

# FINAL MINUTES

## Meeting Minutes

### Jefferson County Planning Commission

June 08, 2021

The Jefferson County Planning Commission met on June 8, 2021 at 7:00 p.m. with the following Commission members present in person: Mike Shepp, President; Wade Louthan, Secretary; Jack Hefestay, Steve Stolipher, and Donnie Fisher; and the following present via ZOOM: Shane Roper and Matt Knott. Jay Ware and Ron Thomas were absent with notice.

Staff members present included Jennifer Brockman, County Planner; Alexandra Beaulieu, Zoning Administrator; Jonathan Saunders, County Engineer; Nathan Cochran, County Attorney, Alice Johns, Planning Clerk.

By order of the President, the Planning Commission meeting was held in person for Commissioners and applicants and virtually via ZOOM for the public. Access information was made available on the agenda and packet, which were posted to the County website.

Jennifer Brockman conducted a roll call. Mr. Shepp verified that there was a quorum and called the meeting to order at 7:01 PM.

1. Approval of Meeting Minutes: May 11, 2021. The minutes were approved as submitted.
2. Request for postponement. None.
3. **Wild Hill Solar Energy Facility Concept Plan Public Workshop:** Construction of a 92.5 megawatt alternating current solar energy facility with a substation connecting to the existing overhead electrical transmission line. The project will be developed across six contiguous parcels comprised of approximately 841 acres owned by five separate property owners: Zigler, Inc., Clarence & Donna S. Hough, Charles L. & Marie S. Hough, T. Todd & Susan B Hough, John Samuel & Alice J. Rissler Estate, and Clarence & Donna S. Hough. Tax District: Kabletown (06); Map 4/Parcel 9, Map 11/Parcels 7.1 & 8; Map 5/Parcels 1 & 6; and Tax District: Charles Town (02); Map 16/Parcel 18. Developer: Wild Hill Solar, LLC an indirect subsidiary of EDF Renewables, Inc.

Mr. Shane Roper recused himself from this agenda item. Jennifer Brockman presented an overview of her staff report to the Commission.

Mr. Paul Raco with P.J. Raco Consulting, LLC was present in person along with Joe Knechtel, Engineer with Potesta & Associates, Inc. and Susan Snowden, attorney with Jackson Kelly PLLC and Katie Rose Jackson with Jackson Kelley PLLC. Present via ZOOM was Chris Sternhagen with EDF, Applicant.

Mr. Paul Raco presented an overview of the project. . Mr. Paul Raco explained that this project will occupy 841 acres and that the landowners will continue to farm the portions of their farms not occupied by the solar facilities. .

Mr. Chris Sternhagen, Director of Development with EDF Renewables North America, spoke to give background on EDF Renewables North America. EDF Renewables North America has been a provider for over 35 years and currently has 73 operating projects in the US across 15/16 states. EDF intends to hire locally for fairly skilled jobs in Jefferson County.

Mr. Paul Raco explained that although a site plan is not required to be reviewed by the County, construction of the facility still requires engineered plans and the following approvals:

- Storm water management plans by the County Engineer;
- NPDES Permit by the West Virginia Department of Environmental Protection (WV DEP);
- Highway entrance permit by the WV DOH

- Building permits and bonding by County Building Dept.;
- A complete decommissioning plan by the County Engineer; an outline of which is a part of d the submitted concept plan.

Mr. Paul Raco then further summarized the project and stated that Public Service Commission approval has been received. He also noted that although the Cloverdale subdivision to the north is beyond the required 100' distance requirement and no buffer is required, the applicants have agreed to install a 20' treed buffer based on the M53 standard detail along this boundary. Mr. Joe Knechtel also pointed out the location of the proposed 4.6-acre substation adjacent to the overhead power lines which will process as an "essential utility".

Jennifer Brockman explained that no comments were received from outside agencies and that staff has deemed the Concept Plan to be complete in accordance with the Subdivision Regulations.

Mr. Mike Shepp opened the Public Workshop for public comment. The following members of the public spoke:

- Natalie Stone - spoke in favor.
- Dee Metz – spoke in favor, with two concerns: one regarding whether Roper North Fork Rd during construction, and secondly, whether it would possible to provide additional screening along North Roper Fork Road across from her farm location.
- Mr. Rodney Rice – spoke in favor.
- Delegate Wayne Clark - spoke in favor of the project.
- Mr. Tim Sheehy – requested that the natural barrier include an evergreen component for a year round buffer.
- Mr. Kim Guterrez, - supports project.
- Mr. William Baty - supports project but expressed concern regarding the topography of the area, the potential for sinkholes, and the impact of an 8' fence on the wildlife corridor/ migration through the property.
- Ms. Stacy Tabb – supports solar energy but believes the process should be a Conditional Use Permit and expressed concern about the proposed use on the karst topography, noting that at the Public Service Commission, public hearing a geotechnical report was present and EDF testified that there would be no blasting or concrete foundations for the installation of the panels. Ms. Tabb asked if those guidelines would still be followed.
- Mr. Doug Rockwell called in and Jennifer Brockman and Mr. Shepp called back but no connection was made.

Mr. Mike Shepp closed the Public Workshop.

Mr. Raco made the following responses to the public comments:

- Construction traffic they will not be off North Roper Rd; it will be off Kabletown Rd where the main entrance is. Any damage to state road would be monitored by WV DOH.
- Regarding the karst topography, and the applicants have mapped the sinkholes on the site and identified 12 to 18 sinkholes.
- Regarding the wild life, the applicant will monitor the wildlife; however, a fence is required by ordinance.

- Regarding an additional buffer along North Roper Rd, Mr. Raco noted that the current plan has the panels sitting far back from the road in this area but the applicants would consider a buffer as the plans develop.
- Stated that anything the applicant agreed to at the PSC Public Hearing would be honored.
- Stated that the applicant will install a natural buffer as required in the M53 standard detail as well as the existing vegetation along the Cloverdale boundary.

Mr. Steven Stolipher asked Mr. Raco to describe the proposed buffer including the width and height. Mr. Raco stated the County's standard details include three barriers that were developed by Jon Lockman who was the County Engineer: a 10-foot narrow buffer (M-54), a 20-foot medium buffer (M-53), and a 30-foot wide buffer (M-52). A convenience store would require a 10-foot narrow buffer. For the proposed solar facilities, the ordinance requires the 100-foot setback and an 8-foot fence, and the applicants are agreeing to install a buffer meeting the M-53 detail which includes small shrubs, medium bushes and large evergreen trees.

Wade Louthan asked about a buffer around the substation. Mr. Raco explained that none of the ordinances in Jefferson County require a buffer around the substation.

Mr. Steve Stolipher made a motion to approve the Concept Plan as presented; which was seconded by Jack Hefestay. The motion passed unanimously.

4. Charles Town Sheetz (Augustine Avenue) Concept Plan Public Workshop: Concept Plan for the Charles Town Sheetz Store (a Major nonresidential Site Development). The proposal consists of Gas Station, Large, including a 5,437 sq. ft. convenience store with drive-thru, 5 fueling islands with canopy, new roadway, open space, stormwater management areas and the construction of associated utilities. Owner/Applicant: Guy Chicchirichi; Developer: Bob Franks, Sheetz Inc. Property Location: Northeast corner of US 340 and Augustine Avenue intersection, Charles Town. Tax District: Charles Town (02); Tax Map: 16; Parcels: 1. Total Project Size: 2.5 acre portion of 4.42 acre site; Zoning District: Highway Commercial (HC). (File: 21-4-SP.)

Mr. Steve Stolipher recused himself from agenda item #4. Mr. Roper re-joined the meeting.

Jennifer Brockman provided an overview of the project.

The applicant, Jason Gerhart with Gordon was present to review the project. Bob Franks, with Sheetz was on line via Zoom.

The applicant is proposing two access points from Augustine Avenue. A draft Traffic Impact Study (TIS) has been submitted and reviewed by WV Dept of Highways (WVDOT) and there is continued coordination regarding access. The TIS recommends that the entry closest to US 340 be developed as a right in only from 340 and that full access would be the entrance aligned with Washington High School. The TIS has not been finalized at this point. Any improvements would be at the expense of Sheetz.

Jennifer Brockman reported on the outside agency comments received:

- Historic Landmarks had no objection.
- Charles Town Utility Board Schools indicated that they had the capacity to serve this site and they are working on best water and sewer connection points.
- Jefferson County Schools Director of Transportation indicating concerns about the amount of traffic and congestion during arrival and dismissal times.

- WV DOH comments on the TIS about the right in only.

Ms. Brockman also stated that the 2.5 acres will have to be subdivided from the existing parcel; noted that the Subdivision Regulations require sidewalks/ bike paths on at least one side of the street; and require interconnectivity with adjoining properties.

Mr. Mike Shepp opened the Public Workshop.

Ricki Twyford, Charles Town City Councilman spoke in support of the project and the proposed intersection improvements and inquired whether Huyett Rd would be a part of the intersection improvements.

Mr. Mike Shepp closed the Public Workshop.

Mr. Jason Gerhart stated that there are no current plans related to Huyett Rd improvements to Huyett Road because the applicant is currently limited to “right in” access to their site. He also noted that the draft TIS evaluated the US340/Augustine Avenue intersection and that there may be improvements related to the Sheetz project. The WV DOH may also be looking at other safety concerns that have existed prior to this project.

Mr. Jack Hefestay made motion to accept this Concept Plan as presented; the motion was seconded by Donnie Fisher; and passed unanimously.

Mr. Mike Shepp stated that no public comment will be taken for the following Agenda Items.

Mr. Stolipher re-entered the meeting.

5. Requests for the Planning Commission to consider incorporating within their work plan two possible text amendments to the Zoning and Land Development Ordinance (Discussion/Possible Action):

- A. Consider developing provisions for short term rentals.

- i. Request from Amy Bowman, landowner
- ii. Request from Chris Rife, landowner

Ms. Alex Beaulieu provided an overview of the two requests above. She explained these are opposing requests. The Zoning Ordinance currently allows residential units to be rented by the week, month or year.. One request is to draft an amendment to address short-term rentals, whether allowing by right on more frequent basis and the other request is to make the requirements more stringent. Currently the definition of “family” in the Zoning Ordinance allows up to six unrelated individuals to occupy a single dwelling unit. Ms. Beaulieu stated that the Planning Commission could form a committee to address the concerns related to short-term rentals or determine that this cannot be undertaken at this time.

- i. The applicants were permitted to make a presentation to the Planning Commission: Amy Bowman and Butch Diehl stated that they are asking the Planning Commission for clarity in the Ordinance regarding the short-term rental provisions and that there is a large market for “home shares.”

Mr. Mike Shepp asked if this discussion related to Air B&Bs. Ms. Bowman stated that the term actually refers to room rental and the definition of dwelling, does not apply to room rental, particularly if there is no access to a kitchen. She further stated that she believes that there are 120 Air B&Bs already in Jefferson County. She and Mr. Diehl are the ambassadors for the County and their guests spend money in Jefferson County. Ms. Bowman stated that there was

law passed in 2018 that requires collection of sales tax. There was a bill that went to Governor Justice and didn't pass; however, they are moving forward with the idea that the state will collect the hotel/motel tax for the County and it will be a guaranteed 6% (similar to how the state has their guaranteed 6%).

Mr. Steve Stolipher made the statement that the hotel/motel tax which is collected is what funds the County Visitors Bureau (CVB), Parks and Recreation and the Historic Landmarks Commission (JCHLC).

Amy Bowman also explained that the Air B&B constituents pay higher real estate taxes. She reiterated that they would like the Ordinance to be clarified for them.

- ii. Ms. Chris Rife spoke and agreed that the ordinance is unclear. She is a home owner in rural neighborhood with five Air B&Bs within one mile radius on a back road that is not paved. Ms. Chris Rife would like more restrictions. The residents of their neighborhood have had to post signage stating private property, due to tenants coming in and out all the time. Ms. Chris Rife is looking for limitations in rural areas.

Mr. Steve Stolipher inquired if there are limitations for different zoning districts. Ms. Alex Beaulieu explained that right now, a dwelling can be rented out for weekly basis, for any district. There are no provisions to allow on daily basis, except for processing as a hotel, or if you reside on the property, to process as bed/breakfast. What is coming into question is renting entire dwellings on a more frequent rate or renting rooms that are not part of a Bed and Breakfast. Ms. Beaulieu reiterated that the request is before the Planning Commission to determine if they want to consider these amendments as a part of their current workplan.

Mr. Steve Stolipher expressed his opinion and stated that Jefferson County is the highest grossing tourist county in the state. He expressed his opinion that the County should clarify the regulations to encourage tourism and that includes Air B&Bs. Mr. Steve Stolipher that, from property rights standpoint, the tourist need to be informed that they cannot trespass on other properties. He also stated that the regulations should address all the zoning districts.

Mr. Stolipher made a motion to ask staff to work on drafting new language and updating the ordinance as part of the current workplan; Donnie Fisher seconded the motion, and it passed unanimously.

B. Consider reducing the setback requirements for lots in the Residential Growth zoning district.

- i. Request from the Board of Zoning Appeals

Ms. Alex Beaulieu provided an overview of this text amendment request. The Board of Zoning Appeals had a zoning variance request related to a proposed subdivision in which the lots were not final platted and the Board they felt they couldn't approve the request. The letter is submitted on their behalf of the Board of Zoning Appeals for the Planning Commission to consider reducing the side setbacks in the RG Zoning District.

Mr. Nathan Cochran, further explained the actions of the Board of Zoning Appeals.

Mr. Jason Gerhart, Gordon, noted that he was available if the Planning Commission had any questions as the variance in question related to the King's Crossing subdivision.

Mr. Stolipher made asked for a motion to ask staff to propose new setbacks in the RG zoning district; Donnie Fisher seconded the motion, and it passed unanimously.

6. Reports from Legal Counsel

Mr. Nathan Cochran reported that the lawsuit regarding solar text amendment is still moving forward.

7. Planners Memo

Ms. Jennifer Brockman reported that Ms. Clare Ath was appointed by the County Commission to fill Josh Compton's position effective May 20, 2021.

The next regular Planning Commission meeting is July 13, 2021 and there are two concept plans on the meeting.

There is a special meeting on June 22, 2021 to hear a Waiver Request to allow early grading for Shepherdstown Sheetz and to deem the Site Plan complete.

8. President's Report None

9. Actionable Correspondence None

10. Non-Actionable Correspondence None

Mr. Donnie Fisher made a motion to adjourn the meeting at 8:22 pm; Mr. Jack Hefestay seconded the motion, and the motion carried unanimously.

These minutes were prepared by Alice Johns, Planning Clerk.