

PERSON COUNTY BOARD OF COMMISSIONERS

OCTOBER 4, 2010

MEMBERS PRESENT

OTHERS PRESENT

Johnny Myrl Lunsford
Jimmy B. Clayton
Kyle W. Puryear
B. Ray Jeffers
Samuel R. Kennington

Heidi York, County Manager
C. Ronald Aycock, County Attorney
Brenda B. Reaves, Clerk to the Board

The Board of Commissioners for the County of Person, North Carolina, met in regular session on Monday, October 4, 2010 at 7:00 p.m. in the Commissioners' meeting room in the Person County Office Building.

Chairman Lunsford called the meeting to order and asked Commissioner Clayton to lead in prayer and Commissioner Kennington to lead the Pledge of Allegiance.

DISCUSSION/ADJUSTMENT/APPROVAL OF AGENDA:

A **motion** was made by Commissioner Kennington, **seconded** by Commissioner Puryear, and **carried 5-0** to add to the agenda a Memorial Tribute to Thomas James Brown to be placed on the agenda immediately following the approval of the agenda.

A **motion** was made by Commissioner Puryear, **seconded** by Commissioner Jeffers and **carried 5-0** to approve the agenda as adjusted.

A MEMORIAL TRIBUTE TO THOMAS JAMES BROWN:

Chairman Lunsford read the Memorial Tribute to Thomas James Brown. The Board and all attending observed a moment of silence. Chairman Lunsford presented the Memorial Tribute to Thomas James Brown to the Brown family. Mrs. Virginia Brown and Ms. Jayne Brown Lefever were in attendance.

A Memorial Tribute to Thomas James Brown

November 23, 1924 – September 27, 2010

WHEREAS, the Person County Board of Commissioners is saddened by the death of Mayor Thomas James Brown; and

WHEREAS, Mayor Brown's death is a great loss to Person County, his family, and community; and

WHEREAS, Mayor Brown served his country in World War II as a member of the United States Navy and the citizens of Person County as the last principal of Roxboro High School and the first principal of Person Senior High School working for the Person County Schools for 24 years and most recently serving his second term as Roxboro City Mayor; and

WHEREAS, Mayor Brown's service to his community was given with such devotion that it won the respect of all with whom he was associated.

NOW, THEREFORE BE IT DECLARED that I, Johnny Myrl Lunsford, as Chairman, and speaking on behalf of the entire Board of Commissioners and our county, do hereby urge all our citizens to pause for a moment of silent prayer as we reflect back on the life of *Thomas James Brown* during this memorial tribute to one of our outstanding citizens.

ADOPTED THIS, THE 4TH DAY OF OCTOBER, 2010.

(signed)

**Johnny Myrl Lunsford, Chairman
Person County Board of Commissioners**

October 4, 2010

PUBLIC HEARING:

INDUSTRIAL PROJECT AND REVENUE BONDS TO BE ISSUED BY PERSON COUNTY INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING AUTHORITY RESOLUTION FOR APPROVAL IN PRINCIPLE:

A **motion** was made by Commissioner Puryear, **seconded** by Commissioner Clayton, and **carried 5-0** to open the public hearing designated to hear comments related to an Industrial Project and Revenue Bonds to be Issued by Person County Industrial Facilities and Pollution Control Financing Authority and consideration of Resolution for Approval in Principle of a Special Purpose Project for CertainTeed Gypsum NC, Inc., a Delaware Corporation or its affiliate or subsidiary (the Company) and the Financing thereof with Recovery Zone Facility Bonds in the principal amount of up to \$165,000,000.

County Attorney, Ron Aycock stated the public hearing is taking place to hear comments from the public regarding the proposed issuance of Recovery Zone Facility Bonds for the purpose of financing a facility for CertainTeed Corporation. Mr. Aycock noted the CertainTeed intend to construct a manufacturing plant that would employ 80 plus further noting the potential tax base. Mr. Aycock stated the Industrial Facilities Authority will issue the bonds but the elected body are required by state statute to endorse the proposal.

The following individual spoke as a proponent:

Mr. Jeffrey Poley, Partner with Parker Poe and attorney for CertainTeed of 911-302Washington Street, Raleigh, NC, stated under federal tax law the Board is requested to approve the bonds in principle. Mr. Poley stated the bonds will save CertainTeed a considerable amount of money to build the facility.

No one spoke in opposition.

A **motion** was made by Commissioner Jeffers, **seconded** by Commissioner Puryear, and **carried 5-0** to close the public hearing designated to hear comments related to an Industrial Project and Revenue Bonds to be Issued by Person County Industrial Facilities and Pollution Control Financing Authority and consideration of Resolution for Approval in Principle of a Special Purpose Project for CertainTeed Gypsum NC, Inc., a Delaware Corporation or its affiliate or subsidiary (the Company) and the Financing thereof with Recovery Zone Facility Bonds in the principal amount of up to \$165,000,000.

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Mr. Aycock confirmed for the Board that the transaction does not involve any county funds, liability for repayment nor any obligation. It is the obligation of the company to repay the bonds. Person County is serving as a conduit issuer on behalf of the company.

A **motion** was made by Commissioner Clayton, **seconded** by Commissioner Jeffers, and **carried 5-0** to adopt the Resolution for Approval in Principle of a Special Purpose Project for CertainTeed Gypsum NC, Inc., a Delaware Corporation or its affiliate or subsidiary (the Company) and the Financing thereof with Recovery Zone Facility Bonds in the principal amount of up to \$165,000,000.

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A RESOLUTION FOR APPROVAL IN PRINCIPLE OF A
SPECIAL PURPOSE PROJECT FOR CERTAINTEED GYPSUM
NC, INC., A DELAWARE CORPORATION OR ITS
AFFILIATE OR SUBSIDIARY (THE COMPANY) AND THE
FINANCING THEREOF WITH RECOVERY ZONE FACILITY
BONDS IN THE PRINCIPAL AMOUNT OF UP TO
\$165,000,000

WHEREAS, The Person County Industrial Facilities and Pollution Control Financing Authority (the "Authority") proposes to assist in the financing under the North Carolina Industrial and Pollution Control Facilities Financing Act, Chapter 159C of the North Carolina General Statutes, as amended (the "Act") of a "special purpose project" by CertainTeed Gypsum NC, Inc., a Delaware corporation, or its affiliate or subsidiary (the "Company"), which plans to acquire, construct and equip a 520,000 square foot manufacturing facility to be used for the manufacture of wallboard (the "Project") located on a portion of a 122 acre tract that is located at 912-A Shore Road, Semora, Person County, North Carolina;

WHEREAS, on July 8, 2010, the Board of Commissioners of the County of Person, North Carolina (the "County") declared the County to be a recovery zone for purposes of Sections 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, under the Code, the Project constitutes "recovery zone property" because it is depreciable property located in a recovery zone which is used in the active conduct of the Company's trade or business; and

WHEREAS, the Act and the Internal Revenue Code of 1986, as amended (the "Code") require that the governing body of a county approve in principle any project to be financed under the Act after a public hearing; and

WHEREAS, the North Carolina Tax Reform Allocation Committee ("TRAC") has reallocated \$165,000,000 of recovery zone facility bond allocation to the Authority for the Project; and

WHEREAS, this Board of Commissioners today has held a public hearing with respect to the advisability of the Project and the issuance of recovery zone facility bonds; and

WHEREAS, the Authority intends to issue its Recovery Zone Facility Bonds (CertainTeed Corporation), Series 2010 (the "Bonds") in the principal amount of up to \$165,000,000; and

WHEREAS, Section 147(f) of the Code requires that the Board of Commissioners approve the plan of financing for the bonds; and

WHEREAS, under Section 159C-4 of the Act the issuance of bonds under the Act must be approved by the governing body of the county in which the project to be financed is located;

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NOW, THEREFORE, the Board of Commissioners of Person County, meeting in regular session in Roxboro, North Carolina, on October 4, 2010, does the following:

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF PERSON:

1. The proposed "special purpose project" consisting of the acquisition, construction and equipping of an approximately a 520,000 square foot manufacturing facility to be used for the manufacture of wallboard (the "Project") to be owned and operated by CertainTeed Gypsum NC, Inc., a Delaware corporation, or its affiliate or subsidiary, and the issuance of recovery zone facility bonds in an amount not to exceed \$165,000,000 are hereby approved in principle.

2. The Board of Commissioners hereby approves the plan of financing as required by Section 147(f) of the Code.


3. The issuance of the Bonds in the principal amount of \$165,000,000 is hereby approved for purposes of Section 159C-4 of the Act.

4. THE BONDS DO NOT CONSTITUTE A DEBT OF THE STATE OF NORTH CAROLINA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY OR THE COUNTY, OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF NORTH CAROLINA OR ANY POLITICAL SUBDIVISION, INCLUDING THE AUTHORITY OR THE COUNTY.

Adopted this the 4th day of October, 2010.


Johnny Myrl Lunsford, Chairman
Person County Board of Commissioners

Attest:


Brenda B. Reaves
Clerk to the Board

October 4, 2010

**PUBLIC HEARING:
REQUEST BY PROGRESS ENERGY FOR A SPECIAL USE PERMIT AND
VESTED RIGHTS FOR A MONOFILL (INDUSTRIAL LANDFILL FOR COAL
COMBUSTION PRODUCTS) ON 659.9 ACRES ON U.S. 501 NORTH AND
WOODY'S STORE ROAD, WOODSDALE TOWNSHIP:**

A **motion** was made by Commissioner Kennington, **seconded** by Commissioner Puryear, and **carried 5-0** to open the public hearing for the request by Progress Energy for a Special Use Permit and Vested Rights for a Monofill (Industrial Landfill for Coal Combustion products) on 659.9 acres on U.S. 501 North and Woody's Store Road, Woodsdale Township.

Planning Director, Paula Murphy stated the County has received a request for a Special Use Permit and Vested Rights by Progress Energy for a monofill (industrial landfill for disposal of coal combustion products) on US 501 North, Old 501 and Woodys Store Road. Ms. Murphy noted the Mayo Plant is going from a wet system for ash to a dry system. Ms. Murphy confirmed an electrical generating facility is allowed in the RC District with a Special Use Permit noting this change from a wet system for ash to a dry system requires a Special Use Permit.

Ms. Murphy stated the parcel in question is approximately 659 acres owned by Progress Energy on US 501, Old 501 and Woodys Store Road in the Woodsdale Township. The parcel is neither within a Person County designated watershed nor in a 100 year flood area and is currently vacant land consisting mainly of trees with some intermittent and perennial streams along with wetlands. The surrounding property is primarily vacant land with some single family dwellings, Louisiana Pacific and the Progress Energy Mayo Plant. The proposed waste footprint (monofill) will be 118.4 acres with access to the site from Old US 501. Ms. Murphy stated trucks will leave the Mayo Plant site off US 501 and head north approximately .75 mile to Old US 501, left turn and enter the site via a 22 foot wide graveled road.

Ms. Murphy noted Progress Energy has submitted a site plan for a proposed 118.4 acre monofill (industrial landfill for disposal of coal combustion products) on property near the existing Progress Energy Mayo Power Plant on US 501 North and Woody's Store Road, Woodsdale Township. The Mayo Plant is the largest coal fired plant in the Progress Energy system. The plant generates approximately 180,000 tons of ash and 170,000 tons of gypsum and other coal combustion products per year. Ms. Murphy stated ash is currently stored in a wet pond.

Ms. Murphy stated approximately one hundred truck trips per day is anticipated . The number of employees on site has not yet been determined. In the future, the plant is expecting to add a shop with a small office and two maintenance bays. If this is not approved within this Special Use Permit, a new special use permit application will have to be filed for the office/maintenance shop (part of the second phase of construction).

The proposed monofill has an expected 60 years disposal capacity. The monofill will have to get approval from NCDHENR and meet all State, Federal and Local Regulations. The proposed development of the site will be done in stages. There is a proposed leachate tank, portion of the monofill and the access roads in the first stage which will be five years. A maintenance/shop building is proposed in addition to rail access/unloading facilities after the five year period. Map SUP-2 shows the proposed site of the monofill along with the perennial and intermittent streams and wetlands. The current plan shows one stream crossing which will require approval from NCDEHNR. It has been noted that there are no geological hazards on the property. The closest well to the property is 800 feet to the west. The plans do not show any buffers around the property. Ms. Murphy noted the Zoning Ordinance does not require buffers but this could be a condition of the Special Use Permit.

Ms. Murphy cited Section 74-4 of the Planning Ordinance:

74-4 On receiving the recommendation of the Planning Board, the County Commissioners shall consider the application and said recommendation and may grant or deny the Special Use Permit requested. The Special Use Permit, if granted, shall include such approved plans as may be required. In granting the permit, the County Commissioners shall find:

- (1) that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.
- (2) that the use meets all required conditions and specifications.
- (3) that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and
- (4) that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with comprehensive plan.

Ms. Murphy highlighted the Progress Energy Monofill Project Booklet prepared by Golder Associates Inc. containing the application for a special use permit as well as Mayo Combustion Products Monofill Supplemental Materials documentation noting preliminary jurisdictional determination for which Ms. Murphy noted the Army Corps of Engineers is responsible. Appendix D contains information from the Division of Water Quality on streams located on the property. Appendix C contains correspondence from the North Carolina Department of Cultural Resources and North Carolina Department of Environment and Natural Resources.

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Ms. Murphy noted the following permits may be required in connection with this project:

1. Erosion and Sedimentation Control Plan approved by NCDEHNR.
2. 401 Permit from the State on the wetlands located on site. (These areas are noted on the plans)
3. Solid Waste Management Permit.
4. Natural Resources Clearance.
5. State Historic Planning Officer Clearance.
6. NPDES Storm Water Permit.
7. Section 404 Clean Water Act Permit

Ms. Murphy stated should the Board make a favorable recommendation, the following conditions should be considered as well as find that the request for a special use permit is in keeping with the Comprehensive Plan and the Findings of Fact in Section 74-4.:

1. Approval from NCDENR for a Waste Management Permit prior to obtaining a Zoning Permit.
2. Approval of an Erosion and Sedimentation Plan prior to obtaining a Zoning Permit. A copy of the plans and the approval letter to be submitted to Planning.
3. Board to make a recommendation on buffers.
4. All required Federal, State and local permits to be obtained and a copy of those approvals submitted to Planning prior to a Zoning Permit.
5. Board to approve the Vested Rights for a period of five years

Ms. Murphy stated the Planning Board held a Public Hearing on September 2, 2010 and after discussion decided unanimously on the following conditions to be forwarded to the County Commissioner's with a favorable recommendation. The condition include a 200 foot buffer around the landfill portion, a 22 foot wide graveled road, the phasing as shown on the plan, a maximum height of 180 feet, the findings of fact as noted on Page 8 and 9 of the application, in keeping with the comprehensive plan, Section 2.1 and consideration of staff comments.

The following individuals spoke as proponents of the request:

Mr. Eric Norheim, Plant Manager at the Progress Energy Mayo Plant first introduced the Progress Energy representatives, Tanya Evans, Community Relations Manager, Rob Reynolds, Monofill Project Manager, Drew Elliot, Corporate Communications, Dulcie Phillips, Mayo Plant Environmental Coordinator as well as the two outside consultants, Mr. Charles Hiner, Senior Consultant of Golder Associates and Mr. Matthew Rhoad, a partner of Smith Anderson Law Firm representing Progress Energy. Mr. Norheim introduced the subject before the Board by stating Progress Energy has been and will always be a good environmental steward noting there are state and federal regulations forthcoming and Progress Energy is proactive to create a better, long term storage system for coal combustion products according to all regulations thereby reducing impacts to surface water and ground water. Mr. Norheim noted this project will minimize truck transport of coal combustion products through the county by locating the monofill next to the Mayo Plant. Mr. Norheim provided detail and history noting Progress Energy 740 mega-watt Mayo Plant fulfills a critical need by providing electricity to a growing region. Progress Energy continues to make investments in both the Roxboro and Mayo Plants. Both plants generate more than 3200 mega-watts that could power 2.6 million homes. Mr. Norheim noted state-of-the-art scrubbers and catalytic reduction systems were installed in 2001-2009 in both power plants reducing sulfur dioxide air emission rates by approximately 90% and nitrogen oxide emission rate by approximately 80% in Person County representing an investment of almost \$1 billion. The new technology further reduced mercury emission rates by more than 70%. Mr. Norheim stated to further the environmental concerns, Progress Energy plans continue investments in surface water and ground water quality standards moving away from wet pond storage system to a monofill dry storage system for coal combustion products (fly ash and gypsum). A monofill is an above ground dry storage system containing one type of material, (this case, coal combustion products). Mr. Norheim stated coal combustion products are currently being transported to an existing monofill at the Roxboro plant. Progress Energy desires to minimize trucking traffic across the county and further utilize land already owned by Progress Energy adjacent to the Mayo Plant. The land in question was originally purchased in the 1970 for its initial use as a future wet ash pond. Progress Energy would like to keep with the original use of the land. Mr. Norheim told the Board that state-of-the-art design and technology would be incorporated into the high density polyethylene liner and the leachate collection system built in accordance to the design approved by the North Carolina Department of Environmental and Natural Resources and any additions approved as well. Mr. Norheim noted that Progress Energy actively pursues beneficial reuse opportunity of coal combustion products that significantly reduce the amount of coal combustion products to be stored and provide economic development opportunities, such as the announcement of the CertainTeed plant. Mr. Norheim further noted the CertainTeed plant would reuse the majority of the gypsum product. Coal ash can be reused as a additive to cement and concrete products.

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Mr. Matthew Rhoad, a partner of Smith Anderson Law Firm representing Progress Energy stated the special use request meant the proceeding is quasi-judicial and requested to have all participants offering testimony sworn under oath. County Attorney, Ron Aycock stated it would be permissible to administer the oath to all proponents Chairman Lunsford swore in the following to offer testimony: Mr. Eric Northeim, Mr. Charles Hiner, Mr. Robert Reynolds, Mr. Drew Elliot, Progress Energy, Mr. Jim Stovall, Mr. Mark Phillips, Ms. Tanya Evans, and Mr. Matthew Rhoad.

Chairman Lunsford stated all previous testimony would be accepted without the need of repeating such.

Mr. Charles Hiner, Professional Engineer, Senior Consultant and Associate of Golder Associates, Inc. of Greensboro, NC highlighted for the Board the design of the facility noting a detailed design permit request for the Department of Environment and Natural Resources (DENR) is taking place currently. Mr. Hiner further noted the Environment Protection Agency (EPA) is revisiting coal combustion regulations, and the design is currently with DENR regulation subtitle D alternate requiring a composite liner. Mr. Hiner explained a composite liner is basically a piece of FML, between two pieces of clay with a leachate collection system. Mr. Hiner stated Progress Energy is proposing a more robust system containing 2 feet leachate system as a subtitle D, secondary leachate collection system above primary liner, another leachate collection system, a secondary FML liner and then a backup GCL liner which is more protective of the environment than the current regulations. EPA proposed regulations consists of all with the same subtitle D liners FML clay composition liners. The proposed liner exceeds the performance standards of the EPA proposed.

Mr. Robert Reynolds of Progress Energy, 100 E. Davie Street, Raleigh made no comments but was sworn in to answer any questions.

Charles & Nellie Wilkins of 2216 Union Grove Church Road, Hurdle Mills signed up to make comments but was not sworn in nor appeared before the Board to offer testimony.

Mr. Drew Elliot, of Progress Energy Corporate Communications did not offer testimony.

Mr. Jim Stovall of 261 Wimbledon Drive, Roxboro and Chairman of the Economic Development Commission recommended to the Board to approve the request for the special use permit and vested rights for the proposed monofill facility noting the proposal facility would be a state-of-the-art, DENR approved, lined with full leachate properties and monitoring systems. Mr. Stovall further noted the alternate to subtitle D is far superior to the subtitle D. Mr. Stovall recommended the proposal fly ash handling process from a coal fire generating power plant. Mr. Stovall stated the pond system to a regulated lined is a great safeguard for the community's environment noting the close proximity to the Mayo Plant is another excellent feature and protection. Mr. Stovall told

the Board the monofill system will put Progress Energy and Person County years ahead in handling, regulation and safety. Mr. Stovall commended Progress Energy on the many other clean air initiatives in Person County as well as other services in the Carolina and Florida noting the \$3 billion spent on new scrubbers and SCR systems reduce and has reduced the sulfur and dioxide emission by 90%, nitrogen oxides by 80% and the mercury levels by 70% just from the 2004 levels. Mr. Stovall stated all four of the Hyco and the Mayo Plant have these new technologies. Mr. Stovall thanked Progress Energy for being Person County's greatest economic development partner now and in the past highlighting current projects include the Person County Solar Park, \$160 million plus CertainTeed plant under construction now and other unannounced projects that are in Person County in large part to Progress Energy's support and committee to Roxboro and Person County. Mr. Stovall stated he supported totally the Planning Board's unanimous recommendation for the Board's approval.

Mr. Mark Phillips of 233 N. Main Street, Roxboro and Vice Chair of the Roxboro Area Chamber of Commerce asked the Board to support the unanimous Planning Board's decision and recommendations for approval of the monofill project requested by Progress Energy. Mr. Phillips stated Progress Energy is a great corporate citizen to both Person County and Roxboro contributing greatly to the tax base and many other ways in the community, proactively installing new scrubbers reducing pollutants in both plants in Person County implementing three years ahead of the required state and federal mandates. Mr. Phillips stated Progress Energy is being proactive in this case as well implementing before required and noted his support in their attempt to keep the environment and everyone safe.

Ms. Tanya Evans, Progress Energy Community Relations Manager made no comments but stated her availability for questions.

The following individuals spoke in opposition to the request before the Board:

Chairman Lunsford swore in the following to offer testimony: Mr. Troy L. Wilson, Mr. Charles Whitlow, Mr. David Brooks, Mr. Jimmy Blanks, Mr. Jeffrey Whitlow, Mr. Eugene Berryhill, and Mr. C.T. Hall, Jr.

Mr. Troy L. Wilson of 71 Allie Clay Road, Roxboro encouraged the Board to have an environment study completed noting his own personal experiences of living near to the current EPCOR USA facility (previously owned by Progress Energy) with ash airborne. Mr. Wilson recounted experiences when Progress Energy owned the plant adjacent to his home of ash loaded on trucks that went all over the community. Mr. Wilson stated he has 4-5 hours of video of trucks loaded with ash. Mr. Wilson stated Progress Energy did a poor job of taking care of the ash. Mr. Wilson complained of

EPCOR using grounded up automobile tires for fuel and the black carbon that lands on vehicles in the community. Mr. Wilson asked the Progress Energy representatives if the monofill facility would be accepting materials from other plants such as EPCOR. Mr. Reynolds stated the monofill facility would accept coal combustion products from the Mayo Plant, Roxboro Plant and any Progress Energy facilities. Mr. Reynolds confirmed the EPCOR plant is not a Progress Energy facility. Mr. Wilson stated one hundred truck loads per day will be a disaster and problems like EPCOR receiving trucks all during the night. Mr. Reynolds noted Progress Energy currently loads ash dry and transports to Roxboro further noted in the loading and handling prospective, there is no change except to transport closer to the source. Mr. Reynolds stated all trucks are loaded direct in an enclosed silo and covered and sprayed with water prior to leaving the site. Mr. Northeim stated the proposal will limit the coal combustion products to coal facilities in North Carolina to the two plants in Person County and two plants in Asheville by 2014, further stating 90% of the ash generated after 2014 will be from the plants in Person County.

Mr. Charles Whitlow of 1085 Woodys Store Road, Roxboro stated opposition to the request noting his concerns with dust, pollutants and contamination in the air. Mr. Whitlow stated his belief if it is on the ground, it will get inside the ground and contaminate something. Mr. Whitlow said he looked on the computer about coal combustion products from coal plants and stated surface water is contaminated, well water is contaminated and if that happens, what do the people do? Mr. Whitlow asked if water would be provided, if a water line would be run to this area. Mr. Whitlow stated he buys land to be safe, then big companies come in (stated the need for power) and do this for a long time wondering what will happen over time noting people inside the Roxboro City Limits do not have the worry but the ones that live close by do have to worry with many trucks come in, dust in the air, landing on the houses. Mr. Whitlow asked what would happen to his livelihood, his children breathing the air, drinking water without a guarantee they won't get sick. Mr. Whitlow encouraged the Board to think long and hard noting it will be in his backyard.

Mr. David Brooks of 5019 Woodsdale Road, Roxboro stated the Woodsdale community is at the mercy of commercial industrial site while agreeing for the need electricity to be generated, opposed the proposed request for Progress Energy's trash. Mr. Brooks noted not one of the Board members or Progress Energy representatives live in the Woodsdale area. Mr. Brooks stated Woodsdale is on its way to being a commercial industrial site. Mr. Brooks commented that one day something will happen to a house and the owner will not be allowed to put the house back together because of the industry taking over. Mr. Brooks suggested industry buying out at a fair market price so he can relocate. Mr. Brooks stated Progress Energy would not put a place in the county to walk in to pay bills and talk to someone about problems noting Piedmont Electric does have such an office. Mr. Brooks spoke of the 660 acres owned by Progress Energy noting the hundreds of trucks per day going to the asphalt and gravel plant. Mr. Brooks noted the Board's responsibility is to protect its citizens and stand up on their behalf. Mr. Brooks stated it is a mistake to allow something to this magnitude without knowing the effect on the people.

Mr. Jimmy Blanks of 930 R.T. Hester Road, Roxboro, retired 38 years in the military, and a farm owner of 3,860+ feet of parcels of land abutting Progress Energy lands west and north of Boston Road requested the Board return the Progress Energy special permit request back to the Person County Planning Board for proper planning board notification procedures as required by law. Mr. Blanks presented the Board with handouts containing information on state authority 61.17 referencing NC state law 160A-384(a) methods of procedure, glossary of environmental health terms, email correspondence related to coal combustion water or coal ash including the dangers on leads and arsenic poisoning. Mr. Blanks stated he is trying to get organic certified to sell to the public beef, goat meat, chickens, eggs noting it next to a fly ash dump and on his land what will be covered with dew daily. Mr. Blanks stated Woody Hollow Farm (80 acres) and his, his children and grandchildren's livelihood being next to ash pond will be ruined. Mr. Blanks stated a different liner was discussed at the Planning Board and another different in the written material noting it has been changed three times. Mr. Blanks stated the Person County Planning Board failed to mail by first class mail to all known owners of all parcels of land abutting Progress Energy lands west of Boston Road and north of Woody Store Road a notice of the upcoming public hearing on a proposed zoning request/amendment from Progress Energy, at least 10 days but not more than 25 days, prior to the date of that hearing, the 2nd of September of 2010. Mr. Blanks noted the lack of public published minutes from the 2nd September public Planning Board meeting as well as asked the Planning Board to require a revisit and verification of properly process written special permit as it currently exists in the written form from Progress Energy as a matter of order before the Board to review and render a ruling on the special permit. Mr. Blanks went on to say the Person County Planning Boards failed to response satisfactory to several personal telephone inquires as to why the sign of notice was posted at R.T. Hester and Boston Roads crossroads prior to the 2nd of September 2010 meeting. Mr. Blanks stated the Planning Clerk explained that only personnel living on Woody Store Road were involved, and she didn't know why the sign was at R.T. Hester and Boston Roads and directed Mr. Blanks to further inquiry with Ms. Murphy. Ms. Murphy was out of the office and Ms. Perkins said she would leave a message. Mr. Blanks noted after a couple of days, he emailed Ms. Murphy and received the reply which is included in the handout for Board review. Mr. Blanks stated he did not receive a letter of notification. Mr. Blanks stated he was not prepared to speak at the 2nd September Planning Board meeting and he and his wife attend out of curiosity, asking several questing during the briefing as the presentation was very vague and much too general in nature for anyone in the attending audience. Mr. Blanks stated Old 501 is a NC DOT road, 16 feet wide. Mr. Blanks spoke of the different liners presented stating the liners will expire. Mr. Blanks stated he overheard Progress Energy personnel verbally assured the Planning Board that Progress Energy in fact owned all of R.T. Hester Road.

Mr. Rhoad went on the record with a standing objection to the hearsay testimony not being admissible.

Mr. Blanks continued to speak and noted he was advised to attend the Board meeting with proper documentation to verify his statements. Mr. Blanks stated according to DOT, SR1374 has been a DOT road since 1962 and is not up to standard to serve 100 trucks per day. Mr. Blanks referred to the bylaws to prevent the pollution of air, streams and parks; to assure the adequacy of drainage facilities; to protect the water table; and to encourage the rational and efficient utilization and management of natural resources throughout the county in order to preserve the integrity, stability, and beauty of the community and the value of the land. Mr. Blanks described a 20 foot story building of ash that 1 football wide by and 3-4 football fields long (180 feet) fitting into the community being esthetic. Mr. Blanks continued the bylaws description to preserve the natural beauty of the county and to ensure that the development is consistent with indigenous natural and physical features. Mr. Blanks illustrated with charts and maps the location of the proposed facility noting a 200 foot setback for safety and questioned why not a 500 foot setback stating limitations of installing a well or constructing a house. Mr. Blanks commented about the amount of energy generated and what is the electrical bill Progress Energy pays or the amount of energy consumed by Progress Energy. Mr. Blanks noted he thought he was protected because of the laws. Mr. Blanks stated CP&L sold him his land in 1980 including all easements. Mr. Blanks stated a cemetery was plotted out on the drawings and now big trucks went right over where the cemetery was located. Mr. Blanks stated he was ashamed that 2000 are not before the Board or take the time to find out what is happening in the community. Mr. Blanks stated coal combustion water, or coal ash, is largely made up of ash and other unburned materials that remain after coal is burned in a power plant to generate electricity noting burning concentrates the metals naturally found in coal. Mr. Blanks spoke of the many coals cars and the toxic elements such as arsenic, cadmium, chromium, lead, mercury, selenium, thallium and numerous other dangerous contaminants are founds in much higher concentrations on a per volume basis in ash as compared to coal. In additional, coal ash includes the particles captures by pollution control devices installed to prevent air emissions of particulate matter (soot) and other gaseous pollutants from the smokestack. Mr. Blanks told the Board he was an HB Zachary employee that built the power plant and noted he could tell stories about quality assurances programs. Mr. Blanks stated understanding that there would be a waste and if smart ahead of mandates to show stockholders a good job and be there 60 years. Mr. Blanks stated as power plants employ more and better pollution control devices to capture hazardous air pollutants, the volume and toxicity of coal combustion waste grows. More importantly, it is not the mere presence of these dangerous toxins in ash that pose the threat – it is their propensity to leave the ash when the waste comes into contact with water. Mr. Blanks described 10 trucks loads and ash and six inches of rain the results to the liner and the soil. Mr. Blanks admitted he was not a chemist nor a scientist but sited the dangers of lead and arsenic poisoning as nerve and skin damage, scaling of the skin, pigment changes, increased cancer risk of lung, bladder, kidney and liver, circulatory problems in the skin, high level of lead contribute to mental retardation, coma, convulsions and death, low levels of lead are associated with reduced IQ and attention span, impaired growth, reading and learning disabilities, hearing loss and a range of other health and behavioral effect.

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Chairman Lunsford asked Mr. Blanks to bring his discussion to a close.

Mr. Blanks noted North Carolina has more hazardous ash compounds than any other state and further noted Progress Energy plants in North Carolina that have levels above state standards.

Mr. Rhoad objected to Mr. Blanks' comments related the environmental contaminations, chemical levels, toxin levels, etc that only an expert can testify. Mr. Rhoad stated the only thing before the Board is the four criteria for the special use permit. Mr. Aycock explained quasi-judicial procedure dictated the Board to act as judge in court noting courts have said that a little more latitude that is in normal testimony of a court is allowed. Mr. Aycock stated Mr. Rhoad is correct in that there has been a substantial amount of testimony with the Board allowing great latitude and suggested Mr. Blanks to close his comments as the Board had been open to allowing much testimony. Mr. Aycock noted expert testimony is given by people who are qualified to be experts.

Chairman Lunsford asked Mr. Blanks if he understood and he confirmed he did. Mr. Blanks stated regulatory requirement for landfill for monitoring, collection and cover system, controls, corrective actions, structured stability, financial assurance and the proposed dump is considered hazardous to his health. Mr. Blanks recommended using the guidelines in subtitle C of CRRA 40, CRF parts 264 and 265.

Mr. Aycock advised the Chairman that a lay witness is not allowed to provide expert testimony unless qualified as an expert. Mr. Aycock noted statements have been made substantial and suggested the Board understood Mr. Blanks position with the limitation of going beyond what the procedure is about and allow others to make statements. Mr. Blanks commented no further and returned to his seat.

Mr. Jeffrey Whitlow of 1087 Woody Store Road, Roxboro stated opposition to the request noting none of the people in support or experts live in this area. Mr. Whitlow stated 7 springs in the field, 3 springs just below, turkeys on the land is endangered species and the impact to wildlife. Mr. Whitlow noted is there would be fluid leaking or ash flying from the 100 trucks traveling through the area. Mr. Whitlow stated the proposal is wrong.

Mr. Eugene Berryhill, of 668 Berryhill Road, Roxboro stated opposition to Progress Energy's request and disagreed with the Planning Board recommendation and urged the Board disagree with the Planning Board decision or at least table to obtain more information. Mr. Berryhill stated government offices came before the Board to increase the tonnage going into the landfill. Chairman Lunsford told Mr. Berryhill his comments needed to be related to request by Progress Energy. Mr. Berryhill spoke of community public hearings with the citizens expressing their desire of no more trash coming into Person County. Mr. Berryhill noted counties and cities take care of its own trash and he questioned why Person County should be looking after Progress Energy's trash. Mr. Berryhill stated he is 89 years old and realize his own limitations and desires

friendly environmental conditions for himself and family which can't be achieved with a time-bomb staring into one's face. Mr. Berryhill noted Scott Mooneyham's article in *The Courier-Times* Editorial page of September 15th spelling out the problems with Progress Energy's trash. Mr. Berryhill gave Board members a copy of noted article highlighting the last paragraph stating North Carolinians need to know that even as plants are moth-balled, the coal ash pits won't turn into ticking time-bombs. Mr. Berryhill stated the workers of the Planning Board projected this project right by the law, in good fashion and complimented the way it was presented. Mr. Berryhill noted the US Environmental Protection Agency announced public hearings not only in North Carolina but across the nation discovering dangerous waste sites up with North Carolina having a number of them noting dangerous levels of arsenic, lead, mercury and other toxins. Mr. Berryhill asked the Board if they would like to have 180 feet pile of ash containing toxins next to them or even in the county. Mr. Berryhill noted Progress Energy is requesting to store contaminated ash and questioned Progress Energy addressing the issue anytime soon. Mr. Berryhill suggested trucking the ash to the coal mines stating Progress Energy is currently trucking ash from the Mayo Plant to the Hyco Plant on heavily loaded trucks with 3 axles. Mr. Berryhill noted one road is now blocked, repairing a bridge, now traveling into Roxboro, further noting the trucks are secure with nothing getting out and Progress Energy is claiming not toxic. Mr. Berryhill stated the Planning Board approved the request without much publicity or explanation to the citizens of Person County. It did not appear as a headline article in *The Courier-Times* last Saturday noting a published statement that the ash does not contain any contaminants harmful to human beings. Mr. Berryhill asked how this statement could be made when the U.S. Environmental Protection Agency has already pointed that out in Tennessee contaminated ash stored and did a lot of damage.

Chairman Lunsford asked Mr. Berryhill to bring his comments to a close as he was out of the realm of law for the discussion in the public hearing reminding him the Board is considering what the Planning Board has presented.

Mr. Berryhill stated Progress Energy's request has caused trouble and noted a stockpile. Chairman Lunsford stated it should have been brought to the Planning Board as the Board is acting on the Planning Board recommendation. Chairman Lunsford reminded Mr. Berryhill of his statement of the Planning Board's good job. Mr. Berryhill stated the people that work with the Planning Board did a good job of explaining to the Planning Board members of the situation. Mr. Berryhill mentioned a small city in Ohio had a dump that broke and flooded the city resulting in contaminated wells. Mr. Berryhill stated the Planning Board approved dumping and stockpiling contaminated ash in Person County and this Board of County Commissioners has to accept the Planning Board's decision or reject it. Mr. Berryhill wanted to inform the Board via the U.S. Environmental Protection Agency what has happened in other areas so the Board will disregard the Planning Board's decision or at least table to learn more about the situation. Mr. Berryhill felt the public hearing was announced at the eleventh hour that the Board would consider the request. Mr. Berryhill commented the speakers before him opposed to the request are speaking from the heart.

Chairman Lunsford stated this concluded the speakers that had signed up for the public hearing. Mr. C.T. Hall, Jr. requested to speak. Chairman Lunsford stated he did not sign up prior to the meeting. Mr. C.T. Hall, Jr. stated he could not get into the room upon his arrival however, he did take the oath to be sworn. Chairman Lunsford instructed Mr. C.T. Hall, Jr. to approach the podium to speak.

Mr. C.T. Hall, Jr. of 975 Claude Hall Road, Roxboro, landowner adjoining to Progress Energy property stated concerns of the ash. Mr. Hall noted an article in the *News and Observer* recently put out by the EPA and other government officials stated no toxins however Mr. Hall feels arsenic is definitely in the ash. Mr. Hall is concerned if the ash get in a stream or pond and puts lead in the oxygen, what effect on livestock and fish. Mr. Hall mentioned a potential problem at Hyco. Mr. Hall stated shields will break coupled with a big rain will result in a problem. The EPA and other government agencies have started to have meetings to study and decide whether or not to leave up to the state regulations or federal law to enforce. Mr. Hall stated Progress Energy wants to get this request passed on before the federal government comes out with very strict regulations on storing ash. Mr. Hall encouraged the Board to wait until the federal government makes a decision. Mr. Hall stated this is a very serious problem as he saw in a paper the recently that a landfill down east had a shield to break. Mr. Halls gave an example of digging a well a mile away and if the vein of water is under a place that has leaked and turned to poison, then the well water will be contaminated. Mr. Hall stated he resides 9 miles from the Hyco plant and before the scrubbers were installed, he could write his name on top of his car from the dust collecting.

Chairman Lunsford asked for a motion to close the public hearing. Commissioner Kennington requested to ask questions to those presenting, who are sworn prior to closing the public hearing. Mr. Rhoad stated no objection to any questions and requested the Chairman to give a brief summary and rebuttal evidence as well prior to closing the public hearing. Chairman Lunsford directed Mr. Rhoad to proceed.

Mr. Rhoad confirmed with the Board and the Clerk that the entire application for the special use permit is part of the record. By reference, the Progress Energy Application for a special use permit and vested rights is hereby incorporated into the minutes and shall be on file in the Office of the Clerk to the Board.

Mr. Rhoad renewed his objection to any hearsay testimony and requested for it not to be considered by the commissioners and also to any lay testimony that properly expert testimony include environmental, evaluations, safety, etc. Mr. Rhoad stated much testimony heard is speculation and is not admissible under the law.

Mr. Rhoad addressed questions to Mr. Hiner under direct examination.

Mr. Aycock suggested to be consistent the witness should be qualified and requested qualifications of the expert witness. Mr. Charles Hiner stated that he is a practicing engineer for Golder Associates with a bachelors degree in engineering (1988) and a masters in civil engineering (1994), is a licensed professional in the state of North Carolina, practicing and working primarily in landfills design, permitting, construction, monitoring and environmental monitoring including corrective action at landfills since 1994.

Question: Mr. Rhoad

Under EPA or DENR is the material considered hazardous?

Answer: Mr. Hiner

Currently coal ash, coal combustible products are not considered hazardous waste. EPA has a procedure called toxicity characteristic leach procedure (tclp) . If something fails a tclp test and considered hazardous, something is leaching out of a material. In the case of coal ash, looking at arsenic, selenium, boron, magnesium and other metal discussed. To date, no coal ash has failed tclp. EPA is discussing at looking at it as a special waste and putting under subtitle C hazardous special waste. Historically what has been done as people have pointed out, ash going into large ponds where subjected to water for a chance of leaching to occur on lined ponds which is what Progress is trying to get away from. Trying to go dry, trying to go lined. In the long and short, no, it is not hazardous.

Question: Mr. Rhoad

The references to the problems in Ohio with the TVA, were those dry ash storage or were they wet ponds?

Answer: Mr. Hiner

TVA is definitely a wet pond, not personally familiar with the Ohio incident but the way it was described it does sound like it was a wet pond from the verbage used. Mr. Drew Elliot of Progress Energy, commented from the audience that he was familiar with what they were talking about and it was not actually a fly ash storage issue.

Question: Mr. Rhoad

Does the proposed plan comply with federal and state laws and regulations?

Answer: Mr. Hiner

Stated preparing a permit amendment or permit request which would be in accordance with all state and federal regulations including sediment erosion control, air pollution control, control dust emissions as well as solid waste, ground water monitoring, leachate collection design.

Question: Mr. Rhoad

If EPA were to change the regulations, Progress Energy would be subject to work with the new regulations?

Answer: Mr. Hiner

Currently the regulations that are proposed like I briefly mentioned before subtitle D or D like which are permanent would be in accordance. Also your zoning ordinance would permit something like that. If they go subtitle C it would "hazardous" in which case the special use permit becomes invalid.

Question: Mr. Rhoad

And why is that?

Answer: Mr. Hiner

Because the Zoning Ordinance does not allow hazardous waste in Person County.

Question: Mr. Rhoad

And the special use permit we are asking for is for non-hazardous, non-toxic?

Answer: Mr. Hiner

Confirmed.

Mr. Rhoad stated that was all the questions he had for Mr. Hiner and requested to ask questions to Mr. Reynolds.

Mr. Hiner stated one of the things that kept coming up over and over was concern over the dust and ground water contamination and of, course the system is lined, collecting leachate so the chance of ground water contamination is minimal and if it does occur, ground water monitoring would be in place to detect it. Regarding ash, compliance with air permits and also part of the daily operation is an alternate daily cover so to protect the material at the end of every day and at least once a month, covered with soil or something similar, again, minimizing the potential for releasing into the environment. Mr. Hiner also pointed out is the special use permit is requested south of the railroad tracks noting Mr. Blanks claim of not receiving notification as an adjoining neighbor is due to the special use permit is not being requested north of the railroad tracks. The railroad tracks are owned by Progress Energy. Mr. Hiner noted that Progress Energy is not only meeting the 200 foot buffer from the property line but also no ash will be put within 200 feet of any perennial streams.

Commissioner Kennington requested to ask questions of Mr. Hiner at this time and proceeded to do so.

Question: Commissioner Kennington

Requested explanation of what is being talked about on page 7, section 2.7, and page 1, section 1.3 regarding several intermittent streams are expected to be impacted by the proposal development

Answer: Mr. Hiner

The site has valleys and hills and an intermittent stream in accordance with what has to demonstrated to DENR can be the elbow of those ridge lines so if there is place where storm water runs through, root and vegetation patterns or even in some cases some incision can present where there is water drains, creek bed. An intermittent stream on this site is nothing that is stream-fed but purely run-off driven and has gotten to the point where it has created some of those features, but not a wet land. A request for jurisdictional determination has been submitted is included and a meeting with the CORPS of Engineers is set for tomorrow to review the request for agreement. Usually the CORPS does not take jurisdiction over an intermittent stream as a perennial stream. NC Department of Environment and Natural Resources takes jurisdiction over intermittent streams and currently there are no regulations prohibiting placement of ash waste in an intermittent stream as they are typically a run-off driven feature. As you are changing the topography above the stream, you no longer have run-off.

Question: Commissioner Kennington

You are saying they will be impacted?

Answer: Mr. Hiner

Intermittent streams, yes.

Question: Commissioner Jeffers

Can you repeat the statement about the meeting with the CORPS tomorrow?

Answer: Mr. Hiner

Meeting with the CORPS of Engineers tomorrow to go over a wetlands permit. One other thing is crossing a creek and an upgrade to the crossing as it is now a low level crossing. Once a jurisdictional determination is done and wetland or stream identified, permitting process can be started for crossing. Looking at a triple box culvert or something like that. The intermittent streams are drainage features.

Question: Commissioner Kennington

Does the four intermittent streams run directly into Bowes Creek or referred to Bowes Stream?

Answer: Mr. Hiner

Some of them do and some do not.

Question: Commissioner Kennington

What impact of those four running into Bowes Stream then goes north goes into the Dan River Basin?

Answer: Mr. Hiner

The streams will no longer be there. As the project develops , the draining areas will be dug out, leveling out and taking out the valleys so there will not be a run-off going to those steams or to the Bowes Stream.

Question: Commissioner Kennington

Under oath you can guarantee that there will be no run-off from the intermittent stream to the Bowes Stream?

Answer: Mr. Hiner

Under oath, I can say that any run-off that goes into Bowes Stream will be permitted under either a 401 permit.

Question: Commissioner Kennington

In layman's terms, what does that mean, does that mean that you can't guarantee?

Answer: Mr. Hiner

In laymans terms, the intermittent steams will be controlled and contained, sediment removed, noting anything going into the creek will not be ash. If ash were to go into the creek, it would be a violation of the solid waste permit and discharge permit would be corrective action. Development will be done in phases, building a sediment erosion control ponds to minimize the chance of any sediments from the project going into the stream.

Question: Commissioner Kennington

Can you guarantee?

Answer: Mr. Hiner

Can't guarantee much in life.

Question: Commissioner Kennington

In your professional opinion, what is the life of the line demonstrated to the Board?

Answer: Mr. Hiner

Several hundred years. Would have to look at the specific material being used, typically in the laboratory, exposed to high levels of oxygen and other heat to get a life. An HTP liner has a 500-1000 years life span, varies from manufacturer, typically associated with organic material which is not at this site, metals typically do not affect the liner.

Question: Commissioner Kennington

Under oath, stating a guarantee that this liner will not leak over the 60 years?

Answer: Mr. Hiner

I can not guarantee and the manufacturer can not guarantee it.

Question: Commissioner Kennington

What type of ground water monitoring is proposed to ensure that no leakage does occur and particularly wells down or up stream, 1 mile, 10 miles away into the Dan River Basin?

Answer: Mr. Hiner

At the first phase of the development, would need to review the plan and discuss at DENR but looking at 5 wells and in discussion with DENR to use the secondary leachate collection system and monitoring for collection and analysis.

Question: Commissioner Kennington

If any leakage off-site, what is the legal responsibility of Progress Energy to correct?

Answer: Mr. Hiner

If anything goes more than 250 feet from the well, the landfill ground water has two phases, detection monitoring and assessment. Detection monitoring would be the initial phase, if any contaminants are detected in the ground water above background, assessment monitoring which also has components of corrective action. At the point of above background, a study of the effect on ground water to prevent any contamination from going off-site.

Question: Commissioner Kennington

How can the Board be expected to approve tonight when the Board does not know what the CORP of Engineers will find out tomorrow?

Answer: Mr. Hiner

The impacts reviewing is the stream crossing, fairly minimal. Unless the CORP finds something that we did not

Question: Commissioner Kennington

Is that a possibility?

Answer: Mr. Hiner

Certainly hope not.

Question: Commissioner Kennington

Is that a possibility? Yes or no?

Answer: Mr. Hiner

I won't say it is not a possibility but the amount of wetlands is far below the threshold of permitting.

Mr. Rhoad addressed the question noting one of the recommendation from the Planning Board that all permits are obtained which would include any CORP of Engineers permits.

Question: Commissioner Kennington
Does that fall under the aspect of federal permits?

Answer: Mr. Rhoad
Obviously would have to comply with that. If the result from tomorrow is that the stream needs protection, then the project would require a permit to move forward at all.'

Mr. Hiner added that getting the special use permit approval from the Board is part of the permit submitted to DENR.

Question: Mr. Rhoad
The plan is submitted complies with all state and federal regulations with the CORP of Engineers or DENR regarding impacted streams or wells?

Answer: Mr. Hiner
Yes

Question: Mr. Rhoad
The liner discussed complies with all state and federal regulations? Does it exceed?

Answer: Mr. Hiner
Yes, it exceeds.

Question: Mr. Rhoad
The ground water monitoring comply or exceed?

Answer: Mr. Hiner
It complies.

Question: Commissioner Jeffers
Asked Ms. Murphy to speak to the accusation of Mr. Whitlow of not receiving a letter of notification.

Answer: Ms. Murphy
Mr. Hiner addressed that and pointed out on Figure 3 the area for the requested special use permit noting the 500 foot range outside that area is owned by Progress Energy so Mr. Whitlow is beyond the limits.

Question: Commissioner Clayton
What is the difference in the selenium level in fly ash from 1984, is it lower or higher or approximately the same?

Answer: Mr. Hiner

Varies with coal so he could not answer that question.

Commissioner Clayton commented that in the 80's there was a problem with selenium getting into Hyco Lake, from the ash pond.

Mr. Hiner stated going dry so there should no discharge from the landfill to any water body.

Question: Commissioner Clayton

If rain water or surface water gets into the fly ash and collection system would it pick up any selenium?

Answer: Mr. Hiner

Responded that any water that comes in contact with the ash would have to be contained and treated and not allowed to run-off.

Question: Commissioner Clayton

Would the leachate be collected and carried to a special waste treatment facility? I'm assuming it would not go to a waste water treatment plant.

Answer: Mr. Hiner

Vast majority of be used to moisture condition the ash.

Question: Commissioner Kennington

Under section 3.1, page 8 stated coal ash will be covered on a regular basis, please define regular.

Answer: Mr. Hiner

Daily covered with polymer synthetic cover (alternate daily cover) to prevent dust and water coming into contact with the ash and at the moment requesting monthly at least one foot of soil cover which is in accordance with state regs.

Question: Commissioner Kennington

Somewhere around 2012-2014 Progress Energy would only have coal plants in Person County and in Asheville?

Answer: Mr. Northeim

Currently required to supply that data based on the needs of the state. Noted shutting down current coals plants by the end of 2014.

Question: Commissioner Kennington

No one else would be allowed to use this landfill?

Answer: Mr. Norheim
No one other than Progress Energy facilities.

Question: Commissioner Kennington
Potential that coal ash can be trucked from Asheville to Person County?

Answer: Mr. Norheim
That is a possibility, would not get into the economic considerations of trucking that far but indeed a possibility.

Question: Commissioner Kennington
What is the present disposal of coal ash at Hyco Plant?

Answer: Mr. Norheim
Fly ash is put into the monofill that is there right now.

Question: Commissioner Kennington
When was that built?

Answer: Mr. Norheim
Does not recall, several years ago.

Mr. Hiner estimated 8-10 years ago.

Question: Commissioner Kennington
Has Progress Energy met with all homeowner and landowner related to their concerns?

Answer: Mr. Norheim
No

Question: Commissioner Kennington
If this landfill is not available in Person County, would it be trucked somewhere else which may result in a higher cost impacting future rates for electricity, where would it be trucked to if this request is not approved?

Answer: Mr. Norheim
Reuse is a win/win for everyone. If reuse is not available, secondary option is to truck it over to the Hyco Plant. Alternatively, 50% of the Mayo Plant gypsum went to Norfolk, VA Currently working on contracts with potential cement companies.

Question: Commissioner Kennington
Under section 2.2 economic development issue talking about sophisticated storage disposal design that will minimize environment risk. Does minimize mean you can not eliminate?

Answer: Mr. Hiner

Can not guarantee elimination of risk.

Question: Commissioner Kennington

Can someone show the access road into this plant?

Answer: Mr. Hiner

Illustrated on the wall map the existing main plant road, North on 501 about $\frac{3}{4}$ of a mile, RT Hester Road functionally combines with old US 501 approximately 100 feet or so, in process of talking with DOT for a driveway permit in the old 501.

Question: Commissioner Kennington

Report stated no plan of widening road, will there be a turn lane on 501 North to turn onto old 501?

Answer: Mr. Norheim

Not currently in the plan however, if the Board requests, will take under advisement

Question: Commissioner Kennington

With 100 trucks going into the plant daily, what time will they be traveling?

Answer: Mr. Norheim

Typically during normal working hours

Mr. Hiner added the hours of operation in the application states 7 -6 Monday through Friday and 8-1 on Sat.

Commissioner Kennington inquired if a need for a turning lane or a flashing light with approximately 10-20 trucks to and from within a hour on a 55-mph road.

Mr. Norheim noted 100 trucks per day is the theoretical maximum, technically estimated at 40 trucks per day.

Question: Commissioner Kennington

Second or third phase, putting in a maintenance shop, loading, unloading product, would that be off the Woody's Store Road?

Answer: Mr. Hiner

As shown on the drawings, Mr. Hiner illustrated on the map in the upper corner, accessed through the old logging road, improved.

Question: Commissioner Kennington

How far from the Sunrock property?

Answer: Mr. Northeim
Unsure of where the Sunrock property is.

Question: Commissioner Kennington
Could any blasting at Sunrock could potential crack any of the aquifers under the landfill or do any potential damage to landfill?

Answer: Mr. Hiner
Mr. Hiner noted his expertise is not in quarry but he was exposed a little bit to this area and typically with a quarry, analysis of blasting is done with a certain distance to consider the effects of the blasts. Mr. Hiner noted of one landfill he was involved with was permitted adjacent to a quarry and the quarry demonstrated as part of the permitting process at 500 feet would not have any effects on the adjacent bedrock. The proposed facility in Person County is designed to withstand an earthquake, one with a 10% chance of occurrence within 250 years.

Question: Commissioner Jeffers
Where are the notices as the one he was holding placed in the county? Commissioner Jeffers noted the notice he was holding was on the county bulletin board.

Answer: Ms. Murphy
The notice was sent to the property owners and in the paper.

Question: Commissioner Jeffers
Published the 22nd and 29th of September according to Planning policy?

Answer: Ms. Murphy
Yes

Question: Commissioner Jeffers
Is that all the county has in the policy is to publish twice that close to having a public hearing?

Answer: Ms. Murphy
Yes, It also gets published again when it comes to the Board.

Commissioner Jeffers requested a copy of the policy in his box this week noting the Board needs to review and go back and change.

Ms. Murphy stated the notice is according to state law. Commissioner Jeffers stated county law may need to be a little longer.

Question: Commissioner Kennington

Off of old 501, 100 feet, will there be a locked gate all the time and a guard to prevent anyone else from entering the facility?

Answer: Mr. Northeim

There are no plans to have a full time guard there. There will be security around the perimeter of the facility. Typically use swing gate, badge the truck drivers with computer system.

Chairman Lunsford yielded to Mr. Brooks in the audience. Mr. Brooks inquired to the testimony of the chemical not hazardous, why is it so secured? Mr. Hiner responded that there is confusion hazardous means noting arsenic and saccharine is hazardous and becomes hazardous when exposed to certain dose. Mr. Hiner pointed out arsenic is present in potatoes and salt but in trace concentrations which is similar to what the tclip test is looking for how much of this material comes out of the substance when water is run over it. Mr. Brooks stated people living adjacent to the plant will smell and breath and asked if it will be healthy? Mr. Hiner responded that he doesn't know people will smell or breathe it.

A **motion** was made by Commissioner Jeffers, **seconded** by Commissioner Kennington, to close the public hearing. Mr. Rhoad requested to summarize Progress Energy's position. Commissioners Kennington and Jeffers withdrew their motions.

Mr. Rhoad proceeded with his summary and drew the Board's attention to the four criteria involved with a lot of testimony about a lot of things under the special use permit procedures under the ordinance are not relevant in a legal sense although relevant to the neighbors. The first criteria to consider is that the use will not materially endanger the public health. Mr. Rhoad noted expert testimony that it will not complying with all state and federal regulations and considered a non-hazardous substance, exceeding regulations for the line, complying with ground water monitoring, all the evidence tendered to show that there might be a danger to public health was all speculative with no expert testimony, not something under the law would rise to competent evidence. Discussions about dust are speculative, no actual evidence that these do cause dust. In fact, there was evidence that people did not know what was in the truck, though it was gravel. All the references to hazardous toxic contamination are all for expert witnesses. The second criteria, Mr. Rhoad stated is that the use meets all conditions set forth in the ordinance which was established by the testimony and application submitted by Mr. Hiner. The third criterion is that the use will not substantially injure the value of adjoining property. Mr. Rhoad pointed out Progress Energy owns most of the adjoining properties and they do not feel it affects the value of their property. The other properties are protected by the buffer. In addition Mr. Rhoad noted the third criteria also states public necessity requires this use. Mr. Rhoad stated generating power is a public necessity and the evidence has been generating power from the Mayo Plant causes the

coal combustion products to be created and must be disposed of according to state and federal regulations. Mr. Rhoad stated the four criteria is that the location and character are in harmony with the area and with the comprehensive plan noting Mr. Hiner's testified and in the application, this is an undeveloped area and what is developed in this area of the county is primarily industrial. Mr. Rhoad stated a power plant in the primary use in this area and as Mr. Blanks noted on the survey from the 70's it show this being an ash pond, therefore, for 40 years now, the plan has been on public record that this is going to be a disposal site for ash. Mr. Rhoad stated conversion from wet to dry storage is safer and more environmentally sounds so it is better then what it has been shown for the past 40 years. The comprehensive plan as set forth in the application does comply and fits with design for this area, economic development expansion of existing industrial uses and a required use for the power plant.

Commissioner Kennington referred to #1 of Section 74.4 of Planning Ordinance, stating Mr. Hiner could not guarantee that it would not materially endanger the public health or safety. Commissioner Kennington noted Mr. Hiner's testimony noting several intermittent streams would be impacted. Mr. Rhoad confirmed that Mr. Hiner's testimony stated the streams may be impacted. Commissioner Kennington noted Mr. Hiner's testimony stating he would do everything in his power to minimize environmental risks. Mr. Rhoad confirmed that was Mr. Hiner's testimony. Commissioner Kennington stated, in his opinion, the first criteria could not be met and asked how could a guarantee made not to materially endanger public health of the citizens? Mr. Rhoad stated criteria one does not say a guarantee that it will not affect so it does not materially endanger further noting Mr. Hiner's testimony stated compliance completely with state and federal regulations, in fact, exceeds in some aspects, so if there is any endangering of public health, it is not material. Mr. Rhoad stated there was no evidence of failing, of contaminated ground water, no evidence there is any endangerment. The fact that Mr. Hiner can't say a 500 year storm comes and completely decimates the area, there is a possibility. The question is not a speculative question but does it materially endanger and the only competent evidence presented is that it does not materially endanger. Commissioner Kennington asked impacting on streams is not materially endangering? Mr. Rhoad stated no, if that impact is allowed by the CORP of Engineers and by the Division of Water Quality under DENR, then by state law and federal, that does not endanger public safety. Mr. Rhoad noted Mr. Hiner testified that impacting the streams, the channels would be changed by grading so water would not be flowing through that stream anymore. It does not mean stuff is going into the stream and in to the River Basin eventually and Mr. Rhoad noted Mr. Hiner's testimony affect the grading which affects the stream in that it changes the stream and again it is an intermittent stream which is more of a periodic drainage, essentially. It is not the same as saying it will affect water quality, it is affecting the topography of those streams. Commissioner Kennington confirmed with Mr. Rhoad that four of those streams run into Bowes Stream which is a perennial stream. Mr. Rhoad confirmed that was Mr. Hiner's testimony but what they are saying is that those four streams will no longer exists so it will not be flowing into the Bowes Stream. Commissioner Kennington stated water will find someplace to go. Mr. Rhoad stated any such water would be contained and taken

care of by this plan. Commissioner Kennington asked for a guarantee to contain springs? Mr. Rhoad stated competent evidence that it would not material endanger.

A **motion** was made by Commissioner Jeffers, **seconded** by Commissioner Kennington, and **carried 5-0** to close the public hearing for the request by Progress Energy for a Special Use Permit and Vested Rights for a Monofill (Industrial Landfill for Coal Combustion products) on 659.9 acres on U.S. 501 North and Woody's Store Road, Woodsdale Township.

A **motion** was made by Commissioner Jeffers, **seconded** by Commissioner Kennington, and **carried 5-0** to table the request by Progress Energy for a Special Use Permit and Vested Rights for a Monofill (Industrial Landfill for Coal Combustion products) on 659.9 acres on U.S. 501 North and Woody's Store Road, Woodsdale Township to verify and review information.

County Attorney, Ron Aycock advised the Board on what the quasi-judicial proceedings means as to the Board's conduct and when the Board takes the issue off the table. Mr. Aycock explained that the quasi-judicial proceedings require the Board to keep an open, impartial mind and not have a closed opinion before considering all evidence, deliberation and decision. Mr. Aycock stated state law procedures related to quasi-judicial proceedings require the Board not to have extra judicial discussions about this issue with constituents or with proponents or opponents until a decision is made. Mr. Aycock urged the Board to ask questions at this time or to him collectively or individually. Commissioner Clayton asked Mr. Aycock if the Board could request staff to gather information. Mr. Aycock told the Board they are in fact, expected to get additional information from staff. Staff should not have opinion on the matter but giving the Board factual information. Commissioner Clayton asked Mr. Aycock if staff could get information from departments necessary to gather information. Mr. Aycock stated staff could gather fact finding information desired in order to bring the Board accurate, factual information.

INFORMAL COMMENTS:

The following individual appeared before the Board to make informal comments:

Marjorie Anne Stehle of 159 Possum Trot Lane, Semora appeared before the Board and presented the Chairman a folder of information regarding NC DOT reevaluation of unpaved roads. Ms. Stehle stated the members of the Quail Roost Drive and Wild Turkey homeowners association access their properties from an unpaved road, SR 1437. Ms. Stehle stated criteria set by the state for consideration of priority paving of an unpaved road.

Chairman Lunsford announced a 5-minute recess at 9:39 p.m. The Board reconvened at 9:46 p.m. for action.

APPROVAL OF MINUTES:

A **motion** was made by Commissioner Puryear, **seconded** by Commissioner Clayton, and **carried 5-0** to approve the minutes of September 20, 2010.

ADMINISTRATIVE REPORTS:

A **motion** was made by Commissioner Jeffers, **seconded** by Commissioner Clayton, and **carried 5-0** to approve the Administrative Reports for Tax Administration & Collections.

NEW BUSINESS:

APPOINTMENT OF DEPUTY TAX COLLECTOR – SUSAN ALLEN:

Tax Administrator, Russell Jones informed the Board that General Statute 105-349(f) allows the appointment of deputy tax collectors by the Board to assist the tax collector in forced collections. Mr. Jones stated with recent changes in the Tax Office, he has an opportunity to promote Susan Allen to a Deputy Tax Collector position. Mr. Jones noted Ms. Allen has been with the Tax Office for over 9 years as well as completed the School of Government's class on Tax Collection and a class with the NC Department of Revenue on listing and assessing and noted her qualifications. Mr. Jones requested the Board to appoint Susan Allen as a Deputy Tax Collector as well as Chairman Lunsford to administer the Oath. Chairman Lunsford administered the Oath for Deputy Tax Collector with Susan Allen.

A **motion** was made by Commissioner Puryear, **seconded** by Commissioner Clayton, and **carried 5-0** to appoint Susan Allen as a Deputy Tax Collector.

APPLICATION FOR PROPERTY TAX RELIEF:

Tax Administrator, Russell Jones stated Application for Property Tax Relief for the Elderly or Disabled Exclusion under General Statute 105-277.1 requires an application to be submitted to the Assessor's office before June 1. After June 1, any late application may be approved by the Board of County Commissioners if submitted before December 31 according to General Statute 105-288.1(2a1). Mr. Jones informed the Board the Tax Office has received 5 applications after the June 1 deadline noting all 5 of the applications meet the qualifications and would have been approved had they been submitted timely. Mr. Jones further noted a late application for Religious Property

Exemption under General Statute 105-278-5 has also been received and would have been approved if filed timely. Mr. Jones recommended the Board to approve the late applications.

A **motion** was made by Commissioner Clayton, **seconded** by Commissioner Jeffers, and **carried 5-0** to approve the late applications received for Property Tax Relief for the Elderly or Disabled Exclusion as well as the application for Religious Property Exemption.

Commissioner Kennington asked Mr. Jones of the notification process to inform citizens of the deadline to submit applications for tax exemptions. Mr. Jones stated the only mass mailing to the citizens is the tax bills which would fall after the deadline. Mr. Jones stated the only other mass mailing is the listing form which is mailed to only property owners. Mr. Jones noted advertisements are placed in the paper to remind citizens about listing property, notify of any rules that have changed as well as the application process. Mr. Jones explained to the Board that some applications are late due to awaiting proof of disability from the Veteran's Association. Mr. Jones stated he has participated in presentations at the Senior Center and would consider another mass mailing (costs approximately \$5,000), and would place on the county web site. Commissioner Kennington requested Mr. Jones to prevent or improve for next year. Mr. Jones stated it is not uncommon for all counties to have a few late applications and there is no loss to the county or citizen. Mr. Jones stated he could not guarantee that he would not have late applications again next year. Commissioner Clayton stated a large number of elderly do not know of this benefit and when they find out, submit a late application. Chairman Lunsford stated only 5 late applications from citizens is excellent.

**REVISED REQUEST FOR SEWER LINE EXTENSION
ROXBORO CHRISTIAN ACADEMY (640 JOHNSON STREET):**

County Engineer, Paul Bailey reminded the Board of Roxboro Christian Academy's request for assistance with a sewer line. Mr. Bailey reviewed the request was to try to acquire a right-of-way across private property to serve both the Christian Academy property and property that is owned by Person County. Mr. Bailey stated Roxboro Christian Academy was not able to obtain the right-of-way however; they were able to obtain a small tract of property which will connect the large tract with a tract owned by the City of Roxboro by which sewer connection can be allowed to the Roxboro Christian Academy. Mr. Bailey noted Roxboro Christian Academy made a revised request which is included in the Board packet, but, just this afternoon, Mr. Earl Brooks approached the county with a modified offer. Mr. Bailey explained the offer stating if the county would share 50/50 with Roxboro Christian Academy on the costs of the engineered and state approved portion of the sewer which would be across the tract the City of Roxboro owns to their property (distance of approximately 175 ft) and also share 50/50 in the private line from that point to the school building that the Christian Academy would give to the county a 40 foot construction easement and a 20 foot permanent easement along their western boundary to the Person County property. Mr. Bailey

illustrated for the Board on a map the offer. Mr. Bailey estimates the cost at \$20,000 for the engineering and state approved portion of the sewer for 175 feet including manhole. Mr. Bailey stated the distance of the private line is 1000 feet noting Mr. Brooks had gotten an estimate of \$12,000 from a viable, local contractor. Mr. Bailey stated he could not verify the estimate Mr. Brooks has received. The total estimated cost of the revised request is \$32,000 which at a 50/50 share would equal \$16,000 county funds. The group discussed the previous request's estimate was at \$50,000 (a sewer line to county property) with pumping costs for the school, both of which are off the table at this point. Mr. Bailey stated the county would not have a sewer line installed with this modified request however the county would retain a permanent easement and recommended the revised request to the Board.

Commissioner Kennington asked if the Roxboro Christian Academy Attorney and the County Attorney could work together to prepare the legal documents to have a written, stamped recorded easement.

Mr. Bailey requested direction from the Board as who would take responsibility for this project. Commissioner Kennington stated the county should be responsible for the engineered line. Commissioner Clayton stated the City of Roxboro would have to approve whether the school or the county took responsibility of the engineered portion of the sewer noting it would be easier for the county to allow the school to take responsibility of the project.

County Manager, Heidi York agreed with Commissioner Clayton on his comments that it would be easier for the county if the school took responsibility on the project due to staff resources while this project is underway. Ms. York suggested a legal document naming Roxboro Christian Academy responsibility to implement the line and the county would pay its share. Commissioner Jeffers recommended having a county contact during the engineered line implementation and not involved in the private line implementation.

A **motion** was made by Commissioner Puryear, **seconded** by Commissioner Clayton, and **carried 5-0** to approve the modified request for sewer line extension to Roxboro Christian Academy as presented including the Roxboro Christian Academy Attorney and the County Attorney prepare the legal documents to have a written, stamped recorded easement.

BIDS FOR CHUB LAKE ROAD PUBLIC WATER EXTENSION:

County Engineer, Paul Bailey reminded the Board of Theresa Baptist Church's request for county assistance for a water line extension and Board agreed to share the costs at 50/50. Mr. Bailey noted the engineering and advertisement has been done. Bids were received and opened at 11:00 a.m. this date. Mr. Bailey presented the Board with a handout consisting of the 4 bids received for the Chub Lake Public Water extension. Mr. Bailey recommended to the Board the low bidder, J.F. Wilkerson with the base bid amount of \$88,650 for as well as authorization to the County Manager to execute all associated documents. Mr. Bailey confirmed the county's share would be at \$44,325.

A **motion** was made by Commissioner Clayton, **seconded** by Commissioner Kennington, and **carried 5-0** to approve the low bidder, J.F. Wilkerson as well as authorize the County Manager to execute all associated documents.

CHUB LAKE ROAD WATERLINE BID
OCTOBER 4, 2010

COMPANY	ITEM #1 BASE BID	ITEM #2	ITEM #3
C.M. Solomon	112,078	775 ⁰⁰	2175 ⁰⁰
H.G. Reynolds	108,098	1,058 ⁰⁰	2,258 ⁰⁰
SANFORD CONT.	101,772	600 ⁰⁰	800 ⁰⁰
J.F. Wilkerson	88,650	825 ⁰⁰	1,850 ⁰⁰

- ④
- ③
- ②
- ①

CHAIRMAN'S REPORT:

Chairman Lunsford had no report.

MANAGER'S REPORT:

County Manager, Heidi York informed the Board that their draft agenda for the joint meeting with Roxboro City Council is in your inboxes and requested comments so to distribute. Ms. York stated the joint meeting will be at 12:00 noon on next Monday at the FEMA Shelter.

Ms. York updated the Board of 3 incident violations advancing to criminal proceedings to the Camper/RV ordinance adopted by the Board.

COMMISSIONER REPORT/COMMENTS:

Commissioner Kennington asked the group if the Board has any control over the roads getting paved. The group confirmed the Board does not have any control in which roads are paved. Commissioner Clayton advised the Board could forward such request to DOT.

Commissioner Kennington inquired if any follow-up had been made to the letter of correspondence the county sent to the ABC Board. Ms. York stated she had not received anything at this point.

Commissioner Puryear had no report or comments.

Commissioner Jeffers had no report or comments.

Commissioner Clayton reminded the group that Mr. Jim Wrenn would update the Board at its October 18, 2010 meeting regarding the Falls Lake project.

Commissioner Kennington recognized and congratulated the Clerk to the Board and asked the Board to give Brenda Reaves a standing ovation for the Region K Outstanding Clerk award. Ms. Reaves thanked the Board.

County Attorney, Ron Aycock suggested to the Board to channel any such requests for additional information related to Progress Energy's special use permit to the County Attorney or the County Manager to ensure both sides get an opportunity to cross examine. Mr. Aycock will make legal determination as to whether to give both sides an opportunity to examine such information provided. Commissioner Kennington inquired about notification of when this item would return to the Board agenda and stated he told people the Clerk would have that information as well as agendas are placed on the county website. Mr. Aycock stated at such point the Board decides to place on the agenda, the Board could decide to open up another public hearing, yet no required to do so. Mr. Aycock confirmed the Board is no longer legally required to advertise or have a public hearing. Commissioner Kennington stated he informed citizens to look for the item as an agenda item.

RECESS:

A **motion** was made by Commissioner Kennington , **seconded** by Commissioner Jeffers, and **carried** to recess the meeting at 10:14 p.m. until Monday, October 11, 2010 at 12:00 noon at the FEMA Shelter.

Brenda B. Reaves
Clerk to the Board

Johnny Myrl Lunsford
Chairman