

**TELLER COUNTY BOARD OF ADJUSTMENT
MINUTES
7:00 p.m., Wednesday September 21, 2011
Woodland Park Council Chambers
220 W South Avenue, Woodland Park, CO**

I. Call to Order and Roll Call

The meeting was called to order by Mr. Schenk, Vice-Chairman, at 7:08 pm and the following answered roll call:

Ms. Monte Houseman (Alternate)
Mr. Mark Mills (Alternate)
Ms. Helen Dyer (Regular)
Mr. David Turley (Regular)
Mr. John Schenk, Vice-Chairman (Regular)

Also attending were the following staff members:

Ms. Lor Pellegrino, AICP, Senior Planner
Ms. Jan Fetrow, Senior Planner
Mr. Chris Brandt, County Attorney

Mr. Brandt commented that Mr. Fischer does not currently reside in the County, and although he continues to own property in Teller County, he has resigned to avoid any potential challenge based on his residency status. Mr. Schenk requested that the County send a letter to Mr. Fischer and Mr. Spradling, who also resigned since the last meeting, appreciating their service to the Board of Adjustment. Mr. Mills and Ms. Houseman were appointed regular voting members for this meeting.

II. Election of Officers

a. Chairman

Mr. Turley nominated Mr. Schenk for Chairman. With no other nominations, Mr. Turley then moved, and Ms. Dyer seconded, that Mr. Schenk serve as Chairman. The motion passed with the following in favor: Ms. Houseman, Mr. Mills, Ms. Dyer, Mr. Turley, and Mr. Schenk. The meeting continued with Mr. Schenk presiding as Chairman.

b. Vice-Chairman

Mr. Turley nominated Ms. Dyer for Vice-Chairman. With no other nominations, Mr. Turley then moved, and Ms. Houseman seconded, that Ms. Dyer serve as Vice-Chairman. The motion passed with the following in favor: Ms. Houseman, Mr. Mills, Ms. Dyer, Mr. Turley, and Mr. Schenk.

III. Adoption of Meeting Schedule

Ms. Dyer moved, and Mr. Schenk seconded, that the Teller County Board of Adjustment continue the practice of generally holding the Board of Adjustment meetings on the third Wednesday of every month and to adopt the proposed 2011 meeting schedule including the third Wednesday of January 2012, subject to changes based on applications received and with proper notice. The motion passed with the following in favor: Ms. Houseman, Mr. Mills, Ms. Dyer, Mr. Turley, and Mr. Schenk.

Mr. Brandt noted that as this is the first meeting of the 2011 year, the full schedule for 2011 including the first meeting of 2012 is adopted, and that past meetings in 2011 while scheduled retroactively, were canceled.

Mr. Turley asked if a request to fill Board vacancies will be published to which staff responded in the affirmative.

IV. Designation of Location to Post Agendas

Mr. Turley moved, and Mr. Schenk seconded, that the Teller County Board of Adjustment continue to designate the Teller County Community Development Services Department bulletin board located at 540 Manor Court, Woodland Park, Colorado, as the official location to post the Board of Adjustment Meeting Agendas for 2011. The motion passed with the following in favor: Ms. Houseman, Mr. Mills, Ms. Dyer, Mr. Turley, and Mr. Schenk.

V. Review and Approve Minutes

a. September 15, 2010

Ms. Dyer moved, and Mr. Mills seconded, approval of the September 15, 2010 minutes. The motion passed with the following in favor: Ms. Houseman, Mr. Mills, Ms. Dyer, Mr. Turley, and Mr. Schenk.

VI. Consider a request by Chris A. Janiec (Applicant and Property Owner) to vary the maximum height in the Residential / Mobile (R-1M) zone district from 43.75 feet to 65.62 feet (an increase of 21.87 feet) for a proposed wind turbine to support the existing residence on Lot 20A, Block 3, Amended Final Plat (Modified Procedure) Indian Creek Filing 1, Teller County, CO (76 Ute Creek Drive, Florissant).

Mr. Schenk opened the matter and outlined the process for the hearing. Mr. Mills stated that while he has performed work for Mr. Janiec, he believes he can still render a fair and honest opinion on the application. Mr. Brandt asked if the work performed was current or occurred in the past to which Mr. Mills replied that the work was performed in the past, more than one year ago. The Board concurred that no conflict exists and that Mr. Mills may continue to hear and vote on the case.

Ms. Pellegrino presented the staff report recommending denial of the application for a 21.87 foot height variance for a proposed wind energy system to supplement IREA energy to the house due to insufficient evidence of compliance with the standards, including but not limited to incompatibility with the neighborhood, the surrounding area, and the Florissant Plan. She also explained the addendum that was distributed at the meeting. Mr. Turley asked if the noise levels for the turbine were submitted and Ms. Pellegrino responded that they were included in the application and that the proposed noise complies with state standards. Mr. Schenk asked if covenants are applicable and Ms. Pellegrino stated that this lot is not subject to any covenants, and that the County does not consider nor enforce covenants. Mr. Schenk asked if further documentation was received with regard to historic artifacts to which Ms. Pellegrino responded that no response had been received from the State Forest Archeologist and that the Pikes Peak Historical Society has not done a survey of the site. Mr. Schenk asked if the Indian Creek POA submitted a formal response to which Ms. Pellegrino responded that none was received. Mr. Schenk asked if a roof system was viable to which Ms. Pellegrino responded that it was viable in that it would produce some usable energy. Mr. Schenk asked if the applicant must meet all six standards for approval (with the seventh being inapplicable) and Ms. Pellegrino responded, and Mr. Brandt confirmed, in the affirmative. Mr. Schenk asked about wildlife concerns and Ms. Pellegrino stated that a lack of referral response from the Colorado Division of Parks and Wildlife indicates no concern.

The applicant and landowner, Mr. Chris Janiec, presented his application. He stated that his wind system would be less visually intrusive than others might be; that the ridge to the east is six feet higher than the tower site and blocks views from the east; and that trees further block views from the back (north) and sides (east and west) direction. He drew images on the easel showing the possible visual impact and described how the trees and topography would mitigate this impact. He distributed for Board review a model of bent wire which when held at arm's length demonstrated the impact of the visible portion of the system above the trees from approximately one mile away. He stated that a roof-mounted system is unrealistic as it would result in greater visual impact, would be subject to more turbulence, and would create vibrations that would affect the house; that the Colorado wind map submitted with the application shows the potential of up to 5 to 6 meters per second of wind which could generate up to 3,400 kW hours per year – more than enough to satisfy his energy needs. He stated that the generator is at least 700 feet from the nearest home so noise would not be an issue; that the FAA is not concerned with structures less than 200 feet high outside airport zones; and, that most complaints received were from residents more than one-half mile away.

Mr. Turley asked if the application materials with the packets were submitted by the applicant and Ms. Pellegrino stated in the affirmative. Ms. Dyer asked if objections were more applicable to large commercial projects rather than this smaller residential proposal. Mr. Janiec stated that at least one neighbor was citing commercial specifications and that bird mortality concerns relate to wind farms and not a single tower. Ms. Dyer asked if Mr. Janiec was confident about meeting the variance standards and Mr. Janiec responded that he is not a lawyer and is not confident about meeting the standards. Mr. Mills asked about the decrease in efficiency if the turbine were built within the height standard and Mr. Janiec stated that the turbulence from the hill/trees/house would be problematic if the turbine is too low. Ms. Houseman asked about solar energy and Mr. Janiec responded that it has been considered but would not meet all his needs nor would it be as cost effective as wind at this time. Ms. Dyer asked about whether a site specific wind study was conducted and whether the intent was to go off grid to which Mr. Janiec stated that he extrapolated from the existing wind maps and that he does not intend to go off grid. Mr. Schenk asked about how the proximity to trees affected the viability of the system and Mr. Janiec stated that it would reduce efficiency but that it was preferable to cutting trees. Mr. Schenk asked about the possibility of putting the system 20 feet further down the hill and into the trees or on a shorter mast if roof-mounted to which Mr. Janiec responded that it would be subject to greater turbulence and suffer reduced efficiency if it were sited into the north hillside and a roof-mounted system would have to be the same or greater height. Mr. Turley stated that discussion seems to be focused on speculation and alternate suggestions where it should be focused on zoning standards.

Mr. Schenk opened the matter up for public comment.

Ms. Leah Dahle, 59 Apache Creek Drive, reiterated concerns expressed in her letter about magnification of constant turbine noise in a quiet mountain community; that personal windmills create more noise than the larger ones; that birds will be affected by the system due to its location on the ridge; that ice from the blades might fly onto surrounding properties; and that the noise would further aggravate her hypertension and insomnia reducing her overall health. She submitted some material for Board consideration.

Mr. Dennis Radford, 1249 Gold Dust Creek Road, commended the Applicant on his green ideas but suggested that a bigger lot might be more appropriate. He expressed

concern about direct visual impact to his lot; and is concerned that if this tower were approved it might cause the proliferation of towers in the neighborhood.

Seeing no other members of the public wishing to speak, Mr. Schenk closed the public comment portion of the hearing.

Mr. Janiec responded that noise is not an issue and that reduced air density at this elevation means that noise travels less well. With respect to ice spraying neighbors to the east, Mr. Janiec stated that the distance and the mountain between his lot and others to the east would likely prevent that from happening.

Mr. Schenk indicated that the matter was ready for general deliberation. Ms. Dyer asked if the 1998 Florissant Plan did not fully consider alternate energy systems perhaps rendering it irrelevant. Ms. Pellegrino stated that the 1998 Florissant plan, despite its age, does generally encourage alternative energy while at the same time discouraging visual pollution. Ms. Dyer suggested updating the plans so that they are more current and relevant. While expressing appreciation for the applicant's attempt to create clean energy, Mr. Turley stated that the height increase is not compatible in a residential area and would be a visual and audible impact to the entire community. Mr. Mills expressed support for green energy but suggested it not occur at this location.

Mr. Turley moved, and Mr. Mills seconded, that the Teller County Board of Adjustment deny the request of Chris A. Janiec (Applicant and Property Owner) to vary the maximum height in the Residential/Mobile (R-1M) zone district from 43.75 feet to 65.62 feet (an increase of 21.87 feet) for a proposed wind turbine to support the existing residence on Lot 20A, Block 3, Amended Final Plat (Modified Procedure) Indian Creek Filing 1, Teller County, CO (76 Ute Creek Drive, Florissant), incorporating Staff findings contained in that Staff Report dated September 2, 2011 based on the failure to satisfy and/or demonstrate compliance with the applicable standards of the Teller County Land Use Regulations, including without limitation:

- §2.12.G.1 *Special Circumstances Exist*
- §2.12.G.2 *Not a Result of the Actions of Applicant*
- §2.12.G.3 *Strict Application Consequences*
- §2.12.G.4 *Variance is Necessary for Relief*
- §2.12.G.5 *Not Detrimental to the Public Good*
- §2.12.G.6 *Variance Will Not Impair Zoning Plan and Resolutions*

The motion passed with the following in favor: Ms. Houseman, Mr. Mills, Ms. Dyer, Mr. Turley, and Mr. Schenk. The variance was denied. Ms. Pellegrino stated that a decision of the Board may be appealed to district court within a certain time.

VII. Planning Report

There was some discussion regarding general context, Board deliberation and discussion. Mr. Brandt stated that Board decisions must be based on standards, as should testimony and evidence presented. Ms. Pellegrino stated that no meeting will occur in October and invited the Board to attend the 7:00 p.m. Sept. 27 Planning Commission work session presentation of the "Survey of Critical Biological Resources in Teller County" by the Colorado Natural Heritage Program.

VIII. Adjourn

Mr. Schenk adjourned the meeting at 9:00 p.m.