



To: Board of Commissioners  
From: Planning Staff  
Date: February 15, 2017  
Subject: PB 16-28 Currituck County Text Amendment

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The enclosed text amendment was initiated by the Board of Commissioners (BOC) to amend the Unified Development Ordinance (UDO) to remove solar array as an allowable use.

### **Background**

- June 2, 2014 – The BOC approved a use permit for PB 14-07 Ecoplexus, Inc. for a solar array in Shawboro. The only UDO regulation at the time was that panels not produce excessive glare. District setbacks applied to the panels. The applicant increased the setback to 50' for the panels from Shawboro Road with vegetative screening between the property line and the panels.
- May 4, 2015 – The BOC approved a text amendment to add solar array standards to the UDO including requirements for ground cover, screening, height limits, decommissioning plans, and a decommissioning requirement if the system does not generate electricity for a continuous 12 month period.
- May 4, 2015 – The BOC approved use permit PB 15-14 Wildwood Solar for a solar array near Moyock. The owner agreed to a 300' setback for panels from an existing dwelling and that they would install a landscape berm.
- October 5, 2015 – The BOC approved a text amendment to add additional solar array standards to the UDO including requirements for the 300' setback for all components of the solar array to the property line, ground water testing, and a performance guarantee to ensure decommissioning.
- January 4, 2016 – The BOC approved a text amendment to allow a reduction in the 300' setback with increased screening, changed the permit required from a use permit to a conditional rezoning, and removed the solar array use from all zoning districts except the AG district.

- January 3, 2017 – The BOC adopted an ordinance imposing a moratorium on the acceptance, processing, or consideration of applications for solar arrays.

### **Amendment Request**

This request is to amend the Unified Development Ordinance Chapter 4: Use Standards to remove solar array as an allowable use. This proposed amendment to the UDO is determined advisable to meet and preserve the stated goals established by the Currituck County 2006 Land Use Plan.

Existing permitted solar arrays will become legal nonconformities.

### **Text Amendment Review Standards**

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

- (1) Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
  - a. *The amendment promotes farmland preservation. (LUP POLICY AG1)*
  - b. *The amendment prohibits all energy producing facilities within the county's jurisdiction. (LUP POLICY ID9)*
- (2) Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
  - a. *The amendment eliminates a conflict between the 2006 Land Use Plan and the UDO.*
- (3) Is required by changed conditions;
  - a. *The North Carolina Utilities Commission Public Staff reported to the North Carolina General Assembly on February 10, 2016 that as of January 31, 2016 Currituck County was ranked fifth among the top ten counties in the number of pending North Carolina Utilities Commission certificate applications. The amendment clarifies that renewable energy facilities are not consistent with the 2006 Land Use Plan and are also prohibited in the county.*
- (4) Addresses a demonstrated community need;
  - a. *The amendment promotes the conservation of farmland which is consistently a community value and need included in adopted plans.*
- (5) Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the county;
  - a. *County residents have reported adverse effects of solar array construction, activity and operation including aesthetic impacts and potential impacts on residential and other property values. The amendment prevents incompatible solar array projects from being established that could adversely*

*impact the quality of life for county residents.*

- (6) Would result in a logical and orderly development pattern; and
  - a. *There exists in the county two solar arrays located adjacent to residential uses of land, that has resulted in numerous complaints to the county of incompatible activity on the solar array site with use of adjacent property for residential purposes. The amendment prevents this type of development pattern while promoting compatible uses and protecting agriculturally productive lands.*
  
- (7) Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
  - a. *In a February 10, 2016 report to the North Carolina General Assembly the North Carolina Department of Environmental Quality expressed concern for the loss of agricultural land and jobs in the state from conversion of agriculturally used property to use for solar arrays and the loss of wildlife habitat due to large areas encompassed by solar arrays that are fenced and affect food availability for wildlife. (Attachment 1)*

### **Land Use Plan Consistency**

The UDO requires that the Board of Commissioners adopt a statement of consistency and reasonableness that describes whether the decision on the amendment is consistent with county adopted plans that are applicable and why the decision is reasonable and in the public interest. The 2006 Land Use Plan is the controlling plan and the following policy statements are relevant to this request:

POLICY AG1: ACTIVE AGRICULTURAL LANDS having a high productive potential, and especially those removed from infrastructure and services, should be conserved for continued agricultural use.

LUP POLICY ID9: Currituck County shall not support the exploration or development of ENERGY PRODUCING FACILITIES within its jurisdiction including, but not limited to, oil and natural gas wells, and associated staging, transportation, refinement, processing or on-shore service and support facilities

### **Staff Recommendation**

Staff recommends adoption of the proposed text amendment because it complies with all applicable review standards of the UDO and is consistent with the 2006 Land Use Plan.

### **Planning Board Discussion – February 14, 2017**

Tammy Glave, Senior Planner, presented the case on behalf of the Currituck County Board of Commissioners (BOC). Ms. Glave gave background information on solar arrays in Currituck County which began in June 2, 2014 with one condition that panels did not produce excessive glare and later changes were made to add ground cover, screening, height limits, decommission plans and setbacks. The permit required was also changed from a use permit to conditional rezoning and removed the solar array use

from all zoning districts except the AG district on January 4, 2016. The BOC adopted an ordinance imposing a moratorium on the acceptance, processing, or consideration of applications for solar arrays on January 3, 2017. For the requested text amendment tonight, Staff recommends adoption of the proposed text amendment to remove solar array as an allowable use from the Unified Development Ordinance (UDO) Chapter 4 since it preserves the stated goals established by the Currituck County 2006 Land Use Plan with the preservation of farmland and prohibition of all energy producing facilities within the county's jurisdiction.

Ms. Overton asked if there were any open requests for solar arrays. Ms. Glave said there is one in construction and one that is complete. There are no new applications since the moratorium had a condition to not accept any new applications.

Mr. Craddock asked what reasons were cited by the Board of Commissioners for this text amendment. Mr. Woody said the Board of Commissioners referenced an environmental report which shows concern for loss of wildlife and agricultural land. Another reference is the fact that Currituck County is ranked fifth among the top ten counties in North Carolina for applications through the department of utilities for solar arrays. Also, property owners complained of loss in property values and the aesthetic complaints of the solar arrays. Lastly, they referenced a Land Use Plan policy that says Currituck will not support energy producing facilities and the Board of Commissioners have determined solar arrays fall under the energy producing category.

Mr. Craddock opened the public hearing.

Steve Fentress (247 Grandy Road, Grandy), spoke against the total removal of solar arrays in the UDO. He said the county should not completely ban solar arrays, but put more stringent restrictions on them to keep solar arrays from being in Currituck County. Mr. Fentress was concerned that the panels currently used are not tested and may have toxic materials since they are not made in the United States. Mr. Fentress also showed concern for the setbacks not being great enough.

Mr. Craddock closed the public hearing.

Board members discussed tax percentages for farm land verses solar arrays. Some members showed concern for loss in revenue for the county. Discussion was also held on property owners not having the right to put solar arrays on non-productive farm land.

Mr. McColley motioned to approve due to the active agricultural lands (AG1) and the county's nonsupport of energy producing facilities (ID9) for consistency of the Land Use Plan. There was no second and the motion died.

Board members discussed whether the item could be tabled and Mr. Woody encouraged them to make a decision of approval or denial.

Mr. McColley motioned to approve again with the same consistencies of the Land Use Plan as stated before, due to the active agricultural lands (LUP Policy AG1) and the county's nonsupport of energy producing facilities (LUP Policy ID9) and Bobby Bell seconded the motion.

Ms. Overton asked to amend the motion as approved with the recommendation that the Board of Commissioners not rush to a decision since this affects the county with income loss and land sitting vacant for several years.

Mr. McColley agreed to the amended motion and the motion carried unanimously.

<b>RESULT:</b>	<b>RECOMMENDED APPROVAL</b>	<b>Next: 2/20/2017</b>
<b>MOVER:</b>	<b>[UNANIMOUS]</b>	
<b>SECONDER:</b>	John McColley, Board	
<b>AYES:</b>	Robert (Bobby) Bell, Board Member, Steven Craddock, Board Member, John McColley, Board Member, Jane Overstreet, Board Member, J. Timothy (Timmy) Thomas, Board Member	
<b>ABSENT:</b>	Carol Bell, Chairman, Fred Whiteman, Vice Chairman, C. Shay Ballance, Board	



**STAFF REPORT  
PB 16-28 CURRITUCK COUNTY  
BOARD OF COMMISSIONERS  
FEBRUARY 20, 2017**

The Currituck County Board of Commissioners requests an amendment to the Unified Development Ordinance, Chapter 4 Use Standards, to remove solar array as an allowable use in the county.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1: That Chapter 4 is amended by deleting the following bold strikethrough language in Section 4.1.2:**

USE CATEGORY	USE TYPE	ZONING DISTRICT (CURRENT DISTRICT IN PARENTHESIS) [NOTE: OVERLAY OR SUB-DISTRICT REQUIREMENTS MAY FURTHER LIMIT USES]														ADDITIONAL REQ. (4.2.3.H.1)	
		RC	AG	SFM	SFO	SFR	SFI	MXR	GB	LB	CC	VC	LI	HI	PD-R		PD-M
<b>INSTITUTIONAL USE CLASSIFICATION</b>																	
Utilities	Solar array		<del>C</del> <del>Z</del>														<del>3.H.</del> <del>1</del>

**Item 2: That Chapter 4 is amended by deleting the following bold strikethrough language in Section 4.2.3.H.1:**

**4.2.3. Institutional Uses**

**H. Utilities**

~~(1)~~ **Solar Array**

~~(a)~~ **Solar arrays shall be configured to avoid glare and heat transference to adjacent lands.**

~~(b)~~ **Appropriate ground cover/grass is required and shall be maintained as not to create a fire hazard.**

~~(c)~~ **The solar panels, equipment, and associated security fencing shall be located at least 300 feet from any perimeter property line abutting a residential**

~~dwelling, residential zoning district, religious institution, public school, state licensed day care center, public playground, public swimming pool, or public park. The solar panels, equipment, and associated security fence shall be screened from those uses or zoning districts by a Type D buffer. The buffer may be reduced to a Type C when abutting a right-of-way, use, or zoning district not listed above and the setback may be reduced to 100 feet in these instances.~~

~~(d) The total height of the solar energy system, including any mounts, shall not exceed 15 feet above the ground when orientated at maximum tilt.~~

~~(e) The solar energy system owner shall have 12 months to complete decommissioning of the facility if no electricity is generated for a continuous 12 month period.~~

~~(f) Operations, maintenance, and decommissioning plans are required.~~

~~(g) Ground water monitoring wells shall be installed prior to construction of the solar energy system and testing data shall be submitted annually to the Planning and Community Development Department until decommissioning occurs. Monitoring wells shall be located near the center of the site and along each exterior property line at approximately the lowest ground elevation point of each property line. Testing data shall be provided to the county indicating compliance with EPA National Primary Drinking Water Standards prior to construction and annually until decommissioning occurs.~~

~~(i) Should the initial ground water testing indicate that the site is not in compliance with the EPA National Primary Drinking Water Standards subsequent annual reports shall indicate no~~

~~increase in noncompliance with those standards.~~

~~(h) Prior to the issuance of a building permit, the developer shall post a performance guarantee in the form of cash deposit with the county to ensure decommissioning funds are available in the amount equal to 115 percent of the estimated decommissioning costs minus salvageable value. Estimates for decommissioning the site and salvageable value shall be prepared and certified by a registered engineer or North Carolina licensed general contractor and submitted prior to building permit approval and verified by a registered engineer or North Carolina licensed general contractor and resubmitted every two years thereafter until decommissioning occurs.~~

*Please note that the sections following this item will be renumbered accordingly.*

**Item 3: Statement of Consistency and Reasonableness:**

The requested zoning text amendment is consistent with the 2006 Land Use Plan because:

- It protects active agricultural lands having a high productive potential and conserves those lands for continued agricultural use. (LUP POLICY AG1)
- It does not support the exploration or development of energy producing facilities within the county's jurisdiction. (LUP POLICY ID9)

The request is reasonable and in the public interest because:

- It prevents incompatible solar array projects from being established that could adversely impact the quality of life for county residents.
- It promotes the conservation of farmland which is consistently a community value and need included in adopted plans
- In reference to a February 10, 2016 report provided by the North Carolina Department of Environmental Quality, It limits the loss of agricultural land and jobs in the county from conversion of agriculturally used property to use for solar arrays and the loss of wildlife habitat due to large areas encompassed by solar arrays that are fenced and affect food availability for wildlife.

**Item 4:**The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of

competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Item 5:** This ordinance amendment shall be in effect from and after the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Board of Commissioners' Chairman  
Attest:

\_\_\_\_\_  
Leeann Walton  
Clerk to the Board

DATE ADOPTED: \_\_\_\_\_  
MOTION TO ADOPT BY COMMISSIONER: \_\_\_\_\_  
SECONDED BY COMMISSIONER: \_\_\_\_\_  
VOTE: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS \_\_\_\_\_  
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PLANNING BOARD DATE: February 14, 2017  
PLANNING BOARD RECOMMENDATION: Approval  
VOTE: 5 AYES 0 NAYS  
ADVERTISEMENT DATE OF PUBLIC HEARING: 2/5/17 & 2/15/17  
BOARD OF COMMISSIONERS PUBLIC HEARING: February 20, 2017  
BOARD OF COMMISSIONERS ACTION: \_\_\_\_\_  
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: \_\_\_\_\_  
AMENDMENT NUMBER: \_\_\_\_\_