

Minutes of the Yadkin County Board of Adjustment

September 14, 2020

Board Members Present:

Richard Foster- Chair
Scott Pipes
Ricky Roberts
Charles Collins
Bud Matthews- Alternate

Board Members Absent:

Jeff Smith –Vice chair
Benny Myers- Alternate

Staff Present:

Dawn Vallieres, Planner Ed Powell, County Attorney
Gary Hayes, Central Permitting Director

Guests Present:

Tom Terrell	John Barefoot	Sean Andersen
Tommy Cleveland	Rich Kirkland	Reynolds Neely
Nathan Tidd	Evan Williams	Kenneth Stevens
Dale Poindexter	Daniele Summerfield	Landon Wag
Shawn Summerfield	Josh Eicher	

Call to Order

Chairman Richard Foster called the September 14, 2020 meeting of the Yadkin County Board of Adjustment to order at approximately 6:00 PM. Attendance and quorum were noted. Bud Matthews was made a voting member for tonight's meeting.

Approval of Minutes

Chairman Richard Foster asked if anyone saw any changes that needed to be made on the minutes from the last meeting. There were no changes requested. Bud Matthews made a motion to approve the minutes from the August 10, 2020 meeting. Scott Pipes seconded the motion. Motion was approved 5-0.

Chairman Richard Foster explained the quasi- judicial process.

The Board Adjourned the Regular Meeting to hold a Public Hearing.

Public Hearing- Eicher

Variance- Joshua Eicher -Article 12- Modification of Rear Setback

Staff told the board that since it was a variance, a four/ fifths vote was required to pass. Chairman Richard Foster asked if there was anyone to speak in favor of the proposed project. The applicant came forward. Chairman Richard Foster affirmed the applicant.

Mr. Eicher spoke. The basis for the variance is that the back side of the property is adjacent to 421 and the compact size of the property. It is a request to decrease the rear setback. The setback would be down to six feet at the narrowest point. Access behind the building was discussed. There was no building access proposed for the rear of the building. Mr. Eicher said they would keep it mowed and cleaned but they would not have any building access on that side. It is against the right of way to 421, no neighbor as such behind this parcel.

Staff gave a PowerPoint presentation on the request. This lot is slightly below minimum lot size.

Chairman Richard Foster asked twice if there was anyone to speak against the proposed project. No one came forward.

The Board concluded the public hearing on Joshua Eicher Variance request.

Regular Board Meeting

Chairman Richard Foster asked the Board if there was any discussion on the Joshua Eicher request. The Board briefly discussed the Joshua Eicher application. Ricky Roberts made a motion to approve the variance, Bud Matthews seconded. The vote was 5-0.

Public Hearing- Two Hearted Solar on Shady Grove Church Road

Conditional Use – Solar Farm – Two Hearted Solar, LLC/ Mickey &Hilda Smitherman/ Shady Grove Partners LLC/ Evan & Tina Williams/Jackie & Betsy Williams/Carl & Ruth Matthews/Billy Miller et al- Article 17

Chairman Richard Foster asked who was there to represent the applicants. Attorney Tom Terrell came forward and introduced himself.

Chairman Richard Foster asked about the company that Mr. Terrell was representing. Is it a permitting or operational entity? Two Hearted Solar, LLC is a subsidiary of a joint venture of Silver Creek Energy and Pinegate Renewables that have put together a holding company called Silver Pine Holdings. Pinegate Renewables would be the long term owner and operator of the proposed facility. Sean Andersen with Pinegate Renewables was there tonight to speak to the corporate presence and long term presence of the company.

Mr. Terrell gave binders of information to the Board. Chairman Richard Foster told Mr. Terrell that this information could not be reviewed during a meeting. Mr. Terrell stated that all the information in the notebook would be testified to verbally so it would be on the record at that time. Chairman Richard Foster said that the spoken testimony is what the decision would be based on.

Chairman Richard Foster swore in all the proposed speakers for the application and speakers for the opposition.

Mr. Terrell spoke about the maps and site plan that were available. There is a page in the notebook of the two entities, Silver Creek Energy and Pinegate Renewables, which shows how the two of them together create a very strong company.

Chairman Richard Foster explained that the reason he asked about ownership is because an LLC is a shell company and there is a concern of recovery from a shell company that would not have any assets.

Mr. Terrell spoke regarding the local landowner's who are hoping to lease their property to the solar company. He also spoke on the tabs in the notebook. Statement of compliance, summary on quasi-judicial proceedings. They had put in the notebook what the communications were with the neighbors and when they realized there was a lot of interest, they had reached out to the adjacent neighbors. They held a neighborhood meeting. Next tab is health and safety. These are actually papers the speaker, Mr. Cleveland, has authored. Harmony and consistency will be presented verbally by a planner from Randolph County.

We have been asked about buffers...we are going to offer as a condition a buffer six times what the County requires. They will be addressing chemical control. Mr. Cleveland says for a solar farm chemical use is minimal. For the most part you have to use lawn mowers and weed eaters. Herbicide use at solar facilities is typically similar to that used at agricultural facilities, as such the impacts of herbicide use is likely to be no more than that of conventional agriculture.

Stream protection was raised. Mr. Barefoot will be speaking to that. They are going to offer protection two and a half times what would be required by DEQ (Department of Environmental Quality). Wildlife permeability fences will be spoken about. Pollinator friendly habitat will be planted, which is not out there currently, so that will be an improvement for agriculture. Decommissioning will be addressed. Questions were raised at the neighborhood meeting on who monitors this? Mr. Terrell listed agencies: NC Utility Commission, NC Wildlife, Dept. of Public Safety, Dept. of Cultural Resources, and NCDOT. The agency which has the most influence is DEQ which is for stream protection. The last tab is several conditions they are asking to be imposed on this application:

1. Where there is no existing vegetation at least 20 feet wide to provide screening, applicant shall install a minimum 20 foot planting strip with three rows of dense evergreens.
2. Pending approval by Yadkin County, the applicant shall erect perimeter fencing that is wildlife permeable.
3. Applicant shall plant pollinator habitat in all feasible locations.
4. Applicant shall design all erosion control basins to pass the 25 year storm event rather than the NCDEQ required 10 year storm event to achieve two and a half times what is required.

Mr. Terrell covered John Barefoot's qualifications to be tendered as an expert witness. He is a licensed PE in NC and works with Kimley Horn.

Chairman Richard Foster asked how much analysis as far as topography? The reason I am asking is because there was a 400 acre project which, after the initial approval, came back with a 200 acre expansion because the property had not been thoroughly evaluated.

John Barefoot said No, it would be after the permitting. The design is in the preliminary stages.

Mr. Terrell asked John Barefoot if that was typical; permitting first, then detailed design? John Barefoot said yes. Panels were asked about. They will be single axis trackers that will be rotating throughout the day. Typically at a 60 degree angle then reset facing east. Maximum height around 10-12 feet at maximum tilt.

John Barefoot spoke regarding the site plan. The general location, it's a 22 megawatt ac (alternating current) facility on about 285 acres of land which is enough to provide electricity to a couple of thousand homes. Access points were covered and the need for NCDOT driveway permits, typically a 50 foot asphalt apron and then ABC aggregate on gravel.

Chairman Richard Foster asked at what point the roads would be constructed. John Barefoot said typically quite early. First a construction entrance, then the erosion control measures. You would do some limited local grading, then get the roads in. The roads generally are trying to minimize the length. Three jurisdictional stream crossings were pointed out. Those would be permitted through Army Corps of Engineers and DEQ. They would design a culvert. Army Corps of Engineers permitting time was discussed. Generally, a 4-6 months permitting process through the COE. They would not cross those streams until they had the COE approval.

Other features on the site plan were discussed. There is a buffer around entirety of site. There will be additional planting. Laydown areas were discussed. Temporary erosion control basins would be located at edges generally at low point of the site. Single axis trackers will be used; a series of posts driven into the ground then aluminum racking on top of that, then solar modules attached to racking. Combiner boxes and inverter locations were covered. All wiring would go underground at this point. Wires would gather to interconnections and run into an existing transmission line that is cutting across the site. Once the power is on the grid, it will go to wherever the load is being used. Impervious area will total about 3%. There will be a geotechnical report (preliminary, then a final): they will drive a pile into the ground and put loads on it to understand the soil parameters.

Chairman Richard Foster said the reason he asked about the construction access is because during the construction phase we have in the past put requirements to prevent mud on the roads during construction.

Mr. Barefoot said that one of the things he does in the design is a very clear note for the contractor "Do not bring any dirt/soil onto the roadways." They usually have a construction entrance which helps with this. If we see that that is an issue we can put notes on the plans for a tire wash down if needed.

John Barefoot continued with stream protection. Two pieces of stream protections. One component is stormwater on site. Regulated by DEQ. This project will fall into Low Density, projects that have 24% or less impervious area and grass conveyances, so you aren't discharging via a pipe. This site has 3% impervious surface. From his experience, if you switch from forest use or an agricultural use to an open space meadow condition there is a negligible effect on stormwater peak flow. There is a dedicated solar farm chapter in the stormwater manual DEQ handbook. The panels are viewed as completely pervious. Rows of grass in between the panels have to be wider than the panels. They wouldn't do any permanent attenuation of flow because it is expected to be a negative effect.

No state roads that go through this? Correct. And, one item Mr. Barefoot did not discuss. Behind the landscape buffer there will be an 8 foot tall fence to secure the site.

The other component is erosion control. We would typically use temporary sediment basins or skimmer basins located around the perimeter of the site. In order to get the water to corral to those locations they use diversion ditches which are a structure that is a berm and a ditch. All of that is backed in silt fencing. Sediment laden runoff during construction will be conveyed to sediment basin, the skimmer device will spray water for two to five days to give time for

suspended solids to fall out. Those structures would have an emergency spillway and a riser. DEQ says basins have to be designed for a ten year storm. They propose to add a condition that they would design for a twenty-five year storm just to add some extra protection. All of the erosion control features would be adequately sized based on the hydrology. Any culverts under the drives would be based on the same hydrology. DEQ will review the hydraulic calculations to ensure that all components are adequately sized. Grading was covered. Driving posts then racking materials will be installed, then contractor would start to stabilize. Once they have achieved 80% vegetated cover, then DEQ will come out to inspect, then basins can be decommissioned. DEQ may randomly inspect this site during construction. If sediment is going off site, DEQ would issue a stop work order and the contractor could be fined.

Attorney Tom Terrell asked John Barefoot, PE if industry standard computer modelling software was used to calculate hydrology? John Barefoot, PE said yes, and spoke about the software.

Nathan Tidd, PE was tendered as an expert witness for landscape architecture. He spoke regarding the 20 foot wide buffer, three rows of evergreen materials, meeting the eight feet high requirement, typically six feet minimum at installation. Staggered rows.

Attorney Tom Terrell asked if any vegetation planted would get to 20 feet high? Nathan Tidd, PE said yes, American Holly would be evergreen, or American Boxwood would meet the County's requirements. It does vary by what is available in nurseries at the time.

Attorney Tom Terrell asked which varieties would go to 20-25 feet? Nathan Tidd, PE said American Holly, and crypto meria would go to that height.

Attorney Tom Terrell offered as another condition that at least one of the three rows of evergreen will be a variety that is expected to grow to 20 feet at maturity.

Sean Andersen with Pinegate Renewables spoke. Pinegate Renewables is a NC solar developer. They are partnering with Silver Creek. Pinegate will be the long term owner and operator of this facility. These projects are very passive forms of development. There are no batteries. No electricity stored on site. They highly prefer to hire local operations manager. Mr. Andersen spoke about solar projects they currently operate. There is a long timeline for solar projects. They have to obtain a certificate of public convenience and necessity from the NC Utility Commission.

Chairman Richard Foster spoke about decommissioning and bonding, specifically a \$50,000 bond to begin the process of removal should the solar farm be discontinued. There was discussion on this. It is not net decommissioning, but a \$50,000 bond to begin the process of initial removal of equipment.

Tom Terrell tendered Tommy Cleveland, PE as an expert witness to speak on the health and safety effects.

Chairman Richard Foster asked if he had looked at this site in detail, does the topography of this site lend itself to solar?

Tommy Cleveland, PE said he hadn't looked at it in great detail, he has not looked at the specific topography of this site. Potential health and safety impacts of solar are well understood- clean energy technology, less reliance on oil, decrease in coal burning. So emissions going to land, water, and air will be decreased. Economics of solar electricity were discussed.

Most of what is onsite are the panels. Panels are made of glass, aluminum, plastic seal on the electrical components, silicon, silver, tin, and copper. The only potential concern would be the lead in the solder which is a tiny amount and is sealed away by the tempered glass. Metal racking, inverters and transformers have no liquid and are no different than what would be installed at schools or hospitals. The EMF/radiation was spoken to. The health and safety issues that do exist are dangers from electric shock, which are only if a person is on site and those are trained people. Fire dangers would be like any electric system. There is not much material to burn, small amounts of flammable material. You could come and fight the fire without any special equipment. Soil- PH level was covered. Often agricultural land has lime applied so it will revert to normal acidity but could have lime applied again if property was to revert to agricultural use. His professional opinion is that this project, as proposed, will have no negative impacts on the health and safety.

Rich Kirkland, state certified licensed appraiser, was tendered as an expert witness on real estate values. Mr. Kirkland spoke on his experience with solar farms and real estate valuation. He spoke to the potential externalities from a solar farm. It is his professional opinion that this project if developed as proposed would not have an impact on real estate values and will be harmonious with the area.

Chairman Richard Foster asked if he was an independent appraiser? Any negative results? Rich Kirkland said he is an independent appraiser. He has not spoken against any solar farms but he has declined to represent solar farms due to setbacks that were not large enough.

Reynolds Neely was tendered as an expert on planning.

Chairman Richard Foster asked if he was independent consultant? Mr. Neely said he was.

Reynolds Neely spoke. It is his professional opinion that this project is in harmony with the area and general conformity with the County's Future Land Use Plan. Very few uses are considered incompatible, there may be externalities that need to be addressed but once they are addressed the uses become compatible. From a functional standpoint, nothing about the facility would prevent agricultural or residential uses from continuing adjacent to this facility. Courts have held that if it is a permitted use then there is an assumption of harmony; meeting the specific development standards establishes the assumption of harmony. Rural agricultural area is not allowing only farms uses; it is a district that allows many uses including microbreweries, country clubs, landfills, motocross, police/fire stations, major public utilities, sawmills, etc.

Chairman Richard Foster said MAY include.

Reynolds Neely continued, some by right, some as conditional uses. Solar farms do not irrevocably convert land to industrial uses. He spoke at length on the general conformity with the county land use plan. It is his professional opinion that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is located and is in general conformity with the Yadkin County future land use plan.

Attorney Tom Terrell introduced the last speaker. Sometimes it is forgotten that it is not just about the company asking for a land use permit. There is a long list of farmers and farm families involved in this permit. Mr. Evan Williams is their last speaker.

Evan Williams, one of the applicants and a landowner, was tendered as an expert witness on farming. He is a 4th generation farmer on this land who wants to diversify. His family has been

farming since the 1800s. Everyone in his family has paid taxes for generations to make this county what it is. He moved back here when his dad got sick. Then he stayed to take care of the corn, soybeans, and run four chicken houses. Farming is not easy but it's a good way to live. Just a few bad years of weather and markets, the farm can go under. He spoke on how very few farmers have just one crop, they try to diversify their income. The solar farms don't harm agriculture. They make it possible for people like him and his neighbors to keep land in their families and continue to farm. Solar farms don't harm the neighbors. They are quiet and don't generate traffic. He thanked the board for their time.

Attorney Tom Terrell said they would like to tender ALL verbal testimony as evidence. And just so it is stated clearly for the record, the two additional conditions would be

1. At least one of the three rows of evergreens to be a species that will reach 20-25 feet at maturity.
2. Applicant offers a decommissioning bond in the amount of \$50,000 to cover the initial removal of equipment at the time of decommissioning.

Chairman Richard Foster noted that it was 8 p.m. There had been a very detailed presentation, and asked how many people were there to speak against the proposal. A few hands were raised. Chairman Richard Foster noted that when we have projects of this size we traditionally hold two meetings. He continued by saying that the format of the next meeting would be started with the speakers for the opposition if they were agreeable to that format.

Dale Poindexter and Sean Summerfield acknowledged this.

Continuance

The Board made a motion to continue the hearing to the October 12, 2020 meeting at 6p.m. on the second Monday of the month and stand adjourned until then. It was approved 5-0.

It was asked by the opposition that applicants left the site plan aerial for use next time. Applicants said they would bring it to the next meeting.

Respectfully Submitted,
Dawn Vallieres, Secretary to the Board


Richard Foster, Chair

Approved on 10/12/2020

