

ZTA19-03 - Solar Energy Facilities
Written Comments to Planning Commission
Public Hearing Date: June 2, 2020
Comments Received through June 23, 2020

1. Mark Dyck, GORDON, 05-27-20
2. Doug Rockwell, 05-28-20
3. Robert D. Aitcheson, 05-29-20 (1)
4. Robert D. Aitcheson, 06-01-20 (correction to memo)
5. Robert D. Aitcheson, 05-29-20 (2)
6. Robert D. Aitcheson, 05-29-20 (3)
7. Lyle C. Tabb, III, 06-01-20
8. Joy Rawn, 06-01-20
9. Gavin Perry, 06-12-20
10. Nicola Bastian, 06-12-20
11. Elizabeth Wheeler, 06-16-20
12. Robin Huyett Thomas, 06-16-20
13. Doug Rockwell, 06-17-20
14. Robert D. Aitcheson, 06-22-20 (late submission)
15. Lyle C. Tabb, III, 06-23-20 (late submission)



Attention: Alex Beaulieu

Re: Section 8.20 Solar Energy Facilities

Alex,

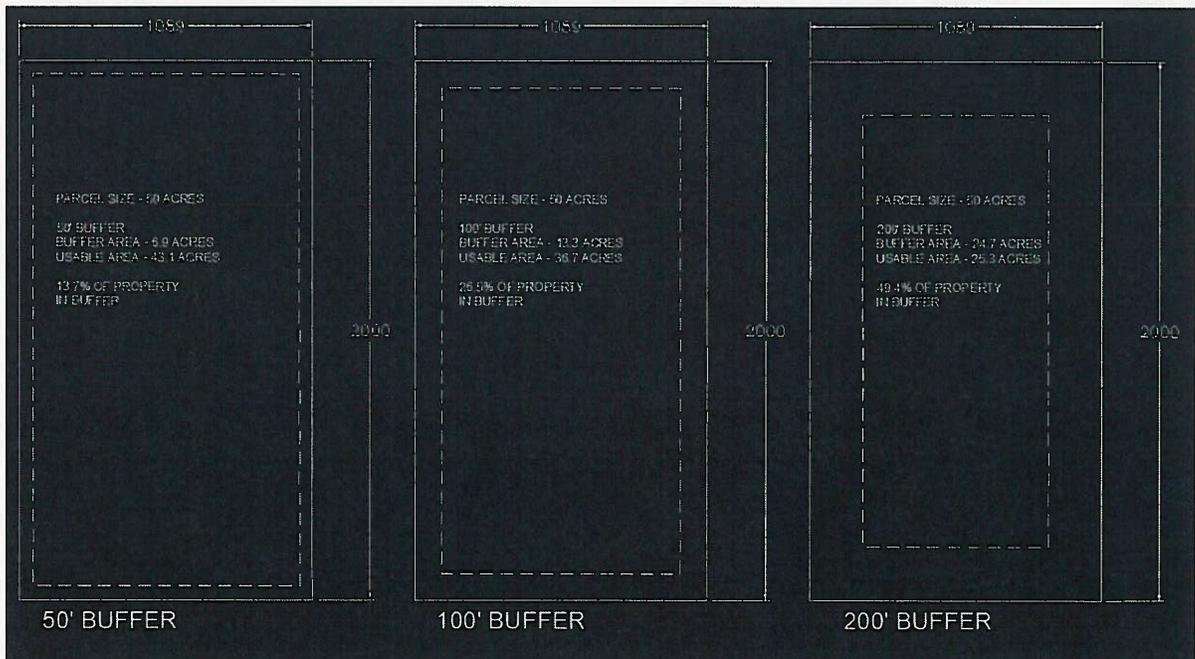
Please accept my comments on the Solar Energy Facility zoning test amendment.

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JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

1. Setbacks – the purpose of a setback is to protect the public and adjacent lands while providing for efficient use of a property. The proposed setback of 100' is excessive for a use that does not generate noise, traffic, light pollution, air pollution. Any visual impact is fully mitigated by the vegetative buffer required under B.3.b. Not other use except for industrial has a greater setback, in fact a gas station could be placed next to a subdivision with only a 25' setback.
 - a. A 100' setback reduces the usable area by 26.5% (see exhibit below)
 - b. A larger buffer has a negative impact on farmland in Jefferson County, requiring more land to achieve the same energy yield. If 250 acres of solar is developed in the county it will result in an additional 50 acres of farmland being taken out of production. Both farmland and sustainable energy are important and the best balance needs to be achieved.



- c. The 100' setback does serve a purpose on land developed or zoned residential, it does not serve a purpose against farmland, commercial land or roads.
- d. The following setbacks are suggested:
 - i. 50' setback from roads
 - ii. 100' setback from the following districts – V, RG, PND
 - iii. 100' setback from existing homes or dwellings, setback measured from the structure not the property line.
 - iv. 25' setback from the following districts – IC, RLIC, R, NC, GC, HC, LI, MI, OC

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2. Buffering – B.3.a “structures, materials” provide a definition of what a structure is and what materials are.
3. Buffering – permit a 6’ berm in lieu of an opaque fence.
4. Land Use Table – sustainable energy should be a cornerstone of Jefferson County’s development objectives. As such it should be permitted on all undeveloped agricultural lands, including those zoned residential growth. To protect the residents of Jefferson County the following restriction would be applied to solar facilities within the RG zone;
 - a. All residential development will be prohibited until such point as the facility is fully decommissioned.
 - i. A solar facility has considerably less impact on Jefferson County resources (schools, roads, policing, fire, etc.) than a residential development. These facilities should be permitted and will help provide an alternate use for land owners whose only option is subdivision development.

I appreciate the opportunity to submit these comments and look forward to the public hearing.

Regards,

Mark Dyck

Re: ZTA 19-03

Please include in Packet
to the Planning Commission the
enclosed 4 pages.

Thanks,

Doug Rockwell
5/28/20

Section 8.20.B.2

§. Rural District

- i. A solar energy facility shall be a minimum of 200 feet from the State ROW or easement of any State Road. Where not in conflict herewith, subsections a and b above shall apply.

Rockwell
6-2-20



WEST VIRGINIA CODE

≡ MENU

CHAPTER 8A. LAND USE PLANNING.

CHAPTER 8A. LAND USE PLANNING.

Article 6

All Articles

Article 8

ARTICLE 7. ZONING ORDINANCE.

§8A-7-8. Amendments to the zoning ordinance by the governing body.



(a) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

(b) When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment if there is not an election, or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:

(1) Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and

(2) Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

Previous §8A-7-7. Election on a zoning ordinance.

§8A-7-8. Amendments to the zoning ordinance by the governing body.

Next §8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.



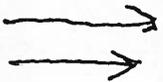
Rockwell
6-2-20

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Agricultural and Rural Economy Recommendations (Goal 8)	
1.	Support West Virginia's and Jefferson County's "Right to Farm" policies which protect the rights of existing and future farms and farmers by developing zoning standards, other legislation, and educational programs designed to reduce potential conflicts arising from the proximity of agriculture to residential development (State Code § 19-19; Section 4.5 of the County's Zoning Ordinance).
	a. Identify and utilize a wider variety of funding sources that could serve to expand the County's farmland protection program.
	b. Create an educational pamphlet informing developers, realtors, and potential homeowners of the offsite impacts of living adjacent to farming activities.
2.	Enact Zoning Ordinance provisions to reduce the intensity of residential development in the Rural zone, other than by clustering, thereby protecting and increasing the investment potential and attractiveness of the agricultural lands for families, entrepreneurs, and businesses.
	a. Decrease the problems of rural traffic volume and the need for additional costly public infrastructure services in rural areas while conserving areas of the Rural zone for agricultural uses and the rural economy through support for rural cluster development vs large subdivisions of new home growth.
3.	Support the rural economy by amending the Subdivision Regulations to establish rural business site plan standards to include:
	a. performance criteria, including compatible size, scale, use, intensity, traffic capacity limits, employee limits, site design standards (i.e. buffering, siting), and standards that protect public health, safety, and welfare; and
	b. the adaptive reuse of existing historic and agricultural structures.
4.	Collaborate with the County's agricultural community to assess the current land use regulations and determine what opportunities for agriculture might currently exist and what additional opportunities might be able to succeed in Jefferson County.
5.	Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses.
	a. Incorporate into the zoning provisions innovative agricultural uses including the creation of standards which permit flexibility in the sale of farm products and related auxiliary products.
	b. Amend local land use regulations to permit non-agriculturally related commercial uses by the <u>Conditional Use Permit (CUP) process</u> in the Rural zone if the use is agriculturally and rurally compatible in scale and intensity, poses no threat to public health, safety, and welfare, and if the use helps to preserve farmland and open space and continue agricultural operations.



7. Fencing

Towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The Planning Commission may require as a condition of approval that the fencing be screened by a landscaped buffer of at least 10 feet in width planted along the entire exterior perimeter of the fence. Such a buffer must contain at least one row of native vegetation and form a continuous screen at least 6 feet in height at planting. All buffer yards shall be maintained by the property owner. It will be the responsibility of the property owner to maintain the buffer yard and to replace any trees or shrubs that die.

The Planning Commission may waive or modify the fencing requirement upon a determination that doing so will enhance the overall appearance of the facility without any compromise in safety or security.

8. Tower Color

Towers shall have a flat gray or galvanized finish unless the Planning Commission determines that another color scheme would be a preferable alternative to address visual mitigation and such scheme is consistent with FCC and FAA standards for antenna structure marking.

Section 4B.8 Maintenance & Removal Bonds

Prior to issuance of a Zoning Certificate, each applicant for a Facility shall be required to execute a standard Maintenance / Removal agreement binding the applicant and its successors and assigns to properly maintain the exterior appearance of, and to ultimately remove such facilities, upon abandonment or cessation of operations. The applicant shall be required to post a bond for this purpose in accordance with the Department of Planning & Zoning schedule of fees and charges. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the Maintenance/Removal agreement have been satisfied. Private business users operating a single Facility at their principal place of business and Governmental Users are exempt from this bond requirement.

Section 4B.9 Abandonment & Removal

- A. Any Facility or Support Structure that is not operated for a period of twelve (12) consecutive months may be referred to the Property Safety Enforcement Agency Board for a determination of the structural soundness of the Facility or Structure.
- B. If a structure is determined to be unsound, it will be considered abandoned.
- C. The owner or operator of any Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance.

Rockwell
6-2-20

May 27, 2020

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MAY 28 2020

**JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING**

From: Robert D. Aitcheson

To: Jefferson County Planning Commission

Re: ZTA 19-03 Solar Energy Facilities

The trade association for the solar energy industry in Washington, D.C., distinguishes between “community” solar facilities, such as the one at Double Toll Gates on Rt. 522 in Clarke County, VA, and the massive “industrial” solar facilities such as the one shown in Exhibit A from the Saving Greene website. To be clear, the proposed text amendment contemplates **industrial** solar facilities only. I **oppose** approval of the proposed text amendment and **oppose** industrial solar facilities in the Rural Zoning Districts of Jefferson County for the following reasons:

1. Allowing industrial solar facilities in Rural Zoning Districts violates West Virginia public policy. See W. Va. Code 24-2-10(b) definition of “Eligible site”.

“Eligible sites” are defined as “any site in this state that has been previously used in electric generation, industrial, manufacturing or mining operations, including, but not limited to, closed landfills, hazardous waste sites, former industrial sites, and former mining sites”. Only if none of these are available may other sites be considered. We have plenty of the types of sites specifically enumerated above in this County.

2. Allowing industrial solar facilities in Rural Zoning Districts is contrary to the Jefferson County Comprehensive Plan and, therefore, in violation of W. Va. Code 8A-7-8(a).

W. Va. Code 8A-7-8(a) states in relevant part:

- (a) Before amending a zoning ordinance, the governing body with the advice of the Planning Commission, **must find** that the amendment is consistent with the adopted comprehensive plan...(emphasis added)

The comprehensive plan adopted by this County requires that the rural and agricultural character of the County be preserved and that land uses inconsistent with that goal not be allowed. See Exhibit B attached hereto in furtherance thereof.

3. Designating industrial solar facilities in Rural Zoning Districts as a principal permitted use (PPU) while requiring a special event facility to secure a conditional use permit (CUP) for a one day event such as a wedding, is inconsistent and further, industrial

solar facilities are not compatible with non-residential rural areas.

There can be no rational justification for this inconsistency when a CUP is required for a one day event, but not for a 25-30 year long project. Also, the comprehensive plan requires it. See Exhibit B **again**. Finally, virtually all of the nearby jurisdictions that have dealt with this issue require a CUP.

4. Pollution of our groundwater through the porous limestone substrate by runoff, leaching contamination by toxic chemicals in industrial solar panels threatens the health of all Jefferson County residents.

The County Engineer, in his report to this Commission of April 22, 2020, acknowledged this problem. It is not “clean” energy. Here is a sampling of the toxic chemicals found in industrial solar panels:

“...cadmium telluride, copper indium selenide, cadmium gallium (di) selenide, copper indium gallium (di) selenide, hexafluoroethane, lead and polyvinyl flouride, silicon tetrachloride, a by-product of producing crystalline silicon, is highly toxic”. Cancer biologist David H. Nguyen, Ph.D., as quoted in “Solar Panels Produce Tons of Toxic Waste - Literally”, Wirtz, p. 3 (November 18, 2019).

There are NO requirements for remediation and any other efforts to protect our drinking water from contamination.

5. The failure to recommend that a surety bond be required of the landowner, developer and operator to cover all costs of remediation of toxic spills, decommissioning and reclamation of the land of abandoned sites, will leave Jefferson County taxpayers to bear those costs, along with the prospect of many years of litigation in an effort to obtain reimbursement.

The reference by the County Engineer to the subdivision ordinance in his discussion of bonding is inapposite. Clearly, the County Commission has the authority to impose the requirement of a surety bond to remain in effect for the life of the project. See, for example, Zoning Ordinance, Section 4B.8 Maintenance and Removal Bonds, attached hereto as Exhibit C. If the County Commission has the authority to impose such a bond for cell phone towers, it certainly does for industrial solar facilities as well.

Disposal of the tons of toxic waste left at the time of decommissioning of an abandoned site mandates the necessity of a surety bond. See “Are We Headed for a Solar Waste Crisis?”, Desai & Nelson (June 21, 2017) in which the organization Environment Progress found that “Solar panels create 300 times more toxic waste per unit of energy than do nuclear power plants.” See pp 2 and 3 of this article for a more detailed discussion of their findings as to comparative amounts of toxic waste and carcinogenic substances emitted.

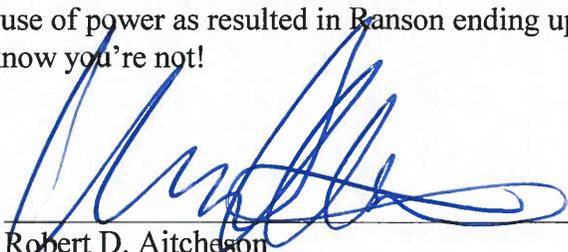
To fail to recommend the requirement of a surety bond leaves the County to the difficult, if not impossible, task to recoup its costs with respect to abandoned facilities after out-of-state investors and firms have taken their tax credits and profits and disappeared. The prospect of years of litigation to try to recover those costs only enriches the lawyers and adds insult to injury.

6. The paltry setback and screening requirements and compounding those problems by allowing a zoning administrator to waive the requirements, all FAIL to protect adjoining and nearby property owners.

The setback requirement should be 200 feet from any state or county right of way or adjoining property boundaries. Screening should require a minimum of 10 feet tall opaque fencing and vegetation. These requirements should not be waivable.

7. The preparation of the draft ordinance in hours of SECRET subcommittee meetings with industry representatives to the exclusion of concerned citizens and then allotting citizens 3 or 5 minutes in the public hearing to address issues of concern, is an abrogation of your duty to the citizens of Jefferson County.

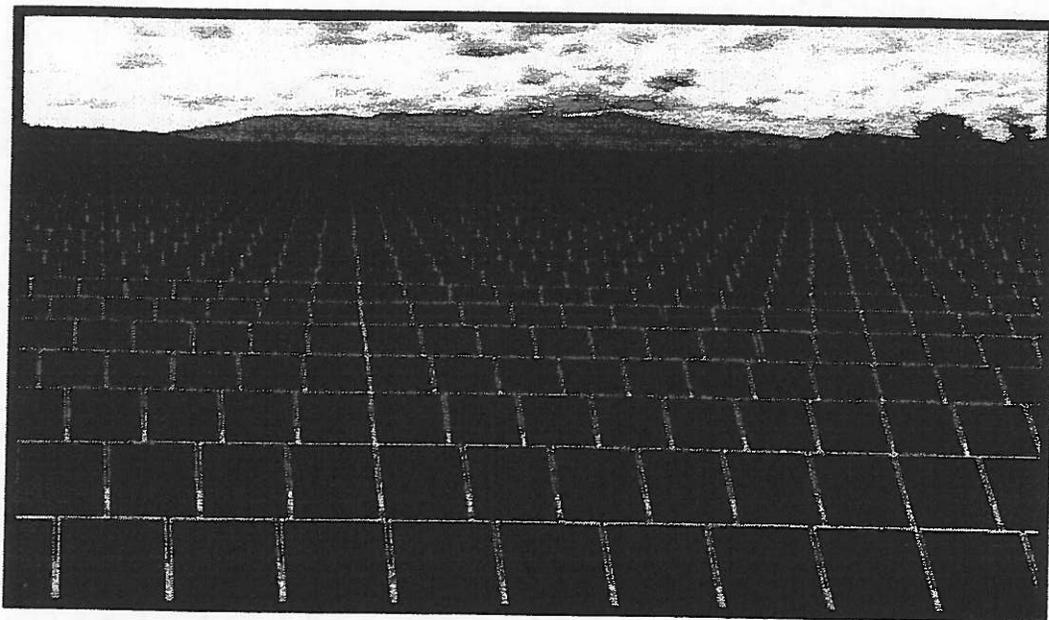
Exhibit D sets forth the early clandestine efforts of political operatives, profiteers and environmental virtue signalers to violate West Virginia law and perpetrate a fraud on County citizens. Refusal to allow concerned citizens to participate meaningfully in this process is but another example of such an abuse of power as resulted in Ranson ending up with Rockwool. You ought to be ashamed but I know you're not!



Robert D. Aitchison



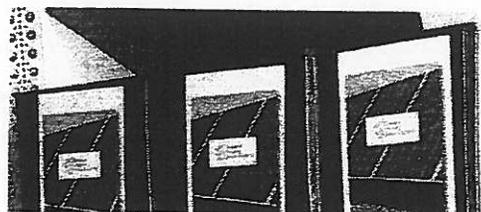
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CITIZENS FOR SENSIBLE SOLAR  SAVING GREENE

Exhibit A

**Solar Siting is in the News with
the latest New York State
Budget and the New**



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- C. The owner or operator of any Facility or Support Structure shall remove the Facility pursuant to the requirements of the Jefferson County Property Safety Ordinance.

Exhibit C

Secret Text Amendment to the Jefferson County Zoning Ordinance (Solar)

From: Bob Aitcheson (bob.aitch46@gmail.com)

To: ncochran@jcpawv.org

Date: Wednesday, April 22, 2020, 01:50 PM EDT

Nathan:

In early March 2020, I received information about a very concerning secret effort by certain members of the Planning Commission, in concert with a Colorado developer, to concoct an amendment to our Zoning Ordinance reference solar facilities in rural districts of our County. I learned that an unnoticed, secret & private SECOND meeting of a 3 Commissioner subcommittee charged with drafting an ordinance with only representatives of the developer likely present AND EXCLUDING ANY OTHER CONCERNED CITIZENS OF THE COUNTY, was to take place on Friday, March 27 at 3pm. When I tried to find out whether the meeting was cancelled (because of the virus, etc) & rescheduled, the new time, location, etc, I was denied that information.

In fact, I was told that Mike Shepp, President of the Planning Commission, responded to my inquiry saying "... that the drafting of an amendment is PROTECTED AS A DRAFT UNTIL SUBMITTED TO THE Planning Commission AS A PUBLIC DOCUMENT BECAUSE THE SUBCOMMITTEE MEETINGS DO NOT MEET THE DEFINITION OF 'meeting' within the Open Meetings Act...". Evidently, someone forgot to check the written public policy of the Jefferson County Commission that EVEN WORK SESSIONS ARE TO BE NOTICED & OPEN TO THE PUBLIC even though there are no votes taken & the public does not participate in the meeting!

My concerns are:

- 1) According to a fair reading of prior minutes, these secret meetings are held with at least one proponent of the ordinance present & having input, but NO concerned citizens of the County are allowed.
- 2) Recently, staff advised that the citizens of our County would not be allowed to see the proposed ordinance until it is sent to the Planning Commission for action in the packet for the meeting at which it is to be acted upon.
- 3) Recently, upon request of concerned citizens to meet with the President of the Planning Commission concerning fashioning a text amendment consistent with the Comprehensive Plan, state law & the protection of other residents of our County, the response was that it would be improper to engage in ex parte communications! This, of course, is notwithstanding the multiple, frequent input from the developer & a member of the Commission who is a commercial real estate agent with an unusually keen personal interest in seeing these blights on our landscape move forward unregulated in any meaningful way!
- 4) A recent article in the Spirit concerning this matter entitled "A Bright Idea", obviously propagandized from various proponents, contained, a misleading statement that these are to be solar "farms" when they're not farms at all. They are "facilities". If you've ever seen one, you would know they aren't 'farms'.
- 5) Once the ordinance is submitted to the Commission, you know as well as I do that citizens, with little time to evaluate it, concerned citizens will be the victims of a sham hearing as the self-interested on the Commission take the lead in ramming it thru.

Finally, I ask the question: WHAT IS IT THAT THOSE IN THESE SECRET MEETINGS ARE TRYING TO DO TO THIS COUNTY ie MY NEIGHBORS & ME, THAT THEY MUST BE "PROTECTED" FROM PUBLIC SCRUTINY? For what, to destroy agricultural land to provide electricity to Northern Virginia & line the pockets of crooked political operatives? It is an outrage that unelected bureaucrats think they have the power to put their interests above that of the citizens of Jefferson County to the detriment of many! This is exactly how they ended up poisoning this County with ROCKWOOL!!!

Awaiting your prompt reply, I am,
Very truly yours,

Robert D. Aitcheson,

Exhibit D

From: [Bob Aitcheson](#)
To: [Planning Department](#)
Subject: Correction to my memo re: ZTA 19-03 Solar Energy Facilities
Date: Monday, June 1, 2020 10:18:37 AM

Hi Rachel,

Following up our phone conversation this morning, there is a correction to item no. 1, the citation to the new statute:

Where it says in bold “ See W. Va. Code 24-2-10(b)” it should read “See W. Va. Code 24-2-1o(b)”. The “zero” should be the letter “lower case o”.

Thank you for including this correction with my memo tomorrow.

All the best,
Bob Aitcheson

Sent from my iPhone

May 27, 2020

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MAY 28 2020

From: Robert D. Aitcheson, WVSB #90 (inactive)

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

To: Jefferson County WV Planning Commission

Re: Member Stephen Stolipher; Failure to Recuse Himself from Solar Facility
Text Amendment Discussion, Vote, etc.

The Planning Commission must REQUIRE Stephen Stolipher to recuse and disqualify himself from ANY vote, discussion, participation or other activity regarding the proposed solar facility text amendment because W.Va. Code 6B-2-5(b)(1) and separately W.Va. Code 8A-2-4(e) & (f) mandate such recusal and because the “class exception” under W.Va. Code 6B-2-5(j)(2)(A) of the Ethics Act is NOT available to Mr. Stolipher as a defense to his disqualification, more particularly as follows:

1. W. Va. Code 8A-2-4(e) & (f) require that a Planning Commission (hereinafter “PC”) member recuse himself or herself from any vote, discussion or other activity regarding “the conflicting issue” if the member is pecuniarily interested in the matter.

2. Separately, the W. Va. Code 6B-2-5(b)(1) of the Ethics Act PROHIBITS a PC member from “knowingly and intentionally” using “his or her office or the prestige of his or her office for his or her own private gain...”.

3. FACTS:

(a) Mr. Stolipher is a commercial real estate agent with Oakcrest Realty. As such, he is believed to have contracts pending for the sale or lease of land in Jefferson County, WV with HORUS Renewables Corp. of Sacramento, California as prospective purchaser or lessor. At least three of those contracts are believed to be for Thorn Hill Subdivision (172 acres) at the corner of Route 115 and Kabletown Road, Highland Farm (123 acres) and another separate 100+ acre parcel.

(b) If said contracts are closed, Mr. Stolipher stands to receive a monetary commission or finder’s fee from each such transaction.

(c) The contracts with Horus Renewables Corp. are believed to be for the purpose of establishing solar facilities on said properties and are believed to be in some way dependent on the actions of this PC and the County Commission on the subject text amendment.

4. The class exception under W. Va. Code 6B-2-5(j)(2)(A) incorrectly relied upon by Mr. Stolipher as a defense to his recusal, is not available to him in this circumstance because:

(a) The essential requirement to relieve a member of the requirement of recusal is that the member not be uniquely affected, but be “a member of and to no greater extent than any other member of a profession,...consisting of not fewer than five similarly situated persons or businesses;...”

“If, on some occasion, a Planning Commission member would be uniquely affected, he or she must fully recuse him or herself from the matters before the Planning Commission and the subcommittee in accordance with W. Va. Code 6B-2-5(j)(3)”....(emphasis in original) Advisory Opinion 2017-19 (West Virginia Ethics Commission).

5. Mr. Stolipher is “uniquely affected” and “pecuniarily interested” because he stands to benefit directly and financially in specific, unique transactions depending upon the actions of this Commission and the County Commission thereafter. And it is well known that the County Commission generally accepts the recommendations of the Planning Commission as presented.



Robert D. Aitcheson
Resident and Citizen of Jefferson County,
W. Va. since April, 1979

BEFORE THE PLANNING COMMISSION OF JEFFERSON COUNTY,
WEST VIRGINIA

RECEIVED

MAY 28 2020

In re: ZTA 19-03, Solar Energy Facilities

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

ROBERT D. AITCHESON'S MOTION TO RECUSE STEPHEN STOLIPHER,
PLANNING COMMISSION MEMBER

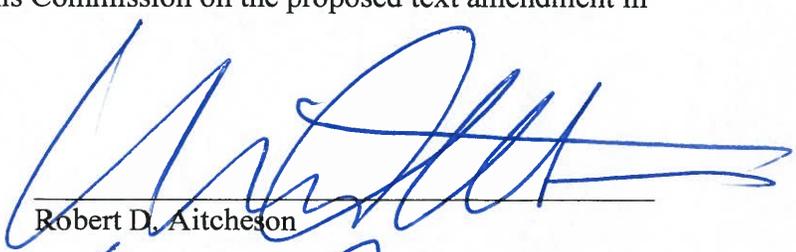
COMES NOW, Robert D. Aitcheson, a resident and citizen of the Rural Zoning District, Jefferson County, West Virginia, and moves the Planning Commission to disqualify and recuse Stephen Stolipher, Planning Commission member, from ANY vote, discussion, participation or other activity regarding the above-referenced ZTA 19-03, Solar Energy Facilities, for the following reasons:

1. Movant is reliably informed and therefore states upon information and belief that Mr. Stolipher is pecuniarily interested, directly and/or indirectly, in the subject matter of ZTA 19-03 and the approval by this Commission of the draft text amendment prepared at the request of the Subcommittee of this Commission and representatives of one or more solar facilities developers.
2. Upon information and belief, Mr. Stolipher is a commercial real estate agent and has several contracts pending in Jefferson County, West Virginia, for one or more renewable energy developers that stand to also benefit pecuniarily from the approval by this Commission of said draft text amendment.
3. W.Va. Code Section 8A-2-4(e) states in part that:

“...This member must recuse himself or herself from ANY vote, discussion, participation or other activity regarding the conflicting issue.” (emphasis added)

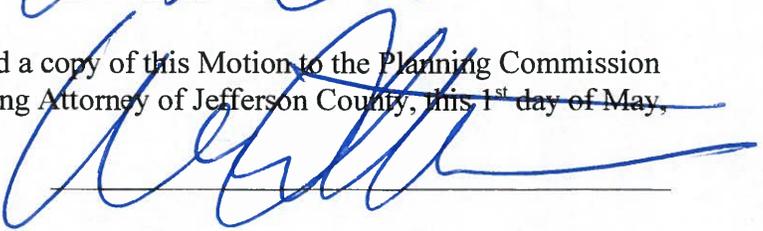
And this provision requires his said disqualification should he fail to do so. In that it appears Mr. Stolipher has, upon information and belief, failed to timely recuse himself in this matter, he must be required to disclose, on the record and under oath, all of his activities, directly or indirectly, to influence the votes of other members of this Commission on the proposed text amendment in ZTA 19-03.

Dated this 1st day of May, 2020.



Robert D. Aitcheson

I certify that I have hand delivered a copy of this Motion to the Planning Commission and Nathan Cochran, Assistant Prosecuting Attorney of Jefferson County, this 1st day of May, 2020.



Zoning

From: Cam Tabb <cam.tabb@gmail.com>
Sent: Sunday, May 31, 2020 10:46 AM
To: Planning Department; Zoning
Subject: Cam' comments Solar Energy
Attachments: Cam' comments Solar Energy.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Please see attached comments for the June 2 Planning Commission meeting per #4 agenda item - Public Hearing.

Please confirm receipt of these comments.

Thank You,

Cam Tabb

**Lyle C. Tabb, III
1040 Old Leetown Pike
Kearneysville, WV 25430
304-725-4325 cam.tabb@gmail.com**

Public Hearing Comments: #4 agenda item, June 2, 2020 #ZTA19-03

I have numerous concerns with the Solar Energy Facilities amendments as written. I am not opposed to solar energy on existing buildings, new buildings or partial tracts. I am very concerned that large swaths of prime farmland could be covered with solar panels under this proposal as written.

I hope that the virtual meetings and chaos of Covid19 will not minimize the due diligence of the Planning Commission and public vetting process.

As a previous Planning Commission member for over 10 years, I was shocked to learn that the subcommittee was directed to work with consultants, Sam Gulland with Clean Torch Energy and Paul Raco, local land use consultant who was the Planning Director when I served on the Planning Commission.

Both of these individuals have a vested interest in minimizing requirements as much as possible and constitute a direct conflict of interest relative to these amendments.

My specific comments are as follows:

#1 -p. 196 of 256, objective #9

Energy sources within Jefferson County that respects the character of the County. A large solar facility would only enhance Northern Va. power supply, not eastern WV plus would not respect the character of the County.

#2 -For reference on p. 33 of 137 under Definitions:

“For Principal Permitted Use, if approved by the office of Planning and Zoning without requirement of approval by a board or commission, provided the use conforms with all applicable requirements of this ordinance.”

This means that the Palling Commission and/or citizens would not have the opportunity to address a project since many of the requirements are being relaxed in the ordinance.

Lyle C. Tabb, III
1040 Old Leetown Pike
Kearneysville, WV 25430
304-725-4325 cam.tabb@gmail.com

#3 -p. 108 of 137, section 8.20 A2

This part has been gutted of commercial development criteria to the point of being useless to citizen comment.

#4 -p. 108 of 137, B standards

1. This section undermines all of the past and present requirement to develop a property and leaves a neighboring property owner looking at what could be a vast sea of solar panels with no break even as property ownership changes from one property line to another. The Comprehensive plan states numerous times the importance of open space and maintaining the character of the County. These amendments are contrary to that vision.

#5 -B, 3a Buffering

Buffer should extend along the entire length of the property line.

#6 -B4, Storm Water Management

This is a commercial development and should be policed as one (refer to p. 137 of 137, Appendix C, Solar Energy Facility is commercial).

#7 -5a.

A full decommissioning plan should be required with the Concept Plan to ensure proper review by the Planning Commission and the public.

#8 -5b.

Again this approach minimizes scrutiny and limits the possibility of public comment.

Lyle C. Tabb, III
1040 Old Leetown Pike
Kearneysville, WV 25430
304-725-4325 cam.tabb@gmail.com

#9 -5 c, d & e

These sections should spell out the Bond requirement and how the Bond would be used for decommissioning the facility.

The office of Engineering staff report uses Chapter 8A, Article 6-1, Bond Requirements, as the basis for their believe that the County does not have authority to require a Bond but this is for construction, not clean up/decommissioning. The County does in fact have a provision in the ordinance to deal with decommissioning.

I direct your attention to Section 4B.8 Maintenance and Removal Bonds:

“Section 4B.8 Maintenance & Removal Bonds Prior to issuance of a Zoning Certificate, each applicant for a Facility shall be required to execute a standard Maintenance / Removal agreement binding the applicant and its successors and assigns to properly maintain the exterior appearance of, and to ultimately remove such facilities, upon abandonment or cessation of operations. The applicant shall be required to post a bond for this purpose in accordance with the Department of Planning & Zoning schedule of fees and charges. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of the Maintenance/Removal agreement have been satisfied. Private business users operating a single Facility at their principal place of business and Governmental Users are exempt from this bond requirement.”

I believe that having the facility Bond in place protects the interest of the County and its Citizens as it would minimize the courts actions in which sometimes no one wins and the tax payers are left footing the bill.

#10 -8.20, C, 9

This is ridiculous to consider with liability concerns to Lesse, Property Owner and safety of equipment.

#11 -2h Stormwater Management Ordinance

Lyle C. Tabb, III
1040 Old Leetown Pike
Kearneysville, WV 25430
304-725-4325 cam.tabb@gmail.com

H. Solar Farms – these facilities would no longer be farms and this should be labelled as Solar Energy Facility.

Zoning

From: Planning Department
Sent: Monday, June 1, 2020 10:34 AM
To: Zoning
Subject: FW: ZTA19-03, Draft Zoning Ordinance Amendment RE: solar Energy Facilities

I will distribute tomorrow - just wanted you to see it

Rachael

-----Original Message-----

From: Joyce Rawn [mailto:jsrawn@gmail.com]
Sent: Sunday, May 31, 2020 9:22 PM
To: Planning Department <PlanningDepartment@jeffersoncountywv.org>
Cc: Joyce Rawn <jsrawn@gmail.com>; Terry Rawn <terawn@gmail.com>
Subject: ZTA19-03, Draft Zoning Ordinance Amendment RE: solar Energy Facilities

Dear Planning Commission Members,

I am a Jefferson County farmland owner and am against the proposed ordinances and text amendments for Solar Energy Facilities. I also would like Planning Commission member, Steve Stolipher, to recuse himself from voting on the proposed text amendment. His occupation as a commercial realtor should disqualify him. The proposed zoning ordinance amendment would benefit he and his business.

Jefferson County, West Virginia has the most productive farmland and rural economy in our state and that should be promoted by every proposal voted on by the Planning Commission. Our county is also privileged to have historic attractions that draw visitors from metropolitan Washington and Baltimore who enjoy the lovely vistas unmarred by commercial solar facilities. The Planning Commission should not allow easy access for Solar facilities in our county.

Solar facilities will add no value to Jefferson County. They are ugly and take productive farm land out of use indefinitely. There only value is monetary to those who directly benefit: the realtor, landowner and the Solar company. In addition the long term cost of toxic residue cleanup can be left for the local taxpayers.

My understanding is there has been significant discussion and meetings involving the Planning Commission over the proposed zoning ordinance amendment for solar facilities. My hope is that these were conducted in a fair and legal manner so that the interests of the residents and landowners of Jefferson County are being served by the committee members. I am not in favor of the Zoning Amendment ZTA19-03 RE: Solar Energy Facilities.

Sincerely,

Joy Rawn
Stiles Family Partnership Three LLP

Zoning

From: Planning Department
Sent: Friday, June 12, 2020 9:31 AM
To: 'Gavin Perry'
Cc: Zoning
Subject: RE: Proposed Solar Energy Facilities Text Amendment (ZTA19-03) - Residents Comments

Hi Gavin,

Thank you for your comments; we will be sure to get the edited version to the Planning Commission members prior to the meeting, 6-23-20. Please watch for the Agenda to be posted to our site later today, for the ZOOM meeting information, in case you would like to attend to listen to the solar discussion.

Thank you,
Rachael Burke
Planning Clerk
(304) 728-3228

From: Gavin Perry <gavarch@gmail.com>
Sent: Thursday, June 11, 2020 1:25 PM
To: Planning Department <PlanningDepartment@jeffersoncountywv.org>
Subject: Fwd: Proposed Solar Energy Facilities Text Amendment (ZTA19-03) - Residents Comments

I corrected the spelling of eliminate in the second paragraph

Gavin

----- Forwarded message -----

From: Gavin Perry <gavarch@gmail.com>
Date: Thu, Jun 11, 2020, 12:18 PM
Subject: Proposed Solar Energy Facilities Text Amendment (ZTA19-03) - Residents Comments
To: <planningdepartment@jeffersoncountywv.org>
Cc: Gavin Perry <gavarch@gmail.com>

My name is Gavin Perry, my family and I have lived in Jefferson County since 1975. I am a retired Architect, LEED Accredited Professional and a member of the Jefferson County Farmland Protection Board and the West Virginia's for Sustainable Development Board. The opinions below are my own and do not reflect the opinions of any organization.

My objections to the proposed solar facility is that it will be built on farmland. I fully support solar energy, being a LEED AP, but not at the expense of taking good farmland out of production. Solar facilities should be on the roofs of buildings; unused quarry or mine sites; on impervious areas, such as parking spaces and garages; and on unproductive farmland. For example the Rockwool factory has 500,000 square foot of roof area and large parking areas on which solar panels could be placed to provide power to electric arc furnaces and eliminate the need for coal powered furnaces.

We need both solar energy and productive farmland and can have both if we act intelligently.

The Jefferson County, WV Envision Jefferson Comprehensive Plan, January 2015 states, "One goal of this Plan is to maintain productive farmland soils and the rural character and economy of the County by reducing the conversion of farmland to non-agricultural based uses."

Thank you for your consideration of my opinion. Please acknowledge receipt of the email.

G. A. Perry, Architect, LEED AP.

Zoning

From: nicola bastian <nicolabastian@yahoo.de>
Sent: Friday, June 12, 2020 12:31 PM
To: Ralph Lorenzetti; Stephanie Grove; Daniel Lutz; Zoning
Subject: solar farming ?
Attachments: Solar Farming.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Stephanie, greetings, there is no online email address for Jefferson County Planning Commission , please forward.
Ralph, sending it to you as a rep as i do have your address.
Daniel, please comment.
Pres. J.Tyler Quynn, Jeffrey Bannon , Deirdre Catterton Leeds Corbin, MattMcKinney of the Zoning Board, I pray you
you look for long term impact not just to help one farmer ,now.Thank you.

Love you all volunteers for your dedication, as well as staff, probably not terribly high pay.

Below some questions that i think need to be answered before we plunge again into an endeavour not deeply enough researched.
I make no claim that my questions necessarily lead to a nol on permitting this solar farm- another out of state conglomerate ,
it is whispered. I do affirm, that the questions need to be asked . For a starter , please watch the (shortened version of)
Michael Moore's film

. See below

Respectfully
please stay safe

nicola

304 535 6907.

From
Nicola Bastian
Millville WV 25432
nicolabastian@yahoo.de
304 535 6907

To whom it may concern,

I am writing today to urge our Jefferson County officials and residents to consider to find answers to following questions regarding Solar Farming before committing to re-zone and permit big size solar farming .

- 1) How does the input in earth's resources , labor, energy foot print, and distruction of land per KWH of current produced compare with other forms of energy production, including the resources needed for energy storage batteries?
(My efforts so far to research this issue, finding engeneers contacting the US Energy Information Agency, speaking with CEOs of Solar Companies have been inconclusive)
- 2) What is the environmental impact of de-installing such facilities , including the disposal of batteries and cleaning up possible contamination by damaged solar cells ?
- 3) Is there appropriate bonding issued so the companies can be held responsible for any clean-up/ environmental damage?
- 4) Has the issue of water runoff/stormwater in our karst topography been given in depth consideration and study?

Wheras I am a big proponent of alternative energy, some of these questions have nagged me for decades. After seeing Michael Moore's newest film ,Planet of Humans' (on you Tube) i am even more hesitant to fully support the installing of big solar farms. While Moore's film may contain dramatic exaggerations, the questions he seeks to answer are very valid .

I support whole heartedly do have alternatives for farmers to make a living . That is an issue we all should address before we commit to further reduce land available for food production, especially in times when it seems more important then ever to have food growing closer to whom then is now being practiced.

Public officials may be able to get a response from engeneers and/or the Energy Information Agency. I pray this matter will be tabled until the questions can be fully answered and the impact understood.

Thank you for your consideration.

Questions?

Please contact
nicolabastian@yahoo.de

Planning Department

From: Elizabeth Wheeler <ewheelerwv@yahoo.com>
Sent: Tuesday, June 16, 2020 7:46 PM
To: Planning Department
Subject: ZTA19-03, Draft Zoning Ordinance Amendment RE: Solar Energy Facilities

To the Planning and Zoning Department re: ZTA19-03, Draft Zoning Ordinance Amendment RE: Solar Energy Facilities

As a resident of Jefferson County and proponent of the protection of our county's rural historic agricultural lands, I wish to express my concerns regarding the proposed zoning ordinance amendment that would allow the construction of solar energy facilities on rural lands without the requirement of the CUP process or a clear and effective bonding requirement to address eventual decommission of such installations. As a county and as a society we must steward our resources for future generations, especially our productive farmland which we are losing at an increasing rate - forever. Allowing the construction of large scale solar facilities on rural lands without requiring the careful evaluation of a conditional use permitting process invites difficult and costly consequences to county residents. 25 or 30 years down the road residents may shoulder the burden of legal enforcement of provisions against utilities and landowners who are no longer involved. Good farmland will be lost. Solar facilities should be integrated into existing urban infrastructure - we have rooftops and parking lots aplenty that can integrate solar collectors, closer to the consumers.

Elizabeth Wheeler P.O. Box 1084 Shepherdstown, WV 25443 Tel: 304-876-6638 Cell: 304-283-3129

Zoning

From: o6redleg@aol.com
Sent: Tuesday, June 16, 2020 5:19 PM
To: Zoning
Subject: Re: Proposed Solar Energy Facilities Text Amendment (ZTA19-03)
Attachments: ZTA19-03, Solar Energy Facilities.docx

Follow Up Flag: Follow up
Flag Status: Completed

Alex,
Attached are some comments to the proposed allowing of Solar Energy Facilities as permitted use in Rural zoned land. Some of my comments may be beyond the scope of the text amendment.

Thank you,
Robin Huyett Thomas

-----Original Message-----

From: Zoning <Zoning@jeffersoncountywv.org>
To: 'o6redleg@aol.com' <o6redleg@aol.com>
Sent: Wed, Jun 10, 2020 3:33 pm
Subject: Proposed Solar Energy Facilities Text Amendment (ZTA19-03)

Ms. Huyett-Thomas,

As we discussed, the public comment period to submit written comments pertaining to the proposed Solar Energy Facilities text amendment is open through June 16. Written comments can be submitted by email to planningdepartment@jeffersoncountywv.org (or you can reply to this email, that is OK, too).

If you prefer to mail your comments, they can be mailed to Jefferson County Planning and Zoning, P.O. Box 716, Charles Town, WV 25414.

If you would like to drop of your comments in person, we are located at 116 E Washington St in Charles Town.

Please [[click here](#)] to be directed to the webpage that contains the draft amendment as well as a summary of the status of this text amendment.

If you have any questions, please let me know.

Thank you,

Alex

Alexandra Beaulieu
Zoning Administrator
Jefferson County, WV
304-728-3228

June 16, 2020

Alexandra Beaulieu
Zoning Administrator
Jefferson County, WV

Re: ZTA19-03, Solar Energy Facilities

Following are some comments to the proposed Solar Energy Facilities in Jefferson County

1. I do not find this proposal compliant with the goal of the Jefferson County Comprehensive Plan “to maintain productive farmland soils and the rural character and economy of the County by reducing the conversion of farmland to non-agricultural based uses.
2. While I do not oppose Solar Energy and understand benefits of using Solar Energy I do not think an industrial operation permitted use in Rural zoned land is appropriate and needs further study.
3. The COVID 19 Pandemic has brought to the forefront how important it is for a Community to have access to locally sourced food. In Jefferson County there is tremendous stress on loss of farmland for housing developments. The loss of valuable farmland for conversion to Solar Energy Facilities will further increase the loss of fertile farmland.
4. A 20ft. wide buffer along common property lines is minimal and should be expanded.
5. I do not see a County master plan for number, amount, location, effectiveness of Solar Energy Facilities. This proposal seems to be too unstructured and allows anyone to place a Solar Energy Facilities on their land regardless of impact to the surrounding area and electrical capacity gain versus loss of agricultural land.
6. The County will need to create a new division to oversee design, construction, installation and decommissioning, as well as oversee possible loss of trees for installation, roads, etc and oversee required natural vegetation at the facility.
7. Decommissioning of the Facility may involve mitigation of metals and other contaminants on the land. Is the County going to cover the cost of mitigation if the landowner does not properly decommission the land at the Facility. We have seen this issue in WV with failure by Companies in reclamation of land that has been used for mining.
8. There should be no exemption to stormwater management. Stormwater management and runoff into the local streams and Shenandoah River is an ever growing impact to the health of our natural waterways. The increase in water flow with continued addition of stormwater runoff from developments and expansion of CTUB has dramatically changed the water flow along Evitts Run with negative impact to adjacent land at times of increased waterflow.
9. I believe there should be further study and community input regarding Solar Energy Facilities being a permitted use in Rural zoned land.

Thank you,

Robin Huyett Thomas
534 S. Samuel St./165 Sesame St.
Charles Town, WV

Planning Department

From: Robert Aitcheson <bob.aitch46@gmail.com>
Sent: Wednesday, June 17, 2020 9:09 PM
To: Planning Department
Subject: Fwd: Secret Meetings
Attachments: ROCKWELL.LTR(3).pdf

Follow Up Flag: Follow up
Flag Status: Completed

----- Forwarded message -----

From: Bob Aitcheson <bob.aitch46@gmail.com>
Date: Sun, Jun 14, 2020 at 5:37 PM
Subject: Fwd:

Pls find Doug Rockwell's open letter to the citizens of Jefferson County. Thank you for publishing same.
Bob Aitcheson
bob.aitch46@gmail.com

Sent from my iPhone

Begin forwarded message:

From: Bob Aitcheson <bob.aitch46@gmail.com>
Date: June 11, 2020 at 10:59:50 AM EDT
To: Elizabeth Wheeler <farmlandprotection@jcda.net>
Subject: Fwd: Secret Meetings

FYI

Sent from my iPhone

Begin forwarded message:

From: wanda aitcheson <waitcheson@yahoo.com>
Date: June 11, 2020 at 10:56:39 AM EDT
To: "bob.aitch46@gmail.com" <bob.aitch46@gmail.com>
Subject: Fw: Secret Meetings

SECRET MEETING/UNLAWFUL ACTS

In February of this year three members of the Jefferson County Planning Commission and staff held a meeting, from which the public was barred, with a local lobbyist and an out of state developer of commercial solar facilities controlled by a New York Investment fund. After this meeting and three other secret meetings this group of three adopted an amendment to the County Zoning Ordinance which allows Commercial solar energy facilities in more than 75% of the county as a principal use. Meaning you can not oppose it. There are no notes or recordings of the meetings. The staff has refused to voluntarily release the documents or other writings the group reviewed. These secret meetings violated the state open meeting law and the county's policy on open meetings.

A commercial solar energy facility can include solar panels, transformers, storage batteries, generators, substations, reflecting mirrors and security fences. The draft has no density or height limits.

State law mandates an amendment MUST be consistent with the adopted comprehensive plan. In a memo dated July 9, 2019 the County Zoning Administrator advised each member of the Planning Commission that the County Comprehensive Plan would allow non-agricultural commercial use by the Conditional Use Permit process in the Rural Zone. A solar energy facility is a commercial activity and must process as a conditional use and not a principal use as in the drafted amendment. Accordingly the amendment VIOLATES state law.

The farmer's letter requested a text change in the zoning ordinance and a conditional use for a solar facility in the Rural Zone. What happened? Why hold secret meetings? Why knowingly draft an amendment which violates state law? Will the Commission adopt an unlawful amendment? The Jefferson County Planning Commission meets June 23, 2020 at 7:00 o'clock p.m. Will there be answers?

Doug Rockwell

Planning Department

From: Robert Aitcheson <bob.aitch46@gmail.com>
Sent: Monday, June 22, 2020 11:16 AM
To: Planning Department
Subject: Industrial/commercial solar facility text amendment

Follow Up Flag: Follow up
Flag Status: Completed

This concerns the sickeningly obvious, ongoing efforts by the Planning Commission (hereinafter “PC”) to obstruct & indeed prevent any meaningful citizen input to the as- drafted unlawful proposed solar text amendment. See e.g. pp. 73, 74, 75, 77 & 78 of the 256 page Comprehensive Plan for easy reference to the legal requirements to which you must adhere.

To be clear, I am not opposed to solar facilities in the county on commercial or industrial or abandoned industrial sites. I am opposed to commercial/industrial solar facilities in the rural zoning districts.

Today I called the Planning Office to register to speak in person at tomorrow night’s meeting since the Courthouse is now open. I assumed the PC would address the issue after further & this time, face-to-face input from concerned citizens. WRONG! Instead, Mr Shepp has exercised alleged discretion to prevent once again meaningful citizen contact with the PC on this issue. Call in!

When I indicated that I want to speak at the meeting, I was told “this is not a hearing”. This struck me as being to the effect “Sit down & shut up, you’ve had your 3 minutes. (notwithstanding that the lobbyist & other proponents have had about 2 1/2 hrs of PC or subcommittee face time; that the subcommittee met in secret & that staff has refused a citizen request for documents reviewed in subcommittee meetings, etc.) Now the heavy hand of the government you pay taxes to, is going to unlawfully take (devalue) your property & there’s not a damn thing you can do about it.” Of course! What’s another lawsuit when we’re paying them with our tax dollars to defend against our legitimate claims.

When I pointed out that there is normally a ‘citizen comment’ portion of meetings, I was finally registered to address the PC, presumably for a whole 3 more minutes. Even though it is impossible to address the complex issues arising with this proposed text amendment, both the many procedural deficiencies & unlawful substantive provisions, in 3 minutes, I encourage other citizens to also sign up to speak.

The conduct of the PC & certain financially interested & conflicted member(s) thereof, is inimical to & irreconcilable with any semblance of our representative form of government.

Robert D. Aitcheson

Zoning

From: Cam Tabb <cam.tabb@gmail.com>
Sent: Monday, June 22, 2020 7:49 PM
To: Planning Department; Zoning
Subject: Planning Commission public comment for June 23, 2020
Attachments: Solar Farms comments #2.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hello --

Attached are my public comments on the Solar Farm text amendments.

Please confirm receipt.

Cam Tabb

Lyle C. Tabb, III
1040 Old Leetown Pike
Kearneysville, WV 25430
304-725-4325 cam.tabb@gmail.com

Public Hearing Comments: Solar Farm Text Amendments June 23, 2020

After reviewing the initial request by Stanley Dunn to amend the ordinance in a letter dated 11/18/19 and the subsequent text amendments before the Planning Commission:

The proposed amendments by Mr. Dunn are closer to the spirit of the Jefferson County Zoning ordinance and the Comprehensive Plan than the amendments generated by the subcommittee.

I cannot understand why the Planning Commission would want to make solar energy facilities a permitted use in so many districts. Doing so removes the input and review of the Planning Commission plus the public that may be a neighbor to an extensive project. I believe the conditional use process is far better for the County.

As stated in my previous public comment, the solar installer must be required to bond for decommissioning (see Section 4B.8, Maintenance and Removal Bonds from the Zoning Ordinance). Failure to require this bonding will cause problems down the road for landowners, their heirs and estates plus the County.

Thank you for your consideration.