



ZONING BOARD OF APPEALS

Minutes of the Meeting

January 10, 2024

ATTENDANCE

A regular meeting of the Zoning Board of Appeals was held on Wednesday, January 10, 2024, in the Fourth Floor City Chambers of the Sumter Opera House, 21 N. Main Street. Seven board members – Mr. Leslie Alessandro, Mr. Louis Tisdale, Mr. Todd Champion, Mr. Claude Wheeler, Mr. Clay Smith, Mr. Steven Schumpert and Mr. Jason Reddick were present. Mr. Frank Shuler and Mr. William Bailey were absent.

Planning staff in attendance: Ms. Helen Roodman, Mr. Jeff Derwort and Ms. Kellie Chapman.

The meeting was called to order at 3:00 p.m. by Mr. Leslie Alessandro, Chairman.

MINUTES

Mr. Jason Reddick made a motion to approve the minutes of the December 7, 2022, meeting as written. The motion was seconded by Mr. Claude Wheeler and carried a unanimous vote.

ELECTION OF OFFICERS

Mr. Alessandro opened the floor for nomination for Chair and Vice-Chair.

Mr. Louis Tisdale nominated Mr. Leslie Alessandro for the position of Chair. The nomination was seconded by Mr. Steven Schumpert and carried a unanimous vote.

Mr. Louis Tisdale nominated Mr. Frank Shuler for Vice-Chair. The nomination was seconded by Mr. Clay Smith and carried a unanimous vote.

NEW BUSINESS

BOA-23-30, Pinewood Rd, Starks Ferry Rd, S. St. Paul's Church Rd, & Gwyndale Rd. (County) was presented by Mr. Jeff Derwort. The Board reviewed a request for Special Exception approval for the establishment of a utility scale 74.99 MWac photovoltaic solar energy system on property with frontage along or near Pinewood Rd., Starks Ferry Rd., S. St. Paul's Church Rd., and Gwyndale Rd. The total proposed area of solar array development and support facilities is +/- 650 acres in size (maximum). The property is located along or near Pinewood Rd., Starks Ferry Rd., S. St Paul's Church Rd; and Gwyndale Rd. The property is zoned Agricultural Conservation (AC) and is

represented by TMS# 179-00-01-002 (*Note: This parcel is split by the right-of-way of the above referenced roads*).

Mr. Derwort presented background information to include the location of the project, the applicable zoning designation, existing land use conditions, and floodplain/wetland conditions.

Mr. Derwort discussed the major components of the proposed project and discussed the proposed general development plan for the project.

Mr. Derwort discussed the applicable general special exception criteria outlined in *Article 1.b.4.c.2* of the *Sumter County Zoning & Development Standards Ordinance*.

1. That the special exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements.

A full review of the special design criteria outlined in *Article 5.b.c.3* of the Ordinance is provided elsewhere in this report. Outside of *Article 5.b.c.3* items, the project complies with all Ordinance development standards.

2. That the special exception will be in substantial harmony with the area in which it is located.

The applicant has submitted site and landscape buffering plans, as well as numerous documents and studies to support the position that the project will be in substantial harmony with the area in which it is located. All such documents submitted have been provided as exhibits to this report. Additional studies submitted include a Health & Safety Assessment an Appraisal Report), a Glare & Glint Analysis and a technical memorandum responding to Shaw Air Force Base concerns.

A Species & Habitat Summary has been submitted. This report indicates that the project area contains potential habitat for federally listed threatened and endangered special based on preliminary review and field reconnaissance. However, these findings are not expected to impact or limit the development of the proposed facility. Both further on-site habitat/species studies and coordination with the US Fish & Wildlife Service (USFWS) and the South Carolina Department of Natural Resources (SCDNR) are proposed to determine the potential for impact to protected species.

Shaw Air Force Base was notified of the project and has raised several concerns including the potential for conflict with Poinsett ECR operations and pilot safety. The applicant is countering these concerns and has provided additional documentation.

Project compatibility with Poinsett ECR and Shaw Air Force Base operations is a primary consideration in determining if the project is in substantial harmony with the area in which it is located.

3. That the special exception will not discourage or negate the use of surrounding property for uses(s) permitted by right.

A majority of the identified project boundary is surrounded by land used for agricultural/silvicultural purposes or by land otherwise undeveloped. However, the project area also completely surrounds an established institutional use and a single-family residential use, is adjacent to existing residential development in the southern and western portions of the project area, and is in close proximity to residential development to the north, south, and west.

The applicant is proposing a 300 ft. setback from all property lines and is proposing to install or retain landscape buffering to screen the project.

A Health & Safety Assessment and an Appraisal Report for the project has been submitted in addition to all other applicant submitted documents to support the position that the project will not discourage or negate the use of surrounding property uses(s) by right.

Staff is of the opinion that the project has the potential to satisfy this criterium, however additional detail on development plans and certain project revisions are required.

Mr. Derwort discussed the applicable general special exception criteria outlined in *Article 5.b.3.c* of the *Sumter County Zoning & Development Standards Ordinance*:

1. All ground-mounted photovoltaic solar energy systems shall be setback 300 ft. from all property lines. This provision shall be interpreted to apply to all improved areas associated with the project(s). This provision excludes any security fencing, however; the 300 ft. setback shall apply to arrays, storage areas, permanent

stormwater management facilities, battery storage, inverters, and transformers. The poles and aerial lines necessary to deliver electricity to the power grid may be located in the setback so long as all necessary buffering is maintained as required in *Article 5.b.3.c.10*.

The site plan submitted by the applicant shows all identified areas for solar arrays in compliance with the 300 ft. setback requirement. However, the plan lacks detail concerning storage areas, stormwater management facility locations, battery storage areas, inverter locations, and transformer areas. As such, staff cannot fully comment on whether all required aspects of the project will meet this standard.

2. All access roads and storage areas shall be established on a 30-foot minimum easement to a public right-of-way.

Access roads and storages areas are not shown on the site plan submitted by the applicant. As such, staff cannot comment on whether the proposal meets this standard. Staff has included this requirement as a recommended conditional of approval.

3. On-site All ground ground-mounted photovoltaic solar energy systems shall be enclosed by a perimeter security fence that is wildlife friendly and of a height that meets the National Electric Code (NEC) without the use of barbed wire. Said fencing shall be installed behind required buffers and shall not be visible from public rights of way. In addition to the use of wildlife friendly fencing, solar developments shall be designed to provide unfenced wildlife passageways of a size, scale, and number appropriate for a given development size in order to allow large mammals such as deer, coyotes, and bears to traverse the area.

Based on information submitted by the applicant, the facility will be enclosed by a security fence that is at least six (6) feet in height and will meet National Electric Code (NEC) requirements. No other details on the fencing have been submitted and staff is unable to determine if said fencing is proposed to be wildlife friendly. Further, the identified project area boundaries are expansive on both the east and west sides of Pinewood Rd. Some space between identified solar array areas is provided where wetland areas traverse the property. However, staff is of the opinion that additional wildlife through passages for larger mammals need to be provided for and shown on plans.

4. All ground-mounted photovoltaic solar collectors shall be limited to maximum height of 15 feet above the ground when oriented at maximum tilt. The provision shall not include the interconnection poles, substation equipment, or other devices necessary for the electricity to be delivered to the public utility station.

Submitted documents indicate that a maximum height of 25 ft. at full tilt is being proposed. Staff notes that this was the maximum height prior to final adoption of OA-23-01. It is staff's understanding that a maximum height of 15 ft. at full tilt is generally acceptable to solar facility developers. The 15 ft. maximum height standard is required and is outlined in the recommended conditions of approval.

5. On-site electrical interconnections and power lines shall be installed underground wherever reasonably practical.

Notes on the submitted site plan state that on-site power lines between solar panels and inverters will be placed underground or above ground, subject to final design. No additional information has been provided, and the site plan does not show proposed line locations. More information is required from the applicant to adequately review this standard.

6. The applicant has the burden of proving that glare produced from a primary photovoltaic solar energy system will not have a significant adverse impact on aviation interests, motor vehicle traffic, or neighboring properties. Submission of a glare assessment prepared by a qualified professional is required.

A glint and glare analysis prepared by Kimley-Horn and dated November 2023 has been submitted. This analysis includes separate reports for arrays with anti-reflective coating and for arrays without anti-reflective coating. The reports outline in an "hours per year" metric the potential level for glare and glint from the project for flight approaches, roadway users, the Shaw Air Base air traffic control tower, and from identified observation points. The analysis does not take into account vegetative buffers, terrain, and man-made objects in order to provide a more conservative worst-case situation analysis. The applicant is proposing to install panels with anti-reflective coating.

7. For all locations within 5 nautical miles of the center point of the runway for Shaw Airforce Base, *Poinsett*

Electronic Combat Range (ECR) and the Sumter County Airport:

- a. The applicant shall provide documented proof of having notified the Shaw Airforce Base/Poinsett ECR Military Base Commander, or the Commander's representative and/or the Sumter County Airport Director of a Photovoltaic Solar Energy System proposal.
- b. The applicant shall allow 21 days for written comments to be provided from these agencies. Any written comments received shall be submitted with the Special Exception use application.

This requirement is applicable due to project area's location within 5 nautical miles of the center point of Poinsett ECR.

Documentation shows that the applicant initially notified Shaw Air Force Base representatives of the project on July 20, 2023, and met with appropriate representatives on July 25, 2023 to discuss the project. Shaw Air Force Base oversees the operations of Poinsett ECR. On September 6, 2023, the applicant provided responses to these comments. On September 6, 2023, Shaw Air Force Base provided comments to the applicant. On October 4, 2023, Shaw Air Force Base provided additional comments and responses to the applicant.

Based on review comments in the record, Shaw Air Force Base is not supportive of the project and cites potential impacts to restricted air space, conflicts with Poinsett ECR flight activity, concerns about impacts to pilots and to the solar facility from operations due to the project location, and concerns about the potential for air accidents due to bird strikes.

The applicant has taken the following steps responding to this position: 1) held a meeting with Shaw Air Force Base representatives on November 29, 2023 to discuss concerns, 2) prepared a technical memorandum responding to stated concerns, and 3) submitted the project for review under the formal Department of Defense Aviation and Installation Assurance Siting Clearinghouse for higher level review.

8. It shall be demonstrated that the Photovoltaic Solar Energy System will not unreasonably interfere with the view of, or from, significant sites of public interest such as public parks and historic sites and resources.

SCDAG ArchSite review shows 1 archaeological survey site within the project site boundary and 1 archaeological survey site +/- 160 ft. outside of the project boundary. The site within the project boundary appears to be within the setback area.

The project is adjacent to Enon Missionary Baptist Church. This is an historic site with an official historic marker, as it is the location of the original Enon Baptist Church established in 1872.

The site located outside the project boundary corresponds to the Enon Missionary Baptist Church property. Site and landscaping plans indicate that existing vegetation is located on the subject property and the church property.

9. Landscape Buffering: A minimum 50 ft. wide landscape buffer containing evergreen vegetation screening is required to obscure solar energy systems from public rights of way and residential uses on adjacent parcels. Buffers shall meet the following minimum criteria:

- a. Existing Vegetation: Existing mature trees and shrubs shall be retained in the required 300 ft. setback area. Dead trees and shrubs may be removed in the setback area. Said vegetation shall be supplemented to ensure a year-round evergreen vegetative visual screen of at least 6 ft. in height over 3 growing seasons and not less than 20 ft. in height at maturity.
- b. Additional Plantings: Where existing vegetation is insufficient for required screening, a planting plan shall be developed and submitted that creates a year-round evergreen vegetative visual screen of at least 6 ft. in height over 3 growing seasons and not less than 20 ft. in height at maturity. The planting plan shall utilize a variety of evergreen species to avoid the creation of a monoculture vegetative buffer.
- c. Maintenance: All new plantings must include an irrigation system that shall be maintained until all plant materials are fully established and thriving;

dead or diseased plant materials shall be replaced within 60 days of notification by the County. It shall be the developer's responsibility to ensure all buffer plants remain healthy and thriving. Failure to replace dying, diseased or plants failing to thrive constitutes a violation of the Ordinance and may result in enforcement action in accordance with Article 1 of the Ordinance.

Submitted site and landscape plans indicate that a 50 ft. buffer is provided along public rights of way and residential uses on adjacent parcels. It is noted that existing vegetation within the entire 300 ft. setback area must be retained as required. It is also noted that additional plantings are being proposed were required. Landscape Buffer detailing and general planting specifications have been provided. Landscape plan notes indicate that appropriate irrigation will be provided.

10. For primary photovoltaic energy systems developed in the Agricultural Conservation (AC) and Conservation (CP) zoning districts – sites shall be designed and developed using native ground cover/vegetation and other best practices as outlined in the Technical Guidance for the Development of Wildlife & Pollinator Habitat at Solar Farms (South Carolina Solar Habitat Act – March 2021) document or similar best practices documents.

Based on submitted documentation, the applicant intends to use native ground cover. The applicant is proposing other ground management practices aimed at alleviating concerns about aircraft bird strikes. Such practices may conflict with best practices outlined in the above cited technical guidance for wildlife and pollinator habitats.

11. Satisfactory completion of a Decommissioning Plan, per Appendix D. The Decommissioning Plan shall be recorded at the Sumter County Register of Deeds and be included with any leasing documents/agreements with the property owner.

A draft decommissioning plan has been submitted with this request. The plan outlines many of the components addressed in Appendix D but includes additional information and commentary. It is a recommended condition of approval that a decommissioning plan addressing all items outlined in Appendix D be recorded at the Sumter County Registers of Deeds prior to land disturbance permit approval for the project.

12. Must comply with the following Decommissioning Surety requirements:

- a. A form of surety equal to 125% of the entire cost to decommission the primary photovoltaic solar energy facility, as approved, is required. Decommissioning costs shall be estimated by an engineer licensed to practice in the State of South Carolina and approved by the Sumter County Administrator and Sumter County Attorney.
- b. The surety is required to cover the costs of decommissioning the primary photovoltaic solar energy facility. Decommissioning costs shall include all work as described in the recorded Decommissioning Plan.
- c. The surety can be in the form of cash, cashier's check, certified check, certificate of deposit, negotiable U.S. Treasury securities, performance bond, irrevocable letter of credit, or other instrument readily convertible into cash at face value. If utilizing a bond to cover the required surety, the bond shall have a rating of AAA.
- d. The surety can be made directly to Sumter County or be placed in escrow within a financial institution designated as an official depository of Sumter County.
- e. Following initial submittal of the surety, the cost calculation shall be reviewed every (5) years and adjusted accordingly based upon an updated estimate provided by an engineer licensed to practice in the State of South Carolina. Update estimates must be reviewed and approved by the Sumter County Administrator and Sumter County Attorney. In the case of cost increase, the surety instrument used must be updated to reflect 125% of the entire cost to decommission the primary photovoltaic energy facility.
- f. Failure to comply with any of the requirements outlined in Article 5.b.3.c.13 shall result in the immediate termination and revocation of all prior approvals and permits; further, Sumter County shall be entitled to make immediate demand upon, and/or retain any proceeds of the surety, which shall be used for decommissioning and/or removal of the

primary photovoltaic solar energy facility, even if such facility is operational.

The applicant has submitted preliminary cost estimates for decommissioning as part of their decommissioning plan. Such estimates are considered preliminary at this time and must be updated as required if the project is formally approved. All *Article 5.b.3.13* items are required and have been included in the recommended conditions of approval.

Mr. Derwort stated that Additional information and plan details are required to determine whether the project will meet all applicable special exception criteria. Additionally, concerns have been raised by Shaw Air Force Base concerning the project's potential impact to Poinsett ECR.

Mr. Derwort stated that the Zoning Board of Appeals may only defer a decision on this request if such a deferral is mutually agreed upon by the applicant and the BOA.

Mr. Derwort stated that staff has developed recommended conditions of approval for the project that are outlined in Exhibit 1 of the staff report. If the BOA makes the findings necessary to approve this request, then it is recommended that such approval be made contingent upon compliance with said approval conditions.

Mr. Derwort summarized staff's recommended conditions of approval.

Mr. Thomas Delafield introduced himself as being from Ithica Solar, LLC, the applicant for this project.

Mr. Thomas Delafield provided a project overview, a development status update concerning the Duke Energy/Progress RFP, information about the project location, information about proposed development plans for the project, information about adherence to the Sumter County 2040 Comprehensive Plan, information about specific project site design features, information about preliminary evaluations on threatened and endangered species, information about operations, maintenance, and decommissioning, information about facility equipment safety, information about overall project impact, information about community engagement efforts carried out to date, information about discussions with Shaw AFB, information about addressing SHAW AFB concerns, and information about how the project will benefit the community.

Mr. Thomas Delafield responded to questions from the Board.

Mr. Allesandro called a 10-minute break.

Ms. Nicole Scott introduced herself as being an attorney from Maynard Nexen, the legal firm representing the applicant.

Ms. Nicole Scott introduced an exhibit to record concerning information on other solar facilities on or near military installations.

Ms. Nicole Scott stated that all studies being relied upon by the Board need to be included in the project record. Ms. Nicole Scott stated that this is a quasi-judicial board whose decisions are appealable to the Circuit Court.

Mr. Richard Kirkland introduced himself as being from Kirkland Appraisers and that his firm was hired to conduct a property impact assessment for the project.

Mr. Richard Kirkland summarized the results of the property impact assessment conducted for this project and notes the full assessment has been provided in the packet.

Mr. Tommy Cleveland introduced himself as an independent consultant representing Ithica Solar, LLC on the project. Mr. Cleveland spoke on technical matters related to the project and utility scale solar projects in general.

Mr. Septimus Harvin introduced himself as being the owner of the property subject to this request. Mr. Harvin provided general statements concerning his reasons for allowing for this proposal on the property.

Mr. Delafield stated that the Ithica Solar, LLC presentation is concluded.

Ms. Ashley Nichols introduced herself as the Community Planner for Shaw AFB. Ms. Ashley Nichols stated that she is a representative of Shaw AFB and is designated to speak on behalf of Shaw AFB on this matter.

Ms. Ashley Nichols provided information about the Shaw AFB review process, communications with the applicant to date, and stated that Shaw AFB does not support the project.

Ms. Ashley Nichols responded to questions from the Board.

Mr. Leslie Allesandro opened the public hearing on the request.

Mr. Leslie Allesandro asks if anyone was here to speak in favor of the request.

	<p>There being none, Mr. Leslie Alessandro asked if there was anyone here to speak in opposition of the request.</p> <p>Ms. Patricia Hobbs-Canne introduced herself and provided comments in opposition to the request.</p> <p>Councilman Carlton Washington introduced himself and provided comments in opposition to the request.</p> <p>Mr. Jimmy Artis introduced himself and provided comments in opposition to the request.</p> <p>Mr. Chris Brooks introduced himself and provided comments in opposition to the request.</p> <p>Ms. Lynn Hawkins introduced herself and provided comments in opposition to the request.</p> <p>Mr. Roger Holman introduced himself and provided comments in opposition to the request.</p> <p>Mr. Michael Coker introduced himself and provided comments in opposition to the request.</p> <p>Ms. Rusty Gullede introduced herself and provided comments in opposition to the request.</p> <p>Ms. Rose Infinger introduced herself and provided comments in opposition to the request.</p> <p>Chairman Mr. Allesandro invented the applicant to provide rebuttal statements.</p> <p>Mr. Delafield provided rebuttal comments to the Board.</p> <p>Mr. Louis Tisdale made a motion to deny based on the requirements in the Sumter County Zoning & Development Standards Ordinance that require Shaw AFB to be consulted with for solar facilities projects in certain locations within Sumter County, and based on the information Shaw AFB provided for the project and the responses to that information, and based upon concerns on how the project will impact the ongoing operations of Poinsett Electronic Combat Range (ECR).</p> <p>The motion was seconded by Mr. Steven Schumpert and carried by a unanimous vote.</p>
OTHER BUSINESS	NONE

	<p>There being no further business, Mr. Clay Smith made a motion to adjourn the meeting at 6:00 p.m. The motion was seconded by Mr. Mr. Jason Reddick and carried a unanimous vote.</p> <p>The next regularly scheduled meeting is scheduled for February 14, 2024.</p>
	<p>Respectfully submitted, <i>Kellie K. Chapman</i> Kellie K. Chapman, Board Secretary</p>