

**EXCERPTS FROM THE  
SAN LEANDRO BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING**

City Council Chambers, First Floor  
835 East 14th Street  
San Leandro, California 94577

**MINUTES FOR FEBRUARY 7, 2013**

*7:00 p.m. Regular Meeting*

**Item 1: Roll Call**

**Present:** Members Philip Daly (District 1), and Lee Thomas (District 3); Vice Chair René Mendieta (District 6); Chair Catherine Vierra Houston (District 4).

**Absent/  
Excused:** Members Jane Abelee (District 5), Thomas Makin (District 2) and Janet Palma (At Large).

**Staff:** Sally Barros, Secretary to the Board of Zoning Adjustments; Jennifer Faught and Richard Pio Roda, Assistant City Attorneys; Tom Liao, Acting Community Development Director; Elmer Penaranda, Senior Planner; Larry Ornellas, Facilities Coordinator; Barbara Templeton, Recording Secretary.

**Item 4: Correspondence**

**Planner Penaranda** reported receiving communication from Howard Beckman concerning Public Hearing Item 7B, and **Secretary Barros** indicated receiving written correspondence regarding Item 7A since the preparation of the staff report on that item. **Chair Houston** gave Board Members time to review that material.

**Item 7B: Public Hearings**

PLN2012-00006; Variance to construct an 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet. Structures up to sixty (60) feet in height are permitted in the IG Industrial General District and a variance to height is required for exceeding 60 feet. The proposed turbine would be an accessory use to the primary manufacturing/research and development (R&D) use of the site; 2539 Grant Avenue; Alameda County Assessor's Parcel Numbers 80G-910-15; Louis Rigaud, Halus Power Systems (applicant and property owner). (Penaranda)

**Planner Penaranda**, using a PowerPoint presentation and referring to the staff report dated February 7, 2013, explained that the applicant's proposed monopole structure would be 100 feet tall in total, including the turbine blades. The IG District allows 60 feet, so the applicant is seeking a variance.

Planner Penaranda described Halus as a San Leandro-based green technology company that moved here from Hayward in 2010. The company designs and manufactures wind turbine components, including digital mechanical control systems, and engages in research and development (R&D) to increase the energy efficiencies of wind technologies and equipment.

Included in the applicant's request for a variance is the environmental review, a Mitigated Negative

Declaration (MND), and the mitigation monitoring plan.

The setbacks for the monopole would include approximately 200 feet from the northern property line and about 750 feet from Grant Avenue, in excess of 100 feet from the western property line and nearly 300 feet from the eastern industrial neighbor.

In preparing the MND, Planner Penaranda said the City conclusively determined that the proposed project, with mitigation measures incorporated will not have a significant effect on the environment, and that no substantial evidence has been presented indicating that the proposed project would have a significant environmental effect.

Among key points in the MND, which had been recirculated, he cited:

- An avian report indicating that bird fatalities are relatively low even on wind farms, and would be even less likely with a single small wind turbine (0.15 bird deaths annually). At that rate, it would take 6.5 years of continuous operation to result in a bird death.
- The California Department of Fish and Game (DFG; note: now known as Department of Fish and Wildlife [DFW]) recommendations for mitigation measures to protect avian life.
- Noise would not exceed 55 dB at the exterior property lines, well within the City's noise limits in residential areas (as well as industrial standards).
- Shadow analysis by Environmental Science Associates (ESA), a leading environmental consulting firm, indicated that the shadow of a structure 100 feet tall would not reach the homes to the north at the winter solstice (December 21), when the path of the sun is the lowest and the shadows the longest. Rather, it would fall on the north bank of the channel and the channel itself.
- The Federal Aviation Administration determined that the proposed wind turbine would present no hazard to air traffic or navigation.

Planner Penaranda also showed several exhibits, including a series of photo simulations of how the turbine would look from various perspectives. The simulations are of a crane with a propeller that took it to the 100-foot height. Simulations depicted views of the proposed turbine from such areas as:

- The Bay Trail parking lot
- The salvage yard with the 120-foot PG&E transmission towers in the foreground
- Further north along the Bay Trail adjacent to the east side of the PG&E substation looking over the salvage yard onto the Halus site
- Along the shoreline

From the Oro Loma dechlorination facility, Planner Penaranda pointed out, the monopole and its blades are no longer visible. Nor, he pointed out, is it visible looking south from the first house in Heron Bay, which is located at the southwest corner of the Bay Trail, until the trail turns.

Turning to the recirculated MND, Planner Penaranda pointed out a typographical error in the date of attorney A. Alan Berger's letter on behalf of the Heron Bay Homeowners Association (HOA) in the staff report. The letter was received and stamped by the City on November 13, 2012 – not 2013 as indicated in the staff report. The MND comments from the Homeowners Association also included a supporting report from Paul Taylor, Principal Environmental Scientist at Paul Taylor Consulting, a professional practice of Environmental Scientists, Regulatory Analysts and Registered Environmental Assessors.

Although the California Environmental Quality Act (CEQA) does not require the City to comment, Planner Penaranda said responses to all comments were prepared, and copies have been made available to the public as well as on the City's website. The City found the revised MND complete, adequate and reflective of the City's independent judgment and analysis as to the environmental effects of the Halus turbine project.

In regard to the requested variance, he said, the Recommended Findings of Fact indicates a special circumstance applicable to this property is its expansive clear area with unobstructed access by prevailing westerly onshore winds. Furthermore, the proposed turbine would not affect availability of light or air on adjacent properties, nor pose a nuisance or hazard to the general public with its large setbacks. Accordingly, the requested 40-foot variance was found to have no detrimental impact on adjacent property or persons. Permitting this variance and constructing this turbine would have no effect on any natural resources, and the proposed operation of the turbine would have no significant effect on birds, bats or existing biological environmental conditions.

**Member Daly** asked for clarification about the recommended variance shown at the end of the PowerPoint presentation. Planner Penaranda said the slide was incorrect; the height limit is 60 feet, and the variance request is to add 40 feet to accommodate the turbine, for a total of 100 feet.

**Member Thomas** asked how long ago the avian research was conducted, what kinds of wind turbines were involved, and where they were located. Planner Penaranda said that he believed the research was based on smaller turbines in Fairfield-Suisun Sewer District.

**Member Daly** asked whether the applicant would be able to build, for example, 20 wind turbines instead of only one if the project is approved. Planner Penaranda said it would be possible because it would be permitted, but a variance would have to be approved for any that would exceed the 60-foot height limit.

In response to **Member Daly** asking the applicant's reasons for wanting to build this turbine, Planner Penaranda said it's for R&D, to provide energy for his site, and to promote his clean-energy business.

**Member Daly** asked what would prevent a blade, for instance, from flying off during a big storm. Planner Penaranda said if there's enough wind to make them spin, the blades rotate at a maximum of 44 rpm and pivot to pick up the prevailing winds, but he deferred to Mr. Rigaud to answer the safety question.

**Vice Chair Mendieta** said his review of the report shows the City did significant and thorough work in preparing the MND, looking at the wildlife issues, contacting DFG and obtaining the ESA study and shadow analysis and photo simulations from various vantage points. He said he's also weighing the fact that the turbine would be obvious to homeowners on the south side of the Heron Bay neighborhood, and that Heron Bay residents question whether the MND is sufficient as opposed to having a complete Environmental Impact Review (EIR).

**Chair Houston** had several questions. In response, Planner Penaranda said:

- The turbine would be 370 feet north of San Lorenzo Creek
- After Mr. Rigaud met with the Heron Bay HOA on June 20, 2012, the MND review period (which had been due to expire on June 21, 2012) was extended 40 days (to July 31, 2012), but there were no subsequent meetings involving Halus and the HOA
- In Photo View 5, the structures that appear higher than the turbine are PG&E towers and tension lines

**Chair Houston** also asked about Photo View 9. The simulated turbine was not visible from the angle photographed – from the trail near the front yard of the southwesterly Heron Bay house – but

she asked how far one would need to walk before it would be visible. Planner Penaranda estimated about 34 feet, and the front of the house faces the street that runs parallel to the channel. (When Mr. Rigaud came to the microphone later in the meeting, he explained that the photo in question was taken from a distance of one house back from the one visible in the photo.)

Referring to the May 5, 2010 ESA Technical Memorandum section about avian reports, **Chair Houston** said with 0.152 bird deaths per year it would take 6.5 years of continuous operation to result in the death of one bird. The Memorandum also said it was infrequent, that one turbine poses little risk, and there would be no significant biological impact, but Chair Houston said the impact could be construed as significant for threatened or endangered species. Birds mentioned specifically within this report, including California clapper rails and California black rails, are both on the Endangered Species List, she said.

Planner Penaranda cited two of the eight mitigation measures recommended by DFG to minimize the potential for avian mortalities. Mitigation Measures: #1d and #1e.

**Chair Houston** said she visited the Rio Vista wind turbine farm, which apparently had neither an environmental review nor pre- or post-construction monitoring. The wind turbine installed at the Anheuser-Busch brewery in Fairfield was supposed to have post-construction monitoring, she said, but the report said there was no fatality monitoring. So, she asked, what was monitored?

At one point, **Chair Houston** said, she read that the Halus wind turbine was expected to run 11 months out of the year, but in another place she saw comments about potential shutdowns during periods of dense fog or heavy rain. She asked how to ensure operations would be halted under those conditions. Planner Penaranda said that would be in the BZA's purview to add as a condition of approval.

**Chair Houston** was disappointed to see the San Francisco Bay Area Wetlands Ecosystem Goals Project study of 2000 was the latest report about avian mortality cited. She said she's concerned about disturbances to the environment for endangered species. Because these are migratory birds, that would be their point of takeoff and they aren't "big fliers."

**Member Daly** asked who does the monitoring when a bird is killed or the carcass of an endangered species is found. Planner Penaranda said the applicant would be required to self-report. But then, **Chair Houston** added, the material indicates that a qualified biologist would be required to come in. **Secretary Barros** pointed out that monitoring isn't completely voluntary, but that one of the mitigation measures addresses this issue. **Mr. Pio Roda** added that complaints and/or outside evidence also could trigger investigations.

**Member Thomas** asked whether the wind turbines that Halus remanufactures produce energy equivalent to what newer models do. Planner Penaranda deferred to Mr. Rigaud for the answer.

**Member Daly** asked whether any agency besides the City, such as DFG or the airport, would be involved if Halus wanted to erect more wind turbines that didn't require variances to exceed the height limit. Planner Penaranda said the City would consult with the Airport Land Use Commission and the FAA. Although he said he does not know the specific spacing requirements between wind turbines on a farm, Planner Penaranda said there are operating standards for proficiency that address density and placement.

In response to a further question from **Member Daly**, Planner Penaranda said that the proposed wind turbine would be six feet in diameter at the base, tapering to three feet in diameter at the 80-foot point.

**Vice Chair Mendieta** asked whether installation of multiple wind turbines would constitute a farm, and whether zoning regulations would allow it. Secretary Barros said that as she interprets the Zoning Code, multiple installations would constitute a utility, so it would be necessary to check permitted uses in IG Districts.

**Chair Houston** invited the applicant to make his presentation.

**Louis Rigaud** began by addressing BZA member questions. He stated the first ESA report referenced more than 25 bird studies, most of which dealt with farms and thus, larger wind turbines than Halus is proposing. One of the reasons for placing the wind turbine in the middle of the Halus property is to have ample buffer space – even though it’s not required – for safety reasons. In the event of a catastrophic event such as an earthquake, the tower could fall and not hit anyone else’s property. He added that the turbine proposed has two separate braking systems, as is characteristic of Vestas turbines. They’re extremely safe, Mr. Rigaud said, and more than 2,000 of them were installed in California alone in the mid-1980s as part of the Carter Administration tax credit program for wind energy. Located in Palm Springs, Tehachapi Pass and San Geronio, they’re extremely reliable and about the safest wind turbines ever built, he said. That’s part of why Halus chose to specialize in re-manufacturing Vestas turbines. Vestas was the early Danish pioneer in the wind industry, and the company remains the world’s largest wind turbine manufacturer. Vestas produces new turbines at the rate of about one every four hours, but its current output consists of much larger turbines than before. Mr. Rigaud said there’s still a market for the small- to medium-size commercial turbines, which is the niche his company serves.

DFG requires Halus to have an approved monitoring plan in place before turbine operations may commence. Employees must be trained to be able to identify birds, posters must be displayed, and ESA would be on retainer. The 2000 Goals Study was the best available, Mr. Rigaud said, but DFG is very current, and it monitors wind-farm development all over the country. DFG also visited the Halus site, he said, which is why it made no comment on the recirculated MND.

The amount of energy a wind turbine produces is a function of the amount of air in the blades, Mr. Rigaud said, and Halus isn’t expecting to produce considerably more power with the wind turbines it specializes in. The advantages of the smaller wind turbines are that they can react to mini-grids, work with diesel generators in remote areas, and pick up more wind because the blades pivot. Efficiency gains are only up to 20%. Efficiency does not double or triple when refurbishing the turbines. The most significant development over the last 10 to 15 years has been in producing wind turbines with blades that move directionally with the wind.

Showing a PowerPoint presentation, Mr. Rigaud provided some of Halus Power Systems background. He showed photos of projects for which the company has supplied wind turbines over the past 10 years. Its equipment has gone to 25 states and overseas destinations. Halus moved to San Leandro in July 2010 from a smaller location in Hayward and was happy to find nearly five acres in San Leandro. The new location enabled Halus to purchase a machine shop in Belmont and move the manufacturing equipment to San Leandro to increase production. Halus recently installed an automated Computer Numerical Control (CNC) metal-cutting system with a table 45 feet long and 15 feet wide. It can cut through steel up to 3 inches thick, Mr. Rigaud said.

The turbine transmissions weigh from 3,000 to more than 10,000 pounds. The transmission, coupled with blades and an electric motor (no combustion engine), is why these wind turbines run so quietly (55 dB). Mr. Rigaud said that Halus is now able to manufacture more and more of the thousands of transmission parts needed in remanufacturing. Halus also designs and manufactures in-house microprocessor-based control systems that can be checked remotely via the internet.

Mr. Rigaud said the turbines his company supplies are among the most sophisticated of their size anywhere. Halus recently shipped one of its wind turbines to Reese Technology Center (RTC) in

Lubbock, Texas, which wanted a commercial turbine to fit with new components for testing for a project funded by the U.S. Department of Energy (DOE). RTC wasn't interested in a big 3 MW (megawatt) turbine, but rather a smaller one with all the bells and whistles of a larger model. Sandia National Laboratories and Vestas are joint partners in that project.

Mr. Rigaud showed a slide depicting some of the various sizes of wind turbines, including a 5 MW installation being tested in Germany that's so tall it dwarfs the 555-foot-tall Washington Monument. Wind-farm developers are installing wind turbines that generate enough energy to power approximately 2,000 homes. From an engineering perspective, Mr. Rigaud said it's rather remarkable that in less than 20 years, turbines went from 50 KW – which at one time was the world's largest – to their current size.

For R&D purposes, Mr. Rigaud explained, testing done on single-phase motors, such as those that power household blenders, is not applicable to three-phase motors, but even a 50 KW turbine produces enough power to test three-phase commercial electric motors.

In response to **Member Daly**, Mr. Rigaud said spacing of multiple turbines on a site depends on the site itself. If a site has reliable wind speed from one direction, he said, turbines could be placed close together. Developers spend a lot of time and money working that out, he added, because it's more economical to place as many as possible on a parcel. He said, too, that Halus plans to put up one turbine, and that's what the application requests. That's all we need and all we want, he said. The primary purpose is to test new products. Much of the world doesn't have the reliable power grid U.S. users know, he said, and with multiple daily blackouts to deal with, international customers, in particular, want turbines they can rely upon. Bench-testing switchgear and power electronics goes only so far, he said, so Halus needs the wind turbine to advance its R&D to test new controls.

**Member Daly** asked how employees would reach the wind turbine engine for repairs and maintenance. Mr. Rigaud said the tower is made of rolled steel plate, with access from a door at the bottom. They would climb a ladder to grease, service and check the turbine. His company currently employs 10 people, and he said he can't wait to bring in more employees. Developing new product is the path to growing, he said. He stated that Halus has been rebuilding turbines for about 10 years, knows the market very well, and sees foreign countries entering that market space. He wants Halus to be the company at the forefront with the small turbines. Vestas, General Electric and other major players no longer make small turbines, but many properties want them, including schools, farms and businesses. Other World Computing, for instance, (macsales.com) had one installed in a surplus field behind its headquarters complex in Illinois to power it. OWC didn't want a \$6 million, 2 MW machine. A wind farm needs 100 or 200 of the large wind turbines to compete with coal or small natural gas plants, but "distributed generation" such as that in place at OWC is quite different from wind-farm development. The distributed generation market is definitely growing, Mr. Rigaud said, and that's the market Halus serves.

Most of the studies that have been performed related to farms have dozens or hundreds of wind turbines in operation. Altamont Pass has about 6,000 turbines, he added.

As a trail user himself, **Vice Chair Mendieta** said he went to see the Halus site from that perspective. Noting that in addition to many of the letters from Heron Bay homeowners, other trail users addressed the safety issue. He said a video he saw in researching this issue online showed what happened in a high wind when a wind turbine overheated. Vice Chair Mendieta supposed it was a much larger wind turbine involved than what Halus produces, but the braking mechanism for the propeller failed and exploded, sending the blades flying off.

Mr. Rigaud said the YouTube video depicted a large-scale, 1.5 MW turbine. He said incidents with serious turbine problems are something like one in 10,000. That's why he's proposing to put the Halus tower as close as possible to the center of the property, for everyone's safety.

**Vice Chair Mendieta** said as he understands it, the BZA could have language incorporated that would require Halus to shut down the turbine in high winds. Mr. Rigaud said that winds up to 60 mph generally don't pose a problem, but both mechanical and electronic mechanisms ensure shutoff in higher winds. He said even if there were no structures or creatures in sight, you'd want to shut it down under those circumstances to protect the turbine itself. High winds pose not only a safety risk, but cause excessive wear and tear and potential damage to the turbine drive train, blades, etc. As for shutdown on foggy days, he said that's not an issue because if it's foggy it isn't windy, so the turbine is already off. The minimum wind speed to operate a wind turbine depends to some extent on the model, but he said a 10 mph wind speed would be the sweet spot. At the Halus site, he said wind speed usually ranges between 10 and 20 mph in the spring and summer, when winds in the area are typically strongest.

In response to a further question from **Vice Chair Mendieta**, Mr. Rigaud said that although wind turbines generally don't do well in low winds, a lot of work is being done to maximize the wind turbine's energy output through controls during low wind speeds.

Addressing **Vice Chair Mendieta's** question about why more avian studies have not been undertaken with the smaller wind turbines, Mr. Rigaud said that studies do differentiate between tower types, such as lattice-type structures that have dozens of perching spots versus tubular towers. He also noted studies cited by ESA, including:

- An October 2009 study prepared by the East Bay Regional Park District for the California Energy Commission, *Range Management Practices to Reduce Wind Turbine Impacts on Burrowing Owls and Other Raptors in the Altamont Pass Wind Resource Area*
- An October 2007 study by Curry and Kerlinger, *Feasibility Study of Potential Avian Risk from Wind Energy Development, Western Ohio Lakeshore Region*

**Vice Chair Mendieta** asked whether onsite employees would require ear protection when the turbine is running. Mr. Rigaud said he's spent a lot of time in and on turbines, climbing them, working on them, and no hearing protection is necessary. He said 55 dB is very low, and when people come close to a turbine for the first time, he said they wonder whether it's even running.

**Planner Penaranda** saw an identical model turbine when he visited Rio Vista. Planner Penaranda said that at 120 feet away, he couldn't hear it at all.

**Vice Chair Mendieta** referred to Mr. Beckman's letter, which indicated that noise calculated in dBA (A-weighted) eliminates low-frequency air pressure waves produced by wind turbines, helicopters and other rotating machines. Mr. Beckman stated that the low-frequency waves have distinct adverse effects on humans and wildlife, and that Halus uses dBA rather than dBC, which *does* detect the lower-frequencies. He asked Mr. Rigaud to comment on that.

Mr. Rigaud quoted from one of Mr. Beckman's attachments: "In general, the Environmental Protection Agency (in Denmark) does not expect problems relating to low-frequency noise from wind turbines that keep current limits for the 'normal noise.'" Mr. Rigaud said this seems to contradict assumptions Mr. Beckman stated in his letter. Mr. Rigaud also said that San Leandro has its own Noise Ordinance, and Halus would not be allowed to exceed it – whether from the wind turbine, a forklift with a bad flywheel, or anything else.

**Planner Penaranda** noted that the Halus site is along the airport's landing path, so the ambient noise level in this location is relatively higher because it's also combined with industrial uses. He said the turbine isn't ever likely to exceed the present ambient noise level when aircrafts are landing.

**Chair Houston** asked what triggers automatic shutdown, and whether the triggers relate to external factors such as wind speed as well as mechanical failures. Mr. Rigaud said that even earlier-generation turbines had sensors for cable twist, vibration, generator temperature, bearings

overheating, etc. The turbine's microprocessor runs at a high frequency, checking components many times each second, and if it detects a problem, it sends a signal that shuts the turbine off. In addition to the microprocessor, the tips of the blades have mechanical failsafe devices. In the absence of a computer, these devices would deploy on their own.

If something happens and the microprocessor isn't functioning properly but the internet is up, Mr. Rigaud said automatic notifications would instantly alert him and other employees via cell phone messages. If the internet is down and the power out, the hydraulic brakes on the turbine transmission would deploy automatically. Unlike with a car, where you have to push a pedal to apply the brakes, he explained, a hydraulic system needs electricity in order to prevent the brakes from engaging. In addition, he said nowhere in the world do Vestas turbines have a history of not working properly.

In response to **Chair Houston**, Mr. Rigaud said that unlike other businesses, Halus is not seeking this turbine to offset its electric bill. That factor is secondary. The company wants to develop turbine products. It currently produces about two turbines each month because each remanufacture takes between 1,000 and 2,000 manhours. Although small relative to other turbines, they aren't small. In fact, Mr. Rigaud said it takes a 40-foot flatbed to haul one of Halus's remanufactured wind turbines. (It takes up to six trucks to deliver the larger ones.) With only about two turbines coming out of Halus each month, he added, the company creates very little truck traffic.

**Chair Houston**, who went to Rio Vista to be able to assess the noise impact of wind turbines, said she found the noise minimal at what she estimated to be 150 feet away. She said she couldn't hear it and did not find the noise to be a huge factor personally.

**Chair Houston** asked how far away the nearest PG&E tower is from the Halus property. Planner Penaranda said it was 270 to 300 feet, and not a concern to PG&E. **Chair Houston** also asked whether, in foregoing an EIR, the BZA could request pre- and post-construction monitoring. Mr. Rigaud said post-construction monitoring is already a requirement, as is pre-construction monitoring unless construction occurs outside a nesting window. Mr. Pio Roda said the City could negotiate a condition with the applicant to address the concern about any construction that might occur earlier or later.

**Vice Chair Mendieta** asked whether any excess energy Halus produced at its site would go into the PG&E power grid. At times, some of it would, Mr. Rigaud said. With net metering, he explained, PG&E meters track the power coming onto a property as well as leaving it. For example, homes with solar panels accrue credits on the meter when the sun is shining, which are then deducted as they use energy in the evening.

In response to a further question from **Vice Chair Mendieta**, Mr. Rigaud said wind-farm developers are happy to have their turbines running 30% to 35% of the time; the best are in the high 30s. He said in San Leandro he hopes for 20%. In terms of propeller velocity, he said some turbines are faster than others, but the Vestas equipment speed runs at 44 rpm maximum.

**Vice Chair Mendieta** asked whether anything on a wind turbine functions like a circuit breaker. Mr. Rigaud said many such turbine controls are in place, and before it can even connect to the grid, it must pass a PG&E-required inspection. Other safeguards include finger-sized copper plates that serve as circuit breakers, and multiple layers of fuse protection on distribution lines between the site and along Grant Avenue.

After a break in the proceedings, **Chair Houston** confirmed with Mr. Rigaud that if the application is approved, he is prepared to comply with the conditions set forth. She invited public comments.

**Howard Beckman**, 1261 Via Dolorosa, San Lorenzo, said there's strong local agreement that finding alternative energy sources is urgent but it requires an orderly, lawful planning process. He said the BZA must deny the subject application because it cannot be supported by the required

findings under the terms of the San Leandro Zoning Ordinance. Upon denial, he recommends that the City adopt a moratorium on wind turbine installations in order to explore the conditions under which turbines will be permitted.

Mr. Beckman said his letter touches on noise, property values and the definition of a structure in the Zoning Ordinance. The record presented for tonight's hearing says there's no quantitative evidence concerning low-frequency sound of the wind turbine and its potential impact within the sensitive shoreline environment. Indeed, he continued, no evidence in the record suggests that this issue was even considered. Mr. Beckman said he has extensive experience with the issue of low-frequency sound, and provided documents from the Danish Ministry of Environment saying it has determined low-frequency noise is a problem. The Danish EPA's opinion is relevant and important, he said, because it set the rules for certifying the noise on the Halus turbine. Mr. Beckman also said he deals frequently with the question of damages or nuisance from noise.

Likewise, Mr. Beckman said, the issue of property values was dismissed by the City as irrelevant to the MND and environmental analysis. A real estate appraiser said the jury is out in that regard. In terms of the requested variance, Mr. Beckman said the conditions that staff believes support the variance are laughable.

**Chris Morey** thanked all the other Heron Bay residents who came to the meeting and asked them to stand quietly to show their numbers. He said Heron Bay is a beautiful neighborhood with all the wetlands around it that make it a jewel in San Leandro. He said he hoped the group made a good impression because first impressions are important. He said having to go 50 miles to find a wind turbine also makes a first impression. Without an EIR, he said the first impression of the Halus proposal is skimpy, and an EIR is necessary to understand what a wind turbine would do in the proposed environment and whether it's appropriate for that area. It needs to be studied, researched and fully vetted. It ought to be done right, and the right questions must be asked. He said that his wife was supportive of wind turbines until she saw one off an I-80 exit on the way back from a ski trip.

**Alan Berger**, 95 South Market Street #545, San Jose, is the Heron Bay HOA attorney. He referred to comments he submitted on behalf of Heron Bay on two occasions, July 31, 2012 and November 14, 2012, as well as an attached report prepared by Paul Taylor. Mr. Berger said that Mr. Taylor is one of California's foremost environmental engineers and has commented on issues related to the requested variance. Despite considering Planner Penaranda a credit to the City, Mr. Berger said after trying cases in more than 20 states and every California jurisdiction, he's rarely seen a staff report quite like the one on the Halus proposal. He said he represents residents in 629 homes who are vitally concerned about the comments of staff and about the issue. While indicating there's no doubt staff did considerable work putting together the Halus materials, Mr. Berger asserted that every photograph, every submission, every chart and every report submitted by staff rehashes Halus material. It was not based on independent testing or empirical evidence, he said.

At this time, Mr. Berger continued, it is not Heron Bay's position whether this wind turbine should be allowed. The issue now concerns whether the variance should be granted without the benefit of a full EIR. At this point, the BZA has insufficient evidence to rely on staff's opinion to go with an MND, he said. CEQA Section 21064.5 talks about when an MND can be used, he said, and it's clear an MND can be used only when no substantial evidence in light of the whole record shows any chance of a significant effect on the environment.

Informed that his time was up, Mr. Berger said this is a serious legal position and he needs about 10 minutes to summarize it. Members of the audience offered to give him their time.

***Motion to Extend Mr. Berger's Presentation Time***

***Daly/Mendieta: 4 Ayes, 0 Noes***

Mr. Berger said when any fair argument can be made that a project may have environmental impacts, both CEQA rules and cases that have interpreted CEQA clearly state that an EIR must be ordered. He said the very questions raised by BZA members are ones members of the HOA brought up. He criticized the studies cited as being years old and conducted in environments very different from San Leandro's. If staff had ordered an EIR in the first place, almost eight months ago, the process would be finished by now, he said. Instead, the City invested the time, money and effort in showing why no EIR is necessary. Mr. Berger added, for the record, that he received additional staff comments just four days ago.

Despite what the photo simulations depict, Mr. Berger said everyone in Heron Bay and on the Bay Trail will see a 10-story billboard for Halus. He said turbines belong in non-residential, rural areas where they don't affect anyone. He said, too, that the MND ignores the issue of private property and aesthetic values, both of which the courts support and both of which demand an EIR and scientific evidence. He pointed out that the staff recommendations fail to address the important issue of what happens with the wind turbine if Halus leaves the site, and asked why staff puts the interest of one business ahead of the interests of 629 homeowners.

**Mike Katz**, 46 Estabrook Street, described Mr. Berger's scare tactics as "very entertaining." He said we're talking about a windmill on a piece of property that is zoned for industrial use – which is neither in the marsh nor on sensitive environment land. As a regular user of the Bay Trail, he said the most prominent features there are the 12-story-tall electric towers between the Heron Bay development and the Bay, followed by the regular aircraft landings. He said the aircraft are about 16 times louder than the wind turbine. Mr. Katz said there have been plenty of studies, including one in December 2009 by the Lawrence Livermore National Laboratory that looked at the effect of wind turbines on nearby home prices and found no correlation. He also cited a January 2012 study for the Massachusetts Department of Environmental Protection and Massachusetts Department of Public Health that documented no epidemiologically significant impacts of noise from wind turbines on nearby populations.

Encouraging the BZA to grant the variance requested, Mr. Katz asked them to think about the scientific documentation and not what people's fears are generating. This is not a wind-farm project, he said, but a project by a company in the business of refurbishing wind turbines and another similar company would want the same. Mr. Katz said he supports the requirement for monitoring effects on avian life, but he cited domestic cats, electrical power lines and communication towers as more dangerous to birds than a wind turbine. He cited a University of Southern California study released in April 2012 that documented seven million annual bird kills by the communication towers we rely on for cellular phone and TV service. Mr. Katz said that having an EIR would not be a bad thing, but in this case he considers it inappropriate.

**David Johnson**, 120 Estudillo Avenue, is President and CEO of the San Leandro Chamber of Commerce. Speaking in that capacity and as a representative of the Chamber Board of Directors, he stated that Halus gives San Leandro the opportunity to set a standard and grow a sophisticated company. He said he understands the fears, but is concerned that those fears have been stoked around issues that aren't real and have nothing to do with the adjacent residential area. He said all sorts of issues, as Mr. Katz mentioned, about electrical towers and aircraft noise, also come into play. He pointed out that the average person-to-person conversation is in the same decibel range as what the wind turbine would generate, and that would be only when it's running. He said we must

not forget that the fundamental purpose here is to do research that will make it possible to improve efficiencies around producing energy from wind, and San Leandro is never likely to have anything resembling a wind farm. He said the significant documentation provided in the MND clearly and conclusively supports granting the variance requested. The 100-foot turbine with large setbacks from residences and public open spaces would not have any impact on the immediate adjacent properties, persons or avian species.

Mr. Johnson read into the record a letter from the Chamber Board of Directors. In part, the letter states:

- *Halus Power Systems exemplifies the very kind of business that will establish a benchmark for San Leandro's growing green economy.*
- *[The BZA's] affirmative action will satisfy a key goal of our Climate Action Plan, and serve as a clear and far-reaching invitation to other innovative companies like Halus who are seeking to locate and grow businesses and green jobs in a sustainably focused community like ours.*
- *Consider our growing visibility as Halus carries out national as well as international research and development work in this critical field of wind energy.*
- *Our community, through Halus good work, will be at the cutting edge of taking on our changing climate challenges.*

**Stephanie Smith**, 2223 Kingfisher Court, said that as a San Leandro native, she wants this to be the best City possible now and in the future. She said she favors all forms of well-located and well-legislated green energy sources. She said the proposed Halus wind turbine is not well-located, nor does it have sufficient policy behind it to keep everyone safe. She asked what would happen if a fire broke out in the middle of the night and the wind carried embers over to the Heron Bay community. Heron Bay has only one exit and one entrance. She asked whether one business is worth risking the lives of thousands of residents. She also said studies have produced conflicting information regarding the health effects of wind turbines.

Ms. Smith said she would like San Leandro to establish comprehensive guidelines as to where a wind turbine could be built, including monitoring for noise, safety and effects on birds, independently from outside the company to guarantee that accurate information would be forthcoming. Ms. Smith said she's concerned about the proposed location because it directly abuts a residential community where thousands of San Leandro residents live, it's close to a nature preserve where several endangered species live, and it's an eyesore that would drive people away from the Bay Trail. California has banned offshore wind farms because wind turbines are ugly, she said, and building one that can be seen on the shoreline breaks the spirit of that law. She asked the BZA to stop the Halus project that would sacrifice the needs and wants of many San Leandro citizens, trail users and endangered birds for one small but already very successful business, and to take under consider her request for a thoughtful and comprehensive policy regarding wind turbines.

**Howard Kerr**, 15388 Norton Street, is a 62-year resident who served on the San Leandro City Council (starting in 1992) and was appointed Vice Mayor (1995). A founder, past president and longtime member of the Washington Manor Homeowners Association, he was also President of the Associated Homeowners of San Leandro. He said he can't remember any other project in San Leandro that's taken as much scrutiny as the Halus proposal. He said he's grateful for the staff's analysis of every issue of the whole project and the answers to every question raised. He recommended approval of the MND so the project can go forward, because it's needed in San Leandro.

Mr. Kerr said the City has lost a lot of industry over the years, including automobile and tractor manufacturing and canneries, and needs to attract new industries. He said he can't see the wind turbine as any detriment to the Heron Bay neighborhood and believes it should move forward. He praised Halus for restoring wind turbines that are no longer manufactured and making them available in outlying areas all over the country, and said it's the type of industry that San Leandro should encourage.

**John Dalisay**, 2301 Pacific View Court, a member of the Heron Bay HOA Board and a realtor with more than 10 years of experience, said everyone remembers how 9/11 changed the country, but not many probably remember 9/9 – the day in 2010 that a gas pipeline explosion rocked San Bruno's world. What happened in San Bruno, he said, stigmatized that community in the eyes of potential homebuyers, who now think about the risk factors involved in all the underground gas pipes. Mr. Dalisay said he doesn't equate Halus with a destructive monster prepared to invade Heron Bay, but as a realtor, he said it's important for the City to thoroughly investigate what it's getting into. Mr. Dalisay said he knows from his experience in selling a home in Five Canyons, right next to a tower, that it's hard to explain the effects. An EIR would at least be something to share with potential buyers who could use it to consider in making decisions. Without the EIR, he said, we're clueless about what the immediate effect would be.

**Misha Wyatt**, 2353 Lagoon Court, a Heron Bay resident, said she sent an email last year to request the EIR, and reiterated that request. She gave Halus kudos for its work in alternative energy technology and manufacturing in San Leandro. She said she has questions that remain unanswered including: What is the lifecycle of remanufactured wind turbines? Where is Halus in the monitoring plan with USFWS, which must be in place before the project can move forward? Can the City stipulate that the monitoring plan is in place prior to approval of its variance request? What should we do in terms of wind turbines in the future?

Ms. Wyatt said she also considers an EIR an independent safety provision for the community, the City and the Chamber of Commerce, and as a way of looking at constraints. She said an EIR would be an objective way to make a decision. She said she's heard contradictory information, for example, about studies being as old as 2000, but also about a Lawrence Livermore National Laboratory study in 2009 and another report in 2012. She said she looks to experts to provide the most comprehensive information. Thus she urged the completion of an EIR so that everyone involved – the community, businesses, residents, administrators, BZA Members – can take a holistic approach.

**Ramoncito Asistin**, 15698 Anchorage Drive, said most of his concerns have been mentioned, but he pointed out that the photo simulations are a subtle admission that the wind turbine would be an eyesore. He said his Heron Bay home is directly across from the site, and it would ruin his day every time he would see the wind turbine there. He said that even out-of-towners who come to San Leandro to walk the Bay Trail would have to look at it. He said properties in San Leandro have been affected already by the recession, and in Heron Bay homes have been hit by a 25% decrease in valuations of their primary investment. Halus is profit-driven, Mr. Asistin said, but the property owners' interests here are their life investments. They can't afford property values to decline even more.

Mr. Asistin said storms that hit the coast generate lightning, and because lightning strikes indiscriminately, with a 100-foot tower next to the power plant it won't be a coincidence if it hits one of the homes in Heron Bay. He said the City would not want to be a party to that. He said the BZA's decision would be about fairness to a community it represents, and that community wants a full EIR.

**Dan Zhang**, 2268 Mariner Way, said the response to homeowner comments characterized homeowners as unqualified to render opinions. He said he has lived in the neighborhood for more than 10 years, and knows the look and feel of the environment, that the turbine would be right in front of their faces and create a detrimental impact to the scenery. He also said Halus has yet to produce any substantial evidence to support its assertion of hardship for the variance requested. The recommended findings state that “the unusual circumstances in this instance include the irregular flag-shaped lot, its sizeable land area, it is not immediately adjacent to occupied properties, and its clear and unobstructed location to the westerly San Francisco Bay winds...” According to Mr. Zhang, this hardly describes a hardship, but he continued, the Heron Bay homeowners would definitely experience hardship if the wind turbine is built, because home values would decline. Even though the MND does not require it, he said the BZA should take into consideration the economic effects on homeowners as a separate issue.

**Chris Smith**, 2223 Kingfisher Court, said the community was shocked to find out, after the wind turbine was proposed. He said no one he’s talked to about this project takes exception to green energy or what Halus wants to accomplish except for the part of installing a wind turbine. He said he was also shocked by the minimum amount of information disseminated about this project, and that it had gone to only a handful of people who live right next to the site. The process was almost secret, he said, requiring people to pull and twist and turn to get information.

When Heron Bay homeowners finally met with Halus to express their honest fears and desire for information, Mr. Smith said they were outraged by the idea of having this project approved when the community of nearly 1,000 people didn’t want it. He said arguments about airplane noise being worse than a wind turbine and the power lines looking worse are disingenuous when you don’t live there. No one wants to look out the window and see a 100-foot-tall wind turbine that advertises Halus’s business. If realtors must tell a potential homebuyer they don’t know whether more wind turbines would be built, Mr. Smith asked how that would help the homeowners or be fair to the people who live there. “Is it worth it to do that to us?” he asked.

**Mary Lavonas**, 39030 Levi Street, Newark, said she has a vested interest in Heron Bay, because she uses the trails there for the post-stroke exercise she needs. She finds those trails relaxing, loves the view all the way to San Francisco on clear days, and said the wildlife adds to the beauty. After her walks, she said, she shops at the Greenhouse Marketplace or Marina Faire outlets, and eats at La Piñata or Kasper’s. The construction of even a single wind turbine would ruin this God-created beauty, she stated, and no one can convince her that it wouldn’t affect the wildlife and the view.

Ms. Lavonas said she and her daughter visited one of Halus’s wind turbines in Rio Vista. While her daughter went onto the property, she stayed in the car but after a long time she panicked and honked the horn. Her daughter didn’t hear it because the wind turbine is very loud. Ms. Lavonas said she’s hard of hearing and couldn’t stand the noise. With the opening of Kaiser’s San Leandro hospital in 2014, she said she would use the trails at Heron Bay more frequently, as would the stroke-group friends she’s encouraged to also enjoy the treasure of that trail. But if the turbine is built, she said she and her friends would stop coming because it would be ugly, noisy and kill birds.

**Shudong Zheng**, 2332 Riverside Court, said that according to Mr. Rigaud, Halus’s 50 KW-capacity wind turbine would run 20% of the time – approximately five hours a day – for 750 kWh a month, assuming 30 days of consecutive operation. Mr. Zheng said he pays PG&E 12.8 cents per kWh, so Mr. Rigaud’s 750 kWh would amount to \$938 per month. When this project was first made public, Mr. Zheng said, the rationale was for generating green energy, and 750 kWh per month doesn’t make economic sense. If it costs \$150,000 to build and install the wind turbine, it would take 11.3 years to break even. While applauding any green energy production, he said that would contradict

the project goals as they were first announced. Halus said the goal now is for testing, which Mr. Zheng said is scarier, because being tested is neither stable nor reliable.

Mr. Zheng said Heron Bay residents have many concerns about negative impacts because the project is so nearby, so why not just do the EIR? He also pointed out that airport noise and PG&E towers were present when he moved to Heron Bay about 15 years ago, but he doesn't want more bad things added on top of those. He asked the BZA to help protect our homes, communities, environment and ecosystems. He does not want to have to move again.

**Darlene Evans**, 359-361 Bristol Boulevard, said she studied building codes while taking architectural drafting courses, spent more than four years working on industrial buildings for fire-insurance ratings, and saw wind turbines in Indianapolis in 2004. She said a wind turbine in San Leandro is inappropriate. She referenced the ESA Biological Resources Technical Memorandum dated May 12, 2012. In discussing studies involving the impacts of single small wind turbines, it says, "Environmental guidance for small wind projects is lacking at both federal and state levels" and with "a rotor-swept area of less than 2,000 square feet, no additional surveys or mitigation should be required."

**Julia Chung**, 2385 Pacifica Court, said she moved to Heron Bay because her family loves wildlife. She said she also favors green energy. She said that human beings use so much space, it leaves smaller and smaller areas available to animals. She's grateful that San Leandro has this protected area for birds, geese, foxes and so on by Heron Bay, but their habitat is already very limited. She said she's never seen a bird perched on a wind turbine, whether or not the propellers are rotating, because the birds are afraid of them. She and her husband want to leave their estate to benefit wildlife in the area, but she is worried that in 10 or 20 years there will be no wildlife. She said that although the wind turbine is proposed for an industrial area, it borders a densely populated residential neighborhood. She also said that although the wind turbine would not be visible from her property, she believes they will feel it.

**Howard Thu**, 2338 Spinnaker Court, said the photographic simulations don't represent how the wind turbine actually would look because they were done so as to make nearby objects appear larger and minimize the appearance of the wind turbine in the distance. Mr. Thu said he respects business people, but they go home to their mansions at the end of the day and don't have to worry about the sight of a wind turbine, while the people who live here, pay taxes and vote have to deal with it every day.

**Jenny Chen**, 2386 Pacifica Court, said as she drives through the community to I-880, down Wicks Boulevard, she sees many empty business buildings and warehouses. She agrees we need to generate businesses to support the City. She said that according to Mr. Rigaud, Halus remanufactures one to two turbines a month, the most expensive of which is \$600,000. She calculated that even working at full capacity and selling only their highest-value products, Halus would generate only \$14 million in gross sales annually. She asked what tax Halus would pay to San Leandro on those sales, versus the property taxes of almost 700 Heron Bay homeowners. She said she expects the City would collect much less from Halus than from the property owners. Even though home prices have dropped considerably, she said the last home sold for more than \$500,000. She said that yes, San Leandro needs more businesses, but it needs businesses that hire more than 10 people.

**Fred Simon**, 15670 Atlantus Avenue, said Heron Bay is where he purchased his first home 15 years ago, and that's where he and his wife are raising their two children. He said it's a beautiful place to live and San Leandro overall is a wonderful place to live. Without an EIR on this project, he said the City would seriously deteriorate the quality of life in San Leandro. He urged the BZA to reject the variance request because the true impacts of the project – to health, to the environment, to the animals – have not been evaluated. He said, for example, that killing one bird in six years is

completely unrealistic. An EIR needs to be done in order to properly evaluate the impact. He said he has walked the Bay Trail at least three times a week for 15 years and sees hundreds of birds.

In terms of safety, Mr. Simon cited Vice Chair Mendieta's story about the wind turbine that exploded. He said the reports have not evaluated how far a blade would fly. People also suffer health impacts from wind turbines, he said, including nausea and migraines. He said that's not been studied, either, and "we deserve that respect and dignity" to be able to understand what the impacts would be. The impact on property values also needs to be evaluated, he stated, noting that some people have already told him they're moving out. This project would also have a negative impact on aesthetics. There are no wind turbines in affluent areas such as Danville and Blackhawk, he asked, why should San Leandro be the *guinea pigs* for a project of this magnitude without an EIR.

***Motion to Close the Public Hearing***

***Daly/Mendieta: 4 Ayes, 0 Noes***

**Member Daly** asked if anything in Mr. Beckman's letter or the public testimony changes the City Attorney's opinion about whether the BZA can proceed on the variance request. Mr. Pio Roda said no, and that he's also comfortable about proceeding without an EIR.

**Member Daly** asked Mr. Rigaud what fuels a wind turbine and whether in his experience they ever catch fire. Mr. Rigaud said there's no fuel source, and if the wind isn't strong enough to push the blades, they don't move. He also said turbines very rarely catch fire. Some of the bigger turbines have more components, including power electronics, and lightning could conceivably start a fire. In lightning-prone areas, he said lightning will hit whatever it finds, and lightning storms in Kansas have caused damage to wind turbines there. Most of the time, he said, the lightning blows out electrical components. He said he doesn't believe San Leandro is considered a lightning-prone area.

**Vice Chair Mendieta** asked whether the wind turbine would remain intact after being struck by lightning while the internal components are fried. Mr. Rigaud said that over a 10-year period, he's seen three turbines that have been hit by lightning. Twice it resulted in electrical damage and once there was fiberglass damage. Other incidents he's aware of but hasn't seen involved electrical damage. He said Halus bolts on lightning arrestors to keep lightning that hits the ground from coming up into the machine. He also pointed out that lightning that strikes utility wires can travel through the wires and break components in the turbine or any other building. In other words, he said it doesn't take a direct lightning hit to damage a wind turbine.

**Member Thomas** asked whether the information prepared by the City cross-referenced any related cases. Mr. Pio Roda said yes. In terms of the EIR-versus-MND issue, he added, the City and staff have made the case quite clearly about there being no substantial evidence or fair argument that there would be environmental impacts. They've received numerous comments, including some that came in after the extended deadline passed. The City responded diligently to every one of them, Mr. Pio Roda said, and many of the comments were not based on facts and some were absolutely false or contained erroneous information. The project, as it is modified in the MND, has no significant impacts, and with the mitigations, he said, we believe that the MND is proper in this case.

**Mr. Liao** clarified that the MND for CEQA is the City's document, prepared and vetted by staff, not unfiltered material from Halus. The reason for the delay was to address the comments seriously and thoughtfully. When expert input is appropriate, he explained that staff sometimes chooses a firm from its list, or with the City's approval, the applicant can choose another firm to address concerns. Mr. Liao said that ESA has considerable experience with regard to San Leandro shoreline issues. The City mandates the right to a peer review to make sure they're comfortable with the material

because staff must ultimately prepare and sign off on these environmental documents.

**Vice Chair Mendieta** said mitigation measures pertaining to wildlife, noise and aesthetics showed the kind of due diligence he expects of staff. He said he's sensitive to concerns of residents about negative health effects, but he cannot see that such effects have been demonstrated. As a realtor himself, he said he understands what Heron Bay residents have said in terms of the potential impact on property values. The sizzle of high-tension wires 30 feet from a property can have a detrimental effect on a property's appeal to a potential buyer, he said, although he noted that a buyer may decide that the size of the property, proximity to work and other factors are more important. The electromagnetic fields (EMFs) emitted by high-tension wires certainly affect real estate values, he said, but he isn't persuaded that a wind turbine would emit serious EMFs.

Despite the direct impact of the recession on home prices, **Vice Chair Mendieta** continued, San Leandro has seen a resurgence, which should continue with the Kaiser facility coming closer to completion, shoreline development projects that are taking form, the downtown transit-oriented development (TOD) that's moving forward and the Lit San Leandro fiber optic installations. He said significant dynamics are transforming San Leandro in a way that will make it more desirable.

As for renewable energy sources, **Vice Chair Mendieta** said our long-term existence is at risk due to the historic dependence on fossil fuels. Whether one believes in global warming, he said, the science tells us that we're in deep trouble. The polar icecaps could melt by the year 2050, and the sea level is rising. He appreciates environmental sensitivity to animals and wildlife, too, he said, but he's not persuaded that one wind turbine would present a problem.

**Ms. Faught** pointed out that an impact on property values isn't a CEQA issue. It might relate to the BZA's Finding #2 in terms of either approving or denying the variance, but not to adoption or denial of the MND.

**Member Thomas** commended both sides for their contributions to tonight's meeting including residents going out and fighting for what they believe in is part of what makes this a great City. Likewise, to think big, dream big and make San Leandro the place of business innovation is something we all ought to think about, he said.

**Member Daly** asked for a summary of what the BZA is being asked to do tonight. Ms. Faught outlined two parts:

1. The resolution to adopt the MND, which includes findings that, along with the mitigation measures, the project would have no significant impact on the environment; and
2. The variance requested

The changes that the BZA requested, she explained, would be part of the conditions of approval. The conditions of approval are attached to the variance, but they are also included in the mitigation measures in the MND.

**Secretary Barros** explained that in addition to staff's recommended conditions of approval, Mr. Pio Roda said a stipulation for a pre- and post-construction monitoring plan negotiated with the applicant would be included. It would involve modifying Condition of Approval III.B. and Mitigation Measure #1a (Mitigation Monitoring Plan), so that a qualified biologist will be retained for to conduct pre-construction surveys for raptors and nesting birds one week prior to any construction activity on the turbine. Construction activity will be permitted to proceed if no active nests are detected during the surveys.

**Member Daly** said his original concerns involved issues of height, safety and whether additional wind turbines would follow installation of the first. He said the area where Halus is located is not appropriate for a wind farm; one wind turbine is acceptable but more than one is not. Member Daly

said he appreciates the neighborhood's concerns, and considers this a close call that ultimately will have to be resolved at City Council level. Based on the applicant's stated reasons for the wind turbine – not so much to produce energy as to supplement his business, and that he would not return to ask for more – and as a volunteer member of the BZA, Member Daly said he accepts staff recommendations. He said staff work was thorough and there's nothing inappropriate about it. So, he said, as difficult as it is, he agrees with staff's recommendation.

**Member Daly** moved to accept the Resolution of the BZA adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Halus Wind Turbine application PLN2012-00006, with the added Condition of Approval that the turbine may not operate in heavy rain or dense fog. **Vice Chair Mendieta** seconded the motion.

**Chair Houston**, for the record, stated that she did not have an opportunity to make her comments.

**Member Daly** said he's satisfied that the height is not outrageous and that the wind turbine would be safe. Considering the area and historic industrial uses around the Bay, one wind turbine is acceptable, he said, but any more would be an eyesore and a serious problem.

**Chair Houston** thanked everyone for coming out tonight for this very long meeting. In addition to many public speakers, she said BZA Members had many questions and wanted to ensure they were answered thoroughly. She said BZA Members do their best to make sure they make decisions on the basis of code and CEQA requirements. She thanked BZA Members for stepping back and viewing the issues from that perspective and for listening to everyone's comments. She agreed with Member Daly that this issue is likely to go to the City Council.

***Restated Motion to Accept the Resolution of the BZA  
Adopting a Mitigated Negative Declaration and Mitigation Monitoring Program  
for the Halus Wind Turbine Application PLN2012-00006,  
with the Added Conditions of Approval that the Turbine May Not Operate in Heavy  
Rain or Dense Fog and a Qualified Wildlife Biologist, will be Retained to Conduct  
Pre-construction Surveys for Raptors and Nesting Birds One Week Before  
Initiation of Construction.***

***Daly/Mendieta: 4 Ayes, 0 Noes***

**Secretary Barros** said that applications recommended for approval by the Board of Zoning Adjustments are final (contrary to what it states on the agenda, which is a typographical error). Decisions of the BZA under public hearing may be appealed to the City Council by filing a form with the City Clerk within 15 days of the date of the action. The form shall specifically state the reason for the appeal, and an appeal fee is required through the City Clerk's office.

***Motion to Approve a Variance  
to Exceed the 60-Foot Maximum Height Limit to 100 Feet,  
Subject to Recommended Findings and Conditions of Approval  
for the Halus Wind Turbine Application PLN2012-00006***

***Mendieta/Thomas: 4 Ayes, 0 Noes***