

**MINUTES OF THE BLACK HAWK COUNTY BOARD OF ADJUSTMENT MEETING HELD  
ON MARCH 26, 2019 HAROLD E. GETTY COUNCIL CHAMBERS –  
WATERLOO CITY HALL.**

Steven Rosauer called the regular monthly meeting of the Black Hawk County Board of Adjustment to order at 7:00 pm, Tuesday, March 26, 2019, in the Harold E. Getty Council Chambers - Waterloo City Hall.

**I. Call to order and roll call**

Members present: Larry Oltrogge, Steven Rosauer, Dr. Laval Peloquin, Lucas Jenson and Diane Depken

Members absent: None

Also present: Black Hawk County Planning Staff - Seth Hyberger, John Dornoff, and Aric Schroeder, and 25 members of the public

**II. Approval of the Agenda**

*It was moved by Oltrogge and seconded by Jenson to approve the amended agenda to include changing the address for business item one from 5502 S Raymond Road to 11214 Kimball Avenue and changing the date of completion for construction for business item two from December 31, 2012 to December 31, 2022. Motion carried unanimously.*

**III. Approval of Minutes of the October 23, 2018 meeting.**

*It was moved by Dr. Peloquin and seconded by Depken to approve the minutes of the October 23, 2018 meeting. Motion carried unanimously.*

**IV. New Business**

**1. 11214 Kimball Avenue – Keniston Front Yard Setback Variance**

A request for a variance to the 50' front yard setback requirement to construct a 24' X 28' 610 SF attached garage addition in the "A" Agricultural District.

Hyberger gave the staff report and noted that some of the pages in the BHC Board of Adjustment Packet did not get copied correctly and noted the applicant is here today to request a 25' front yard setback which is 25' less than the 50' that is required in the "A" Agricultural District.

Ted Steimel, 10319-10401 Kimball Avenue, Black Hawk County, noted that he lives a mile north of the property and the house has been there as far back as he could remember. The home is an eyesore basement home. Steimel noted that he is in support of the variance request. It will make the neighborhood look nicer.

Jonathan Keniston, 11214 Kimball Avenue, indicated he had owned the property for over 12 years and now wants to do something with the structure that will be beneficial and be cohesive with the area. The granting of the 25' front yard variance will enable him to take the structure and build something new out there. The current position of his pole building to the home makes it difficult to

place the attached garage anywhere else. The placement of a garage to the south of his property would essentially block the entrance to his pole building and make access very difficult.

Dr. Peloquin asked if there is a different location where the garage can be placed to meet the Zoning Ordinance requirement. Keniston stated that due to sticking with the property's existing footprint/foundation, there is no other location on the lot where the garage can be placed. Placing the garage to the north would also be problematic because it would require a second driveway.

Oltrogge noted the reason for the variance is that they are placing the garage on the east side of the home and indicated that if the garage was flipped and placed on the west side, it would no longer need a variance. That accomplishes a number of things. First of all they have any existing porch there that is 12 feet wide and the attached garage is 24 feet. They are adding only 12 more feet than what is already there. The west side already has a door into the house. Every home has two rooms that require a lot of light. That is the living room and the kitchen. Putting the garage on the west side would address that issue. Parking in the front of the house on the east side, a person would have to walk all the way around the house to get to the front door. Oltrogge does understand that maintaining access to the pole building is an issue due to being on the corner, but currently a person will have to drive around the porch to gain access to the pole building. Keniston noted the blueprints in the packet are proposed and is not the existing home. The proposed home does however; match up with the existing footprint of the home. Keniston notes that the existing home is a basement home that does not contain a porch. The blue print notes what he plans on building for the replacement home. Keniston also indicated that if the garage were placed on the west side, it would end up covering his septic sewer system and water lines. Therefore placing the home on the west side is not a practical alternative.

Dr. Peloquin noted the south wall of the garage, and asked Keniston how far away it was from the property line. Keniston noted that distance is approximately 30 to 35 feet. Dr. Peloquin noted they are fine with the south wall. Keniston indicated a variance is not needed for the south side. Keniston also noted that placing the garage to the south would also limit his access to his pole building. Dr. Peloquin asked Keniston how long the home has been there. Keniston stated since the 1950's and his plan is to demolish the home and build new. Dr. Peloquin asked if his neighbors had any issues with the variance request. Keniston noted no.

Jenson asked if he could get a picture of the property to show where the septic system is. Hyberger pulled up an image of the property on the display screens and showed the Board of Adjustment members where his existing sewer septic system is located on his property. Schroeder asked the applicant how much distance would there be between the proposed addition on the west side and the pole building. Kenisten stated that it would only be 8 to 10 feet. Oltrogge noted it would be too narrow to drive through to get access to the pole building. Dr. Peloquin asked Keniston if he plans on building the sewer septic system in the same location. Keniston indicated yes. Dr. Peloquin next asked Keniston if he plans on keeping the foundation. Keniston plans to, they will check the foundation after the demolition to ensure that it is still viable, otherwise it will be replaced. Rosauer asked what the existing front yard setback is and Keniston noted it was 50 feet.

Jenson noted the existing plans right now take the existing foundation into account. Keniston noted yes. Jenson asked if that may change. Keniston responded yes, depending on the condition of the foundation. Hyberger later brought up page 6 on the digital screen. Rosauer asked if there is anyone in the audience that is opposed to the project. No one from the audience came forward. Jenson later noted that they approved a variance for setbacks at their previous meeting. Dr. Peloquin indicated that the existing property would not be able to be built as is today. Hyberger noted that due to lot size and building code, probably not. Dr. Peloquin noted that as far as

property value, curb appeal, and utility of the home. The replacement home would be vast improvement to what is already there. Keniston indicated correct. Dr. Peloquin asked if other members of the Board of Adjustment have seen the home. Jenson indicated no, he had not. Depken then stated that the home is not contrary to the public interest, could be viewed as unnecessary hardship, and meets other criteria for the variance. Rosauer noted that if had just bought the property a year ago it would be different, but the applicant has owned the property for 12 years. Rosauer noted that if the foundation was not reused, he could move the property back 4 to 5 feet more feet. An extra acre would definitely help. Dr. Peloquin noted that moving the home back 4 to 5 feet could impact existing utilities. Oltrogge noted that putting the garage in the front of the home does improve the value for the property. Rosauer and Dr. Peloquin noted that with the new design it will definitely improve the value of the site. The typical design for ranch homes does often have the garage pushed out a little up front. Jenson also noted the septic system is an important factor as well and attempting to reuse the existing foundation. For those reasons, approving the variance will be an improvement to the area.

***It was moved by Jenson and seconded by Dr. Peloquin, to approve a request for a variance to the 50' front yard setback requirement to construct a 24' X 28' 610 SF attached garage addition in the "A" Agricultural District. Motion carried 4-1 with Oltrogge voting nay.***

## **2. Request by Washburn Wind Energy, LLC, for a project time extension**

Washburn Wind Energy, LLC, requests the Board of Adjustment to consider and grant a time extension for an approved special permit to allow for the construction and operation of up to 35 Vestas 2 MW wind turbines, one Meteorological Tower, and other appurtenances. Washburn Wind Energy, LLC is requesting a time extension to commence construction of the Project by July 1, 2020 and complete construction of the Project by December 31, 2022. The Washburn Wind Energy, LLC project was approved 3-2 at the Board of Adjustment's regular meeting on April 24, 2018.

Hyberger gave the staff report.

Dr. Peloquin indicated that he had a few questions regarding the litigation. Dr. Peloquin asked if the Board of Adjustment was represented in court and who is the law firm that is representing them. Hyberger noted he could not remember the name of the law firm that is representing Black Hawk County and the County Board of Adjustment in court. Dr. Peloquin noted that he is a member of the Board of Adjustment and Hyberger is administrative staff. Hyberger stated yes. Dr. Peloquin next indicated is it unusual for those persons named in a suit to not be notified of the suit. Dr. Peloquin indicated if someone is going to represent him in court, he wants to know who he is being represented by and would like to have copies of all the legal documents that were involved in the suit. Dr. Peloquin also noted he was not aware of the suit or the court dates until he was notified about the time extension when he received a copy of the March 26, 2019 Board of Adjustment meeting packet. Dr. Peloquin indicated he would like to know who is representing the Black Hawk County Board of Adjustment and their viewpoints regarding the suit and noted that it was the Black Hawk County Board of Adjustment's decision that resulted in the suit. The Board of Adjustment needs to know, otherwise what is the point in having a Board of Adjustment. Dr. Peloquin then asked Rosauer if he had received any notification regarding the suit. Rosauer indicated he was not notified regarding the suit either. Schroeder indicated that he could note Dr. Peloquin's concerns with the County Attorney's Office and the law firm that is representing Black Hawk County regarding the suit. Schroeder noted that staff can provide additional notification to the Board of Adjustment regarding court dates and forward information concerning court documents related to the suit. Schroeder also made it clear that Black Hawk County is listed in the

suit and none of the names of the Board of Adjustment members are listed in the suit. The suit just simply states Black Hawk County and the Board of Adjustment. Dr. Peloquin indicated he understands that, but they should have been notified because they are members of the Board of Adjustment and should receive copies of all documentation concerning the suit and be given an opportunity to attend the court proceedings. Dr. Peloquin noted that staff reports to us as it performs its administrative functions. Schroeder indicated that staff could definitely provide documentation concerning the suit and provide contact information regarding the firm that is defending Black Hawk County and the Board of Adjustment. Oltrogge indicated that the Board of Adjustment does not have the authority to hire attorney's regarding this court case. Dr. Peloquin noted he understands that, but the Board of Adjustment is the defendant in this case.

Dr. Peloquin asked Jenson if he was aware of the suit before today. Jenson noted he did read some articles in the Courier regarding the case, but was never directly contacted regarding the suit. Rosauer also commented that he does not fully know what the court case is about, but it is their ruling or outcome as members of the Board of Adjustment that is being challenged. Rosauer questioned how the appointed attorneys for the County can keep the members of the Board of Adjustment out of the process. Those attorneys at least should have contacted the members of the Board of the Adjustment to determine how they each arrived at their decision. Depken noted that considering the circumstances, the request for information concerning the court case should be dealt with separately. It could be a future agenda item. Dr. Peloquin noted that his first knowledge of the suit did not occur until now. Rosauer indicated that they should now discuss the suit and the information that they received in their Board of Adjustment packet. Dr. Peloquin noted he had been on other boards before and he needs to know more concerning the court case.

Mr. Oltrogge noted that the Board of Adjustment is already being represented by the County. Dr. Peloquin noted that may be true legally, but the Board of Adjustment is who is being defended regarding this suit. Dr. Peloquin noted that just because he is a physician in a hospital for instance, he may get sued, but the hospital will provide representation for him. That physician shall however, be the defendant. Schroeder noted that there is a distinction between a doctor being sued and having an attorney defending them. In this case only the Board of Adjustment and Black Hawk County are listed in the lawsuit. No members of the Board of Adjustment are listed in the suit. Rosauer commented that our names are still in the paper regardless of the court case. It was their decision and the members of the Board of Adjustment should have been notified and had documentation provided regarding the court case. Dr. Pelquin noted that regarding this suit and other suits in the future, members of the Board of Adjustment need to be kept informed in the future of dates and documentation. Roasauer also noted that being a member of the Board of Adjustment can be tough job, decisions can be difficult, and it doesn't pay. Hyberger noted that staff can definitely provide all documentation regarding the suit and forward that information to all members of the Board of Adjustment. Depken suggested having a resolution for another meeting regarding sharing information concerning the suit and she would support that. Hyberger also indicated that Black Hawk County was listed in the lawsuit, the County's insurance carrier selected the attorneys to defend the County, and the County was merely trying to protect itself. It was never staff's intension to keep information from members of the Board of Adjustment and staff can definitely provide that information. Oltrogge also noted that they are not here tonight to reconsider the vote that was made last year in April.

Oltrogge also noted that the Board of Adjustment can only reconsider a decision if the following has occurred: "A motion, carried by not less than (3) affirmative votes, is made by a member of the Board that voted in the prevailing; and; new evidence is submitted that could not be reasonably have been presented in the original meeting. The Board of Adjustment is simply here today to vote on a time extension for the Washburn Wind Energy, LLC project and good cause was provided.

Rosauer stated there may be new evidence, but he was not aware of any. Oltrogge also noted that today is not a public hearing. Schroeder and Hyberger noted that today is not a public hearing. It's a public meeting to discuss the time extension. Jenson also noted it is reasonable for staff to provide information to the Board of Adjustment, but members of the Board of Adjustment are not specifically named in the suit.

They do not deserve notification from the court, but being updated on the proceedings is a reasonable request. Rosauer noted as long as they do not get a black eye out of it, due to him being business owner. Dr. Peloquin noted he simply wants to be informed and that due diligence is followed regarding the dissemination of information regarding the suit and noted every issue is a big issue. Jenson also noted that they can still discuss the time extension issue today. Jenson asked is there is a member of the audience that would like to discuss the time extension for the Washburn Wind Energy, LLC Project. Hyberger noted that today is not a public hearing, but members of the audience can still be given the opportunity to address the agenda item.

Angie Libert, Black Hawk County, asked members of the audience to give a show of hands that are land owners affected by this project. They majority of the members of the audience raised their hands and are interested in today's decision. Angie Libert simply wanted to make that point. Kathy Law, 700 Walnut Street, Suite 1600, Des Moines, Iowa indicated that she was representing Washburn Wind Energy, LLC, and their application for a special permit. On April 17, 2018, the Black Hawk County Planning and Zoning Commission voted to recommend to the Black Hawk County Board of Adjustment approve Washburn's request for a special use permit. On April 24, 2018, the Board of Adjustment voted 3-2 to approve Washburn's application for a special permit to construct 35-turbine, 70 megawatt wind energy project in rural Black Hawk County south and east of Hudson, Iowa (the "Project"). On May 23, 2018 Harold Youngblut initiated legal action against the Board of Adjustment and alleging that the Board of Adjustment violated certain provisions of the Black Hawk County Zoning Ordinance by approving the special permit. Several legal proceedings have taken place since May 23, 2018 and there is still no resolution concerning this lawsuit. The most recent hearing was on January 22, 2019 and the judge has yet to make a ruling. Law also noted section VII (V) (3) (e) (11), Zoning Ordinance No. 36 states the following, (a) wind energy facility authorized by Special Permit shall be started within twelve (12) months of Special Permit issuance and completed within thirty-six (36) months of the Special Permit issuance, or in accordance with a timeline approved by the Board of Adjustment. Upon the applicant's request for good cause, the Board of Adjustment may grant an extension of time. That is why everyone is here tonight.

Washburn Wind Energy, LLC has submitted a request to the Board of Adjustment and has good cause to extend the time frames under the special permit. In addition the Youngblood lawsuit has significantly impacted Washburn Wind Energy, LLC's ability to market and sell the project or power generated by the project and potential buyers of the project are naturally weary of purchasing the project of power until the suit is resolved. It is also unreasonable for Washburn Wind Energy, LLC to continue with the project until there is a purchase agreement in place and legal proceedings have been completed. The potential economic costs of pursuing the project are far too great of a risk for Washburn Wind Energy, LLC to take without knowing the outcome of the legal proceedings. Finally, Wind Energy, LLC cannot influence the legal proceedings between Mr. Youngblood and Black Hawk County. The suit also beyond Washburn Wind Energy, LLC's control and that is why Washburn Energy, LLC is here before the Board of Adjustment today to request additional time for the special permit which will allow Washburn Wind Energy, LLC to commence construction of the project by July 1, 2020 and complete construction by December 31, 2022. The request for the extension is not about the issuance of the special permit. That decision was made on April 24, 2018. The only issue is whether Washburn Wind Energy, LLC is granted a

time extension for the project. Kathy noted that there is a reason for good cause to allow for the time extension to take place. Washburn Wind Energy, LLC wants to thank the Board of Adjustment for giving them the opportunity to address their request.

Rosauer asked if the legal proceedings are addressed by July 1, 2020, will Washburn Wind Energy, LLC be able to complete construction by December 31, 2022. Craig Fricke, with Washburn Wind Energy LLC, indicated that they would require four months from when everything is resolved to comply with all legal authority requests, finalize studies, and provide engineering plans. It will then take another 3-6 months to provide all information required by planning and zoning and building inspection to pull the required building permits. In addition they have to find a buyer for the power or project. There is quite a lot of work that has to be done.

Jenson the asked considering July 1, 2020, all work can be completed four months before that. Fricke was confident most items can be addressed by early 2020 and this includes having contracts in place to sell the power or project. The additional 15 months will hopefully give them the opportunity to get all requirements completed.

*It was moved by Oltrogge, seconded by Dr. Peloquin, to approve a request for a time extension to commence construction of the Washburn Wind Energy, LLC project by July 1, 2020 and complete construction of the Project by December 31, 2022. Motion carried 3-2 with Dr. Peloquin and Rosauer voting nay.*

### 3. Selection of Chair and Vice Chair 2019

Oltrogge nominated and made a motion to Jenson. Jenson then asked when his term would expire. Hyberger noted that Jenson's term was up on October 1, 2019. Depken seconded the request for Jenson to become chair until his term expires on October of 2019. Dr. Peloquin then asked if they would simply vote for a new Chair in October. Schroder then noted the Vice Chair would become chair for the remainder of 2019. The Board of Adjustment then unanimously voted to approve Jenson as Chair until his term expires on October 1, 2019. Dr. Peloquin nominated and made a motion to approve Oltrogge as Vice Chair and was seconded by Jenson. The Board of Adjustment then unanimously voted to approve Oltrogge for Vice Chair.

## V. Discussion Items

Hyberger noted that based upon Dr. Peloquin's request. Staff will provide all information concerning legal proceedings to the Board of Adjustment and any information regarding upcoming court dates regarding the Youngblood suit by tomorrow.

## VI. Adjournment

*It was moved by Oltrogge seconded by Depken to adjourn at 7:15 P.M. Motion carried unanimously.*

Respectfully submitted,



Seth Hyberger,  
Black Hawk County Zoning Administrator