



COUNTY OF AUGUSTA
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMUNITY DEVELOPMENT
P.O. BOX 590
COUNTY GOVERNMENT CENTER
VERONA, VA 24482-0590



MEMORANDUM

TO: Augusta County Planning Commission
FROM: Leslie Tate, Planner II *LT*
DATE: March 4, 2019
SUBJECT: Regular Meeting

The regular meeting of the Augusta County Planning Commission will be held on **Tuesday, March 12, 2019 at 7:00 p.m.**, at the Augusta County Government Center, in the Main Board Meeting Room, 18 Government Center Lane, Verona, Virginia.

There will not be a worksession before this meeting, so please report promptly to the Board Meeting Room at 7:00 p.m.

Attached are the agenda and meeting materials for Tuesday's meeting. If you have any questions about any of the material, please feel free to contact me. If you won't be able to attend the meeting, please let Jean or me know as soon as possible.

LT/jm

ADVANCED
AGENDA

Regular Meeting of the Augusta County Planning Commission

Tuesday, March 12, 2019 7:00 P.M.

1. CALL TO ORDER
2. DETERMINATION OF A QUORUM
3. APPROVAL OF THE MINUTES
4. PUBLIC HEARINGS

An ordinance to amend Chapter 21. Subdivision of Land. Article III Procedure for Approval of Major Subdivisions. Section 21-37. Final approval and recordation of the final plat.

Amendment reflects a change in the Augusta County Service Authority policy regarding reserved treatment capacity for public sewer systems. The amendment clarifies that the reservation of capacity as a condition of final plat approval is dependent upon such policy and is not required in all cases.

5. MATTERS TO BE PRESENTED BY THE PUBLIC
6. NEW BUSINESS
7. OLD BUSINESS
8. MATTERS TO BE PRESENTED BY THE COMMISSION
9. STAFF REPORTS
 - A. Information for Commission – Code of Virginia, Section 15.2-2310
(Board of Zoning Appeals Items)
 - B. Solar Power Generation and the Comprehensive Plan
10. ADJOURNMENT

PRESENT: T. Jennings, Chairman
G. Campbell, Vice Chairman
S. Bridge
J. Curd
L. Howdysshell
K. Leonard
K. Shiflett
J. Wilkinson, Director of Community Development
L. Tate, Planner II

VIRGINIA: At the Called Meeting of the Augusta County Planning Commission held on Tuesday, February 12, 2019, at 5:00 p.m. in the Board Room, Augusta County Government Center, Verona, Virginia.

Mr. Jennings called the meeting to order.

Mrs. Tate reviewed with the Commissioners the items coming before the BZA in March, sharing aerial maps of the properties and specifics of the application requests.

Mrs. Tate reviewed with the Commissioners the proposed ordinance changes which will be considered at the Public Hearing.

1. An ordinance to amend Chapter 25. Zoning. Article IV. Signs, billboards and outdoor advertising structures.
2. An ordinance to amend Chapter 25. Zoning. Article XII Rural Residential (RR) Districts. Section 25-123. Uses permitted by Administrative Permit.
3. An ordinance to amend Chapter 25. Zoning. Article VII General Agriculture (GA) Districts. Section 25-73. Uses permitted by Administrative Permit.
4. An ordinance to amend Chapter 25. Zoning. Article I General Provisions. Section 25-4. Definitions. Special Use Permit.
5. An ordinance to amend Chapter 25. Zoning. Article I General Provisions. Section 25-4. Definitions. Kennel.
6. An ordinance to amend Chapter 25. Zoning. Article V Accessory Buildings and Uses. Section 25-54.1. Uses accessory to single-family residences.
7. An ordinance to amend Chapter 25. Zoning. Article V Accessory Buildings and Uses. Section 25-55. Uses accessory to multi-family residences.
8. An ordinance to amend Chapter 25. Zoning. Article VII. General Agriculture (GA) Districts. Section 25-72.1. Accessory buildings and uses.

Mrs. Tate reviewed with the Commissioners a request made by **Augusta Solar LLC** for a Special Use Permit. She explained to the Commissioners this is not a request for a rezoning and that the public hearing would not be related to making a recommendation to the Board of Supervisors whether to approve the request, but that it would be their responsibility to decide at the public hearing if the request is in substantial accord with the County's Comprehensive Plan.

Chairman

Secretary

PRESENT: T. Jennings, Chairman
G. Campbell, Vice Chairman
S. Bridge
J. Curd
L. Howdyshell
K. Leonard
K. Shiflett
J. Wilkinson, Director of Community Development
L. Tate, Planner II

VIRGINIA: At the Regular Meeting of the Augusta County Planning Commission held on Tuesday, January 8, 2019, at 7:00 p.m. in the Board Room, Augusta County Government Center, Verona, Virginia.

DETERMINATION OF A QUORUM

Mr. Jennings stated as there were seven (7) members present, there was a quorum.

MINUTES

Mrs. Shiflett moved to approve the minutes of the called and regular meetings held on December 11, 2018 and January 8, 2019.

Mr. Bridge seconded the motion, which carried unanimously.

PUBLIC HEARINGS

A. An ordinance to amend Chapter 25. Zoning. Article IV. Signs, billboards and outdoor advertising structures.

Amendment eliminates definition of and removal timeframe reference of Agricultural and Forestal District signs; reduces the size of a single off-premise advertising signs from 800 sq. ft. to 200 sq. ft. in General Agriculture (allowing for a waiver along interstate highways) and reduces the size of a single on and off-premise advertising sign from 800 sq. ft. to 200 sq. ft. in Business, Industrial, and Public Use Overlay zoning districts (allowing for a waiver); and adds a prohibition on any sign that produces or emits sound.

Mrs. Tate explained the proposed amendment change as presented on PowerPoint.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mrs. Shiflett stated this is a reasonable amendment that needs to be enacted. She moved to recommend approval of the amendment. Mr. Bridge seconded the motion, which carried unanimously.

B. An ordinance to amend Chapter 25. Zoning. Article XII Rural Residential (RR) Districts. Section 25-123. Uses permitted by Administrative Permit.

Amendment creates a provision for an administrative permit process in Rural Residential zoning districts for the sale of guns for those holding a Type 1 or Type 3 Federal Firearms License. Conditions related to the permit do apply and can be viewed as is detailed below.

Mrs. Tate explained that in the Rural Residential category, there is a various list of uses that can be approved administratively. This amendment will allow a permit to be issued administratively to someone who wishes to hold a Type 1 or Type 3 Federal Firearms License (FFL). She explained the request and reviewed the conditions to hold a Type 1 or Type 3 FFL as presented on PowerPoint.

Mr. Jennings asked Mrs. Tate to explain the difference between a Type 1 and Type 3 Federal Firearms License.

Mrs. Tate stated Type 3 is a curio and relics license and is primarily for collectors. Type 1 is for the sale of firearms and does not include pawn brokering or manufacturing of ammunition.

There being no further questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Leonard stated the County has received many requests from residences wishing to sell firearms from their home. He moved to approve the proposed amendment. Mr. Howdyshe seconded the motion, which carried unanimously.

C. An ordinance to amend Chapter 25. Zoning. Article VII General Agriculture (GA) Districts. Section 25-73. Uses permitted by Administrative Permit.

Amendment creates a provision for an administrative permit process in General Agriculture zoning districts for the sale of guns for those holding a Type 1 or Type 3 Federal Firearms License. Conditions related to the permit do apply and can be viewed as is detailed below.

Mrs. Tate explained currently, if a property owner who has property zoned General Agriculture wishes to sell firearms from their residence, they would be required to obtain a Special Use Permit. This amendment will allow the owner to hold a Type 1 or Type 3 FFL through an administrative permit and they will be required to abide by the same conditions as previously explained for Rural Residential districts.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Howdysshell moved to recommend approval of the amendment as written. Mr. Bridge seconded the motion, which carried unanimously.

D. An ordinance to amend Chapter 25. Zoning. Article I General Provisions. Section 25-4. Definitions. Special Use Permit.

Amendment clarifies that a Special Use Permit can also be granted by the Board of Supervisors as is consistent with Article LVIII. Special Use Permit procedures.

Mrs. Tate explained this amendment changes the definition to match an amendment that was previously approved reserving the authority of the Board of Supervisors to grant Special Use Permits in certain cases as identified in the ordinance.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

Tracy Pyles of 3665 Churchville Avenue stated he does not agree with this amendment as it allows the Board of Supervisors to be judge and jury. Special Use Permits have always come before the Board of Zoning Appeals and they do an admirable job. While the Board of Supervisors have a big responsibility, there are no checks and balances, therefore they should not be part of the appeal process.

Steven Morelli of 104 Fall Ridge Dr. approached the podium to speak against the solar panel application.

Mr. Jennings reminded Mr. Morelli there will be a time for the public to speak during the hearing addressing solar panels.

Mrs. Tate reminded the audience this amendment is to clarify the definition for Special Use Permits. There is already an approved ordinance reserving the authority of the Board of Supervisors to hear Special Use Permits in certain cases as identified in the ordinance.

There being no one further to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Curd stated he agrees with Mr. Pyles that there needs to be a checks and balances system. The Board of Supervisors is becoming more autonomous and is stripping the BZA and Planning Commission from having any control. However, he moved to recommend approval of this amendment to match the ordinance that has previously passed. Mrs. Shiflett seconded the motion, which carried unanimously.

E. An ordinance to amend Chapter 25. Zoning. Article I General Provisions. Section 25-4. Definitions. Kennel.

Amendment changes the age of an adult dog as is referenced in the definition from six months of age to four months of age to be consistent with state code.

Mrs. Tate explained the proposed amendment change as presented on PowerPoint. She stated this amendment change is to bring the definition of the County ordinance in consistency with state code. It does not change the number of dogs a person is allowed to have.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Bridge moved to recommend approval as written. Mr. Leonard seconded the motion, which carried unanimously.

F. An ordinance to amend Chapter 25. Zoning. Article V Accessory Buildings and Uses. Section 25-54.1. Uses accessory to single-family residences.

Amendment changes the age of an adult dog as is referenced in the provision for the keeping of dogs from six months of age to four months of age to be consistent with state code.

Mrs. Tate explained the proposed amendment change as presented on PowerPoint.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mrs. Shiflett moved to recommend approval of the amendment. Mr. Campbell seconded the motion, which carried unanimously.

G. An ordinance to amend Chapter 25. Zoning. Article V Accessory Buildings and Uses. Section 25-55. Uses accessory to multi-family residences.

Amendment changes the age of an adult dog as is referenced in the provision for the keeping of dogs from six months of age to four months of age to be consistent with state code.

Mrs. Tate explained the proposed amendment change as presented on PowerPoint.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Campbell moved to recommend approval of the amendment. Mr. Howdyshell seconded the motion, which carried unanimously.

H. An ordinance to amend Chapter 25. Zoning. Article VII. General Agriculture (GA) Districts. Section 25-72.1. Accessory buildings and uses.

Amendment changes the age of an adult dog as is referenced in the provision for the keeping of dogs used for agricultural purposes from six months of age to four months of age to be consistent with state code.

Mrs. Tate explained the proposed amendment change as presented on PowerPoint.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

There being no one to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Howdyshell moved to recommend approval of the amendment. Mr. Leonard seconded the motion, which carried unanimously.

I. Augusta Solar LLC SUP – 15.2-2232 Review

Review of the Augusta Solar LLC Special Use Permit request, as described below, for a substantial accord determination with the adopted Comprehensive Plan or part thereof (Virginia State Code Section 15.2-2232). Parcels included in this request are

located in either Urban Service or Community Development Areas of the adopted Comprehensive Plan and include the following future land use designations: Industrial, Planned Residential (variety of residential uses at a density of four to eight dwelling units per acre), Low Density Residential (detached residential units at a density of between one-half and one dwelling unit per acre), Medium Density Residential (detached residential units at a density of between three and four dwelling units per acre), Neighborhood Mixed Use (a variety of residential uses at a density of four to eight dwelling units per acre and convenience retail and office uses on up to 20% of the total land area).

Mrs. Tate explained the Special Use Permit request as presented on PowerPoint. She stated it is the Commissioner's responsibility to determine if the Special Use Permit (SUP) request for a solar project is in substantial accord with the County's Comprehensive Plan or part thereof. She stated some parcels for this request are in an Urban Service Area where the County expects growth and development to take place. She explained that development in Urban Service areas is expected to be compact, interconnected and pedestrian oriented while remaining sensitive to the context of the surrounding development and natural features. Urban Service Areas are priority locations for significant amounts of residential and employment growth and expansion of public water and sewer.

Some of the parcels for this request are in a Community Development Area. She gave the definition of a Community Development Area as local community settlements which have existing public water or sewer systems in place, but not both, or relatively good potential for extensions of either of those utilities and are appropriate locations for future low density, rural residential development. Priority locations for moderate amounts of small scale residential and employment growth.

She indicated to a map on PowerPoint the areas for the proposed SUP and the fence line for the project. She indicated on the map the proposed parcels that are in the Urban Service Areas and the ones in the Community Development Areas. She further explained that both Urban Service and Community Development areas have a future land use associated with them within the Comp Plan as they are areas expected for growth. Rural Conservation and Agriculture Conservation Areas do not have a future land use associated with them, because the Comp Plan stipulates that these are areas where development is not expected. Mrs. Tate indicated to a map on PowerPoint which showed the future land use designations for all parcels that are part of the SUP request.

The determination that needs to be made for the SUP request is if the project's location, character, and extent are in substantial accord with the Comp Plan.

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

Mr. Jennings reminded the Planning Commission and the audience that the sole purpose of the hearing is to determine if the request is in substantial accord with the Comprehensive Plan or part thereof.

Tom Kleine stated he is a partner with the Virginia firm of Troutman Sanders and he represents Augusta Solar, LLC. He reminded the Commission that in 2018 the Board of Supervisors adopted an ordinance permitting large solar energy systems to be located in the

county on property zoned General Agriculture, subject to the issuance of a SUP. He stated the ordinance that was adopted is consistent with the Virginia Energy Plan which states in part that it shall be the policy of the Commonwealth to promote generation of electricity through technologies that do not contribute to greenhouse gases and global warming. The ordinance also provides ample protections for these types of projects as part of the SUP process. He discussed other criteria for a SUP as stipulated in the ordinance such as bonding, decommissioning, property owner notification, buffering, and site plan submittal. He stated the proposed project will be located on properties zoned General Agriculture. The owners of the properties for the proposed project have the same objectives; they wish to keep the properties in the family, they are looking to use portions of the properties that diversify their ability to continue to maintain agriculture and to also have other priorities and investments on their property, and they want to keep the property zoned General Agriculture. The proposed project would generate 125 megawatts of electricity by the capturing of sunlight through the solar panels. The panels would only be 8' tall, they would generate no audible noise or odors, no night time lights or increase in traffic. They would be shielded by landscape buffering in accordance with the ordinance requirements, and would meet the required setbacks. He indicated on a map the parcels that would be touched by the project. He also indicated on the map the areas that would have panels behind fences as part of the overall project. About 40% of the land is part of the project. The rest is residual land that will be retained by the property owners. The total project will take up a total of 1100 acres. There is ample area left for other development to occur. State Code 15.2-2232 gives the Planning Commission authority to determine whether a public utility facility is being developed in substantial accord with the Comp Plan or part thereof. He reminded the Commissioners this request is not a rezoning and they are not changing the underlying land use classification. He also reminded them of the freedom and rights of the landowner as described in the Comp Plan. He feels this project is of a light industrial nature and is a public facility as allowed and described by the Comp Plan. He reviewed other requirements of the Comp Plan in relation to this project and stated this project is in compliance with them all.

Boyce Brannock stated he is an attorney that is representing the property owners whose land will be leased to Augusta Solar, LLC. He stated the property owners are families that have been an integral part of the community for generations and are good stewards of their property. They are not asking for a rezoning because they wish to maintain their property for agriculture use, as well allowing it to be used as a public facility. They wish to remain good stewards of their property and use it in a way that will help preserve it. The request will not have an effect on taxes or cause a tax burden, it meets the objectives in the Comp Plan, creates an opportunity to diversify, and helps farmers with economic setbacks. The Comp Plan is not a series of land use regulations. The Comp Plan does not override individual property rights. The Comp Plan, when updated four years ago, made changes to "help farmers to diversify their operations and supplement their farm incomes".

There being no questions from the Commissioners, Mr. Jennings opened the Public Hearing.

Tom Brown of 426 Shalom Road stated he and his wife support the project. Solar energy is clean to the environment and lessens the dependence on fossil fuels and the project will not generate an increase in traffic. The project should increase the tax base as agriculture land comes out of land use to support the project. He realizes the Comp Plan is slated for industrial growth, but this project will increase the tax base now.

James Kindig of 3546 Stuarts Draft Highway stated he is in favor of the solar project. He stated the project is in substantial accord with the Comp Plan. He stated there appears to be a resistance to accept anything other than a residential or industrial development as being compatible or in the framework of the Comp Plan. There are no conflicting features of the proposed project with the Comp Plan.

Paula Figgatt of 52 Kolb Circle stated she and her husband are in favor of the project. She feels the Quillen's and Brenneman's have been good stewards of their property and good leaders of the community. Mr. Quillen has even given easements for fly fisherman to cross his property for fishing. She feels the solar panels would be a good addition to the area, rather than more housing, which would increase traffic and population in schools. She does not feel property values would decrease with the installation of the solar panels.

Mr. Pyles stated he is in support of the Special Use Permit for freedom and for tax payers. The Comp Plan states the County believes in freedom and rights for property owners which should supersede all other issues. He feels there is no reason to have 1000' setback for the proposed project, as solar energy is more passive than a graveyard. The project would create no noise or smells.

James Brenneman of 3251 Lyndhurst Rd., stated he supports the request. There are six new homes on Benz Road. There are close to 500 more acres beyond the end of Benz Road and he would rather see solar collectors there instead of 1000 more houses.

Charles Hochavik of 533 Shalom Road stated his daughter who lives at 573 Shalom Road owns seven acres that adjoins the Quillen's property. He stated he nor his daughter have a problem with the solar project. They do not pollute the air and no one should have a problem with them. He stated no one should have a say other than the ones it would affect.

Bob East of 217 Vance Lane and owner of property included in the project stated 2,000 acres is needed for the water treatment plant at full capacity. There are at least 5,000 acres in this area that are not being requested to be part of the project and could be used for housing or industrial use. He wants to keep his land in the family and he has no desire to develop it. He feels the proposal is in substantial accord with the Comp Plan.

Tim Quillen of 2500 Lyndhurst Road stated this project is a win-win for all concerned.

There was no one else to speak in favor of the request.

Steven Morelli of 104 Fall Ridge Dr., stated he grew up in Mexico and windmills are the way of the future there. The windmills caused a lot of runoff. He realizes the owners want to keep their property but has concerns about water run-off and asked who would be responsible if the panels cause run-off. He also has concerns that a solar project could increase personal property taxes.

Mrs. Tate stated if the project is approved, the conditions related to the SUP will require the property to meet erosion and sediment control regulations.

Theresa Klimovich of 62 Warren Oaks Lane stated she looked at the Comp Plan when she was considering where to purchase property. Had she known it was a possibility that a solar

project would be close to her property, it would have affected her buying decision, but she based her decision on the Comp Plan. She can't change the location of her property.

Peggy Clements of 254 Rankin Lane stated her property backs up to the Bob East property. They share a deeded easement and the property is land locked. She doesn't feel the easement is respected because of the farm equipment, semis and dump trucks that come in over the easement regularly. When the lane becomes too muddy for the trucks, they use her gravel. She has concerns that if this project is approved, what will happen to her deeded easement with the increase from construction traffic. She also has concerns that if one solar project is approved, what will keep other solar projects from being developed on the unused land. She is not opposed to solar energy, but feels the solar projects should be located in more rural areas, not in an area with individual residential homes.

Michele Kresge of 163 Benz Road stated while she is not opposed to solar energy, she is opposed to this project. She stated the location for the proposed project is not in compliance with the Comp Plan and she asked the Planning Commission to follow the Comp Plan. She is concerned with the detrimental impact solar farms can have on agriculture land. Until the questions regarding the impact the solar panels will have on the environment, the request should be tabled.

Stan Sikorski of 169 Benz Road stated he looked at the Comp Plan when he heard about the solar project and from what he read this project does not conform to the plan. He read part of the Comp Plan to the Commissioners to demonstrate the proposed project does not conform to the County's overall vision. He moved here to enjoy what Augusta County has to offer based on the Comp Plan. It was stated that the panels are 8' high, but when they are fully raised they will be 15' high. If solar projects come, the urban services will go away, then where will other growth go? If you put solar projects on agriculture property, it is no longer agriculture property. The only business solar projects will attract are other solar panel industries, not other types of businesses.

Morgan Liddick of 883 Cold Springs Road stated the project is not in compliance with the Comp Plan. This project will be one of the two largest projects in Virginia, one of the largest on the east coast, and the 14th largest in the United States. The project does not meet the Comp Plan that promises to protect scenic views, to protect the character of the community, and to provide compact, contiguous and pedestrian friendly development.

Brian Burns of 9 Kennedy Court stated he looked at the Comp Plan when he was buying his house. The Comp Plan did not say solar projects would be an allowed use on a farm. Farms are something that is grown. He appreciates Mr. Kleine's thought on expanding the farmers business. When there are two million solar panels, it would be hard to grow anything. He appreciates the farmers but he cannot appreciate solar panels in a community.

Michael Moneymaker of 201 Alta Dr. stated he feels for the property owners and understands the solar farms would be a good way to supplement their income. He doesn't feel this area is a good location for solar farm development because of the close proximity to Rt. 340 and housing developments. There are a number of large areas in the County away from interstates, railroads and roadways that would be better suited for solar farms and could support special use permits.

Travis Gilmer of 81 Kennedy Ridge Court stated he is opposed to the project. Stuarts Draft residences were told that there are numerous solar projects waiting in line to have a solar farm. Industry brings thousands of jobs and increases taxes for the County. Solar projects bring about 10 jobs over a 35 year span.

Scott Kresge of 163 Benz Road stated out of all the areas that will have the biggest impact on growth is where the solar projects will be. The project will be taking away land where growth could be. One of the things that brings people to this area to live are the views. The views from the parkway will be solar panels if the project is approved. Growth will cease because the view will be gone and tourism will decrease. There are plenty of areas better suited for solar farms.

Fred Powell of 435 Hall School Road has two farms. When he built his home he had no idea that solar projects would be a possibility. Dominion Energy wants the project because it will help generate electricity without coal. The solar projects will not generate power for anyone. It goes on the grid. The benefit of this project is not local. He respects the landowner's rights as long as it does not affect anyone else and this project will affect others. He stated there has not been an environmental impact study done and he is concerned about water flow and wildlife.

Dean Anderson of 21 Queens Court stated he moved here from West Virginia 45 years ago because he got tired of the strip mining and logging. He understands the landowner's perspective, but he is looking at the business end of the project. Augusta Solar LLC is from Pennsylvania, they purchase their equipment from China, and they use their own employees to complete the project. He has looked at other locations that have solar farms and the farms are placed away from all other development. Solar companies are subsidized by the government and have a tendency to go bankrupt within three to five years. The solar panels will not produce the energy that has been claimed they will produce. They only produce on days when there is total sunshine. It doesn't make business sense to put them in this location.

Bob Fisher of 29 Kennedy Ridge Court stated he opposes this project. He stated his biggest concern is what happens in four or five years if the project doesn't work out. The company has stated they will take out a bond. However, when a natural disaster occurred in California, it caused a law suit with the Copper Mountain Solar Farm and that project was bonded. If the County is going to grow in the next 20 years, someone needs to make sure the taxpayers will not get burdened with a cleanup bill should a natural disaster occur.

Richard Crawford of 31 Jester Court stated it is hard to believe the County would allow these panels to be put so close to residential homes. The owners of these homes will not benefit from the solar projects. He built his home because of the beauty of the area and had he known solar farms would be permitted in this area, he would never have built there. His property was also an investment when he purchased it, but may turn out to be a bad investment if solar panels are allowed. He feels for the property owners that want the project but also for the landowner's that are opposed.

There being no one else to speak in favor of or against the request, Mr. Jennings closed the Public Hearing.

Mr. Kleine and Mr. Brannock declined rebuttal.

Mr. Leonard stated he empathizes with the landowners who want the project. As an individual who lives off the land, it is tough to make a living. The solar project would help the landowners to keep going and take some of the financial burden off of them. However, they would be the only ones to benefit from the project. The County and other property owners will not benefit from it. The Planning Commission cannot decide if it is a good project or a bad project, only if it is in substantial accordance with the Comp Plan.

Mr. Howdysshell stated the property owner's rights need to be recognized. The Planning Commission does planning for the County and cannot approve the request for the Special Use Permit. It is the job of the Commission to determine if the project is in conformance with the Comprehensive Plan. There is more work for the Commission to do to make the ordinance more feasible for projects such as this one.

Mrs. Shiflett stated when the Comp Plan was put together and revised, the solar industry was not foreseen, therefore, the Comprehensive Plan does not correctly address the solar industry. More work needs to be done to the ordinance to address the solar industry concerns. She stated she sympathizes with both sides. For now, the Commission only has the current Comp Plan to go by and the Commission will have to decide if the request is in substantial accord with the Comp Plan.

Mr. Campbell thanked everyone that spoke during the Public Hearing. He stated it is the Commission's job to look at how the project relates to the Comp Plan. Since solar was not part of the Comprehensive Plan revision, it makes it difficult for the Commission to make a decision.

Mr. Curd stated the arguments and concerns regarding the solar panels are valid. When the Comp Plan was last updated it did not include solar energy because solar generated facilities were not envisioned at that point. He believes the request is in substantial accord with the Comp Plan or part thereof. The project would provide economic diversification, which the Comp Plan calls for, and it will have the required buffering. He understands the adjacent property owners that do not wish to look at a solar facility, but feels they would be better than a big industry or a housing development. The project will not increase road traffic or wear and tear on the roads, it will not require more emergency services, schools will not be affected and the project will not require public utilities. It will not create pollution or noise. It is also in accord with the Comp Plan because the project will respect the landowner's rights. He believes the request is in accordance with the Comp Plan or part thereof.

Mr. Bridge stated he agrees with Mr. Curd's comments. Mr. Kleine and Augusta Solar have provided a number of things that meet the Comp Plan requirements or part thereof. He agrees that the project does meet the Comp Plan or part thereof.

Mr. Jennings stated he is proud to be a citizen of Augusta County because of the citizens that reside here and because of those such as Mrs. Tate and Mr. Wilkinson that spend countless hours working on the important matters that affect the County. It is now the task of the Planning Commission to determine if the request is in substantial accord with the Comp Plan or part thereof. If the State code didn't have the wording "part thereof", he would be inclined to say the request is not in accord with the Comp Plan, but because of the wording "part thereof", he is unsure. Without question, it can be argued that this proposal supports

agriculture. It can be argued that it provides economic diversification and that it does a lot of things, but is that enough to make it a part thereof.

Mr. Leonard stated in his earlier comments he did not give an opinion about the project. He said that he tends to focus on the big picture. He said that the applicant's representative himself referred to this as a priority development area and he personally does not consider solar panels as development as is envisioned in the Comprehensive Plan for this area. Mr. Leonard stated that substantial to him means big and does not mean just a little accord but a big accord. He reviewed comments from the public that related to the effects such a project would have on the character of the area. He also referenced a comment from the public regarding the size of the request in relationship to other projects in the country and the east coast. He does not believe that this project goes along with the way the Comp Plan is written and what is intended for the area. He understands what the property owners are trying to do, and that is not necessarily a bad thing, but he does not believe the project is in substantial accord with the Comp Plan.

Mrs. Shiflett stated one of the main frameworks of the Comp Plan is the planning policy areas. The Commission uses the Comp Plan and the planning policy area as a guide. As much as she would like it to fit, she cannot make this project fit into conformance with the Comp Plan.

Mr. Jennings reminded everyone that the Planning Commission is a recommending body. Whatever recommendation is made will be taken to the Board of Supervisors for them to make the final decision.

Mr. Bridge stated he believes this project does meet, in part, the requirements of the Comprehensive Plan. He moved to recommend accepting the Special Use Permit as written because it does meet, in part, what is written down as the Comprehensive Plan.

Mr. Curd seconded the motion.

Mr. Howdyshell stated there are advantages and disadvantages with the project. The project does not affect roads and it will not create housing, therefore schools will not be affected. However, the project will not provide many jobs locally. Because there are more advantages than disadvantages, he supports the project.

The motion carried on a vote of 5-2, with Mrs. Shiflett and Mr. Leonard being opposed.

MATTERS TO BE PRESENTED BY THE PUBLIC

Steve Tallent of 58 Kennedy Ridge Court stated he has lived at his residence for three years. He asked if the Commissioners that farm would like having solar panels on their property. He asked if any Commission members lives in the area on the map that shows where panels will be. If he had known at the time he purchased his property what he knows now, he would not have purchased it. The solar farm being one reason, but also the Dominion Energy pipeline, and the flooding issues. He is concerned about the potential spots for the solar panels being surrounded by flood zones. If there is any runoff it will go into the South River.

Mr. Bridge stated he lives nearby, but does not live in sight of where the panels will be.

Mrs. Shiflett reminded Mr. Tallent of the public hearing that will come before the Board of Supervisors on February 27.

MATTERS TO BE PRESENTED BY THE COMMISSION

Mrs. Shiflett requested the Comprehensive Plan be revised in order to deal with issues such as solar farms. She stated she does not feel like that was enough guidance for the Commission from the current Plan.

Mr. Leonard asked if the Commission would be allowed to table any future request for solar until the Comp Plan is revised.

Mrs. Tate explained that applications would have to be accepted and processed as normal. She would need to consult with the County attorney for clarification on tabling a request.

Mr. Leonard stated he feels that work on the Comp Plan needs to be addressed as soon as possible and the revision process started.

STAFF REPORTS

A. Annual Report

Mrs. Tate reviewed the Annual Report with the Planning Commission. There were no questions or discussion by the Commissioners.

Mr. Curd moved to recommend approval of the Annual Report.

Mr. Leonard seconded the motion, which carried unanimously.

B. CODE OF VIRGINIA – SECTION 15.2-2310

Mrs. Tate reviewed with the Commissioners the requests coming before the BZA at the March meeting.

The Planning Commission took no action on the BZA items.

Mrs. Tate reviewed with the Commission the Special Use Permit request coming before the Board of Supervisors at the February 27 meeting. They made the following comments and recommendations:

Augusta Solar, LLC- SUP Request

The Planning Commission encouraged the Board of Supervisors to make sure the setbacks and buffering for the solar project are appropriate. They would like to see additional setbacks and buffering for the property coming in on Rt. 340 near Mt. Vernon Church. They also recommended that the Board look at the project per parcel rather than the project as a whole.

There being no further business to come before the Commission, the meeting was adjourned.

Chairman

Secretary

**COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Section 21-37 Final approval and recordation of the final plat
March 12, 2019**

An ordinance to amend Chapter 21. Subdivision of Land. Article III Procedure for Approval of Major Subdivisions. Section 21-37. Final approval and recordation of the final plat.

Amendment reflects a change in the Augusta County Service Authority policy regarding reserved treatment capacity for public sewer systems. The amendment clarifies that the reservation of capacity as a condition of final plat approval is dependent upon such policy and is not required in all cases.

PROPOSED ORDINANCE TEXT:

§ 21-37. Final approval and recordation of the final plat.

A. Approval signature by the subdivision agent will be affixed on the final plat and other documents submitted in accordance with subsections (B) through (F) of § 21- 55 only after (1) the requirements of § 21-36 above have been met, and (2) the subdivision agent has received written confirmation from the Augusta County Service Authority that sewer connections are available for each lot to be served by a public sewer system, and that capacity has been reserved for each such lot, **if reservation of capacity is required by the Service Authority.**

COMMUNITY DEVELOPMENT STAFF COMMENTS: The Board of Directors of the Augusta County Service Authority has modified Policy No. 104 *Reserved Treatment Capacity for Water or Sewer Systems* (See attached). The revised policy gives the developer the option to not pay for any part of the availability fees until request for the physical connection is made. This amendment is specifically for lots to be served by any ACSA Wastewater Treatment Plant with more than 4,000 available Equivalent Residential Connections. Staff recommends the ordinance to be amended to reflect the change in the Augusta County Service Authority's policy.

**AUGUSTA COUNTY SERVICE AUTHORITY
OPERATING PROCEDURES AND POLICY MANUAL**

Approved By: Board of Directors
Effective Date: March 9, 2015
Revised Date: February 11, 2019

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Reserved Treatment Capacity for Water or Sewer Systems

General

The reservation of treatment capacity in the water and wastewater treatment facilities of the Augusta County Service Authority (herein called the "Authority") will be based on the assessment of the appropriate prevailing Availability Fee for that service (herein called the "Availability Fee") under the conditions set forth in this policy and as in accordance with the Code of Augusta County.

Residential Subdivisions – Major

Prior to approval by the Community Development Department of a final plat but following compliance with County Code Section 21-55 *Documents and other matters to accompany final plat* or County Code Section 25, Division J, Article LXVII *Site Plan Review* as applicable, the owner (herein called the "Developer") of a proposed subdivision (the "Project") has the following options for payment of the requisite Availability Fee: (1) payment in full of the Availability Fee at the current rate for each lot in the Project, as shown on the plat, or (2) partial payment in an amount **not less than ten (10) percent** of the Availability Fee at the current rate for each lot in the Project, as shown on the plat, with the balance to be due not later than five (5) years thereafter. The balance of the Availability Fee will be payable as set out below. Upon payment in full or partial payment of the Availability Fee(s), the Authority will enter into an agreement with the Developer (herein called the "Agreement"), specifying the number of connections to be provided and any conditions which apply to those connections in the discretion of the Authority. The Agreement will be recorded in the Office of the Clerk of the Circuit Court of Augusta County as a notice of the terms of this policy and the Agreement to prospective purchasers of lots.

Upon execution of the Agreement the Authority will issue a letter to the Developer with a copy sent to the Augusta County Community Development Department, which states that capacity exists for each lot in the Project. If the Availability Fee is partially paid for a lot, then upon the earliest to occur of the following events: (1) five (5) years from the date of full execution of the Agreement when the entire unpaid balance on the Availability Fee as to the entire project is due; or (2) upon transfer of title of any part of the Project (hereinafter referred to as a lot) (as to that lot); or (3) at the time of application for service for a lot (as to that lot). The balance due of the Availability Fee at any time shall be computed on the basis of the then current rate, less the credit from the initial partial payment for any lot.

If the Availability Fee(s) are not paid when due, the reservation of capacity is terminated, any partial payment is forfeited and it cannot be applied to any future application for service, and the Agreement will terminate as to the affected lot(s).

All amounts due under the Agreement must be paid in full before service will be provided.

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Reserved Treatment Capacity for Water or Sewer Systems

Exception for Major Subdivisions in Areas Served by Wastewater Treatment Plants with Available Capacity in Excess of 4,000 Equivalent Residential Connections

For lots that are to be served by any ACSA Wastewater Treatment Plant with more than 4,000 available Equivalent Residential Connections (ERC's), the Developer shall have the option of not paying for any part of the availability fees until request for the physical connection is made (water meter set, or sewer cleanout installed), at which time the Developer or the owner of each applicable lot shall pay all applicable availability fees at the then-current rates. If the Developer chooses this option, ACSA will not reserve capacity and does not guarantee service for the lot, but will track the additional lots keeping track of the respective WWTP's available capacity. At such time that the available capacity of the applicable WWTP drops below 4,000 ERC's, including all lots for which capacity has NOT been reserved, ACSA shall notify Augusta County and begin requiring the 10% payment before recordation of any new platted major subdivision served by the applicable WWTP. ACSA will also, at this time, attempt to notify all then-current owners of lots for which no portion of the availability fee has been paid and no capacity has been reserved. At this time, lot owners may choose to pay the then-current availability fee required to reserve capacity.

Applicability

This revised policy, and any future revisions to the policy, will be effective on the date specified. Projects shall be subject to the policy which is in place at the time of their First Submittal.

Special Agreements

Projects which are the subject of separate written agreements with the Authority will continue to be governed by those agreements.

Residential Subdivisions – Minor

Minor Subdivisions, as defined by the Augusta County Subdivision Ordinance, may be evaluated by the Authority, on the basis of the remaining capacity in reserve and may be approved for reserved capacity subject to such conditions as may be imposed by the Authority which may include a requirement that the owner of the lot or parcel pay the then current Availability Fee.

Multi Family, Commercial, or Industrial Property

Multi Family, Commercial and Industrial Property projects must meet the same criteria for determining and reserving capacity as Major Subdivisions, with site plan approval being substituted for final plat approval and other provisions as required by County Code Section 25, Division J, Article LXVII *Site Plan Review* as applicable.

Upon disapproval of a Project application submitted through County Code Section 25, Division J, Article LXVII *Site Plan Review*, or failure of the Developer to obtain approval of such an application within one year of the date of its last submission to the Authority, the Authority may terminate the Agreement and the reservation of capacity contained therein, provided in such

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Reserved Treatment Capacity for Water or Sewer Systems

event the Authority shall refund to Developer any Availability Fee or portion thereof paid previously.

Determination of Remaining Available Capacity

The Authority will make the sole determination of the available number of connections remaining to be allocated for each of its facilities. The Authority will make a determination from time to time of the capacity at each facility which is to be reserved for engineering and managerial purposes, such as allowance for “peak flow” usage. This determination will be reviewed on an ongoing basis and the number of available connections will be updated to reflect current conditions. When no new allocations are determined to be available, no new Project will be approved with reserved capacity.

General Conditions

- A. Once paid in whole or in part the Availability Fees and other fees or charges are not refundable unless otherwise specifically provided in this policy.
- B. The Authority shall have the right to demand immediate payment of all fees related to the Project and to exercise all its rights and remedies under the Agreement if:
 - a. Any Availability Fee owed to the Authority under the terms of the Agreement is not paid when due.
 - b. Developer fails to pay when due any other fees related to the Project to the Authority pursuant to the terms of the Agreement.
- C. The Authority will not approve any building permit or provide service for any part of the Project unless and until the Availability Fee for that part of the Project has been paid.
- D. The Authority shall be under no obligation to accept payment of the Availability Fees for any phase of the Project unless Developer is current in payment of all other amounts due the Authority associated with the Project or any other project or property owned by the Developer at the time such payment is tendered.
- E. Inspection and ancillary fees related to the Project will be billed separately by the Authority to Developer, due thirty (30) days after the billing date. Notwithstanding the fact that the Availability Fees have been paid, the Authority shall not be obligated to approve any building permit or provide service at any time when any amount which Developer owes to the Authority is past due.
- F. Except as expressly set out in the Agreement, the relationship between Developer and the Authority shall be governed by the Authority’s policies, procedures and rules in effect at any given time.

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- G. If any fee is not paid by the responsible party (Developer or Developer's successor in title) the responsible party shall be liable for all damages, costs and expenses, including attorney's fees, incurred by the Authority related to or as a result of the default, in collecting payment, or in enforcing the Agreement.
- H. The Agreement shall be binding on the parties signing it as Developer with respect to all or any part of the Project, and on successors in title to the Developer who assume Developer's obligations, in every case jointly and severally, and is to be recorded in the Clerk's Office of the Circuit Court of Augusta County. Certain terms and conditions of the Agreement affect lots in the Project owned by successors in title to the Developer even if they do not assume Developer's obligation.
- I. In the event of any changes in governmental laws or regulations applicable to the Authority utility system which effectively reduces system capacity, the Authority may terminate the Agreement and the reservation of capacity contained therein, provided in such event the Authority shall refund to the then current owner of the Project, or of any lot therein which is separately titled, any Availability Fee, or portions thereof, paid previously.
- J. Nothing in the Agreement shall be construed to modify or limit any right or remedy available to the Authority under applicable law.



Augusta County Service Authority
Department of Administration
Memorandum

To: ACSA Board of Directors
From: Phil Martin, Executive Director
Date: February 11, 2019
Subject: Modification to Reserved Capacity Policy 10.4

Summary of Information

ACSA policy currently requires Availability Fees for commercial and residential developments. For Major Subdivision residential developments, 25% of the availability fee is required to be paid prior to recordation of the subdivision plat. The purpose for this requirement is to reserve capacity, particularly for wastewater treatment and the County requirement to reserve capacity (§21-37A in Attachment 1). This has been a longstanding requirement due to our limited available capacity in many of our wastewater treatment plants. Capacity is also limited on the water side but system improvements are generally less expensive than on the sewer side.

While the requirement is certainly necessary in areas where we have limited available capacity, the expansion of two of our plants (Stuarts Draft and Fishersville) has resulted in substantial available capacity in areas served by those plants. Each of these wastewater treatment plants has more than two million gallons of available capacity.

Earlier this year, the Augusta County Homebuilders' Association approached us requesting modifications to our policy to make new home prices more affordable. Removing the requirement to pay 25% of the availability fees prior to recordation was one of the requests, specifically in areas where reserving capacity was not as critical.

In December, 2018, the Finance and Audit Committee met to discuss alternatives and at the December 10th Board Meeting recommended a modification to the existing reserved capacity policy (Attachment 2). The modification removes the reserved capacity requirement for major subdivisions served by any wastewater plant with more than 4,000 available residential connections and reduces the prepayment amount for all other areas from 25% to 10% of the total availability fee.

Staff has developed a modification to the existing reserved capacity policy (Attachment 2) and has consulted with Augusta County Community Development and the County Administrator. They have informed us that they support the proposed modification. They have also told us that they are willing to bring the

necessary County Subdivision Ordinance revisions before the Augusta County Board of Supervisors for their consideration.

Staff Recommendation:

Approve and adopt the revision to ACSA policy as referenced contingent upon Augusta County amending their existing ordinance §21-37A.

**AN ORDINANCE TO
TO AMEND CHAPTER 21 SUBDIVISION OF LAND
ARTICLE VIII. FINAL APPROVAL OF MAJOR SUBDIVISIONS
SECTION 21-37. FINAL APPROVAL AND RECORDATION OF THE FINAL PLAT
OF THE AUGUSTA COUNTY CODE**

WHEREAS, the Augusta County Board of Supervisors has deemed it desirable to amend Section 21-37 so as to reflect an amendment to the Augusta County Service Authority's Policy No. 10.4 Reserved Treatment Capacity for Water and Sewer Systems.

NOW THEREFORE be it resolved by the Board of Supervisors for Augusta County that Section 21-37 of the Augusta County be amended as follows:

§ 21-37. Final approval and recordation of the final plat.

A. Approval signature by the subdivision agent will be affixed on the final plat and other documents submitted in accordance with subsections (B) through (F) of § 21- 55 only after (1) the requirements of § 21-36 above have been met, and (2) the subdivision agent has received written confirmation from the Augusta County Service Authority that sewer connections are available for each lot to be served by a public sewer system, and that capacity has been reserved for each such lot, if reservation of capacity is required by the Service Authority.