

The Smithfield Town Council met in regular session on Tuesday, June 3, 2014 at 7:00 p.m. in the Council Chambers of the Smithfield Town Hall. Mayor John H. Lampe II. presided.

Councilmen Present:

M. Andy Moore, Mayor Pro-Tem
Marlon Lee, District 1
J. Perry Harris, District 2
Travis Scott, District 3
Roger A. Wood, District 4
Emery D. Ashley, At-Large
Charles A. Williams, At-Large

Councilmen Absent

Administrative Staff Present

Paul Sabiston, Town Manager
Lenny Branch, Public Works Director
Paul Embler, Planning Director
Kenneth C. Griffin, Public Utilities Director
Patrick Harris, Emergency Services
Tim Kerigan, Human Resources/PIO
Tim Johnson, Parks & Rec Director
Mike Scott, Police Chief
Greg Siler, Finance Director
Shannan Williams, Town Clerk

Present:

Bob Spence, Town Attorney

Staff Absent:

The invocation was given by Councilman Scott followed by the Pledge of Allegiance led by Silas McClure of Boy Scout Troop 95.

APPROVAL OF AGENDA:

Mayor Pro-Tem Moore made a motion, seconded by Councilman Williams, to approve the agenda with the following amendments:

- Add to the Business Items #5 – *Appointment of a member of Council to the Upper Coastal Plain Area Rural Planning Organization (RPO) Transportation Advisory Committee (TAC).*
- Add to the Business Items #6 – Discussion of changes to the new hire policy.

Unanimously approved.

Mayor Pro-Tem Moore made a motion, seconded by Councilman Scott, to add the following to the agenda:

- Add to the Business Items #7 – Update regarding litigation

Unanimously approved.

PRESENTATIONS: None

PUBLIC HEARINGS:

Town Clerk Shannan Williams swore in persons wishing to offer testimony at the Public Hearings

1. Community Development Block Grant (CDBG) – Small Cities Community Development Block Grant to improve the Water Treatment Plant.

Mayor Pro-Tem Moore made a motion, seconded by Councilman Harris, to open the public hearing. Unanimously approved.

Public Utilities Director Ken Griffin informed the Council that the purpose of this first of two required Public Hearings was to announce the Town of Smithfield's intent to apply for a Small Cities Community Development Block Grant (CDBG) to improve its Water Treatment Plant, specifically its Raw Water intake facilities as described in the Preliminary Engineering Report (PER) prepared by the

Wooten Company dated March 2014. The installation cost is estimated at \$2,450,000.00 with a total estimated cost over time of \$ 3,010,000. Preliminary review of each of the CDBG criteria indicates the Town of Smithfield should receive a favorable score for this highly competitive grant program.

Mayor Lampe asked if there were any questions/comments from anyone in attendance. There were none.

Mayor Pro-Tem Moore made a motion, seconded by Councilman Wood, to close the public hearing. Unanimously approved.

No action taken

2. Conditional Use Permit: Nitro Solar Farm (CUP-14-03)

Mayor Pro-Tem Moore made a motion, seconded by Councilman Williams, to open the public hearing. Unanimously approved.

Nitro Solar, LLC requested a Conditional Use Permit to operate a solar farm on approximately 21 acres of an 87.37 acre tract of land within an R-20A (Residential-Agricultural) zoning district. The property under consideration is located on the east side of Yelverton Grove Road approximately 1500 feet south of its intersection with Ray Drive and further identified as Johnston County Tax ID# 15L11-034.

Planning Director Paul Embler testified that the installation would include a 5 mega-watt, fixed tilt, photovoltaic solar farm with electrical power inverters, electrical transformer and buried conduit. The proposed facility would tie into the Duke Energy Progress power grid. It would be enclosed and have the minimum fifty foot buffer required by the Unified Development Ordinance (UDO).

Staff has classified the proposed solar facility as a utility; as a result, it is permitted in all zoning districts of the Town of Smithfield with an approved Conditional Use Permit. The prospective solar farm extends across 21 acres which is a substantial industrial use proposed for a neighborhood of otherwise low density residential and agricultural uses. The project land fronts Yelverton Grove Road and surrounds, but for the Road, or borders several existing residences. When the Town drafted the UDO, the only utility uses were small utility substations, pumping stations or transformer boasting sites as required to operate the local electrical, sewer and water systems. The proposed solar utility substantially differs from such uses in size and intensity. Its outline on the pattern of uses in the area is far more substantial and its impact would negatively affect the uses and values of the local properties.

Planning Staff recommended approval of the application and the Planning Board at its May 1, 2014 meeting also recommended approval. One member of the Planning Board was the owner of the proposed site but he recused himself with Board approval from the vote.

At the hearing before the Town Council on June 3, 2014, Tommy Cleveland, an Engineer with North Carolina State University in its support of solar projects, testified that there would be no toxic materials in the installed panels and they would be encased so as not to have emissions. He stated the racks for the panels met a 1703 UL safety head standard engineered to pass wind loads of approximately 90 miles per hour but then stated he was unsure if that information was accurate. There are no toxic materials in the silicon based panels which carry a twenty-five year warranty. The racks are not encased in concrete so they can simply be removed when the project is abandoned. He admitted he designs solar farms but has never been involved in the construction of a solar farm. However, he did not believe the panels would pose a danger to the environment.

Rick Kirkland, a MIA appraiser, stated that he did not believe the solar farm would affect adjacent residential property values. He cited one solar project as having good comparables (comps), a project in Goldsboro, NC constructed in the recession. He opined that with no noise, traffic or smell the only adverse effect would be appearance and that could be screened by trees in the fifty foot buffer. However, the applicant's plans offered screening primarily with shrubs (not trees) apparently following general landscaping suggested in the UDO for general projects. He admitted a fifty foot buffer as proposed by the applicant is minimal and suggested 100 feet from dwellings. He further admitted that the price per square foot for residential sales near the Goldsboro solar facility was \$74.95 per square

foot before the solar farm was installed and fell to \$72.44 per square foot after the installation. He chose to attribute the descent in price to the fact some of the approximately 2000 square foot houses constructed after the solar farm were 500 square feet larger. The price per square foot after the installation of the solar farm however remained lower even after the economy improved. Sales adjacent to the solar farm had been lower than other areas of Goldsboro.

He stated that another effect would be that goats and sheep could be used to control vegetation but that the pasturing of the animals in the farm was not currently planned. He stated he had not talked with adjoining landowners of the proposed project but thought the landowner had spoken to them.

When questioned about Town enforcement standards to control property maintenance, Planning Director Paul Embler testified that the solar farm was in the Extra Territorial Jurisdiction (ETJ) of the Town and current enforcement for grass and maintenance of this area or other nuisances (such as the odor of livestock) was under the jurisdiction of Johnston County.

Engineer Tommy Cleveland stated that if a motor vehicle accident occurred at the site, the vehicle could collide with 300 volts of electricity. The solar panels are lower to the ground and easier for a car to collide with than would be the normal utility pole. Mr. Cleveland stated that if the panels were damaged by collision, the operator of the utility could remotely disconnect the voltage. In the meantime, the voltage would be excessive.

From the evidence presented, the Council voted to deny the project finding that the applicant had failed to carry its burden in that the solar farm, though permitted by staff interpretation of the UDO as a utility, is really the insertion of a far more intense use into a low density residential and agricultural area than the normal substation or pumping station for the local utilities. Its outline would be large in the area. Its technology is new and the voltage at the inverters is high and dangerous to persons if impacted so low to the ground. Its technology requires disconnecting by the utility or operator when they arrive at the site and does not allow for quick disconnect on impact. Its buffering as proposed was only with light shrubs in a minimal buffer and the appearance of the panels would be of the intrusion of an industrial utility use into this residential neighborhood, would damage the aesthetics of the area, and would hurt property values.

Thus ultimately, the Council finds that the solar farm would endanger the health, safety, or general welfare if located where proposed and developed according to the plan as submitted. Furthermore, the use would adversely affect adjoining properties and their uses. The project would have a negative effect on the value of residences in the area and that the evidence of the appraiser failed to persuade. The Council finds that the appraiser could present only one set of comps statewide. That set of comps for the Goldsboro site showed an actual decrease in value for homes in the area after the construction of the solar farm despite the improvement in the economy during the last four years. Sales in the Goldsboro area have increased after the construction of the solar farm while sales adjacent to the site have decreased. Furthermore, the Council finds the applicant did not present evidence that the utility would not add safety risks. In fact there was evidence of public safety danger if a vehicle or other impact accident occurred to inverters close to the ground and without immediate cut offs as opposed to the height of most high voltage on telephone wires or underground.

Mayor Lampe asked if there were any questions/comments from those persons in the audience that were duly sworn to testify.

- Teresa Creech Parker, whose mother is a neighbor, had concerns.

Planning Director Paul Embler has incorporated his entire record and provided it to Council in written form in the June 3, 2014 agenda packet.

Councilman Ashley made a motion, seconded by Councilman Wood, to close the public hearing. Unanimously approved.

The Written Finding of Facts

At its June 3, 2014 regular meeting, The Town Council of the Town of Smithfield decided the matter of this Conditional Use Permit Application by motion and vote on each of the following four findings of fact.

1. Finding One of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved or is approved with the following stated conditions.

The proposed solar farm will not materially endanger the public health safety or general welfare; the panels are low profile, will be screened from view, do not produce sound, do not move and have no emissions. They are completely safe and will be installed following all local electrical and building codes. They will be designed to withstand wind loads and will be fenced in and buffered for safety purposes. They are monitored electronically on a 24 hour basis. There are no lights, so neighbors will not be visually disturbed.

Councilman Ashley made a motion, seconded by Mayor Pro- Tem Moore, to vote in the affirmative to Finding One of Four. Unanimously approved.

2. Finding Two of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinance or other applicable regulations or is approved with the following additional stated conditions.

The solar farm will be in complete compliance with local ordinances and; meets required conditions and specifications. The project will be prepared by licensed North Carolina Engineers and constructed by licensed North Carolina Contractors and Electricians.

Councilman Ashley made a motion, seconded by Councilman Wood, to vote in the affirmative to Finding Two of Four. Unanimously approved.

3. Finding Three of Four: Denied

Based on the evidence and testimony presented it is the finding of the Town Council that the application will substantially injure the value of adjoining or abutting property and/or will be detrimental to the use or development of adjacent properties or other neighborhood uses in the following ways or for the following reasons.

The proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduce land values due to loss in desirability of their land that is in close proximity to a major utility.

Councilman Charles A. Williams made a motion, seconded by Councilman Harris to vote in the negative to Finding Three of Four for the reason that based on the evidence and testimony presented, the proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduced land values due loss in desirability of their land that is in close proximity to a major utility.

Mayor Pro-Tem Moore, Councilman Lee, Councilman Harris, Councilman Scott, Councilman Wood and Councilman Williams voted in favor of the motion. Councilman Ashley voted against the motion. Motion carried in a six to one vote.

4. Finding Four of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application would not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development of the adjacent properties or is approved with the following additional stated conditions.

The screen buffer will be in complete harmony with the area, it will feature large, medium, and small trees and bushes, the solar panels will not be seen from neighboring sites and will not generate any noise or emissions. There are no negative impacts generated by the solar farm, it does not require sewer or water services, creates no traffic on the roads, does not impact school populations and requires no town services such as police or fire.

Councilman Ashley made a motion, seconded by Councilman Harris to vote in the affirmative to the Finding Four of Four. Unanimously approved.

Conditional Use Permit Denial

Councilman Harris made a motion, seconded by Councilman Wood, that based upon failure to meet all of the above four stated findings and for reasons stated therein, I move to recommend denial of Conditional Use Permit Application # CUP-14-03 for the following stated reason: the application will substantially injure the value of adjoining or abutting property and/or will be detrimental to the use or development of adjacent properties or other neighborhood uses in the following ways or for the following reasons:

The proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduced land values due to loss in desirability of their land that is in close proximity to a major utility.

Mayor Pro-Tem Moore, Councilman Lee, Councilman Harris, Councilman Scott, Councilman Wood and Councilman Williams voted in favor of the motion. Councilman Ashley voted against the motion. Motion carried in a six to one vote.

3. Conditional Use Permit: Elizabeth Solar Farm, LLC (CUP-14-04)

Councilman Harris made a motion, seconded by Wood, to open the public hearing. Unanimously approved.

Elizabeth Solar, LLC requested a Conditional Use Permit to operate a solar farm on approximately 24.64 acres of a 34.22 acre tract of land within an R-20A (Residential-Agricultural) and B-3 (Business) zoning district. The property under consideration is located on the south side of US 70 Business Highway East approximately 850 feet east of its intersection with Hill Road and further identified as Johnston County Tax ID# 15M12-32B.

Planning Director Paul Embler testified that the installation would include a 34 mega-watt fixed tilt photovoltaic solar farm with electrical power inverters, transformer and buried conduit. The proposed facility would tie into the Duke Energy Progress power grid.

Planning staff has classified the proposed solar facility as a utility, a "public utility substation/switching station", which is not defined in the Unified Development Ordinance (UDO). The result is that it is permitted in all zoning districts of the Town of Smithfield with an approved Conditional Use Permit. This solar farm is planned to extend across 24.64 acres which is a substantial industrial use proposed

for a neighborhood of low density residential and agricultural uses with some light highway business along Highway 70. The project land fronts on Highway 70 but extends back into the more residential area that runs east and extends along the eastern side of Hill Road. The location on Highway 70 is on the business corridor into Smithfield but is well out of any intense business district which begins just east of the I-95 intersection. When the UDO was drafted, the only utility uses were small utility substations, pumping stations or transformer boosting sites as required to operate the local electrical, sewer and water systems. The proposed solar utility substantially differs from such uses in size and intensity and in its footprint on the pattern of uses in the area is far more substantial and its impact would negatively affect the uses and values of the local properties.

However, Planning staff recommended approval of the application. The Planning Board voted against the application expressing concerns that the proposed project would materially endanger the public health or safety if located where envisioned and developed. According to the plan as submitted, due to its large size and the scale of the project in what is otherwise a low density residential and agricultural area with limited small highway business, the Planning Board found the project would have an adverse effect on adjacent land values.

The applicant proposed the minimum fifty foot buffer required by the UDO to shield the facility from neighboring houses and small highway businesses. Multiple pictures of constructed solar farms displaying minimal or no screening from the view of adjacent properties and even residences were presented. Nevertheless, at the hearing before the Town Council, Richard Kirkland, an MAI appraiser for the applicant, opined that the solar farm would have no negative impact on adjacent properties and thought the use to be in harmony with the area. Mr. Kirkland presented no evidence in the record to support his opinion. He had testified at a prior hearing on a different solar farm application that night that he felt the impact of the farm could only be measured by two comparables (comps), one in Chapel Hill with no adjacent home sales and one in Goldsboro with adjacent home sales before and after the construction of the solar farm. He had visited about 40 other sites and could not find them to offer comps. In the Goldsboro situation, house values fell after construction of the solar farm from about \$74.95 per square foot to \$72 per square foot, but he opined in the prior unrelated hearing that this might be partly due to the houses constructed after the farm being about 500 square feet larger than those before as the economy improved. Sales also slowed adjacent to the solar project in comparison to other properties. Mr. Kirkland further stated that there would be no adverse effect to adjoining properties because he did not believe there would be noise, smell or traffic generated by the site. The only adverse effect would be the appearance of rows of unscreened solar panels. Regardless of whether this was even evidence presented at this hearing, rather than actually at the prior hearing, the Town Council finds that the 24.64 acre solar farm in this neighborhood of low density residential and agricultural use would so differ from the pattern of low intensity uses in the area that it would negatively impact adjoining properties, both their use, their value, and their enjoyment. Furthermore, the applicant offered only minimal screening of the solar farm from adjacent properties and showed multiple photos of unscreened or minimally screened solar farms that would damage adjacent properties. The Council finds that the appearance of the rows of panels, minimally screened as the applicant planned and apparently easily visible outside the property as constructed elsewhere, would damage adjacent properties and be a large substantial industrial use inconsistent with the proposed neighborhood uses.

Tommy Cleveland, a mechanical engineer with a Master's Degree who is employed at North Carolina State University for solar company projects, testified that there would be no toxic materials in the installed panels and they would be encased so as not to have emissions. He further testified that the noise created by the facility would impact adjoining properties mostly from the units at the edge of the 24.64 acres. He testified that fans cooling the electric inverters create noise. A neighbor within 105 feet would hear 50 decibels of noise, which he characterized as the equivalent of the noise generated in a normal conversation between persons. For instance the dB(a) generated by a fan at the solar farm would be about 80 dB(a) (decibels) at a distance of 3.28 feet from the unit, but 50 dB(a) at 104.99 feet from the unit, still 38 dB(a) at 419 feet from the unit and 32 dB(a) at 839.9 feet from the unit.

Sarah Hayward, attorney for the applicant, testified that she did not believe the project would negatively impact public safety or the environment. She believed it would not emit odor or noise or create traffic. It would create some jobs.

Eugene Foxworth, a municipal planner employed in another county, owns a home located at 201 Hill Road. Mr. Foxworth's home would be bordered on two sides by the proposed project. He testified that it was not realistic for Smithfield to treat this project like a small substation. Substations are not twenty four acres.

Mr. Foxworth is well familiar with the area. He objected to the constant noise from the units. He stated that he had pulled data from a university showing that 80 decibels is equivalent to a diesel train at 45 miles per hour and that this would be the noise at 100 feet. Mr. Foxworth contradicted the statement of Mr. Cleveland in that the noise would not be a negative impact at 400 or 800 feet. He further stated that he may want to market his house and the fair market value of his home would decrease immediately if it were adjacent, even with the fifty foot buffer, to a 24 acre solar panel facility. Not only would the proposed use damage the residential areas, such as Hill Road, but he objected to the solar farm as inconsistent with the small highway business uses along Highway 70. He stated that the proposed 24 acre facility would grow to be the eastern entrance to Smithfield. The intensity and scale of the solar farm would be detrimental to the entrance corridor.

The Council found that the proposed large scale solar farm was inconsistent with the pattern of uses at the entrance corridor to the eastern side of the Town along Highway 70 as Mr. Foxworth testified. It further found that the size and intensity of a 24 acre solar farm with the attendant noise for the solar farm, the visual impression and the actual impact of a large industrial utility use in the low density residential area along Hill Road would damage residential values and adversely affect small highway business uses along Highway 70.

From this evidence, the Council voted to deny the project finding that the applicant had failed to carry its burden in that the solar farm, though permitted by staff's interpretation of the UDO as a utility, is really the insertion of a far more intense use into a small highway business and low density residential and agricultural area than the normal substation or pumping station for the local utilities. Its outline would be large in the area. Its buffering, as proposed, was only with light shrubs and the appearance of the panels would be of the intrusion of an industrial utility use into this residential neighborhood, would damage the aesthetics of the area, and would hurt property values. Furthermore, the Council finds that these proposed sites are new and the applicant did not present sufficient evidence to carry its burden to prove that the utility would not increase safety risks to the neighborhood if a motor vehicle or other impact occurred to inverters close to the ground and without immediate cut offs. The Council finds that the farm located on highway 70 would endanger public health safety and general safety due to the risk of impact to the inverters from errant highway traffic. The Council finds that the height of most high voltage on telephone wires or underground is more protected from impact on the ground. The low to the ground inverters proposed by the applicant if impacted from the highway or otherwise would have loose high voltage current similar to that normally confined by utilities underground or on raised poles.

Thus ultimately, the Council finds that the solar farm would endanger the health, safety, or general welfare if located where proposed and developed according to the submitted plan because of its size and intensity and of an industrial appearance and usage that is fundamentally incompatible with this neighborhood. The applicant offered insignificant buffers for this incompatibility and showed in photos that in other projects there was virtually none. Fundamentally, the Council finds that the use and its large scale appearance would adversely affect adjoining properties and their uses and thus the value of small consumer oriented highway business and residences in the area. The evidence of the applicant failed to carry the initial burden much less persuade. The Council finds that the appraiser could present only one set of comparables (comps) statewide. That set of comps for the Goldsboro site showed an actual decrease in value for homes in the area after the construction of the solar farm despite the improvement in the economy during the last four years. Sales in the Goldsboro area have increased after the construction of the solar farm but sales adjacent to the site have decreased.

Councilman Harris made a motion, seconded by Mayor Pro-Tem Moore, to close the public hearing. Unanimously approved.

The Written Finding of Facts

At its June 3, 2014 regular meeting, The Town Council of the Town of Smithfield decided the matter of this Conditional Use Permit Application by motion and vote on each of the following four findings of fact.

1. Finding One of Four: Denied

Based on the evidence and testimony presented it is the finding of the Town Council that the application will materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved for the following stated reasons:

The proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduced land values due to loss in desirability of their land that is in close proximity to a major utility.

Councilman Scott made a motion, seconded by Councilman Wood, to vote to deny Finding One of Four for the reason that based on the testimony and evidence presented, the proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduce land values due to loss in desirability of their land that is in close proximity to a major utility.

Councilman Scott, Councilman Wood, Councilman Lee, Councilman Harris, and Councilman Williams voted in favor of the motion. Mayor Pro-Tem Moore and Councilman Ashley voted against the motion. Motion carried five to two.

2. Finding Two of Four: Approved

Based on the evidence and testimony presented, it is the finding of the Town Council that the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinance or other applicable regulations or is approved with the following additional stated conditions.

The solar farm will be in complete compliance with local ordinances and; meets required conditions and specifications. The project will be prepared by licensed North Carolina Engineers and constructed by licensed North Carolina Contractors and Electricians.

Councilman Ashley made a motion, seconded by Councilman Harris, to vote in the affirmative to Finding Two of Four. Unanimously approved.

3. Finding Three of Four: Denied

Based on the evidence and testimony presented it is the finding of the Town Council that the application will substantially injure the value of adjoining or abutting property and/or will be detrimental to the use or development of adjacent properties or other neighborhood uses in the following ways or for the following reasons.

The proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduce land values due loss in desirability of their land that is in close proximity to a major utility.

Councilman Harris made a motion, seconded by Councilman Wood to vote to deny Finding Three of Four for the reason that based on the evidence and testimony

presented, the proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduced land values due to loss in desirability of their land that is in close proximity to a major utility.

Mayor Pro-Tem Moore, Councilman Lee, Councilman Harris, Councilman Scott, Councilman Wood and Councilman Williams voted in favor of the motion. Councilman Ashley voted against the motion. Motion carried in a six to one vote.

4. Finding Four of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application would not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development of the adjacent properties or is approved with the following additional stated conditions.

The screen buffer will be in complete harmony with the area, it will feature large, medium, and small trees and bushes, the solar panels will not be seen from neighboring sites and will not generate any noise or emissions. There are no negative impacts generated by the solar farm, it does not require sewer or water services, creates no traffic on the roads, does not impact school populations and requires no town services such as police or fire.

Councilman Harris made a motion, seconded by Councilman Ashley to vote in the affirmative to the Finding Four of Four. Mayor Pro-Tem Moore, Councilman Harris, Councilman Ashley, Councilman Lee and Councilman Williams voted in favor of the motion. Councilman Scott and Councilman Wood voted against the motion. Motion carried five to two.

Conditional Use Permit Denial

Councilman Harris made a motion, seconded by Councilman Williams, that based upon failure to meet all of the above four stated findings and for reasons stated therein, I move to recommend denial of Conditional Use Permit Application # CUP-14-03 for the following stated reasons:

The application will materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved for the following stated reasons: The proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduced land values due to loss in desirability of their land that is in close proximity to a major utility.

The application will substantially injure the value of adjoining or abutting property and/or will be detrimental to the use or development of adjacent properties or other neighborhood uses in the following ways or for the following reasons: The proposed solar farm as submitted will be detrimental to the adjacent land uses due to the type size and intensity of the project. Adjacent land and residential use will suffer from reduced land values due to loss in desirability of their land that is in close proximity to a major utility.

Mayor Pro-Tem Moore, Councilman Harris, Councilman Williams, Councilman Scott, Councilman Lee and Councilman Wood voted in favor of the motion. Councilman Ashley voted against the motion. Motion carried in a six to one vote.

CITIZENS COMMENTS:

- Luther Peedin – Electric Line Crew Leader for the Town addressed the Council on the concerns of the Electric Department and the Water/Sewer Department employees. Mr. Peedin explained that these two departments are no longer being paid overtime for hours worked in excess of 40 hours. He explained that the employees were given compensatory time instead of monetary compensation. Mr. Peedin stated that it was an unfair practice especially when crews were expected to work after already completing a full work day or in the event that they were called out during a holiday.
- Carl Garner – Electric Line Crew Leader for the Town agreed with the comments made by Mr. Peedin. Mr. Garner stated that they were not asking for raises, but simply to be compensated for the work that is done.

Human Resources Director Tim Kerigan clarified to the Council how non-exempt employees are to be compensated based on the Fair Labor Standards Act (FLSA).

- Tony Nixon – Chairman of the East Smithfield Improvement Organization addressed the Council on concerns expressed by the residents of Pine Acres in regards to the Smithfield Crossings Project. Mr. Nixon explained that the project abuts several properties and the citizens are concerned about the buffer between the properties and the roadway.

Town Manager Paul Sabiston explained that once the Town assumes the roadway from NCDOT, a buffer will be installed.

CONSENT AGENDA:

Mayor Pro-Tem Moore made a motion, seconded by Councilman Williams, to approve the following items as listed on the Consent Agenda:

1. Approval of Minutes:
 - April 30, 2014 – Special Meeting – FY 2014-2015 Budget
 - May 6, 2014 – Regular Meeting
2. Approval to add “Slow Children at Play” signs on North Sussex Street and on Rose Street.
Approval to add a “Neighborhood Watch” sign in the 200 block of Laurel Circle Drive.
3. Approval of various budget amendments.

BUDGET AMENDMENTS						
June, 2014						
GENERAL FUND				BEFORE	ADJ.	AFTER
1. Revenue						
10-3990-0000 Fund Balance Appropriated				\$ _____ -	\$ (250,342)	\$ (250,342)
Expenditures						
10-4110-5720 Non-Departmental - Fund Balance Reserve				\$ 250,342	\$ (250,342)	\$ _____ -
Justification: To correct budget intended to increase fund balance. The correct way to increase fund balance is to intentionally under estimate revenue						

2. Revenue						
10-3900-1700 Grant Revenue			<u>\$ 22,604</u>	<u>\$ 13,885</u>	<u>\$ 36,489</u>	
Expenditures						
10-4110-5706 Non-Departmental/RADA			<u>\$ 18,604</u>	<u>\$ 13,885</u>	<u>\$ 32,489</u>	
Justification: To fund additional Raleigh Area Development Authority (RADA) revenues and expenditures; The entire budget is grant funded.						
3. Expenditures						
10-4120-9543 Debt Service - Smithfield Crossing Short Term		\$ 157,411		\$ (38,328)	\$ 119,083	
10-4120-9537 Debt Service - Street Paving 2009		58,200		2,270	60,470	
10-4120-9535 Debt Service - Aquatic Center (FOP)		216,100		10,780	226,880	
10-4120-9534 Debt Service - Aquatic Center (Town)		<u>322,150</u>		<u>25,278</u>	<u>347,428</u>	
		<u>\$ 753,861</u>		<u>\$ -</u>	<u>\$ 753,861</u>	
Justification: To correct debt service cost - No additional funds allocated.						
			BEFORE	ADJ.	AFTER	
4. Revenue						
10-3423-0000 EMS-Insurance/Debtsetoff Collection			<u>\$ -</u>	<u>\$ 2,662</u>	<u>\$ 2,662</u>	
Expenditures						
10-5400-1100 EMS - Telephone		\$ -		\$ 562	\$ 562	
10-5400-3300 EMS - Supplies/Operations (COECO)		-		600	600	
10-5400-3500 EMS - Contracted Services (Mgmt Consult)		-		<u>1,500</u>	<u>1,500</u>	
		<u>\$ -</u>		<u>\$ 2,662</u>	<u>\$ 2,662</u>	
Justification: To fund establish and fund final expenses for EMS with monies collected through debt setoff						
<u>FIREMEN'S RELIEF FUND</u>						
5. Revenue						
50-3300-0000 Reimbursement			<u>\$ -</u>	<u>\$ 2,000.00</u>	<u>\$ 2,000.00</u>	
Expenditures						
50-4010-3500 Supplemental Retirement		<u>\$11,954.00</u>		<u>\$ 2,000.00</u>	<u>\$ 13,954.00</u>	
Justification: To fund additional supplemental retirement cost with reimbursements						
Approved by the Smithfield Town Council this the 3rd day of June, 2014						

4. Approval to replace three part-time employees at the Smithfield Recreation and Aquatics Center.

Unanimously approved.

BUSINESS ITEMS:

1. Electric Residential Rate Study Discussion

Town Manager Paul Sabiston gave the Council an update on a complaint made by Ms. Jordan on behalf of the resident at 824 Blount Street at the May 2014 regular meeting. Mr. Sabiston stated that staff reviewed all the utility usage and determined that there was a large consumption of electric during the months presented to the Council. Mr. Sabiston stated that staff is attempting to assist the resident with the problem.

Public Utilities Director Ken Griffin gave the Council an update on residential electric rates. Mr. Griffin explained that the Town has the second lowest residential rate of all the thirty-two North Carolina Eastern Municipal Power Agency (NCEMPA) members. Mr. Griffin further explained that the rates in town are higher than those of Duke Energy Progress (DEP), but hopefully in the near future the Town's rates would be more competitive based on continued negotiations between NCEMPA and DEP. Mr. Griffin also stated the Town's non-purchase power cost is approximately 15.5% and is considerably lower than the national average of 25% to 35%.

No action taken.

2. Agreement and Statement of Work Approval – Nexgrid for a Smart Grid Pilot Deployment

Public Utilities Director Ken Griffin addressed the Council on a request to enter into an agreement with Nexgrid for deployment of a Smart Grid with Automated Metering Infrastructure (AMI). Mr. Griffin explained that based on an analysis performed by ElectricCities, it showed a very favorable return on investment. The system will improve customer service, improve administrative and billing efficiencies, improve operational efficiencies and increase system reliability. Smithfield Public Utilities has requested a proposal from Nexgrid to deploy a Smart Grid Pilot. The Statement of Work (SOW) and Pilot Quote call for installation of 45 "smart" electric meters of which 5 will have a remote disconnect feature, 5 water meter radio read heads, and the necessary smart grid infrastructure to install a fully functioning Pilot Smart Grid for Smithfield and integrate the data generated into our Customer Service and Billing software, Logics. The total price is \$12,242.00. The costs will be expended from the Electric Fund's Capital Outlay line item (31-7230-7400).

Mayor Pro-Tem Moore made a motion, seconded by Councilman Ashley, to approve the request as submitted. Mayor Pro-Tem Moore, Councilman Ashley, Councilman Williams and Councilman Wood voted in favor of the motion. Councilman Harris, Councilman Lee and Councilman Scott voted against the motion. Motion carried 4 to 3.

3. Josephine B. George Fund Update

Finance Director Greg Siler informed the Council that the Josephine B. George endowment of \$20,050 was established in 1990 by James P. George to honor his mother, Josephine B. George. The original agreement was between the endowment and the Year Round Garden Club of Smithfield to ensure continued support for the club's effort to beautify the Town of Smithfield. Half of the endowments investment income was to be used for beautification projects and the remaining half added back to the investment. Once the investment reached \$50,000, it would be maintained in perpetuity as a permanent endowment and all of the net income would then be expended for projects of the club. The agreement with the Town has been revised several times with the most recent dated January 1, 2013. This endowment is currently being managed and often used by the Appearance Commission. Mr. Siler explained that there were periods when earnings were not drawn from the endowment, resulting in a value far beyond the intended \$50,000 perpetual investment. The failure to withdraw earning occurred most recently in fiscal years, 2009, 2011, 2012, and 2013. As a result, the endowment is indebted to the Town of Smithfield for \$6,895.37 for beautification expenditures which were budgeted and funded, but not reimbursed from the Josephine B. George endowment earnings. In addition, the budget for beautification projects for several years was set higher than the investment income would support. The current investment is yielding \$3,150 annually in interest income with payments now set to automatically transfer to the Town of Smithfield.

Mr. Siler, met with James P. George, and the past Appearance Committee Board Chair, Robert Worsham, in an attempt to collaborate on a solution to resolve the monies owed to the Town. The options for repaying the monies owed were reduced to the following two recommendations:

Recommendations: Two options were offered with regards to settling the debt owed to the Town by the endowment:

1. Restrict the endowment from future spending until such time the interest earned is sufficient to pay in full the \$6895.37 debt. The estimated time needed to satisfy the debt is 2.19 years, starting this fiscal year. Interest income of \$3,150 has already been received this fiscal year,

thereby reducing the debt to \$3,745.37 and the remaining time to satisfy the balance to 1.19 years.

2. Forego spending this fiscal Year, have the Town forgive the balance of \$3,745.37 and resume spending in FY15 at the \$3,150 investment income level.

Councilman Harris made a motion, seconded by Councilman Ashley, to approve recommendation #2. Unanimously approved.

4. Online Bill Pay for Utility Collections

Finance Director Greg Siler addressed the Council regarding Online Utility Bill Pay. Mr. Siler explained that this service is best when provided by the same company that provides the utility software, but at this time that is not possible. Mr. Siler recommended that the Town seek a third party vendor to offer an alternative, less sophisticated option for online bill pay.

Mayor Pro-Tem Moore questioned the request. Mr. Siler responded that he was seeking authorization from the Council to solicit proposals from third party vendors for online utility bill pay.

Councilman Ashley made a motion, seconded by Councilman Scott, to allow Finance Director Greg Siler to solicit proposals from third party vendors for online utility bill pay. Unanimously approved.

5. Council Appointment to the Upper Coastal Plain Area Rural Planning Organization (RPO) Transportation Advisory Committee (TAC).

Town Manager Paul Sabiston requested that Council appoint a new member to represent Smithfield on the Upper Coastal Plain Area Rural Planning Organization (RPO) Transportation Advisory Committee (TAC). The person representing Smithfield on the TAC must be an elected official.

Councilman Wood made a motion, seconded by Mayor Pro-Tem Moore, to appoint Councilman Williams to represent Smithfield on the Transportation Advisory Committee (TAC) of the Upper Coastal Plains Rural Planning Organization (RPO). Unanimously approved.

6. Amendment to the New Hire Policy

Councilman Harris made a motion, seconded by Councilman Scott, to allow the Town Manager to approve the hiring of replacement staff for previously approved and budgeted positions. Upon the hiring of a new or replacement employee, the Town Manger or Department Head will report the new/replacement hire to the Council on the Consent Agenda at the next scheduled monthly Town Council meeting. Unanimously approved.

7. Litigation Update

Councilman Ashley offered an update on the pay raise scandal of 2011. Mr. Ashley explained that it appears that in excess of \$200,000 in unauthorized expenditures have been discovered. Mr. Ashley further explained that depositions in the case have begun and that the former Town Clerk is suing the Town to pay any legal fees associated with the case. Mr. Ashley will update the citizens as the information becomes available.

Councilmembers Comments:

- Councilman Williams expressed his appreciation to Finance Director Greg Siler for the addition of pie charts to the monthly financial reports.

Town Manager's Report:

- **Department Reports**

- A highlight of each department's monthly activities was given to the Council.

- **Financial Report**

- General Fund revenues for the month ending April 30, 2014 were \$591,874. Year to date revenues for FY 2013-2014 general fund were \$12,259,849. The general fund expenditures for the month ending April 30, 2014 were \$871,967 and YTD expenditures were \$9,470,251.

- **Manager's Updates**

An update was given to the Council on the following projects

- NCDOT – RPO Meeting and the Booker Dairy Road Extension Project
- Highway 70 West Beautification Project
- Smithfield Crossings Project
- Reminder of the June 9th Budget Meeting

Adjourn

There being no further business, Councilman Scott made a motion, seconded Mayor Pro-Tem Moore to adjourn. Unanimously approved.

The meeting adjourned at approximately 10:23 pm.

John H. Lampe II., Mayor

ATTEST:

Shannan L. Williams, Town Clerk