

## VANCE COUNTY BOARD OF ADJUSTMENT

The Vance County Board of Adjustment met at a regular and duly advertised meeting on **September 14, 2017** at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

### MEMBERS PRESENT

J. Thomas Shaw III – Chairperson  
Ruth Brummitt – Vice Chairperson  
Agnes T. Harvin  
Ruxton Bobbitt, Alternate  
Blake Haley  
Alvin Johnson Jr.  
Phyllis Stainback

### STAFF PRESENT

Sam Hobgood, Director Planning  
Angie Blount, Planner  
Jonathan Care, County Attorney

### MEMBERS ABSENT

Logan Darensburg

Chairperson Shaw called the meeting of the Board of Adjustment to Order. Board members were asked if they had any conflicts or knowledge otherwise of the case. Witnesses and planning staff were sworn in.

*Chairperson Shaw declared the public hearing open.*

**BOA CASE NO. 20170914-1; Dogwood Creek Land Holdings (property owner), Cypress Creek Renewables (applicant)- Modification on site plan from original CUP issued on 6/11/2015; 3335 Glebe Road, (Tax Parcel 0381 01001**

Chairperson Shaw asked Mr. Hobgood to present the staff report:

The applicant is requesting a modification of the site plan that was approved for a Conditional Use Permit By the Board of Adjustment on 6/11/2015.

### **Exhibits as follows:**

- Exhibit 1.** Application
- Exhibit 2.** Original Site plan approved on 6/11/2015 by the BOA. **(attached)**
- Exhibit 3.** Proposed modified Property Site plan. **(attached)**
- Exhibit 4.** Minutes from BOA Case No. 201505104-1
- Exhibit 5.** Adjoining owners map, surrounding zoning and 2013 Aerial
- Exhibit 6.** Current images of property.

### **Findings**

1. The request is for a modification from the original approved site plan. The modification consists of relocating the Point of Interconnection (POI) and establish a more opaque buffer on the east end of Glebe Road due to existing vegetation being removed during excavation, originally, it was to remain an existing buffer.
2. The property is owned by Dogwood Creek Land Holdings and is identified as tax parcel 0381 01001.
3. The property consists of 60.4 acres.
4. The property has been recently cleared of its existing vegetation.
5. The adjoining property owners were notified on August 30, 2017.
6. The property was posted on August 30, 2017.

### **Staff Comments**

The applicant is proposing a modification for two areas. First, the Point of Interconnection is being

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relocated to the southeast side of the property, off of Glebe Road. The original location of the POI that was approved at the Conditional Use Permit hearing on June 11, 2015 was on the northwest side of Kelly Road (Exhibit 2). Second, the existing vegetation on the southeast side of the property, off of Glebe Road was to remain (Exhibit 2), however this buffer has been completely removed during the clearing process. The applicant is proposing a more opaque buffer to remedy the issue. The proposed buffer consists of 12' deciduous understory trees planted @ 18' OC, 6' ever-green understory trees planted @ 8' OC and 30" evergreen shrubs planted @ 8' OC. The vegetative buffer at this location consists of an area 100' by 35' (see Exhibit 3). Staff feels these modifications are so extensive and have an adverse effect on surrounding areas, it requires the board's review and approval prior to work commencing.

### **THOSE SPEAKING FOR THE REQUEST**

Phillip Martin with Cypress Creek Renewables  
Cory Zandt, Project Manager for Cypress Creek Renewables

### **PUBLIC COMMENT REGARDING THE REQUEST**

Nancy Reavis, Resident  
John Price, 3775 Glebe Road  
Bertha Carb, Resident, Heartland Dr., off of Glebe Rd.

Mrs. Harvin commented that the NW corner had been clear cut and wanted that added to the record.

Mr. Hobgood advised he was not aware of the clear cutting on the North West section. Mr. Hobgood asked if the board had any other questions for staff, Mrs. Stainback asked if the tree buffer was supposed to have been all the way from the interconnection site on Kelly to Glebe Road, to which Mr. Hobgood replied it was not.

Mrs. Harvin asked what was the reason for the change of interconnection point, to which Mr. Hobgood replied that Cypress Creek and Duke Energy had been in communication and would be presenting the reasons for the change at today's meeting.

Mrs. Harvin commented that the change in the location of the POI changed the entire appearance, since it was now directly in front of a residence. Mr. Hobgood commented that the changes were significant enough to bring it before the board.

Chairperson Shaw asked if there were any more questions for staff. Mrs. Stainback commented she did not have any questions but that she did have concerns. She expressed that the board had met twice to get the CUP straight and thought that they had. Mr. Hobgood stated that he had gone back and listened to the BOA minutes from 2015 and that he found there were two major concerns that kept coming up during the hearing.

Mrs. Stainback stated that this current situation has put the board in an awkward position. Mrs. Harvin asked who was in charge of the clear cutting, to which Mr. Hobgood replied he did not have that information, but the representative from Cypress Creek would.

Chairperson Shaw commented that the board had two previous lengthy meetings and discussions on this site which took a lot of time, and then to come back again.

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Mrs. Harvin asked who received the money for the clear cutting, to which Mr. Hobgood replied he did not know as it is not a concern for staff, but suggested again that they board should ask the Cypress Creek Representative.

County Attorney, Jonathan Care stated that the information regarding who gets compensation from the clear cutting is information that the representative for Cypress Creek would present to the board if they chose to.

Mrs. Stainback commented she was concerned about the board's reputation now and in the future and that she felt they were tasked with protecting the property owners in Vance County. She stated that Vance County is progressive regarding the introduction of solar farms in the county, but that it puts the board in an awkward position when something like this (unapproved clear cutting) happens. She commented that there should have been proper supervision over the cutting, especially since the board had many concerns before the project was approved.

Chairperson Shaw asked if there were any more comments from staff, to which Mr. Hobgood answered that there were none at this time.

Chairperson Shaw declared that the board would now hear from the representatives or any other proponents of the request.

Mr. Phillip Martin took the podium. He advised he is a Zoning Manager with Cypress Creek Renewables. Mr. Martin presented to the board an email chain from Duke Energy to Cypress Creek informing them that the original proposed location of the Point of Interconnection would no longer be viable as it was on the wrong electrical circuit, prompting the change of location from Kelly Rd to Glebe Rd. Mr. Martin expressed that Cypress Creek would welcome any request by the board that would rectify the situation. Mr. Martin was asked by the board to clarify the changes they were requesting. Mr. Martin stated the Point of Interconnection had changed from Kelly Rd to Glebe Rd due to the specific electrical lines needed. He stated that the existing vegetation was cleared by their sub-contractor in error. Mr. Martin accepted responsibility for the cutting mistakes that were made. Mr. Martin presented a new proposed replanting plan for the area on Glebe Rd that would be 400' long, 50' wide, 12' understory trees, 6' evergreen trees and shrubs. Mr. Martin also advised that part of the original plan included a drip irrigation system, and that Cypress Creek had already paid for the tap connection. He advised everything was in place for the vegetative buffer to be implemented immediately. He also added that if the board wished it, they could install an 8' opaque fence. He summarized that Cypress Creek had been at fault and would do whatever the board wished to remedy the situation. Mr. Martin did also advise that Cypress Creek now owns the property in question and are under contract to have the project finished by December 1<sup>st</sup>, 2017.

Mrs. Harvin asked Mr. Martin what he proposed for the NW corner that was clear cut.

Mr. Martin suggested they could use the same vegetation plan proposed for Glebe Rd for the area that has been clear cut. He advised if the board requested they do that, they would. He apologized for putting the board in this position, he admitted they have made mistakes, but are now trying to remedy them.

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Mr. Haley asked how many acres was in the section that was clear cut. Mr. Martin replied that there were about 15 acres.

Chairperson Shaw asked if there were any plans to replant the clear cut area in pine. Mr. Martin advised that they could plant a buffer, to which Chairperson Shaw clarified could they replant the entire 15 acres in pine instead of letting it grow from stump.

Mr. Haley asked for clarification how the acreage was cut, he was advised by Chairperson Shaw and Mrs. Harvin that it was clear cut.

Mr. Bobbitt asked if the site had been completely stumped, Mr. Martin advised that it had not. Mr. Haley asked which part had been stumped, and Mr. Martin replied only the part where the solar farm was to be placed.

Mr. Bobbitt commented that when he received his packet and was looking it over, he wondered why this project was back before the board. He commented one of his concerns in the beginning was whether or not the vegetation would be maintained, and were assured it would be irrigated. He advised it was one of the most impressive plans the board had seen. He advised his plan would be to reinstate the buffer on Kelly Rd and He asked the board to remember the solar farm at Drewry, and stated that Cypress Creek had just offered to buffer this farm the same way. He stated his opinion regarding replacing the pines in the wet area would be a key requirement.

Chairperson Shaw asked if the board had any more questions. Mrs. Stainback stated that she felt the neighbors shared the same concerns the board had, and that they have to be satisfied with any remedies offered because of the change. She stated that it was unfair to the neighbors that it has changed from the original plan. She stated that someone had made a big mistake, as stated by Mr. Martin. She also commented that it is her concern that if the project had not been supervised during the clear cutting, would it be supervised in the future.

Mr. Martin stated that Cypress Creek maintains all of its sites. He advised that their Operation and Maintenance team is very large and that one of their O & M people live in Granville County, and that he will be in charge of this site. Mr. Martin stated to the board that this type of mistake is not typical for them. Mrs. Stainback asked who was responsible for the project, to which Mr. Martin answered that he had brought the project manager, Cory Zandt, who would answer any questions regarding the happenings on the site.

Mr. Zandt advised the board that when they are in the logging phase of a project they sub-contract the actual cutting. Cypress Creek is in charge of surveying the land and marking it with flags so the loggers know what to cut. Mr. Zandt advised the flags were up and they had clarification from the subcontracted loggers that they would abide by the flags. Mr. Zandt stated that at their next visit to the site, after the logging was complete, is when they discovered the loggers had cut too far. Mr. Zandt stated that they immediately reported this back to Cypress Creek, who began then to propose how a new buffer could be erected to rectify the mistake.

Mrs. Stainback asked Mr. Zandt the name of the logging company, to which Mr. Zandt replied Inez Forestry. Mr. Care asked if he had a copy of the timber sale map, to which Mr. Zandt replied that he did not have it with him, but that he did have a digital copy.

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Mr. Care asked of Mr. Zandt the time of the clear cut, to which Mr. Zandt replied that it took place in late July.

Mr. Care asked if the sale map showed the areas as being out of the cutting area. Mr. Martin answered that the logging agreement has a note instructing the logger to cut according to their flag marks, and that they did a general overview of the site and they had a stipulation to observe the lines to preserve the wetlands and the buffers.

Mr. Haley asked if the tree save area was marked when the surveyor came out to mark the cut areas, to which Mr. Zandt replied that it was and that they walked the site with the loggers, and pointed out specific locations to save and that they had their environmental consultant present as well. He stated they made sure the trees were identified as to whether they stay or go.

Chairperson Shaw commented they had no trouble with the loggers cutting around the borders of the wetlands, to which Mr. Martin answered that was correct. Chairperson Shaw surmised that the logging company had abided by those flags, which Mr. Martin confirmed.

Mrs. Stainback asked who received the payment for the cutting of the logs, to which Mr. Martin replied that matter would be handled through their subcontractors, that the subs receive the payment and then usually at the end of the project it is shown given back to Cypress Creek Renewables as a deduction. Mrs. Stainback commented that basically Cypress Creek received the benefit from the sale of the logs, to which Mr. Martin replied that they were receiving the credit, but that it would go back into the replanting, that they would not be gaining financially despite receiving the credit, and that they would actually be spending more due to the mistake.

Mrs. Harvin surmised that they were benefiting more than they would have without the sale of the logs, to which Mr. Martin commented that the price for the lumber was marginal compared to what the overall cost of the project was, to which Mrs. Harvin agreed, but pointed out that it was part of what they would be receiving a deduction for.

Chairperson Shaw asked if the East boundary, toward HWY 39 was cut to the property line, to which Mr. Martin responded that it was, to the LOD, or Limit of Disturbance.

Mrs. Harvin asked if that buffer on the East was gone, to which Mr. Martin replied that it was only to the Limit of Disturbance, Mr. Martin clarified that the property line and the LOD line are two separate lines.

Chairperson Shaw clarified that he had asked if the trees were cut to the property line.

Mr. Bobbitt asked if there had been any notices of violation from the EPA for the cutting within the wetland, to which Mr. Martin replied that they did not cut any trees within the wetland. Mr. Bobbitt then asked if the EPA had monitored the site since it was cleared, to which Mr. Martin replied he was unaware of any site visits by the EPA.

Mr. Care stated that he had questions regarding the interconnection, to which Chairperson Shaw advised him to ask. Mr. Care asked if Duke Energy refused to place the point of interconnection at the place that was approved by the BOA in 2015 because it would not work there or because it was too costly. Mr. Martin advised it is a different circuit and they could not place it there for that reason. Mrs. Harvin asked whether it took them two years to find out this information, to which Mr. Martin advised it

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happened in 2015, and that Cypress Creek has been in the process of trying to obtain building permits since January 2016. Mrs. Brummitt commented that Cypress Creek knew, but the BOA did not. Mr. Martin replied that it was after the fact. Mrs. Brummitt surmised that Cypress Creek had known for quite a while. Mr. Martin replied that this project predates him and that he is just trying to fill in the blanks with what he does know. Mrs. Brummitt asked when Cypress Creek contacted the VC Planning Department about the interconnection change, to which Mr. Martin advised he believed Cypress Creek contacted Jordan and whoever was in charge of building inspections for Vance County in 2016.

Mr. Haley asked if the site were visited, everything is cleared other than the buffers. Mr. Martin answered that was correct. Mr. Haley commented that where the panels were going to go must be very clear, to which Chairperson Shaw added that it was clear. Chairperson Shaw added that he felt it looked more like an industrial site.

Mr. Haley asked if there was a plan for the replanting, or if that is something that could be done. Mr. Martin advised that the area where vegetation had died had to be replanted, but they would let the BOA decide what they wanted done for the other areas. Mr. Martin commented that they are admitting their mistake and ready to rectify however the boards sees fit, and that is the extent of what they can do.

Mr. Bobbitt asked if Mr. Martin had an idea of what it would cost per acre to reforest the clear cut area. Mr. Martin advised he was not sure, but that it would depend on the type of tree. Mr. Bobbitt advised he was referring to pine. (discussion among BOA members).

Mrs. Brummitt asked if the board needed to hear from the public before they made any decisions, to which Chairperson Shaw advised they would, then asked the board if they had any more questions.

County Attorney Mr. Care asked Mr. Hobgood if he had spoken with a representative of Duke Energy regarding this matter, to which Mr. Hobgood replied he had. Mr. Care asked if it was his understanding that the interconnection point could not be located at the original site, to which Mr. Hobgood replied that he had been led to believe that Cypress Creek picked the location of the POI. Mr. Hobgood stated that after his conversations with Duke, he tried to get more information. At that time Mr. Martin of Cypress Creek provided an email from the previous week that he had not seen, but confirmed that it was from the same Duke Representative that he had spoken with previously.

Mr. Haley asked if the proposed landscaped area included a raised earthen berm, to which Mr. Hobgood replied that the area did not, that it was flat.

Mrs. Brummitt asked Mr. Hobgood if he had been made aware of the change to the POI at the same time as the Board was notified, Mr. Hobgood advised that was correct. Mrs. Brummitt surmised that someone knew about the change before August 25<sup>th</sup>. Mr. Hobgood advised that while reviewing the submitted building plans the change in location was noticed.

Chairperson Shaw asked Mr. Care if he had any more questions, to which he replied he did not. Chairperson Shaw then announced that the board would hear from those members of the public opposing the proposed change or otherwise affected by the case.

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Nancy Reavis, resident located directly across from the proposed POI change on Glebe Rd took the podium. Mrs. Reavis stated that her family was the most affected by the change due to the location of their residence in relation to the proposed POI change. She expressed that she felt they had been lied to at the onset of the project and feared the same would happen in the future when the project was no longer in service and it was time to clear the site. She felt that the lack of supervision which led to this amendment to the plans would set a precedent for future solar farms. She advised Duke Energy had a power pole on the property for the solar farm which has now been removed and relocated to their property on Glebe Rd. She also expressed concerns over the amount of clear cutting that had been done, stating that their view of the project is no longer buffered by forest. She advised the site is active with workers at all hours and is loud and disruptive. Mrs. Reavis stated that she felt this mistake would have gone unnoticed if her family had not contacted Duke and complained. She stated she felt it was unfair for Cypress Creek to be able to come back and ask for an amendment now given the amount of time that had passed. Mrs. Harvin asked Mrs. Reavis if she had any solutions or requests that she would like to be considered, to which Mrs. Reavis replied that other than relocating the entire site, would be for the site to be supervised properly and an assurance that the site would also be cleared properly in the future when it is no longer in service. She suggested moving the solar panels back and building a 20' high berm planted with vegetation to insure it could not be seen from her property. She also suggested trees be placed between the berm and the right of way. Mrs. Harvin asked Mrs. Reavis if she was satisfied at the last meeting with Cypress Creeks' presentation, to which Mrs. Reavis replied she did not attend, but that her husband did, and stated that although he was not completely satisfied with the proposal, but was willing to see what the final result would look like. She stated that they feel Cypress Creek did not fulfill what was proposed. Mrs. Reavis stated that there were flags on the trees at the road, when it was their understanding the trees would act as a natural buffer, but were instead removed. Mrs. Brummitt commented that cutting to the property line was not what was proposed. Mrs. Brummitt asked Mrs. Reavis to indicate on the map the location of her residence, Mrs. Reavis did so. Chairperson Shaw advised it was Exhibit 2 in the BOA packet. Mrs. Harvin asked Mrs. Reavis if placing a berm at the site where the trees were cut to the property line would aid the Reavis' in not being able to see the panels, and Mrs. Reavis replied a 20' planted berm would help. (discussion among BOA members.)

Chairperson Shaw asked if Mrs. Reavis had any more questions for the board. She indicated she did not.

Mr. John Price, resident of 775 Glebe Rd, adjacent to the solar farm took the podium. He stated that he was in attendance at the first hearing and was in opposition of the solar farm CUP request. Mr. Price stated that he was afraid something like this would happen. He advised the 50' buffer of trees on Glebe Rd and Kelly Rd has been removed. Mr. Price stated he did not understand how the POI could be moved from Kelly Rd to Glebe Rd without a permit to do so. He advised the entrance is now in front of the Reavis' driveway. Mrs. Harvin commented the entrance to the farm was approved at its current location during the CUP hearing, that it is the POI location change that has not been approved, to which Mr. Price indicated he understood. Mr. Price stated that the removal of the tree buffer on Kelly Rd and Glebe Rd has now left stumps and undergrowth, and wondered why they did not clear all the way to the road if the trees were cut by mistake. Mr. Price advised his property line runs the entire length of the solar farm and asked if there would be a berm or fence placed on his side where the trees have been cleared to the property line, to which Mrs. Harvin advised the site plan shows a buffer, to which Mr. Price advised there is no buffer, that it had been cleared. Chairperson Shaw asked Mr. Price if they had cut to

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his property line, to which Mr. Price replied that they had. Mrs. Harvin asked Mr. Price if there was any vegetation to his property line, to which he replied there was not. Mr. Price advised Mrs. Harvin that if the land owners were paid a sum of money per acre that had been cleared, that would be acceptable, but he understood that would not happen. Mr. Price commented that the project should have been monitored from the beginning. Mr. Price implored the board to be more vigilant in the future where solar farms are concerned. Mrs. Brummitt asked Mr. Price if he observed the flags to the road as Mrs. Reavis described, to which he replied they were. Mrs. Brummitt asked if it looked like the cutting was a mistake or done according to the flags, to which Mr. Price replied it was done purposely. Mr. Price also expressed his concerns for the wetland in the area, that they be protected.

Chairperson Shaw asked if there were anyone else that wished to speak. Mr. Martin with Cypress Creek commented that some of the clearing that was done was on purpose, because they did it with plans for planting vegetation in mind. Mrs. Harvin commented that there was one small section on Mr. Price's property line that was indicated to be planted, due to a skimmer pond that might have to be placed there, but that the planting of the entire east property line was not proposed.

Mr. Price asked the board if these changes would affect the permit Cypress Creek received for the project, to which County Attorney, Mr. Care replied that Cypress Creek had already received a CUP for the project and the proposed changes would not affect that. He advised what Cypress Creek is asking for is a revision to their plans, and if that is approved they will be able to move forward.

Chairperson Shaw asked if anyone else or if staff would like to speak. Chairperson Shaw swore in member of the public, Bertha Carb, resident of Heartland Dr., located off of Glebe Rd. Mrs. Carb expressed her concerns about the low shoulders that have been left due to the clear cutting along the road way. Mrs. Carb asked if there were plans to install guard rails along the low shoulder on Kelly Rd. Mrs. Harvin asked if this were the area where the road dips and crosses over a creek. Mrs. Carb replied that it was. Mrs. Harvin commented that maybe DOT needs to look at that area.

Chairperson Shaw asked if staff had any additional comments, to which Mr. Hobgood replied he did not. Chairperson Shaw asked Mr. Martin of Cypress Creek if he had anything else to say, Mr. Martin replied he did not.

Chariperson Shaw asked if anyone else wished to speak, then asked the board if they were ready for discussion.

**DISCUSSION**

**DECISION:**

Chairperson Shaw suggested that the board table the discussion until the next meeting date and asked Cypress Creek to come back with proposals for concealment of the solar farm that the residents would approve of.

*Chairperson Shaw declared the public hearing closed.*

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