineer there would have any problem making a recommendation. Once we get the architectural stamped drawings from them, if the board wanted a third party opinion as well, I think we would be able to give the engineer our drawings, and they would be able to make an opinion on the bond as well.

**Vincent Cestone-** Adam, about money for the engineer?

**Adam Rodd-** I think the way to approach this is that I think the applicant would need to post an escrow to defray the cost of the engineering review.

At this juncture I would suggest an escrow of perhaps a thousand dollars, with the understanding after the engineer reviews the materials the firm can give a more realistic number as to the cost that are going to be involved in reviewing this project.

**Vincent Cestone-** Who do they do that with, the escrow money, is that with the Town Clerk?

**Adam Rodd-** I believe it is.

**Tina Andress-Landolfi-** It comes through our office, the Code Enforcement Office.

**Vincent Cestone-** Ok, is there anything else that you wish?

**Connor Kays-** No, I think that we will let the public take it from there. I know the owner Mr. Gleick is here tonight, and would like to speak. The only other thing that we submitted is a letter from the Conservation Board and wetland inspector, and they had no objection to the problem, and they do mention wildlife, noise, and bats, and everything else. They had no objections, and I think that is worth pointing out. Along with some general information, that was more for public consumption was submitted and some photos of the vehicles that we are looking at that we talked about last time, nothing too big. Cement truck and a crane is the largest that we would have up there. Unless the board has any questions for me at this time.

**Vincent Cestone-** Any questions from the board?

**No questions from the board at this time.**

**Vincent Cestone-** With that I open it up for public comment. Sir if you would come up to the microphone and introduce yourself.

**Robert Cutler-** Hi, I am Robert Cutler. First of all I would like to thank you for having this hearing, because I remember the last one was going to be the last one, and we asked that you could open it one more time.

**Vincent Cestone-** Absolutely.

**Robert Cutler-** I appreciate that.

**Vincent Cestone-** And it will probably go longer than that.

Robert Cutler- That I got. It has certainly given me and some others some homework to do with this issue. What I would like to do is first just review where we were at the tail end of the last hearing. It came out that if the applicant were successful and granted the approval to put up a wind turbine, then that is something that other people could do in Philipstown as well.

**Vincent Cestone-** They can do that now, even before the approval.

**Robert Cutler-** Conceivably, I could put up a wind turbine.

**Vincent Cestone-** Absolutely.

**Robert Cutler-** Although I don't. What I am here to do is tell you that I have gone through.

**Vincent Cestone-** Pardon me, Just one second. Please no flash.

**Reporter-** Ok

**Vincent Cestone-** Ok I am sorry.

**Robert Cutler-** Again I have looked a number of issues, and what I would like to do, I don't have the images that I would like to present to you. I went down to grey printing, and you cant print them up large enough, so I have a hand out that I would like to hand out.

**Vincent Cestone-** Sure, To us?

**Robert Cutler-** And to other people in the audience?

**Vincent Cestone-** Usually Board members and the secretary and the attorney is what we would require.

**Mr. Cutler handed the board photos showing Commercial Wind Turbines on fire, and Images of dead birds killed by Commercial sized wind turbines.**

**Robert Cutler-** What I did, was try and take a look at the potential risk and damages that could occur to Philipstown, and all of us with a wind turbine put up. I had no knowledge of these things, before I went into this, I did not know yea or nay whether it was a good idea. What I found that was alarming is that if you look at the back. The first is the damage to the environment. These things catch fire they are not perfect. There are many photographs like this, these are just four. They are machines. They are subject to mechanical error and human error. What disturbs me as looking at these images, is thinking of a wind turbine on top of a hill right behind me in august in the middle of a dry spell is there could be forest fires. My house is closes to it, and I am in danger. If there were wind turbines all over Philipstown, there could be many accidents. That is something that I think you need to think very careful about. Second, was the damage to wildlife, in particular soaring birds, eagles and hawks, which would fly up next to our hill and to the top where this wind turbine would be located. They would be killed, in fact so many were killed in California in a wind farm that the scientist who collected the carcasses classified the deaths in three separate ways. One was by the birds being cut in half, the other was decapitation, and the other was their wings being clipped. That is what they had to do to understand how these birds were being killed. I can see that happening too if there were several hundred wind turbines in the Town of Philipstown. That is the thing that bothers me, if you give one to one person, you can give one to all.

**Vincent Cestone-** Absolutely.

**Robert Cutler-** You have three different kinds of birds here that are soaring birds. You have eagles and hawks. There are night owls, and there are also the migrating birds that fly through. This picture here shows a flock of geese going right through wind turbine. Geese don't know, and birds don't know it is a danger for them. The third point that bothers me a lot, is the destruction to the scenic beauty of the Hudson River Valley. It seems to me that if we have not learned anything from Storm King, what are we doing here? The Storm King turned out to be based on the large unattractive plant on top of the Storm King Mountain. If you imagine wind turbines everywhere, and you take a look at the image, you can see what I tried to do, those are obviously not to scale, but if you have several hundred wind mills around here you are certainly going to cause damage to the scenic value and the character of the Hudson River Valley. Imagine if you will,

driving along route 9D, the corridor to the Highlands, and up on the, when you get to Castle Rock, Castle rock is about 75 feet high. This window would be twice as high as that. 150 feet high. Imagine if the owner of Castle Rock decided he wanted to have two or three wind mills up there. Next to the Castle you have three gigantic wind mills, it is perfectly possible given what you are considering tonight.

**Vincent Cestone-** This is not a commercial installation. I did the same research that you did, and I am very aware of what you are telling me.

**Robert Cutler-** The fourth of course is the stature of the Hudson River Valley as an area of historical importance. We all know that indeed, that our country was secured by what happened at Constitution Island by the chain, and by (inaudible) Ironically on top of the very hills that these wind turbines would be placed. You have really the desecration of the scenic value and the diminishing and the compromising of the importance. Number five is the appeal of Philipstown by the tourist will be decreased by the combination of three and four. The scenic beauty being destroyed and the National Historicalness being compromised, who wants to come to Philipstown with a lot of turbines. It is going to affect tourism there is not a doubt in my mind about that. The sixth was the one I had no idea, but the health of humans and all creatures is threatened, and what that means is, I dug in to this. I talked to Arlene Bronzaft who is the noise advisor to Mayor Bloomberg, and she has also been the advisor to the three previous Mayors. Her telephone number is there. She is the author of various articles on the potential impact of wind turbine sounds on adults and children. There are numerous websites. The deal is that they create inaudible sounds. We can't hear them, but they are there never the less, at 40 db I think it is. Those inaudible sounds do impact some people. They cause headaches they cause dizziness and you feel lousy. The articles, I can't give you chapter and verse, but here are the websites to look in to. Finally, I have to confess that I have a dog in this hunt, because I am trying to sell my house at 540 Route 9D right now, and when I told Bob McCaffrey about the wind mill, he did not say Hosannah. He said Uh Oh. I am not alone, you have other people that are trying to sell their homes too. Again you have a \_\_\_ of these that are going to bring all the property values down. I think these are the things, that finishes the list of seven, there is a legal issue that someone advised me about, and that is the right to enjoy one's property. We have the right to life, liberty, and the pursuit of happiness. We have the right to own property, and enjoy that property. If I sit on my property and

watch a hawk fly up, I now will think oh my God, don't go over there. If I see an eagle, I will feel the same way. Does that infringe on the enjoyment of my property, I think it does. If I think during a dry spell about forest fire, then that infringes on the enjoyment of my property. The second legal issue that I only discovered this morning was the, on the back of the document, was from the great Bob Boyal who called me up, you may know him. Bob said he Robert, did you know that there is a policy number 24 that designates a number of scenic areas of state wide significance that must be protected when making planning and development decisions. Perhaps you know about the SASS Policy.

**Vincent Cestone-** Yes, I do.

**Robert Cutler-** That is spelled out here. Certainly our area is of State wide significance. I would like to read those two middle paragraphs. It says, The Hudson River Coastal area between New York City and the federal \_\_\_\_\_ are the first areas to be evaluated under the policy 24. The Hudson River Coastal landscape has a wealth and variety of scenic resources shaped by the unique combination of geological forces and historical events. Majestic Mountains and (inaudible) The Hudson River region has played an important roll in our Nations history. It spawned the Hudson River School of painting, and the romantic landscape style. World renowned artist have responded to its beauty and the works of major architects line the rivers corridor. Historic \_\_\_\_\_ the Hudson's past is a bustling transportation corridor. Today tourism is the major industry, and National State Parks and Historic sites attract visitors from all around the nation and the world. I think that we are really putting the Hudson Highlands in danger of going ahead with the project a project like this.

**Vincent Cestone-** Thank you very much. Anyone else wish to speak?

**Don Nice-** My name is Don Nice, and I am here to discuss an issue. I don't know if it has been brought up or not, and my wife and I have lived overlooking the Hudson for forty years. During that time there has been a significant change in peoples attitude of things aesthetic and things that are scenic. As a result of that I think that this community and this part of the country has seen a rebirth, in a way of people coming up to be in a place which is unique in the world, totally unique. Why is it unique? It is because there are people here that have fought desperately to preserve what we have. That thing that we have is very nebulous, it is like those Hudson

River paintings. You look at it and you cant say that is bad or good, but we know it is here.I would just like to suggest that we continue this, and that we seriously consider what is going on. If for example, that this permit is granted, does that mean then, that there will be a board that will decide on the aesthetic merit for every single application? That is going to be difficult.

**Vincent Cestone-** That is absolutely difficult.

**Don Nice-** I would be happy to be a part of that if that happens, because I consider myself to be and expert witness in this area. I was dean at the school of visual arts. I was Vice President at the National Academy. I taught school for 25 years, and am a long time painter of the Hudson River. Thank you.

**Vincent Cestone-** Thank you. Any one else wish to speak?

**Allen Smith-** My name is Allen Smith. I was here last time. I would like to start by apologizing for my behavior last time, but it was the first time I had heard about this, and my reaction was just a total emotional reaction with out really knowing anything about it. Since then I visited in Red Hook one of these towers to look at. I am an Audio file, Audio Engineer, Musician retired from being an executive at Sony Music.I built Sony Music studios around the world. I was part of the evaluation of what they call super audio cd. A very high end form of audio. My office and me were used as listening station. I am trying to say that audio and sound are a major part of my life. That is how i made my living, and frankly was very successful at it.Now I am retired, and I am speaking as a neighbor. I agree with everything that has been said about keeping the beauty of the area, but in a little bit, I am talking about what I think the personal effect is going to be on myself. I have lived along the river since 1978. I had property on the other side of the road. I could walk down to the river look at the trains. You do get noise from the river, and the road, but 6 am Sunday Morning it is dead quiet. 2am any morning it is dead quiet. Those are hours that I do what I do. I contemplate, and I listen to music. That is quiet time for me. I looked at the noise regulations. I know that it is an application for a variance in height, but if you look at the noise regulations. I think you have work to do, for instance one regulation that says, if the noise at the property boundary exceeds 5 decibels from norm, then it is a violation of the noise regulations. I think if you are going to allow something like this, then you have to at least set up a study, put a sound meter out there around the clock four seasons

of the year and see what the normal sound level is, before you can see if there is a violation of 5 db. The other thing that concerns me is, I live in a down draft from the top of the hill. The tower is going to 1500 feet away from my property line. The idea of sound traveling 1500 feet can sound like, hey it does not do that. You are missing the points, Cold weather, hot weather, sound waves travel differently in cold weather. Down drafts, sound waves catches on an airwave, it comes down. I am very concerned with what I consider to be my life at this point. I sit in my pond in the back at hours that you wouldn't believe. I am a music person, so middle of the night is normal for me. I don't want to be hearing. You said last time it sounds like a refrigerator. If you listen to a refrigerator for a solid hour, it is very disturbing sound to hear a sound wave to continually going as opposed to what you would call music. That is my issue. I do commend Mr. Gleick for wanting to do something about alternative energy. I think it is very good to do that. I would wonder why he does not do a solar panel that does not interfere with anything, and gives him alternative electric. I understand that he can get similar kinds of subsidies for it. The other thing is, that when I visited the tower in Red Hook to hear it, and it was not spinning. The homeowner told me that he was sorta disappointed, because it does not work all the time. He originally thought he would make his payback in seven years, he figures it is going to take him 17 years, and he lives in a home that is 10 percent the size of Mr. Gleick. I commend alternative energy, but I don't know if this is the right one.

**Vincent Cestone-** Sound is part of the Long Form EAF.

**Allen Smith-** If I read these, it says sounds emitted at levels lower than those prohibited by sub section c2 shall not be permitted, because of the type of frequency of the noise emitted. Sub sounds are offensive, disruptive, or are in continual dis harmony of the character of an adjoining or nearby residential neighborhood. It is not something you can measure.

**Vincent Cestone-** I saw that section of the code.

**Allen Smith-** I am sure you did.

**Vincent Cestone-** Absolutely.

**Allen Smith-** Ok Thanks

**Vincent Cestone-** Your welcome. Introduce yourself please.

**Vivian Linares-** My name is Vivian Linares. I am a staff member at Manitoga Russell Wright Design Center which is an adjacent property. Our executive director was here previously, but she cant be here tonight, so I am representing the organization. She had voiced a concern about sound, and I would like to reenforce that. we are a National Historic Land Mark The highest designation that you can have. We have 75 acres and two historic properties, and we are open to the public. We are concerned about audible sound, low frequency sound and infra sound, and while we applaud innovation, as stewards of this National Historic Landmarks, we must be concerned with any factors that might affect the site. One of the things that we noticed, I have a paper that was published by the Canadian Health Department. In it, it says something about low frequency sound is not generally well perceived by the human ear, however it may induce vibrations in light weight structures, and in residences or sleeping quarters and cause a quote rattle. Our Structures are mostly glass and wood it \_\_\_\_\_ we have lots of one of a kind artifacts that are fragile and are built in to the house which is a museum. We also have collection objects that are very fragile as well. We have concerns, and we don't have the funds to do our own study to see how his would impact us. From what we are reading we have raised concerns that we need to voice. We appreciate the time and care you are putting in to this. Thank you very much.

**Vincent Cestone-** Your welcome. Someone else wish to speak?

**Mary Ellen Finger-** I am Mary Ellen Finger. I spoke to you last month, and I have some strong opinions about this, and i made copies of the Zoning. Can I had them out to you.

**Vincent Cestone-** If you just tell us the section that would be sufficient.

**Mary Ellen Finger-** 175-10 d.175-60 a and c, 175-30 e2.

**Vincent Cestone-** I read those sections related to this.

**Robert Dee-** we have the books.

**Vincent Cestone-** Make your point.

**Mary Ellen Finger-** I am a little \_\_\_\_\_ I don't know if my interpretation is correct on this.

**Vincent Cestone-** Just say what your concerns are.

**Mary Ellen Finger-** When I saw the Saturday Times list heat trapping gas passes a mile stone raises fears, and then the next days (inaudible cant hear her) It really makes me concerned about the issue our earth is facing, because of our energy uses. It somehow seem sensible to let our concerns about saving a view trump saving this planet. Richard Shea said in an article that if this turbine is not approved in some sort of matter with restrictions, conditions, then it would really lead to the inability to get any wind turbines in the area. I really feel we need to not just talk the talk about energy conservation and alternative energy systems, we really need to walk the walk. I did mention that \_\_\_\_\_ AKRF whose planners represent our town at the Zoning Training Meeting said that it has to have a significant negative impact on the enjoyment of a view from a public place. Not just because it can be seen in order for it to be considered as a negative impact. (Inaudible. Mrs Finger was making references to sections of the code, but was very low speaking)I looked up applicable.

**Vincent Cestone-** This is major application, because of the maximum height in Philipstown. That is why it is a major Application. If the wind turbine could be built under forty feet, then you can build it by right. Once you go over the maximum height, that is when you start running into issues with special use permits.

**Mary Ellen Finger-** My argument is that applicable cant really be referred to this forty which is kind of the default height limit, because I really don't think that applies to wind turbines in general.

**Vincent Cestone-** You have to understand, that the Zoning Board does not make the code, we interpret it. The Code is developed and instituted by the Town Board, and we are a board that deals with those ambiguities and special use permits. We cant write the law all we can do is interpret the law when there is ambiguities. I understand your point about wind turbines, but there are options that don't impact scenic areas. I don't think many people would be here for the installation of solar panels. Do you agree, because solar panels can achieve the same goal, and it is not 152 feet tall.

**Mary Ellen Finger** -It really depends on the site.

**Vincent Cestone**- Yes, but the site is susceptible to both. I understand what you are saying in support of alternative energy, and I agree with you, but there are other options. There is not one size fits all. Is the concern of this board.

**Mary Ellen Finger**- What I am suggesting, because I was prepared for this to be thrown out (inaudible) the legal reading of the code. There is enough(Inaudible) Wind Energy conversion systems may exceed height limits in the dimensional table. I was (inaudible) And is used to generate energy for off site use (inaudible) It is talking about commercial uses.

**Vincent Cestone**- Well that is your interpretation on that.

**Mary Ellen Finger**- We have soil mining regulations, we have communication tower regulations, but we don't have wind or solar.

**Vincent Cestone**- I do have the section of the code, but it does specifically talk about towers in general. Not just communication towers. Towers period. It deals with this type of application. In the old code, maybe you are looking at the old code, it did not deal with it at all.

**Mary Ellen Finger**- Do you know the section (inaudible)

**Vincent Cestone**- Not off the top of my head.

**Mary Ellen Finger**- The only thing I found about towers was in the communication towers.

**Vincent Cestone**- I am not going to debate it right now, because I'm not prepared to talk about it. The applicant has options. If he wants to go green, there are many options where he can go green. It does not have to be a wind turbine. It could be solar or some other type of installation that achieves the goal, so making the argument for wind turbines as one size fits all, I don't agree with you on that, because there are sections of Philipstown where it is viable and areas where it is not. You can't put a 152 foot tower in the middle of Cold Spring, it would not make sense, but the code says it is an accepted use. Not in Cold Spring, because that is a Village, but say Continental Village where it is not a village on its own.

**Mary Ellen Finger-** I could not find anything where it referred to setbacks or any.

**Vincent Cestone-** You are not an expert in the code. The code specifically talks about these things, and I have 18 years experience doing this. It does address that.

**William Flaherty-** I would just like to say briefly that section 175-10d I won't read the whole thing because we will be here till midnight. I just want to say in relation (inaudible) Wind energy conversion systems that exceed applicable height limits shall be considered a major, which this is, only by special permit by the Zoning Board.

**Mary Ellen Finger-** Yes sir, my argument with that was, as sketchy as it may sound, is applicable does not apply to 40 feet limit. That is not applicable to wind energy conversion systems because the turbulence area that you have to avoid is 40 to 50 feet above the height of the house or the trees around. A small wind energy conversion system has to be higher than the houses, so that is not applicable. I looked up in the dictionary applicable means capable of being applied or appropriate. That height is not appropriate.

**Robert Dee-** That is your opinion, That is your opinion

**Mary Ellen Finger-** That is my opinion

**William Flaherty-** I don't think at this time this board has the authority to grant variances because of the height. Our Zoning takes care of that I think without the necessity of having a Zone Variance.

**Vincent Cestone-** What you are saying is the height variance is irrelevant in this instance.

**William Flaherty-** That is correct

**Vincent Cestone-** The way the code is written now yes, and if you disagree with that you have to go to the Town Board and ask them to change the code.

**Mary Ellen Finger-** Im sorry?

**Vincent Cestone-** What Bill was saying is that once this Wind Turbine installation was presented as a special use permit, the height variance is no longer relevant.

**William Flaherty-** Exactly, it is no longer applicable

**Vincent Cestone-** If you disagree with that you would ask the Town Board to change the code, because we interpret the code we don't write the law. We cant change that.

**Mary Ellen Finger-** Thank you sir.

**Vincent Cestone-** Your welcome. Anyone else wish to speak? You sir.

**James Requa-** I am James Requa, and I was surprised and very appreciative that the board has taken all this time to look at this. I think it would have been very easy for you to say you cant do that. I think it is important because of the bigger picture of what is going on with our planet which also effects our community. As the climate changes it will effect us, and we for some time have been doing things in response to that or in favor of taking care of our area. We have recycling programs, we have town offices using green energy, we have regulations about dumping. It is not just about Philipstown. If we don't want trash all around we don't just take it over the border to Dutchess County and dump it either. We do the responsible thing with it. I think that is good, and it is appropriate. We care about the river. The river over the years has had many good things and bad things. We have power plants on the river spewing smoke, and we have nuclear power plant. We do our best here to take care of the river which is mostly benefiting the people down river from us, but we do it anyways. I think that it is very important not just to put up wind turbines and solar panels, but to do all of it. We are way behind where we need to be in terms of switching to green energy. When an opportunity like this comes up, what would be really good is if the town, like the state and federal government, had ways to encourage it rather than limits and rules that make it difficult or impossible. I think that I would love to see this approved, and more than that I would love to see it instigate a deeper look by the town to see what it is that we can do encourage more of this kind of a thing. In the past there have been people who wanted to put up Solar Panels that had the same

kind of resistance. It is an historic landmark, you cant put solar panels on it. That is the thing I wanted to say. I would like to see us all looking at moving towards a set of rules that encourages and supports people who want to do things like this, rather than putting things in the way and making it difficult for them.

**Robert Dee-** Can I ask you one question sir?

**James Requa-** Absolutely

**Robert Dee-** Do you think it would be acceptable to people for everyone in Philipstown, with a small piece of property with 1/2 an acre 3/4 of an acre that are together have a windmill? If everybody had one, would it be ok?

**James Requa-** Well, at this point I think it would be much better than the direction we are heading, which is a disaster.

**Robert Dee-** Ok

**Vincent Cestone-** Sir

**James Gleick-** I am the applicant, is this the appropriate time.

**Vincent Cestone-** You can say whatever you want, this an open forum.

**James Gleick-** My name is james Gleick, I am the applicant. I want to be brief because I spoke to you in November, and I wrote you a letter, and I do not want to repeat myself. I honestly don't remember what I said back in November. I am thinking that maybe I should address the question of why I am not putting in Solar Panels, since a number of people have asked, and the board is curious. My wife and I have been thinking for about several years on what we might do or need to do as citizens of the planet. We read the news papers like all you do. You all saw the news last week that has already been alluded to you here. The levels of atmospheric carbon dioxide have passed 400 parts per million for the first time, not just in recorded history, but since the first time since there have been humans on the planet. It is a mile stone that even the most pessimistic climate scientist thought would come later than it has, and it is irreversible. We put carbon into the atmosphere, but we cant take it out. It contributes to the very violent weather that I know we are all worried about. The first thing we

thought about was solar panels, because we have some roof top, and compared to putting up a big wind tower it seemed much easier, and obviously less expensive. We called some contractors, and they came and investigated our property, and it turns out that for us it does not work. We do not have enough roof space, or our roof was not pointing in an southernly enough direction, and it would not pay for itself. It might be possible theoretically to tear down a wide area of trees and put up some dedicated solar installation, but I think that would be more expensive and more damaging to the landscape than what we are talking about. The next thing that occurred to us was, it is windy up there. We have a very unusual piece of property in two respects. One is that it is very high up above the river at the elevation of 700 feet. The other is that the site we are talking about is quite isolated. It is a great distance from the nearest neighbor. Those two things are not true for everybody. The first one at least is necessary, before you can get approval from NYSERDA, as you heard at the last meeting from their expert. You have to qualify based on the wind speeds that you can get through the turbine. I think even on our property there was only one possible site to make it work. People have talked about putting a wind turbine on every piece of property in Philipstown. I think as soon as people start to investigate, they are going to discover in general their property is not going to qualify, because the wind does not blow in an efficient and unobstructed way that lets them generate enough power. Also we are far from our neighbors. I have listened to the comments today, and I have watched the video of the previous meeting, so I am aware of what my neighbors have come out and said. I am grateful to them for coming and taking the time, and raising the questions that they have raised. In particular, I am very sensitive to the question of noise. The first question that my wife and I asked, because I don't want to hear noise when I am going to sleep, and I wanted assurances from the contractors that we were not going to hear the thing, which is only a few hundred feet from our house, and they provided those assurances. There is a difference between asking questions and providing expert testimony, and I am not in a position to provide expert testimony. I have only been able to look at the data which has been presented to you. I think that it is interesting that the gentlemen that actually took the time, and I am glad that he did this, to visit a wind turbine, found that it was silent when he visited it, because there was no wind blowing. That is an important point. When it is quiet the wind turbine is still. When the turbine is moving the wind is blowing. My understanding from the experts is that, the slight additional noise of the turbine will not be audible to us over 200 feet away will not be audible to us over the sound of

the trees. There has been a comparison to the sound of a refrigerator. I am not exactly sure where that came from. I don't think it is going to sound like a refrigerator, but I don't like the sound of my refrigerator, but I can't luckily hear it from my bedroom, and I also can't hear the refrigerator of my neighbors. I am very confident that someone who lives 1,700 feet, a third of a mile from this wind turbine is never going to hear it, is never going to hear a thing, in any wind. Furthermore, I also appreciated the concerns about the visual effects of the thing. Some people think they are attractive, some think they are ugly. I am not going to presume to offer an opinion about that. I do honor the people who care about preserving the natural and rural feeling of our landscape, because I care about that too. I want to emphasize this site is deep in the woods, and this board was properly quite diligent in requiring us to do two balloon test to give an accurate sense of how visible this thing would be from different places in the area. I think that it was pretty clearly established that the wind turbine on this site will be virtually invisible from everywhere in Philipstown. It might be seen from across the river or possibly Cloudbank, seen, but small. I don't think that anybody can seriously say that it would be large over their property or casting a shadow, or in any way impairing their ability to enjoy their property.

**Robert Dee-** I just want to point it out. Do you (inaudible) to your neighbors who can see it. Do you think they will be affected?

**James Gleick-** I don't believe that they will be able to see it.

**Robert Dee-** You don't feel that will obstruct their view?

**James Gleick-** I don't think they will be able to see it.

**Robert Dee-** You don't think they will be able to see it?

**James Gleick-** No, I feel that it will be absolutely invisible from my neighbors at the bottom of the hill. Is this not what the balloon test was for? I think we discovered that it might be visible from one spot on Cloudbank. I was not here for the balloon test, those of you who were can speak to what the actual results were.

**Robert Dee-** It was visible from the Bear Mountain Bridge.

**James Gleick-** It might be visible from the Bear Mountain Bridge, but not from Route 9d down below the property.

**Robert Dee-** And not from your neighbors?

James Gleick- And not from the neighbors, absolutely not.

**Lenny Lim-** It will be able to be seen from the Appalachian Trail.

**James Gleick-** Yes, possibly from the Appalachian Trail.

**Lenny Lim-** No, it will be. I walked up to the Appalachian Trail to see what was going on, to see if I could see (inaudible) You will be able to see it from the Appalachian Trail.

**Robert Dee -** Which is a Historic Site.

**James Gleick-** Ok. And this board if it wants can make a judgement on whether the enjoyment of the hikers on the Appalachian Trail will be so impaired by a glimpse of a wind turbine on my property, and if that is a valid issue. I can't, you know what my opinion is, I have no facts to offer. I want to thank you for taking so much time to consider the issues so carefully, because I am not a lawyer, I am not sure what to make of the Towns Attorneys contribution at the beginning. I thought that we had excepted in November that this was a major project and we were applying for a special permit. If there is something new that we needed to provide.

**Vincent Cestone-** It was procedural things that were missed. This was the first one so there were procedural things that were missed. We are trying to cross the T's and dot the I's.

**James Gleick-** Ok, then I want to thank you. I know that the code on the one hand contemplates the possibility of wind energy conversion systems, and on the other hand it clearly does not provide a straight forward road map for you to make a decision.

**Vincent Cestone-** That is the problem. There are some things that I wanted to ask you. These gentlemen here told us that you use approximately twice the amount of electricity that I would use or Lenny would use or whatever. wouldn't it be simple to decrease your energy uses to get the same result?

**James Gleick-** I am not aware that our energy use is so excessive, I am not sure why it would be. We have a refrigerator, we have some computers, we have one TV, and we have air conditioning.

**Vincent Cestone-** Maybe that is incorrect, just had to ask the question.

**James Gleick-** It is a fair question. The whole point of this is that I really do care about. You know, you hear news like the news I referred to from the paper last week. If you are an individual who cares about the fate of the planet, as I think everybody in this room does. I think your tendency is to feel frustrated by news like that, because there is not that much that any individual can do. Most of the effective steps that need to be taken can only be taken by industries and governments. As individuals, I don't think that it is fair to ask us to feel guilty every time we flip a light switch. That is why my wife and I felt, here is an unusual opportunity, because of this particular site for us to all of a sudden take the majority of our electrical usage, which causes the burning of oil and gas and the release of carbon in to the atmosphere and convert that in to electrical uses that is free from releasing carbon into the atmosphere. That seems like a worth while thing that we are in a position to do.

**Vincent Cestone-** Thank you.

**William Flaherty-** You mentioned that solar panels would not work for you. There was an interesting article in the New York Times relative to renewable energy. That article solely starts itself with solar panels, nothing about wind energy what so ever. If you take a ride through various streets in our Township, you will find that more and more homes have solar panels. Every time I go for another ride I find another house with solar panels. I am wondering why it works for them, and not for you.

**James Gleick-** Let me be more clear. That is a good question. I don't mean that I cant put solar panels on my roof and generate a certain amount of electricity, obviously I could. The question is always balancing the cost and the savings. A certain amount of solar panels cost a certain amount, and it saves you a certain amount on your electrical bill and you have to do the math and decide for yourself if it is worth it. The amount of solar panels necessary to generate the amount of electricity that this wind turbine will produce would have been enormous, and would have been much more

than what we could fit on our roof, and much too expensive. It turns out that because the wind blows so well on this site, that the wind turbine is much more economical. If you want to provide just enough electricity to heat a swimming pool for example, I think solar panels are great for that. I am not saying that I rule out the idea of ever installing any. I am just saying why, after investigating first solar, then wind energy, we ended up feeling we had no choice, but we ended up having to go with wind energy.

**Robert Dee-** I am sure that you understand from your contractor, and other people from the State have talked, that it is going to decrease your electric bill by about 50 percent. It is not going to decrease it 100 percent.

**James Gleick-** I do understand that.

**Robert Dee-** This is not a town project, if it was 10 to 50 windmills that the town was going to put up, it would be a whole different thing. We have to decide, besides the law, is. It is an important role for energy, everyone in this room is for energy, we all agree. Cutting your electric bill by 50 percent compared to cutting the scenic Hudson view or maybe Appalachian Trail, or some neighbors has to balance out.

**James Gleick-** I agree, and that is a decision you have to make.

**Robert Dee-** I hope you understand that.

**James Gleick-** I do understand, I would ask whether the evidence that has been presented over these months indicates if it is going to have any significant deleterious affect on the scenic view.

**Vincent Cestone-** You sir, you had your hand up.

**Chuck Clifton-** My name is Chuck Clifton, and I just want to go on the record as another land owner who, I am not directly adjacent to this project, I live on South Mountain Pass Spur, which is over the top of (inaudible) down on the east side of the mountain a little bit. I just want to say that the risk of it generating noises that are perceptible, is a risk that I am not willing to take. My wife and I regularly marvel at midnight on a summer evening, how the only thing we ever hear is an occasional motorcycle on Route 9., or a truck, but those are human noises that come and go. We marvel at the incredible silence, that it is so silent that we can hear our refrigerator

downstairs sometimes. The noise floor is remarkably low, like when we hear our furnace turn on two stories below us. That is one of the things we love about living in this area. It is very precious to us, and the thought that this thing. I mean if the applicant were saying he is only going to run it when there is strong winds, and only during times of peak energy use, and he would never run it past 10 at night, because there is little energy use, so there is no point in running it unless he is going to install an 80,000 dollar system of batteries to store the power in or something. That would double the cost of his whole project. The only thing that makes sense when to run this thing is when you are doing the laundry, or when your air conditioners are running, and frankly if he has that good a breeze up there, he does not need air conditioning. We live with out them, and we live with all the windows open in the summer. We hear noises coming a mile away from route 9. We can hear the occasional motor cycle on Route 9. It is probably less then half a mile up over the hill. Prevailing winds do come from the west. As Allen was pointing out, sound travels in the air, and those sound waves would be carried more towards us, then the river, unless he is running it during a nor'easter. There is also the aspect, that everybody enjoys the beauty of the Hudson. It is a community asset. Only one person is going to enjoy the benefit of this wind turbine. I think that is a bad scenario. That is pretty much all I have to say. Thank you.

**Allen Smith-** Can I just add.

**Vincent Cestone-** You have had your turn, this lady back here, you will get a turn.

**Wendy \_\_\_** - My Name is Wendy \_\_\_ I live in the North Highlands, so I am no where near the potential installation of this turbine. I feel it is important for me to speak for the rest of the community, because I also love the Hudson Valley and Philipstown, and think it is one of the most beautiful places on the Earth. I feel like we have our own National Park here. I echo the concerns of others in terms of wind turbines making noise, causing shadow flicker, killing birds, ruining habitats and destroying views. On the other hand I am amenable to other forms of alternative energy, but I worry about a structure that is so high, that it really can have a serious visual impact, and I also worry about the precedence that it would set for the town, if suddenly 100 people had applications in to build turbines on their property. I guess in conclusion, I applaud the idea that we should look for alternative sources of energy, but I worry about the effect on the town, and

how many people it would benefit, and what the cost of it would be to them. Just to conclude, I would like to quote Robert Kennedy. He was involved in the Cape Wind Project in the Nantucket Sound. Which took 9 years by the way to get approval, because people were opposed to that. I would like to quote from an editorial from the New York Times a few years ago. "Some places should be off limits to any sort of industrial development" I understand that this is not industrial. "I would not build a wind farm in Yosemite National Park, nor would I build one on Nantucket Sound. All of us need to periodically experience wilderness, to renew our spirits, and reconnect ourselves to common history of our Nation to Humanity, and to God. The worse trap that an environmentalist can fall into is the conviction that the only wilderness worth preserving is in the Rocky Mountains or Alaska. To the contrary, our most important wildernesses are those that are closes to our densely population centers." Thank you.

**Vincent Cestone-Sir?**

**Andy Schmar-** My name is Andy Schmar with Hudson Highland Land Trust, but also a Philipstown resident. First of all I would like to thank you for the clarification on the code, because it has been uncertain on how the code did apply. I appreciate your councils clarification on that, and your plan to move forward. I am going to cherry pick just a little bit. I am not going to speak about this particular application, I am going to speak in general, and turn to our town council member, and encourage him like Dr. Finger did and others to make sure that the code is clear because of its implications. I am going to cherry pick a little from the materials that were provided to this board, one is wind letter from 2004 says, that there is no question that wind generators which require tall towers to access an unobstructed flow of wind are highly visible. This is the Wind Industry saying that. one other quote was NYSERDA letter to you all as of April 12, his last point is your decision will not just affect one project, but it will affect the future of Philipstown. I think that is an important point. Decisions like this are not just about this application. This application is just the beginning. Before that beginning, and before that subsequent, because we already heard one other potential applicant say he is going to be the next one to build. As stewards of this land we have the responsibility to look in depth and make sure we completely understand the implications. The nightmare example that can be used, shows that it is not just your town borders that you have to consider the implications, it is the (inaudible) Fort Montgomery. I am sure the residents of Fort Montgomery had no idea the implications of

that development, and I think if we all drive south on Route 9d and look at Fort Montgomery, that development really has no impact on the residents of Fort Montgomery, it affects the residents, and the visitors of this side of the river. Again we have to be careful of the implications of one decision, and its lasting impacts. It is also interesting in our code, and this goes to our Town Board, that they offer model legislation here on model wind turbines, and that might be the start point of this after your decision. You are going to have to make a decision on this on whether it is applicable and the impacts that might result from it. Then the Town Board needs to take a look at the current Zoning Code, and the lack of clarity that has been sited by several other people, and make sure that the code going forward is very clear for your board and the planning board, and for the applicants who want clarity as to what they can and can not do. If you recall 15 years ago there was a moratorium wide moratorium on cell phone (inaudible) this is similar to that. A very tall structure that is going to be very visible. I would encourage you as this progresses (inaudible) The Appalachian Trail Conference, I don't know if they have provided any, this is about 200 feet from their border, so we need to make sure that input is received as part of the application as an adjoining neighbor. They are the closes neighbor to this. We all want to make sure we don't suffer a death by 1000 cuts, so in your deliberations keep in mind obviously the long term implications of this. Find out and determine, our code is actually very clear that such uses, that it allows a variety of uses provided that such uses to not adversely affect neighboring properties, the natural environment, and our rural and historic character of the town. It sites communication towers, energy facilities and so forth. Those are the key terms that you all have to weigh here, and I don't envy you in that process, and I appreciate your deliberations on this. Thank you.

**Vincent Cestone-** We have been around the block, now back to you.

**Allen Smith-** I just want to make one point, because Mr. Gleick referred to the things that I said.

**Vincent Cestone-** Can you come, so it can be on the tape.

**Allen Smith-** I would suggest that Mr. Gleick go speak to the same homeowner that I spoke to, because he is talking about expertise versus us unknowledgeable voyeurs or whatever we might be. I spoke to the homeowner, and spent quite a bit of time with him. His concern was that

when he put the tower in he had a certain expectation as to what kind of electric was going to be delivered by the tower, and he is getting, he expected his payback to be seven years, and he thinks it is going to be about seventeen years. I know that Mr. Gleick's location is better than this homeowner, but his house is easily 10 times as large as this other one. This guy lived in a small house, and he was barely recovering 100 dollars a month on his electric bill. That is it.

**Vincent Cestone-** With that, you need to provide a lot of things to this board. I don't know if our next meeting on June 17th you will be ready, I doubt it, we can touch base, but I don't think with what you have to provide, and what the engineer has to do on our side you will be ready by then. If it is ok with you, I will leave you on the Agenda for June with the perception, unless you tell us otherwise, you can tell Tina that you are ready. We are just going to touch base and see where you are. Is that ok?

**Tina Andress- Landolfi-** They would have to have everything ready the last Monday of this month.

**Vincent Cestone-** We are going to touch base. I suspect we will have some public comment. We will touch base, and it would be a relatively short meeting.

**Connor Kays-** We are going to leave the public hearing open?

**Vincent Cestone-** Yes, we would have to vote as a board to close. This is not closing till all the t's are crossed and the i's are dotted.

**William Flaherty-** I think Vinny, based on the information that we have gotten here this evening that the applicant has a lot to do prior to the time that we can draw any conclusions and vote. I don't now if that will be accomplished by our next meeting or not.

**Connor Kays-** I doubt it as well.

**Vincent Cestone-** Who knows, the stars may align.

**William Flaherty-** Do you think it is possible

**Connor Kays-** I think if I push the engineer, I think it is possible o our end. I am not sure that the town Engineer is going to have the time he wants.

**(inaudible some interference)**

**Vincent Cestone-** We are going to continue this to our June Meeting you are welcome to speak, and we are probably going to continue into July. You are welcome to speak at both of those meetings or any one of them. With that unless there is any new business, I make a motion to adjourn.

**Robert Dee-** I second

**Vincent Cestone-** All in favor?

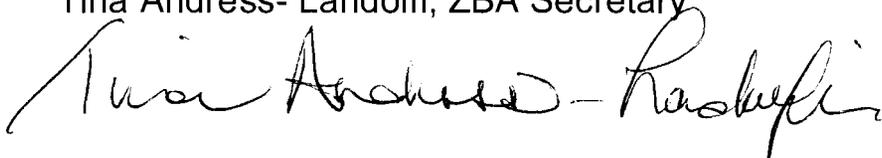
**ALL MEMBERS WERE IN FAVOR**

**MEETING CLOSED AT 9:00 pm**

**NOTE:** These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation, and approval thereupon.

**DATE APPROVED:** June 10, 2013

Respectfully Yours,  
Tina Andress- Landolfi, ZBA Secretary

A handwritten signature in black ink, appearing to read "Tina Andress-Landolfi", written in a cursive style.