

MINUTES
JAMES CITY COUNTY PLANNING COMMISSION
REGULAR MEETING
COUNTY GOVERNMENT CENTER BOARD ROOM
101 MOUNTS BAY ROAD, WILLIAMSBURG, VA 23185
September 6, 2023
6:00 PM

A. CALL TO ORDER

Mr. Polster called the meeting to order at 6 p.m.

B. ROLL CALL

Planning Commissioners Present:

Frank Polster
Rich Krapf
Tim O'Connor
Jack Haldeman
Rob Rose
Barbara Null
Stephen Rodgers

Staff Present:

Paul Holt, Director of Community Development
Susan Istenes, Director of Planning
Liz Parman, Deputy County Attorney
Terry Costello, Senior Planner
Suzanne Yeats, Planner
Andrea Case, Community Development Assistant

C. PUBLIC COMMENT

Mr. Polster opened Public Comment.

As no one wished to speak, Mr. Polster closed Public Comment.

D. REPORTS OF THE COMMISSION

Mr. Polster opened Public Comment.

As no one wished to speak, Mr. Polster closed Public Comment.

E. CONSENT AGENDA

1. Minutes of the August 2, 2023, Regular Meeting

On a voice vote, the Commission approved the Consent Agenda. (7-0)

F. PUBLIC HEARING(S)

1. SUP-23-0012. 8659 Richmond Road Solar Project

Ms. Suzanne Yeats, Planner, stated that Mr. John Townsend has applied on behalf of Sun Tribe Development for a Special Use Permit (SUP) to develop and construct a 5-megawatt solar panel facility for electrical power generation, storage, and transmission on an approximately 67.8-acre portion of parcels located at 8659 Richmond Road and 8659A Richmond Road. Ms. Yeats stated these parcels are currently zoned A1, General Agricultural, and designated rural lands on the 2045 Comprehensive Plan Land Use Map and located outside the Primary Service Area (PSA).

Ms. Yeats stated this application was being presented to the Commission because it was submitted prior to the BOS' Initiating Resolution on large-scale solar farm applications. Ms. Yeats stated the parcel is split by Richmond Road and the entirety of the project will lie south of the Richmond Road right-of-way. Ms. Yeats stated the design of the project depicts solar panels on a single axis tracking system that will rotate throughout the day to track the sun. She stated the electricity produced by the panels is collected and connected to the existing electrical grid. Ms. Yeats stated the project is intended to operate for a term of 30 years with the potential for two additional five-year periods for a total of up to 40 years. Ms. Yeats stated at the end of the sublease term, the owner will cease operation of the project and execute a final decommissioning plan agreed to by the landlord and project owners.

Ms. Yeats stated the 2045 Comprehensive Plan Land Use Map designates the property as Rural Lands and that while not a typical primary use, staff finds this use could be appropriate in Rural Lands as solar farms in general are low intensity uses after the initial construction phase. Ms. Yeats stated the use is designed to be temporary in nature and intended to return to agricultural or forestal use at the conclusion of the lease term and decommissioning measures. She stated for this proposal staff finds the use generally compatible with the character of the area and generally in accordance with the Rural Lands Development Standards. Ms. Yeats stated much of the land has been cleared for farming and is surrounded by natural wooded growth. Ms. Yeats further stated the development plan shows a 50-foot-wide vegetated buffer along Richmond Road and a 35-foot-wide vegetated buffer along the perimeter of the facility site. She stated this is a low use with respect to traffic and noise.

Ms. Yeats stated staff has proposed conditions in Attachment No. 1 to mitigate impacts from this proposal to address public safety, stormwater and resource protection measures to mitigate potential pollutants and flooding, preservation of nearby and surrounding properties, placing utilities underground, buffering to mitigate visual impacts to the Community Character Corridor, native pollinators, and public improvements addressing public need and benefit. Ms. Yeats stated following the publication of the Agenda Packet materials for this case, staff has reviewed Condition No. 2 and recommends a revision of this condition to include language so that the condition includes a machinery and tool tax as well and what would be due under a Revenue Share Ordinance.

Ms. Yeats stated unless a Utility facility is shown on the adopted 2045 Comprehensive Plan or other master plans for the County, the local Planning Commission and governing body shall review the facility to determine whether the location, character, and extent of the project is substantially in accord with the adopted 2045 Comprehensive Plan. Ms. Yeats stated staff recommends that the Planning Commission find this proposed solar panel facility is substantially in accord with the adopted 2045 Comprehensive Plan and applicable parts thereof, as required by Section 15.2-2232 of the Code of Virginia. Ms. Yeats stated staff finds the proposal to be compatible with surrounding development and is consistent with the recommendations of the adopted 2045 Comprehensive Plan. Ms. Yeats stated staff recommends the Planning Commission recommend approval of the proposed SUP to the BOS, subject to the proposed conditions as amended.

Mr. John Townsend, Senior Developer, 107 5th Street SE, Sun Tribe Solar, made a presentation

in support of the application.

Mr. Krapf asked staff for more information on proposed Condition No. 11.

Mr. Holt stated that James City County has had four previous solar farm projects. Mr. Holt stated one project was not approved and three projects were approved. Mr. Holt stated one of these projects is currently in construction and another is substantially complete. Mr. Holt stated Dominion Energy completed substantial improvements for the Richmond Road solar facility that resulted in negative impacts to the viewshed. Mr. Holt stated Condition No. 11 is proposed to prevent a similar situation from occurring with this project.

Mr. Polster asked for a legal opinion.

Ms. Parman stated the condition was approved by the County Attorney's Office.

Mr. Polster asked for the surety amount required by the condition.

Mr. Holt replied staff would calculate the cost if the SUP is approved.

Mr. Polster stated the Virginia State Corporation Commission, which governs solar interconnection agreements, determined that the cost of interconnection is not the responsibility of the vendor. Mr. Polster asked if this was correct.

Mr. Holt stated staff would be able to research this and report back to the Commission.

Mr. O'Connor asked about the route to the substation from the point of interconnection.

Mr. Townsend stated the point of interconnection is on the property and the equipment will be ground-mounted.

Mr. Geoff Suttle of Sun Tribe Development stated the power would go to the Toano substation located at Anderson's Corner.

Mr. O'Connor asked when the generated electricity transfers from Sun Tribe Development to Dominion Energy.

Mr. Townsend replied this occurs at the point of interconnection.

Mr. Haldeman asked if Dominion Energy can be required to underground power lines if upgrading existing infrastructure.

Mr. Holt replied not under typical circumstances, but this is different because it is being proposed as an SUP condition.

Mr. Haldeman asked if the BOS approve the SUP without Condition No. 11 if the County would have any oversight over Dominion Energy upgrades.

Mr. Holt stated the County would not without an SUP condition.

Mr. Halderman confirmed that Dominion Energy would not need an SUP for any upgrade work.

Mr. Holt confirmed this was correct.

Mr. Polster requested staff determine the surety amount and define the locations on a map for the BOS to see.

Mr. Krapf asked Mr. Townsend how Sun Tribe Solar would like to modify Condition No. 11.

Mr. Townsend stated the project would not add new poles, that equipment would be ground-mounted, and all cabling undergrounded or mounted to the solar panels. Mr. Townsend stated that the issue is not the amount of the surety but rather that Sun Tribe Solar has no way to ensure Dominion Energy will follow the condition. He stated Dominion Energy could act in such a way that would cause Sun Tribe to be delinquent. He stated he cannot guarantee the condition could be met as written.

Mr. Polster stated this was a Dominion Energy issue that was becoming an issue for Sun Tribe Development.

Mr. Rose asked for details on the revenue provided to the County from the project.

Mr. Townsend replied the estimate included an assumption that the property value would increase, resulting in increased property taxes. Mr. Townsend stated this accounts for about half of the \$879,000 revenue to the County and the remaining revenue comes from the revenue share option that is part of Condition No. 2.

Mr. O'Connor asked about the traffic management plan and if the Virginia Department of Transportation (VDOT) required bonding for damage to the road. Mr. O'Connor also asked about the flow of traffic to turn into the property.

Mr. Townsend stated for previous projects Sun Tribe Solar has completed a road evaluation before construction to identify and repair any damage due to construction. Mr. Townsend stated the traffic plan would minimize the use of U-turns and would defer to their traffic consultant regarding the best flow of traffic.

Mr. Polster inquired about the Shared Solar Program and his understanding that a low-income family could have a \$55 energy bill.

Mr. Townsend replied a lower-income subscriber would have a percentage reduction based on income and the \$55.10 minimum bill could be erased in its entirety.

Mr. Polster asked about the estimate of the power from the project being able to support 1,000 homes.

Mr. Townsend stated the number was taken from a Dominion Energy conference presentation.

Mr. Polster stated it seemed that 1,000 low-income homes in James City County could benefit from this program.

Mr. Townsend stated that is one way to look at it.

Mr. Polster asked about marketing for the program to ensure citizens know about the program. Mr. Polster asked if Sun Tribe Solar had asked staff about reaching the audience for the program.

Mr. Townsend stated he reached out to Neighborhood Development and there is not a current outreach program for low-income residents who may qualify.

Mr. Polster asked about measures for damaged panels and decommissioning.

Mr. Townsend answered damaged panels would be removed and replaced almost immediately and would not be stored on-site.

Mr. Polster stated Sun Tribe Solar was the first company to receive the gold star certification from the Virginia Department of Environmental Quality. Mr. Polster asked if Sun Tribe would pursue this certification for this project.

Mr. Townsend stated the pollinator plan for this project is based off the Virginia Smart Pollinators Program; however, Sun Tribe Solar would not pursue this project because some requirements do not apply to this project.

Mr. Polster asked about the mowing schedule, if the maintenance plan ensured the vegetative buffer was intact three years later, and herbicide use.

Mr. Townsend stated herbicides would not be used, and he believed the mowing schedule was once per quarter.

Mr. Polster stated it is important to ensure the property is cared for during the 30-40-year period of this project.

Mr. Townsend stated it was understood the vegetation within the facility and the vegetative buffer would be maintained throughout the operational life of the project. Mr. Townsend further stated that during construction there would be State and County requirements to ensure the site reaches full stabilization and groundcover is established.

Mr. O'Connor asked if battery storage would be added to the facility in the future.

Mr. Townsend stated battery storage was not part of the project.

Mr. Polster opened the Public Hearing.

Ms. Patricia H. Hunter, 1010 Marney Court, spoke in support of the application.

Mr. Richard Matula, 113 Mid Ocean, spoke regarding his project questions.

Mr. William Lee, 4560 Longhill Road, spoke in support of the application.

Mr. Polster closed the Public Hearing.

Mr. Krapf stated this project supports alternative energy sources and the preservation of rural lands found in the 2045 Comprehensive Plan. Mr. Krapf stated he supports the option for landowners to be able to earn an income from their land and is impressed with the applicant. Mr. Krapf stated he is supportive of the application.

Ms. Null asked if the application can be approved with the question related to Condition No. 11.

Mr. Holt stated the motion and recommendation from the Commission would state if the condition were included, not included, or modified.

Mr. Rose stated he was unsure what it would mean to approve the application without Condition No. 11.

Mr. Polster stated the final decision will be made by the Board and Supervisors and the Commission will make a recommendation based on the available information.

Mr. Haldeman stated he intended to support the application.

Mr. O'Connor stated he was in favor of the solar farm and wanted to understand more regarding Condition No. 11 given the changes to Richmond Road completed by Dominion Energy.

Mr. Polster stated more information was needed regarding Condition No. 11.

Mr. Krapf asked if Condition No. 11 could be recommended only within the project boundary.

Mr. O'Connor asked if the applicant's project returns would change if Condition No. 11 remained.

Mr. Polster stated he believed the recommendation would modify Condition No. 11 to only apply within the project boundary.

Mr. Townsend clarified that Dominion Energy owns an easement within the property boundary along Richmond Road.

Mr. Suttle stated Condition No. 11 creates a situation where Sun Tribe is responsible for Dominion Energy when they have no authority to the design upgrades that Dominion may make in the future. Mr. Suttle stated Sun Tribe have already agreed to underground and ground-mount their equipment from the solar plant to the point of interconnection.

Mr. Polster stated the applicant has already agreed to a condition accepting responsibility for the distribution box. Mr. Polster asked if this agreement was in writing.

Mr. Suttle stated it was in the site plan.

Mr. Holt confirmed it is part of the Master Plan.

Mr. Polster stated this could be clarified by modifying Condition No. 11 to include responsibility for underground utilities up to the point of interconnection. Mr. Polster asked Sun Tribe Development if this condition would be amenable to them.

Mr. Townsend stated it would be.

Mr. Rose asked if Condition No. 11 would be removed, and this new condition added.

Mr. O'Conner stated that Condition No. 11 would be modified to reflect the edit.

Mr. Krapf confirmed it would amend Condition No. 11.

Mr. Polster stated he needed two motions on the item - one for consistency with the 2045 Comprehensive Plan and the second for the SUP with the recommendation for the amended condition.

Mr. Holt stated the recommendation would recommend approval of the resolution in the Agenda Packet as presented.

Mr. Rodgers motioned for the Committee to recommend approval of the resolution in the Agenda Packet and find application SUP-23-0012 consistent with the 2045 Comprehensive Plan.

On a roll call vote, the Commission voted to Approve the resolution in the agenda packet and find application SUP-23-0012 consistent with the 2045 Comprehensive Plan. (7-0)

Mr. Krapf made a motion for approval of SUP-23-0012 to the BOS with conditions as presented with recommended edits to Condition No. 11 to have utilities undergrounded to the point of interconnection and to Condition No. 2 to include machinery and tool tax and revenue share payments to the County.

On a roll call vote, the Commission voted to recommend approval of SUP to the BOS with conditions as presented with recommended edits to Condition No. 11 to have utilities undergrounded to the point of interconnection and to Condition No. 2 to include machinery and tool tax and revenue share payments to the County. (7-0)

2. Z-22-0004 and SUP-22-0026. 8290 Richmond Road Hankins-Dunn Rezoning and Residential Cluster Development

Ms. Terry Costello stated the applicant requested deferral of this case until the November 1, 2023, meeting of the Planning Commission.

Mr. Polster opened the Public Hearing.

Mr. Micheal Hosang, 8404 Camellia Court, spoke in opposition of the application.

Mr. Haldeman motioned to defer this item to the November 1, 2023, meeting and leave the Public Hearing open until that date.

On a roll call vote, the Commission voted to defer item Z-22-0004 and SUP-22-0026. 8290 Richmond Road Hankins-Dunn Rezoning and Residential Cluster Development to the November 1, 2023, meeting, and leave the Public Hearing open until that date. (7-0)

G. PLANNING COMMISSION CONSIDERATIONS

There were no items for Planning Commission Consideration.

H. PLANNING DIRECTOR'S REPORT

1. Planning Director's Report - September 2023

Mr. Holt stated that he did not have anything in addition to what was provided in the Agenda Packet.

I. PLANNING COMMISSION DISCUSSION AND REQUESTS

Mr. O'Connor stated two applicants tonight were surprised by the conditions and asked regarding the system for proffers.

Mr. Holt stated staff works as best they can to make applicants aware of any issues throughout the plan review process. Mr. Holt stated for rezonings and proffers staff cannot have these discussions with the applicant as a result of General Assembly legislation. Mr. Holt stated staff does a good job identifying inconsistencies with the 2045 Comprehensive Plan and items from a land use point of view that need to be mitigated, especially with respect to SUPs. Mr. Holt stated staff do a pretty good job communicating with applicants along the way.

Mr. Polster stated the County has started a new fiscal impact statement worksheet and this may account for some of the disconnect seen in the Agenda Packet.

Mr. Krapf asked if staff can communicate with an applicant if a proffer is not acceptable.

Mr. Holt stated the County's position under the 2018 legislation is that staff are unable to negotiate proffers.

Mr. Krapf asked if this made the process more cumbersome and would lead to more deferral requests and lengthier processes.

Mr. Holt stated that staff do their best to provide excellent customer service within the constraints of the General Assembly.

Mr. O'Connor wondered if stated proffers were not acceptable constituted negotiation.

Mr. Holt stated staff are unable to do that outside of a staff report.

Mr. Krapf confirmed the application would not know proffers were deemed unacceptable until the staff report became publicly available.

Mr. Holt confirmed that was correct. He stated the staff report was based on staff analysis and finding out if impacts were mitigated and the degree to which what was being proffered was consistent or not with the 2045 Comprehensive Plan and BOS' policies.

Mr. O'Connor stated some localities offer the ability for the applicant to sign an affidavit that the proffers are voluntary. Mr. O'Connor stated the County Attorney was not amenable to this and he felt it was a disservice to the applicant, citizens, and staff. He stated he wished for a better solution.

Mr. Rose asked if there would be a scenario in which the Commission would not grant the deferral.

Mr. Holt stated once the item is on the Commission's Agenda, it is up to the Commission to recommend approval or denial. Mr. Holt stated the Commission is not obligated to act in any particular way.

Mr. Haldeman observed Low Density Residential Lands are under pressure to be developed for housing. Mr. Haldeman citizens of the County have repeatedly asked to protect agricultural lands inside and outside the PSA and it was increasingly difficult to respect their opinion in the face of such pressure.

J. ADJOURNMENT

Mr. Haldeman made a motion to adjourn.

The meeting was adjourned at approximately 7:30 p.m.

Paul D. Holt, III, Secretary

Frank Polster, Chair