

Special Meeting
Monday, February 18, 2019
5:00pm
Chowan County Public Safety Center
305 West Freemason St.
Edenton, NC

Present Chair Patti Kersey, Commissioners Ron Cummings, Don Faircloth (came in later), Bob Kirby, Ellis Lawrence and Larry McLaughlin.

Staff present County Manager Kevin Howard, County Attorney Lauren Arizaga-Womble and Board Clerk Susanne Stallings.

Closed Session

Commissioner McLaughlin moved that the Board go into closed session in accordance with NCGS 143-318-11.a-3 attorney client privilege. Chair Kersey asked for all in favor, the motion passed unanimously (5-0).

The minutes of the closed session are sealed.

Commissioner Kirby moved to come out of closed session. Chair Kersey asked for all in favor, the motion passed unanimously (6-0).

Adjourn

Commissioner Cummings moved that the meeting be adjourned. Chair Kersey asked for all in favor, the motion passed unanimously (6-0).

Regular Meeting
Monday, February 18, 2019
6:00pm
Chowan County Public Safety Center
305 West Freemason St.
Edenton, NC

This meeting was recorded. A copy of the recording is in the meeting file labeled February 18, 2019.

Present Chair Patti Kersey, Commissioners Greg Bonner, Ron Cummings, Don Faircloth, Bob Kirby, Ellis Lawrence and Larry McLaughlin.

Staff present County Manager Kevin Howard, Finance Officer Cathy Smith, County Attorney Lauren Arizaga-Womble and Board Clerk Susanne Stallings.

Regular Meeting

Chair Kersey called the regular meeting to order and led all in the pledge of allegiance.

Commissioner Cummings then provided the invocation.

Approval of Draft Agenda

Commissioner Bonner moved to approve the agenda as presented. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Public Comment

Chair Kersey opened the floor for public comment.

Linda Nwadike, Deborah Spence, Johnny Hollowell and Jeff Copeland all signed up to speak in public comment it was determined their public comment was related to the Conditional Use Permit Application and would be called on during the public hearing later in the meeting.

Patrick Flynn provided the Board with a petition to consider new research regarding infrasound and impacts for the Conditional Use Permit which was granted to Timbermill. He stated this research was not available or presented to the Commissioners at the time of the CUP permit. A copy of the petition and attachments are in the meeting file labeled February 18, 2019.

Sarah Tynch signed up to speak, she asked to have her name withdrawn from the list.

Consent Agenda

a. **Minutes**

Minutes of February 4, 2019.

Ms. Stallings noted a correction to the closed session minutes of February 4, 2019.

b. **Tax Refunds/Releases**

Boyce, N. \$375.00 Town of Edenton Nuisance fee billed to wrong parcel, refunded and billed to the correct parcel.

Commissioner Kirby moved to approve the consent agenda as amended. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Budget Amendments

BA-1819-046

BA-1819-047

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
Register of Deeds			
11-3418-415-00	*Preservation/Automation	554.48	
11-4180-298-00	*Dept Supplies - Auto/Pres		184.83
11-4180-440-00	*Contr Svcs - Automation/Pres		184.83
11-4180-511-00	*C/O - Auto / Pres		184.82
Sheriff's Office			
11-3431-233-00	*State Special Funds	13.56	
11-4317-441-00	*State Special Expense		13.56
11-3431-243-00	*KIDS & COPS	1,084.45	
11-4317-443-00	*KIDS & COPS Expense		1,084.45
Animal Shelter			
11-3438-894-00	*Donations - Chowan	375.00	
11-3438-894-01	*Donations - Gates	10.00	
11-3438-894-02	*Donations - Perquimans	200.00	
11-3438-894-03	*Donations - Other	25.00	
11-4381-600-00	*Donation - Expense		610.00
11-3438-895-00	*Adoption - Chowan	700.00	
11-3438-895-01	*Adoption - Gates	230.00	
11-3438-895-03	*Adoption - Other	450.00	
11-4381-441-00	*Contr Svcs - Spay/Neuter		1,380.00
11-3438-898-00	*Donations from Advertising	133.00	
11-4381-602-00	*Donations from Advertising		133.00
Cooperative Ext:			
11-3495-370-00	*AG Program Fees Discretionary	250.90	
11-4953-440-00	*Ag Program Discretionary		250.90
11-3495-378-00	*4-H Fees Discretionary	56.00	
11-4953-448-00	*4-H Fees Discretionary		56.00
11-3495-379-00	*Livestock Program	600.00	
11-4953-449-00	*Livestock Program		600.00
Recreation			
11-3612-504-00	*Recreation Special Events	645.00	
11-6132-453-00	*Recreation Special Events		645.00
Senior Center			
11-3616-532-00	*Donations - Home Del Meals	1,000.00	
11-4268-904-01	*Donations - Home Del Meals		1,000.00
11-3616-533-00	*Reg Fees - Trips	9,215.00	
11-4268-312-00	*TRIPS - Senior Citizens		9,215.00
11-3616-533-01	*Registration Fees Activities	128.00	
11-4268-299-01	*Activities - Dept. Supplies		128.00
11-3616-535-03	*Healthways	1,077.00	
11-4268-352-02	*Healthways		1,077.00
DSS			
12-3531-230-14	*DSS Special Events	51.00	
12-5310-450-00	*DSS Special Events		51.00
EMS			
60-3839-891-00	*Donations - Rescue Squad	100.00	
60-4370-499-00	*Donations - Rescue Squad		100.00
	Balanced	16,898.39	16,898.39
	Total Discretionary Income Received FYE 2019	195,200.00	
Justification:			
	<i>To amend the 2019 budget to include Discretionary income received through January 2019.</i>		

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
TDA			
51-3815-530-00	Co-Op Monies	36.80	
51-8150-261-01	Co-Op Office Supplies		36.80
51-3832-530-00	Co-Op Advertising	3,700.32	
51-8150-370-01	Co-Op Advertising		3,700.32
51-3839-894-00	*Music & Water Festival	2,050.00	
51-8150-826-00	*Music & Water Festival		2,050.00
	Balanced	5,787.12	5,787.12
Justification:			
<i>To amend the 2019 budget for TDA to include Co-Op and Discretionary income through January 2019</i>			

BA-1819-048

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
General Fund			
11-3493-890-00	Insurance Proceeds	60,811.25	
11-9800-980-32	Transfer to Capital Projects		60,811.25
Capital Projects			
32-3810-011-00	Transfer from General Fund	60,811.25	
32-8100-588-00	Fishing Pier Bathroom Repairs		60,811.25
	Balanced	121,622.50	121,622.50
Justification:			
<i>To amend 2019 budget to include insurance proceeds for fire damage to the restroom facility at the Wharf Landing fishing pier on 11/18/18.</i>			

BA-1819-049

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
Social Services			
12-3531-230-01	Social Services Admin	39,721.00	
12-5380-539-21	Low Income Energy Assistance		39,721.00
	Balanced	39,721.00	39,721.00
Justification:			
<i>To amend the 2019 budget based on the Division of Social Services Funding Authorization for the LIEAP Program.</i>			

Commissioner Faircloth moved to approve the budget amendment as presented. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Trillium Health Resources Update

Bland Baker presented the Board of Commissioners with an update from Trillium Health Resources. A copy of the PowerPoint presentation is in the meeting file labeled February 18, 2019.

Rivers and Associates Contract Amendment #2

Water Director David Tawes presented the Board with a second amendment to the contract for Engineering Services Agreement for Rivers and Associates. He stated this second amendment to the contract will allow CORMIX modeling software access and an additional simulation to be performed in response to state comments regarding Valhalla WTP process rinse water.

Mr. Howard noted this amendment is an additional \$6,000 to the total contract.

Commissioner Kirby asked if this additional cost to the County is the fault of the state.

Mr. Howard stated he would not blame the state and added this will help the County in the long run.

Commissioner Lawrence moved to approve the contract amendment. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

AWARE Update

Barbara Yates and representatives from AWARE provided the Board with an update on their activities. A copy of the flyer and the written comments from AWARE are in the meeting file labeled February 18, 2019.

Animal Control and Animal Shelter Update

Animal Control Director Louann Fisher and Animal Shelter Director Katelyn Robertson provided annual updates from their departments. A copy of the Animal Control report is in the meeting file labeled February 18, 2019.

Grant Pre-Application NC Cooperative Extension

Mr. Howard asked that the Board consider a grant pre-application from Extension in the amount of \$1,000 for the NC State Extension Master Food Volunteer program. No matching funds are required.

Commissioner Cummings moved to approve the grant application. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Chair Kersey called for a five minute recess, after five minutes she called the meeting back to order.

PUBLIC HEARING Conditional Use Permit – CC-CUP-19-01

As previously noted this meeting was recorded. A copy of the audio is saved in the meeting file labeled February 18, 2019 and is also stored in the digital files of the office to the Clerk to the Board.

A public hearing for CC-CUP-19-01, an application for a Conditional Use Permit to construct a 5 MW solar farm on approximately 65 acres located at 3448 Virginia Road in Tyner.

Chair Patti Kersey stated that this is the Quasi-judicial hearing application CC-CUP-19-01. Applicant is Ryland Road Solar, LLC (a SunEnergy1 Company). Pursuant to section 3.12A. “This is an evidentiary hearing which differs from a public hearing in that the purpose of the evidentiary hearing is to gather facts not solicit citizen opinion. The hearing on this matter will be judicial in nature with sworn testimony and evidentiary safeguards.

Ms. Womble noted that pursuant to NC law and the Chowan County Zoning Ordinance, a board member participating in a quasi-judicial hearing shall be impartial –impermissible conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex-parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. She asked are there any conflicts for the remaining Board Members? She stated that she was not aware of any conflicts and none were alleged.

Board Clerk Susanne Stallings noted the following individuals are seated at the decision making panel:

Chair Patti Kersey, Commissioners Greg Bonner, Ron Cummings, Don Faircloth, Bob Kirby, Ellis Lawrence and Larry McLaughlin.

Chair Kersey then stated in this hearing, we will first hear from staff and other County witnesses, then from the applicant and their witnesses, and then from opponents to the request if there are any. Parties may cross-examine witnesses after the witness testifies when questions are called for. If you want the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please kindly identify yourself for the record.

The parties with standing for opposition as well as the applicant, property owner and County Planner were all identified and given the oath in masse by the Clerk to the Board. The following individuals received the oath:

Deborah Spence, John Hollowell, Jeff Copeland, Kenny Goodwin, Brandon Shoaf, Tommy Cleveland, Rich Kirkland, Linda Nwadike and Jeff McDurmolt.

Commissioner Faircloth moved that the Board go into the quasi-judicial hearing. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

County Planner Brandon Shoaf then presented his staff report to the Board.

STAFF REPORT

To: Chowan County Board of Commissioners
Date: February 7, 2019
Case: CUP 19-01

GENERAL INFORMATION

Requested Action: Gather information and vote to approve or deny the Conditional Use Application for a Solar Farm that is proposed to be developed at 3448 Virginia Rd.

ANALYSIS

Ryland Road Solar, LLC (a SunEnergy1 Company) has made application for a Conditional Use Permit to develop a 5 megawatt generation facility at 3448 Virginia Rd. (north of the Ryland Rd. intersection, with PIN 699200371881) This is an approximately 106-acre tract, where roughly 65 acres will be utilized for the solar development.

SunEnergy1 is proposing to purchase this tract as well as the tract directly to the north and fronting Virginia Road as well (PIN 699200390051), but is not proposing any solar development on that parcel in this application.

The Chowan County Planning Board, at their regular meeting in January, voted unanimously, to recommend the CUP be granted to the developer. The minutes from the meeting are attached. You also have the full application as well as correspondence, from the developer, with information to answer questions about materials and their toxicity used in the panels.

Staff review:

- The proposed site is located in an A-1 Zoning District where Solar Farms are permitted by a CUP.
- 100' setbacks are addressed at all property lines
- The application includes "placement" for the vegetative buffers, and a detailed design, as noted in 8.108 C and 16.04 B, natural buffers of at least 25' in width can be used where practicable, buffers of 50' in width must be installed elsewhere.
- Proposed placement of panels appears to meet ordinance requirements

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- Proposed height of equipment is under the maximum in the ordinance (15')
 - State Stormwater permit provided
 - NCDOT driveway permit is provided
 - Liability insurance proof is provided
 - Third Party decommissioning plan is provided
 - Site located more than 500' from the Virginia Rd./ Cannons Ferry Rd. Intersection
 - The proposed site has been posted with signage advertising the CUP application and appropriate contact information. Adjacent property owners have been notified via first class mail, for both the Planning Board and Commissioners meetings.
 - Technical review committee meeting minutes are attached as well as any received comments from TRC members that were not in attendance of the January 9, 2019 meeting.
 - Section 8.108 Solar Farm (excerpt from the County Ordinance) is attached for your review.

RECOMMENDATION

Based on the unanimous vote, by the Planning Board, to recommend the CUP be granted by the Commissioners, staff recommends a favorable vote by the County Board of Commissioners. The developer was agreeable to amending the original site plan, showing solar panels closer to Virginia Road and beside the church, to further back into the site (something the planning board was critical of as a design, but pleased with the compromise).

Any vote that make tonight should also be accompanied by, with a separate vote, a statement of consistency with the current Land Use Plan. For example:

This CUP will/ or will not be consistent with the 2018 Land Use Plan, other County Zoning Ordinances or any other plan officially adopted by the Board of Commissioners because solar farms and associated developments are a defined and permitted use within the County's Zoning Jurisdiction, with an approved Conditional Use Permit.

It was noted for the record that the staff report and attached legal notices, Planning Board and TRC minutes would be received and labeled as County's Exhibit #1.

Linda Nwadike 192 Raceway Dr, Mooresville, NC presented the application on behalf of SunEnergy1. She provided a PowerPoint presentation detailing the project location and design. A copy of the PowerPoint is in the meeting file labeled February 18, 2019.

Highlights from the presentation included:

- The project occupies approximately 65 of 106 total acres. It was noted that the developer moved the boundary further away from the adjoining church property.
- The developer has an offer to purchase the tract of land
- PowerPoint addressed 8.108 of the County Solar Ordinance regarding setbacks, height and visibility. Buffering and Application requirements were also addressed.
- Installation and design as well as decommissioning were addressed in the PowerPoint and application packet.
- Economic impact of the project was highlighted

Ms. Nwadike then reviewed the findings of fact. She stated the first finding of fact will the project endanger the public health or safety. She stated no. the comments from this are in the PowerPoint. She then called on Tommy Cleveland a Licensed NC Professional Engineer to discussed Public Health and Safety impacts. Mr. Cleveland testified that there are no negative health or safety impacts from solar. He stated the technology does not emit toxic materials. He noted the panels can be recycled.

Chair Kersey opened the floor for questions from the Board.

Commissioner Kirby asked was Cleveland an employee of SunEnergy1.

Mr. Cleveland stated no he is a consultant.

Commissioner Kirby asked for Mr. Cleveland's curriculum vitae.

Mr. Cleveland stated he could provide a digital copy if requested. He stated some of his experience in serving as an expert witness on the matter.

Chair Kersey stated she has a question about decommissioning.

Ms. Nwadike stated she would be speaking on that matter.

Chair Kersey stated the Planning Board members had questions or concerns about the panels and toxicity or cadmium.

Mr. Cleveland stated the panels are silicone and do not contain cadmium.

Commissioner Lawrence asked if the panels are fixed or do they track the sun.

Ms. Nwadike said they track the sun.

Commissioner Lawrence asked how many will be hired to build the project.

Ms. Nwadike stated over 100 during construction but the site will be monitored by a SCADA system.

Commissioner Cummings asked about the pfas or pes material.

Mr. Cleveland stated he does not recognize that material he stated there is plastic but not that.

Commissioner Kirby asked when in the process does the suns energy become electricity.

Mr. Cleveland stated it is in the cells.

Commissioner Kirby asked if DC electricity is in the cells.

Mr. Cleveland stated yes.

Ms. Nwadike then called on Rick Kirkland a licensed NC real estate appraiser with an MAI designation to speak on findings #2 and #3 (will the value of adjoining property be substantially injured and will the project be in harmony with the area).

Mr. Kirkland stated that the proposed property will not injure the value of adjoining or abutting property. He utilized information from the Chowan Jehu solar project built in 2018. He stated that property sold immediately before and after the construction did not fluctuate in price. He stated that in fact the property sale prices increased after construction of the Jehu project. Mr. Kirkland stated the project will be in harmony with the area it is to be located. He stated that the site is mostly agricultural farms and away from major subdivisions. He stated there will be landscape requirements of vegetative buffering and setbacks.

Commissioner McLaughlin asked for Mr. Kirkland's experience with comparable projects in similar flat areas.

Mr. Kirkland named Bailey, Contoe, Moyock, Chapel Hill, Roxboro and Moyock. He shared an example of a project near a subdivision where there were lots being sold during the build out of the solar project. He stated the only neighbor complaints were that the deer were setting off the alarms at the solar site.

Chair Kersey asked about what materials are typical for screening/buffering.

Mr. Kirkland stated every jurisdiction is different. Some have timelines set on the size of the buffering. He stated there are some projects in Texas with no screening. He noted he has begun tracking the growth of landscaping at a project in Benson.

Commissioner Kirby stated his concern with the 50' buffer in the sheet D 1.1. He stated that it does not look 50' wide.

Mr. Kirkland stated that is at a distance of 1,000 feet.

Commissioner McLaughlin stated he felt that staggering the vegetation would be best.

Ms. Nwadike stated that staggering the landscaping would not be a problem.

It was decided the Board would start a list of items to return to during the point of conditions for approval or denial.

Commissioner McLaughlin asked about the screening. He noted there is a 40' section that is not buffered.

Ms. Nwadike state that is the gate to access the project she stated that NC DOT will not allow that to be blocked.

Commissioner McLaughlin noted the solar panels were moved back on the project he asked why the fencing is not moved back also.

Ms. Womble stated she would review the ordinance to see if this meets the lesser requirement of the ordinance she stated she will add this to the come back to list for now.

Chair Kersey asked about strips for the fencing.

Ms. Nwadike stated that Sun Energy is open to the discussion.

Commissioner Kirby stated the application notes that Sun Energy to hire locally whenever possible as noted in the application.

Ms. Nwadike stated that this will be done for purchasing of materials like fencing also.

Commissioner Kirby noted a subdivision will be required for the purchase of the property.

Ms. Nwadike stated that the project was originally called Chowan Virginia now it is called Ryland Rd.

Commissioner Kirby asked how the vegetative buffer is maintained.

Ms. Nwadike stated that Sun Energy mows it.

Commissioner Kirby asked how Sun Energy will ensure that the wetlands around the project are not disturbed.

Ms. Nwadike stated that there are measure in place to ensure this does not happen.

Commissioner Kirby noted the clearing house sheets and comments. He asked what Gliden Solar is.

Ms. Nwadike stated that is another proposed project.

Commissioner Kirby asked for more clarification on the decommissioning document.

Ms. Nwadike stated that there are various methods for decommissioning however the materials are often reused when the project is decommissioned.

Commissioner Kirby asked if the project would be bulldozed at decommissioning.

Ms. Nwadike stated it would be unbolted and hauled off.

Commissioner Kirby stated his concerns with the estimated time and cost associated with decommissioning in the report. He stated he feels this is not enough money. He asked who is buying the power from the project.

Ms. Nwadike stated they are trying to determine that now.

Commissioner Kirby asked if the citizens would have lower electrical bills.

Chair Kersey stated the decommissioning figure did not seem real to her. She stated she looked at 5MW decommissioning and the bond would be based on the estimate. She asked if the Board had to accept the estimate.

Ms. Nwadike stated that the estimate is from a certified engineer.

Ms. Womble stated that Sun Energy hired a 3rd party engineer. She stated the Board looks to determine if the application meets the standards of the ordinance. She stated if the Board is not comfortable with the estimated cost.

Chair Kersey then opened the floor for public testimony

Deborah Spence 329 Ryland Rd. Tyner NC stated she is from Chowan but moved back to her family farm. She stated her property abuts the wooded section of the proposed project. She stated that water flows from either side of the project on to her property and into her horse pasture. She stated that the developer stated there is no toxicity, silicone or plastic. She stated the three things tested were barium, cadmium and lead and met EPA standards. She stated that the heavy metals go into the wetlands and then get into river. She stated her concerns with the estimated costs for decommissioning. She stated she did not feel it was fair for her children or grandchildren to have to pay for decommissioning. She urged the Board to further study the toxicity reports. She asked about the project impacts on the electrical grid and cellular service. She stated she did not want any forestry removed so that she will hear the traffic from NC 32. She stated she has concerns over noise and tetrachlorides. She stated her concerns over the projects impacting the hawks and eagles that nest near her property. She stated her concerns with the Planning Board meeting and said she felt offended over how she was treated by the Planning Board. She stated her concerns over soil erosion from the ditches in the wooded area and stated she would like trees to remain as a barrier.

Commissioner Bonner asked if the Board were able to implement some of her requests would it be helpful.

Ms. Spence stated she would not be happy but it would be more palatable.

Commissioner Bonner noted the Board has to be concerned with the Public's health safety and welfare.

Ms. Womble the findings of fact are state law not on the County's requirements.

John Hollowell 301 Ryland Rd. stated he is concerned with the potential for runoff. He stated he dug a ditch in that wooded area to drain the land and he stated his concern with seeing it filled. He stated he is concern with the metals. He stated materials that come from China contain a lot of lead. He stated his concern with lead leeching into the water. He stated he was happy with the increased buffering behind the church. He stated his concern with the amount of time it will take for the trees to cover the fencing. He stated the land is very wet. He asked what will happen in the future when the green energy money is gone. He asked who the land will be returned to. He suggested the developer consider sheep to maintain the property.

Jeff Copeland 945 Ryland Rd. Tyner stated he owns property across the road from the church. He stated he feels the project is a done deal. He stated he appreciates the natural screening at the Jehu project because it cannot be seen from Ryland Rd. He stated you cannot see the panels at Yeopim Rd. He suggested planting a pine thicket to screen the project. He suggested putting a curve in the entrance path.

Kenny Goodwin stated he is the property owner for the proposed site. He stated the company is following the County Ordinance regulations. He stated the company has fulfilled its obligations to him so far. He stated he is doing this project to help him pay for his children's college education.

Ms. Stallings noted a Jeff McDurmolt is signed up but did not speak.

Chair Kersey called for a five minute recess, after five minutes she called the meeting back to order.

Chair Kersey asked Ms. Nwadike if she had any remarks regarding the public questions/ comments/testimony.

Ms. Nwadike stated she would like for Mr. McDurmant to speak regarding storm water analysis and the permitting.

Mr. McDurmant stated that he is the Environmental Program Engineer. He stated that part of the process required analysis on soil and erosion, storm water management and water quality. Additionally an analysis was made on the impact of endangered species. He sated the project was not deemed detrimental by fish and wildlife. He stated that with regards to Soil Erosion there is a plan to prevent deposits on the wetlands. He stated the project has received approvals for this. He

noted there will be a four man crew environmental crew on site. He stated the cut area of the project will be surveyed for the drainage when the trees are cleared.

Commissioner McLaughlin asked how the stumps will be handled when the timber area is cut.

Mr. McDurmant stated a bulldozer will pull the stump and in some cases the stump will be ground.

Commissioner McLaughlin asked about the standards for the access roads.

Mr. McDurmant stated they will use wash stone.

Commissioner Lawrence asked if there are environmental issues later would that be reviewed.

Ms. Womble noted the storm water permitting is all done by the State. She stated they are required to remain in state compliance.

Chair Kersey asked about the land that would be logged outside of the blue area.

Ms. Nwadike stated they would not log outside of the blue area.

Chair Kersey asked if there would be any groundwater monitoring.

Mr. McDurmant stated that they will do surface monitoring. He stated if there were a fuel spill or something like that then groundwater monitoring might be required.

Ms. Nwadike discussed the materials of the panels. She stated there is some impact on the peanut crop because of ph. levels because of raw steel. She stated this can be remediated if desired after decommissioning. She stated the project will not be expanded. She noted that the distribution poles are the tallest items in the project.

Ms. Nwadike stated the materials come from all over. She stated that when the panels break it is similar to how a windshield breaks. She stated that Sun Energy will own the land at the completion of the project.

Commissioner Lawrence stated he is concerned with the decommissioning estimates. He stated nearby counties estimate \$2 - \$3 million for decommissioning.

Ms. Nwadike urged the Board to consider salvage values.

Ms. Womble stated she does not have an opinion regarding the decommissioning report. She stated the Board takes the evidence and considers if it meets the ordinance requirements.

Chair Kersey asked if the engineer would review the decommissioning report to ensure there is not a typo. She stated she feels the estimates are extremely low.

Commissioner Kirby asked about purchasing surety bonds.

Ms. Nwadike stated that they cannot buy bonds. She stated they have to put down cash. She stated she is authorized to go up to \$100,000 anything else would have to be approved by the company owners. She stated that they are willing to review the estimates every five years and use a different engineering company.

Chair Kersey asked if there was any further evidence, (there was none).

Ms. Womble noted the application and materials from Sun Energy 1 would be labeled as Applicants Evidence #1.

Commissioner Lawrence moved to close the public hearing. Chair Kersey asked for all in favor the motion passed unanimously (7-0).

Ms. Womble noted that at the conclusion of the evidentiary hearing, the permit-issuing board may proceed to vote on the permit request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure. FINDINGS OF FACT MOTIONS – MAKE SEPARATELY –Board must explicitly set forth what it determines to be the essential facts on which its decision is based

Commissioner Kirby moved to find that the application is completed. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner McLaughlin moved to find that the Planning Board reviewed the application and made recommendation. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Faircloth moved to find that the notice requirements were met for the meeting. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Cummings moved to find that based on the evidence presented, the planners report, and application the applicant complied with specific ordinance requirements set out in CCPO -8.108. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Lawrence moved that based on the evidence presented, planner's report, application, the use will not materially endanger the public health or safety if located where proposed and approved. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Bonner moved that based on the evidence presented, planner's report, application, the use will not substantially injure the value of adjoining or abutting property. Chair Kersey asked for all in favor, the motion passed (6-1 McLaughlin).

Commissioner Kirby the moved Based on the evidence presented, planner's report, application, 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 to be located.

Ms. Womble discussed the list of potential conditions that the Board may wish to consider.

Commissioner Kirby withdrew his original motion.

Commissioner Kirby then moved that extraordinary circumstances exist that justify the variation from the specified requirements within the ordinance, specifically to move the face back from the Virginia Road boundary line to the fourth (4th) blue circle on the north line (map SL 1.1). Chair Kersey asked for all in favor, the motion passed (6-1 Cummings).

The Board then discussed staggered landscaping and the potential for shading.

Ms. Nwadike stated that the bushes will have to be cut if there is shading.

Ms. Womble noted that they will have to maintain the landscaping.

Commissioner Bonner moved that the buffering set forth in the ordinance be staggered, not in a straight line, in addition any open land remain a natural growth, unmaintained, subject to the applicants access to the project area and subject to a minimum height of 15 feet. Chair Kersey asked for all in favor, the motion passed (6-1 Cummings).

The Board discussed the distance for the canopy.

Commissioner Faircloth stated his concern with adding additional requirements.

The Board discussed straps in the gate and it was determined this was not needed with the project fence moving back from the road.

Commissioner Lawrence moved that a decommissioning review at the first five year mark will be completed by a different third party than the one originally submitted (Structures Inc Jim Kunkle). Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Lawrence moved to increase the decommissioning bond to \$100,000 for the first five year period. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Kirby moved that based on the evidence presented, planner's report, application, the location and character of the use, if developed according to the plan as submitted and approved, in addition to the attached conditions will be in harmony with the area in which it is to be located. Chair Kersey asked for all in favor, the motion passed (5-2 Cummings McLaughlin).

Commissioner Faircloth moved that based on the evidence presented, planner's report, application, and the proposed use is in general conformity with the Land Use Plan for Chowan County. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Commissioner Bonner moved that for approval of the CUP Application subject to specific conditions already discussed. Chair Kersey asked for all in favor, the motion passed (6-1 Cummings).

Commissioner Lawrence moved to direct attorney to draft written decision granting permit w/ said conditions, findings of facts and conclusions of law and submit to Chair for review and signature. Chair Kersey asked for all in favor, the motion passed (6-1 Cummings).

Chair Kersey stated she would like to amend the agenda and table the items remaining.

Ms. Stallings noted that item 11 is time sensitive.

Chair Kersey rescinded her motion and asked the meeting adjourn after item 11.

Commissioner Kirby moved to hear item 11 and continue the remaining items to the next agenda. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Albemarle Commission Resolutions

Mr. Kirby provided the Board with a copy of “A Resolution Requesting Amendment of the 1997 Resolution Modifying and Amending Resolutions Creating the Regional Planning Commission Known As the Albemarle Commission” (the “Resolution”) and a “First Amendment to 1997 Resolution Modifying and Amending Resolutions Creating the Regional Planning Commission Known As the Albemarle Commission” (the “Amended Charter”). The Albemarle Commission Board adopted the resolution at its January 17, 2019 meeting. That Resolution requests that each of the 10 counties comprising the Albemarle Commission approve an amendment to the 1997 Charter so that the terms for delegates be changed from 1 to 2 year terms.

Additionally, the Resolution requests that the Charter be amended to reflect that the immediate past chair will serve as an ex officio, non-voting member of the Board. But of these practices have been provided in the bylaws adopted by the Board of Delegates and have been followed but they are not prescribed in the Charter.

The Amended Charter is needed in order to update the 1997 Charter to be consistent with bylaws that have been adopted by the Board of Delegates over the last 20 years that have, in these respects, not been consistent with the 1997 charter. Some other minor changes were made as well.

He moved to approve both documents including the resolution. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

FIRST AMENDMENT TO 1997
RESOLUTION MODIFYING AND
AMENDING RESOLUTIONS CREATING
THE REGIONAL PLANNING COMMISSION
KNOWN AS THE ALBEMARLE COMMISSION

WHEREAS, in 1970 the Counties of Camden, Chowan, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans and Tyrrell, (the "Initial Counties"), began a regional cooperative effort by creating a regional planning and economic development commission known as the Albemarle Commission; and

WHEREAS, the County of Washington was granted membership in 1971 with unanimous consent of the Initial Counties (the Initial Counties and the County of Washington may be referred to individually as a "County" and collectively as the "Counties"); and

WHEREAS, N.C. Gen. Stat. ' 153A-391 provides that the Counties may, by unanimous action, modify and amend the resolution creating the Albemarle Commission; and

WHEREAS, in 1997, the Counties unanimously modified and amended the resolution creating the Albemarle Commission by adopting that certain document entitled "Resolution Modifying and Amending Resolutions Creating the Regional Planning Commission known as the Albemarle Commission" (the "1997 Resolution"); and

WHEREAS, Article II of the 1997 Resolution provides the method for the appointment of delegates by the member Counties, including terms for such appointments, that the governing board of the Albemarle Commission has requested be changed as set forth below; and

WHEREAS, the Counties, after due and diligent consideration, desire to modify and amend the 1997 Resolution through this First Amendment to the 1997 Resolution to change the method for appointment of delegates and the terms for delegates.

NOW, THEREFORE, BE IT RESOLVED by each of the Boards of Commissioners for the Counties of Camden, Chowan, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans, Tyrrell and Washington, in separate sessions duly convened, by the adoption and enactment of this First Amendment to the 1997 Resolution by each of the Boards, do hereby modify

and amend the 1997 Resolution as follows:

Section 1. By replacing Articles I through VIII thereof with the following:

ARTICLE I

NAME

The name of the regional planning commission shall be the ALBEMARLE COMMISSION.

ARTICLE II

ALBEMARLE COMMISSION MEMBERSHIP AND GOVERNING BOARD

A. Albemarle Commission Membership – The Counties of Camden, Chowan, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans, Tyrrell and Washington shall be member governments of the Albemarle Commission. The Albemarle Commission shall be governed by a board of 15 members appointed as follows:

- 1) The governing board of each member government shall appoint one “Commissioner” delegate who must be a member of the member government’s governing board. Commissioner delegates who no longer hold office as an elected member of their member government’s governing board are unable to continue as a delegate unless they can be and are approved as an at large delegate.
- 2) Four additional “At Large” delegates who do not hold an elective office shall be initially appointed as follows:
 - (a) One delegate appointed by Camden County’s governing board;
 - (b) One delegate appointed by Chowan County’s governing board;
 - (c) One delegate appointed by Currituck County’s governing board;

(d) One delegate appointed by Dare County's governing board.

The At Large delegates appointed as of the adoption of this Resolution may continue to serve the remainder of their terms as set forth below.

Successors shall thereafter be appointed by the governing board's member governments in a rotating manner which order shall be determined alphabetically until the end of the alphabet is reached and then starting over (e.g., two years after the year in which this Resolution is adopted one delegate would be appointed by each of the following counties: Gates, Hyde, Pasquotank, and Perquimans; two years thereafter, one delegate would be appointed by each of the following counties: Tyrrell, Washington, Camden, and Chowan; and the appointments would continue rotating every two years in this alphabetical manner).

- 3) The immediate past chair shall serve for one year as an ex-officio, non-voting member unless they can be and are appointed as a Commissioner Delegate or an At Large Delegate.

The member governments are encouraged to consider making appointments that will result in at least four delegates being racial minorities.

B. Terms; Removal; Vacancies – Delegates of the Albemarle Commission shall serve two-year terms. Terms shall be measured by calendar years but shall end on December 31, regardless of the date of appointment by the appointing authority. A delegate may be removed with or without cause by the appointing member government's governing board. Appointment to fill vacancies shall be made for the remainder of the unexpired term by the respective appointing member government's governing board.

C. Officers; Compensation – Those officers currently serving as of the date of adoption of this resolution, shall continue serving until the next organizational meeting of the Albemarle Commission governing board.

Thereafter, the Albemarle Commission governing board shall hold an organizational meeting annually in January to elect a chair, vice-chair and secretary by simple majority vote of those delegates present and voting at a properly constituted meeting. Only Commissioner Delegates, i.e., those delegates who are members of a member government's governing board, shall be eligible to hold an office, other than the non-voting office of immediate past chair.

Delegates may be compensated and reimbursed for their expenses at an appropriate mileage rate by the Albemarle Commission for attendance at meetings of the Albemarle Commission governing board.

ARTICLE III

POWERS AND DUTIES

The Albemarle Commission shall possess the following powers:

- (1) Apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the federal government or any agency thereof, any unit of local government or any agency thereof, or any private or civic agency;
- (2) Employ personnel;
- (3) Contract with consultants;
- (4) Contract for services with the State of North Carolina, any other state, the United States, or any agency of those governments;
- (5) Study and inventory regional goals, resources, and problems;

- (6) Prepare and amend regional development plans, which may include recommendations for land use within the region, recommendations concerning the need for and general location of public works of regional concern, recommendations for economic development of the region, and any other relevant matters;
- (7) Cooperate with and provide assistance to federal, state, other regional, and local planning activities within the region;
- (8) Encourage local efforts toward economic development;
- (9) Make recommendations for review and action to its member governments and other public agencies that perform functions within the region;
- (10) Exercise any other power necessary to the discharge of its duties.

ARTICLE IV

FINANCES

Funding for the Albemarle Commission's administrative and general operational requirements shall, in addition to other funds which might become available, be provided by member governments. Each member government's proportionate share shall be determined by a per capita assessment based on the most recent United States Census. Thereafter, the Albemarle Commission governing board shall develop and adopt, by simple majority vote, an annual budget for each up-coming fiscal year showing the anticipated contribution of each county which budget shall be submitted to the member governments for review and comment not later than May 1.

ARTICLE V

BUDGETARY AND FISCAL CONTROL

The Albemarle Commission budget and fiscal affairs shall comply with the procedures set forth in the Local Government Budget and Fiscal Control Act, Chapter 159,

Subchapter III of the North Carolina General Statutes.

The Albemarle Commission shall cause to be made an annual audit of its books and records by an independent certified public accountant at the end of the each fiscal year and a certified copy of the audit shall be filed promptly with each member government.

ARTICLE VI

WITHDRAWAL

A member government may withdraw from the Albemarle Commission by giving at least two years' written notice to the other member governments.

ARTICLE VII

AMENDMENTS

This resolution may be amended, modified or repealed by the unanimous action of the member governments.

ARTICLE VIII

DISSOLUTION

If the Albemarle Commission is dissolved by the unanimous action of the member governments then the proceeds that may be derived from the sale of the Albemarle Commission's assets, less payment of debts and liabilities, shall be distributed among the member governments pursuant to the following formula:

$$\frac{\text{Member Government Population}}{\text{Total population of Member governments}} \times \text{Total Dollar Value of Albemarle Commission assets} = \text{Member government's Share}$$

Section 2. All provisions of resolutions creating, amending or modifying the 1997 Resolution which are not re-enacted by this resolution, are hereby repealed.

Section 3. This resolution shall take effect immediately upon its unanimous adoption by the Counties.

Adjourn

Commissioner Cummings moved to adjourn the meeting. Chair Kersey asked for all in favor, the motion passed unanimously (7-0).

Patti F. Kersey, Chair

Susanne Stallings, Clerk