

COUNTY ADMINISTRATIVE BOARD

DECISION

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[Seal] **County of Södermanland**
Elisabeth Östlin
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Date
15 December 2011

Reg. nos
403-2103-11 et al.

Stamp:
[NACKA DISTRICT COURT

RECEIVED: 10 JAN. 2012
CASE NO: P 129-12
FILE ANNEX: 3J

See distribution list

Appeal of the decision of the Planning and Building Committee of the Municipality of Strängnäs on a building permit for two wind turbines. Näs 1:4 and Knutsberg 1:2

DECISION

The County Administrative Board rejects the actions of the following parties:

Naturskyddsföreningen i Södermanlands län [*Society for Nature Conservation in the County of Södermanland*], reg. no 403-40-2011

Föreningen Landskapsskydd i Strängnäs [*Association for Landscape Protection in Strängnäs*], reg. no 403-4711-2010

Hans Åke and Monika Berg (Helgarö-Åsby 4:5)

Håkan and Christina Lindström (Helgarö-Åsby 3:7)

Rolf Karlsson (Helgarö-Åsby 1:10)

Eva Wesslén (Rällinge 1:5)

Krister Hålldin (Rällinge 4:9)

Sten and Lilian Onelöv (Helgarö 3:1)

Kjell Andersson (Björnsund 1:23)

Börje Karlsson (Helgarö-Åsby 1:5)

Gunnar Hedin (Rällinge 1:6)

Hans Kroné (Helgarö 6:1)

Börje Williamsson (Helgarö 4:5)

Lillemor Mårtensson (Rällinge 4:7)

Claes and Margareta Holmgren (Rällinge 4:6)

Kent Karlsson (Knutsberg 1:6), reg. no 403-43-2011

Åsa Lilja and Örjan Karlsson (Knutsberg 1:13), reg. no 403-42-2011

Tommy Karlsson (Knutsberg 1:14), reg. no 403-4710-2010

Börje Jansson (Stenstavik 1:1), reg. no 403-4721-2010

Anna Björbrand Lövgren and Henric Lövgren (Rällinge 4:10), reg. no 403-41-2011

Catrine Fredlund (Helgarö 7:1 and 5:7), reg. no 403-125-2011

Gunilla Höjjer and Kaj Lundahl (Rällinge 5:6), reg. no 403-4714-2010

Gun Lövgren and Arne Lövgren (Rällinge 4:2), 403-4715-2010

Silja Sandelin (Fogdö-Viggeby 1:17), reg. no 403-4722-2010

Ylva Abrahamsson Thornefors (Knutsberg 1:16), reg. no 403-4720-2010

Bernd Stümer (Helgesta 1:2), reg. no 403-2103-2011



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This decision can be appealed to the Land and Environment Court, Nacka District Court, see below.

ACCOUNT OF THE MATTER

Decision appealed

On 3 November 2010 the Planning and Building Committee of the Municipality of Strängnäs granted, §276, a building permit for the construction of two wind turbines with a maximum power of 2 MW and with a hub height of 95 m and a rotor diameter of 90 m. The following were given as the main reasons for the decision. The site of the wind turbines envisaged is in an area not covered by a detailed development plan in the northern part of Fogdö, about 3 km northeast of Björsund. The site where the turbines are to be established mainly consists of forest today and is intended to continue to do so. The planned wind turbines will change the landscape to some extent but not in such a serious way that the impact can be contrary to Chapter 3, Section 1 of the Planning and Building Act. Nor will the wind turbines encroach to a degree worth mentioning on outdoor recreational exercise and they are not deemed to substantially damage the natural and cultural values of the area. The distance to the nearest building development is about 680 m. This means that the siting of the wind turbines cannot be considered to result in significant nuisance for the existing housing. The wind turbine establishment in question is in an area identified by the Swedish Energy Agency as a national interest for wind farming. The wind turbine establishment coincides with a national interest for Lake Mälaren and its islands and shore areas and a national interest for fishing.

Appeals

The decision has been appealed by:

Naturskyddsföreningen i Södermanland[s län]

The chair of Föreningen Landskapsskydd i Strängnäs, also as the representative on behalf of the following property-owners/residents:

- Hans Åke and Monika Berg (Helgarö-Åsby 4:5)
- Håkan and Christina Lindström (Helgarö-Åsby 3:7)
- Rolf Karlsson (Helgarö-Åsby 1:10)
- Eva Wesslén (Rällinge 1:5)
- Krister Hålldin (Rällinge 4:9)
- Sten and Lilian Onelöv (Helgarö 3:1)
- Kjell Andersson (Björsund 1:23)
- Börje Karlsson (Helgarö-Åsby 1:5)
- Gunnar Hedin (Rällinge 1:6)
- Hans Kroné (Helgarö 6:1)
- Börje Williamsson (Helgarö 4:5)
- Lillemor Mårtensson (Rällinge 4:7)
- Claes and Margareta Holmgren (Rällinge 4:6)



Wilhelm Thornefors, Member of the Swedish Bar Association, as the representative of the following three property owners:

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- Ken Karlsson (Knutsberg 1:6)
- Åsa Lilja and Örjan Karlsson (Knutsberg 1:13)
- Tommy Karlsson (Knutsberg 1:14)

Börje Jansson (Stenstavik 1:1)
Anna Björbrand Lövgren and Henric Lövgren (Rällinge 4:10)
Catrine Fredlund (Helgarö 7:1 and 5:7)
Gunilla Höjer and Kaj Lundahl (Rällinge 5:6)
Gun Lövgren and Arne Lövgren (Rällinge 4:2)
Silja Sandelin (Fogdö-Viggeby 1:17)
Ylva Abrahamsson Thornefors (Knutsberg 1:16)
Bernd Stümer (Helgesta 1:2)
Silja Sandelin (Fogdö-Viggeby 1:17)
Ylva Abrahamsson Thornefors (Knutsberg 1:16)
Bernd Stümer (Helgarö-Väla 1:2)



As their actions must be understood, the appellants have requested that the decision appealed be set aside. As grounds for this claim they have stated, among other things, that the siting and high total height of the planned wind turbines will result in encroachment on, and a substantial risk of injuries to people and damage to property on, the surrounding properties. Taking account of the planned height of the wind turbines, a safeguarding distance of at least 1 000 metres to nearby residents is required. Residents would be exposed to extensive disturbance in various forms such as light, noise and shadows. Sensitive nature, plants and animal and bird life would be seriously harmed and the landscape would be transformed into an industrial landscape. There would be a negative impact on the possibilities for forestry, outdoor life, recreation and hunting. Finally views have also been put forward about the processing of the matter by the Municipality of Strängnäs.

REASONS FOR THE DECISION OF THE COUNTY ADMINISTRATIVE BOARD

Under the transitional provisions to the Planning and Building Act (2010:900) older regulations shall still apply to cases and matters begun before 2 May 2011 and cases and matters that relate to appeals of decisions in such a case or matter until the case or matter has finally been decided.

The general rules on the right to appeal administrative decisions are set out in Section 22 of the Administrative Procedure Act (1986:223). That section provides that a decision may be appealed by the person whom the decision concerns, provided that the decision affects him adversely and is subject to appeal. However, Section 3 of the same Act states that where another act or an ordinance contains a provision that deviates from the Administrative Procedure Act, that provision shall be applicable.

Chapter 13, Sections 5–7 of the Planning and Building Act (PBA) contain provisions about who has the right to appeal. A non-profit organisation referred to in Chapter 16, Sections 13 and 14 of the Environmental Code may appeal detailed development plans and decisions on the withdrawal of shore protection. The right of non-profit organisations to appeal other decisions under the Planning and Building Act has therefore been cut off.

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In view of the above the appeals of the following non-profit organisations shall be rejected:

Föreningen Landskapsskydd i Strängnäs; and
Naturskyddsföreningen i Södermanlands län.

The two wind turbines in question are located at a distance of about 500 metres from one another.

Under case law building permit decisions are considered to concern owners of the properties bordering directly on the property that the building permit applies to and, as previously mentioned, also owners of properties in a close neighbourhood that are particularly affected on account of the nature and scope of the measure that the building permit refers to, natural conditions at the site, etc. None of the properties with the designation Björsund, Helgarö, Helgarö-Våla (with the exception of Helgarö-Våla 1:1), Helgarö-Åsby, Rällinge or Stenstavik is a neighbour sharing a border with either Knutsberg 1:2 or Näs 1:4 and they are, in addition, located between 1.5 and more than 3 km from the closest wind turbine. Nor do Knutsberg 1:16 (with a distance of about 1 km from the closest wind turbine) or Knutsberg 1:6, 1:13 or 1:14 meet this requirement. The latter three properties are located between 1.2 and 1.3 km from Näs 1:4. In view of this, the owners of/residents on these properties cannot be considered to be affected by the intended activities in such a way that they have a right to appeal the decision of the Committee under Section 22 of the Administrative Procedure Act. Their appeals shall therefore be rejected.

[Signature]

Karin Bergqvist
Chief Legal Officer

[Signature]

Elisabeth Östlin
Case Officer

HOW TO APPEAL

If you want to appeal this decision, you have to send an appeal to the County Administrative Board. The appeal has to be in writing and signed by you. It has to be received by the County Administrative Board within three weeks from the date on which you were informed of the decision. For public institutions (e.g. the Municipality), however, the period is counted from the date of the decision. In your appeal you have to state what decision you are appealing (for example by giving the registration number of the decision), how you want the decision to be varied and why you consider that it should be varied. The County Administrative Board will send your appeal along with the County Administrative Board's and the Municipality's file to the Land and Environment Court at Nacka District Court.



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Translated from Swedish by Ian MacArthur, public translator authorised by the Swedish Legal, Financial and Administrative Services Agency for translation from Swedish to English (Stamp no 393).



Stockholm, 5 October 2015

[Seal] **Courts of Sweden**

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Stockholm, 30 September 2015