

**At a Recessed Meeting of the Sussex County Board of Supervisors
Held in the General District Courtroom in
Thursday, September 29, 2016 at 6 p.m.**

BOARD MEMBERS PRESENT

Keith C. Blowe
Alfred G. Futrell
Susan B. Seward
John A. Stringfield
Rufus E. Tyler, Sr.

BOARD MEMBER ABSENT

C. Eric Fly, Sr.

STAFF PRESENT

Vandy V. Jones, III, Deputy County Administrator
Mark Flynn, County Attorney
John Broderick, Public Schools' Director of Finance & Business Operations
Shilton R. Butts, Assistant to the County Administrator/Deputy Clerk to the Board
Andre M. Greene, Director of Community Development
Julius Hamlin, Public Schools' Director of Instruction
Arthur Jarrett, Jr., Superintendent of Public Schools
Kelly Moore, Accounts Payable Clerk

Item 1. Call to Order/Determine Quorum

The September 29, 2016 Recessed meeting of the Sussex County Board of Supervisors was called to order by Chairman Blowe.

Item 2. Invocation

The Invocation was offered by Chairman Blowe.

Item 3. Pledge of Allegiance

The Pledge of Allegiance was recited by all.

Item 4. Agenda Amendment

Chairman Blowe requested to delete Item 7. Sussex County Public Schools – 50/50 School Fund Carryover Policy from the agenda.

Item 5. Approval of the Agenda

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR SEWARD and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the agenda of the September 29, 2016 meeting, subject to the following: Deleting Item 7, Sussex County Public Schools, 50/50 School Fund Carryover Policy.

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

Voting nay: none

Absent: Supervisor Fly

Item 6. Conditional Use Permit Application #2016-03, Virginia Solar LLC, applicant

County Attorney Flynn reviewed the revisions, Items 13 and 19 of the proposed conditions of Conditional Use Permit Application #2016-03, Virginia Solar LLC, applicant.

A copy of the entire Conditional Use Permit Application #2016-03, Virginia Solar LLC, applicamt, was provided to the Board members.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission held a public hearing on Monday, September 12th, 2016 to consider Conditional Use Permit Application #2016-03 (VA Solar LLC., applicant). Following the public hearing the Planning Commission voted (6-5) to forward Conditional Use Permit Application #2016-03 to the Board of Supervisors with a recommendation that it be denied for the following reasons:

- 1. Solar is not a viable business without taxpayer subsidies.
- 2. There are too many unknowns. The company stated that there will be no dealings with Dominion Power but electricity will be transmitted over Dominion lines.
- 3. No figures have been submitted relative to the amount of the surety bond.

SUGGESTED MOTIONS

To recommend approval:

Mr. Chair, I recommend the Board of Supervisors approve Conditional Use Permit Application #2016-03 with the amended conditions with the requirements of the Zoning Ordinance and is consistent with the Comprehensive Plan.

To recommend denial:

Mr. Chair, I move the Board of Supervisors deny Conditional Use Permit #2016-03 for the following reason (s): _____

Conditions

1. Sappony Solar LLC or any successors, assignees, current or future lessee, sub-lessee, or owner of the Solar energy facility (the “Applicant”) shall consent to annual administrative inspections by the Community Development Department staff for compliance with the requirements of this CUP.
2. The Applicant shall sign the list of the adopted conditions for this CUP signifying acceptance and intent to comply with these conditions.
3. All federal, state and local laws, regulations, permit requirements and ordinances will be adhered to including but not limited to:
 - a. All active solar systems shall meet the requirements of the National Electrical Code (NEC), National Electrical Safety Code (NESC), American Society of Civil Engineers (ASCE), American National Standards Institute (ANSI), Institute of Electrical and Electronics Engineers (IEEE), Underwriters Laboratories (UL), or International Electrotechnical Commission (IEC) as applicable and state building code and shall be inspected by either a county building inspector or a third-party inspector through the building permit process.
 - b. An Erosion and Sediment Control Plan must be submitted and approved prior to any land disturbance.
 - c. The site shall fully comply with all applicable provisions of the Sussex County Zoning Ordinance, to the extent not modified herein, throughout the life of this CUP.
4. A building permit must be obtained within 3 years of obtaining the Conditional Use Permit and the generation of solar electricity shall begin within one year after the building permit is obtained or this CUP shall be null and void.
5. This conditional use permit (CUP) shall be binding on Sappony LLC or any successors, assignees, current or future lessee, sub-lessee, or the owner of the solar energy facility.
6. The solar energy facility shall consist of one integrated power generation facility and shall be limited to no more than 250 acres of ~~the 250 acres of the~~ the 371 acre property identified as “Sappony-Virginia Solar,” as shown on the Maximum Extents Plan prepared by Timmons Group dated May 27th 2016.
7. All site activity required for the construction and operation of the solar energy facility shall be limited to the following:
 - a. All piling driving shall be limited to the hours from the earlier of sunrise or 8 a.m. to the later of 6 p.m. or sunset, Monday through Saturday. The applicant may request permission from the County Administrator to conduct piling driving activity on Sunday, but such permission will granted or denied at the sole discretion of the County Administrator; and
 - b. All other construction activity on-site shall be permitted Monday through Sunday in accordance with the provisions of the County’s Noise Ordinance.
8. A minimum one hundred and fifty (150) foot setback shall be maintained from solar equipment to any adjacent residential dwellings that exist at of the time of the approval of the Board of Supervisors, unless it is across a public right-of-way from the solar equipment. This requirement may be reduced or waived if agreed to, in writing, by the owner of the residence. The security fence and project roads may be located within the setbacks. During construction the setback may be used for staging of materials and parking.
9. A minimum 50’ foot setback from the solar equipment to the property line shall be provided around the perimeter of the project where it is adjacent to property not owned by the same

property owner as covered in the CUP at the time of approval by the Board of Supervisors. Within the buffer, in areas where there is either less than 15 feet of native timber remaining on the project parcel or the solar equipment is less than 150' from the adjacent property line, a single row of evergreens will be planted within the 50 foot setback or adjacent to the project fence, where there is an adjacent property with an existing residence. Such evergreens shall be planted on 15 foot centers and shall be a Meyers Spruce, Eastern Red Cedar, Norway Spruce, or other similar tree (which alternate tree shall be subject to the prior written approval of the Community Development Department), and the evergreen installed shall have an anticipated five year height of six (6) feet to eight (8) feet after planting and an anticipated mature height of thirty (30) to forty (40) feet or low growing evergreen vegetation with an anticipated five year height of three (3) to five (5) feet after planting and a mature height of no more than seven (7) to ten (10) feet shall be planted. This requirement may be reduced or waived if agreed to, in writing, by the owner of the residence. The security fence and project roads may be located within the setbacks. During construction the setback may be used for the staging of materials or parking.

10. A minimum 50 foot setback from any solar structure to any public right-of-way shall be provided where the project is adjacent to the public right-of-way. Along public right-of-ways where there is either less than 15 feet of native timber remaining on the project parcel or the solar equipment is less than 150' from the public right-of-way, low growing evergreen vegetation with an anticipated five year height of three (3) to five (5) feet after planting and mature height of no more than seven (7) to ten (10) feet shall be planted, and/or in combination with a single row of Meyers Spruce, Eastern Red Cedar, Norway Spruce, or other similar tree planted on fifteen (15) foot centers (which alternative tree shall be subject to the prior written approval of the Community Development Department), with anticipated five year height of six (6) to eight (8) feet after planting and an anticipated mature height of thirty (30) to forty (40) feet, and/or in combination with a berm of sufficient height to block the view of the solar equipment, when standing at the edge of the public right-of-way at a height of 5'. This requirement may be reduced or waived if agreed to, in writing, by the Department of Community Development. The security fence and project roads may be located within the setbacks. During construction the setback may be used for the staging of materials and parking.
11. The Applicant shall install a security fence around the solar energy facility that is a minimum of seven (7) feet in height.
12. Construction lighting shall be minimized and shall be directed downward. Post-construction lighting shall be limited to security lighting only.
13. A decommissioning plan shall be developed by the Applicant and forwarded to the Community Development Department prior to approval of any building permits for the facility. If the solar energy facility is inactive (completely or substantially discontinuing the delivery of electricity to an electrical grid) for a continuous twenty-four (24) month period, shall be considered abandoned. The Applicant shall provide notice to County staff immediately upon the site becoming inactive and/or shutting down operation. The current owner of the Project ("Project Owner") shall remove the facilities (decommissioning) within six (6) months of receipt of notice from the County ("County Notice"). If the facility is not removed within the specified time after the County Notice, the County may cause the removal of the solar energy facility with costs being borne by the Project Owner. **Unless**

~~the solar energy facility is owned by a public utility in the Commonwealth of Virginia,~~
The ~~net~~ costs of decommissioning shall be secured by an adequate surety in a form agreed to by the County Attorney, including but not limited to a letter or credit, cash or a guarantee by an investment grade entity, ~~posted within 30 days of which shall be posted prior to the issuance of the land disturbance permit and building permit the project receiving its occupancy permit or equivalent~~ from the County. If the solar energy facility is sold, ~~to an entity that is not a public utility,~~ the CUP shall not transfer to the purchaser until such time as the adequate surety is provided. ~~If a surety is required, the cost estimates of the decommissioning shall be updated every five (5) years and provided to the County. At its option the County may require the surety amount be increased based on the net updated cost of decommissioning.~~

14. The applicant shall coordinate with the County's emergency services staff to provide to provide materials, education, and/or training to the departments serving the solar facility in regard to how to safely respond to on-site emergencies.
15. Access roads are to be marked by the Applicant with identifying signage.
16. A Construction Traffic Management Plan and mitigation measures shall be developed by the Applicant and submitted to the Virginia Department of Transportation and the County of Sussex for review. The Plan shall address traffic control measures, pre-and post-construction road evaluation and any necessary repairs to the public road that are requires as a result of damage from the Project. If traffic issues arise during the construction of the Project, the Applicant will develop with input from the County and VDOT appropriate measures to mitigate the issues.
17. All panels will use anti-reflective coatings.
18. No aspect of the solar facility shall exceed 25 feet in height, as measured from grade at the base of the structure to its highest point. Such height restriction shall not apply to the electrical distribution or transmission lines.
- ~~18.~~19. All pilings, foundations, racking systems, solar panels, underground cables and conduits, combiner boxes, switch gears, transformers, and other accessory equipment/structures shall be removed from the subject property and properly disposed of as part of the decommissioning.

County Attorney Flynn advised that the applicant can't start work until the surety bond is in place and that the county attorney has the authority to work with the applicant to ensure the County is protected by the bond.

There was discussion that in no event shall the surety bond be less than \$100,000.00.

It was discussed that language would be added to state that the consultants shall be a professional engineer licensed with expertise in the subject of decommissioning solar projects and approved by the County.

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR SEWARD and carried: RESOLVED that the Sussex County Board of Supervisors approves Conditional Use Permit Application #2016-03, with the noted modifications to the amended conditions, as it complies with the requirements of the Zoning Ordinance and is consistent with the Comprehensive Plan:

Conditions

1. Sappony Solar LLC or any successors, assignees, current or future lessee, sub-lessee, or owner of the Solar energy facility (the “Applicant”) shall consent to annual administrative inspections by the Community Development Department staff for compliance with the requirements of this CUP.
2. The Applicant shall sign the list of the adopted conditions for this CUP signifying acceptance and intent to comply with these conditions.
3. All federal, state and local laws, regulations, permit requirements and ordinances will be adhered to including but not limited to:
 - a. All active solar systems shall meet the requirements of the National Electrical Code (NEC), National Electrical Safety Code (NESC), American Society of Civil Engineers (ASCE), American National Standards Institute (ANSI), Institute of Electrical and Electronics Engineers (IEEE), Underwriters Laboratories (UL), or International Electrotechnical Commission (IEC) as applicable and state building code and shall be inspected by either a county building inspector or a third-party inspector through the building permit process.
 - b. An Erosion and Sediment Control Plan must be submitted and approved prior to any land disturbance.
 - c. The site shall fully comply with all applicable provisions of the Sussex County Zoning Ordinance, to the extent not modified herein, throughout the life of this CUP.
4. A building permit must be obtained within 3 years of obtaining the Conditional Use Permit and the generation of solar electricity shall begin within one year after the building permit is obtained or this CUP shall be null and void.
5. This conditional use permit (CUP) shall be binding on Sappony LLC or any successors, assignees, current or future lessee, sub-lessee, or the owner of the solar energy facility.
6. The solar energy facility shall consist of one integrated power generation facility and shall be limited to no more than 250 acres of the 371 acre property identified as “Sappony-Virginia Solar,” as shown on the Maximum Extents Plan prepared by Timmons Group date May 27th 2016.
7. All site activity required for the construction and operation of the solar energy facility shall be limited to the following:
 - a. All piling driving shall be limited to the hours from the earlier of sunrise or 8 a.m. to the later of 6 p.m. or sunset, Monday through Saturday. The applicant may request permission from the County Administrator to conduct piling driving activity on Sunday, but such permission will granted or denied at the sole discretion of the County Administrator; and
 - b. All other construction activity on-site shall be permitted Monday through Sunday in accordance with the provisions of the County’s Noise Ordinance.
8. A minimum one hundred and fifty (150) foot setback shall be maintained from solar equipment to any adjacent residential dwellings that exist at of the time of the approval of the Board of Supervisors, unless it is across a public right-of-way from the solar equipment. This requirement may be reduced or waived if agreed to, in writing, by the owner of the

residence. The security fence and project roads may be located within the setbacks. During construction the setback may be used for staging of materials and parking.

9. A minimum 50' foot setback from the solar equipment to the property line shall be provided around the perimeter of the project where it is adjacent to property not owned by the same property owner as covered in the CUP at the time of approval by the Board of Supervisors. Within the buffer, in areas where there is either less than 15 feet of native timber remaining on the project parcel or the solar equipment is less than 150' from the adjacent property line, a single row of evergreens will be planted within the 50 foot setback or adjacent to the project fence, where there is an adjacent property with an existing residence. Such evergreens shall be planted on 15 foot centers and shall be a Meyers Spruce, Eastern Red Cedar, Norway Spruce, or other similar tree (which alternate tree shall be subject to the prior written approval of the Community Development Department), and the evergreen installed shall have an anticipated five year height of six (6) feet to eight (8) feet after planting and an anticipated mature height of thirty (30) to forty (40) feet or low growing evergreen vegetation with an anticipated five year height of three (3) to five (5) feet after planting and a mature height of no more than seven (7) to ten (10) feet shall be planted. This requirement may be reduced or waived if agreed to, in writing, by the owner of the residence. The security fence and project roads may be located within the setbacks. During construction the setback may be used for the staging of materials or parking.
10. A minimum 50 foot setback from any solar structure to any public right-of-way shall be provided where the project is adjacent to the public right-of-way. Along public right-of-ways where there is either less than 15 feet of native timber remaining on the project parcel or the solar equipment is less than 150' from the public right-of-way, low growing evergreen vegetation with an anticipated five year height of three (3) to five (5) feet after planting and mature height of no more than seven (7) to ten (10) feet shall be planted, and/or in combination with a single row of Meyers Spruce, Eastern Red Cedar, Norway Spruce, or other similar tree planted on fifteen (15) foot centers (which alternative tree shall be subject to the prior written approval of the Community Development Department), with anticipated five year height of six (6) to eight (8) feet after planting and an anticipated mature height of thirty (30) to forty (40) feet, and/or in combination with a berm of sufficient height to block the view of the solar equipment, when standing at the edge of the public right-of-way at a height of 5'. This requirement may be reduced or waived if agreed to, in writing, by the Department of Community Development. The security fence and project roads may be located within the setbacks. During construction the setback may be used for the staging of materials and parking.
11. The Applicant shall install a security fence around the solar energy facility that is a minimum of seven (7) feet in height.
12. Construction lighting shall be minimized and shall be directed downward. Post-construction lighting shall be limited to security lighting only.
13. A decommissioning plan shall be developed by the Applicant and forwarded to the Community Development Department prior to approval of any building permits for the facility. If the solar energy facility is inactive (completely or substantially discontinuing the delivery of electricity to an electrical grid) for a continuous twenty-four (24) month period, it shall be considered abandoned. The costs of decommissioning shall be secured by an adequate surety in a form agreed to by the County Attorney, including but not limited

to a letter or credit, cash or a guarantee by an investment grade entity, which shall be posted prior to the issuance of the land disturbance permit and building permit from the County, and shall be in an amount no less than One Hundred Thousand Dollars (\$100,000) while the facility remains installed. If the solar energy facility is sold, the CUP shall not transfer to the purchaser until such time as the adequate surety is provided.

The cost estimates of the decommissioning shall be updated every five (5) years by an independent consultant retained by the Project Owner and provided to the County. The consultant shall be a professional engineer licensed in Virginia with expertise in the subject of decommissioning solar projects, and shall be subject to the County's approval prior to being engaged by the Project Owner, which such approval shall not be unreasonably withheld. The consultant's reports will identify the cost of decommissioning, taking into account any salvage value of the installed equipment. The surety amount will be increased or decreased based on such updated cost of decommissioning, but the surety shall not be below the minimum amount required by this condition. The Project Owner shall be liable to the County for any deficiency if the bond amount does not fully fund the costs of decommissioning.

If the Project Owner intends to cease operations, or to shut down the project, it shall send the County Attorney written notice at least 90 days prior to such action and will provide, with such notice, a revised consultant's report. The then-current owner of the Project ("Project Owner") shall remove the facilities ("decommissioning") within six (6) months of receipt of notice from the County ("County Notice"). If the facility is not removed within the specified time after the County Notice, the County may cause the removal of the solar energy facility with costs being borne by the Project Owner.

14. The applicant shall coordinate with the County's emergency services staff to provide to provide materials, education, and/or training to the departments serving the solar facility in regard to how to safely respond to on-site emergencies.
15. Access roads are to be marked by the Applicant with identifying signage.
16. A Construction Traffic Management Plan and mitigation measures shall be developed by the Applicant and submitted to the Virginia Department of Transportation and the County of Sussex for review. The Plan shall address traffic control measures, pre-and post-construction road evaluation and any necessary repairs to the public road that are requires as a result of damage from the Project. If traffic issues arise during the construction of the Project, the Applicant will develop with input from the County and VDOT appropriate measures to mitigate the issues.
16. All panels will use anti-reflective coatings.
17. No aspect of the solar facility shall exceed 25 feet in height, as measured from grade at the base of the structure to its highest point. Such height restriction shall not apply to the electrical distribution or transmission lines.
18. All pilings, foundations, racking systems, solar panels, underground cables and conduits, combiner boxes, switch gears, transformers, and other accessory equipment/structures shall be removed from the subject property and properly disposed of as part of the decommissioning.

Voting aye: Supervisors Blowe, Seward, Stringfield, Tyler

Voting nay: Supervisor Futrell
Absent: Supervisor Fly

Item 7. Citizen's Comments – none

Item 8. Adjourned

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR FUTRELL and carried:
RESOLVED that the Sussex County Board of Supervisors hereby adjourn the September 29, 2016
recessed meeting at 6:32 p.m.

Voting aye: Supervisors Blowe, Futrell, Seward. Stringfield, Tyler

Voting nay: none

Absent: Supervisor Fly