

IN THE ALLEGANY COUNTY BOARD OF ZONING APPEALS

IN RE:

DAN'S MOUNTAIN * Cases Nos 942 and 943

WIND FORCE, LLC, et al., * Hearing Dates: 10/9/2019

FOR VARIANCES & SPECIAL EXCEPTION * 10/16/2019

FINDINGS OF FACT AND OPINION

I. PROCEDURAL BACKGROUND

Dan's Mountain Wind Force, LLC, and several property owners (identified below) (collectively, "the Applicant") have applied for several variances from Allegany County's requirements of set-backs from property lines, and separation of wind turbines from homes. See Case 943. All property owners affected by the variances have given written permission, as required by Allegany County Code, sec. 360-107(A)(8), and are co-Applicants.

The Applicant has also applied for a special exception to operate an Industrial Wind Energy Conversion System (IWECS), pursuant to Allegany County Code sec. 360-107. See Case 942. The Board has elected to consider the two cases together. Allegany County Code, sec. 360-107(A)(8) ("at the discretion of the Board of Appeals, variance applications may be heard in conjunction with the special exception hearing").

Hearings were held, initially, in October and December of 2015. At that time, the Board voted against all of the variances. The Applicant appealed to the Circuit Court for Allegany County, Maryland, which affirmed the decision of the Board. The Applicant further appealed to the Court of Special Appeals. On April 3, 2018, the Court of Special Appeals reversed the

decision of the Board, and remanded the matter for reconsideration on the record by the Board, outlining the correct legal tests to be applied to the evidence that was presented. See Dan's Mountain Wind Force, LLC, v. Allegany County Board of Zoning Appeals, 236 Md.App. 438 (2018).

Upon remand, the Board¹ conducted a site inspection on October 4, 2019, which was open to the public. On October 9, 2019, the Board held a public hearing for the Applicant and other interested parties to address the evidence in the record. No additional evidence was taken by the Board. However, arguments were heard from Applicant's attorney, Gorman E. Getty, III, Esq., and from Paul Flynn, Esq., Counsel for ANCHOR, Limited (a community organization). Comments from speakers from the community were also heard.

On October 16, 2019, the Board met in executive session, pursuant to Allegany County Code, sec. 360-141(G)(1), to consider the testimony and documentary evidence and to deliberate on a decision. At said deliberation, the Board considered each property and variance sought by the Applicant, and granted said variances under Case No. 943. The Board also granted the Applicant the Special Exception sought in Case No. 942.

II. FACTS

This recitation of the facts is from the prior decision of the Board.

“The Applicant has proposed to construct 17 wind turbine generators (the “turbines” [or “WTG’s”]) on leased property located on Dan’s Mountain. This property is located within the Agricultural, Forestry, and Mining (“A”) Zone and Conservation (“C”) Zone. The Allegany

¹ The membership of the current Board has changed from 2015. Mr. Bernard C. Wolters and Mr. Dale L. Dickerhoof were appointed by the Allegany County Commissioners to the Board prior to this hearing. The current Board chairperson, Mr. Mark Farris, recused himself and alternate member Mr. Brian Alderton took his place in these cases. The Board, so constituted, elected Mr. Wolters as Acting Chairperson for these cases.

County Code requires that wind turbines have a minimum separation distance of two thousand (2000) feet from any residential structure and a setback to the property line distance of “three times the height of the unit” which, in this case, is nine hundred and fifty five (995) feet. (Allegany County Code, 360-92(A) (2) and 360-92(B) (3)). A review of Applicant’s development proposal found that in order to meet the criteria of the zoning code, a variance to the separation distance is required for eight (8) residences and a variance to the setback requirements are necessary at two (2) locations. All of the subject property owners requesting a variance to the separation distance are co-applicants and have executed variance authorizations.

(See Exhibit ZZZ). These owners are as follows:

1. Lynn S. and Mary M. Keiter, Trustees; Liber 1552, folio 434; Tax Map 36, Parcel 104.1.
2. John R.H. and Betty J. Loar; Liber 1385, folio 10; Tax Map 36, Parcel 12.
3. John R. and Deborah L. Lashbaugh; Liber 588, folio 215; Tax Map 36, Parcel 169.
4. Michael P. Willison; Liber 2089, folio 233; Tax Map 48, Parcel 103.
5. Paul C. and Joann Willison; Liber 1470, folio 595; Tax Map 48, Parcel 102.
6. Daniel C. Willison; Liber 2089, folio 238, Tax Map 48, Parcel 104.
7. Eugene R. and Stephanie R. Cesnik; Liber 641, folio 577; Tax Map 48, Parcel 35.
8. John T. and Virginia Agnes Moffitt; Liber 658, folio 553; Tax Map 36, Parcel 104.4.

All of the subject property owners requesting a variance to the property line set back requirements are also co-applicants and have executed variance authorizations. (See Exhibit ZZZ). These owners are as follows:

1. USC OC of Cumberland, LLC; Liber 608, folio 504.
2. Maryland DNR; Liber 329, folio 281 and Liber 599, folio 573.

That five (5) of the eight (8) co-applicant property owner’s variance requests involve residential structures within the 2000 foot separation distance of multiple wind turbines. As such, while only ten co-applicants have filed for variance, evidence presented indicated that the Board

will have to review and grant twenty-six (26) separate variance requests and the related turbines to illustrate:

The Keiter Property

This property needs one (1) variance to the separation distance between it and Turbine 5 in the amount of 304 feet.

The Loar Property

This property needs one (1) variance to the separation distance between it and Turbine 11 in the amount of 224 feet.

The Lashbaugh Property

This property needs two (2) variances to the separation distance between it and Turbine 11 in the amount of 998 feet and it and Turbine 12 in the amount of 66 feet.

The Michael Willison Property

This property needs five (5) variances to the separation distance between it and Turbine 8 in the amount of 440 feet; Turbine 9 in the amount of 252 ft.; Turbine 12 in the amount of 867 ft.; Turbine 13 in the amount of 1013 ft.; and Turbine 14 in the amount of 547 ft.

The Paul & Joann Willison Property

This property needs five (5) variances to the separation distance between it and Turbine 8 in the amount of 570 feet; Turbine 9 in the amount of 542 ft.; Turbine 12 in the amount of 541 ft.; Turbine 13 in the amount of 794 ft.; and Turbine 14 in the amount of 547 ft.

The Daniel Willison Property

This property needs five (5) variances to the separation distance between it and Turbine 8 in the amount of 152 feet; Turbine 9 in the amount of 552 ft.; Turbine 13 in the amount of 619 ft.; Turbine 14 in the amount of 941 ft.; and Turbine 15 in the amount of 411 ft.

The Gene and Stephanie Cesnik Property

This property requests one (1) variance to a separation distance between it and Turbine 17 in the amount of 520 feet.

The John & Agnes Moffit Property

This property needs four(4)) variances to the separation distance between it and Turbine 6 in the amount of 477 feet; Turbine 7 in the amount of 919 ft.; Turbine 8 in the amount of 199 ft.; Turbine 11 in the amount of 192 ft. For the record, no residence is currently built on the site.

The USCOC of Cumberland Property

This property is subject to a property line setback variance request of 68 ft.

The State of Maryland Property

This property is subject to a property line setback variance request of 533 ft.

Absent the Board's granting of these twenty six (26) variances, the Applicant has indicated that the proposed wind turbine array will not be economically viable and the subject property owners will not be able to utilize the full use of their land."

III. APPLICABLE LAW FOR VARIANCES

The Court of Special Appeals, in Dan's Mountain Wind Force, LLC, v. Allegany County Board of Zoning Appeals, 236 Md.App. 483 (2018), found Applicant had presented evidence of several factors affecting the properties: (a) topography, (b) property boundaries, (c) proximity of buildings and dwellings, (d) stream channels, (e) the habitat of the Allegheny Woodrat, (f) the habitat of Black-fruited Mountain Rice, (g) existing wetlands areas, (h) prior strip mining in the area, (i) communication beam paths from radio and microwave towers passing through the area, and (j) technical requirements of the WTG themselves. Id. at 488-489.

The appellate court determined that the Board had applied the incorrect legal test to the evidence before it. The Court held the proper test to be applied by the Board in this case was as follows:

“[f]irst, the Board must determine whether the unusual factors identified by the Applicant are, in fact, features of that particular property.....
second, the Board must determine whether the effect or effects those features have on the property, taken together, have a nexus with the part of the zoning law from which a variance is sought....[]
third, the Board must determine whether the effect of those factors on the property is unique as compared to similarly situated properties.

Dan's Mountain Wind Force, 236 Md.App. at 498.

If this uniqueness is found, the Board must then determine whether the uniqueness forms a “practical difficulty” to the use of the property. Dan's Mountain, supra at 501 (relying on Montgomery Co. v. Rotwein, 169 Md.App. 716 (2006). Applied here, the Board should consider whether (a) whether strict compliance with set-back or separation requirements would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome...”, (b) whether a variance would do “substantial justice to the applicant as well as other property owners..,” and (c) whether a variance allows “the spirit of the ordinance [to] be observed and public safety and welfare secured.” Id. at 729-730. A factor to be considered under the “less-stringent” practical difficulties test is whether “it is impossible to secure a reasonable return from, or to make a reasonable use of such property.” Rotwein, supra at 733.

IV. THE INDIVIDUAL PROPERTIES AND TURBINES (CASE 943)

The Board considered the eight properties for which separation distance variances were sought. In its deliberations, the Board considered the testimony previously presented in the 2015

hearings, the exhibits introduced at all hearings, the Board's own site inspection, the arguments of counsel and the instructions of the reviewing courts.

The evidence adduced for each property, and the findings of the Board for each property (by a 2-1 vote),² are as follows:

(A) The Keiter Property. The Applicants seek a reduction in the separation distance from the Keiter home to the site of Wind Turbine Generator (WTG) #5 from the required 2000 feet to 1696 feet (304 foot reduction).

Applicant adduced evidence that the property in question is affected by the wetlands identified by the State Department of Natural Resources, the slope and grade of the location, and by the location of the other WTG's, limiting the placement of WTG to a very limited "footprint." T. at 191-194. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing WTG 5 in any location other than the one requested.

Weighing the evidence, the Board finds

1. The Keiter Property, and the site of WTG #5, are affected by the locations of protected wetlands and their buffer zones, by the grade of the land and by the locations of other WTG's;

2. Those described features affect the location of WTG #5 and therefore have a direct nexus with the request to reduce the required separation from a home;

3. Those described features have a unique effect on the Keiter Property, and a unique effect on the location of WTG #5, when compared to similarly situated properties; and

4. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variance sought would not infringe on the rights

² Board Member Brian Alderton dissented from the decision of the Board for the separation variances, as described below.

on the rights of non-Applicants and (c) the variance preserves the spirit of the ordinance and the public safety.

(B) The Loar Property. The Applicants seek a reduction in the separation distance from the Loar home to the site of Wind Turbine Generator (WTG) #11 from the required 2000 feet to 1776 feet (224 foot reduction).

Applicant adduced evidence that the property in question is affected by the wetlands identified by the State Department of the Environment, the habitat of the Allegheny Woodrat, and by the “beam paths” of communications from nearby radio and microwave towers. T. at 196-197. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing WTG 11 in any location other than the one requested, due to the potential damage to natural resources. T. at 197.

Weighing the evidence, the Board finds

5. The Loar Property, and the site of WTG #11, are affected by the locations of protected wetlands and their buffer zones, by the habitat of the Allegheny Woodrat and by radio and microwave transmissions.

6. Those described features affect the location of WTG #11 and therefore have a direct nexus with the request to reduce the required separation from a home;

7. Those described features have a unique effect on the Loar Property, and a unique effect on the location of WTG #11, when compared to similarly situated properties; and

8. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variance sought would not infringe on the rights

on the rights of non-Applicants and (c) the variance preserves the spirit of the ordinance and the public safety.

(C) The Lashbaugh Property. The Applicant seeks two variances here: a reduction in the separation distance from the Lashbaugh home to WTG #11 from the required 2000 feet to 1002 feet (998 foot reduction), and a reduction in the distance from the Lashbaugh home to WTG #12 from 2000 feet to 1943 feet (66 foot reduction).

Applicant adduced evidence that the property in question is affected by the wetlands identified by the State Department of the Environment, by the habitat of the Allegheny Woodrat, by the location of the other homes in the area, and by radio and microwave beam paths, limiting the placement of WTG #11 and #12 to limited locations. T. at 200-201; see also T. at 183. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing WTG #11 and #12 in any location other than the one requested.

Weighing the evidence, the Board finds

9. The Lashbaugh Property, and the site of WTG #11 and 12, are affected by the locations of protected wetlands and their buffer zones, by the habitat of the Allegheny Woodrat, by radio and microwave beam paths, and by the locations of other homes;

10. Those described features affect the location of WTG #11 and 12 and therefore have a direct nexus with the request to reduce the required separation from a home;

11. Those described features have a unique effect on the Lashbaugh Property, and a unique effect on the location of WTG #11 and 12, when compared to similarly situated properties; and

12. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variances sought would not infringe on the rights on the rights of non-Applicants and (c) the variances preserve the spirit of the ordinance and the public safety.

(D) The Michael Willison Property. The Applicant seeks five (5) variances: a reduction of 440 feet from WTG #8, a reduction of 252 feet from WTG #9, a reduction of 867 feet from WTG #12, and reduction of 1013 feet from WTG #13 and a reduction of 565 feet from WTG #14.

Mr. Brewer testified that the property in question is affected by the wetlands identified by the State Department of Natural Resources, the habitat of Black-fruited Mountain Rice, the beam paths of communication towers, and the Woodrat habitat, limiting the placement of WTG's. T. at 202-203. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing these WTG's in any location other than the one requested.

Weighing the evidence, the Board finds

13. The Michael Willison Property, and the sites of WTG #8, 9, 12, 13 and 14 are affected by the locations of protected wetlands and their buffer zones, the natural habitats of protected Black-fruited Mountain Rice and the Allegheny Woodrat, and the emissions of communications towers;

14. Those described features affect the location of WTG #8 through #14, and therefore have a direct nexus with the request to reduce the required separation from a home;

15. Those described features have a unique effect on the Michael Willison Property, and a unique effect on the location of WTG #8, 9, 12, 13 and 14 when compared to similarly situated properties; and

16. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variances sought would not infringe on the rights on the rights of non-Applicants and (c) the variances preserve the spirit of the ordinance and the public safety.

(E) The Paul & Joann Willison Property. The Applicant seeks five variances: a reduction of 570 feet from WTG #8; a reduction of 542 feet from WTG #9; a reduction of 541 feet from WTG #12; a reduction of 794 feet from WTG #13; and a reduction of 547 feet from WTG #14.

Mr. Brewer testified that the property in question is affected by the wetlands identified by the State Department of Natural Resources, the habitat of the Black-fruited Mountain Rice, the beam paths of communication towers, and the Woodrat habitat, limiting the placement of WTG's. T. at 203. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing these WTG's in any location other than the one requested.

Weighing the evidence, the Board finds

17. The Paul & Joann Willison Property, and the sites of WTG #9, 12, 13 and 14, are affected by the locations of protected wetlands and their buffer zones, the natural habitats of protected Black-fruited Mountain Rice and the Allegheny Woodrat, and the emissions of communications towers;

18. Those described features affect the location of WTG #8, 9, 12, 13 and 14, and therefore have a direct nexus with the request to reduce the required separation from a home;

19. Those described features have a unique effect on the Paul & Joann Willison Property, and a unique effect on the location of WTG #8, 9, 12, 13 and 14, when compared to similarly situated properties; and

20. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variance sought would not infringe on the rights on the rights of non-Applicants and (c) the variances preserve the spirit of the ordinance and public safety.

(F) The Daniel Willison Property. The applicant seeks five (5) variances: a reduction of 152 feet from WTG #8; a reduction of 552 feet from WTG #9; a reduction of 619 feet from WTG #13; a reduction of 941 feet from WTG #14; and a reduction of 411 feet from WTG #15.

Mr. Brewer testified that the property in question is affected by the wetlands identified by the State Department of Natural Resources, the habitat of the Black-fruited Mountain Rice, the beam paths of communication towers, and the Woodrat habitat, limiting the placement of WTG's. T. at 203-205. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing these WTG's in any location other than the one requested.

Weighing the evidence, the Board finds

21. The Daniel Willison Property, and the sites of WTG #8, 9, 13, 14 and 15, are affected by the locations of protected wetlands and their buffer zones, the natural habitats of

protected Black-fruited Mountain Rice and the Allegheny Woodrat, and the emissions of communications towers;

22. Those described features affect the location of WTG #8, 9, 13, 14 and 15, and therefore have a direct nexus with the request to reduce the required separation from a home;

23. Those described features have a unique effect on the Daniel Willison Property, and a unique effect on the location of WTG #8, 9, 13, 14 and 15, when compared to similarly situated properties; and

24. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variances sought would not infringe on the rights on the rights of non-Applicants and (c) the variances preserve the spirit of the ordinance and public safety.

(G) The Cesnick Property. Applicant seeks a single variance here, reducing the separation distance of the Cesnick residence from WTG #17 by 520 feet.

Mr. Brewer testified that the property in question is affected by the wetlands identified by the State Department of Natural Resources, as well as the beam paths of communication towers, limiting the placement of WTG's. T. at 206. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing these WTG's in any location other than the one requested.

Weighing the evidence, the Board finds

25. The Cesnick Property, and the site of WTG #17, are affected by the locations of protected wetlands and their buffer zones, and the emissions of communications towers;

26. Those described features affect the location of WTG #17, and therefore have a direct nexus with the request to reduce the required separation from a home;
27. Those described features have a unique effect on the Cesnick Property, and a unique effect on the location of WTG #17, when compared to similarly situated properties; and
28. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variance sought would not infringe on the rights on the rights of non-Applicants and (c) the variance preserves the spirit of the ordinance and public safety.

(H) The Moffitt Property. Applicant seeks four (4) variances: a reduction in the separation distance from WTG #6 of 477 feet; a reduction in the distance of 919 feet from WTG #7; a reduction in the distance of 199 feet from WTG #8; and a reduction in the distance of 192 feet from WTG #11. This property is unusual as there is no home on the Moffitt Property at this time; the owner hopes to build one in the next few years and provided Applicant with its proposed location. As the Applicant has applied for variances here, the Board will consider the evidence as if the home was in existence.

Mr. Brewer testified the property in question is affected by the wetlands identified by the State Department of Natural Resources and the habitat of Black-fruited Mountain Rice. T. at 207-208. Mr. Matthew Brewer also produced evidence that these unique factors produced a practical difficulty in placing these WTG's in any location other than the one requested.

Weighing the evidence, the Board finds

29. The proposed home on the Moffitt Property, and the sites of WTG #6, 7, 8 and 11, would be affected by the locations of protected wetlands and their buffer zones, and the natural habitats of protected Black-fruited Mountain Rice;

30. Those described features affect the location of WTG #6, 7, 8 and 11, and therefore have a direct nexus with the request to reduce the required separation from a home;

31. Those described features have a unique effect on the Moffitt Property, and a unique effect on the location of WTG #6, 7, 8 and 11, when compared to similarly situated properties; and

32. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variances sought would not infringe on the rights on the rights of non-Applicants and (c) the variances preserve the spirit of the ordinance and public safety.

Therefore, upon the evidence, the Board GRANTS the separation variances sought by the Applicant.

Board Member Brian Alderton dissented from the decision of the Board. In his judgment, the Applicant had *not* shown that the effect of the factors described had a “unique effect” on the properties justifying a variance. While each property had a specific configuration of factors (such as wetlands or microwave beam paths), the type of factors facing each property were the same. Thus, he believed the properties had similar features and issues such that general relief by legislation from the County Commissioners was appropriate. See Dan's Mountain Windforce, *supra* at 494 (“if the allegedly restrictive effect of the zoning law is not unusual, and a characteristic is shared by many properties, the problem ought to be addressed by legislation”).

The Board also considered two variance requests regarding property line setback requirements. The Board's unanimous decision is as follows.

(I) The USCOC property. Applicant here seeks a variance from the property-line setback requirement of 68 feet.

Mr. Brewer testified that WTG #16 could not be located further back from the USCOC property-line due to the habitat of the Allegheny Woodrat. Additionally, moving WTG #16 in any direction would impinge on the beam paths of communications towers in existence. T. at 211-212; see also Exhibit 230 (Map of beam paths). Therefore, Mr. Brewer concluded that it would be almost impossible to site WTG #16 and not infringe on the property setback. T. at 214.

Weighing the evidence, the Board finds

33. The USCOC Property, and the site of WTG #16, is affected by the locations of protected animal habitats and their buffer zones, and the emissions of communications towers;

34. Those described features affect the location of WTG #16, and therefore have a direct nexus with the request to reduce the required property-line setback;

35. Those described features have a unique effect on the USCOC Property, and a unique effect on the location of WTG #16, when compared to similarly situated properties; and

36. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variance sought would not infringe on the rights

on the rights of non-Applicants and (c) the minor variance to the set-back requirement preserves the spirit of the ordinance and the public safety.

(J) The State of Maryland Property. Applicant here seeks a variance from the property-line setback requirement of 402 feet.

Mr. Brewer testified that WTG #17 could not be located further back from the State property-line due to the wetlands and their buffer zone, as well as the grade and slope of the location. Additionally, moving WTG #17 in any direction would impinge on the beam paths of communications towers in existence. T. at 213; see also Exhibit 230 (Map of beam paths). Therefore, Mr. Brewer concluded that it would be almost impossible to site WTG #17 and not infringe on the property setback. T. at 215.

Weighing the evidence, the Board finds

37. The State of Maryland Property, and the site of WTG #17, is affected by the locations of protected wetlands and their buffer zones, the topography of the property, and the emissions of communications towers;

38. Those described features affect the location of WTG #17, and therefore have a direct nexus with the request to reduce the required property-line setback;

39. Those described features have a unique effect on the State of Maryland Property, and a unique effect on the location of WTG #17, when compared to similarly situated properties; and

40. That uniqueness forms a practical difficulty in the use of the property, as (a) it severely limits the placement of WTG's, (b) the variance sought would not infringe on the rights

on the rights of non-Applicants and (c) the variance preserves the spirit of the ordinance and the public safety.

Therefore, upon the evidence, the Board GRANTS the set-back variances sought by the applicant.

V. THE SPECIAL EXCEPTION (CASE NO. 942)

As described above, windmills are a permitted use within districts zoned Agricultural (“A”) and Commercial (“C”). However, said use must be approved by the Board of Zoning Appeals as a special exception. Allegany Code, sec. 360-170.

The test as to whether to grant a special exception was described in Schultz v. Pritts, 291 Md. 1 (1981). The Court of Appeals there held

the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use....”

Id. at 22-23.

The Applicant presented expert testimony from Mr. Matthew Brewer, who testified that the Project’s design was in compliance with all site design criteria required by the Allegany County Code. T. at 121-142. He further testified that the Project, and its variances, caused no “risk or harm to the health, safety of welfare of the general public.” T. at 209. Mr. Richard Josephson provided expert testimony that the Project, and the requested special exception, was consistent with the Allegany County Comprehensive Plan. T. at 383. Mr. Sean Davis provided expert testimony that the Project would have no greater impact on Dan’s Mountain than

anywhere else in the County, T. at 455, and that the Project was designed to be low-impact. T. at 458.

Opposing the special exception were numerous community comments regarding the impact the Project would have on the views of Dan's Mountain, the "scenery" of the area, and on the property values and livability of adjoining developments and property owners, such as Harwood Development. T. at 560-732. There was also public comment regarding the health effects of windmills and wind farms. See, e.g., T. at 646 (Statement of Tammy McKenzie); See, e.g., T. at 679-687 (Statement of Dr. Wayne Spiggle, M.D.). No expert testimony regarding these claims was presented, however.

Board Member Brian Alderton voted against granting the special exemption. He believed that the community testimony, including, but not limited to, that from doctors (T. at 679 – Statement of Dr. Wayne Spiggle, M.D.) and professional builders (T. at 722 – Statement of Walter Merrill), demonstrated the Project would have additional adverse impacts placed on Dan's Mountain beyond that of a normal IWECS.

Weighing the evidence presented, the Board finds (by a 2-1 vote):

41. The Project is consistent with the County's Comprehensive Plan;
42. The Project has been designed to have the least impact possible on the site; and
43. The Project would not have any adverse effects above and beyond those

inherently associated with windmills.

Therefore, Applicant's request for a special exception in Case 942 is GRANTED.

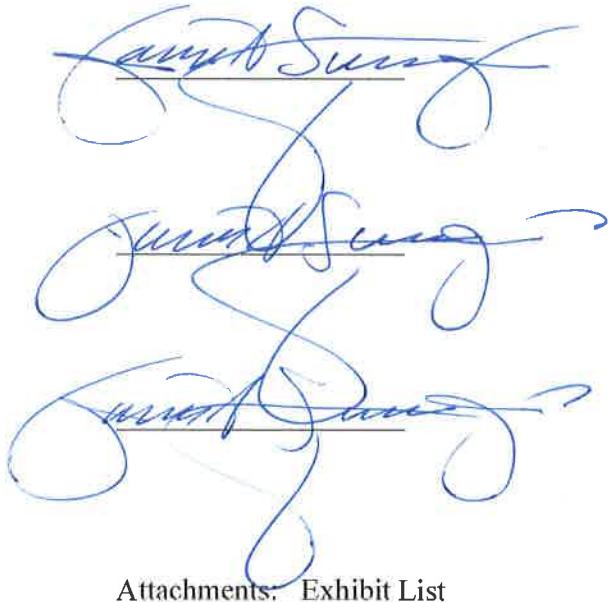
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CONCLUSION

For the reasons explained above, the Board (by 2-1 vote) hereby **GRANTS** the separation variances sought by the Applicant. The Board (by 3-0 vote) further **GRANTS** the set-back variances sought by the Applicant. Finally, the Board (by 2-1 vote) **GRANTS** the special exception sought by the Applicants.

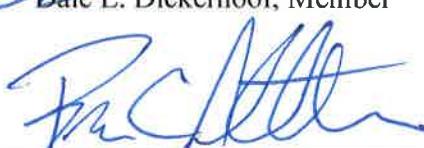
ATTEST

BOARD OF ZONING APPEALS



By: 
Bernard C. Wolters, Acting Chairperson

By: 
Dale L. Dickerhoof, Member

By: 
Brian Alderton, Alternate Member
Dissenting as Described Above

Attachments. Exhibit List

BOARD OF ZONING APPEALS
FOR ALLEGANY COUNTY, MARYLAND

CASE(S) # 942-943
DANS MOUNTAIN WIND FORCE, L.L.C.

HEARING: OCTOBER 27TH-29TH, 2015

HEARING: NOVEMBER 13TH, 2015

HEARING: OCTOBER 9TH, 2019

HEARING: OCTOBER 16TH, 2019

EXHIBITS

FINAL: As of 10/16/2019 10:20 a.m.

(documents in grey bound; as submitted and numbered by Applicant(s) upon filing of Special Exception)

- A. Memorandum of Lease Agreements
- B. List of Adjoining Property Owners
- C. Site Plans (Special Exception, 8x11; Exhibit C.1 is printed in 24x36 format for legibility)
- D. *unassigned*
- E. *unassigned*
- F. School setback map (see also F.1. supplement for legibility)
- G. Communication from US Fish & Wildlife Service
- H. Communication from Maryland DNR
- I. Electromagnetic Interference Analysis (EIA II) (Exhibit I.1, stand alone document, received 5/4/2015)
- J. Access prevention device
- K. *Land Use Permit Application #1507005*
- L. *Petition for a Special Exception*. (Exhibit L.1 – Co_Applicants)
- M. Vicinity Map, includes Tax Map Parcel Layer, for property identification and WTG placement.
- N. Adjoining Property Owners List compiled by the Applicant.
- O. *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- P. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- Q. *Inter Office Memo*, prepared by the LDS office, a document distributed to the necessary review agents notifying them of the Case, date, time; and requesting comment.
- R. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- S. *Certification of Public Notice*, received from the Cumberland Times/News, certifying that the *Public Notification* was published July 25th, 2015. (Exhibit S.1, attached, portion of T/N, Section 4C, containing Public Notice of Case 942 & 943, verifying that the *Public Notification* for this Case was published)
- T. Transmittal from BB&A covering responses to EIA (Version I)
- U. Supplemental information for EIA II, cover letter from LRP, dated May 5, 2015.
- V. Correspondence: Received from US Cellular regarding Special Exception Case 942
- W. Correspondence: Dorsey to Squires, dated 7/29/2015, regarding BOZA Case #942
- X. *Motion for Continuance*, filed 7/30/2015.
- Y. *Public Notification* for hearing regarding *Motion for Continuance*, dispatched 7/31/2015. (Y.1 County Press Release)
- Z. *Screen shot of County Landing Page* (7/31/2015) noting announcement of Public Hearing for *Continuance* (Z.1 County Press Release)
- AA. Correspondence: Randal and Elaine Ridenour to BOZA, dated 7/31/2015, regarding BOZA Case #942
- BB. Returned *Notification of the Hearing* dispatched to State of Maryland, Game and Inland Fish Commission, marked "Return to Sender – No Such number..."
- CC. *Petitioner's Response to Motion for Continuance*, filed 8/3/2015.
- DD. Correspondence received from LRP, dated 5/1/2015, covering other correspondence regarding the EIA, ver II
- EE. Concept Submittal, dated 7/2/2015, (regarding construction of array) distributed to Review Agents requesting comment and/or approval. (Exhibit EE.1, 24x36 Concept Submittal, date 7/2/2015)
- FF. Assorted correspondence received at LDS office regarding EIA (Version I?)

C O N T I N U A N C E

GG. Correspondence: Rice to BOZA, dated July 16, 2015, regarding DWMF petition
 HH. *Motion for Continuance*, dated 7/30/2015, filed by J. Matthew Gilmore (on behalf of Stan Skidmore, et al)
 II. *Petitioner's Response to Motion for Continuance*, dated 8/3/2015, filed by Gorman Getty, et all (on behalf of DMWF LLC)
 JJ. *Notification of Hearing Postponement*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
 KK. *Memorandum*, Angela Patterson to LDS, dated 8/13/2015, providing review comments related to *Concept Plan Submittal* received 7/6/2015 (re: SWM).
 LL. Times/News article (website), dated 8/13/2015, regarding sale of WTBO/other radio stations. Submitted by Darlene Park.
 MM. *Order*, dispatched by BOZA, regarding hearing date for the continuance of BOZA Cases 942 and 943. Exhibit includes distribution list.
 NN. *Memorandum*, Adam Patterson to LDS, dated 9/10/2015, providing review comments related to *Concept Plan Submittal*, reference #14SS33
 OO. *Notice to Strike Entry of Appearance*, prepared by Matthew Gilmore, dated 9/8/2015.
 PP. Comprehensive response (via email) to DMWF plan submittal, from Amy Stonebreaker to Matt Brewer, dated 9/11/2015. Includes memorandums (comments) from Amy Stonebreaker, Angela Patterson, and Adam Patterson.
 QQ. *Clearing House Memorandum* (State of Maryland), prepared by Roy Cool, ACDCS, regarding 348' microwave/radio tower, other, to be constructed by the Maryland Department of Information technology at a location near Dans Rock.
 RR. Correspondence: US Cellular to LDS, dated September 22, 2015, regarding EIA.
 SS. Email, from David Friend, DWMF, to LDS, regarding EIA II *comment letters*. Email includes correspondence from: WCRH Radio; TWR Communications; United States Department of Commerce; ConXX, Inc; Black Diamond Industries; Orbital ATK Inc.; Mike Hussey (July 30 and Sept. 22, 2015)
 TT. Correspondence: Marked *RTS* from USPO: Regarding *Hearing Postponement Notice* dated August 6, 2015.
 UU. Correspondence: Marked *RTS* from USPO: Regarding *Hearing Continuance*. Dispatched by staff September 2, 2015.
 VV. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location (10/27 Continuance).
 WW. *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board. (10/27 Continuance)
 XX. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board (10/27 Continuance)
 YY. *News Release* regarding Hearing, dispatched by Brett Rienhard, Public Information Officer. Includes screenshot of County's Main Website Landing Page noting Hearing Date/Time. (10/27 Continuance)
 ZZ. *Email*: Article prepared by K. Darlene Park, dated 10/11/2015, dispatched to Cumberland Times/News for publication (publication status unknown).
 AAA. Portion of the Saturday, October 10, 2015, edition of the Cumberland Times/News, Section B7, containing *Public Notice* of Case 942 & 943 (10/27 Continuance) verifying that the *Public Notification* for these Cases was published.
 BBB. Correspondence: Dispatched to BOZA, from Edward Giugliano, dated 10/14/2015.
 CCC. *Email*: Comments from Andrea Baker to J. Squires, dated 10/18/2015.
 DDD. *Email Attachment*: Correspondence from Lynn Keiter and Mary Keiter to BOZA, dated 10/18/2015.
 EEE. Document entitled Petitioner's Pre-Hearing Memorandum on Legal Issues, stamped received 10/20/2015.
 FFF. *Inter Office Memo*, dated 10/19/2015, prepared by the LDS office, a document distributed to the necessary review agents notifying them of this Case, date, time; and requesting comment. (10/27 Continuance)
 GGG. *Memorandum* dated 10/21/2015, from James A. Squires Jr., Division Chief, to the Allegany County Board of Zoning Appeals, regarding site development plan requirements.
 HHH. Last revision to LUP Application #1507005, revision date of 10/21/2015, unexecuted. (Note: Also to be considered as Exhibit K)
 III. Correspondence: James Llewellyn Ph.D., to the BOZA, dated 10/19/2015, regarding BOZA Case #942 and 943.
 JJJ. Correspondence: Dana Hites to the BOZA, dated 10/20/2015, regarding BOZA Case #942 and 943.(multiple, addressed to each Member)
 KKK. Correspondence: Jennifer Hilderbrand Sween to the BOZA, dated 10/15/2015, regarding BOZA Case #942 and 943.
 LLL. Correspondence (collectively): Marked *RTS* from USPO: Regarding *Hearing Notice* for October 27th, 2015, Hearing. *Notice* dated October 8, 2015 (Four (4) correspondence; includes Joseph Tindal, Keith Schlegel/Ellen Grolman, State of Maryland-Game and Inland Fish Commission, and Carl Schmidt Jr.).
 MMM. Correspondence: Sandra Llewellyn, BSN/RN, to the BOZA, dated 10/21/2015, regarding BOZA Case #942 and 943.
 NNN. Correspondence: Donald Shirley to the BOZA, dated 10/24/2015, regarding BOZA Case #942 and 943.
 OOO. Correspondence: Pamela J. Ronan to the BOZA, dated 10/23/2015, regarding BOZA Case #942 and 943.
 PPP. Correspondence: Dr. Richard A. Lechliter, DVM, to the BOZA, dated 10/26/2015, regarding BOZA Case #942 and 943.
 QQQ. Email: Gordon Riffe to the BOZA, dated 10/24/2015, regarding BOZA Case #942 and 943.
 RRR. Correspondence: Walter E. Merrill to the BOZA, dated 10/17/2015, regarding BOZA Case #942 and 943.
 SSS. Correspondence: Delegate Jason C. Buckle and the Delegate Michael W. McKay to the BOZA, dated 10/26/2015, regarding Laurel Run Partners Wind Project (BOZA Case #942 and 943).
 TTT. Correspondence: Carl Belt, Jr. of Carl Belt, Inc., to the BOZA, dated 10/26/2015, regarding BOZA Case #942 and 943.

UUU. Email: Ronald and Shelly Brown to the BOZA, dated 10/25/2015, regarding BOZA Case #942 and 943.
 VVV. Correspondence: Cynthia L. Pyles to the BOZA, dated 10/26/2015, regarding BOZA Case #942 and 943.
 WWW. Correspondence: Dave Weimer to the BOZA, dated 10/22/2015, regarding BOZA Case #942 and 943.
 XXX. Correspondence: Stuart C. Czapski, Allegany County Chamber of Commerce, to the BOZA, dated 10/22/2015, regarding BOZA Case #942 and 943.
 YYY. Correspondence: Randal and Elaine Ridenour to BOZA, dated 7/31/2015, marked *Received 10/26/2015*, regarding BOZA Case #942 and 943. (Note: Reference Exhibit AA, this correspondence may have been revised).
 ZZZ. Exhibits 942 (A-YYY) and Exhibits 943 (A-D), collectively [all Exhibits received and processed prior to commencement of hearing].

H E A R I N G 1 0 / 2 7 / 2 0 1 5

AAAA. Credentials of Mr. Matt Brewer, PE, PLS (includes MD DLLR Licenses, PE/PLS)
 BBBB. PowerPoint Presentation(by DMWF), Case 942-Special Exception, Section 360-100
 CCCC. PowerPoint Presentation(by DMWF), Case 942-Special Exception, Section 360-101
 DDDD. PowerPoint Presentation (by DMWF), Case 942-Special Exception, Section 360-92
 EEEE. PowerPoint Presentation (by DMWF), Case 943-Variance
 FFFF. Correspondence: Goodwin and Associates, Grandine to Friend, dated 07/24/2015, regarding National Register Properties
 GGGG. Correspondence: US Department of Interior, LaRouche to Clapp, dated 04/30/2015, regarding Bird and Bat Conservation Strategy
 HHHH. Correspondence: US Department of Interior, LaRouche to Clapp, dated 05/28/2015, CORRECTION regarding Bird and Bat Conservation Strategy
 IIII. Correspondence: Maryland DNR, McKnight to Laurel Renewable Partners, LLC, dated 08/05/2015, regarding Allegheny Woodrat (covers portions of site plans).
 JJJJ. Document: Bird and Bat Conservation Strategy (Dans Mountain Project), prepared by Meinke and Young [West, Inc.], dated 09/23/2014
 KKKK. Document: EIA Guidelines, dated 04/15/2015 (Revised).
 LLLL. Correspondence: Laurel Renewable Partners, LLC, to Squires, dated 05/12/2015, regarding supplemental information to DMWF EIA II
 MMMM. Inventory/Roster: Covering various correspondence regarding DMWF EIA II, multiple preparers/dates
 NNNN. Correspondence: US Department of Commerce, Tenhula to O'Brien, dated 06/29/2015, regarding Interdepartmental Radio Advisory Committee (IRAC)
 OOOO. Document: Confirmation of Delivery, DMWF EIA II
 PPPP. Document: Feasibility of Relocating Turbine 3,4,5 in DMWF Project, prepared by Yi Luo, submitted 11/20/2014
 QQQQ. Portion of USGS Quadrangle Map, with label "Mining Location Information"

H E A R I N G 1 0 / 2 8 / 2 0 1 5

RRRR. Correspondence: Lowell Chapman, PE, to AC LDS office, dated 10/20/2014, regarding Keiter Subdivision Plat (Kens Lane)
 SSSS. Correspondence: James Walsh, Esquire, to Matt Brewer, PE, dated 10/23/2015, regarding Kens Lane
 TTTT. Correspondence: Daniel R James, Esquire, to AC BOZA, dated 10/28/2015, regarding Hearing. WTGs, plus.
 UUUU. Credentials: Richard Josephson, Planner
 VVVV. Credentials: Sean D. Davis, RLA
 WWWW. Report: *The Regulations and Management of Wind-Energy Devices*, dated January 2009
 XXXX. Curriculum Vitae: Robert Miller (regarding EM signals/communications)
 YYYY. Document: Elaine L. Ridenour, comments regarding DMWF and 2014 AC Comprehensive Plan
 ZZZZ. Document: Public Comment by Ernest Santmyire, dated 10/27/2015 (FM Radio Station Operator)

[End Alphabetic labeling of Exhibits, begin Arabic Numbers]

105. Document: Statement by Carol A. Wilson, dated 10/27/2015 (re: Pinnacle Wind Farm)

H E A R I N G 1 0 / 2 9

106. Document: Bound document prepared by Darlene Park regarding Code Home Rule Bill and zoning regulations (clear cover/red cover, multi-page)
 107. Document: Demographics of Allegany County, Maryland (Presentation, Darlene Park, bound document with maps, green cover)
 108. Document: Petition to Oppose Dans Mountain Wind Force Special Exception (bound, clear cover/red cover, multi-page)
 109. Document: ...Statement on behalf of Edith McKenzie Bohanan...(3 page)

110. Email: Regarding Eileen Stoger (Header: Elaine Ridenour, 2 page)
 111. DVD: (Video) Presentation by Tammy McKenzie regarding WTGs, effects (two copies, noted 'B')
 112. Exhibits collectively: 112.1. through 112.8

112.1. Cover: Narrative
 112.2. Findings – Infrasound Noise Study (6-2-2014)
 112.3. Correspondence: Hessler to O'Toole, dated 12-12-2013, regarding noise abatement
 112.4. Report: Noise Control, dated 9-9-2014
 112.5. Email: Peer review, dated 4-19-2015
 112.6. Report: World Health Organization (Europe), Night Noise Guidelines for Europe
 112.7. Note: Authored by A. J. Jarszy (sp?), dated 9-10-2014
 112.8. Report: Report # 122412-2 "... Low Frequency and Infrasound at Shirley Wind Farm...", dated 12-24-2012

113. Presentation: Wind Turbine Research on the Issues, the Facts and Reality, 10-29-2015, by Dana Hites
 114. Correspondence: Douglas Gansler, AG, to Honorable Marin O'Malley, Governor, dated 5-8-2013, regarding SB 370, "...Industrial Wind Energy"
 115. Document: "Handout from Dana Hites...", dated 10-27-2015. (bound; clear cover/green cover, multi-page: includes CD)
 116. Document: Prepared by Elaine Ridenour, regarding Petition Signatures, related comments.
 117. Document: Entitled "Conclusions of Scholarly Papers and News Reports....", dated 10-27-2015 (Dr. Spiggle)
 118. Document: Prepared by Allen Dale, regarding CHR Bill 2-09/Cases 942-943 (bound; clear cover/red cover, multi-page)
 119. Document: Prepared by Walter E. Merrill, dated 10-27-2015 (assorted, multi-page)

- 119.1 Times/News, October 29th Edition (portion)
- 119.2 Email: (referencing Cook and Friend)

P O S T H E A R I N G o f 1 0 / 2 9

120. Document: Prepared by Patricia Wilson, regarding CHR Bill 2-09/Cases 942-943
 121. Correspondence: Cynthia L. Pyles to BOZA, dated 10-26-2015, regarding wind farm.
 122. Correspondence: Jennifer Shaw to BOZA, dated 10-26-2015. (multiple, correspondence to each BOZA Member)
 123. Document: Prepared by Walter E. Merrill, dated 10-17-2015 (assorted, multi-page; reference Exhibit 119)
 124. Correspondence: Jason Kappa to Whom It May Concern (dated recv'd 10-30-2015), regarding Laurel Renewable.
 125. Document: Memorandum in Opposition, regarding Dans Mountain Wind Force LLC (Case 942-943), prepared by Jayci Shaw Duncan, Esquire.
 126. *Certification of Public Notice*, received from the Cumberland Times/News, certifying that the *Public Notification* of the October 27th Hearing was published October 10th, 2015.
 127. *Press Release*: Dispatched by BOZA, to inform Interested Parties and the public of the November 13th, 9 a.m., Hearing Continuance of BOZA cases 942-943. Release includes certification by the County's Public Information Officer.
 128. Email: Deb Lashbaugh to Squires, dated 10-27-2015, regarding Dans Mountain Turbines
 129. Correspondence: Brenda Smith, Executive Director of TGCC, to BOZA, dated 7-15-2015, regarding Dans Mountain Wind Force LLC
 130. Email: k.bar665@yahoo.com to Squires, dated 10-31-2015, regarding WTGs, Four Mile Ridge (project); contains link to YouTube.
 131. Email: Deb Lashbaugh to Squires, dated 11-1-2015, regarding Dans Mountain Wind Project, Case 942-943
 132. Email: Rick Lashbaugh to Squires, dated 11-1-2015 (time stamp 2:13 pm), regarding Dans Mountain Wind Project, Case 942-943
 133. Email: Rick Lashbaugh to Squires, dated 11-1-2015 (time stamp 2:16 pm), regarding Dans Mountain Wind Project, Case 942-943
 134. Email: Lynn Keiter and Mary Keiter to Squires, dated 10-31-2015, regarding BOZA Case 942-943
 135. Email: Rick J. Sivic Sr. to Squires, dated 11-2-2015, regarding BOZA Case 942-943
 136. Correspondence: John R. Emerick to BOZA, dated 11-2-2015, regarding Dans Mountain Wind Force LLC
 137. Email: Grover Duling to Squires, dated 11-2-2015, regarding Dans Mountain Wind Project
 138. Email: Joan and Tom Vogtman to Squires, dated 11-2-2015, regarding BOZA Case 942-943
 139. Correspondence: Richard H. Duckworth Jr. to BOZA, dated 10-3-2015, regarding BOZA Case 942-943
 140. Correspondence: E. C. Durney to BOZA (no date) regarding BOZA Case 942-943
 141. Correspondence: Ward Malcolm to BOZA, dated 10-29-2015, regarding Dans Mountain Wind Project
 142. Document: Prepared by Dale Allen, regarding CHR Bill 2-09/Cases 942-943. Includes map.
 143. Correspondence: Jennifer Shaw to BOZA, dated 10-26-2015
 144. Email: Steve Gyurisin to James Squires, dated 11-3-2015, regarding installation of temporary access road for soil borings (related to DMWF WECS project). Pipe removed, area reclaimed. Photo of subject site attached.
 145. Email: Poly-Jo Hightower to BOZA, dated 11-4-2015, regarding Dans Mountain Wind Farm
 146. Correspondence: Jeremy M. Kennell, Laborers' International Union of North America, Local Union #616, to BOZA, dated 11-4-2015, regarding Dans Mountain Wind Farm
 147. Correspondence: Thomas A. Vogtman Jr., DMV, to BOZA, dated recv'd 11-5-2015, regarding BOZA Cases 942-943

148. Correspondence: Holly Harman to BOZA, dated 10-29-2015, regarding BOZA Cases 942-943

149. Correspondence: Frances A. Vogtman to BOZA, dated recv'd 11-5-2015, regarding BOZA Cases 942-943

150. Email: Brenda Smith, Executive Director of TGCC, to Squires, dated 11-5-2015, regarding Dans Mountain Project Support

151. Exhibits collectively: 151.1. through 151.4

- 151.1 Correspondence: Elaine L. Ridenour to BOZA, dated 11-3-2015, regarding Allegany County Code 360-92 and BOZA Cases 942-943
- 151.2 Document: Elaine L. Ridenour to BOZA, dated 11-3-2015, narrative regarding Allegany County Comprehensive Plan
- 151.3 Document: Elaine L. Ridenour to BOZA, dated 11-3-2015, narrative regarding Petition in opposition to Special Exception and Variance requested by DMWF
- 151.4 Document: Randall C. Ridenour, dated 11-3-2015, observations regarding DMWF, hearing, other...

152. Correspondence: Bruce and Karen Irons, to BOZA, , dated 11-4-2015, regarding BOZA Cases 942-943

153. Correspondence: Thomas A. Vogtman Sr to BOZA, dated recv'd 11-5-2015, regarding BOZA Cases 942-943

154. Correspondence: Owen Dorsey to Squires, dated 11-5-2015, regarding BOZA Cases 942-943

155. Correspondence: Cliff Wendricks, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local Union #568, to BOZA, dated 11-5-2015, regarding Dans Mountain Wind Farm

156. Correspondence: Paul and Kathryn Shearer to BOZA, dated 10-30-2015, regarding BOZA Cases 942-943

157. Correspondence: Francis Zumbrun to BOZA, dated 11-3-2015, regarding Dans Mountain Wind Force, LLC, BOZA Cases 942-943

158. Correspondence: Ann Bristow, Ph.D. to BOZA, dated 11-3-2015, regarding BOZA Cases 942-943 (AG correspondence of 5-8-2013, attached)

159. Correspondence: In aggregate, William C. Dudley, Jr. to BOZA Members, dated 11-6-2015, regarding wind farm on Dans Mountain

- 159.1 Correspondence directed to William Powell
- 159.2 Correspondence directed to Julia Williams
- 159.3 Correspondence directed to Rodger Uphold

160. Correspondence: In aggregate, K. Darlene Park to BOZA Members, regarding CHR Bill 2-09/Code 360-92; BOZA Cases 942-943

- 160.1 – 160.6 Multiple copies for each BOZA Member

161. Correspondence: Ryan Miller (sp?) to Squires, dated (recv'd 11-6-2015), regarding wind turbine affects

162. Correspondence: In aggregate, Mark Holtzel to BOZA, dated (recv'd 11-6-2015), regarding BOZA Cases 942-943

- 162.1 Correspondence directed to Rodger Uphold
- 162.2 Correspondence directed to John Brant
- 162.3 Correspondence directed to William Powell
- 162.4 Correspondence directed to Julia Williams
- 162.5 Correspondence directed to William Kenney

163. Correspondence: John Rephann to Squires, dated (recv'd 11-6-2015), regarding Special Exceptions and Variances

164. Correspondence: Jared Lamp to BOZA, dated 11-3-2015, regarding Special Exception and Variances (BOZA Cases 942-943)

165. Correspondence: Luke Martz to Squires, dated 11-3-2015, regarding wind mill farms

166. Correspondence: Michael Willison to BOZA, dated 11-1-2015, regarding Dans Mountain Wind Farm project

167. Correspondence: Paul and JoAnn Willison to BOZA, dated 11-2-2015, regarding Dans Mountain Wind Farm project

168. Correspondence: Dennis Marshall (sp?) to Whom It May Concern, dated (recv'd 11-6-2015), regarding Dans Mountain Wind Farm

169. Correspondence: Carl Belt Jr. to BOZA, dated 11-6-2015, regarding BOZA Cases 942-943

170. Correspondence: Carl Belt Jr., President, Belt Group of Companies, to BOZA, dated 11-6-2015, regarding BOZA Cases 942-943

171. Correspondence: Mary J. Bohlen to BOZA, dated 11-3-2015, regarding Dans Mountain Wind Farm

172. Correspondence: Kelly Llewellyn, K&D Development, LLC, to BOZA, dated (recv'd 11-6-2015), regarding Special Exception and Variances, Dans Mountain Wind Farm

173. Correspondence: Carolyn Dudley, to Julia Williams, Chair-BOZA, dated (recv'd 11-6-2015), regarding DMWF Special Exceptions and Variances

174. Correspondence: Ann Kerr to BOZA, dated (recv'd 11-6-2015), regarding Special Exception and Variances proposed by Dans Mountain Wind Force, LLC

175. Correspondence: Edward Giugliano to BOZA, dated (recv'd 11-6-2015), regarding BOZA Cases 942-943

176. Email: Jon Rosenberger to Squires, dated 11-5-2015, regarding Dans Mountain Wind Farm

177. Correspondence: Dan Llewellyn, K&D Development, LLC, to BOZA, dated (recv'd 11-9-2015), regarding Special Exception and Variances, Dans Mountain Wind Farm

178. Correspondence: Jeremy Irons to BOZA, dated 11-6-2015, regarding BOZA Cases 942-943

179. Correspondence: Brian Harvey, K&D Development, LLC, to BOZA, dated (recv'd 11-9-2015), regarding Special Exception and Variances, Dans Mountain Wind Farm

180. Correspondence: Todd Merbaugh to BOZA, dated (recv'd 11-9-2015), regarding Special Exception and Variances, Dans Mountain Wind Farm

181. Correspondence: Joe Raines to BOZA, dated (recv'd 11-9-2015), regarding Special Exception and Variances, Dans Mountain Wind Farm

182. Email: Clyde Burdock to Squires, dated 11-6-2015, regarding Dans Mountain Wind Farm

183. Email: Daniel Willison to Squires, dated 11-7-2015, regarding Dans Mountain Wind Farm

184. Correspondence: Jeffery Hutter, Sr. to BOZA, dated 11-8-2015, regarding Dans Mountain Wind Force, LLC, Special Exception and Variance

185. Correspondence: Richard Lechliter, DMV, to BOZA, dated 11-9-2015, regarding BOZA Cases 942-943, Dans Mountain Wind Force, LLC

186. Email: James Roberston to Squires, dated 11-9-2015, regarding wind mills

187. Certification: Allegany County (Maryland) Public Schools, Certification by Ester Greco, Office of Student Services, dated 11-2-2015, that the Baker children are enrolled within the *home schooling* program in Allegany County (Maryland). (Includes hand written note by Andrea Baker; Report Cards attached)

188. Correspondence: Karyl Hansen to BOZA, dated 11-7-2015, regarding BOZA Cases 942-943, Dans Mountain Wind Force, LLC

189. Correspondence: Elaine Ridenour to BOZA, dated 11-9-2015, regarding Petition Signatures, related comments. (5 copies submitted, for each BOZA Member)

190. Correspondence: Richard James, E-Coustic Solutions, LLC, to BOZA, dated 11-9-2015, regarding BOZA Cases 942-943 testimony of Dr. Wayne Spiggle at Hearing. Correspondence covers document entitled "Anchor Testimony to the AC Board of Special Appeals...", other.

191. Correspondence: Ed and Cathy Nolan to BOZA, dated 11-6-2015, regarding BOZA Cases 942-943

192. Correspondence: Matthew Collins (sp?) to BOZA, dated (recv'd 11-9-2015), regarding Dans Mountain Wind farm project

193. Correspondence: Virginia Golden to BOZA, dated 11-7-2015, regarding Dans Mountain Wind farm project

194. Correspondence: Brian to Squires, dated 11-5-2015, regarding Dans Mountain Wind farm

195. Correspondence: John Redshaw to BOZA, dated 11-5-2015, regarding Dans Mountain Wind farm project

196. Correspondence: Kimberly Armentrout to BOZA, dated 11-4-2015, regarding Dans Mountain Wind farm project

197. Correspondence: Joshua Grubb to BOZA, dated 11-7-2015, regarding Dans Mountain Wind farm project

198. Correspondence: Robert Chipman to BOZA, dated 11-7-2015, regarding Dans Mountain Wind farm project

199. Correspondence: Carol Wilson to BOZA, dated 11-2-2015, regarding Pinnacle Wind farm project

200. Correspondence: Tyler Swope to BOZA, dated (recv'd 11-9-2015), regarding Dans Mountain Wind farm project

201. Correspondence: Grant Wolfe to BOZA, dated (recv'd 11-9-2015), regarding Dans Mountain Wind farm project

202. Correspondence: Kristopher Fout to BOZA, dated (recv'd 11-9-2015), regarding Dans Mountain Wind farm project

203. Correspondence: Ryan Shryock to BOZA, dated 11-7-2015, regarding Dans Mountain Wind farm project

204. Correspondence: Ronald Miller to BOZA, dated 11-7-2015, regarding Dans Mountain Wind farm project

205. Correspondence: Daniel Robinette to BOZA, dated 11-7-2015, regarding Dans Mountain Wind farm project

206. Correspondence: Paul Skelly (sp?) to BOZA, dated 11-5-2015, regarding employment/taxes/wind farms

207. Correspondence: Eileen Stoger to Squires, dated 11-5-2015, regarding BOZA Cases 942-943

208. Correspondence: Bernard Michael to BOZA, dated 11-4-2015, regarding Dans Mountain Wind farm project

209. Correspondence: Justin Michael to BOZA, dated 11-3-2015, regarding Dans Mountain Wind farm project

210. Correspondence: Susan Michael to BOZA, dated 11-4-2015, regarding Dans Mountain Wind farm project

211. Correspondence: (non-legible signature) to BOZA, dated (recv'd 11-9-2015) regarding BOZA Cases 942-943

212. Correspondence: David McPhail to BOZA, dated 11-4-2015, regarding Garrett County windmills, other

213. Documents: Assorted, filed by Diane McKenzie-Sapp

214. Documents: Assorted, filed by Diane McKenzie-Sapp

215. Document: Statement in Opposition, filed by Erin Stark, dated (recv'd 11-9-2015)

216. Correspondence: Leslie Forsythe to BOZA, dated 11-9-2015, regarding BOZA Cases 942-943

217. Correspondence: Allen D. Boyd to BOZA, dated (recv'd 11-9-2015), regarding BOZA Cases 942-943

218. Correspondence: Joan Vogtman to BOZA, dated (recv'd 11-9-2015), regarding BOZA Cases 942-943

219. Correspondence: Leo Broadwater to BOZA, dated (recv'd 11-9-2015), regarding Special Exception and Variances, Dans Mountain Wind Force LLC

220. Document: Applicants' Post Hearing Memorandum and Evidence Submission, prepared by John Gontrum, Esquire, Counsel for the Applicant, dated (recv'd 11-9-2015)

221. Email: Kathleen Brundick to BOZA, dated 11-9-2015, regarding Dans Mountain Wind Farm, BOZA Cases 942-943

222. Email: Lawrence Wolfe, WMD Building & Construction Trades Council, to BOZA, dated 11-9-2015, regarding BOZA Cases 942-943 Comments

223. Correspondence: Frank O'Hara to BOZA, dated (recv'd 11-9-2015), regarding BOZA Cases 942-943. Includes asserted documents, newspaper articles.

224. Exhibits A through 223, for Cases 942-943, collectively.

C O N T I N U A N C E H E A R I N G o f 1 0 / 9 / 2 0 1 9

- 225. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- 226. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- 227. *Inter Office Memo*, prepared by the LDS office, distributed to the necessary *release agents* notifying them of this Case, date, time and requesting comment.
- 228. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- 229. Correspondence from Flynn to Rozas, dated 10/8/2019, regarding counsel appearance on behalf of ANCHOR (attached *name/address – Strike from Record*)
- 230. (Multi-page) Hardcopy of *PowerPoint* presentation performed by Mr. Gorman Getty, Esquire, Counsel to DMWF.
- 231. Multi-page document entitled "WTG – 5 ; Unique Circumstances" submitted by Counsel to DMWF.
- 232. Excerpt from BOZA Hearing Transcripts, pages 192-196 (Volume I), with attached map (11x17) entitled "Exhibit A1, N/F Mary Marsha & Lynn S. Keiter, TM 36/Parcel 104/Lot 1." [AKA Plaintiff's Exhibit #1]
- 233. Six (6) page *Site Plan* (11x17): Entitled "Wetland/Waterway Delineation Plan for Dans Mountain Generating Facility" [AKA Plaintiff's Exhibit #2]
- 234. Two (2) page *Site Plan* (11x17): Entitled "Microwave Study Overview Map Point to Point Beam Paths - Dans Mountain Wind Project" [AKA Plaintiff's Exhibit #3]
- 235. Excerpt from BOZA Hearing Transcripts, pages 196-200 (Volume I), with attached map (11x17) entitled "Exhibit A2, John Russell Henry & Betty J. Loar, TM 36/Parcel 12." [AKA Plaintiff's Exhibit #4]
- 236. Excerpt from BOZA Hearing Transcripts, pages 200-201 (Volume I), with attached map (11x17) entitled "Exhibit A3, John R. Jr. & Deborah Lynn Lashbaugh, TM 36/Parcel 169." [AKA Plaintiff's Exhibit #5]

C O N T I N U A N C E H E A R I N G o f 1 0 / 1 6 / 2 0 1 9

- 237. *Certification of Public Notice*, dispatched by the Cumberland Times/News, certifying that *Notice* was published for the October 9th, 2019, remand proceedings.
- 238. *Certification of Public Notice*, dispatched by the Cumberland Times/News, certifying that *Notice* was published for the October 16th, 2019, remand proceedings.

END OF EXHIBITS as of 191016

Note: "Strikethrough Text" indicates *Motion to Strike*

Last Amended: 191016 @ 12:30 pm

\documents\boza\log\EXLST 942-943 Remand Hearing 191016-Comprehensive List_FINAL.doc
ver 10/19 [T7400A]
Print date/time: Print: 10/16/2019 12:47:00 PM

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Findings of Fact: BOZA Cases 942 & 943 Remanded
Regarding DMWF Proceedings of CY2019
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