

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
MARCH 28, 2013

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman-*

Charles Ewen *

Claye Frank X

Linda Rich *

Sharon Ferris *

Justin Mullarkey *

Bill Fleming *

Kevin Faison *

Thomas Taft, Jr. X

The members present are denoted by an “*” and those absent are denoted by an “X”.

VOTING MEMBERS: Ewen, Faison, Rich, Ferris, Mullarkey, Fleming, Shook

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Chris Kelly, Engineering
Mrs. Elizabeth Blount, Secretary
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Fleming made a motion to approve the February 19th minutes as presented, Ms Rich seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BENBOW PUB, LLC - APPROVED

The applicant, Benbow Pub, LLC, desires a special use permit to operate a dining and entertainment establishment pursuant to Appendix A, Use (6)m(1). of the Greenville City Code. The proposed use is located at 114 E. Fifth Street. The property is further identified as being tax parcel number 01357.

Mr. Dail delineated the area on the map. He stated that the property is located in the downtown core of the city's jurisdiction.

Zoning of Property: CD (Downtown Commercial)

Surrounding Zoning:

North: CD (Downtown Commercial)

South: CD (Downtown Commercial)

East: CD (Downtown Commercial)

West: CD (Downtown Commercial)

Surrounding Development:

North: Levels, Pirates Den, The Halfway House, The Scullery
South: East Carolina Bartending School, UBE
East: G-Vegas Magazine, 5th Street Distillery
West: Taxi King, Another Level Hair Bar

Description of Property:

The subject property is a 23, 399 square foot commercial building located south of E. Fifth Street. The portion of the property under consideration is the former Armadillo Grill. The building also houses the The Lofts on 5th Street Apartments.

Comprehensive Plan:

The property is located within Vision Area “H” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on March 14, 2013. Notice of the public hearing was published in the Daily Reflector on March 18, 2013 and March 25, 2013.

Related Zoning Ordinance Regulations:

Definition: *Dining and entertainment establishment.*

An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover or minimum charge for admittance or service during special periods of operation in accordance with this chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
 - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
 - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
 - (c) A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the

sale of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance under this subsection (2), the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the state;

- (3) Does provide sit-down dining area(s);
- (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
- (5) May offer food in disposable containers;
- (6) May offer carry-out and/or off-site delivery services;
- (7) Does not offer drive-in attendant services;
- (8) May exhibit one but not both of the following operational functions or characteristics:
 - (a) Drive-through service; or
 - (b) Over the counter service. For purposes of this section, the term over the counter service shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils and the like, from an order/delivery station or counter remote to the on-site place of consumption.
- (9) May have one or more of the following activities or services, which is open to the establishments patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation and on-premises food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premises food consumption services may be suspended at the option of the owner/operator not less than one hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 a.m. (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premises food consumption shall be provided until not less than 11:00 p.m. of the same day;
- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security requirement as specified under sections 9-4-86 and 9-4-103;
- (11) Does not qualify under the definition of restaurant, fast food or restaurant, conventional as contained herein; and
- (12) Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a public or private club for purposes of zoning regulation.

Specific Criteria: *Dining and entertainment establishments.*

- (1) (a) A special use permit for a dining and entertainment establishment is subject to revocation in

accordance with the provisions of this subsection (F)1. Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.

- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes, and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)1.(4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
 - 1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
 - a. The use of the property is inconsistent with the approved application;
 - b. The use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code;
 - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
 - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
 - 2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F)1. and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the

rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.

- (e) The requirements and standards set forth in this subsection (F)1. are in addition to other available remedies, and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
- (3) In addition to subsection (F)1.(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (7) Weekends. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment@ shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended

as a principal form of entertainment shall not be deemed amplified audio entertainment.

(8) Provisions for extended hours of operation for amplified audio entertainment.

- (a) The allowable period for amplified audio entertainment for any dining and entertainment establishment in any zoning district may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to not later than 2:00 a.m. the following day on December 31 (New Year's Eve).
 - (b) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above on each Thursday night to no later than 2:00 a.m. the following day.
 - (c) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to no later than 2:00 a.m. the following day on March 17 (St. Patrick's Day), May 5 (Cinco de Mayo); July 4 (Independence Day) and October 31 (Halloween).
 - (d) To qualify for extended hours of operation for amplified audio entertainment as provided in subsections (F)l.(8)(b) and (F)l.(8)(c) above, the dining and entertainment establishment shall not be located within a 500-foot radius, including street rights-of-way, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the dining and entertainment establishment to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this subsection, the term "single-family residential zoning district" shall include any RA20; R15S; R9S; R6S; and MRS district.
 - (e) In no event shall the noise generated by amplified audio entertainment exceed the noise control provisions as provided in Title 12, Chapter 5, of the Greenville City Code.
- (9) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
- (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
 - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including

the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.

- (c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.
 - (d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.
- (10) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (F)1.(9) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations.
- (11) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (12) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment, and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.
- (13) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor and sound stage.
- (14) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall

be located within a 200-foot radius of an existing or approved dining and entertainment establishment located within any CN (Neighborhood Commercial) District as measured from the nearest lot line.

- (15) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:
- (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
 - (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
 - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Staff Recommended Conditions:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Mr. James Benson, applicant, spoke in favor of the request. He stated that the club wanted to charge for entertainment that will be held 2-3 times a week. He stated he would like to bring larger entertainment groups to town and charging a cover fee would help augment the cost. He said he would like to continue business as a

restaurant and also have entertainment.

Mr. Mullarkey asked if the applicant was the previous owner of Pheasants.

Mr. Benson stated that he is the current owner.

Mr. Fleming asked if apartments were above the club.

Mr. Benson stated yes.

Mr. Fleming stated that the music was loud in the restaurant and that he did not see how anyone could live above.

Mr. Benson stated that they have worked out a deal with the building owner and they will not have live entertainment after 11pm on Sunday-Thursday nights. They will have live entertainment on Friday and Saturday nights until 2 am. The tenants have agreed to the arrangements.

Mr. Mullarkey stated that the apartments have been there for a long time and loud music is in that part of town.

No one spoke in opposition.

Mr. Dail stated that staff had no objection to the request.

Chairman Shook closed the public hearing and opened for board discussion.

No board discussion.

Chairman Shook read the required findings criteria. No objections.

Ms Ferris made a motion to adopt the finding of facts with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.

Mr. Fleming made a motion to approve the petition with the stated conditions, Ms Rich seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY-APPROVED

The applicant, North Carolina Eastern Municipal Power Agency, desires a special use permit to operate a public utility (peak shaving generators) pursuant to Appendix A, Use (4)a. of the Greenville City Code. The proposed use is located at 490 W. Firetower Road. The property is further identified as being tax parcel number 36048.

Mr. Dail delineated the area on the map. He stated that the property is located in the extreme southern portion of the city's jurisdiction, north of West Firetower Rd.

Zoning of Property: RA20 (Residential Agricultural)

Surrounding Zoning:

North: RA20 (Residential Agricultural)
South: GB (General Business) & OI (Office Institutional) - *Winterville's Jurisdiction*
East: RA20 (Residential Agricultural)
West: RA20 (Residential Agricultural)

Surrounding Development:

North: Vacant
South: GUC Substation, North Winterville Cemetery, Vacant, Sunclassics, LLC
East: Vacant, Single Family Residences (South Hall), Temple FWB Church
West: Vacant, Reimage Church

Description of Property:

The subject property is owned by The City of Greenville, and is 9.57 acres in size and contains the Greenville Utilities Winterville Substation. The area proposed for new development is located 1,000 feet north of W. Firetower Road and is 2.5 acres in size. The applicant plans to install ten peak-shaving generators and supporting equipment in the proposed area. The property is located 761+/- feet to closest residence in South Hall, 708 feet to Temple FWB Church, and 1100 feet to the closest residence in Winterville's jurisdiction, and 722 feet to the closest building on Reimage's campus.

Comprehensive Plan:

The property is located within Vision Area "E" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends conservation/open space for the subject property.

Notice:

Notice was mailed to the adjoining property owners on March 14, 2013. Notice of the public hearing was published in the Daily Reflector on March 18, 2013 and March 25, 2013.

Related Zoning Ordinance Regulations:

Definition: Public utility building or use.

Any above-ground building or use necessary for the delivery of electric, water, sanitary sewer, storm drainage, gas, telephone, cable TV or other utility service system which meets any one of the following conditions:

- (1) Utilizes structures in excess of 100 total square feet;
- (2) Utilizes any structure in excess of 15 feet in height;
- (3) Requires any on-site permanent maintenance or service attendant;
- (4) Requires or utilizes three or more parking spaces; and
- (5) Creates noise, smoke, dust, odor glare or any other condition which may have an adverse impact on area properties or uses.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Mr. Ewen asked if there were any screening requirements for vegetation.

Mr. Dail stated no.

Attorney Phil Dixon, applicant's legal representative, spoke in favor of the request. He stated that the applicant selected Greenville as a potential site for peak shaving generators. This would create a \$500,000 savings for Greenville Utilities Commission (GUC). The generators help reduce demand and cost and provide backup power in case of a catastrophe. GUC submitted five possible locations. North Carolina Eastern Municipal Power Agency (NCEMPA) selected the proposed location because it was the most buffered, most remote, least likely to interfere with anyone, and is a suitable site. The noise level for the generators is expected to be 65 dba even though the proposed ordinance does not have to abide by the city's 75 dba noise level ordinance.

Mr. Todd Rouse, chief operating officer at GUC, spoke in favor of the request. He presented GUC background information. He stated that Greenville currently has twelve similar units since 1994. GUC customers also own and operate 40 units for peak shaving purposes throughout the service area. The benefits of the generators include: (1) Electric system reliability and quality support, (2) Annual savings to GUC customers of \$500,000 per year in wholesale power costs, (3) Contribution to local tax base, (4) Local temporary construction jobs, (5) Impact fee and facility charge payments to GUC, (6) Land lease payments to GUC, (7) GUC and the City of Greenville have approved the lease agreement with NCEMPA.

Chairman Shook asked the definition of peak times.

Mr. Rouse stated that GUC pays 4 ½ ¢ per kilowatt hour (kwh) for the power that is purchased from the power agency. During peak times in the day, GUC pays 12 ½ ¢ per kwh. The bill is based upon trying to reduce the load during peak times which have been designated at 6-8 am in the winter and 2-5 pm in the summer only on weekdays. The units will only be operated approximately 200 hours a year.

Chairman Shook asked how much does it cost per hour to run the generators.

Mr. Rouse stated that another speaker could address the cost.

Mr. Fleming asked why the generators use diesel fuel rather than natural gas.

Mr. Rouse stated that a natural unit is 1 ½ times bigger than a diesel unit and companies do not make many natural units the size needed for the proposed project.

Mr. Andrew Fusco, director of Planning at Electricities of North Carolina, spoke in favor of the request. He stated that the site location was selected due to its proximity away from residential areas, the flatness of the land which will have minimum construction cost. The other sites posed technical difficulties, were too close to residents or could not handle the load. The site will run 20 megawatts of power over 20 year which is the life span for the units. The Power Agency will save \$29 million in which GUC gets 18%. Within a year, the Power Agency will save \$2.5 million and \$500,000 will be directly saved for GUC. The generators cost \$1.7 million each for a total of \$15 million. They are the size of a tractor trailer truck. The plan is to install five generators

by July, two by end of the year and three by 2014. If the project is delayed, the Power Agency lost savings is \$200,000 every month. GUC was selected for the generators because of the fiber optics in place in order to remotely operate the generators and the workforce expertise. GUC also has experience with peak shavings and is the second largest municipal-owned utilities in the state. Electricities also provides management for North Carolina Municipal Power Agency 1 (NCMPA) which has 34 – 2 MW generators in 19 cities in western North Carolina. NCMPA has not had any emissions violations, fuel or chemical spills, or work related injuries.

Mr. Fleming asked will additional power lines be needed.

Mr. Fusco stated electrical lines will run from the generators to the substations.

Mr. Fleming asked will the train be used to install the generators since the proposed location is near the train tracks.

Mr. Fusco stated that the train was mentioned because vegetation near the tracks provides additional buffer.

Mr. Fleming asked if the new power line in the Simpson area would have anything to do with the project.

Mr. Rouse stated that the line will be additional power into Pitt County and add to the reliability of the system in Pitt County.

Mr. Fleming asked if there is any risk affiliated with the generators.

Mr. Fusco stated that another speaker will address safety issues.

Mr. Faison asked if the units will operate 24 hours to detect the peak hour or does a monitoring system track the levels.

Mr. Fusco stated that the generators are operated remotely from Raleigh and that they run approximately 15 hours a month.

Mr. Faison asked if there will be days that the units are completely nonoperational.

Mr. Fusco stated they will not be operational 90% of the time. Operational times will usually be when the temperatures are at its hottest or coldest.

Mr. Michael Dougherty, President of Southeastern Consulting Engineers, spoke in favor of the request. His company has been instrumental in installing 500 MW of generators. The fuel used for the generators is #2 diesel fuel which is not combustible. The units have a secondary containment area for leak prevention. The units are also bullet proof. The transformers use biodegradable material. The generators are state-of-the-art units that meet the latest EPA Tier 4i standards for air emissions. The ten proposed generators together will have emissions rate equal to one unit installed ten years prior. All the required state and local permits have been or will be applied for. The units are located in a 50' x 10' shipping container and are sound attenuated. The sound of all ten is equivalent to the sound of one unit installed ten years prior. Noise from the generators does conform to the City's noise ordinance of 75 dBA even though the units are located in the ETJ. When all generators are running, the sound level at the closest home is calculated to be less than 59 dBA; quieter than the

inside of a Lexus LS 600h L hybrid at 70 mph. Tree buffer would further reduce sound levels. The running of the generators is quieter than a train horn that is 100-150 dBA.

Ms Rich asked where the generators are manufactured.

Mr. Dougherty stated near Minneapolis, Minnesota.

Chairman Shook asked about the noise emitted from the exhaust pipe on the roof of the units.

Mr. Dougherty stated the three major sources of noise on the generator is the engine, radiator and the exhaust. The exhaust runs through a silencer.

Chairman Shook asked about the fan and how air is pumped in and out.

Mr. Dougherty stated that the air comes underneath the enclosure, goes across the engine and then goes up to be exhausted out.

Mr. Ewen asked if the proposed units would be quieter than the starting of the unit behind his building on ECU's campus.

Mr. Dougherty stated that the starting of the unit is the loudest but since he did not design those units he was not sure if it would be quieter. He stated that the proposed units are quieter than their normal design.

Mr. Fleming asked if the residents in South Hall would be able to hear the generators.

Mr. Dougherty stated that he did not know.

Attorney Dixon stated that the generators would run during the coldest or the hottest times so windows will be down and doors will be shut. The proposed site was selected because of the distance to the closest residents.

Mr. Paul Cuomo, president of Coastal Carolina Group, Inc., spoke in favor of the request. He stated that he was a state certified real estate appraiser and his engagement with the application was to determine if any adjacent property value diminution occurred because of the proposed site selection for the generators. He observed the proposed site on March 13 and 14. The site has several uses surrounding it and it has massive and stable growth. The property is unique and well buffered. Its highest and best use is a substation. He conducted a sales comparison approach analysis of recent sites close to existing generator sites.

Mr. Faison asked if the proposed project would increase property value.

Mr. Cuomo stated no because its highest and best use is extremely depreciated because it is a substation. It will add nor take away the value of adjacent property.

Mr. David Barnes, Chief Legal and Ethics Officer of ElectriCities of North Carolina, Inc., spoke in favor of the request. He is the legal representative for NCEMPA. He stated that the proposed project is an effort to make their rates competitive and the rate payers have to pay as little as possible. The applicant did extensive research in selecting the proposed site for the generators in order to be good neighbors. The applicant paid extra money

to make sure that the diesel generators were in attenuated containers to ensure sound was as low as possible and that the diesel fuel was encased as safe as possible. They also hired people that were experience with the installation of the diesel generators. He stated that the company is committed to do whatever they can to make everything right.

Chairman Shook asked the specifics concerning the company doing whatever is needed to make the proposal right.

Mr. Barnes stated that the company has taken several precautionary measures – trying not to remove trees, to have a retention pond, encasing the units, etc. They are open to suggestions.

Attorney Dixon summarized the presentation.

Chairman Shook asked Attorney Little to explain admissible testimony and evidence.

Attorney Little stated that facts must be presented versus an opinion or a belief unless it is based on a fact. The opinion of an expert witness can be considered. A lay person can have an opinion as long as it has a factual basis.

No one else spoke in favor.

Mr. Griff Garner, resident of South Hall, spoke in opposition of the request. He stated that he lived in the house closest to the proposed location. He stated that only 10 residents in South Hall received notices because of the notification requirement. He stated that he talked to City staff and others affiliated with the project about his concerns with emissions and noise. He is not sure emissions will be a problem due to technology. He believed that the noise of the generators will be heard at and inside his house. He and his wife visited the peak shaving generators near Minges Coliseum. The generators were remotely started one at a time and then both at the same time. The group backed up an estimated 700 feet and the generators could still be heard with the assumption that the bulk of the noise came out of the exhaust. He did research via the Internet on attenuation of sound. He walked through a mathematical exercise about the noise level and is convinced that he will be able to hear the noise. He asked the board to ensure residents that the proposed site is the least offensive spot to single family residences. He also requested the following from the applicant: (1) to do everything possible to attenuate the sound which may involve installation of vegetation or sound walls; (2) to ensure that ten generators are not too many for one site; (3) limit the hours that the generator can run per year except during natural disasters; (4) fund \$5,000 to residents to hire a sound engineer to review the attenuation plan.

Mr. Ewen asked how often the train comes by South Hall.

Mr. Garner stated that he thought the train came by once a day approximately 8 pm for approximately three – four minutes.

Chairman Shook stated the train runs twice a day- once around noon and the other around 5 pm.

Mr. Garner stated that the train tracks were there when he bought the house.

Mr. Faison asked if the noise from Firetower a nuisance.

Mr. Garner stated that he can hear traffic late at night but he was aware of that when he bought the home.

Mr. Mullarkey asked if the catfish industrial plant still operational.

Mr. Garner stated the residents were originally told that the smell would be comparable to fresh baked bread and it is nowhere close. The owner of the company is also not cooperative.

Chairman Shook asked if the total number of hours the generators will run or the time of day the issue.

Mr. Garner stated the total hours. The time of day is comforting.

Mr. Faison asked if Mr. Garner could visit a site with generators similar to the proposed project.

Mr. Garner stated that Mr. Rouse chose the location. He was told that the noise at his property line is 60 dBA which is comparable to normal conversation at three feet.

Mr. Barnes stated the company has an attenuation plan. He stated that a sound wall may help South Hall but it may send the sound towards Reimage Church. They could plant additional trees on the north side; however, that side is under the GUC transmission line. Certain liability requirements from the federal government state that trees cannot be near transmission lines. They will be happy to plant trees that will be less than 20 feet tall and feel that will be helpful in buffering the sound. Providing money for the neighborhood to hire an engineer will translate to higher rates. The company did hire an independent engineer when they hired Mr. Dougherty. \$2 million was spent on should attenuation for ten generators. Someone would monitor the load to anticipate the peak. If the hours are limited, it will affect the project.

Chairman Shook asked how many peak hours would occur in a month.

Mr. Barnes stated that the company only wants to hit one hour but is uncertain of when it will be.

Ms Ferris asked the highest number of hours they ever needed in order to hit the peak.

Mr. Fusco stated three hundred or four hundred hours.

Mr. Rouse stated the estimated distance away from the generators was approximately 300 feet in order to hear 60 dBA.

Mr. Mullarkey asked if the new generators are 1/10 of the sound of the existing generators then would two of the existing generators be equivalent to twenty new ones.

Mr. Rouse stated the ratio was referring to emissions.

Mr. Dougherty stated that 65 dBA would register at the Garner's property line. All ten generators would create 75 dBA. After applying a mathematical formula to calculate noise over distance, 58 dBA would actual be heard at the Garner's house. This is equivalent to less than a normal conversation.

Ms Ferris asked for a comparison of a air conditioning unit of a house to the noise level of the generators.

Mr. Dougherty stated that the noise level of a busy street is 80 dBA.

Chairman Shook asked if Mr. Dougherty agreed that Mr. Garner would be able to hear the units at his property line.

Mr. Dougherty stated that he could not say what Mr. Garner would be able to hear.

Attorney Dixon handed Mr. Dougherty papers that listed some sound source examples and noise reduction examples based on distance.

Mr. Dougherty read the examples and explained the distance formula.

Mr. Fleming asked about the vibration from the generators.

Mr. Dougherty stated that the generators have vibration isolators underneath the engine.

Mr. Fleming asked how long the generators have been available.

Mr. Dougherty stated that the proposed generators have been in existence for a couple of years.

Mr. Fleming asked how the proposed generators been installed in North Carolina.

Mr. Dougherty stated that he was not sure. The builders are taking generators that have been around and adding the new emissions reduction technology.

Mr. Porter Kaffman, resident of South Hall, spoke in opposition of the request. He stated that he did not understand the value that the generators will create. He also asked how much of the savings will be passed on to the customers. He also wanted to know about future expansions and a guarantee that the tree buffer will always been in place. He wanted to know what the company will do if the noise level goes above 59 dBA. He also wanted to know if the company will replace old generators with newer technology when it becomes available. He suggested that the company get written testimonies about the noise from other residents that are near some of the existing units. He suggested that the board not make a decision until all the questions have been answered.

Mr. Faison asked if written testimony was admissible.

Attorney Little stated the document would have to be from an expert within that field and within the scope of business.

Mr. Fleming asked how the City will benefit from the generators other than from the utility savings.

Attorney Dixon stated Eastern Municipalities will pay taxes and the location is leased.

Mr. Fleming asked how much tax the project will generate.

Attorney Dixon stated that he had no idea how much but the project will generate lease payments every year, hookup charges, significant savings, and a backup energy source.

Mr. Fleming asked if the generators will attract industries.

Attorney Dixon stated that the City was excited to be selected and stated that one of the other speakers will elaborate on the benefits.

Mr. Fusco stated that the company does not plan to expand beyond the ten units. The tract of land is not big enough for expansion. The air permit limits tons of emission to the air. The ten generators has a air permit limit of 1100 run hours so the generators cannot go over the cap. Nineteen cities in the western part of North Carolina have the 2MW peak shaving generators. Greenville would be the first in the eastern part of the state to have them. The benefits include the economic savings, the reliable source of energy, the local tax, and the lease payments. Greenville will contribute 18% of the capital and receive 18% of the benefit. It will cost the company \$200,000 every month if the project is delayed.

Mr. Faison asked if the site selected was chosen because it was the most intrusive.

Attorney Dixon stated yes and asked Mr. Rouse to speak in rebuttal to the opposition.

Mr. Rouse stated the new EPA laws have required that the older units have to be retrofitted with new catalytic converters to improve emissions.

Mr. Dougherty stated that the trees on the site will remain because erosion control prohibits it.

Chairman Shook asked if the bufferyard will preclude the company from planting anything inside the site.

Mr. Dougherty stated the retention pond is on the west side of the property and the trees on the side will not be touched.

Mr. Rouse stated that GUC is willing to work with property owners if an issue should arise. GUC is willing to look at modifying the site for plantings that are 15-20 feet tall in order to not interfere with power lines.

Mr. Ewen asked if a 15' vegetative buffer would make a difference if the exhaust is on top of the unit.

Mr. Rouse stated the buffer would block some noise and attenuate the noise closer to the ground. He stated that the substation and the railroad tracks were constructed prior to South Hall.

Ms Meredith Stone, resident of South Hall, spoke in opposition to the application. She stated that the railroad runs once a day for two minutes and should not be compared to ten generators running for one hour. She asked if the company looked at putting the generators in an industrial zoned area versus residential. She said the company has not addressed the plan for controlling sound or aesthetics. The impact of the property value of the homes next to the site has not been addressed.

Attorney Dixon stated that an appraiser testified that adjoining properties will have no adverse impact.

Mr. Barnes spoke in rebuttal to the opposition. He stated that some of the questions Ms Stone were addressed. The company looked at locations in Greenville and Rocky Mount and the selected site was the furthest away from any residence. He said the residents would not be disturbed.

Mr. Fusco addressed the four other sites in Greenville: (1) Across from Third Street School – closer than 700' to an apartment building and permit issues with site previously housed a coal plant; (2) McGregor Downs location- residents along B's BBQ road closer than 700'; (3) Simpson location – near the new Wal-Mart location and residents much closer than 700'; (4) Welcome – technical issue preclude installation

Mr. Faison asked if the current Winterville substation had noise problems.

Mr. Rouse stated no complaints to date.

Mr. John Moore, resident of South Hall, spoke in opposition of the request. He stated that he served on Board of Adjustment in 1980's. He stated the peak noise levels from the Cummings Diesel manual of 42 dBA at night and 52 dBA during the day. He stated that the board does not have the information to make a quality decision about the generators. 34 generators are located in 19 counties. Ten generators will be placed in 2.5 acres. He suggested that the request be put on hold until adequate information about noise is supplied.

Chairman Shook asked what legal statute the board could stand on.

Mr. Moore stated he did not know except when they stated that the selected site was the least objectionable. He asked what it will cost the City to generate at \$500,000 savings. He stated that the biggest mistake the board made in the 1980's was listening to people that did not paint the whole picture.

Mr. Mullarkey stated that it will cost 18% of \$17 million.

Mr. Ferris stated that unless the opposition can show a good, factually supported reason why the applicant should not be approved.

Mr. Moor stated that the decision should be postponed. Only ten people in the neighborhood were notified. He felt that the application was rushed in.

Mr. Ewen asked if the applicant met the required deadlines.

Mr. Dail stated sure.

Mr. Fleming asked why only ten people received written notification a couple of days before the meeting.

Mr. Dail stated that the letters were mailed on March 14 and the state requires letter to be mailed to residents within 100'. Staff went above and beyond the notification requirements of the state.

Mr. Faison asked technically staff could not have sent any notices because the residents were beyond the state requirements.

Mr. Dail stated that several would have been required to send notices to but staff strives to go above and beyond

the bare requirements. The notice of the meeting is also put in the Daily Reflector two times along with signs posted on the property.

Attorney Dixon stated that the company went before the GUC Board of Commissioners several months ago for the lease. The Board recommended it to City Council for approval. Approval was granted on the condition that the company receives a special use permit. The manager then signed the special use permit paperwork. The company has demonstrated why the permit should be approved. No sound basis of fact was presented on behalf of the opposition. The big issue is the appropriateness of the site and the noise level. Proof has been given that the selected site is the most appropriate and the noise level 700 feet is comparable to conversation noise.

Mr. Barnes stated that ElectriCities and NCEMPA are non-profit organizations.

Mr. John Trolley, deacon for Temple Free Will Baptist Church, spoke neither for nor against the application. He asked if the special use permit is indefinite and if the church expands will the noise levels be enforced.

Mr. Dail stated that the property is not located in the city's limit so the noise level does not apply to the property. The church can notify the City if there a noise issues and staff will bring it back to the board.

Chairman Shook stated that a special use permit does not expire but it can be revoked.

Mr. Trolley asked if complaints were from any of the other sites in Greenville near residential areas.

Mr. Fusco stated that no complaints were received from the units located in the western part of North Carolina. He added that peak hours would not occur on Sundays.

Mr. Trolley asked if there would be any interference with the church's electrical equipment.

Mr. Fusco shook his head no.

Attorney Dixon stated that if the church or residents had issue that they would first come to GUC before going to start in order for the company to exert their best efforts to resolve them.

Mr. Ed Adams, resident of South Hall, spoke in opposition of the request. He asked if the applicant actually measured the noise from the top of the generator or have come into the neighborhood and measured the noise. He stated that the only way sound could be stopped was by mass.

Mr. Fleming asked if \$2 million was going towards attaining sound.

Mr. Adams said he heard sound and trees and would like more details to what exactly will be done. He wanted to see the plans on the attenuation of sound and suggest that the board have an engineer to review the plans.

Mr. Garner asked to speak again.

Attorney Dixon stated that the opposition does not get an opportunity to rebut the rebuttal.

Attorney Little stated that the decision was up to the board.

Mr. Faison asked if the loss of \$200,000 a month a presumed loss or actual.

Mr. Fusco stated it is an actual loss based on formula rate from Progress Energy.

Mr. Ewen asked if the City would be losing \$200,000 every month if the project does not go online.

Mr. Fusco stated yes.

Ms Christy Garner, resident of South Hall, spoke in opposition of the request. She stated that the approval for the request does not need to be rushed. Her and her husband's were more concerned after visiting the site near ECU. She asked if the company visited any sites with ten generators.

Mr. Fusco stated the company currently does not have a site with ten generators but they had a project with two combustion turbines in Monroe, North Carolina that were equivalent to 24 MW.

Ms Garner stated that the company is already not willing to implement the suggestions from the neighborhood prior to receiving the permit. This is not indicative of being a good neighbor and asked if the speakers would like for it to be behind their house.

Attorney Dixon spoke in rebuttal to the opposition. He stated that he was not intending any misrepresentation of any kind. Noise is not an issue. There is no need to build a brick wall or plant additional trees. The applicant addressed the noise level. The company cannot install one generate in order to measure the noise but they did bring in an independent expert who calculated the amount of noise at various locations.

Mr. Al Stone, resident of South Hall, spoke in opposition of the request. He asked for the board to deny the request. The selected site is the cheapest site. The noise will travel into South Hall. If the generators are installed, then more industries will be able built in the area. This decision will take precedence for future endeavors.

Attorney Dixon spoke in rebuttal to the opposition. He stated that the existing peak shaving generators have run 15.8 hours on an average per month over the past ten years of hours. This will total to 7,224 hours with significant savings and very little if any inconvenience to the adjoining properties.

Mr. Dail stated that staff had no objection with the proper findings by the board.

Chairman Shook closed the public hearing and opened board discussion.

Mr. Faison stated that the residents made good points but the board is bond by the finding of facts and the residents did not have any expert witnesses. The applicant presented at least four experts.

Mr. Fleming stated that he could appreciate their concern about the noise, but the installation of the generators is a tremendous economic opportunity. The other sites were not close to as nice as homes as South Hall and the people probably are not as well educated.

Ms Ferris stated that the applicant took a lot of effort to examine other sites. The selected location is the best option and they are willing to continue to make an effort to make people happy.

Mr. Mullarkey stated that the residents made good points but they could not be considered with the finding of facts. The board had to use expert testimony. The board can use the best science at hand and the educated opinions. The site was selected because (1) it has an existing substation; (2) an industrial facility is next to the site; and (3) the property is divided by an active railroad.

Mr. Ewen stated there are legitimate concerns about the noise but the residents do not know what the noise level will be. Engineers that work with the generators are saying the noise will not be a problem. The board has to work with the laws of the City. If there is a problem, bring it back to the board.

Chairman Shook read the required findings criteria. No objections.

Mr. Ewen made a motion to adopt the finding of facts with the stated conditions, Ms Ferris seconded and the motion passed unanimously.

Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.

ANNUAL REVIEW OF PUBLIC AND PRIVATE CLUBS AND DINING AND ENTERTAINMENT ESTABLISHMENTS OPERATING PURSUANT TO AN APPROVED SPECIAL USE PERMIT-

Mr. Dail stated that staff conducts an annual review of public and private clubs and dining and entertainment establishments. Information is gathered from the Police Department, Code Enforcement, Pitt County ABC Commission, Fire Department and Inspections. A spreadsheet was created to summarize the comments. No major concerns with any of the establishments.

Captain Rob Williams stated that he reviewed the information and no business stands out to give the Police any concerns of any of the establishments.

Mr. Fleming asked what has caused the change downtown from several years ago when there were a lot of issues and extra police were needed to patrol downtown.

Captain Williams stated that extra officers are downtown on weekends and the speed cushions have helped with the vehicular traffic. Egress plans have been established in certain areas where a lot of people are coming out of the club at closing time. A very well orchestrated response to Friday and Saturday nights. Collective all the efforts have helped improve conditions downtown.

Chairman Shook stated that none of the places downtown have a special use permit so the board has no jurisdiction.

Captain Williams stated that the high number of service calls for some of the establishments could be because the alarm went off.

Chairman Shook stated that some of the calls are near the establishments but did not occur in the establishment.

Captain Williams stated that is correct. Just because the call is under a particular club does not mean that the call originated at that address.

Mr. Mullarkey stated that the best report is from the guys on the street.

With no further business, Mr. Fleming made a motion to adjourn, Mr. Faison seconded, and it passed unanimously. Meeting adjourned at 10:18 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner