



County of Surry, Virginia
Planning Commission Meeting Minutes
May 20, 2024

MEETING CONVENED: The meeting of the Surry County Planning Commission was called to order at 7 PM on Monday, May 20, 2024, in the Surry County General District Court, 45 School Street, Surry, VA, by Mr. Eddie Brock, Chair.

ATTENDANCE: The following members responded present to Roll Call:

Mr. Eddie Brock, Chair
Mr. Giron Wooden, Jr., Vice Chair
Mr. Theodore Lunsford
Mr. Earl Newby, Sr.
Mr. Stephen Berryman
Mr. David Coggin
Ms. Dianne Cheek
Ms. Carmen D. Judkins

Absent:

Mr. Thomas Hardy
Mr. Bryon Pierce
Mr. William Seward, IV

Staff Present

Mr. Horace Wade, III, Director of Planning and Community Development
Ms. Regina Hilton, Administrative Assistant
Mr. Lorenzo Turner, Planner
Mrs. Lola Perkins, County Attorney

PLEDGE OF ALLEGIANCE: All

ADOPTING OF AGENDA: Chair Brock entertained a motion to adopt the meeting's agenda. It was moved by Vice Chair Wooden and seconded by Mr. Newby.

In favor: (8) Brock, Wooden, Newby, Berryman, Lunsford, Cheek, Judkins, Coggin,
Opposed: 0
Abstain: 0

APPROVAL OF CONSENT ITEMS: None

OLD BUSINESS:

1. Solar Ordinance Amendment - the Planning Commission will review the County's Solar Ordinance, other select Virginia localities' solar ordinances, and previous Conditions for solar applications in Surry County and recommend an amendment.

Mr. Wade stated that tonight's meeting concerns the conditions from the previous cases for Cavalier Solar, Loblolly, and Surry Solar Center. Cavalier Solar was approved, but the Board did not approve the other two, so the conditions would be helpful. Chair Brock said at the last meeting that several Commissioners favored the Louisa County Solar ordinance. Mr. Wade stated that Ms. Cheek compiled a list of recommendations for roads, storm dust and debris, noise, lights, construction buffers, decommissions, other ordinances, and information received for tonight's meeting.

Question: Mr. Wooden asked, regarding roads, how much jurisdiction the County has other than requiring traffic plans. To his understanding, the roads are state highways. He believes that the public assumes that if the Board of Supervisors approves a new solar facility and the roads are damaged in the process, it is the County's responsibility to make repairs. His question now is, as a County, what are the responsibilities other than ensuring we require a traffic mitigation plan requiring heavy equipment to use certain roads?

Mr. Wade said that when working with VDOT, they analyze and anticipate how much construction traffic is generated through a particular region and require an amount for a road bond. Mr. Wade believes that the ordinance says that roads would be repaired after the project is complete, but in past practice, the maintenance would be implemented throughout the project.

Mrs. Perkins said that from a legal liability standpoint, they are responsible for the repairs if the developer causes the damage. The challenge is, did they cause the damage, and what is the baseline? We need a good baseline, showing the road conditions before a project begins. Ms. Perkins said that conditions could be in place that would help determine the baseline, if it should be a phased approach, or if it should be at the end of the project. If it is a large pothole, you wouldn't want to wait until the end of the project.

Ms. Cheek said that the Cavalier CUP requires the roads to be repaired within 48 hours, or as soon as reasonably practical. When asked at the Board of Supervisors meeting, a representative of VDOT stated that the County could pay for road repairs. Ms. Cheek said that as a County, we should consider recommending that the project provide money to help repair the roads. The citizens take the impact. Mr. Wade said there is a set baseline before the project. The developers/engineers go out on the roads with cameras and record throughout the routes. Chair Brock asked if it could be put in as a condition, and Mr. Wade said he thought it was already a condition.

Mr. Wade told AES that after a project was completed, VDOT told delivery drivers they could take the routes because they were state highways. We should suggest that developers be responsible for ensuring contractors and subcontractors are aware of the approved routes. According to the County's

land use approval, it would be a zoning violation, and maybe stronger language should be found to enforce the conditions.

Mr. Wooden said that if we are discussing general conditions or trying to establish general conditions for future projects, could one of the conditions be an assessment from VDOT for a bond amount before the project is approved? As a general condition, developers are required to work with VDOT to get an estimate before approval. Mr. Wade said number two, condition 12 for Cavalier, says, "Prior to final site plan approval, the applicant shall secure a permit from VDOT and post surety for the estimated cost of repairs to public roads based on estimate review and approved by the county transportation representative and VDOT. Pre-assessment of preexisting road conditions and the ability to handle construction traffic must be completed by the applicant and approved by VDOT and the County's Planning Director before final site plan approval, pavement damage to roads, including shoulders and aprons, attributable to construction."

Mrs. Perkins added, "Having the bond is great, but having a bond is not like being able to go to the ATM and take the money out." You must call in the bond; since it's VDOT's bond, VDOT would have to do that. The County will not have the ability to do that. Whether or not we could require an additional bond, she is not sure." Ms. Perkins said that would be something she could investigate.

Question: Mr. Wooden said back to his original point of the roads being a state highway. People don't understand that and hold the County responsible for road repairs, but it's a state highway, and Mrs. Perkins said VDOT is responsible. He asked if Surry County would have a standing to call the bond in for that situation. Mrs. Perkins said that if we could have a bond, we could require a bond. She did not know if the county could require a bond on a private road, so she would investigate.

Ms. Cheek said that at the Board of Supervisors meeting, VDOT noted that they did not have a problem if the County wanted to put money up for improving roads. Ms. Check asked if the County could apply money (to a road project), but it still may have to go through VDOT. Mrs. Perkins said that the County must go through VDOT for conditions of approval and that the County wouldn't be able to waive any of the conditions. Mrs. Perkins said, "Maybe the County could require the developer to take out a bond benefiting the County." Then, the county would still have to call the bond and have control and access to the funds. If it were a private development, the county could take out different bonds for the infrastructure of the roads.

Question: Mr. Berryman asked Mrs. Perkins, number 10 of the Cavalier conditions, if she could speak on the parentheses where it says, excluding any cessation caused by an event of force majeure. Does that mean that the project would have to be decommissioned, or would it be within 12 months? Mrs. Perkins said her interpretation of that condition is, "It's the requirement within 12 months after it stops working for a continuous 12-month period. Let's say there was some known force, an act of God, or something completely unexpected." Hailstorms, global pandemics, tornados, or hurricanes interrupt that schedule. Give the developer more time to get everything in place and not eliminate the requirement.

Mr. Berryman also said that in the same section 10-157, it says, in accordance with section 4.11 of the solar energy ordinances. Mr. Berryman asked if there is a section 4.11. Mr. Wade said that it may be in the 2018 section for decommissioning.

Question: Mr. Newby said at the last meeting that Ms. Cheek asked Mrs. Perkins to find the information on which one is the controlling, the CUP or the ordinance. Mrs. Perkins said the approved CUP conditions are the Virginia code's top dog. There is case law, most recently from 2020, in the Supreme Court of Virginia. When a governing body does its land use approvals, if it approves a condition or accepts a proffer that is not precisely in line with the ordinance's language but can still meet all the other requirements like in substantial accord with the comprehensive plan.

But suppose the governing body has deviated from the exact language in the ordinance because they think it's in the best interest of the citizens. That is acceptable, as in the town of Warrington in 2020. Also, the specifics of that case were that the town council approved a planned unit development. Per the ordinance, certain requirements were set for what percentage had to be commercial, residential, parkland, or community land that anyone could use.

Mrs. Perkins said that when the approvals occurred, they reduced the percentage of the residential by 10%. The 10% was split amongst the other uses. Reader's Digest version of the case is that some residents sued the town, the developer, and the town council. The case went to the Supreme Court of Virginia. The Supreme Court's analysis was that the Virginia code sections, conditional zoning, proffers, and conditions associated with a conditional use permit provide a locality the flexibility to approve conditions that may deviate.

Mrs. Perkins said that she and Mr. Wade are trying to put in an even better posture moving forward with procedural improvements, process improvements, and system changes. When projects come before the Planning Commission, one is to implement a template before voting. Whether you're voting to approve or deny and to set a legislative record as to why the Commission decided to deny, recommend the project for approval, and make resolutions for the Planning Commission. Instead of having the chairman of the Board write a letter or have that communication happen through Mr. Wade, it should be made more official.

Mrs. Perkins said it would help establish and clarify the legislative record. There have been situations in the past where the Planning Commission has recommended the denial, and the Board has approved it. Maybe it will be more apparent to the Board why the Planning Commission made that decision and its rationale. In the hierarchy of things, the ordinance governs what is in the site plan and the requirements. The conditions and the proffers will also impact the site plan. The comprehensive plan is our guideline.

Question: Chair Brock asked Ms. Cheek how she came up with the 1300-foot setbacks for the residence. Ms. Cheek stated that if the solar project was near her, she would want the project to be at least a quarter mile away, and she rounded down to the 1300 ft. Chair Brock said the Commission could come up with a reasonable setback number. Mr. Wade said that the Commission could put in place a comfortable number for the minimum setback and that there isn't any flexibility in the ordinance when of specific setbacks or having more setbacks than is required, and the current setbacks are whatever your minimum zoning setbacks for the zoning district. In a rural agricultural zoning district, setbacks are more significant, but we now have M1 districts, and the setbacks have decreased significantly. Chair Brock said that if you have a 500-foot or more for setbacks, you would have enough room for your fenced fire trail.

Question: Mr. Wooden asked if there was a subcommittee to work on conditions. Mr. Wade said not at this point and asked the Commissioners if they would want a subcommittee to review and bring the findings back for the Commission. Ms. Cheek and Mr. Newby volunteer to be on the committee to review other ordinances, CUP conditions, and Surry's ordinance.

Mr. Coggin said that, according to Ms. Cheek's list of working hours, seven to five would be a good workday. Ms. Cheek said loud construction activities should start at least when people are up and out of their homes. Mr. Berryman commented that he would like to protect open farmland and develop a percentage of a project that could be on open farmland.

Ms. Cheek said that in the comp plan, she thought that one solar project wouldn't be able to hook into an existing solar project and, therefore, would be further away from the transmission lines. Maybe it can be made more evident in the ordinance. Mr. Wooden said, "One of the issues as a County that we have or Commission designated on a map is where these projects should occur. In his opinion, it's hard enough to backtrack and say you can't put a project in because it will be connected with another project or it has the potential of connecting with another project. The same thing is true with the AES project. They're trying to put the second project in a piece we've already said is prime land for solar development."

Ms. Cheek said they put the project on that location, but can they connect another thousand acres? Mr. Wooden thought the plan was to add 200 or 300 hundred acres. Chair Brock said they found 200 or more acres, and the project wants to add that to another 350 megawatts. It was land that was already approved. And their comment to him was that they didn't need that to get to the 350 megawatts of the existing project. They found other tracks of land and wanted to add these 200 acres to get to the next 350 megawatts. Some land is in Isle of Wight County, and some in Surry County, so they could get to the 350 megawatts to tie into the power lines.

Mr. Wooden said that his question was, is it within that zone? It was noted that its land had already been rezoned for development by Cavalier Solar. He is not advocating for the project, but if we have decided on certain things, are they still within those parameters? Chair Brock said the group is still AES but has a different name. They will be putting in different power lines and tie-ins. His question to them was, "Why didn't the company that had it return for an extension?"

Mr. Berryman said he wanted to mention another idea to the Commission: "If it's legal, could there be a limit to one project going on at a time in the County?" It's stressful for many residents who live around a project. Mrs. Perkins said she would have to research and thought you couldn't stop them from applying. We could negotiate to have a condition that says we will not start until a future date. We need the best estimate on when the first project will be finished and then have the conditions that the next project will not break ground or whatever their process is until six months in advance or something along those lines."

Chair Brock said Isle of Wight County would have a public hearing on the 28th for two additional solar projects for Cavalier on White Marsh Road for 500 acres and the other for 200 acres. It would be across the Surry County line where Moonlight Road meets with Burwell's Bay crossroads.

Chair Brock asked the Commission if there were any questions for the subcommittee. Ms. Cheek asked if everyone would review the list and give the subcommittee their input. Chair Brock asked if the

committee would work on number six. Mr. Wade suggested highlighting the numbers so you can go back and work to make an alternative.

Mr. Coggin said number 10 on the Cavalier project. At the bottom, he thought it said, "The amount of the surety bond or other financial security instrument will reflect the net cost of decommissioning. Then it says, the removal cost minus the market value of materials that can be resold or recycled."

Mr. Wade said we are in that situation with Cavalier. They are saying it is a negative, and we don't owe you surety at all. Mr. Coggin asked if we could change that change in the ordinance. Mr. Wade said he has seen it done in several localities. Ordinances address it so that it would be the gross cost and that you wouldn't look at the salvage value.

Chair Brock asked Mr. Wade, "When can the Commission receive feedback from the subcommittee?" Mr. Wade said that he planned to have a draft ready for the next meeting and may call a meeting after the June agenda.

NEW BUSINESS: None

PUBLIC COMMENTS: None

COMMITTEE UPDATES:

Mr. Wade stated that there are items on the agenda for the next meeting. The Substantial Accord Determination for AES for Sycamore Cross. The question he and Mrs. Perkins have relates to section 2232 of the code of Virginia 15.2-2232, which states that the Planning Commission may hold a public hearing. It must be reviewed for substantial accord determination. Mr. Wade said that the question for the Commission is whether to have a public hearing or open just for a determination. In the past, you held substantial accord termination and rezoning for the condition use permit. The public hearing would require notification to the adjacent property owners and open a public hearing for anyone to speak for or against the project. Mr. Wade asked if the Commission's option is to hold a public hearing or to review it amongst themselves to see if it's a substantial accord determination.

Question: Mr. Wooden asked if the Commission determined the path forward with this process. Mr. Wade said that it was determined that it would be a substantial accord determination and did not say it would be a public hearing. You may choose to hold a public hearing, but you will still have to determine if it is a substantial accord.

Mrs. Perkins said that if the Commission decided that the process would be to have substantial accord determination as the first step of the review process, it would then be separated from the rezoning and the comp plan amendment. Then, look at it independently and have that be the first step of the review process. The code reads that the Planning Commission may, or at the direction of the Board of Supervisors, shall. That's when she and Mr. Wade looked at the history; they didn't find anything where the Board had required the Commission to have a public hearing for this substantial accord determination, and maybe because it never came up since everything was bundled together in the old system.

The substantial accord determination is different. The Commission makes a recommendation that goes to the Board of Supervisors with substantial accord determinations. The Commission decides whether it is in Substantial Accord or not. The applicant still has a recourse. If the Commission were to deny, they

could appeal to the Board of Supervisors. The Board of Supervisors would do their independent analysis of that situation.

Question: Mr. Berryman asked if the Commission denied the substantial accord, and when it goes to the Board of Supervisors for the appeal, would the Board have to have a public hearing? Mrs. Perkins said no. Mr. Berryman then asked if they could have a public hearing, and Ms. Perkins said she thought they could, but the ordinance's language is unclear. Mr. Berryman then asked, "If the Board overturns the Commission's decision, would the conditional use permit come back to the Planning Commission? Mrs. Perkins said correct.

Mrs. Perkins said that the concept of substantial accord doesn't have to be every requirement and word for word in our comprehensive plan if it meets substantially in accord. So, if it's 90%, it probably meets the definition. If it's 85, or 80%, it's not a majority. Mrs. Perkins said they are prepared to implement the new procedure of having a template for the motion and a resolution.

Question: Mr. Wooden asked Mr. Wade, when it was presented to the Commission, about the way processes in the past were presented, all in one night. He thought there was a discussion about the substantial accord and having or not having the public hearing. When it comes back to the Commission, there must be a public hearing for the other components. Was that correct? Mrs. Perkins said absolutely. Mr. Wooden said he thought it had been discussed and wasn't needed. It was also noted that it was determined whether the project had enough merit to move forward. Then, if the project were to be approved, the Commission would still have to hold public hearings on the other components. Was he correct in saying that about the process? Mr. Wade said yes, but the process would require a substantial accord determination. Mr. Wooden then asked if the other components would require a public hearing. Mr. Wade said it would require a hearing process, and Mrs. Perkins stated that all the public notice requirements must be met.

Question: Chair Brock asked if the public is against a project and wants to be heard by the Commission, would they be at the wrong public hearing? Because the Commission is here to accept or deny based on how the ordinances are written. Ms. Perkins said if the public addresses traffic control or does not want a solar project, then the Planning Commission decides to have a public hearing for the substantial accord determination, they should be focusing their comments on what the Commission is looking at for substantial accord and does it meet substantially what the comprehensive plan's guidelines are. Mrs. Perkins said it could be potentially confusing to the public to have a public hearing for the substantial accord, but she did not know. The reason at the stage of substantial accord is the comp plan. We're not looking at our ordinance at the substantial accord stage; we are looking only at our comp plan guidelines.

Question: Mr. Berryman asked if there is some relationship between the siting agreement and the substantial accord. Mrs. Perkins said that the siting agreement is another piece. They have submitted a draft of the siting agreement for the upcoming project. In the new process, the siting agreement will be shared with the Planning Commission, and then the Planning Commission will have the opportunity to provide feedback. It is not in the context of a public hearing and is a legally binding document. It would not require public input or a public hearing.

Mr. Berryman said that he read that if the County adopts the siting agreement, it automatically says it's in substantial accord with the comprehensive plan. Mrs. Perkins said correct, and if the Board of Supervisors were to approve the siting agreement, then the need trumps the need for a substantial

accord determination. Mr. Berryman asked, "Will the Board vote on the siting agreement or when will they see it?" or will that not happen until the Commission meeting for the substantial accord?" Ms. Perkins said the siting agreement will go before the Board simultaneously as the conditional use permit. If the Board wishes to see it earlier, then that can happen.

Question: Ms. Cheek asked if the siting agreement includes the CUP or if it's separate. Mr. Wade said some of the conditions he has seen included the CUP. Some of the conditions from the CUP say that. He has seen that the siting agreements included the conditions from the CUP as part of the siting agreement. Mrs. Perkins said the best answer is that it's not a legal requirement that the CUP conditions be in the siting agreement if the parties decide they wish not to do that. The siting agreement must be approved as a formal action by the Board of Supervisors. If the Board wants to arrange a special meeting to consider the siting agreement legally, they can do so.

Ms. Cheek asked if it was before looking at the CUP because you will not look at the CUP until after the substantial accord is done. Mrs. Perkins said right. This process is new for the Planning Commission and the Board of Supervisors because they considered everything to be a bundle.

Mr. Berryman believes that it would be fair to the public to have a hearing. Mr. Wooden said that he agreed "that it's fair to the public to have a hearing, but also often the public may take away from what the Commission needs to do as a Planning Commission. And that is to decide whether the project meets the requirements to move forward. Often, when you have the public here, speaking for or against a project, they are bringing up points as to why they don't want the project for themselves personally, which may distract the Commission from determining whether it meets the substantial accord determination. There will be other opportunities for the public to have comments. He is OK with whoever motions but can see the points either way."

Mr. Coggin moved that we do not have a public hearing and proceed through the process, and then the public will come back after we have the decision. Mr. Wooden seconded it. Chair Brock stated that it was properly moved and seconded that there would not be a public hearing for the substantial accord determination.

In favor: (6) Brock, Wooden, Newby, Berryman, Lunsford, Cheek, Judkins, Coggin,
Opposed: (2) Cheek, Berryman
Abstain: 0

COMMITTEE UPDATES:

Mr. Wade said that a packet with language will be prepared for the next meeting to help the Commission make the determination. Ms. Perkins said that they may be able to bring the siting agreement for review and comment. Mr. Wade said he would get dates together for the subcommittee, maybe a week after the next Planning Commission meeting, to give staff time. Also, the Wetlands ordinance will be coming up soon, and the state code is requiring changes to the current Wetlands ordinance. One thing that is noticed is that the wetlands ordinance has not been codified. On July 22nd, the meeting was postponed to July 15th because of the American Planning Association Conference in Williamsburg.

ADJOURNMENT:

Chair Brock entertained a motion to adjourn at 8:37 p.m. until the June 24th meeting. It was moved by Mr. Berryman and second by Mr. Newby. It was moved and properly seconded that the meeting be adjourned. All those in favor signify by saying, Aye.

Commissioners: Aye