

Open Work Session

Kumquat & Citron Cleantech, LLC – Proposed 7.20 Megawatt Solar Facility and Process for Approving Solar Projects over 2 Megawatts

April 20, 2021

Ms. Lori Carter, Director of Planning, Zoning and Community Development, and Mr. Clark Meadows, Zoning Administrator, came before Council.

Ms. Carter said they appreciate the opportunity to come before Council to discuss the process and also discuss this particular project in regards to the solar facility that is proposed for 7.20 megawatts. She said Mr. Meadows works directly with these particular projects, so they are here for discussion and to answer any questions. She said they just want to let Council know where they have been, where they are now, and how they hope to move forward.

Mr. Meadows said the site is at the intersection of Connelly Mill Road and Foskey Lane zoned heavy industrial. He said it consists of three original parcels that have either been combined or in the process of doing a re-subdivision process. He said the project is actually comprised of two different solar facilities under the same ownership. He said the Kumquat project is a 2 megawatt facility, which would be located on the southerly part of the property abutting Connelly Mill. He clarified, at completion, there would be no distinction between the two fields. He said the Citron site is a 7.2 megawatt facility and the owners and applicants are moving forward in getting the required approvals for both projects.

Mr. Davis said he was contacted by someone and talked to the County Executive about this project because Allen Myers Asphalt Plant has been trying to put a building up and has been having problems with a water easement, and it had something to do with this property. He then asked if they know anything about that, to which Mr. Meadows responded, he is not aware of anything related to that in any way. Ms. Carter said she is not aware of that either.

Mr. Davis said it is kind of funny that he was contacted by Allen Myers and they contacted some people here, and Mr. Wilber might be familiar with this. He said they talked to some people here and they have been held up for years from getting a permit for something to do with a water easement, or some kind of ditch that had to be done, and it all pertained to these two properties with this solar system. He said it was kind of funny that they said as soon as it was coming to Legislation with some things coming down the pipe, all of a sudden, this thing snapped and these people started moving on this property, but the landowners and Allen Myers are still stuck where they cannot get their permit to do their construction.

Ms. Carter asked if Mr. Davis knows which particular Department it was they dealt with, to which Mr. Davis responded, it had to do with Zoning. He said they were told it had to do with something about water up against the lady's property that the water was going to run off in. He said, when they were going to develop it, they had to put up a settlement pond to control the water, but they still are having problems and being held up. Mr. Meadows said that sounds like a stormwater management issue, which is not related to Planning and Zoning directly, to which Mr. Davis responded, but it was all tied into this property where they are putting this solar site, and there was a lady who owned part of the property.

Mr. Wilber said there was a stormwater issue involving Allen Myers. He then asked Mr. Davis if this is the same property, to which Mr. Davis responded, yes. Mr. Wilber said he was not aware this was the same property.

Ms. Carter said that is why she asked if this relates to Public Works because there has not been anything that has come across relating to Zoning, but she can look into that. She said she remembers there was some discussion about a meeting in regards to this particular property, and she believes there was an easement. Mr. Wilber clarified, a stormwater drainage easement. Mr. Davis asked if this solar project is still going forward, to which Mr. Meadows responded, yes.

Mr. Meadows continued, distinguishing between the two facilities, the 2 megawatt facility would be allowed inherently in the heavy industrial zoning district, and they have submitted plans to the County Departments that are pending forest conservation approval, and stormwater management is reviewing their documents for compliance with those regulations. He said, as to the zoning review, it meets the standards for setbacks, landscaping, planting plans, and things of that nature, so that facility is in the process of being approved locally. He said it is currently parcel 317 and about 11 acres +/- of the site, which is about a 25 acre parcel that ultimately will be re-subdivided into one large site.

Mr. Meadows said the 7 megawatt facility is moving forward with the Public Service Commission requirements for the issuance of a CPCN license. He said the initial site visit was held on March 17, and April 6 was the first Public Hearing, which was conducted virtually, and comments are due from interested parties by August 5. He said, at that time a second Public Hearing will be scheduled, but he does not believe a date has been set yet for that hearing.

Mr. Dodd asked if they had any public comments at the Zoom hearing, to which Mr. Meadows responded, not locally because those will be submitted through the Public Service Commission.

Mr. McCain said the project is in an area zoned heavy industrial, which is kind of ideal because it is an industrial scale solar project, so it is permitted by right and is consistent with their comprehensive plan. He said the report Council got says the vision of the comprehensive plan is supporting industrial development in areas zoned for such use while discouraging development of industrial in areas zoned agricultural. He then asked, if this was in an agriculturally zoned district, would the process be the same, or would it be different, to which Mr. Meadows responded, by code, the smaller facility would have been required to go through the special exception process with the Board of Appeals. He clarified, any facility exceeding 2 megawatts of output is a Public Service Commission process with due consideration.

Mr. Dodd asked if there is any consideration from Council to amend the Charter for the zoning of solar fields, to which Mr. McCain responded, it would actually be the code, not the Charter, but he thinks they need to discuss this in the future.

Mr. Hastings said it is great that this project is in an area where folks will not complain and it fits their comprehensive plan. He said seven years ago he worked with another organization on comprehensive plans up and down the Eastern Shore, and Kent County did an amazing job siting where they wanted their renewable energy to go. He said, after that they put a wind project together and a solar project, so at that point in time they worked with MACo, and of course solar siting became one of the biggest issues with Counties, and from there, Kent County has gone through the process. He said Queen Anne's is going through a process of looking at their zoning for where a particular project could go, as well as Dorchester, Caroline, Queen Anne's, and last year Somerset County, so he can go up and down the Eastern Shore except for Wicomico County. He said they are currently in a process now where they have the folks upset with the DAF tank, and he has seen dozens and dozens of times across Delmarva where those kinds of situations have happened. He clarified, in the middle of an agriculturally zoned area they

suddenly have a giant project that folks did not expect or want and have a lot of consternation about it. He said they know the courts take local zoning into account for their opinion, which was crucial with the Kent County situation. He said this keeps going back to when Wicomico County is going to go through a process to figure out where they can effectively zone these projects to go. He said it is nice that this project is in an industrial zone, but nonetheless, it would be really great if they were proactive and put together some sort of mapping to figure this out before the next situation comes where suddenly it is in the middle of Mardela Springs and takes up 70 acres. He then asked if they have plans to go through that process of where they will have solar siting or renewable energy siting?

Ms. Carter responded, they are willing to work with Council on anything they think is pertinent to this process. She said they have had several talks and have been in several meetings, so they look to Council as well as Council looks to them, but they have an opportunity. She said she knows Mr. Meadows works very hands-on with this on a daily basis, so she does not know if he can provide some insight, especially about the process and what would normally happen when a project comes in.

Mr. Meadows said the current arrangement for the large power generating stations exceeding 2 megawatts, specially to this project, the County Council has been identified as an interested party, so the Council Office or individual members will be included in any correspondence related to this project. He clarified, under local zoning, the practice of advising neighbors of Public Hearings is followed with every project the County approves that is not considered accessory to a principle use. He said this process is currently set up, and nothing is going to happen without following those requirements.

Mr. Hastings said he was looking at Somerset County and they have different floating districts, and of course there are differences between utility scale versus community solar versus something on farm use. He said he does not know how to advance this process, and he thinks it is usually the Planning folks who help drive the conversation a little more. He said, if this was comprehensive rezoning they would probably hire a third party organization to go through the process. He said the Council may have ideas, but they do not fully specialize in this, so he does not know how to advance this, but he knows they all fear the next project that may upset a lot of people just like the DAF tank situation.

Ms. Carter said one thing they can continue to do in regards to the discussions is look at this like they did with poultry. She clarified, they can look at the setbacks, screenings, and things of that nature, and they can work with the Department of Law to possibly provide something for Council to look at.

Mr. Cannon said the setbacks here are negligible at 75 feet from the side of the road, and there is really no buffer whatsoever for the most part, where in poultry they established three buffers. He clarified, his point is whether this is even needed, as some may not mind seeing a solar farm and some may hate it. He said he personally likes windfarms, but some people hate them and think it destroys the landscape, so that is something they have to evaluate. He said they need to understand how many other Counties in the State feel that setbacks are a necessity and if the public feels it is necessary.

Mr. Cannon asked, if solar goes terribly bad in 15 years or so and they find out it is not efficient, who will take care of a solar field once it dries up, to which Mr. McCain responded, there is a decommissioning plan required by the Public Service Commission. Mr. Holloway asked if it is a plan or a bond with money because they could go out of business and be broke, to which Mr. McCain responded, he thinks the developer bonds it, but Mr. Meadows might know the answer to that.

Mr. Meadows said he will defer to Mr. Wilber, but generally, as a condition of any license going through the Public Service Commission, there is a decommissioning clause and ever evolving insurance requirements. He said, as a condition of approval for any special exception for smaller facilities, they include a decommissioning clause authored by Mr. Wilber's office, so he will defer to him to tell Council how effective that would be in the future.

Mr. Wilber said it should have a bonding requirement in it because they do not know who is going to still be financially viable down the road to remove one of these. Mr. Cannon asked if that is required by standard with the Public Service Commission, to which Mr. Wilber responded, he thinks it should be, but he would have to look it up to tell him for sure. Mr. McCain said there is definitely a decommissioning plan that has to be submitted if they are over 2 megawatts, to which Mr. Meadows added, they require a decommissioning requirement in the conditions of approval for the smaller projects.

Mr. Cannon said it is a guessing game as to how much control the County has over any of this. He then asked what there is to guarantee the decommissioning plan or that proper bonding is in place, to which Mr. Wilber responded, they establish the bond when they build it. Mr. Cannon asked, by whose authority, to which Mr. Wilber responded, the County requires it for smaller projects. Mr. Cannon asked if the bonding is included as part of the decommissioning in case they cannot afford it and go bankrupt, to which Mr. Wilber responded, that is why a bond is posted, and is an upfront cost at the time it is built.

Mr. McCain said they have talked about this before in a larger sense as far as getting this into their zoning code. He said they had Mr. Showalter here to talk to Council and they looked at Talbot County, but all of the Counties have this, so there is something they can look at. He said the last time they met he thinks Ms. Carter was going to bring comments back, to which Ms. Carter responded, there has been a lot of discussion. Mr. McCain said it sounds like they need to continue the discussion because, from what he is hearing from most of the Council, there is an interest in continuing the discussion. He said, at the end of the day, they are just talking about basic buffer screens and setbacks, so it is pretty minimal and basic zoning parameters that go around any use of this magnitude.

Mr. Hastings said, when he worked with the Mills Branch wind energy and solar energy project, they put together a map, which is a great piece that shows the areas where the projects would go. He said this is, of course, for industrial scale, but he has seen these maps in multiple Counties where they could use that as a base to figure out the few areas where they could allow that, and then they could look at a max acreage like Caroline County did, or they could do it their own way. He said he would love for them to go through a comprehensive process so they do not get caught off-guard someday. He said he likes that this particular project is in an industrial zone and he appreciates them bringing it forward.

Mr. Dodd said they will be in touch with Ms. Carter for further discussion on what everybody has brought up. There was no further discussion.


Larry W. Dodd, President, District 3

Joe Holloway, Vice President, District 5




John T. Cannon, At-Large



William R. McCain, At-Large



Ernest F. Davis, District 1



Nicole Acle, District 2



Josh Hastings, District 4



Laura Hurley, Council Administrator