

The Dorchester County Board of Appeals met in regular session on Thursday, December 21, 2017 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chairperson, Elizabeth Hill, Vice Chair, Lin Spicer, Mike Starling, Walt Gunby, Attorney, and Steve Dodd, Director of Planning. Absent: Cindy Smith

Due to waiting on a document needed for the continuation of the Richfield Farms, LLC/Invenergy, LLC hearing, new business was heard.

New Business

Approval of 2018 Board of Appeal meeting dates

Ms. McCulley asked for a motion to approve the meeting dates for 2018. Ms. Hill made a motion to approve the dates. Mr. Spicer seconded, and the motion unanimously carried.

Election of Officers

Ms. McCulley opened the floor for nominations. Mr. Spicer made a motion to retain the current officers: Ms. McCulley, Chairperson, Elizabeth Hill, Vice Chair. Mr. Starling seconded, and the motion unanimously carried.

Case # 2617- Continued

D. Lee Hagadorn, LLC - Owner

Richfield Farms, LLC - Owner

Invenergy, LLC, One South Wacker - Applicant

Ryan Showalter -Applicant

To request the following Board of Appeals approvals: (1) special exception approval for the establishment of a utility scale solar energy system on lands leased by applicant along Osborne Road and Shiloh Camp Road ("Project"), (2) special exception approval for the installation of a substation on one of two proposed sites to deliver the renewable energy to the electrical grid, and (3) a variance to permit construction of 8' tall security fencing around the project and the substation. Property is located at 4320 Osborne Road Hurlock, MD 21643, Map 22 Parcel 19 Containing 76.09 acres, Shiloh Camp Road Map 22 Parcel 23 Lot 2, Containing 111.91 acres, and Shiloh Camp Road Map 22 Parcel 24 containing 102.31. 4279 Osborne Road Hurlock, MD 21643 Map 22 Parcel 23 lot 1, Containing 88.42 acres, all properties zoned AC - Agricultural Conservation.

Mr. Dodd advised that Emily Wise, HoonBlitzer Associates, LLC who represents many of the residents present at this meeting had submitted a letter dated November 22, 2017 requesting a continuance until the January meeting. She has since withdrawn this request by email dated December 13, 2017. Mr. Dodd read the email into record. He also entered into record Ms. Wise's letter dated December 21, 2017. Mr. Dodd suggested that since the continuation was advertised to begin at 7:15 pm, this date, the hearing not begin until that time.

An introduction was made by Chairperson McCulley, explaining the procedures of this meeting to the audience.

Ms. McCulley asked that any person who would be testifying in this case, stand and be sworn in.

Ms. McCulley called Emily Wise to testify. It was noted that she was not present.

Mark Jastram, 6107 Wanda Rd., Hurlock, MD spoke in opposition, stating that the project is not in harmony with the surrounding area.

Howard Todd, Jr., 6102 Wanda Rd., Hurlock, MD addressed the special exception criteria. He noted that this project is not in keeping with the 12-lot subdivision he lives in or the subdivision on Osborne Rd. He also believes that the project will be detrimental because property values will probably decline. He spoke about noise that would be created during the 18-22 months of construction and the Vermeer PD10 piledriver, noting that one unit is +105 decibels. He talked about the condition of Shiloh Camp Rd. and Osborne Rd. noting that neither are in any condition to handle the construction traffic. Mr. Todd gave the Board a packet containing his responses to the criteria for the special exception as well as other information pertaining to solar.

Barbara Todd, 6102 Wanda Rd., Hurlock, MD spoke about her health issues and the effects of stress on this illness. She also talked about the effects of noise from the solar project on her and the surrounding community.

George Stanton, 311 E Baltimore, St., Taneytown, MD stated that he and his wife purchased property on Shiloh Camp Rd. to build their retirement home. His driveway will be about 50 yds. from the edge of the project. He stated that the goal of the Comprehensive Plan is preservation of farm land and this project does not preserve farm land. He does not think the solar project is in character with the surrounding area and would probably decrease the value of the surrounding properties.

Josh Jewell, 4278 Osborne Rd., Hurlock, MD addressed criteria questions 1-4 for the special exception. Mr. Jewell stated that the project will not be in harmony with the surrounding area and he also believes it will decrease the value of the properties because of 400 acres of fencing and 203, 000 solar panels. He also noted that the roads are not capable of handling the increased traffic from construction. Mr. Jewell pointed out that the Comprehensive Plan does not address solar farms and since this property is zoned Agricultural Conservation, it should not be considered for a solar farm.

Wendall Foxwell, 413 Glenburn Ave., Cambridge, MD stated that large scale solar projects have not been around long enough to know whether the land can be returned to farm land once the project has been decommissioned. Mr. Foxwell pointed out that once a solar project of this size is approved by the Board, they will not be able to turn down an even larger request. Mr. Foxwell questioned of what benefit this project will be to the citizens of Dorchester County, and then read into record a bulletin he received entitled "No Farms, No Food".

Sherri Deloiselle, 4311 Osborne Rd., Hurlock, MD stated she is opposed to the solar project that will affect residents on Osborne Rd. and Shiloh Camp Rd., addressing the criteria specific to the special exception. She noted that the Comprehensive Plan has not been updated for 21 years and does not address this type of project, therefore it cannot be considered consistent with the Plan. She noted provisions in the Public Utilities Act 7-207, effective October 1, 2007, requiring that due consideration be given to the county Comprehensive Plan when a case comes before the Public Service

Commission. She pointed out that the surrounding area is not industrial but agricultural, and does not believe this project is in harmony with the area. She also spoke about the condition of Osborne Rd. and Shiloh Camp Rd.

Donna Todd, 6036 Shiloh Camp Rd., Hurlock, MD advised that she will be looking at +270 panels from her front door. She does not believe that the residents of Osborne Rd. and Shiloh Camp Rd. were presented with the facts, noting that Invenergy and the owners of the land never spoke directly with the vast majority of neighbors. She stated that this is an industrial size solar project that does not meet the criteria for a special exception and is not consistent with the Comprehensive Plan. Ms. Todd entered into record, a letter from Scott Holotik who lives across from the Adams solar farm project on Bucktown Rd. and an article entitled "The Harmful Effects of EMF", dated June 9, 2013.

Mr. Dodd advised that he had received a letter prior to the November meeting from Diane Ewing Jewell that was not entered into record. He also advised that he received a letter today from Emily Wise, HoonBlitzer & Associates and would read them into record. Mr. Showalter waived the readings but noted for the record that if the authors of those letters were not available at this meeting to be cross examined, he would object to the letters being considered. Ms. Jewell was present and stated that she would like Mr. Dodd to read the letter into the record and she would be available to answer questions from Mr. Showalter. Mr. Showalter withdrew his objection with respect to Ms. Jewell and advised that Mr. Dodd did not need to read her letter into record. Mr. Dodd noted that this is not just a letter but a packet of drawings and other information pertaining to solar. Ms. McCulley advised that the Board had received this packet for the November meeting.

Mr. Dodd advised that the Farmview subdivision is a cluster subdivision requiring an area be set aside as open space. Mr. Dodd asked Mr. Showalter if he had looked at the plat, particularly at the parcel to the west of the subdivision and determined it is not an area of open space. He noted that open space associated with a cluster subdivision is subject to the limited Table of Uses in Article 7. Mr. Dodd advised that solar farms are not on the list of permitted uses. Mr. Showalter advised that the parcel in question is not set aside as open space for the subdivision.

Ms. McCulley advised that testimony from all opposition had been heard and Mr. Showalter would now have a chance for rebuttal.

Mr. Showalter called Michael Kaplan, Vice President of Renewable Energy for Invenergy to speak about the sequence and duration of construction for the project. He advised that the 18-22 months projected for construction of the project also included procurement of the equipment such as panels and racks. The duration of on-site construction would be closer to 12 months.

Mr. Kaplan was asked to address the hiring of local contractors. He advised that they would attempt to find local businesses able to do the required work first. He pointed out that this is the most cost effective way to have the work done. Ms. McCulley asked Mr. Kaplan to speak about the types of local jobs that would be required. Mr. Kaplan advised this would include the general contractor and all subcontractors. Ms. Hill asked Mr. Kaplan to address the amount of equipment that would be needed. Mr.

Kaplan advised that anywhere from three to six pile drivers and three to five graders would be in operation at any one time and only during normal business hours.

Mr. Showalter handed out applicant's exhibit A, an email from Mr. Showalter to Ms. Dixie Henry, Maryland Historic Trust (MHT), dated December 8, 2017 and her response dated December 19th stating that the Maryland Historic Trust has no further interest in the grave sites and has asked the project to comply with the Maryland burial laws. Under state law, the burial sites must either be relocated or if they remain on site, persons having an interest in the site must have access to it. Mr. Kaplan stated they would made the site accessible and agreed to make this a condition of approval. Mr. Showalter reviewed who under the Maryland law would be allowed access to the site, noting it would not be open to the general public. He noted that the operator of the solar project would arrange for access to the site. Mr. Spicer asked if any research had been done on who is buried at this cemetery. Mr. Showalter advised this research is ongoing. Ms. McCulley noted that should the special exception be granted, protection of the burial site would be a condition of the approval.

Mr. Showalter called Zachary Nelson, Invenergy, LLC and asked him to address concerns about fire protection. Mr. Showalter entered as applicant's exhibit B, a letter from Zachary Nelson to Jason Trego, Chief and R.J. Helmer, Assistant Chief of the Hurlock Fire Department dated December 19, 2017 concerning fire safety and training. Mr. Nelson advised he recently met with both to discuss meeting once plans for the project are finalized to discuss ingress, egress and equipment location. He advised that the fire department was given information from SEIA, Solar Energy Industry of America, that provides facts on fire safety for solar projects. Mr. Showalter spoke about a document entered as an exhibit at the last meeting from the Fire Protection Research Foundation, entitled "Firefighter Safety and Emergency Response for Solar Powered Systems". Mr. Nelson advised he had reviewed the document and noted that most of it addresses solar panels and structural fires. Ms. McCulley clarified that the structures Mr. Showalter and Mr. Nelson were referring to are rooftop solar fires and are not relevant to this project. There was a lengthy discussion about fires caused by electrical wiring. Mr. Kaplan advised that because the wiring goes from a metal frame to the ground, there is no source of combustion. He also noted that there will be manual shut offs and the fire department will know where these are located.

Mr. Showalter called Paul Thienpont, Senior Project Engineer with Invenergy, to address how the system will be wired and how the shut off systems operate. Mr. Thienpont advised that all equipment on site will meet the UL listings for safety standards. There is also the National Electrical Code (NEC) and National Electrical Safety Code (NESC) that govern electrical and fire safety for electrical generating facilities. He explained the fusing and breaker systems and their locations. Mr. Thienpont then spoke about the manual switches that override the fuses and breakers. He noted that the manual switches would be part of the first responders training. Ms. McCulley asked if the project would be monitored continuously, as it was her understanding the system could be shut down remotely. Mr. Thienpont advised there is a control center in Chicago that monitors all of the company's projects 24/7. Mr. Starling asked if the monitoring station in Chicago will have controls to shut down panels until local personnel can reach the solar project. Mr. Thienpont advised there will be remote shut down controls for the site. Mr. Showalter then referred to a technical memorandum from Electrical Consultants, Inc, on EMF's (electromagnetic

fields) entered this evening as applicant's exhibit C, and asked Mr. Thienpont to discuss the findings of the memorandum. Mr. Thienpont advised that Invenergy retained Electro Consultants, Inc. to do a study of electro mechanical fields for the Richfield Farms solar project. He summarized the findings in the memorandum. There was a discussion on the EMF's emitted from the pad mount transformers and inverters. Mr. Showalter noted this equipment will be at least 300 ft. from any property line.

Mr. Showalter then called William McCain, 5298 James Landing Rd. Salisbury, Md. Mr. McCain is the President of W.R. McCain & Associates, a real estate evaluation and consulting firm. Mr. McCain summarized his educational and background history. He also summarized his experience appraising property with solar projects, cell towers and high voltage transmissions. He reviewed solar projects he has appraised on the Peninsula. Mr. Showalter asked that Mr. McCain be admitted as an expert in property valuation. Mr. McCain spoke about the effect of solar projects on property value comparing projects located on site vs adjacent to the property. He talked about an appraisal study done by Richard Kirkland on solar farms in North Carolina. The report is from Kirkland Enterprises, LLC, dated October 24, 2017, included in tab 9 of applicant's exhibit 2.

Mr. Showalter submitted applicant's exhibit D, a map entitled "Chesapeake Country Scenic Byway" and noted its proximity to the project. He then submitted applicant's exhibit E "Richfield Solar, Projected Fiscal Benefit to Dorchester County". Mr. Showalter advised the assessment would change from agricultural once the project is commissioned. He reviewed the estimated taxes to the county once the assessment changes. He also spoke about the amended personal property tax that would apply to this project. This tax will exceed \$4 million over the life of the project. He also spoke about payment in lieu of taxes which would restructure the payments over the life of the project.

Mr. Showalter entered applicant's exhibit F, "Compliance with Maryland and Dorchester County Farm Bureau, Policies Regarding Utility Scale Solar Facilities" into record. Mr. Showalter noted that they have taken the six position statements of the bureau and provided responses to them. He also noted that this project is consistent with each of the policy statements of the Farm Bureau.

Mr. Showalter then spoke about the Comprehensive Plan and referred to applicant's exhibit 2, tab 7 which contains a memo concerning Comprehensive Plan compliance. He noted that a project of this size was not addressed when the Plan was last updated, however, the Board's criteria is not to ask whether the Comprehensive Plan specifically identifies utility scale solar projects but whether the project is consistent with what the Plan says.

Mr. Showalter pointed out that the Appeals Board makes their decision based on the law, specifically, the County Zoning Ordinance and the record before them. Mr. Showalter submitted applicant's exhibit G, "Applicant's Statement of Law Applicable to Consideration of Special Exception Applications" and read into record highlights from "Legal Standard" for special exceptions in Maryland. He stressed that most special exceptions create an impact, which is why they are not permitted by right. He also spoke about property value impacts, and addressed some of the special criteria in the exhibit.

Ms. McCulley announced the end of testimony at 10:10 pm.

Ms. McCulley called for a motion to continue this hearing to the Thursday, January 25, 2018 meeting. Mr. Spicer made a motion to continue the meeting to the January meeting. Seconded by Ms. Hill and unanimously carried.

With no further business, a motion was made by Mr. Spicer to adjourn. Seconded by Ms. Hill and unanimously carried. Time of adjournment: 10:15 PM.

Respectfully submitted,



Steve Dodd
Executive Secretary