

Spotsylvania County Planning Commission

DRAFT

Holbert Building Board Room, 9104 Courthouse Road, Spotsylvania VA 22553

MINUTES: January 16, 2019

Call to Order: Mr. Newhouse called the meeting to order at 7:00 p.m.

Members Present:

Richard Thompson	Courtland
Howard Smith	Livingston
Jennifer Maddox	Berkeley
Michael Medina	Salem
Mary Lee Carter	Lee Hill
C. Travis Bullock	Battlefield
Gregg Newhouse	Chancellor

Staff Present:

Paulette Mann, Planning Commission Secretary
Wanda Parrish, AICP, Director of Planning
Patrick White, Planner III
Karl Holsten, County Attorney
Jacob Pastwik, AICP, Planner III
Leon Hughes, AICP, Asst. Director of Planning
Ben Loveday, Director of Utilities/Public Works
Jay Cullinan, Fire Chief
Kimberly Pomatto, Interim Zoning Administrator
Richard Street, Deputy Director of Zoning

Announcements: Mr. Newhouse expressed heartfelt condolences, thoughts, and prayers to the Tignor family and Ms. Spaulding's family.

Ms. Parrish advised the Commission that the Board of Supervisors has called a special meeting on February 5, 2019 at 4:30 p.m. to consider the three sPower special use cases. The location is set for the Marshall Center however they directed staff to look for a school to host the meeting so the location may change.

Mr. Holsten stated that the Board set the February 5, 2019 meeting as part of their regular meeting schedule. It's special in that it's intended to be only devoted to sPower but was adopted as a regular meeting.

Review & Approval of minutes:

Motion and vote: Mr. Thompson made a motion, seconded by Mr. Smith to approve the minutes of January 2, 2019. The motion passed 7-0.

Unfinished Business:

sPower Site A Substantially in Accord Review

Ms. Parrish stated that the Code of Virginia requires that the Planning Commission review solar energy facilities that are not shown on the Comprehensive Plan to determine whether the location, character, and extent of the facility are substantially in accord with the Comprehensive Plan (Code of VA Sec. 15.2-2232).

While the '2232 review' is separate from the Special Use Permit process, the use cannot be established with only a finding of 'substantially in accord'. Establishment of the use requires approval of a Special Use Permit and any conditions approved by the Board of Supervisors become integral to the Facility. While the review of Site A was originally bundled with SUP18-0001, procedurally the code does not allow concurrent review. Therefore, we broke the review out separately from the SUP review.

sPower has proposed a 400 MW solar energy facility known as Site A on 5,200 acres in western Spotsylvania County, of which approximately 2,800 acres are proposed to be disturbed in the construction of the facility.

Staff offers the following information related to the Planning Commission's determination of whether Site A's Location, Character, and Extent are substantially in accord with the Comprehensive Plan:

Location – The Comprehensive Plan specifically references renewable energy generation and/or solar energy facilities at three locations within the Plan. The first two policies are in the Introduction and Vision chapter in which the County encourages innovative land uses as a business-friendly community with a focus on local job creation, and identifies agricultural and rural areas as appropriate for renewable energy generation. In the Land Use chapter, the policy statement related to all land uses is that "renewable energy generation facilities, such as solar, geothermal, or wind, should be sited and designed to minimize detrimental impacts to neighboring properties, uses, and roadways". The site is located in an agricultural and rural area near both an existing transmission line and a substation with adequate capacity. The location of Site A appears to be substantially in accord with the Comprehensive Plan.

Character – The facility is proposed in an area characterized by low-density residential development, neighborhoods with rural character, agricultural, and forestry uses. While the use will cover a large acreage, it will have a low profile to the ground and has limited public road frontage. Appropriate setbacks and buffering will help to maintain the rural character of the area and provide transitions to the surrounding uses. Establishment of the use would have two distinct phases: the construction phase, which is expected to be disruptive although temporary in duration. Conditions are recommended that minimize the disruption to the surrounding community. Once the operations phase begins, the impact on the surrounding community is significantly decreased and its character should be in keeping with the surrounding area, especially as time passes and landscaping has the opportunity to mature and further screen the facility from view. The character of Site A appears to be substantially in accord with the Comprehensive Plan.

Extent – The facility is proposed on 5,200 acres with a disturbance area of approximately 2,800 acres. The proposed facility covers a large land area that has historically been under forestry operations. When evaluating a public facility or utility for extent, typically the evaluation looks at the size in relation to the area served. For example, is a proposed park the appropriate size and type to serve the identified need? In this case, the extent is proposed by the applicant to meet the needs of their end users, which is not the public, but corporate customers. While the proposed facility will encompass a large land mass, there is no policy in the Comprehensive that recommends limits on the size of individual uses or projects. Conditions are proposed with the SUP that help to mitigate impacts associated with the project's size. The extent of the Facility that encompasses Site A appears to be substantially in accord with the Comprehensive Plan.

On a motion by Mr. Smith and passed 4-3, the Commission voted to find Site A substantially in accord with the Comprehensive plan.

VOTE:

Ayes: 4 Mr. Bullock, Ms. Maddox, Mr. Smith and Ms. Carter
Nays: 3 Mr. Thompson, Mr. Medina, & Mr. Newhouse
Absent: 0
Abstain: 0

sPower Site B Substantially in Accord Review

Ms. Parrish advised that again the Commission is tasked with determining whether Site B is substantially in accord with the Comprehensive Plan (Code of VA Sec. 15.2-2232) in terms of location, character, and extent. sPower proposes a solar energy facility on a total of 245 acres known as Site B with 200 acres of disturbance providing 30MW of power. The analysis would be the same as what was provided under Site A. She advised that Site B is the smallest of the three sites.

On a motion by Mr. Smith and passed 6-1, the Commission voted to find Site B substantially in accord with the Comprehensive plan.

VOTE:

Ayes: 6 Mr. Newhouse, Mr. Medina, Mr. Bullock, Ms. Maddox, Mr. Smith and Ms. Carter
Nays: 1 Mr. Thompson
Absent: 0
Abstain: 0

sPower Site C Substantially in Accord Review

Ms. Parrish advised that again the Commission is tasked with determining whether Site C is substantially in accord with the Comprehensive Plan (Code of VA Sec. 15.2-2232) in terms of

location, character, and extent. sPower proposes a solar energy facility on a total of 905 acres known as Site C with 500 acres of disturbance providing 70MW of power. The analysis would be the same as what was provided under Site A & B. Site C is the medium sized property of the three applications.

On a motion by Mr. Smith and passed 6-1, the Commission voted to find Site C substantially in accord with the Comprehensive plan.

VOTE:

Ayes: 6 Mr. Newhouse, Mr. Medina, Mr. Bullock, Ms. Maddox, Mr. Smith and Ms. Carter
Nays: 1 Mr. Thompson
Absent: 0
Abstain:

SUP18-0001 - Charles Woolfrey Construction Inc., Robert S. Coleman, Jr., MWD Properties 2009, LLC, Goodwin Brothers Lumber Company LLC, Meadows Farms, Victor N. Meadows, II, David L. Meadows, Frederick L. Meadows, Berman J. Meadows, Betty Meadows, Jay Meadows, RiverOak Timberland Investments, LLC, Gary Thomas Woolfrey (Sustainable Property Holdings, LLC - sPower Solar Energy Facility Site A): Requests special use permit approval on multiple parcels to develop a 400 MW solar energy facility on Agricultural 3 (A-3) zoned properties together constituting a site of approximately 5,200 acres. The properties consist of 11501 W. Catharpin Rd., 12910 Orange Plank Rd., 10900 Buckland Rd., 13301 W. Catharpin Rd., 13001 W. Catharpin Rd., and 22 additional unaddressed parcels. The properties are located in western Spotsylvania County, south of Orange Plank Road, north of W. Catharpin Road, east of the Spotsylvania/Orange County line and west of Catharpin Rd. The properties are located outside of the Primary Development Boundary. The properties are identified for Rural Residential or Agricultural and Forestal Land Use development on the Future Land Use Map of the Comprehensive Plan. Tax Parcels 28-A-1, 28-A-78, 29-A-1, 17-A-7, 18-A-16, 30-A-1, 17-5-19, 17-A-3, 17-A-3A, 17-A-4, 17-A-48, 16-A-1, 17-A-47, 18-A-15, 18-A-20, 28-A-71, 28-A-77, 29-A-2, 29-A-2A, 29-A-22, 29-A-24, 29-A-25, 29-A-26, 29-A-27, 29-A-28, 29-A-7, and 28-A-79. Livingston Voting District.

Ms. Parrish advised that the conditions are currently updated online. There were some last minute changes made this afternoon so a copy has been provided to each Commissioner. (Two sets of the revised conditions were available for all three Special Use Permit cases for the public to review prior to the start of the meeting.) She stated that they would walk through the changes made as recommended by the Commission at the January 2, 2019 meeting. Anything that is struck through or underlined is a staff edit. A lot of those are typos, internal consistency, and terminology to ensure that a condition is clear and enforceable. The items marked in yellow are the changes that the Commission ask be edited.

A General

6 - Amended the condition related to insurance as directed by the PC to require 2-year review

and increases as necessary to protect the County.

9 – Linked proof of insurance to issuance of a land disturbing permit rather than issuance of the Special Use Permit.

13 – Added prohibition of photovoltaic panels manufactured using GenX based on applicant's confirmation that GenX is not used in the manufacturing process for the panels.

Mr. Smith stated that while at the panel discussion he would like to suggest that no CadTel panels be used in this proposal, only silicone.

Mr. Thompson stated that he is in total agreement with that.

Former 12 – removed vehicle speed condition

18 – Eliminated the applicant's decommissioning plan as conditioned due to large number of change recommended by staff. Instead all of the decommissioning and bonding requirements are conditions of the Special Use Permit.

B Construction

2 - Changed term from wide load to Oversize Load and referenced DMV definition requiring a Hauling Permit.

9 – Disallowed any construction on Sundays except broken panel replacement.

Mr. Newhouse stated that the only comment he has on that is that he believes there is other language where we require them to make erosion control repairs within 24 hours and if that takes place over the weekend, they have that ability to make those repairs to be compliant.

10 – Allowed for the public liaison to be advertised via the internet with notification to the County's PIO.

14 – Included Sheriff and State Police in the Joint Construction Traffic Reaction Team.

C Erosion and Sediment Control

1.c – Removed specific crew member requirements for the remediation crews.

2 – Clarified that the 400 acres is rolling and does not include land fully stabilized in the 400 acres.

D Burning and Fire, Rescue, and Emergency Management

2 – Condition prohibits the burning of timber waste or any other matter.

Staff noted concerns about mulch pile and the potential for fires. As a result, staff is recommending additional conditions be added at the end of this section:

11- The storage of mulched timber waste ("Mulch") on site shall be limited in accordance with the following:

- a. Mulch storage shall be set back a minimum of 500 feet from the Property boundary.
- b. Mulch storage shall not be located within any RPA.
- c. Stored Mulch shall be kept in piles or rows which shall not exceed ten (10) feet in height, fifteen (15) feet in width, and 150 feet in length.
- d. Stored Mulch shall not be compacted.
- e. Piles and rows of stored Mulch must be separated by a minimum of ten (10) feet from any other mulch pile or row.
- f. Piles and rows of stored Mulch shall be regularly wetted to maintain a minimum fifty percent (50%) moisture content.
- g. Piles and rows of stored Mulch shall be turned or reassembled at least once every ninety (90) days.
- h. Piles and rows of stored Mulch shall be monitored weekly by taking an internal temperature reading at the center of the pile; if mulch is stored in a row then internal readings shall be taken every twenty (20) linear feet.
- i. Piles and rows of stored Mulch shall be immediately wetted and turned or reassembled in the event an internal temperature reading reaches a minimum 160 degrees Fahrenheit.
- j. Piles and rows of stored Mulch shall be immediately turned or reassembled if the internal temperature reaches a minimum 140 degrees Fahrenheit.

Mr. Thompson inquired if this includes mulch berms.

Ms. Parrish stated that there is a condition elsewhere stating that all berms shall be earthen berms made of dirt, not mulch.

Ms. Carter inquired about the prohibition of burning and whether that was included.

Ms. Parrish stated that yes, no burning will be permitted.

Mr. Holsten that the no burning condition is what led to the mulch conditions.

E Landscaping, Maintenance, Setbacks, and Buffers

3 – The condition provides for a consistent setback no matter the use of the adjoining property. There was discussion last meeting about the setback distance and impact of landscaping and berms on noise dissipation, visual impacts, and the temporary temperature increases. While the County's consultant, Dewberry Engineers, could not recommend a specific setback reduction since it would require modeling various scenarios at specific locations around the periphery of the facility taking into account several factors that could affect the outcome, including panel groupings, topography, types of vegetation, prevailing wind directions, and height and composition of the berms. The setback would likely need to vary in width to achieve the same result based on these factors.

To further the discussion about setbacks, staff offers the following:

Considering the size of the facility, the topography of the area, and policies of the Comprehensive Plan, staff took a conservative approach in crafting the conditions related to setbacks.

The 350' setback is the recommended setback to address noise, visual impacts, and temporary heat increases.

Bright, sunny, hot days are when the largest heat increase may occur. The actual distance at which heat was observed to dissipate to ambient temperatures (within 0.5 degrees) was 328'. Dewberry agrees that landscaping and berm will aid in mitigating any temporary differential in temperatures.

As related to visual impacts, the Virginia Department of Conservation and Recreation provides guidance that "under most circumstances, a 300-foot strip of forested area provides adequate buffer to give a passerby or homeowner the sense that the area is preserved in its natural state". Transitional screening in the County Code ranges between 25 and 50 feet in width. The largest setback in A-3 zoning currently is 100' side and rear setback for a sawmill. It is important to note that a sawmill does require a special use, so setbacks and transitional screening may be conditioned to be wider by the Board of Supervisors.

Also in this section, since the conditions supersede so much of the Applicant's Landscape Plan, all of the requirements are now noted as conditions with only the Applicant's Invasive Species Management Plan being conditioned.

7.O – The landscape bond is changed to a 3-year term (vs 2 year as required by County Code).

Mr. Newhouse mentioned under the bond language, he had made a comment about a maintenance period and whether that is intended to be here or elsewhere.

Ms. Parrish stated that is correct, for a three year period, the County holds a bond for the landscaping to allow it to establish and only once it's established is the bond released.

Mr. Newhouse stated that his concern is that the language of that bond include provisions that sPower, as part of the maintenance replace dead and dying landscaping.

Ms. Parrish stated that is included within this.

F Biological

5 – Clarifies that fertilizer composition needs to be based on soil testing.

H Water

1 - The condition requires the use of public water only for all phases of the project.

Ms. Parrish stated that concludes the review of the conditions.

Ms. Carter inquired how many conditions there are.

Ms. Parrish stated she doesn't know the total because there are sub-conditions within each section. She stated that there are 20 pages of conditions.

Mr. Holsten stated that we have enough information to be able to add tonight, the changes mentioned this evening. He asked for clarification on the E&S work on Sundays. He inquired if it was meant to state in the event of a storm, not site stabilization.

Mr. Newhouse stated correct.

The conditions would apply to the other special use permits.

Mr. Holsten stated that if the Commission is prepared to vote, he asked that they take a recess to allow him and staff to add those conditions and present them in a final version prior to taking action.

The meeting was recessed.

Mr. Newhouse reconvened the meeting and thanked everyone for their patience.

Mr. Holsten went over the conditions that have been revised. He stated that there is a new number 14 under General that reads, "Photovoltaic panels containing Cadmium Telluride, also referred to as 'CadTel', are prohibited on the property."

Under Construction, B9a – He stated that this new condition includes some previous language and read, "The act of replacing a broken panel on an already established array, even if located within the 400 acres of then currently disturbed land area, and the repair work required to be undertaken within twenty-four (24) hours as set out in Sections C(1)c, C(2)(c), and C(3)(c) herein, shall be exempt from this provision."

Mr. Holsten stated that they are the suggested changes and they have been added to all three of the applications before the Commission.

Mr. Thompson inquired how it is determined what is broken and needs to be repaired within 24 hours.

Mr. Holsten stated that we have inspectors will be on the project on behalf of the County. They will also have the benefit of knowing when those types of rain events occur and how much rain has fallen and will then go out to the site to see when those repairs would be necessary.

Mr. Thompson inquired if this includes regular repairs.

Mr. Holsten stated that this is only for the repairs outlined in the condition and that it would be unfair to state they must make those repairs within 24 hours but not allow them to do so on Sunday.

On a motion by Mr. Smith and passed 5-2, the Commission voted to deny the special use request.

VOTE:

Ayes: 5 Mr. Smith, Mr. Medina, Mr. Bullock, Mr. Newhouse, and Mr. Thompson
Nays: 2 Ms. Maddox and Ms. Carter
Absent: 0
Abstain: 0

SUP18-0002 - RiverOak Timberland Investments, LLC (Sustainable Property Holdings, LLC - sPower Solar Energy Facility Site B): Requests special use permit approval to develop a 30 MW solar energy facility on an Agricultural 3 (A-3) zoned and unaddressed property constituting a site of approximately 245 acres. The property is located in western Spotsylvania County approximately 650 feet south of the intersection of W. Catharpin Road and Post Oak Road. The property is located outside of the Primary Development Boundary. The property is identified for Rural Residential development on the Future Land Use Map of the Comprehensive Plan. Tax Parcel 28-A-58. Livingston Voting District.

On a motion by Mr. Smith and failed 3-4 the Commission voted to deny the special use request.

VOTE:

Ayes: 3 Mr. Smith, Mr. Thompson, and Mr. Bullock,
Nays: 4 Mr. Newhouse, Mr. Medina, Ms. Maddox, and Ms. Carter
Absent: 0
Abstain: 0

On a motion by Ms. Maddox and passed 4-3 the Commission voted to approve the special use request

VOTE:

Ayes: 4 Mr. Newhouse, Mr. Medina, Ms. Maddox, and Ms. Carter
Nays: 3 Mr. Smith, Mr. Thompson, and Mr. Bullock
Absent: 0
Abstain: 0

SUP18-0003 - RiverOak Timberland Investments, LLC (Sustainable Property Holdings, LLC - sPower Solar Energy Facility Site C): Requests special use permit approval on two parcels to develop a 70 MW solar energy facility on Agricultural 3 (A-3) zoned and unaddressed properties together constituting a site of approximately 905 acres. The properties are located in western Spotsylvania County south of W. Catharpin Road, north and east of Post Oak Rd. The

properties are located outside of the Primary Development Boundary. The properties are identified for Rural Residential development on the Future Land Use Map of the Comprehensive Plan. Tax Parcels 29-A-7 and 43-A-3. Livingston Voting District.

On a motion by Mr. Smith and passed 4-3, the Commission voted to deny the special use request.

VOTE:

Ayes: 4 Mr. Smith, Mr. Medina, Mr. Bullock, and Mr. Thompson

Nays: 3 Ms. Maddox, Mr. Newhouse, and Ms. Carter

Absent: 0

Abstain: 0

The Commission asked that all recommended conditions be forwarded to the Board of Supervisors for their consideration.

Mr. Newhouse thanked planning staff for all their hard work on the three applications. He knows a lot of work and effort went into the review and preparation to bring them to public hearing. He thanked the public for all of their input. Finally he thanked the applicant as well.

Ms. Carter stated that these applications really made her work hard and study the proposal. She stated that her main concern as part of the applications was the proposed burning and that has now been recommended to the Board of Supervisors to be eliminated. Also, the panels were of concern and that has also been revised to only allow for silicone.

New Business: None

Public Comment: None

Adjournment:

Motion and vote: Mr. Newhouse made a motion, seconded by Ms. Carter to adjourn. The motion passed 7-0.

The meeting adjourned at approximately 9:00 p.m.

Paulette L. Mann

Date