

The Dorchester County Board of Appeals met in regular session on Thursday, February 23, 2017 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chair, Gordon Hill, Wendell Foxwell, Elizabeth Hill, Lin Spicer Steve Dodd, Director of Planning and Walt Gunby, Attorney.

An introduction was made by Chairperson McCulley explaining the procedures of the meeting to the audience. She then asked Mr. Dodd to read the first case.

**Case # 2601 – Mark & Melinda Lowe - Owner
Robert S. Collison, P.A. - Applicant**

To request a variance from the 35 foot front yard setback requirement to allow an accessory structure to be located 10 feet from the property line abutting a private road. Property is located at 5302 Bucktown Road, Cambridge, MD 21613. Zoned SR – Suburban Residential. Total acreage of property is .41.

Mark Lowe, 5302 Bucktown Road, Cambridge, MD and Robert S. Collison, 310 High Street, Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Collison stated that they would rely on their written responses and supplement with comments.

Mr. Dodd read the case and all pertinent information into the record. He noted that his Staff Report details why a permit was issued to the Lowes in 2014 for a similar structure and was denied in 2016.

Mr. Collison spoke about the improvements that will be made to the property. He advised that an existing wooden structure that is 5.5 ft. from the private road will be removed. He noted a correction that should be made to the Staff Report. The new shed will be set back 12 feet from the private roadway, not 10 feet. The requested variance will be for 23 feet. He also noted that there are other structures on the property, pre-zoning that are only 2 to 3 feet from the roadway. Mr. Collison advised that the private road serves the applicant's residence and one other property behind the applicant.

Mr. Lowe advised that he has obtained approval letters from surrounding neighbors. Mr. Lowe also advised that the 2014 permit expired before he could use it because of a major illness. The building will not have plumbing or electricity. The structure will sit on a base of crusher run.

Mr. Dodd read agency comments into the record. The Health Department has no objection to the variance requested. The Department of Public Works has no comment or objection to the variance. A stormwater management plan and erosion sediment control plan will need to be submitted for review and approval prior to any construction in excess of 5,000 sq. ft. Mr. Dodd read four letters of approval from neighbors into the record.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Foxwell made a motion to approve the applicant's request and Ms. Hill seconded. The motion unanimously carried.

Case # 2600- One Energy Sunnee Bee Solar, LLC
Ryan Showalter Esq., Applicant
CONTINUED – from January 19, 2017

To request, (1) a special exception approval for the establishment of a utility scale solar energy system on lands leased by Applicant along Linkwood 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 located at 5722 Linkwood Road East New Market, MD 21613. Zoned AC- Agricultural Conservation. Total acreage of these parcels is 448.25

Mr. Gunby advised all present that Mr. Spicer and Ms. Hill are able to listen to testimony and vote on this case this evening because they each spent their own time listening to the testimony from the January, 19, 2017 meeting and reviewing the exhibits.

Ryan Showalter, Esq., advised that the Applicant would present the rebuttal witnesses this evening. Anyone who would be testifying in this case was sworn in.

Mr. Showalter introduced Applicant's Exhibit 13, a Power Point slide presentation and asked Ms. Clark to review the recent changes made from concerns voiced at the last community meeting. Size of the project has been reduced by 20 acres, allowing the landowner to keep that acreage for their own use as tillable acreage. Setbacks are also further back from Linkwood Road. In addressing the acreage reduction, they have committed to a 13 ft. high system at the top edge of the panel.

Mr. Showalter distributed a revised site plan, Applicant's Exhibit 14. Mr. Shearon, Civil Engineer with DMS reviewed the original and new setbacks using the revised site plan. He noted that the original site plan was entered into evidence at the January 19th meeting and could be used as a comparison to the new plan. He also pointed out the panels that have been moved, noting there is significant pullback of the panels from Linkwood Road.

Mr. Showalter asked Mr. Shearon to speak about the reversal back to agricultural land once the project is decommissioned. Mr. Shearon advised that the topsoil that is there will remain, there will be no mass grading. Panels are mounted on rack systems supported by metal I-beams that are driven into the ground. Electrical wires are buried between the panels. Panels, I-beams, electrical lines and the rack system will be removed when lease is up.

Ms. McCulley asked if there was a decommissioning plan in place now. Ms. Clark reviewed the decommissioning process. A bond is placed with the State per their regulations. This bond assures that the project can be removed at the end of its usefulness. The bond is placed by the company that will own the project and remains in

place should the company cease to exist. The bond is put into place prior to construction and is reviewed every 10 years, adjusting for inflation. Ms. Clark reviewed some of the cost calculations in Exhibit 13 under “Decommissioning”. Ms. McCulley asked if the regulations state that the bond can be or must be reviewed every 10 years. Ms. Clark stated that it is a condition of the State that it be reviewed every 10 years for inflation. Mr. Showalter noted that the bond is there to assure performance and is not released until all concerns are met. Mr. Showalter advised that they would be willing to work with County staff to assure that the County would be the beneficiary of the decommissioning bond and noted they would not object to this being a condition of approval. Ms. McCulley stated that she would like, as a condition, that review of the decommissioning bond must be done every 10 years. Mr. Showalter was also in agreement with this.

Ms. Clark reviewed the decommissioning plan. Mr. Foxwell asked if there is an overseer during the decommissioning project. Ms. Clark stated they would work with the local Soil Conservation Office and noted that there is also a permit process for decommissioning as well as a monitoring process. Ms. Clark noted that they are willing to work with the County to address specific preferences they might want included in the plan. Mr. Spicer advised that there is a significant amount of buffer for this project and would it be removed at decommissioning. Mr. Showalter advised that there is a certain amount of acreage that will be put into forest conservation and will be in a permanent easement. He noted that the rest could be used for timber harvesting or left to the owners’ discretion. Mr. Spicer noted that putting the buffers back into ag land would not be allowed by law. There was a lengthy discussion on the buffers.

Mr. Showalter reviewed the planting plan for this project after questions arose about the landscape plan for the Bucktown Road. project. He advised that the plantings on this project will fully comply with the County regulations, 50 ft. wide and at least 8 ft. tall within two years. There will be a diverse mixtures of trees and shrubs of varying heights. Mr. Hill questioned whether this height would be acceptable now that the panels have gone from 8 ft. to 13 ft. Mr. Hill asked about the two-year guarantee for the plantings. Ms. Clark stated that this is typical for a landscape contractor. After two years, it would transfer to the project owner and the landscape bond would cover any loss. Mr. Hill asked if the two years could be extended further. Ms. Clark stated they would be comfortable looking at a longer guarantee period. Mr. Dodd noted that there is a survival period of two years, at the end of the two years, the County looks at the survival rate of the project and if the survival rate has not been achieved, the project would need to be replanted. The surety begins when the project has been planted.

Ms. Clark advised that the landowners of this project are paying 20% less on a tenant leased basis because this farm produces significantly less than other farm land. She advised that much of this land is not ideal for farming. She attempted to address concerns that productive ag land is being taken out of production by solar projects. Ms. Clark stated that from 2007 through 2012 there was a decrease in the number of agricultural, tillable land by 6,000 acres. She was unable to determine why this decrease occurred.

Mr. Showalter distributed Exhibit 15, Sunnee Bee Solar prime farmland soil classifications, dated February 22, 2017. He noted this is a revised version from the one distributed at the January meeting with the new limits of disturbance, based on the

consolidated footprint of the solar panels. He reviewed the table that shows the different soil areas. Steve Whitten, Surveyor, Fink Whitten & Associates, 108 Dorchester Ave., Cambridge, MD also spoke about Exhibit 15 that he prepared. Mr. Whitten stated that he could not speak to the soil types but the acreage calculations are accurate based on the mapping.

Mr. Showalter entered Applicant's Exhibit 16, Maryland Utility-Scale PV Project: Expert Testimony on Environmental Hazards, Dr. Fthenakis, PhD.

Mr. Showalter summarized Applicant's Exhibit 17, a letter dated June 26, 2016 from Department of Natural Resources, Wildlife and Heritage Division, concerning impacts to any of the species and, Applicant's Exhibit 18, Fish and Wildlife Services report dated September 13, 2016. Mr. Showalter also entered Applicant's Exhibit 19, a series of letters from May, 2016, Corp of Engineers, delineations that confirm the boundaries of all the wetlands on site.

Mr. Showalter asked Ms. Clark to address concerns about glare from the solar panels. She spoke about Applicant's Exhibit 20, the Sandia National Labs Solar Glare Hazard Analysis Report and noted that the FAA was also consulted about hazards to aircraft. She also spoke about how the panels are made to minimize glare.

Ms. McCulley pointed out that even though Dorchester County does not have an up to date Comprehensive Plan that addresses solar utility projects, the Zoning Code does and the one regulation is that they be located in a way so as not to be visually intrusive or inappropriate with their settings. The code identifies these as sites of public interest, such as public parks, designated scenic byways and historic properties. Ms. McCulley pointed out that there are two scenic byways and a historic district very close to the proposed project. She acknowledged that the project has been scaled back and deeper buffers have been created, but pointed out that the Board of Appeals has explicit instructions from the Code to be mindful of locating such an array near these areas.

Mr. Showalter asked Elizabeth Anderson Comer to come forward and address Ms. McCulley's concerns. Mr. Showalter asked Ms. Comer to give a brief overview of her education and qualifications. Mr. Showalter asked that Ms. Comer be admitted as a cultural resources expert. Ms. Comer, owner of EAC Archeology, Inc, 4303 N. Charles St., Baltimore, MD stated that she is a cultural resource professional who deals with above and below ground resources to include architectural history, archeology, cultural landscapes, scenic byways and historic districts. She reviewed this project noting that the historic town of East New Market, the railroad, and portions of the Harriett Tubman and Chesapeake Country scenic byways were considered in this view shed project. She explained the process used to complete a view shed. She also used part of the PowerPoint presentation from Applicant's Exhibit 13 to identify the nine viewpoints used for the view shed analysis. She reviewed the five Solar Panel Visibility Viewpoints from Applicant's Exhibit 13 as well. Ms. McCulley asked how they had arrived at the visibility points. Ms. Comer gave a lengthy presentation on how these visibility points were arrived at. Mr. Showalter asked Ms. Comer if her company works with the Maryland Historic Trust (MHT) on a daily basis. Ms. Comer stated yes, and noted that she is familiar with their project review process. Ms. Comer gave an overview of how the MTH determines the impact on a cultural resource. Mr. Showalter spoke about Applicant's Exhibit 7 admitted at the January hearing for the Sunnee Bee Solar Facility,

noting that the MTH found the project to have no adverse effect on the historic properties. Mr. Showalter introduced Applicant's Exhibit 21, a letter dated February 14, 2017 from the MTH. Mr. Showalter noted that in this letter it specifically notes they considered the railroad in their review and determined that the project would have no adverse effect. He also advised that there was a third project review form dated September 22, 2016 from MHT specifically for the Dorchester & Delaware railroad stating the project will have no adverse effect on the railroad.

Mr. Showalter asked Arlo Corwin from OneEnergy, Boulder, CO to address concerns about this project not contributing to the Dorchester County tax base. Mr. Corwin advised that it will contribute through real property tax. The parcels now contribute approximately \$3,000/year. He advised that he has spoken with the assessment office and they estimate the assessments increase to approximately \$20,000/acre annually. Over a period of 30 years, this would amount to about \$1 million. Mr. Showalter noted that the property will not to be rezoned but would be reassessed.

Mr. Corwin addressed the personal property tax for the project. He advised that they have sent a proposal to the County, a payment in lieu of taxes for the business and personal property taxes. This proposal was made to Councilman Travers and County Manager Jeremy Goldman for consideration. This proposal, if excepted, would give the County approximately \$2.3 million. Mr. Corwin stated that combined with the real property taxes they anticipate the County would receive around \$3 million over the life of the project. Mr. Spicer asked who would be making the payments once the project is sold to a developer. Mr. Showalter introduced Applicant's Exhibit 22, a copy of the payment in lieu of taxes proposal to the County. Mr. Showalter stated that if approved by the County Council, it would be memorialized in a payment in lieu of taxes agreement. This agreement would be binding on the property and any future owner of the solar facility. He also noted that if the assessment value went down the agreement is fixed so that the agreed upon amount would continue over the life of the project.

Mr. Showalter called Tom Weigand, 1244 Ritchie Highway, Arnold, MD to come forward and discuss the appraisal reports. He reviewed his educational experience and qualifications. Mr. Weigand advised he is a licensed real estate appraiser in the State of Maryland. He has owned and operated Treffer Appraisal since 2004. Mr. Showalter asked that Tom Weigand be admitted as an expert in real estate evaluation. Mr. Showalter introduced Applicant's Exhibit 23, Kirkland Appraisals, LLC Report and asked Mr. Weigand to comment on the appraisals. Mr. Weigand advised that in September 2016, he was engaged by OneEnergy to study the effects of the Sunnee Bee Solar Project on adjacent property values. In addition, Mr. Kirkland was also asked by OneEnergy to appraise this project. Mr. Kirkland is a real estate appraiser based in North Carolina. Mr. Weigand has read Mr. Kirkland's report, which is more of a national report, wider in scope than his report. Mr. Weigand advised that he is in agreement with the Kirkland report. Mr. Weigand discussed how he determines the effects of valuation from one property to another using solar projects throughout the State of Maryland. He reviewed sales of houses that are near these projects. He stated that he found no external obsolescence caused by these projects.

Mr. Showalter called Patricia Faux a Community Planner and Landscape Architect with the Faux Group, Annapolis, MD to give a brief overview of her education

and experience. Mr. Showalter asked that Ms. Faux be admitted as a Land Planning expert. Ms. Faux advised that she has reviewed the Dorchester County Comprehensive Plan and the site plan for this project. Mr. Showalter asked Ms. Faux to address how this project is consistent with the County Comprehensive Plan. She advised that although the Plan does not specifically address the solar panels, it speaks to a number of issues to include agriculture, industry and cultural areas. She reviewed items in each chapter of the Plan that are consistent with or could relate to this project.

Mr. Showalter entered Applicant's Exhibit 24, Maryland Farm Bureau, Commercial Solar Energy Policy adopted December, 2016 and Planning Commission minutes dated March 4, 2015. He addressed the statement made that this type of project should be on industrial land, not on agricultural land. He pointed out that this use is appropriate in the AC zoning district by designating it as a special exception and creating certain criteria that must be met. He referenced the Planning Commission minutes of March 4, 2015 noting that this issue was addressed at that meeting when the Planning Commission recommended to the County Council that no changes should be made to the current ordinance.

Ms. McCulley advised that because of the late hour, another meeting would be held to conclude this case.

With no further business, a motion was made by Mr. Hill to adjourn. Seconded by Mr. Foxwell and unanimously carried. Time of adjournment: 9:55 PM.

Respectfully submitted,



Steve Dodd
Executive Secretary