

**Proposed Zoning Ordinance text amendment ZTA19-03
Solar Energy Facilities**

**Public Comments Received during 06-02-20 Planning Commission Public Hearing through the Public Comment Period which closed on 06-16-20
For review during June 23, 2020 PC Meeting**

#	Public Comment	Staff Response
1.	<p>W. Va. Code 24-2-1o(b) – definition of eligible site:</p> <p>“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.</p>	<p>In Dec. 2019, Staff contacted the PSC for information on solar facilities. The contact in the legal division advised that they do not address local land use matters and that each jurisdiction is responsible for developing their own requirements as to how to process such projects.</p> <p>SB 583 went into effect in June of this year. Staff’s understanding of this bill was that it was specific to utility owned solar facilities, not privately owned solar facilities. Additionally, Staff’s understanding was that the new code encouraged locating to eligible sites as defined, but not as a prohibition to other locations. Staff reached out to the PSC to gain some insight and they directed Staff to review the rules associated with SB 583, specifically GO 263, which addresses non-utility solar facilities.</p> <p>Staff does not read this new section of State Code as prohibiting solar facilities from locating on other lands; however, Staff defers to Legal for input. Ultimately, the PSC has the final approval of a location (siting certificate). If local regulations allow solar projects in a location that the State does not allow, the State would override local rules.</p>
2.	<p>Section 4B.8 Maintenance & Removal Bonds (existing section in Zoning Ordinance)</p>	<p>Article 4B of the Zoning Ordinance pertains to Telecommunication Towers. To date, the County has not processed applications for new towers; therefore, the County has not processed any Maintenance & Removal Bonds as described in the referenced section.</p> <p>If Legal determines that State Code does not enable the County to require such bonds, then Article 4B will need to be amended to reflect this decision.</p>
3.	<p>Stormwater Management Ordinance refers to land use as “Solar Farms” and should be changed to “Solar Energy Facility”.</p>	<p>This has been revised.</p>

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4.	General concern for loss of agricultural land.	<p>The agricultural community continues to seek alternative endeavors to diversify their operations to maintain income. The proposed text amendment encourages collocation of agricultural activities in conjunction with solar facilities (Sec. 8.20.C.9).</p> <p>It is more feasible for a site which has been developed with solar panels to be returned to its original condition for future farming than it is if the property is developed for a residential subdivision or for a commercial land use.</p> <p>The proposed text amendment requires ground cover comprised of natural vegetation, with a recommendation to utilize native or naturalized perennial vegetation (Sec. 8.20.C.8). This should help maintain soil quality.</p> <p>While the draft amendment provides provisions to allow solar facilities to process in the Rural zoning district, there are no provisions which diminish the right to continue farming and there isn't a preference in the amendment that these types of facilities locate to the Rural district. Solar facilities are permitted by right in the commercial districts as well. The expectation would be that if the property owner of an agricultural operation wants to continue the agricultural operation, then the property would not be developed for solar or any other non-agricultural land use. If the property owner is seeking another option to move away from an agricultural option, solar energy facilities would provide an alternative to residential development, or another commercial endeavor. It would seem that solar energy facilities may have a lesser impact on the County than a residential development or commercial development, particularly with the expectation that should a facility be decommissioned, the land could then be returned to its original conditional to reestablish an agricultural use.</p> <p>The Planning Commission directed the subcommittee to draft a text amendment that would allow solar energy facilities to process as a Principal Permitted Use (i.e. by right) and to address site development standards such as fencing, screening, and decommissioning. The Planning Commission can revise to include additional requirements, if they deem appropriate.</p>

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5.	Concerns for environmental impact of solar facilities.	<p>The Planning Commission asked several questions pertaining to the environmental impact between the December 2019 and February 2020 meetings. The information presented indicated that environmental impact from solar energy facilities is minimal.</p> <p>It should be noted that no land use is without environmental impact, including residential development and agricultural operations. The Department of Environmental Protection is largely responsible for reviewing environmental impact of a proposed development and has their own regulations a project is subject to complying with for approval.</p> <p>The Planning Commission should evaluate the type of impact solar facilities may have and how those impacts can be mitigated (i.e. vegetative buffers, ground cover, etc.).</p> <p>Compliance with Section 8.9 is required, similar to any other non-residential land use. This section addresses noise, odor, smoke, ambient air quality, vibration, glare and heat, toxic matter, and fire hazards.</p> <p>The proposed text requires solvent’s necessary for cleaning solar panels to be biodegradable (Sec. 8.20.C.4).</p> <p>Solar facilities do not emit odors. Noise is minimal, produced primarily from generators. The glare is minimal and the proposed amendment requires that “antireflective glass that is designed to absorb rather than reflect light” be utilized (Sec. 8.20.C.7).</p>
6.	Proposed setbacks are excessive.	<p>During their December 2019 and February 2020 meetings, the Planning Commission expressed concerns with regard to the aesthetics of these types of projects. The proposed setbacks are slightly above what is required for a commercial project in the rural district (75’, when adjacent to a residence) but less than what is required for an industrial use (200’, when adjacent to a residence). Based on research, it does not appear that a 100’ setback for this type of land use is excessive.</p> <p>The intent was to provide a larger setback to provide a visual barrier.</p>
7.	Proposed setbacks are insufficient.	<p>The proposed setbacks exceed what is required for a commercial project in the Rural zoning district (75’, when adjacent to a residence [25’ if there is no residence]).</p> <p>The intent was to provide a visual barrier through a larger setback (similar to the distance requirements found in Section 4.6).</p>

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8.	Solar energy facilities should be permitted within the Residential Growth zoning district. Solar facilities have less impact on resources than residential development and there should be more options for property owners in the RG district than just residential development.	<p>The original proposal was to allow these types of facilities in the Rural zoning district; however, Staff advised that the use should be permitted in the commercial districts as well, so as to not inadvertently prohibit this type of project from locating in a commercial district.</p> <p>This is a decision for the Planning Commission.</p>
9.	The proposed text amendment is not consistent with the Comprehensive Plan.	<p>It is the Planning Commission’s role to determine whether a proposed text amendment is consistent with the adopted Comprehensive Plan and to make a recommendation to the County Commission. There are several references throughout the Plan which support renewable energy.</p> <p>The County Commission has the final authority to make land use decisions.</p>
10.	The text amendment was drafted during secret meetings with industry representatives.	<p>An industry representative, Sam Gulland, presented the petition on behalf of the Jefferson County landowner, Stanley Dunn, in December 2019. In February 2020, the Planning Commission appointed a subcommittee to work with Sam Gulland on revising the draft to create provisions to allow the use to process as a Principal Permitted Use. The Planning Commission also requested that the subcommittee include local Land Use Consultant Paul Raco and requested that a Staff member be present to facilitate the meetings (Alex Beaulieu).</p> <p>There were no secret meetings or negotiations occurring. The draft reflects exactly what the Planning Commission directed the subcommittee and participants to draft. There were no votes taken during such meetings; no official decisions were made. The purpose of the subcommittee was to revise the original submission to reflect the directives of the Planning Commission and create a working draft to be presented to the Planning Commission and the public for review.</p> <p>Planning Commission meetings are recorded and the recordings are archived online. The minutes are also available online. The Planning Commission’s directions were clear and concise and the revised draft submitted did not take any liberties beyond that direction. Please refer to the records pertaining to December 2019 and February 2020 for Planning Commission discussion and direction.</p>