

1 **NEW BERN BOARD OF ADJUSTMENT**
2 **MINUTES**

3
4 **June 29th, 2015**

5
6 The New Bern Board of Adjustment held a regular meeting on Monday, June 29, 2015 at 5:30
7 pm in the City Hall Courtroom, 2nd floor, 300 Pollock Street.

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9 **Members Present:** Ms. Sarah Afflerbach – Chair
10 Ms. Beth Walker – Vice-Chair
11 Mr. Benjamin Beasley
12 Mr. Kenneth Brown
13 Ms. Lois Jamison
14 Mr. John Murrell
15 Mr. Richard Parsons
16 Mr. John Riggs
17 Mr. PJ Walker

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19 **Members Excused:** Mr. Peter Adolph
20 Mr. Jeffrey Midgette

21
22 **Members Absent:** Mr. Alfred Barfield

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25 **Staff Present:** Mr. Greg McCoy, Land & Community Development Administrator
26 Mr. Bradleigh Sceviour, Planner

27
28 Chair Sarah Afflerbach called the meeting to order.

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30 Roll call was taken and a quorum declared.

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32 **Minutes:** Reading of the minutes from the previous meeting was waived by unanimous
33 consent. Minutes from the April 27th meeting were approved.

34
35 Witnesses were sworn in.

36
37 **New Business:**

- 38
39 1. Consideration of Special Use Permit request to construct and operate a solar facility on a
40 25.06 acre tract. The site is located 1185 NC Highway 55 West and is further identified
41 in Craven County as Township 8, Map Number 222, and Lot Number 094.

42
43 **Staff Comments:** Staff McCoy presented the request to the Board stating the following
44 background information: New Bern Owner, LLC/FLS Energy, Inc, has requested that the Board

of Adjustment consider a Special Use Permit Application to construct and operate a tier one solar facility on a 25.06 acre tract. The property is located at 1185 NC Highway 55 West and further identified in Craven County as Township 8, Map Number 222, and Lot Number 094. Adjacent property owners within 100 feet were notified and the property was posted. The proposed project was reviewed and approved by the City's Departmental Site Plan Review Committee on May 1, 2015. Included in the Board member packet for review are the comments from the May 1, 2015 meeting.

Mr. McCoy stated that Ms. Jennifer Cogdell, representative of applicant, FLS Energy is present and will be giving a presentation to the Board. He asked the Board if they had any questions.

Applicant Comments: Ms. Jennifer Cogdell, representative of FLS Energy gave a power point presentation on the project. It included background information on the company, a brief explanation of how solar farms work, a map showing all of the solar farms they have in the state of North Carolina, and information supporting their belief that the project is in compliance with the Land Use Ordinance as well as the 6 findings of fact required for approval of a Special Use Permit. She further stated that they also intend to plant a vegetative buffer and included a photo of a typical solar farm project street view.

Public Comment: Chair Afflerbach opened the meeting for public comment.

Mark Best, 878 HWY 55 W – Asked how will the solar farm affect homeowners and their families. He also asked how the glass panels will interact with the dynamite blasting and explosions from Martin Marietta.

Angela Fonville, 1160 HWY 55 W – Asked how far off the road the project will be. Ms. Cogdell stated that it will be approximately 35 feet off the road and behind trees and shrubs. Chair Afflerbach asked that questions be directed to the board during public comment and those questions will be discussed after the public comment period. Ms. Fonville stated that she would like to know why they chose this location for the solar facility and stated her concern regarding noise and the possibility of harsh glares to the eye from the solar panels. She asked how this project would benefit the community.

Saletha Fonville, 1160 HWY 55 W – Stated that she would like to know who will benefit from the system and stated her concern for barbwire and the safety of animals getting caught in it. She asked the Board to make the applicant put the project further off the road than 35 feet.

Sherryle Fonville, 1160 HWY 55 W – Wanted to know if light from the facility at night will be a problem, if it will shine on or in the neighboring houses. She also asked if the ground was going to be wet, moist or cold.

Occupant, 1160 Hwy 55 W – Stated that she had two concerns; the climate and the barbed wire being an issue for animals.

Clifford Blackwell, Beamans Fork – His concerns are for the aesthetics of the neighborhood and

that he would prefer the vegetative buffer be on the outside of the fence rather than behind the fence. He asked what will happen when the lease expires or the equipment becomes obsolete and if they have a plan to reclaim the land when the life span of the project runs out. Mr. Blackwell also wanted to know if the applicant will have to do any more clearing of the property.

With no further comments from the public, Chair Afflerbach closed the public comment period.

Board Discussion: Chair Afflerbach asked Ms. Cogdell to address the questions asked by the public. Ms. Cogdell stated some of the ways that the community will benefit from the project are the following: (1) Jobs will be created. (2) It is environmentally clean and will not produce any harmful emissions into the air that we breathe. It's a clean source of energy. (3) It is produced locally, close to where the energy will be used.

Ms. Cogdell explained the noise level is no more than 50 decibels, which is no more noise than the average home. At the fence one cannot hear anything from the inverter. When asked if it is a constant noise or if it is off after sun down, she stated she would have to confirm that with the engineer. She believes it is a constant noise that cannot be heard from the fence. There will be no light from the facility.

Chair Afflerbach asked Ms. Cogdell to walk through the process of possible light pollution from the panels and explain the orientation of the panels. Ms. Cogdell explained the panels are industry standard and non-reflective and with the vegetative buffer will not have any glare or reflection from the sun. She could not definitively answer which direction the panels would be facing, but agreed with Chair Afflerbach that it made sense that the panels would be facing south in order to capture the best sun during the day. She clarified that the fence will be inside the vegetative buffer and that the actual vegetation used is in accordance with the City's Land Use Ordinance. It is a Type A screen.

Staff McCoy explained the different screens required by the City of New Bern Land Use Ordinance Section 15-364 and further described the Type A screen requirements. Type A is an opaque screen which requires shrubbery to reach a height of 6 feet within 5 years. It is a thick screen that will have 3 canopy type trees every 100 feet. This type of vegetation will be evergreen plant materials and will be approved by the Development Services Department. The Type C screen is a broken screen and will be used between the facility and side neighbor's property.

In response to Chair Afflerbach's question Ms. Cogdell stated that she is not aware of any impact study having been done on blasting from Martin Marietta, but that she would take that back for consideration with the engineers.

When asked about how they chose this site for the project, Ms. Cogdell stated that it was chosen for many reasons including its proximity to the Duke Energy power lines, the size of the property, it's previously disturbed land and because North Carolina is a fantastic spot for Solar development. When it became available to them they reviewed it for environmental concerns & wetlands. It's under review with the Army Corp of Engineers, they've spoken with the Fish and Wildlife serves to ensure that it won't impact any species.

Chair Afflerbach asked if any trees were going to be removed and Ms. Cogdell responded that there are trees on the back and she does not believe they are planning any clearing. The impact is under review with the Army Corp of Engineers. She could not state if trees would be removed or not and stated that she would like to confirm that. She stated that the fence will be inside the

135 vegetation & it will be 8 feet (not 6 feet like the plans show) chain link with barbed wire at the
136 top. The project will be secured with locked gates and they will follow the Knox Box program as
137 required. The site will be monitored remotely and will have people on the site for maintenance
138 and cleaning, but not on a regular basis. The point of connection to Duke Energy's power lines
139 will be underground and live will be above ground. Typical life span of a solar facility is
140 approximately 20 years. At that time they will decommission the facility, remove the panels and
141 return the property to its former state. Chair Afflerbach asked if that has happened in the past
142 where they decommissioned a facility and Ms. Cogdell said she could find an example for her.

143 At Chair Afflerbach's request, Ms. Cogdell described the foundation for the facility. She stated
144 that steel piles are driven into the ground; a racking system is placed on the pilings and the
145 panels on top of that. She did not have the dimensions, but offered to send those to the Board
146 after she gets that information from the Engineers. Cables that connect to the inverters are placed
147 underground and no gravel or other types of ground cover is used on the grounds between the
148 pilings. They will do grass and weed maintenance on the grounds. Commissioner Parsons
149 expressed his concern for run-off and asked if there would be any vegetation on the ground. Ms.
150 Cogdell stated they do have an erosion control plan in place and referred the Board to review the
151 plans for details on their storm water discharge permit specifications.

152 Mr. Brown stated his concern with some sections of the City of New Bern's Departmental
153 Review comments where some departments had no comments and the Corp of Engineers had no
154 comments regarding the wetlands. Ms. Cogdell stated that it is with the Corp of Engineers now
155 under review for a permit. They will have to review what the impacts will be and the applicant
156 will have to mitigate any impacts they might be before they are issued a permit. Mr. Brown
157 stated to Mr. McCoy that the applicant should have all of their permits completed prior to
158 applying for a Special Use Permit. Mr. McCoy explained that some permits take longer to get
159 because they are issued by the state and in the section for Inspections it is stated that in order to
160 get their building permits they will have to provide copies of all state and local permits. If the
161 state does not issue a permit they cannot get a building permit.

162 Mr. Brown stated that he thinks the applicant should go back and do a study on the impact from
163 the explosives from Martin Marietta. Mr. Parsons stated that he did not think this would be a
164 safety hazard or issue for the public, rather a financial issue for the applicant.

165
166 Chair Afflerbach requested the Board go through a dry run of the finding of fact in order to see if
167 they have any further questions or concerns before voting. There were no issues on the first
168 finding of fact, "The requested permit is within the Board of Adjustment's jurisdiction according
169 to the table of permissible uses".

170
171 **On fact 2 The application is complete;** Mr. Walker stated he would feel more comfortable if all
172 of the items pending or in progress were resolved. Mr. Brown stated his agreement with Mr.
173 Walker as well as the fact that they still don't have anything from the Corp of Engineers. He also
174 had concerns with the several departments not having any comments for the Departmental
175 Review. Chair Afflerbach explained that in Departmental Review if everything is in compliance
176 they do not have any comments. It is only when there are things the applicant has to do
177 additionally to be in compliance that a department would have comments.
178 There was some discussion about the various permits that are currently in process for the
179 applicant and not yet issued. Vice-Chair Walker clarified to the Board that they are making a

180 decision with regard to the opportunity to put the facility on the property, not based on any of
181 their required permitting.

182
183 **On fact 3 If completed as proposed in the application and as presented tonight, the**
184 **development will comply with all the requirements of this ordinance;** No concerns.

185 **On fact 4 The use will not materially endanger the public health or safety if located where**
186 **proposed and developed according to the plan as submitted;** Vice-Chair Walker stated there
187 were comments from the Fire Department requesting a second point of access as a safety issue.
188 Ms. Cogdell said they were adding a second access gate. Mr. Brown reiterated his concern
189 regarding the explosions near the facility. Chair Afflerbach expressed her concern for the 5
190 years that it will take for the Type A screening to reach its full height and maturity.

191
192 **On fact 5 The use will not substantially reduce the value of adjoining or abutting property,**
193 **or that the use is a public necessity;** Mr. Walker stated that he cannot possibly imagine the
194 project will increase the value of an adjoining property and that he does believe some reduction
195 in value would be possible. Ms. Cogdell replied that the research they have done does not show
196 any evidence of reducing property values. Ms. Jamison stated that when most people think of a
197 solar farm or solar panels they wonder how it will affect their health. It will not increase the
198 value or stay neutral and even with the buffer people will know that is a solar farm and they
199 won't want to be there. There was some discussion about 2 other solar farms in the County. Mr.
200 McCoy explained that he is not familiar with the County's process for permitting solar farms
201 when asked by Chair Afflerbach. Mr. Parsons stated that a solar farm would at least prevent the
202 property from becoming a hog farm or chicken house, which are both permissible uses for this
203 parcel of land. He talked about solar panels not emitting foul smells or loud noise and how they
204 can be a benefit. Chair Afflerbach asked the Ms. Cogdell if there is a requirement or mandate
205 from the state of North Carolina that a certain percentage of energy come from sunlight and if
206 this is why the project is being proposed. Ms. Cogdell replied that North Carolina does have the
207 best policy and apologized for not being able to quote what it is, but stated it is attractive policy
208 wise. The estimated cost of the project is 10 million dollars.

209
210 **On fact 6 The location and character of the use, if developed according to the plan as**
211 **submitted and approved, will be in harmony with the area in which it is to be located and**
212 **in general conformity with the plan of development of the city;** Mr. Murrell stated that to the
213 north of the project there are residential homes and to the south of the project is farmland and he
214 does not understand how a Solar farm will fit in with the character of the community.

215
216 There were no additional comments or questions. At Chair Afflerbach's request Staff McCoy
217 clarified that a simple majority vote is required for a motion to pass. If one of the findings of
218 fact fails, the whole thing fails.

219
220
221 **Findings of fact:**

- 222
223 1. The requested permit is within the Board of Adjustment's jurisdiction according to the
224 table of permissible uses;

225 **Motion B.Walker; Second J. Murrell**
226 **Motion carried by unanimous vote**
227

228 2. The application is complete;

229 **Motion K. Brown ; Second R. Parsons**
230 **Motion carried by unanimous vote**
231

232 3. If completed as proposed in the application and as presented tonight, the development
233 will comply with all the requirements of this ordinance;

234 **Motion R. Parsons; Second B.Beasley**
235 **Motion carried by unanimous vote**
236

237 4. The use will not materially endanger the public health or safety if located where
238 proposed and developed according to the plan as submitted;

239 **Motion R. Parsons; Second P.J. Walker**
240 **Motion carried by unanimous vote**
241

242 5. The use will not substantially reduce the value of adjoining or abutting property, or
243 that the use is a public necessity;

244 **Motion B.Walker; Second R. Parsons**
245 **All members voted "yes" except Mr. Walker & Ms. Jamison who voted "no"**
246 **Motion carried**
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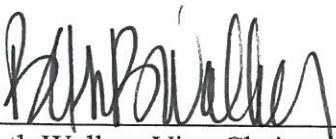
248 6. The location and character of the use, if developed according to the plan as submitted
249 and approved, will be in harmony with the area in which it is to be located and in general
250 conformity with the plan of development of the city;


251 **Motion R. Parsons ; Second J. Riggs**
252 **Mr. Parsons, Mr. Riggs and Chair Afflerbach voted "yes". Mr. Walker, Ms.**
253 **Jamison, Ms. Walker, Mr. Brown, Mr. Beasley, and Mr. Murrell voted "no".**
254 **Motion did not pass**
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256
257 Chair Afflerbach stated that no conditions needed to be in place since the permit could not be
258 approved. She stated that the applicant could come back at a later date with another application
259 and that the application did not pass because the location and character of the use, if developed
260 according to the plan as submitted and approved, will not be in harmony with the area in which it
261 is to be located. She explained to Ms. Cogdell if the applicant wants to take note of the concerns
262 and questions brought up in the meeting tonight and come back with a new application that they
263 are welcome to do that.
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265 With no further discussion, meeting adjourned. The next regularly scheduled meeting is on
266 Monday, July 27, 2015 at 5:30 pm in the City Hall Courtroom, 2nd floor, 300 Pollock Street.
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Beth Walker, Vice-Chair


Greg McCoy, Board Clerk