



VANCE COUNTY
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BOARD OF ADJUSTMENT
MINUTES

November 12, 2020

Approved 12-10-20

TO: Vance County Board of Adjustment
FROM: Angie Blount
SUBJECT: Case# CUP81320-1, LCID Landfill, K & K Organics LLC, US Hwy 1 and Egypt Mountain Rd
DATE: November 12, 2020

Board Members Present: J. Thomas Shaw, Chair, Phyllis Stainback, Alvin Johnson, Jr., Logan Darensburg, Agnes Harvin, Ruxton Bobbitt, Alternate

Board Members Absent: Ruth Jones, Vice-Chair

County Staff: Keith Callahan, Interim Planning Director, Angie Blount, Planner, Jonathan Care, County Attorney

Chairperson Shaw called the November 12, 2020 meeting of the Vance County Board of Adjustment to order at about 4:23 pm. Chairperson Shaw stated that the first order of business would be to swear in those wishing to present testimony.

Those sworn to give testimony:

Joseph Leahy	2234 Egypt Mountain Rd
Richard Moore	
Ramey Kemp	5808 Fairington Place, Raleigh, NC
Jeff Garrett	1526 Egypt Mountain Rd
Jillian Howell	405 S. Library St, Greenville, NC
Wayne Herring	138 Egypt Lane, Kittrell, NC
John Alderman	244 Redgate Rd, Pittsboro, NC
Jerry Eatman, Attorney	

Chairperson Shaw asked planning staff to present the case. Angie Blount, Planner for Vance County, gave a recap of the case, stating that at the September 10, 2020 meeting, the board heard from the applicant and other expert witnesses, and that the meeting was continued to November 12, 2020 in order to allow adjacent landowners in opposition to the request, time to obtain expert witnesses.

Attorney for the opposition, Mr. Jerry Eatman, asked that the testimony of Mr. Howard Gillis, who was sworn and spoke at the September 10, 2020 meeting, be tendered into the record as having given expert testimony. Mr. Eatman stated that he would like to call the witnesses for the opposition to the stand one by one as was acceptable to the board.

Mr. Eatman called Jeff Garrett, adjacent resident, to the podium. Mr. Garrett took the podium and stated his name and address. Mr. Garrett spoke about his concern that the area is prone to frequent flooding, sometimes major. Mr. Garrett also stated that he personally witnessed trucks arriving on the site loaded with debris and leaving empty. Mr. Garrett stated that he did not feel this area is appropriate for this type of land use.

Mr. Eatman, attorney for the opposition, asked Mr. Garrett how long this area has been residential in nature, to which Mr. Garrett replied it has always been residential.

Tom Terrell, Attorney for the applicant, asked Mr. Garrett if he had any evidence that DEQ would not be properly overseeing this project, or that storm water regulations for sedimentation control would not be followed or that the state regulations do not work, to which Mr. Garrett replied that he was sure they were

designed to work, but that they may not work as they are designed to. Mr. Terrell asked Mr. Garrett if he agreed that there was a major transmission line crossing the property, as well as a cell tower in the vicinity across US 1, a railroad parallel to US 1, and a junkyard adjacent to the proposed site, to which Mr. Garrett stated there was a mechanic with cars in his yard. Mr. Terrell asked Mr. Garrett if he would agree that there are businesses further down on US 1, to which Mr. Garrett agreed that there were a couple of garages. Mr. Terrell asked Mr. Garrett would agree that there is property on Egypt Mountain Rd that was zoned industrial, to which Mr. Garrett replied he did not know what the property was zoned.

Mr. Eatman called Wayne Herring to the podium. Mr. Herring stated his name and address. Mr. Herring stated that he lived adjacent to the proposed LCID site. Mr. Eatman asked Mr. Herring when he first noticed unpermitted dumping on the site. Mr. Herring stated that he did not have an exact date but it was shortly after the property was purchased and that he had witnessed trucks coming in and out of the site. Mr. Herring stated that he had noticed the erosion after the use of heavy equipment such as excavator and bulldozers at the top of the hill, there was noise, dust, and causing the property to erode down the middle each time it rained. Mr. Herring stated that he has had to replace his driveway three times since work on the property began. Mr. Herring stated that he could see the property from his. Mr. Herring stated that he moved to the area from Florida in 2008 and that he bought the property from Jeff and Angie Garrett in 2010 and built a house on the property. Mr. Herring stated that he bought the property because it backs up to the creek and that it is a half mile from the road. Mr. Herring stated that he had concerns about the increased traffic on the road caused by the proposed use as well as the size of the trucks and the weight limit on the road being 6 tons and that he felt that would be exceeded. Mr. Herring stated that he moved there for the peace and tranquility.

Mr. Terrell asked Mr. Herring if he had any evidence that the proposed facility would not be designed properly. Mr. Herring replied that he had no knowledge of how they work so he could not say whether it would or would not be. Mr. Terrell asked if Mr. Herring had any evidence that it would increase the flow of water. Mr. Herring replied that he did not see how it could not. He added that it might not increase the flow but that the water could not be stopped from coming down the hill to the creek. Mr. Terrell asked if Mr. Herring knew what the term impervious surface meant. Mr. Herring replied that he did not.

Mr. Eatman called Jill Howell to the podium. Ms. Howell stated her name and that she was the Pamlico-Tar River Keeper with Sound Rivers and that she resided at 405 S. Library St. in Greenville, NC. Ms. Howell stated that she held a BA in Environmental Studies and Global Studies from Colby College and a MA in Environmental Management from Yale University's school of Forestry and Environmental Studies. Ms. Howell stated that as a graduate student she served as a clinician at Yale Law Schools Environmental Justice and Environmental Protection Clinic and a researcher through the School of Public Health and a Graduate Teaching Fellow at the School of Forestry. Ms. Howell stated that she had also worked for six years as a field geologist and a project scientist for a private national environmental engineering and consulting firm in Massachusetts and Connecticut. Ms. Howell stated that she worked on projects doing environmental due diligence, site inspection and delineation of hazardous materials through development and implementation of environmental sampling programs of groundwater, air, soil and building materials and that she also oversaw the remediation of contaminated materials. Ms. Howell stated that she began working for Sound Rivers as the Environmental Projects Coordinator in June 2019, where she managed grant funded projects for the Tar-Pamlico Water Trail and Campus Storm Water Programs implementing green storm water infrastructure projects at middle, high school and community college campuses across the Tar-Pamlico and Neuse River Basins to address storm water run-off issues related to flooding and water quality. Ms. Howell stated that she transitioned into the Tar-Pamlico River Keeper role in August 2019.

Mr. Eatman asked the board that Ms. Howell be tendered as an expert witness in environmental management and natural resource protection.

Mr. Terrell, Attorney for the applicant, stated that he may object to Ms. Howell being entered as an expert witness, and asked if she would be offering opinion about the water quality and erosion control practices. Mr. Eatman replied that she would not be offering engineering testimony.

Ms. Howell stated that based on her training and experience, this proposed land use poses unreasonable risk to the environment and critical water resources. Ms. Howell stated if site characteristics are met for LCID landfills, there can be minimal impact to the environment, such as if they are located in areas that are not proximal to ground water, surface water or wetlands, topography that is relatively flat so that there is little chance of run-off and distance from residential communities. Ms. Howell stated that based on her experience, review of USGS Topographic maps, FEMA floodplain maps, aerial photographs, taken of this property from August 2020, a site visit to adjoining properties, records from US Fish and Wildlife Service and the NC Natural Heritage Program, this site is far from ideal to host any kind of landfill. Ms. Howell stated that the operation of an LCID Landfill on this site would pose unreasonable risk to the water quality of Long Creek, Tabbs Creek and the upper Tar River. Ms. Howell explained to the board about the headwaters and origin location of the Tar River and how the communities downstream from this proposed use would be affected, as well as aquatic species and their habitat. Ms. Howell explained how construction of the landfill would require grading of the area which is mostly sloped, removing vegetation currently holding soil in place and leaving the area open to the effects of wind and rain which would then carry any loose soil downgrade into Long and Tabbs Creek and then into the Tar River. Ms. Howell talked about the risk of hydraulic fluid being released into the soil from the machinery used to clear the land, also finding its way into the streams. Ms. Howell stated that she had concerns about DEQ standards being met even though the applicant would have to go through a stringent application process. Ms. Howell repeated a statement made by Shelia Holeman, Assistant Secretary of DEQ made in February 2020 at a meeting that she had attended, at which Mrs. Holeman stated that the only reason DEQ would deny a permit is if the permit is or would be in violation of a statute or a rule. Mr. Tom Terrell, Attorney for the applicant, objected to Ms. Howell repeating what someone else said that person is not present for cross-examination. Mr. Eastman, Attorney for the opposition, asked Ms. Howell if this was stated to her, to which Ms. Howell stated it was not, but was stated at a meeting that she attended and that it was also reflected in the minutes, although not as a quote. Mr. Eatman also asked Ms. Howell if she had personal knowledge of DEQ's position with respect to this issue, to which Ms. Howell stated that she did. Ms. Howell continued to state that the only reason DEQ would deny a permit is if it was in violation of a statute or a rule. Ms. Howell stated that DEQ did not have the authority over other decisions made at the local level for a potential site, such as land use or zoning. Mr. Eatman asked if Ms. Howell had personal knowledge of DEQ's position in respect to this issue. Ms. Howell stated that she did. Mr. Terrell objected to the testimony stating that DEQ does not speak through an employee attending a meeting and offering their opinion that DEQ speaks through rules or written determinations. Mr. Eatman stated that DEQ also speaks through its actions, and asked Ms. Howell to speak to the actions by DEQ on this issue. Ms. Howell stated that in terms of the agency being very cognizant about overstepping boundaries in terms of denying permits based on anything except violation of a statute or a rule. Ms. Howell further stated that DEQ only regulates and goes through the permitting process after a county or municipality has deemed the site an acceptable location through zoning regulations or a conditional use permit. Ms. Howell stated that DEQ is not evaluating other potential locations for a landfill that they are going to issue a permit for an application that has been presented to them. Ms. Howell stated that this case as presented to this board is the only opportunity to decide that this site is not an acceptable location. Ms. Howell stated that DEQ is a reactive agency and are not going out preemptively to look at different sites, and that they will not be at the entrance to a monitoring trucks in terms of what is coming in or coming out of the site. Ms. Howell stated that they are likely not going to come out to the site and inspect it before issuing a permit. Ms. Howell stated that the agency is understaffed and underfunded and does not have the capacity to perform those kinds of duties even if they wanted to. Ms. Howell gave statistics on the loss of DEQ and Solid Waste Management funding over the last few years as well as statistics on loss of staff that were tasked with enforcement. Ms. Howell stated that since 2011 regulations for environmental protections have been scaled back or repealed at state level for protections such as buffer protections for nutrient sensitive waters and small streams. Ms. Howell gave examples of violations that she had been made aware of and

had notified DEQ of that were taking excessive amounts of time to address or resolve. Ms. Howell stated that it was her professional opinion, based on her experience, and for all the reasons noted above, that this landfill would likely result in significant damage to the environment and would materially endanger the public health and safety. Ms. Howell added that she was concerned that these types of facilities are proposed in communities that are predominantly low income or predominantly people of color. Ms. Howell added that they are proposed in communities where it is perceived that the residents will not have the resources to protect themselves or their communities. Ms. Howell stated that, in her opinion, a person should not have to hire attorneys and experts to help them navigate a process that is complicated to stop someone else from coming in from another county and putting a facility next door to them where they have lived for generations that would present a real harm to their environment and their community. Ms. Howell stated that this is what is happening in this case, a resident and business owner from Wake County bought cheap land in Kittrell, and after unsuccessfully trying to use the property as a place to bring in debris, without a permit, which a resident saw, is now trying to do it this way. Ms. Howell continued that in relation to siting of locations and environmental justice concerns, DEQ has a community mapping tool that is basically used as a way to screen an area for demographics as well as what type of potentially polluting facilities are already in the area. Ms. Howell stated that based on a review of this tool, the Egypt Mountain neighborhood is within a census block group in southern Vance County with just over 2,000 people. Ms. Howell stated that approximately 42% of this block group is non-white versus 63% for the statewide level. Ms. Howell stated that approximately 39.5% of this block group is black versus 22% across the state. Ms. Howell stated that in terms of income, approximately 38% of this block group is considered low income versus a statewide average of 24%. Ms. Howell stated that often these types of facilities are justified because despite the environmental impacts, they bring some other sort of benefit such as jobs or economic growth, but that for a facility like this can be justified that you need LCID landfills to accommodate development, but that is not the case here. Ms. Howell stated that this landfill is not going to bring jobs or economic growth to Kittrell, as Kittrell is not going through any major development with a need to dispose of debris for the benefit for the growth of Kittrell. Ms. Howell stated that a landfill will not improve property value, as no one wants to move in next to a landfill.

Mr. Eatman asked Ms. Howell what DEQ would do once the county approves the CUP. Ms. Howell stated that once the request moves forward, the next step is the permitting process through DEQ. Ms. Howell stated that during the permitting process DEQ will not consider if there are better suited sites, but they may make changes to the permit or try to mitigate environmental harm, but the choice of where this facility goes and whether or not this is a suitable site, lies with the county.

Mr. Terrell asked Ms. Howell if it is her testimony that every project that is required to have sanitation or erosion control devices, which could flow into a stream, must be stopped because DEQ cannot or will not adequately police those facilities, or just this facility should be stopped. Ms. Howell stated no, but that it was this particular site. Ms. Howell stated that LCID landfills are the type of landfill that will cause the least harm but only if certain site characteristics are met, such as being far away from water resources, whether that is ground water or surface water, being in a topographical area that is flat in order to reduce run off issues, and being away from residential neighbors reducing impact to the community.

Mr. Terrell stated that Ms. Howell had given an answer that was not in response to the question he had asked. Mr. Terrell asked Ms. Howell, if he wanted to build a shopping center where the land flows toward a stream, should that be prevented at the outset because DEQ will not adequately police sedimentation and erosion control. Ms. Howell answered that building a shopping center on this property instead of a landfill would present the same problems because of the clearing and grading. *Mr. Terrell responded to Ms. Howells answer, but the response was illegible.* Ms. Howell stated that she was aware not all of the 83 acres would be cleared but that she did not find a number of cleared acres in the plan provided. Ms. Howell stated that the applicant had stated the number could be changed or determined by DEQ. Mr. Terrell responded by stating that 83 acres was a number Ms. Howell made up because the Conditional Use Permit Application covers 73 acres which is reflected in the record. Ms. Howell responded that regardless of whether it was 80 acres or 70 acres or 50 acres, that was a lot of acres to be clearing and

presents the same issues that she had outlined related to clearing and sediment. Mr. Terrell asked Ms. Howell if she had seen a grading plan that showed how many acres would be cleared, to which Ms. Howell replied she had not. Mr. Terrell asked Ms. Howell if she had any evidence that the flood plain delineated on the site plan was improperly measured, to which Ms. Howell replied she did not, but that the flood plain shown is 100 year floodplain information, but is based on storms not within the last 20 years, and that storms have gotten stronger and more frequent in the last decades so flooding is changing. Mr. Terrell read from the rules and regulations governing LCID landfills, 15A NCAC 13B .0564, (8), (a), “Facilities or practices shall not cause a discharge of pollutants into waters of the state”, and asked Ms. Howell if she had any evidence that DEQ would fail to uphold that requirement, to which Ms. Howell stated that she did based on her experience of seeing how DEQ upholds that requirement and that there is the potential that would happen in this case. Mr. Terrell asked if Ms. Howell had any evidence that would happen. Ms. Howell asked what the evidence was that this would not happen. Ms. Howell stated that she could not talk specifically about this site until it is built, but that her response was based on her experience. Mr. Terrell asked Ms. Howell if she would agree that there are many projects where sedimentation and erosion control devices are properly designed and adequately maintained, to which Ms. Howell stated she agreed. Mr. Terrell read from the regulations “Facilities or practices shall not cause a discharge of dredged materials or fill materials into waters of the state”, and asked Ms. Howell if she had any evidence that this facility would cause a discharge into the waters of the state, to which Ms. Howell replied that the only evidence that she had was based on her own experience from seeing other sites, her knowledge of how DEQ operates and having seen the characteristics of this site, but that she could not comment on this site until it was actually built and in operation. Mr. Terrell asked Ms. Howell if she knew the applicant, Mr. Harrison, to which she replied she did not. Mr. Terrell asked if Ms. Howell knew about Mr. Harrison's practice would be on following the states sedimentation and erosion control regulations, to which Ms. Howell stated that she did not know Mr. Harrison personally, but that she knew that he brought in material illegally and unpermitted to his facility. Mr. Terrell asked Ms. Howell if she had any evidence that these storm water and erosion control devices would be improperly designed, to which Ms. Howell replied she did not. Mr. Terrell asked if Ms. Howell had any evidence that these sedimentation and storm water control devices would not be properly maintained, to which Ms. Howell replied she had no hard evidence because the facility is not built, but that she was basing her judgement on her knowledge of Mr. Harrison bringing in material unpermitted, which showed bad faith on the part of the property owner, and her knowledge that DEQ is not actively on site all the time inspecting. Mr. Terrell asked Ms. Howell if she would agree that if DEQ determined that this facility was too close to the stream, or that the storm water and erosion control devices were not adequate, that they would have to do one of two things, either have the applicant redraw the plans, or they could deny the permit, to which Ms. Howell replied that in her experience, DEQ would have the applicant redraw the permit. Ms. Howell stated that she was trying to recall an example where DEQ has denied a permit for anything, because they were not in the business of denying permits, that they work with the applicants to make it work as they see it. Mr. Terrell commented that Ms. Howell had strayed at the end of her testimony from what she came to talk about, to instead talk about people coming in from out of the county. Mr. Terrell asked Ms. Howell if she was from out of the county, to which Ms. Howell replied that she was. Mr. Terrell commented that the cell tower across US 1 was probably owned by a company that was not local, and asked Ms. Howell if she knew who owned the railroad, to which she replied she didn't know, but would guess they were not from inside the county. Ms. Howell stated that she was not from Kittrell or from North Carolina, but that she was present because it was her job to protect this river and was asked to be here by the residents. Ms. Howell stated that the residents were notified of this proposal on this property ten days before it was happening and were concerned about their land and about the water.

Board member Mr. Ruxton Bobbitt asked Ms. Howell about what she had stated earlier in her testimony that if the county did not have a plan for storm water and erosion, then it would go directly to DEQ, to which Ms. Howell replied that it would. Ms. Howell explained that larger urban areas usually have their own plans, those that don't are referred to DEMLR, unless there is a local program for the town of Kittrell or Vance County. Ms. Howell added the plan would be submitted to the local program and they would be in charge of approving and enforcing it, but if that is not the case, which it is not here or in a lot of places,

then it goes to the state. Mr. Bobbitt stated that to sum up Ms. Howells testimony, it seemed that she did not have a lot of trust in DEQ. Ms. Howell stated that there were plenty of good agency folks at DEQ, but they are hamstrung by a lack of budget and staff shortages. Mr. Bobbitt asked Ms. Howell that if someone wanted to develop a subdivision and they had all of their ducks in a row with the soil erosion plan, and that plan met all the specifications, that DEQ would approve it. Ms. Howell stated that they would. Mr. Bobbitt asked Ms. Howell if their enforcement was shorthanded, to which she replied that it was. Mr. Bobbitt then asked if Vance County had a review process for soil and erosion, to which he was answered by planning staff that it did not.

Mr. Eatman called Mr. John Alderman to step to the podium. Mr. Alderman was sworn in and stated his name and that he was from Chatham County. Mr. Alderman stated that he was one of two Non-game and Endangered Wildlife Program Biologists with the North Carolina State Wildlife Resources Commission from which he had been retired since early in the 2000's, but now ran his own business which incorporates areas from Washington D.C. to Florida and west to Oklahoma. Mr. Alderman stated that he had been working as a Biologist for 50 years. Mr. Alderman stated that he was familiar with the creatures living in the local streams. Mr. Alderman stated that he had worked for local, state and federal government agencies, private sector, small companies and companies the size of Duke Energy. Mr. Alderman stated that during the coal ash spill on the Dan River, his company surveyed 134 miles of the river for Duke Energy. Mr. Alderman talked about endangered aquatic species that make their homes in the local streams and waterways and how they are an indicator of water quality, such as fresh water mussels, which can be found in Tabbs Creek, and how they are also an important food source for other area mammals, birds and fish. Mr. Alderman stated that there were five different species below the confluence with Long Creek, Tabbs Creek and in the Tar River, of which two of those species are on the Federal endangered species list. Mr. Alderman stated that when he works for companies who are looking to site a large facility, they look for areas that do not have significant resources present that would cause the least impact. Mr. Eatman asked Mr. Alderman if he regarded the proposed site as inappropriate due to the sensitivity of the area. Mr. Alderman replied that he tells all his clients to site their facilities, regardless of what type of facility and to put a facility where you have the least environmental damage. Mr. Alderman stated that sites should be chosen that would not endanger species as a lot of these have been going extinct since 1900. Mr. Terrell asked Mr. Alderman if he assumed this facility would cause environmental damage, to which Mr. Alderman replied that he was not assuming that at all. Mr. Alderman went on to state that he has never seen any project that could withstand a 30" rainfall event. Mr. Alderman stated that as a professional, he has seen major environmental changes since the 1970's and 1980's in creeks and rivers. Mr. Alderman stated that the rainfall events are becoming much more powerful and have great impact on the land, soils and rivers. Mr. Alderman stated that in many of the creeks and rivers, the rains are hitting so hard on the landscape washing so much of the sediment into the creeks, and the creeks are down cutting all the way to bedrock. Mr. Alderman stated that our environment is changing rapidly and there are no environmental regulations or statutes that can prevent what nature is allowing to happen. Mr. Alderman stated that putting a facility this close to a body of water is going to have significant impacts from rainfall events. Mr. Terrell asked Mr. Alderman if he was basing his statement on the assumption that the engineering designs for storm water and erosion control devices will be inadequate. Mr. Alderman replied that there is nothing that can be designed or engineered that would prevent the erosion that is going to happen from the landscape during major storm events. Mr. Alderman added that storm water structures are not designed for major storm water events and with them becoming more frequent and heavier, that it cannot be controlled by engineers. Mr. Terrell asked Mr. Alderman if he had any evidence that DEQ would not follow state laws when it examines engineered designs that are submitted for storm water and erosion control on this site, to which Mr. Alderman replied that regulations and statutes were not going to protect these streams from major storm events. Mr. Alderman added that facilities need to be sited where the least amount of environmental damage will occur. Mr. Terrell asked Mr. Alderman if his testimony was not that this project would be inadequately designed, but that the laws don't work. Mr. Alderman replied that the project would be inadequately designed because those designs are not able to withstand the major rain events guaranteed to occur in the future. Mr. Alderman stated that his testimony was based on 50 years of fieldwork and experience. Mr. Terrell asked Mr. Alderman if he

would agree that a sedimentation and erosion control permit would not be issued until storm water designs comply with state law, to which Mr. Alderman replied that whatever is approved could easily be wiped out during a major storm event. Mr. Terrell asked Mr. Alderman if he had an opinion as to whether or not K & K Organics have to meet state law in order to obtain a permit, to which Mr. Alderman replied that independent from that, the soils would be washed out if you get major storm events. Mr. Eatman asked Mr. Alderman to state his credentials. Mr. Alderman stated that he would not worry with stating degrees, but that his background was with UNC Chapel Hill in Biology, Ecology and Taxonomy. Mr. Eatman asked to have Mr. Alderman tendered as an expert witness on the issue of fresh water species.

Chairperson Shaw authorized a ten-minute break at 5:50 pm, and called the meeting back to order at 6:00 pm.

Mr. Eatman called Joseph Leahy. Mr. Leahy took the podium and stated his name and that he was an adjacent landowner located to the west of the subject parcel. Mr. Leahy stated that he has the second linier feet bordering this parcel of land with Winchester Woods LLC, bordering the North, having the longest line. Mr. Leahy stated that he held a BS in Zoology from NC State University. Mr. Leahy stated his profession was a real estate appraiser and broker, and has been for over 15 years, but that he was not at this hearing acting as an appraiser, but as a concerned landowner. Mr. Leahy stated that when he first heard about the proposed use it seemed innocent with only dirt, stumps and rocks being imported, but after giving it some thought, foreign material contains a lot more than that. Mr. Leahy stated that dirt can contain microorganisms, insects, unwanted plant seeds and possibly even small animals, all of which may or not be native to the site. Mr. Leahy continued that contamination can occur from the origin site that the material is coming from. Mr. Leahy stated that this a concern for him especially since he has not seen any proposal for testing or quarantining the loads that will be allowed on to this site. Mr. Leahy stated that there are several tree farms located in the area adjacent to this site, Winchester Woods LLC, Jeff Garrett, and his own. Mr. Leahy stated that Preston Floyd has trees located right across US 1 from the site. Mr. Leahy stated that Mr. Floyd and Howard Gillis had both spoken on the issue of Pine Beetles, but that he was also concerned about other foreign pests and diseases that could be endangering his pines and hardwoods. Mr. Leahy stated that he did a couple of searches in the NC Forestry Service site, and found that in June of 2020, they had a write up about the Asian Long Horn Beetle. Mr. Terrell objected to Mr. Leahys testimony as hearsay. Mr. Eatman asked Mr. Leahy if he had any knowledge of how the beetle is spread, to which Mr. Leahy replied that he reads information that the NC Forest Service has provided and that he is concerned that trucks can bring these beetles in. Mr. Leahy stated that another issue he had is that southern Vance County does not have public water and that wells could become contaminated. Mr. Leahy stated that he had an article from WRAL about a county citizen, adjacent to the Hwy 39 landfill, suing the county, but stated that he did not know what the outcome was, but did not want the same issue with this site because a CUP was granted. Mr. Leahy stated that his home was about half a mile from the proposed site, and the applicant proposes a lot of traffic for this area, one vehicle every 5 to 10 minutes. Mr. Leahy stated that his home is one mile from US 1 and he can hear transfer trucks. Mr. Leahy stated that he can only imagine what heavy machinery will sound like moving material on this site. Mr. Leahy stated that he felt all the neighbors had the same concerns and that he had not heard of anyone who is in favor of this proposal. Mr. Leahy stated that he hoped the board would consider their decision as if this proposed site were next to their land. Mr. Terrell asked Mr. Leahy if he could hear the quarry from his property, to which Mr. Leahy stated he could when they blast.

Mr. Eatman called Richard Moore to the podium. Mr. Moore stated his name and that he resided at the intersection of Charlie Grissom Rd and Egypt Mountain Rd and that he had lived there for 31 years. Mr. Moore thanked the board for their service to the community and stated that this case is a sign that growth was coming to Vance County. Mr. Moore stated that growth was a good thing but that it would have to be managed correctly. Mr. Moore described his political career and gave examples of environmental cases he had been involved in. Mr. Moore also talked about state budget constraints in the offices tasked with environmental monitoring and advised the board that as they make their decision, consider that the county would be alone in the enforcement of this site. Mr. Moore talked about issues he had with the traffic

estimate that was presented. Mr. Moore talked about issues he had with the real estate appraisals that were presented. Mr. Moore talked about his concerns about beetle exposure, and other invasive species that might come in with inert debris. Mr. Moore urged the board to deny the permit.

Mr. Eatman stated that the testimony for those in opposition had concluded.

Mr. Terrell called Ramey Kemp to step to the podium. Mr. Terrell stated that Mr. Kemp was a Traffic Transportation Engineer and asked that Mr. Kemp be certified as an expert witness in transportation design and safety.

Mr. Kemp stated his name and that he graduated from NC State University as an undergrad with a degree in Civil Engineering and a Master's degree in Civil Engineering. Mr. Kemp stated that he had spent 12 years with NCDOT in their design section, after which he began working in the design business. Mr. Kemp stated that he formed his own company 29 years ago, headquartered in Raleigh, NC, and that he now has offices in South Carolina and Virginia and has 7 offices altogether. Mr. Kemp stated that his company does about 300 traffic studies a year, from Florida to West Virginia. Mr. Kemp stated that they generally work in five states, as far north as New York and Ohio. Mr. Kemp stated that he was a registered Engineer in five states. *Mr. Eatman spoke but could not be heard on the recording.* Mr. Terrell asked Mr. Kemp to address whether or not there was adequate site distance on US 1 southbound to Egypt Mountain Road. Mr. Kemp stated that he had personally reviewed the site distance on the drawing and also visited in the field and concluded that there is more than adequate site distance on US 1.

Mr. Terrell addressed Chairperson Shaw and advised him that he wanted to make sure that the record is accurate going forward. Mr. Terrell stated that he would like to recall expert witness, Civil Engineer, Vance Moore, to challenge a claim by a neighbor, Mrs. Herring, who gave testimony in September that her home was 2.14 miles from the quarry and challenged that the quarry was across the road.

Mr. Moore took the podium and stated that he had prepared a map based on Vance County GIS Data sources showing parcel information and aerial photos of the area, prepared at a graphical scale that is measurable. Mr. Moore advised that he measured from the Herring residence to the northern quarry entrance off US 1, where the trucks come in and leave the quarry, and found it to be a distance of 2682 ft. or roughly one half of a mile. Mr. Moore stated his second measurement was from the residence to the active area of the quarry and found it to be 4700 ft., or less than a mile.

Mr. Eatman asked Mr. Moore if US 1 was between this residence and the rock quarry, to which Mr. Moore replied that was correct.

Chairperson Shaw asked if there was anyone present who wished to give testimony that had not already spoken. Mr. Howard Gillis, who was sworn and gave testimony at the prior hearing, asked about the weight limit on the road, and asked if the high weighted dump trucks that would be associated with the LCID would be allowed on this road. Mr. Kemp, Expert in Transportation Design and Safety, replied that if the road has a tonnage limit, that question would need to be directed to NCDOT, and stated that there were ways of getting around a tonnage limit. Mr. Kemp stated that it would have to be enforced making sure that trucks do not go over that limit if it applies to that section of roadway that the trucks would be using. Mr. Kemp stated that another way would be to upgrade the pavement. Mr. Kemp stated that if the trucks were to be primarily traveling between the driveway of the property and US 1, the easiest way to solve the problem would be to make sure that the tonnage of the trucks meets the specifications of the road. Board member Mrs. Agnes Harvin asked how pavement would be upgraded and who would pay for it. Mr. Kemp replied that you add pavement to the road and did not know who would be responsible for paying. Mr. Terrell clarified that the trucks using this facility would be carrying brush. Chairperson Shaw added they would be carrying cement and bricks which were heavy. Mr. Terrell asked Mr. Harrison to explain what type of material his trucks would be hauling. Mr. Harrison explained they would be carrying mainly brush, relatively light materials that go over 6 or 8 tons. Mr. Harrison stated that he goes

into LCID facilities frequently that are located on low tonnage roads and has never had a problem. Mr. Harrison stated that the tonnage is enforced by NCDMV. Mr. Eatman asked Mr. Harrison if he was saying that DMV was going to enforce that the tonnage limits are abided by, to which Mr. Harrison replied that the DMV enforces how much weight is put on the road. Mr. Harrison added that his trucks would haul mainly brush, which is light, and would be under 7 or 8 tons. Board member Mr. Bobbitt asked if the LCID facilities have a scale for weighing trucks, to which Mr. Harrison replied LCID facilities do not have scales because they do not pay by weight buy by load. Board member Mr. Alvin Johnson asked that if these trucks are paying by the load, wouldn't they pack as much as they could into each load, to which Mr. Harrison replied that most LCID facilities have height limits on how high debris can be piled in each load, and that they haul mostly brush which is light. Board member Mr. Johnson asked if stumps are in the loads and wouldn't that make the load heavy, to which Mr. Harrison replied that if quad-axle trucks are being used to haul, the length of the truck versus the width and height, would limit the amount you could haul and not exceed the limit, not saying that it could not exceed, but that would be up to DMV to enforce. Board member Mrs. Stainback asked Mr. Harrison how the trucks would be accessing the site, from US 1 or from Egypt Mountain Road, and from the site going where, to which Mr. Harrison replied that the majority of his trucks would be coming in and going out via US 1. Board member Ms. Stainback asked if that section of Egypt Mountain Road would need to be widened, to which Mr. Harrison replied that to his knowledge it would not have to be widened as it is about 250 yards from the drive way to US 1. Board member Mrs. Stainback asked how the trucks would pull into the site, would they have to back up and would Mr. Harrison have a gate, to which Mr. Harrison replied they would have a gate and that the trucks would drive into the site and the brush and debris would be hidden from site due to the natural topography of the site. Board member Mrs. Stainback asked if Mr. Harrison was planning to pave the driveway, to which Mr. Harrison replied not unless it is required. Board member Mrs. Stainback asked what would happen when it rains and mud is tracked onto the highway, to which Mr. Harrison replied that if it is required to obtain a permit then he would pave to a certain point. Board member Mrs. Stainback stated that she had looked at the book that the board members were given and that the DOT was not requiring the drive to be paved, but she felt it would be up to Mr. Harrison to pave it on his own. Mr. Harrison commented that it would be up to the board whether or not he paved the drive, to which Board member Mrs. Stainback stated that she could see where not paving the drive could cause problems with all the big trucks coming in and out. Mr. Harrison stated that he was going to try to do everything he could not to be noticed. Board member Mrs. Stainback asked if Mr. Harrison planned to have an employee stationed at the gate when the trucks come in and go out, to which he replied that the gate will either be locked or there will be an attendant on site because it is required. Board member Mrs. Stainback commented that she did not know how this would economically benefit Vance County other than from a tax standpoint, and then asked Mr. Harrison did he plan to have employees, how many, where would they come from, whether they were from within Vance County or from outside the county, and that it should be advantageous to Vance County in some way. Board member Mrs. Stainback stated that she was concerned about who would be bringing in debris and where it would come from. Board member Ms. Stainback added that she did not understand the business angle of the situation and felt the board needed to. Mr. Harrison replied that there is no other LCID located within Vance County and when people are building houses or otherwise working, creating debris, there has to be a place to dispose of debris. Mr. Harrison stated that Franklin County has three LCID landfills, but Vance County has no place to haul that he knew of that is permitted. Board member Mr. Johnson stated that he knew of one in Townsville but did not know if it was public or private, owned by Falkner Grading. Mr. Harrison stated that he was not familiar with the location of that one, but that it was not located in the southern end of the county and would be a logistical issue for him. Board member Mrs. Stainback stated that she was also concerned about the berms and making sure, they were tall enough and consistent all around and whether or not this facility could be seen from US 1. Mr. Harrison replied that he was not sure how tall the berm or buffer was but that it should not be seen from US 1, as everything would be on the northern side of the power line. Mr. Harrison added that in one place it is a 25 ft. hill and at the entrance and should not be seen from the road. Board member Mrs. Stainback stated that she was concerned how wide the driveway was going to be and having to knock down some of the existing berm, to which Mr. Harrison replied that he was not going to do anything to make it more visible, but only what he has to do to pass DEQ permit

requirements. Board member Mrs. Stainback asked if they were going to accept 120 trucks per day into the site, to which Mr. Harrison stated that number included employees, trucks, everything, and that he thought that was a very high number. Board member Mrs. Stainback asked how many employees Mr. Harrison planned to have, to which Mr. Harrison replied that those who would stay on the site could be one or two initially, but that at some times it could be four or five but would depend on what needs to be done at the site. Board member Mrs. Stainback asked if Mr. Harrison obtained a permit from the state, how long would it be good for, to which Mr. Harrison replied that would be a question for his engineer. Board member Mrs. Stainback stated that she was concerned about the trucks backing up. Mr. Harrison stated that the trucks would be driving into the site and would have plenty of room to dump and drive back out. Board member Mrs. Stainback stated that she was still concerned about the economic impact on Vance County, and whether or not there would be gain, to which Mr. Harrison replied that it was more about creating a place for inert debris to be placed. Mr. Harrison stated that it would be a benefit if a natural disaster occurred to have a place to go with debris, a permitted facility. Board member Mr. Johnson asked what the percentage was of trucks coming in from US 1, to which Mr. Harrison replied he did not have a percentage but that the majority would be coming from US 1. Board member Mr. Johnson stated that would mean that the others would be coming from the other way, from another county, from Oxford and other areas through the low limit roads, and it would be his concern that they don't tear up the roads. Mr. Harrison replied that he has been on those roads and he has seen more rock quarry trucks and logging trucks that would be more apt to be overweight using them than he would have trucks hauling brush that would be using them.

Mr. Eatman asked Mr. Harrison again if he knew what percentage of trucks would be coming from US 1, to which Mr. Harrison replied he could not put a number or percentage on it, just that in his opinion, it would be the majority of the trucks he would receive. Mr. Eatman asked if Mr. Harrison was an expert, to which he replied that he was not, that he was just the property owner. Mr. Terrell asked Mr. Harrison if he did hauling and grading himself, to which Mr. Harrison replied that he did. Mr. Terrell asked Mr. Harrison if he knew where the business of clearing of land was on US 1, to which Mr. Harrison replied he did, and that most of the business is going to come from the main thoroughfare of US 1. Mr. Terrell asked Mr. Harrison if he was required to follow all the laws related to the inspection and registration of vehicles, to which Mr. Harrison replied that he was. Mr. Terrell asked if Mr. Harrison and his drivers were required to follow all the speed limits and other safe movement laws, to which Mr. Harrison replied that they were. Mr. Terrell asked if Mr. Harrison was required to follow the tonnage limit laws and regulations, to which Mr. Harrison replied that he was.

Mr. Eatman asked if Mr. Harrison was going to weigh trucks when they come in, to which Mr. Harrison replied that most all the trucks coming into his site would be hauling brush. Mr. Eatman asked Mr. Harrison how he was going to follow the tonnage laws if he was not going to weigh his trucks when they come into the site. Mr. Harrison replied he would do it the same way that logging trucks or any other truck that hauls brush would do it. Mr. Eatman asked how that would be done. Mr. Harrison stated that he has never had an overweight ticket while hauling brush, that he has been weighed and never been overweight or gotten a ticket. Mr. Eatman stated that he was not following the rules, just not getting a ticket, to which Mr. Harrison replied that he was following the rules which is why he was not getting tickets, that every time he has been weighed he was not overweight. Board member Mrs. Harvin asked where he was weighed, to which Mr. Harrison replied he had been weighed on low tonnage roads and on major roads, and had never received a ticket for being overweight. Board member Mrs. Harvin asked how they weigh, to which Mr. Harrison replied if you are pulled over they will bring out a pair of scales for you to drive onto. Board member Mrs. Harvin asked if Mr. Harrison had been pulled over, to which he replied that he had and that they can pull you over for a random check or if the load looks heavy they can pull you over and that it is regulated by the DMV. Mr. Harrison stated that the impact of brush was nothing compared to what the hauling of stone would be. Board member Mrs. Stainback asked if there would be drivers other than Mr. Harrison's coming into the site, to which Mr. Harrison stated that there would be. Mr. Eatman asked if Mr. Harrison also brought in stones, brick and concrete to the site, to which Mr. Harrison replied that he did. Mr. Eatman stated that Mr. Harrison had stated that he brought in

brush, to which Mr. Harrison stated that he stated it would be mainly brush. Mr. Harrison added that he could bring in some concrete or bricks but that it would be mainly brush, and that with a quad-axle truck the length, width and height would be restricted. Board member Mr. Johnson asked how Mr. Harrison would know if a concrete block had not been contaminated with lead based paint, to which Mr. Harrison replied that no painted or treated concrete or wood is allowed into an LCID Landfill. Board member Mr. Johnson asked how he would know after it had been dumped, to which Mr. Harrison replied that you load it back up, you do not allow it to be dumped. Board member Mrs. Stainback asked if painted wood was allowed in to which Mr. Harrison replied it was not, that nothing with paint was allowed in any LCID. Board member Mr. Johnson asked Mr. Kemp, Traffic Engineer, that regarding the number of vehicles going in and out of the site, was that a five or ten year projection or one year, to which Mr. Kemp replied that it was based on what their initial travel was going to be. Board member Mr. Johnson asked if they knew what it would be in five or ten years or even a two-year projection of travel in that area, to which Mr. Kemp replied that according to NCDOT requirements, they would have to meet the initial period unless they asked them to project beyond that. Mr. Kemp stated that the county could ask for a projection beyond that, but that they were asked to project to the point in which the site goes into service. Mr. Kemp stated that 60 trucks per day, 60 in, 60 out, or 100 trucks, 50 in, 50 out and some passenger cars, that is how they arrived at 120. Board member Mr. Johnson asked about growth and the number in and out increasing. Mr. Kemp replied that if the county keeps growing you have to have waste areas, and if you don't have them in this county they are going to go somewhere else and that is a cost and if that cost gets too big you are not going to get quite the growth that Vance County would be hoping to get. Mr. Kemp started that if you are going to have growth then you have to have some of these things that will provide waste areas for the builders. Board member Mr. Johnson stated that his concern was the amount of vehicles going in and out in the future not when they first open. Mr. Kemp replied that with growth there would probably be more trucks, and that you hope that you would have a lot of growth resulting in more trucks and having to have another site somewhere.

Chairperson Shaw announced that the board would recess until the next meeting on December 10, 2020 at 4 pm.

Chairperson Shaw adjourned the November 12, 2020 meeting of the Vance County Board of Adjustment at about 6:50 pm.

