

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on January 8, 2015 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

Thomas Shaw – Chairperson
Alvin Johnson, Jr.
Agnes Harvin
Blake Haley
Rev. Roosevelt Alston
Ruth Brummitt

MEMBERS ABSENT

Phyllis Stainback – Vice Chairperson

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney
David Robinson, Planner

ALTERNATES PRESENT

Ruxton Bobbitt

Chairperson Shaw called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the November 13, 2014 meeting. Ms. Harvin made a motion to approve the minutes. Ms. Brummitt seconded the motion. All present were in favor. VOTES: 7-0.

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Chairperson Shaw introduced the first case explaining the order of business, gave an opportunity for board members to express any conflicts, hearing none and then declared the public hearing opened for the following case:

BOA CASE NO. 20150108-1 Daryl Burgess & Darline Burgess (property owner), Melinda Solar, LLC / Sunlight Partners, LLC (applicant) – Conditional Use Permit to allow a solar farm on Foster Road, tax parcel ID 0552 01011

Witnesses sworn in include Mr. Jordan McMillen, Mr. David Robinson, Keith Colson (VP of Operations, Sunlight Partners), Michael Fox (Attorney with Tuggle Duggins), Tommy Cleveland (Engineer with NC Clean Energy Technology Center), and Richard Kirkland (Appraiser with Kirkland Appraisals, LLC). Mr. Robinson presented the staff report and reviewed the findings of facts as follows:

Description of Conditional Use Permit Request:

The applicant is requesting a conditional use permit to allow construction of a 5 MW solar farm under the use category of "Solar Energy System, Large Scale".

Findings of Fact

- 1. The request is for a conditional use permit to allow a 5 MW solar farm on a parcel zoned (A-R) Agricultural Residential.
2. The property is owned by Daryl Keith Burgess & Darline Joyner Burgess.
3. The property is located on the south side of Foster Road approximately 0.5 miles southwest of NC 39 Hwy South.
4. The property consists of 135 +/- acres of which approximately 25 acres will be the array footprint. A total of 6.23 acres will be cleared as a part of the construction.
5. The property is partly wooded and partly open fields with the solar arrays being located in the open portions.
6. The application requesting a conditional use permit was filed on December 10, 2014.
7. The adjoining property owners were notified on December 19, 2014.
8. The property was posted on December 22, 2014.
9. The legal notice was run in the Henderson Daily Dispatch on December 30, 2014 and January 6, 2015.

Staff Comments

This request is for a Conditional Use Permit for a 5 MW solar farm, which is considered a large-scale system in the Zoning ordinance. Mr. Robinson reviewed the draft Findings of Facts with the Board. Mr. Robinson went on to state that it is the intent of the applicants to lease approximately 25 acres from the

current property owners for the operation of the solar farm. Mr. Robinson pointed out that the applicants' site plan proposes a 6' fence, which would need to be increased to 8' per the zoning ordinance. The landscaping plan shows a 25' screening buffer consisting of double-staggered trees. The vegetation will be comprised of large canopy trees as well as understory trees and shrubs. The types of trees to be planted were not provided. However, it is the staff's recommendation that an evergreen variety be included to retain some of the screening characteristics during the months of the year when the leaves are off the trees.

Mr. Robinson confirmed that the proposed setbacks meet the county's zoning ordinance, with the solar farm being set back 50 feet from the eastern property boundary, 25 feet from the southern side, and 1,500 feet from the western property boundary. Currently there is a single-wide mobile home on the property that will remain; however, it is approximately 200 feet from the solar farm's fencing.

Mr. Robinson reiterated that the applicants plan to clear approximately 6 acres of woodland. This removal requires an erosion and sediment control plan from the NC Department of Environment & Natural Resources and staff recommends that a copy of the NCDENR permit be submitted as a condition of approval. Mr. Robinson explained that the solar farm will be accessed via a 30 ft. private access easement, which was just recently created and recorded in Plat Book Y page 477. As part of this easement creation, the applicants have obtained the NC DOT driveway permit.

In reviewing the proposal, staff had a number of questions. Mr. Robinson commented that it would be helpful if the site plan contained more detail surrounding the amount of existing vegetation that will remain on the southern side of the property, which abuts the Mettre Estate subdivision. Mr. Robinson also questioned whether the property boundary shown on the site plan was delineated using survey methods or whether it was based on Vance County's GIS.

Mr. Robinson recapped some of these items and potential conditions:

1. Staff will need a copy of the executed interconnection agreement
2. Staff will need a copy of the NC DENR erosion and control permit
3. The vegetative buffers should include plants of an evergreen variety, as well as others
4. The fence height surrounding the solar farm needs to be at least 8' in total height
5. Receipt of the finalized address from E-911 (this has been started but not yet completed)

Mr. Ruxton Bobbitt asked if the project site address, as notated on the application, is actually 433 Foster Road. Mr. Robinsons stated it was his belief that address is for the single-wide mobile home that fronts Foster Road.

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

*Mike Fox* (Attorney, Tuggle Duggins) – Mr. Fox requested to approach the Board to deliver some supplemental materials. He introduced the other individuals that were representing the applicants and highlighted what those individuals would be presenting to the Board.

Mr. Jonathan Care asked Mr. Fox a question regarding the application. He pointed out that the application was submitted on the behalf of two LLCs, but there was no evidence stating who has authority to operate and act for those LLCs. Mr. Fox said that the applicants could provide that evidence and assure the Board, under oath, that the individuals who signed the application have the authority. In any case, they would provide staff documentation on that following the hearing. Mr. Care's also asked whether a survey has been prepared for the actual proposed 25 acre tract where the solar farm will be located. Mr. Keith Colson stated that the survey work on the site was being worked on as they spoke.

*Keith Colson* (Sunlight Partners, LLC) – Mr. Colson explained that Sunlight Partners is an entity that is owned by Cate Street Capital. Cate Street Capital is a company that is involved in renewable energy types of activities.

Mr. Colson offered to entertain any questions that the Board may have about the layout of the site. Mr. Bobbitt commented that it appeared the solar array was laid in the open portions, or already cleared area, of the property. He asked exactly where the additional clearing would take place and if a buffer would be in place around all sides of the solar farm. Mr. McMillen stated it was his understanding that the buffer would be around all sides of the property, but that the buffer on the eastern side would be planted whereas the other sides would utilize existing vegetation. He also clarified that on the southern side of the property, it appears that the applicants will meet the required 25 foot vegetative buffer, but there is some question as to how much of that buffer will be planted vs. existing. Mr. Colson said that regardless of whether the trees are existing or planted, there will be a 25 ft. vegetative buffer in place.

Mr. Colson sought clarification if the fence height requirement meant 8 ft. total or 8 ft. plus 1 ft. of barbed wire. Mr. McMillen confirmed 8 ft. total.

Mr. Blake Haley asked what the height of the solar panels would be. Mr. Colson responded that typically the panels are from 8-10 feet off the ground but they prefer to say 12 feet to have room to adjust if needed.

Ms. Agnes Harvin asked if the entity who will be planting the buffer has been determined. Mr. Colson stated that Sunlight Partners' construction company will be responsible for planting and maintaining the buffer. However, the specific company has not yet been hired and will not be chosen for 3-4 months. Mr. Colson said he would be submitting a full set of plans before construction begins that will state the composition and type of buffer.

*Tommy Cleveland* (Engineer, NC Clean Energy Technology Center) – Mr. Cleveland provided an overview of why solar technology does not create environmental or safety problems. He covered the particular components that make up the solar panel itself and stated that they are all benign materials. Additionally, he stated that there is nothing about solar systems that emit any type of emissions to the air or water. A common misconception is that solar facilities utilize batteries, which they do not.

Mr. Cleveland also pointed out that North Carolina is one of the leading states in solar development so there is a lot of experience here in the state.

Ms. Agnes Harvin asked Mr. Cleveland about the reflectivity of the solar panels. Mr. Cleveland explained that reflection occurs when the sun is positioned at a very acute angle to the ground and that light is reflected opposite to the sun. Essentially the sun shines light in the same direction a solar panel would reflect light. The solar panels would face south and would be tilted at an angle of 20 degrees from horizontal. Ms. Harvin also asked how often the facility will be inspected annually. Mr. Fox said that disruptions to the system are instantaneously detected and fixed immediately. Otherwise, regular maintenance occurs 2-3 times per year.

Mr. Bobbitt asked Mr. Cleveland how many solar farms are 'too many' for a county of Vance's size. Mr. Cleveland responded that from an engineering point of view, it would take a significant number of more solar farms to overload the energy grid for this area.

*Richard Kirkland* (Appraiser, Kirkland Appraisals, LLC) – Mr. Kirkland addressed solar farms' effect on property values. Mr. Kirkland conducted a matched-pair analysis to evaluate the effect, if any.

Mr. Kirkland provided an example of a matched-pair comparing the area surrounding the project site and an existing subdivision outside of Vance County. The existing subdivision was developed before a solar farm facility was constructed. Mr. Kirkland analyzed home sales before, during, and after construction of the solar farm. The analysis did not reveal that the solar farm had any negative effect on property values. Mr. Kirkland also spoke to home owners in that subdivision and the general consensus was that the solar farm wasn't a concern in terms of negatively impacting home values. Mr. Kirkland's research found that the most mentioned factor related to solar farms was appearance of the facility, which according to Mr.

Kirkland is very subjective. Finally, Mr. Kirkland stated it was his professional opinion that the proposed solar farm was a harmonious use in that area and that it will not negatively impact property values.

*Mike Fox* (Attorney, Tuggle Duggins) – Mr. Fox concluded the presentation and requested that the testimony of Mr. Cleveland and Mr. Kirkland be admitted as expert evidence. He also asked the Board to accept the package of material that was distributed as evidence.

Ms. Harvin asked a final question regarding lighting at the site. Mr. Fox stated that no lighting would be installed.

Mr. Fox then went through the Conditional Use Permit checklist and explained how the solar farm meets the requirements of each item.

**THOSE SPEAKING AGAINST THE REQUEST**

*None*

**BOARD DISCUSSION**

Mr. Care suggested that any motion to approve this conditional use permit be subject to receiving a couple of things: a clear boundary line survey for the 25 acres, final plans for development that are consistent with the site plan that was submitted, and the receipt of evidence showing that the signatures on the application are legal representatives of both LLCs.

Mr. Shaw closed the hearing and went through the Conditional Use Permit check-list with the board. Mr. Shaw entertained a motion with stated conditions.

**DECISION:**

Ms. Harvin made a motion to approve the conditional use permit to allow the solar farm, provided the following conditions are met: 1) Submittal of an executed interconnection agreement; 2) Submittal of a copy of the NC DENR erosion and control permit; 3) Perimeter fence is 8 feet tall; 4) Submittal of a final site plan showing the vegetative buffer and that evergreen species are included within the buffer, in addition to other plants, 5) A finalized address obtained from E-911, 6) A completed survey delineating the exact boundary of the proposed 25 acres solar site, and 7) Evidence showing that signatures on the conditional use application are from the member manager of both Sunlight Partners, LLC and Melinda Solar, LLC. Also included in the motion was the approval of the Findings of Fact. Mr. Bobbitt seconded the motion. All present were in favor. VOTES: 7-0.

**OTHER BUSINESS:**

Mr. Harvin made a motion to approve Mr. Shaw as Chairperson of the Board of Adjustment and Ms. Phyllis Stainback as Vice Chairperson. Mr. Johnson seconded the motion. All present were in favor. VOTES: 7-0.

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**ADJOURNMENT:** There being no further business, Chair Shaw declared the meeting adjourned.