

**At a Joint Public Hearing of the
Sussex County Board of Supervisors & Planning Commission
Held in the General District Courtroom on
Monday, April 1, 2019 at 6 pm**

BOARD MEMBERS PRESENT

Keith C. Blowe
C. E. Fly, Sr.
Alfred G. Futrell
Susan B. Seward
John A. Stringfield
Steve White, BOS Tie Breaker

PLANNING COMMISSION MEMBERS PRESENT

Kevin Bracy	Dennis Mason
J. Lafayette Edmond	Terry Massenburg
Jeffery Gary	Andrew Mayes
Frank Irving	Robert Young
Roger King	

BOARD MEMBER ABSENT

Rufus E. Tyler, Sr.

PLANNING COMMISSION MEMBERS ABSENT

Brenda Burgess

STAFF PRESENT:

Vandy V. Jones, III, County Administrator
Millard D. Stith, Independent Consultant
Wallace Brittle, County Attorney
Ellen G. Boone, Commissioner of the Revenue
Deste J. Cox, Treasurer
Ernest Giles, Sheriff
Shilton R. Butts, Assistant to the County Administrator/
Deputy Clerk to the Board

Item 1. Call to Order/Determine Quorum

The April 1, 2019 Joint Public Hearing of the Sussex County Board of Supervisors and the Planning Commission was called to order by Chairman Seward.

Item 2. The Invocation

The Invocation was offered by Supervisor Stringfield.

Item 3. The Pledge of Allegiance

The Pledge of Allegiance was recited by all.

Item 4. Agenda Amendments

County Administrator Jones requested to move under Item 7. Public Hearing, Item 7c. Zoning Ordinance Amendment #2019-02 to Item 10. and add as Item 10.1 Zoning Ordinance Amendment #2019-02 and add as Item 10.2 Discussion regarding Property Maintenance.

Item 5. Approval of Agenda

ON MOTION OF COMMISSIONER YOUNG, seconded by COMMISSIONER MASSENBURG and carried: RESOLVED that the Sussex County Planning Commission hereby approves the April 1, 2019 Joint Public Hearing of the Sussex County Board of Supervisors and Planning Commission agenda inclusive of moving under Item 7. Public Hearing, Item 7c. Zoning Ordinance Amendment #2019-02 to Item 10. and add as Item 10.1 Zoning Ordinance Amendment #2019-02 and add as Item 10.2 Discussion regarding Property Maintenance.

Voting aye: Commissioners Bracy, Edmond, Irving, King, Mason, Massenburg, Mayes, Young

Voting nay: none

Absent during vote: Commissioner Gary

Absent: Commissioner Burgess

ON MOTION OF SUPERVISOR BLOWE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the April 1, 2019 Joint Public Hearing of the Sussex County Board of Supervisors and Planning Commission agenda inclusive of moving under Item 7. Public Hearing, Item 7c. Zoning Ordinance Amendment #2019-02 to Item 10. and add as Item 10.1 Zoning Ordinance Amendment #2019-02 and add as Item 10.2 Discussion regarding Property Maintenance.

Voting aye: Supervisors Blowe, Fly, Futrell, Seward, Stringfield

Voting nay: none

Absent: Supervisor Tyler

Item 6. Public Hearing

ON MOTION OF COMMISSIONER MASON, seconded by COMMISSIONER BRACY and carried: RESOLVED that the Sussex County Planning Commission hereby enters into Public Hearing.

Voting aye: Commissioners Bracy, Edmond, Irving, King, Mason, Massenburg, Mayes, Young

Voting nay: none

Absent during vote: Commissioner Gary

Absent: Commissioner Burgess

ON MOTION OF SUPERVISOR BLOWE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby enters into Public Hearing.

Voting aye: Supervisors Blowe, Fly, Futrell, Seward, Stringfield

Voting nay: none

Absent: Supervisor Tyler

Chairman Seward gave a brief overview of the Order of Business of the Joint Public Hearing of the Board of Supervisors and the Planning Commission.

Item 7a. Comprehensive Plan Amendment #2019-01

The supporting documents were included in the packet provided to the Board members and the Planning Commission members.

Mr. Darren Coffey, of the Berkley Group, stated that the Berkley Group met with the Board of Supervisors and the Planning Commission on March 4, 2019 regarding the Comprehensive Plan and Zoning Ordinance in regards to solar energy facilities.

Mr. Coffey gave a brief overview of what Solar Farms are. He stated that over the last five years, Virginia has seen a dramatic increase in its installed solar capacity, growing from 17 MW in 2014 to more than 320 MW installed by October 2018.

Mr. Coffey stated that the 2018 Virginia Energy Plan calls for 3,000 megawatts for the next three (3) years. The Commonwealth's renewable energy targets to 16% by 2022.

The Commonwealth currently uses a Permit by Rule (PBR) process managed by DEQ to permit wind, solar, and biomass based generation resources with a capacity less than 1500 MW. DEQ has issued 26 permits for solar projects totaling 750 MW. Notices of Intent that have been filed totaling 3,317 megawatts.

Mr. Coffey stated that Dominion Energy has generated 824 MW of solar. They are either operational or have Power Purchase Agreements. Their goal is to add 5,000 megawatts of solar in the state over the next several decades.

He stated that the Permit by Rule (PBR) process by Department of Environmental Quality (DEQ) does provide some regulation. The local government must certify compliance with land use ordinances. Virginia Code Section 15.2-2232 states the local Planning Commission must review public utility facilities. The first step should be the Planning Commission doing local 2232 review.

The application must substantially meet the Comprehensive Plan. If it's not found to be substantially in accord, then there is no Use Permit to be processed. If it is found substantially in accord, then that's one screen that the application passes. If the application meets the substantially in accord to the Comprehensive Plan, it doesn't mean the Use Permit has to be approved.

Mr. Coffey reviewed the County's Vision Statement to seek to maintain its rural character and natural beauty. The County is intent upon protecting its forest resources, agricultural lands, and natural environment systems.

He stated that the Comprehensive Plan shows that land use in the County is 90% agriculture/forestry; 5% residential; and 5% commercial, industrial, and public. Development in the County is concentrated in five (5) general areas of planning and growth in the Comprehensive Plan as well as small area plans.

Promoting the continuation of farming and identifying and preserving prime agricultural land and facilitate existing and future farming operations, reduce the effects of soil erosion, and protect watersheds restricting to permitted use to agriculture, forestry, passive recreation, and other conservation

Under Issue 1 is Commercial and Industrial Development. The goal is sustainable development. Issue 2 is Community Appearance. The goal is to guide and support an attractive land use development. Want to maintain natural areas, create buffers and setbacks.

Issue 6 is Growth Management. The goal is to promote environmentally friendly development that is sustainable, aesthetically pleasing, and consistent with the County's rural image and character.

Issue 8 is Infrastructure Carrying Capacity and Provision for Facilities and Services. The goal is to protect or restore quality areas of environmental concern or other fragile areas while providing adequate levels of service to meet the needs of citizens.

Issue 10 is Land Development and Land Use Compatibility. The goal is to minimize direct and secondary environmental impacts, avoid risks to public health, safety and welfare.

Issue 11 is Natural Systems. The goal is to develop forestry, agriculture, and related industry while protecting the beauty of the landscape.

Mr. Coffey stated that any consideration should involve a wide range of issues, including, but not limited to the potential impact of a development or a proposed ordinance amendment on natural environment, important natural resources, neighboring development and community function, character, and attractiveness.

Mr. Coffey stated that the Zoning Ordinance had a purpose.

Mr. Coffey stated that the location, character, and extent of solar facilities aren't currently substantially in accord with the Comprehensive Plan because there isn't anything about the location, character and extent in the current Comprehensive Plan. He stated that one (1) has been submitted and found to be in conformance. It was done as part of the Use Permit process. They would recommended that it would be broken out and done, first, separately.

There was discussion that the Planning Commission's role is to make recommendation of land use policy to the Board of Supervisors.

There was discussion of decommissioning and proximity to towns.

There was discussion that utility scale solar facility may be appropriate in agriculture and industrial districts. Identify Brownfields, capped county landfills.

It was stated that the Zoning Ordinance will define what is small scale solar, medium scale solar and utility scale solar.

Public comments were heard from:

- Casey Logan (Prince George Electric) – member of ODEC; agreed to purchase; support; goes with environmental plan.
- Raymond Covington (Courthouse District) – concern with limiting total amount; change character; overall coverage; electric magnetic
- Victoria (Developer, Charlottesville) – developer; offer insight; proposal project in January;

Commissioner Gary entered at 7:12 p.m.11029

Comments were heard from Supervisors Blowe, Fly, Futrell, Seward and Stringfield.

ON MOTION OF COMMISSIONER MAYES, seconded by COMMISSIONER MASSENBURG and carried: RESOLVED that the Sussex County Planning Commission hereby recommends approval of Comprehensive Plan Amendment #2019-01 to include the following amendments (1) the total size shall be larger than two (2) acres but less than 1,500 contiguous acres with no more than 65% PV panel coverage; (2) located outside planning areas or community hubs; (3) located outside forested areas to preserve forest resources; (4) further than three (3) miles from any village or town boundary; (5) further two (2) miles from other existing or permitted facilities; and (6) proximity to residences; historic, cultural, recreational, or environmentally-sensitive areas; and scenic viewsheds be considered.

Voting aye: Commissioners Bracy, Edmond, Irving, King, Mason, Massenburg, Mayes, Young

Voting nay: Commissioner Gary

Absent: Commissioner Burgess

ON MOTION OF SUPERVISOR FUTRELL, seconded by SUPERVISOR FLY and carried: RESOLVED that the Sussex County Board of Supervisors hereby accepts the Planning Commission's recommendation regarding changes to the comprehensive plan regarding utility scale solar; to-wit:

- the total size shall be larger than two (2) acres but less than 1,500 contiguous acres with no more than 65% PV panel coverage;
- located outside planning areas or community hubs;
- located outside forested areas to preserve forest resources;
- further than three (3) miles from any village or town boundary;
- further two (2) miles from other existing or permitted facilities; and
- proximity to residences; historic, cultural, recreational, or environmentally-sensitive areas; and scenic viewsheds be considered.

Voting aye: Supervisors Blowe, Fly, Futrell, Seward, Stringfield

Voting nay: none

Absent: Supervisor Tyler

Item 7b. Zoning Ordinance Amendment #2019-01

Mr. Darren Coffey of the Berkley Group reported that the Zoning Ordinance Amendment #2019-01 includes amendment to Article I, Section 16-1, Definitions, to include the meanings of the following: Applicant, Brownfield, Disturbance zone, Integrated PV, Operator, Owner, Photovoltaic of "PV," Rated capacity, Site, Solar facility (small-scale), Solar Facility (medium-scale) and Solar Facility (utility scale).

Add Utility-scale solar facilities to Article XII. Site Plan Requirements, Section 16-202 (When required).

Add a new Article XXIII, Solar Facilities, to include, but not limited to, the following sections: Statement of intent, Applicability, Zoning districts, Applications and procedures, Neighborhood

meeting, Minimum Development standards, Decommissioning, Coordination of local emergency services, and Conditions

Section 16-406. Minimum development standards

(a)1. Should be: The minimum area of a utility-scale facility shall be two (2) acres, and the maximum area shall be less than 1,500 contiguous acres.

Mr. Coffey stated that this will correlate with the Comp Plan.

(g) add clarifying language: in addition to ground cover on the site shall be native vegetation. Language need to be added to address landscaping, address the use of herbicides and pesticides; notify County when applying pesticides and herbicides. County can request periodic water and soil testing.

Will add language for approval by County attorney and staff.

Changes were made to:

Section 16-407. Decommissioning

- (a) Change continuous service to a period of six (6) months shall be removed at owner's or operator's expense.
- (b) The owner or operator shall notify the zoning administrator by certified mail and in person of the proposed date of discontinued operations and plans removal. Change to include anywhere it states zoning administrator to "It shall be provided to the Director of Community and add the County Administrator and the Board of Supervisors".

ON MOTION OF COMMISSIONER IRVING, seconded by COMMISSIONER MASSENBURG and carried: RESOLVED that the Sussex County Planning Commission hereby recommends approval of Zoning Ordinance Amendment #2019-01 to the Board of Supervisors inclusive of the following:

Section 16-406 Minimum development standards

- (a)1. Should be: The minimum area of a utility-scale facility shall be two (2) acres, and the maximum area shall be less than 1,500 contiguous acres.
- (g) add clarifying language: in addition to ground cover on the site shall be native vegetation. Language need to be added to address landscaping, address the use of herbicides and pesticides; notify County when applying pesticides and herbicides. County can request periodic water and soil testing.

Section 16-407 Decommissioning

- (a) Change continuous service to a period of six (6) months shall be removed at owner's or operator's expense.

- (b) The owner or operator shall notify the zoning administrator by certified mail and in person of the proposed date of discontinued operations and plans removal.

Voting aye: Commissioners Bracy, Edmond, Irving, King, Mason, Massenburg, Mayes, Young

Voting nay: Commissioner Gary

Absent: Commissioner Burgess

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby accepts the recommendation to approve additional changes to Zoning Ordinance Amendment #2019-01 regarding scale solar facilities in the County to include:

Section 16-406 Minimum development standards

- (a)1. Should be: The minimum area of a utility-scale facility shall be two (2) acres, and the maximum area shall be less than 1,500 contiguous acres.
- (g) add clarifying language: in addition to ground cover on the site shall be native vegetation. Language need to be added to address landscaping, address the use of herbicides and pesticides; notify County when applying pesticides and herbicides. County can request periodic water and soil testing.

Section 16-407 Decommissioning

- (a) Change continuous service to a period of six (6) months shall be removed at owner's or operator's expense.
- (b) The owner or operator shall notify the zoning administrator by certified mail and in person of the proposed date of discontinued operations and plans removal.

Item 7c. Zoning Ordinance Amendment #2019-02

Because this item is an action, not requiring a public hearing, this item was moved to Item 10.1.

Item 8. Return to Regular Session

Chairman Seward returned to Regular Session.

Item 10. Citizens' Comments

There were no citizens' comments.

Item 10.1 Zoning Ordinance Amendment #2019-02

County Administrator Jones stated that this item was regards to a resolution the Board adopted September 2018 in regards to towing operations. He stated the motion was made by Supervisor Fly, seconded by Supervisor Futrell wherein the Board of Supervisor would direct the Planning Commission to initiate a rezoning process that would grandfather existing towing operations in the A-1 District so that a Conditional Use Permit (CUP) would not be needed. County

Administrator Jones stated that it further resolved that a new applicant going forward to have a CUP.

County Administrator Jones stated that it was noted by the County Attorney that the wording of the intent of the Board was not properly done. It's not a rezoning process.

County Attorney Brittle stated as he understands the intention, from speaking with the previous County Attorney, was to not to rezone anything, but to add a zoning provision. As it reads, any existing towing operations as they are defined, as of the date of acceptance do not need a Conditional Use Permit. Therefore, if they had a permit prior to this, they would not have to abide by it. Or, if they wanted to change something, they could.

County Attorney Brittle stated that in order to protect our citizens, the ordinance should speak to whether the conditions imposed on the citizen that has the CUP, should still be imposed or whether he should be able to operate as if he was in a business zoning.

There was discussion of why the citizen was required to have the CUP. There was discussion of what action need to be taken. County Attorney Brittle stated that the resolution had been in October, more than a 100 days. The Statute says that after 100 days, the Board referring it to the Planning Commission is deemed approved.

County Attorney Brittle stated that he would like for the Board to re-refer it to the Planning Commission. Have the Planning Commission hold a Public Hearing because it's an amendment to a Zoning Ordinance. Once the Planning Commission has held their Public Hearing, if it's recommended for approval to send to the Board of Supervisors, the Board of Supervisors would hold a Public Hearing to receive comments as well.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby re-refers Butler's Towing to the Planning Commission.

Voting aye: Supervisors Blowe, Fly, Futrell, Seward, Stringfield

Voting nay: none

Absent: Supervisor Tyler

10.2 Property Maintenance

County Administrator Jones stated that there has been issues in regards to property maintenance as in dilapidated structures, inoperable vehicles, tall grass, etc. In the past, there has been discussion about Property Maintenance Code allowed by the State of Virginia in the Building Code. For various reasons, the Property Maintenance Code had not been adopted by the County.

County Administrator Jones stated that the Maintenance Code would allow the County to enforce some regulations in regards to dilapidates houses, tall grass, etc. County Administrator Jones stated the adoption of a Maintenance Code now is an all or nothing situation. In the past the State would allow for the adoption of part of the Code; however, now it's all or nothing situation. The "all or nothing" necessitates hiring additional personnel to do the investigations and follow through on the complaints.

There was discussion of the remedies of the County, collection fines, property, etc. and whether or the County should adopt the Property Maintenance Code. As discussed by a previous County Attorney, if the County did not wish to adopt a Property Maintenance Code, there may be other ways to address some of the issues without the adoption of the Code.

One of the ways, was the County's ability to adopt an ordinances dealing with spot blight. This ordinance would be outside of the Code, but it would deal with some of the issues. In this case, there is a prescribed process of what has to happen with spot blight abatement dealing with unsafe and derelict structures that the County would have to follow, as in given notice to owner, owner having time to respond. The response would have to have a response amount of time to address the issue.

The remedy would be if the County would the work, they would be able to attach liens as with the Property Maintenance Code.

County Administrator Jones stated that Supervisor Blowe requested that this matter be brought to the joint meeting.

Vice Chairman discussed keeping the County clean.

County Attorney Brittle discussed briefly the Property Maintenance Code and adopting it. He also discussed achieving cleaning the property and getting liens on property. County Attorney Brittle stated that he believe that it could be handled outside the zoning issue. The way it was written, it's under health and safety.

Item 11. Adjournment

ON MOTION OF COMMISSIONER MASSENBURG, seconded by COMMISSIONER MASON and carried: RESOLVED that the April 1, 2019 Joint Public Hearing of the Sussex County Planning Commission and Board of Supervisors hereby adjourned 9:17 p.m.

ON MOTION OF SUPERVISOR BLOWE, seconded by SUPERVISOR FLY and carried: RESOLVED that the April 1, 2019 Joint Public Hearing of the Sussex County Board of Supervisors and the Planning Commission hereby adjourned 9:17 p.m.

Voting aye: Supervisors Blowe, Fly, Futrell, Seward, Stringfield

Voting nay: none

Absent: Supervisor Tyler