October 4, 2017

At a special Joint Session of the Southampton County Board of Supervisors and the Planning Commission held at 24283 Old Bridge Road, Courtland, Virginia on October 4, 2017 at 5:30 PM.

SUPERVISORS PRESENT
Dallas O. Jones, Chairman (Drewryville)
Ronald M. West, Vice Chairman (Berlin-Ivor)
Dr. Alan W. Edwards (Jerusalem)
R. Randolph Cook (Newsoms)
Barry T. Porter (Franklin)
S. Bruce Phillips (Capron)
Carl J. Faison (Boykins-Branchville)

SUPERVISORS ABSENT

COMMISSIONERS PRESENT
Mr. Michael G. Drake, Chairman
John T. (Jack) Randall, Vice-Chairman
Robert T. White
J. Michael Mann
Douglas A. Chesson

COMMISSIONERS ABSENT
William "Bill" Day
Oliver Parker
Keith Tennessee

OTHERS PRESENT
Michael W. Johnson, County Administrator (Clerk)
Lynette C. Lowe, Deputy County Administrator/Chief Financial Officer
Beth Lewis, Deputy Director of Community Development (Secretary)
Richard E. Railey, Jr., County Attorney
Frances Duke, Administrative Assistant

OTHERS ABSENT

Chairman Jones called the Board of Supervisors to order.

Chairman Drake called the Planning Commission to order.

Supervisor Faison gave the invocation.

Michael Johnson states in the interest of time, I will go ahead and get started I have a 20 to 25 minute presentation. After the presentation you can start your discussion. Having said that, let me start by going over the ground rules. As your facilitator, if I see the discussion moving in a direction that is not positive or constructive, I will call you on it. Right in front of everybody, I will call you out. I want to remind you all, Planning Commission and Board Members, that you all signed a Code of Ethics. The Code of Ethics has a number of things in it that are applicable for our discussion this evening. Number one, you all pledged to work together for the common good. Number two, you pledged to keep things constructive and positive. Number three, you all pledge to refrain from personal attacks on the characters or motives of others. Having said that, it is perfectly fine to disagree. It is not okay to be disagreeable. And you all pledged to respect the process. So what that means in this case is the Board should refrain from using its position to unduly influence the Planning Commission deliberations. There is value in independent recommendation of the Planning Commission without undue influence. And Planning Commissioners, you should recognize that your recommendations are only advisory. The Board is under no obligation to follow them. And if they choose not to follow them, then do not take it personal. So those are the ground rules. Any questions on those before we move forward. Okay. So let us start with sort of a basic overview and for the Planning Commissioners I will apologize

in advance, you guys are certainly much more up to speed on this whole issue of solar, I suspect. Many of our Board members are, of course they have not dealt with it to the extent that you all have. I forgot to tell you, you do not have to worry about taking notes. I have copies of the presentation for everybody. You are welcome to take notes, but I will have copies of this presentation. I do not pass them out in advance because everybody will be flipping ahead. I will give it to you at the end. So who regulates solar? There are three levels of regulation, federal, state, and local. The Federal Government's role is through the Federal Energy Regulatory Commission and their piece of the equation is that they regulate the interconnection of the solar farm to the public utility. So that is the first role. The State's role is done through the Virginia Department of Environmental Quality. They regulate solar facilities through what they call Permit by Rule (PBR), for projects that are 150 Megawatts or less. And then each locality in Virginia has the option of regulating solar facilities through their zoning regulations. So Southampton County currently under its regulations, permits power generating plants, nuclear, or otherwise, in our heavy industrial M-2 zone with a Conditional Use Permit. And you all may remember, that was the process that Southampton Solar followed last year. GENEX followed that process last year and ultimately withdrew their application. So it is important also to understand what the relationship between DEQ and that Permit by Rule and the locality's authority. One of the first things that DEQ is going to require for that application of the Permit by Rule is a certification from the locality that the project complies with all the applicable land use ordinances. So until a solar developer has that certification, they really cannot proceed with finalizing their application with DEQ. Ultimately while DEQ issues that state permit, until they have a local permit, they cannot move forward in the process. Now in addition to that certification, DEQ requires a number of other things to be submitted. I am just sharing this with you so you will understand what the developers will be submitting to DEQ. Those interconnection studies, you all remember, they control the grid in this part of the United States and all those things. Those interconnection studies have to be provided to DEQ, along with the interconnection agreement, whoever the owner is of the transmission line. They have to have a written agreement with the developer that spells out the terms and provisions under which the terms and conditions that connection will be made. DEQ also requires, what they call, Analysis of Beneficial and Adverse Impacts on Natural Resources that includes impacts on wildlife, historical properties or structures, archeological, architectural. If there are adverse impacts noted in that study, then the applicant must provide a Mitigation Plan. They have to do a detailed site plan and then there are four or five various engineering certifications. Where the engineers have to certify that it does not exceed 150 megawatts and it is designed in accordance with all the standards and all those kinds of things. So, how many PBR's has DEQ issued today? As of today, they have issued 13, and you see here, the vast majority are 20 megawatts or smaller. The four biggest projects, Southampton is the biggest at 100 megawatts, Accomack is 80 megawatts, there is a project in Botetourt that is 80, and one in Louisa that is 88.2. The balance of them are 20 megawatts. You see where they are on that slide. So those are the actual Permit by Rule's that have been issued. Just to give you an idea of where Virginia stacks up with our neighbors, in capacity of megawatts installed. This was not permitted; it is actually installed as of December 2016. You can see, Virginia had 238.3 megawatts installed as compared to North Carolina, which has over 3,000 megawatts installed. You can see Maryland is over 600. Tennessee is 171. And West Virginia is at the bottom with 3.4. You also see the numbers there for wind. But in addition to those Permits by Rule, DEQ also tracks the filing of these Notices of Intent. If a developer is beginning to look at a sight, then they go ahead and file this Notice of Intent with DEQ to put them on notice that, hey, we are looking at this site and it has potential. We are moving forward with developing the information. So there are 52 Notices of Intent (NOI) that are currently active and pending with DEQ for a PBR. One of those 52 is in Southampton County. It was filed in November 2016. I am sure you all have heard of it. It was filed by SunPower Corporation. Their application, at least based on their Notice of Intent, they had interest in a 91 megawatt facility on approximately 525 acres of land. The proposed site is situated south and west of Southampton Parkway, east of Smiths Ferry Road, and north Brook Road; approximately 1.5 miles south of Franklin. When fully commissioned the facility will have approximately 290,000 solar panels. 52 Notices of Intent are a lot of projects. What industry experts are saying is that not all of these solar projects will get built. What you are seeing is a little bit of a gold rush. You see developers coming in with a little bit of a speculative bubble, they are trying to lock down these sites and worry about the details later. They are going ahead and nailing down real estate options so that they have the site controlled. They are beginning to do some of the due diligence. But their early studies with PJM and the interconnect and all those things, ultimately, they say all of these things probably will not be built. Just so you know. Now, what I do know is this, there is something afoot in the industry. An e-mail arrived on my desk at 11:33am this morning. You all may remember Joe Lurch. He was a speaker at your workshop that you

conducted last year with VACo. What Joe says is, and this is no surprise, I have been talking to Joe about it. There is a group stakeholders that includes electric utilities and advocates for solar power, but not local government, are proposing significant changes to state law regarding local land use authority for the approval of certain types of solar installations. They are looking to do an end run. They are seeing all these different ordinances around the Commonwealth. They are all different. Some of them push the limits on the tests on the reasonable and responsible. The industry is responding. What the industry's success might be, I do not know. We will find out. But it is out there and they are looking. What they are looking to do specifically is to change the legislative proposals and amend the state code regarding solar installations as they relate to your comprehensive plan approval; and they are looking to establish by-right zoning approval as "residential" and "agricultural" uses. Just so you know. So this is Mike Johnson's quote, nobody else. This is my take. Local ordinances that are overly restrictive and attempt to discourage projects by making their development cost prohibitive, will only serve to mobilize the opposition and provide fuel for their legislation to gain traction. The operative words here are reasonable and responsible. I went to a seminar last month, a regional meeting over in Isle of Wight. The Deputy Secretary of Natural Resources was there talking about solar. I bet he used that term, reasonable and responsible, with regard to local ordinances, no less than a dozen times. So just keep that in the back of your mind. What is reasonable and responsible? So, having given you all that as back ground. First of all I would like to thank Beth Lewis and the Planning Commission for their work over the past 2 years. Maybe you all do not realize, it has been two years, but I went to check. Your first presentation to the Planning Commission was September 2015 on solar. So things got a little busy and you already had some things going on. So it was really March 2016 before the Planning Commission had its first structured discussion of DEQ's model ordinance. You had a lot going on in 2016, you remember. But, you took time in July and conducted a workshop. You invited VACo, DEQ, you had some industry experts that came and shared their background knowledge with you to give you a little bit of a better idea to know what to expect with regards to solar projects. You discussed this draft ordinance, numerous times, I did not count how many times. But I am going to guess at least eight out of twelve months, probably. You sent representatives to a Utility Scale Solar Workshop that was facilitated by VT in November 2016. Then, you continued work in 2017 with numerous revisions to the draft ordinance. The current draft that Beth sent for me for this meeting tonight is the 6th draft. You have been through this thing for several alliterations. So what I am going to do now, is flip the switch a little bit, just so everyone has the same base of understanding of what the key provisions are of the current draft ordinance. Jack?

Commissioner Randall states I just have a couple of questions. Can I ask them now? DEQ, I am sure you have a lot of experience and I do a lot of cases with DEQ. DEQ working with the locality, can work differently depending on what the situation is. Has it been your experience with the current project that DEQ is transparent and gives all the reports and it is reciprocal to the locality? Is that how that is working?

Michael Johnson states are you talking about Southampton Solar project?

Commissioner Randall states correct.

Michael Johnson states I will yield to Beth. I do not have any direct interaction with them.

Beth Lewis states I have not received any reports from DEQ on Southampton Solar.

Commissioner Randall states okay. That was my question, that they are regulating it. The locality has a stake in it and sometimes, hypothetically speaking, an issue can be very transparent and then it cannot be. Stakeholders are the locality. That information needs to be facilitated both ways to help prevent problems. In this instance it has not been a lot of communication. And number two, from my prospective, when we have been working on this, you kind of know what is reasonable on 80% of the ordinance. When you get to the last 20%, which is where I think that we are, I had trouble.

Michael Johnson states and that is exactly where we are at.

Commissioner Randall states you can go back and read my comments, I am really trying to relate it to my experiences. Especially with the bond and those issues. Well, what is reasonable and I have asked these questions to some of the experts and I have really not got, and I am really

perplexed as to what the answer to your question is. I think that there has got to be some information, and hopefully it will be in your presentation. I am venting my frustrations. I feel that I do not have all the information needed to help do what we are doing. At least the last 20% of it. The 80%, we have trudged through.

Michael Johnson states I will help define what that 20% is at the end. That is what the purpose of the discussion is.

Commissioner Randall states okay. I just wanted to point that out because it has been a frustrating process towards that last 20. I am trying to quantify the last 20%.

Michael Johnson states right.

Supervisor Porter states I do not mind you going back. This e-mail that you got today is not the first time you were aware. I do not mind you going back and explaining it to the group of how we got started. Can you do that? I think it would be helpful.

Michael Johnson states sure. Mr. Porter received a phone call from a friend of his in the energy industry. It said, "I am reading some things online, as you guys are looking at developing this solar ordinance, they are causing some concerns, the things that I am reading, and I just want you to be aware that there is a movement afoot. To look to circumvent the localities authority if we continue to see this trend from localities in ordinances that we do not believe are reasonable. So Barry called me. So I said that I had not heard that, Barry, but I will call Joe Lurch with VACo. I called Joe, this was probably 60 days ago. Joe indicated to me that he had, at that time, some conversations with industry people. That he was aware that there was going to be some legislation forthcoming, that he had seen a very early draft of that legislation, but it was still very early and subject to change. But he would keep me informed as things moved on. In the interim, that is when I went to the workshop in Isle of Wight, with the Deputy Secretary of Natural Resources. This was for our VACo region, which is Accomack, Northampton, Southampton, Isle of Wight, Sussex, Surry, and Prince George. As you all know, there are a number of solar facilities, obviously, that have already been permitted at our locality. So it was interesting to hear the Deputy Secretary's comments that night. He kept throwing out those terms, reasonable and responsible. And Jack, to your point, he did not define reasonable. It is objective. And then I got that e-mail today that kind of confirmed. He did send a draft copy of that legislation. That is the first time I have seen it. That is the background, a little bit, of what is going on in back channels in Richmond. So let's cut to the chase on the current draft ordinance, just so everyone has a general base of understanding here. The ordinance defines a "Utility Scale Energy Project" as any project with a disturbance zone of greater than 2 acres. It is fully synced up with DEQ's model ordinance. It provides that "Utility Scale Energy Projects" may be permitted in the Industrial M-2 zoning district with a CUP. DEQ's model ordinance is a little different, but that is our current ordinance. In my judgement, that is reasonable. I do not see anything unreasonable there, but it is different from DEQ's model ordinance. Our draft ordinance requires a lot of submittals by the applicant up front. Let's sort of walk through what all these submittals are. One, they have to do a detailed Site Plan, certainly that is reasonable. We also provide in our ordinance that we will have that technically reviewed by a 3rd party selected by the county and paid for by the applicant. That is probably pretty reasonable too, in my judgement. We do the same thing for cell towers. It is not unreasonable. We do not have solar experts on staff that review those plans. We require them to submit proof of site control. Reasonable. We require them, under the current draft, to do a glint and glare study. DEQ's model ordinance does not recommend that. In fact, if you read DEQ's stuff, there is a foot note in there that mentions it. It basically says that they do not see any good reason that this might be required. I can tell you that if you read the City of Chesapeake's information, they actually required their applicants to do one because of the close proximity to Fentress. You do not want to be blinding pilots for a touch and go landing. Oceana is going to do one. There is actually going to be a smaller project at Oceana. They are going to do a glint and glare study. It makes sense where you have airfields, I think right next to or in close proximity. But DEQ did not suggest the glint and glare study. We are also going to require the applicant to submit a decommissioning plan. That is actually required by the law. It is not even optional. We are going to require it to be prepared by a Virginia PE and reviewed every five years; surety adjusted at each five year review depending on what the outcome of that indicated. I think that is perfectly reasonable. Here are some of things that we added in our draft that are not in the DEQ's draft and is really what we need to talk about. Are they reasonable? The Traffic Impact Analysis, is probably not a big deal because VDOT is going to require that anyway. It is not a big deal if it

is in our checklist. They are going to have to do that work. We began to move a little bit away from the model and this was discussion that we had last September, if you remember, with that GENEX application. It is what we called the Community Impact Assessment. There are a number of components to that Community Impact Assessment. We are asking them to calculate direct tax revenues to Southampton County from the project. Also, short and long-term economic impacts including those on ag & forestry. Job creation estimates. Evaluate impacts on public safety, police, fire, and rescue. Impacts on public utilities, including solid waste and refuse collection and disposal. Any socioeconomic impacts associated with the project. Will there be any impacts on county's capital or operating budget. Where all that stuff came from is, our subdivision ordinance requires that for subdivisions. So we sort of modeled that language right out of what we require for financial subdivisions. So we moved it over and plugged it into solar. It is not in DEQ's model. Part of what we have to discuss tonight, is that reasonable and responsible. Environmental Resource Impact Analysis. Some of this would be required anyway, but the actual full Environmental Resource Impact Analysis is not recommended in DEQ's model ordinance. We are asking them to delineate the wetlands, they need to do that. We are asking them to identify the floodplains. They need to do that. We are asking them to identify any areas that might have excessive slopes or highly erodible soils. They need to do that. Storm water management plan. They need to do that. We are asking them to look at threatened or endangered species and plants. And then, we have this requirement in there for perennial flow determination. Now I had to look that term up. I did not know what that was. When I read it, maybe you guys have talked about it, but in Chesapeake Bay communities they require those types of determinations to be able to determine where these resource protection areas are in that Chesapeake Bay Watershed. We are not in the Chesapeake Bay Watershed. I do not know the history behind that particular requirement, but I think we need to discuss whether or not it is really something that we need them to do.

Beth Lewis states that is also word for word from the subdivision ordinance. All of these assessments are taken word for word from the county's currently adopted subdivision ordinance.

Commissioner Randall states and that is a pretty expensive test. That is my understanding.

Michael Johnson states yes.

Commissioner Randall states and that goes toward the burden of private enterprise.

Michael Johnson states right. We also ask them to do a Historic Resource Impact Analysis. Now you remember, DEQ requires a certain level of this, or a little beyond what we are asking. We are asking for a Phase I archeological survey. If Phase I is suspicious and causes us any concern, then we will ask them for Phase II. If that does not clarify what is that we are concerned about, then we would ask for Phase III, and on and on. We also ask them to identify structures with architectural significance. I think we need to have some discussion about what that means. Does that mean structures that are on the historic register? Does that mean structures that are older than 50 years? What exactly do we mean by structures with architectural significance? We ask them to provide a Landscape and Noxious Weed Plan. Interestingly enough, I do not think the DEQ model ordinance requires the noxious weed plan. That is a discussion, I think that all rural localities ought to have with DEQ. That is a big concern in the agricultural community. I do not understand why DEQ does not require that. That is just my editorial comment. And then the Phasing Plan. We ask them to provide all that stuff up front. Package it up. Nice little box of studies. Submit that with your fee and we will talk about it. That is basically what we are saying. Now also in our ordinance, we have certain design standards. We are saying that every project has to meet or do these things. So we talk about the visual impact. Particularly those that are around view sheds that might revolve around our scenic rivers, both the Nottoway and the Blackwater for the entire length of Southampton County. Our state scenic rivers. We have got Sebrell rural historic district. Beth do we have any scenic corridors currently in our comp plan? I did not check.

Beth Lewis states no, but 35 is a scenic byway.

Michael Johnson states and again we threw that thing in there about structures with documented historic significance. Again, I am not real sure what that means. We also have a provision in there that says the height of equipment is limited to a maximum of 18 feet. With regards to setbacks, what the current ordinance says is, we expect 200' from all public ROW's, residential uses or residentially-zoned parcels, blue- line streams on USGS quadrangles, Ag & Forestry Districts,

conservation easements, churches, schools, cemeteries, and historic structures. From nonresidential structures, we want 100' setback. We included in a provision in our draft that says the minimum lot size is 20 acres. DEQ did not speak to that one way or the other. I am not sure what the significance is, but we have that in there. We also said that we want a perimeter fence with 7' chain link fence with barbed wire on the top. With regard to the landscaping, I just spoke to the fencing perimeter, but we also said we want some intermittent screening along roadways and properties used for residential, cemetery, schools, churches and other structures with historic significance. We want plantings at road intersections. And we want a 6' landscaped berm along all public ROW's and adjacent to residential properties. In addition to those, we have some other little special requirements. We want you to monitor the groundwater prior to, during, and after construction of the facility at 5 year intervals. And we want you to give us a copy of those reports. We want you to do a full day orientation and training for first responders. And before you even turn in your application we want you, the applicant to conduct a community meeting, not the Planning Commission, not the Board of Supervisors, not Southampton County. We want you to do it and we want you to send notices to all property owners within a mile of the project site. I mentioned earlier that we wanted you to file this decommissioning plan. There are really four things that we want to see in that plan. We want to know the anticipated life of the project. It is 20, 30, 40 years? We want to know the estimated decommissioning costs in current dollars. Then we want you to tell us how you estimated or determined that, so we can make sure we agree with your rational. Then we want you to tell us how you intend to go about decommissioning. How are you going to revegetate, regrade, and fix any road repair? What is your plan for removal of above and below-ground components and cables? And what is your plan for disposing all that stuff. So that is what we want them to tell us when they file that plan. Then we are saying that we want you to implement that plan within 365 days of date that the equipment is taken out of service or abandoned. To make sure that you do that, we want you to provide a cash surety, equal to two times original construction costs, with no credit for salvage value of panels or other components or cables. That is what is in the current draft. These are the things that I have already received comments on. Some from the Board of Supervisors members and some from other sources that I just want to pose do these the pass the reasonable and responsible test. Maybe they do. I am not suggesting that they do not. But those are some of the things that people have asked. The glint and glare study, it is not recommended in DEQ's model ordinance. Do we really need to do it? All those additional submittals, the Community Impact Assessment, the Environmental Resource Impact Analysis, and the Historic Resource Impact Analysis, none of those are included in the DEQ model ordinance. Do we need to do it? Is it reasonable and responsible? The 200' setback requirement, DEQ model ordinance recommends that you establish setbacks as you would for all other permitted uses in the applicable zoning district. In our M-2 zoning ordinance, currently, we would require a 75' front primary highway, 50' front secondary highway, 50' rear lot line, and a 10' side lot line. Just as a side bar comment, Chesapeake recommended 50' from all lines. As I mentioned before, we have a requirement for berms for all right of ways. The model ordinance suggests that berms should only be required if there are compelling reasons. Chesapeake has suggested language that says "where necessary." So they left the door open. There may be very reasonable circumstances under which a berm would be necessary. But are they really necessary on all public right of ways for the entire land? The decommissioning surety, the model ordinance recommends that the surety be "sufficient to ensure performance." That leaves you a lot of latitude. But is two times the construction cost with no salvage value reasonable and responsible. So those are the things that people have asked me about. I think the balance of the ordinance, as Jack said, is 80% that everyone agrees on. It is that last 20% that we need to have a discussion on.

Supervisor Porter states there is one thing that is important to me that is missing. That is addressing the power purchase agreement. The things that I have read and a lot of them have lent itself to Planning Commission discussions was concern over the economic viability. Making sure that it is successful. We do not want the thing to fail and we have a field full of scrap that we have to take care of. To ensure that, I think it is reasonable to have a requirement to have a secured purchase agreement for the power. I would like to add that into the discussion.

Michael Johnson states okay.

Supervisor Porter states thank you.

Commissioner Randall states can we see the bullet points on discussion. I thought they were really good.

Commissioner Chesson states does the state have some sort of requirement before the application is filed about the power purchase agreement?

Michael Johnson states they require that interconnect agreement. I do not think that anybody moves forward with an interconnect unless they have a purchaser.

Supervisor Porter states one of the things we were talking about, the GENEX, was that one of the differences between the one we approved and the one that we did not is that there was a power purchase agreement that was for a reasonable period. I think that we indicated to them at that meeting that we would be looking for that.

Michael Johnson states that might be one of the reasons that they withdrew. I do not know.

Supervisor Porter states on that issue, I do not think that we should be penalized or forced to approve a project on a speculative usage basis.

Michael Johnson states by requiring what you just suggested, that eliminates that gold rush that I mentioned earlier. A lot of these solar developers, and that is what they are, developers, they are just trying to put a project together. They are trying to lock up these sites. So if you have the requirement that they have the off take agreement executed before you will consider it, then that might eliminate 99% of those, I think.

Supervisor Edwards states do you think that is going to fly Mike?

Michael Johnson states I do not know. Is it reasonable and responsible? The industry would tell you, do you know what we have to invest to get to that point? All the studies, the grid studies, all that stuff. Millions of dollars that we have to get out there to get to that point. Only to have the locality tell them, no, we do not think so.

Supervisor Edwards states I think the locality thinks that is reasonable, but we do not realize what we are dealing with.

Michael Johnson states I think it is certainly worthy of discussion, I will put it that way.

Beth Lewis states the Phasing Plan section of this ordinance, the last sentence says that no speculative applications will be accepted. That may not be as descriptive.

Michael Johnson states we might want to be a little plainer, but the intent is there.

Beth Lewis states right. That is in the Phasing Plan.

Supervisor Porter states one of the things that these developers have to do is to go out and they finance these projects. They do not put a lot of their own money in it. And being someone from a financial background, that is the key to getting it financed. We do not want go through the process with them, spending our time and money, if they do not have a solid project. If they are going to have to do this to get financing, then I would like to see it up front. Instead of doing this process first.

Supervisor West states this legislative thing that may come up. How far is it along?

Michael Johnson states I do not know how much traction it will have Ronnie. I know that VACo will vigorously oppose because you have been very direct with VACo that we want them to oppose any legislation which would strip our authority to regulate.

Supervisor West states you know the process though. In Richmond when people work behind the scenes, is there any network out there that you are familiar with.

Michael Johnson states there is a group, if you go back to Lurch's e-mail today. He call it the Rubin Group. I do not know who the Rubin Group is, but I am going to find out tomorrow.

Ariel Brown states the Rubin Group currently has four subcommittees that are putting this draft together. The Rubin Group itself has its own meetings outside of these subcommittees. There is a few draft proposals that he is talking about that is currently out there.

Supervisor West states my point, I suppose, is are they intending to take the process out of our hands?

Supervisor Edwards states they did the same thing on the school budget every year.

Michael Johnson states I do not know if they are going to try and take it out of your hands entirely, but it can be the death by a thousand cuts. It is kind of like the cell towers. We have been down that road. You lose a little bit of your authority piece by piece, after a while.

Supervisor West states well let's go back to the financing. I know initially that its regulation of financing and a percentage of the cost and production and so forth and then that reduces, reduces, and reduces, yearly right?

Michael Johnson states are you talking about the decommissioning cost estimate or the machinery and tools.

Supervisor West states yes, correct.

Michael Johnson states correct. It depreciates.

Supervisor West states alright. What I am trying to figure out is, Surry nuclear is a wonderful thing for Surry County as far as revenue, Greensville, Brunswick County. Duke and Dominion are wonderful. Are these going to be treated the same way?

Michael Johnson states yes. They are public utilities. If they are owned by a public utility, like ours will be.

Supervisor Porter states is the life 30 years? What is the depreciation?

Michael Johnson states I would think that they are on 30 years.

Supervisor Porter states okay. So they will lose 3% per year.

Supervisor Edwards states just remember, they are getting an 80% cut right off the top.

Supervisor West states well that was the point that I was trying to get, 80% off the top.

Supervisor Porter states but guys, that is out of our hands. That is assuming that we have to keep the size of the facility 20 megawatts or higher. Anything less than 20 megawatts is no tax. When I look at our 20 acre requirement, you know, that translates into a 2 megawatt project. I do not want to see us have a 2 megawatt project in the county.

Michael Johnson states so you want to see us increase that.

Supervisor Porter states I do not know what our ability is, but I do not think we should consider under 40 megawatts.

Michael Johnson states is that reasonable and responsible?

Supervisor Porter states I think so.

Michael Johnson states I am just asking. There was a lot of discussion about, they were going to break up into 4- 20's instead of 1- 80. Community Solar is the owner and said that was never in the works. That was misconstrued. I do not know what the truth was.

Supervisor Porter states I talked to Mr. Wolf about that and he said there was another 20 megawatt project out there that was percolating. Information got mixed up. Somebody heard 20 megawatt project and no taxes and revenue and then all of a sudden it got out of kilter.

Supervisor West states where did our two times the cost for decommissioning come from.

Michael Johnson states I will have to defer to the Commission for that one. I was not there for that discussion.

Supervisor Edwards states I can tell you where it came from. We went to Halifax. It was Mr. Drake and myself. We had a discussion with the chief engineer. I asked him, point blank, what it would cost to do the decommissioning. He looked at me and said at least twice the cost of putting it up. The chief engineer.

Michael Johnson states Ariel, do you want to say something?

Ariel Brown states I have something to say about that. The problem that I have with the number, two times the cost is the fact that a lot of the contracts that I have seen, last anywhere from 15 to 30 years, with the possibility to extend beyond that for five years at a time. So you are thinking, on the higher end, 35 or 40 years down the road and those are the cost points that someone is going to have to be pulling these installations out. And that could be more than two times. Just because of how much prices go up over time, as you know. But also, I know the reasoning is that you are thinking that the solar panels will not last that long. Yeah but they are easily upgraded. That is something else to consider, is that if they are continuing to upgrade the solar installations during that time, it then has the feasibility to extend the contracts by five years after the initial 30. Through significant time, you do not know what the cost point is going to be.

Supervisor Porter states I think that I agree with you. I think two times is projecting the inflation rate out to 30 years. What we need to make sure of is that at any point in time, in my opinion, we need to have enough resources available to decommission at that time. Which means that over time, the decommissioning fund is going to increase. By the time we get to that point there might be two times the amount or it may be more than two times. But we will use it at that point in time to do the decommissioning. One of the problems that I have with what we have is that we have them required to do a study. And it has to be by a Virginia Certified Engineer to determine what the decommissioning cost is. Then apparently we are not considering it. We are arbitrarily just picking this number. That just does not seem consistent. We get to, basically, decide whether or not we accept the engineer's report. We need to evaluate it and decide. I think we have to go one way or the other. I think that seeing that two times number, without seeing what will happen in the future is completely arbitrary. And that fails my reasonable test. I think we have to base it all on the engineering study. We have it updated every five years. Is that the right time, or every two years, or three years. What is the right time to assure that we have accurate money available to do the decommissioning?

Richard Railey states then who is going to put up the surety. Here is your problem. These projects are federally funded. Federal incentives. If the law changes on that, then the projects become very undesirable. I am told that it takes 29,000 acres of land this way to produce the same amount of electricity that Surry produces on 300 acres. It is inefficient. The only reason to keep it under consideration is because it is substance. You take the substance away and then they want to get rid of them in a hurry. Suppose the folks become insolvent, the llc. Who is going to pay the bond cost? Who is going to be able to attain the line of credit? It would be impossible. And by the way, in the process, how are you going to get on the land to take it down? Suppose the land owner says no.

Supervisor Edwards states the other thing too is, even by their own omission, by what I have read, it only goes 5 at the most 6% of Virginia's electricity supply.

Supervisor Porter states this is irrelevant. What we are discussing is how do we determine the decommissioning cost. Then we determine how to assure that we have it. I am not sure I completely agree with your assessment on the surety because it is my understanding that these are investment subsidies. It is like you go out and buy a Prius, you get a $7,000 tax credit. Once you have the Prius, you are not going to get rid of it if the government stops giving other people $7,000. So once you have got this subsidy locked in by building a facility, you are not going to trash this facility just because they stop the subsidy to somebody else.

Richard Railey states what happens if the first owner sells it to someone else?

Supervisor Porter states when he sells it to somebody else, they are going to buy it based on the economic value of that land at that point in time. So if you have a facility, like for instance Southampton Solar, costs 180 million dollars to buy. Let's say that they got a credit from the government for 20 million dollars. And then they go to sell it, the buyer is going to base the amount on roughly 160 and not pay them 180 million dollars. That is the way that commerce works. That based on the present value of what they see as the cash flow stream over time.

Richard Railey states the thing is, and I am not disagreeing with you, but I am just raising the issue.

Supervisor Porter states I agree with you raising the issue.

Richard Railey states the thing that bothers me is the disjoint. I think of the superfund. You go in and everyone in the chain of title is responsible economically. I think of the concept that lawyers work with every day that is called joint and several liability. Now, if you mention this to VA Power, if they sell it will they remain joint and several liable, then they will baulk. But really that is the only way the locality will really have security. This is something for us to think about. Like what Mike has said, you realize when the first General Assembly comes through, we have very powerful lobbyists now. It is not tobacco anymore, it is Dominion Power and its related entities. They are going to get what they want. The last session of the General Assembly, or the session before, they basically stripped the Virginia State Corporation Commission of their power to regulate. The Supreme Court sustained the General Assembly. You have to put in all in context.

Supervisor Porter states the only way to be 100% protected it to outlaw solar farms. If you do that, then you are not going to pass the reasonable test. What we have to do, is do what we can, within the framework of the statute, to protect us as much as possible.

Richard Railey states and I understand. Protect the locality as best we can.

Supervisor Porter states the last thing we want to do is throw something out there that shows up in a way that is presented to the legislature that they use against us. And I want to make one comment about everybody at the table. We always need to be aware of what we say in these meetings. And the reason is, everything we say is public record. People do look at what we say. I have had things quoted to me from meeting minutes and I was embarrassed. They ask me, is this true? And I had seen them and I was a little uncomfortable. I danced the best I could, but they were right because sometimes we say things that are our own worst enemy. So please remember that. It will come back and bite you.

Michael Johnson states other questions or comments?

Supervisor Edwards states the sticking point seems to be the decommissioning along with the setback. We might have to drop back to what is in that district.

Supervisor Cook states and the berms. The berms are an environmental issue. It is worse for the environment. You have to haul the dirt. Dig it from somewhere. It is just never going to happen.

Chairman Drake states can I make a comment? You have a good point, but after viewing the site out in Newsoms and Boykins, they have totally changed the landscape with soil movement. Those big Earth moving rolling machines. It is leveled. They have actually joined three parcels of land. I do not know if it was wetlands. It was woodlands. But they have joined three different parcels with the panels. You would never know that there was a division there before. It is a good comment because you want to be sure it is not full of water. But as far as them putting up a screening barrier, money is not an issue. Money is no object for these folks.

Supervisor Porter states can we pick one topic and work our way down.

Chairman Randall states why don't we start off with a win, like glint and glare. I do not think that there is any rational basis that we keep it. There is no Fentress and no Air Force. I think that we should eliminate that one. That is a pretty easy one I think.

Michael Johnson states does anybody have any strong feelings about this.

Chairman Drake states unless it is a residential area. A house or whatever that will be affected. I think about, I do not live next door to one, so I do not know. But if it would interfere with a residence, then I think that it does need to be talked about. I know if someone built one across the road from me on their property and it reflected a certain time of day, then I would be very upset. I think we have to look after our residents.

Commissioner Chesson states I feel like that would be a nonissue if the mechanics were operating it properly. Those things should always be pointing at the sun.

Michael Johnson states they are made to track it.

Commissioner Chesson states when they are pointing towards the sun, where is the reflection going. I think the issue would be moot, assuming that we keep the things tracking. How do you guarantee that?

Commissioner Mann states but now, if a glint and glare study is required around airports, then obviously there is an issue. Correct?

Michael Johnson states DEQ did not recommend it anyway. Chesapeake required it because of the proximity to Fentress. Oceana will put one on site with the air base there and they were going to have one done there as well.

Supervisor Phillips states I think they said that the new ones have less of an issue.

Supervisor Porter states yes. New technology versus the old technology. The new panels are more of a matte flat. The old ones were shiny and glossy and they reflected more of the light. So I do not think it is as big of a deal with the current technology.

Supervisor Faison states also with it being on the same level, I would imagine that landscaping can help mitigate that.

Michael Johnson states well keep in mind that it would be great if we could go down these bullet points and we all have 100% consensus. Life would be easy, but that is really not the objective of tonight. I am really not trying to build consensus. What the Board wants is an objective review by the Planning Commission. We wanted to make sure that you are aware that these issues have been raised as concerns. But you take it, consider it, and give us your draft. That is really where we are.

Commissioner Randall states we appreciate it.

Supervisor Phillips states I was not sure of when to surface this. When you and I talked on the phone and I mentioned GENEX, and they had considered using a portion of their site as a cutover. When I asked Mike about that, he said that the only thing in the current ordinance is that you can go through a piece of woods, for a transmission line, or a connecting line, but there is no language that permits using cutover as a site for solar panels.

Michael Johnson states it prohibits cutting the timber to develop. There is language that prohibits that.

Supervisor Porter states I think that solar panels are an exception is it not? You can do a clear cut if you are going to put solar panels there.

Beth Lewis states and they have at Southampton Solar.

Supervisor Porter states there are exceptions to that. You just cannot clear cut everything if you are not going to use it. Is that a proper assessment?

Beth Lewis states right. As I understand it. Just like within the development.

Supervisor Edwards states I think sitting on both Boards, that both Boards seem to have the same concerns. I think we are all on the same page, realizing we have the same concerns.

Michael Johnson states the language states, the clearcutting of tress shall not be permitted as part of utility scale solar installations, except to accommodate roads, drainage, utilities, and other required improvements, as well as the solar rays. It does make provisions for solar rays.

Commissioner Mann states but it does not have a provision for solar panels physically.

Supervisor Porter states it does.

Commissioner Mann states it does. I am hearing them cut timber across the creek.

Michael Johnson states keep in mind that this is just a draft. What you have for an M-2, is a Conditional Use Permit for Southampton Solar.

Supervisor Porter states I would rather see them do that, than take a prime farm field.

Supervisor Phillips states I do not think there would be a lot of discussion or a lot less concern.

Supervisor Porter states I feel on the glint and glare, let's discuss that one to death and then move to the next one. My feedback to the Planning Commission is that I would be comfortable not adding that. It does not add a lot to the value to the ordinance based on the current technology, based on my understanding, but everyone else is free to provide their input as well.

Beth Lewis states and perhaps if you think about the science of the solar panel, any glare that is reflected is energy that is not being captured by the panel and the job of the panel is to capture that energy. So that is wasted when it is reflected away.

Michael Johnson states okay. How about the second bullet. The submittals that our current draft ordinance is suggesting that should be required. Community Impact Assessment, Environmental Resource Impact Analysis, Historic Resource Impact Analysis. What are you all's thoughts on that? It is required in the residential subdivisions.

Supervisor Phillips states it came up in the discussion. People were concerned with the economic impact on the farming.

Michael Johnson states yes. They were asking you what the economic impact was going to be. Your answer was, I do not know.

Supervisor Edwards states I think that they are all reasonable things to leave in. If we are forced to mark them off, then that would not be such a big deal. I do not think that there was a lot of risk there.

Michael Johnson states I do not disagree with that, but I am going to put on my devil's advocate hat. Suppose I want to do one of the other heavy duty industrial uses in the M-2 zone. What if I wanted to do a nuclear power plant?

Commissioner Mann states does the amount of acreage that is being taken for solar affect that? Nuclear Power Plant, that 300 acres you were talking about a little while ago, what other industry in this county do we have that is 1,265 acres of good open, productive farmland that produces our food? If we are looking 40 years down the road, I think Meherrin gave everyone a response to looking 40 years down the road of looking at the food industry. I do not know of any other industry that consumes the amount of land, other than maybe, houses.

Supervisor Porter states I am more comfortable with the Environmental Resource Impact Analysis, based on our unique farming situation. That is pretty simple and justifiable. The question I have is, the other items we have in there just because we have it in our subdivision ordinance. Are they reasonable and necessary? Do they add value to help us evaluate the project? That is my question. I do not know the answer to that. That is what I am asking. Some of those are duplicates of what DEQ is going to do, right.

Michael Johnson states DEQ is going to require, not the level of depth that you have there, but they will require some of that. They will require some archeological, some architectural, and some historical.

Supervisor Porter states the question that I have there is, does this open up the argument of the advocates that say, why are you requiring more than DEQ? You are requiring more than the state agency that is responsible for these issues. It is our home, maybe we do, but can we win that argument. When someone says, you are more stringent than the state agency.

Richard Railey states yes, but the state agency has a different measure. DEQ is the Department of Environmental Quality.

Supervisor Porter states it seems like the reason that we are requiring the studies is similar to the reason that they are requiring theirs. So, we have a broader scope, but for these specific studies, we are looking at the same impacts, or similar impacts on the same area. I do not have a strong feeling one way or another. I am just asking the question of whether it is something that someone can pull out and criticize us for.

Commissioner Mann states don't we have stricter requirements in County, rather than what DEMP is on gravel pits. Setbacks are 25 feet. We have had a lot go through and they were at 50 or 100 feet. So we have got another state agency that is a little more lenient than the locality.

Supervisor Porter states I think that what you are dealing with is a setback is more of a zoning issue, than some of these studies are environmental issues.

Commissioner Mann states I understand, but we are still a little stricter than another state agency. That will counteract the why.

Supervisor Porter states we do not have delegated power necessarily for an environmental regulation.

Glenn Updike states may the peanut gallery say something?

Michael Johnson states sure.

Glenn Updike states I think they are needed. Leave them alone. We are concerned about the citizens, where you live, where I live, and where future generations live. Just because the state does not take a proactive protection of us, its own citizens, there is no rhyme or reason that we cannot protect our fellow citizens.

Supervisor Porter states the only thing that we have, if these studies give us a reason to turn down a Conditional Use Permit. How useful is it in making a decision?

Glenn Updike states a whole lot.

Michael Johnson states anybody else with thoughts about the submittals?

Commissioner Randall I think from the business perspective that it is going to be expensive. Also, from the General Assembly prospective, it is clearly going to be viewed as over burdensome. I do not even think that is debatable. It is going to be lumped on and fit the narrative. I think that we can do some things a little differently and get the same result. But I think that is not what we want to do here today. That is my two cents.

Michael Johnson states anybody else with thoughts about the submittals? Alright, how about the 200 foot setback requirement?

Supervisor Porter states I have a question. It is something that I have struggled with in reading our ordinances and other ordinances, and that is that we require an M-2 zoning. So far, I have not been able to find another locality that requires that. Most of them permit, with a CUP or a Special Purpose Permit in an agriculture or industrial zones. My question for the group is, what is the value in rezoning a large piece of A-1 to M-2 and then put additional conditions on it that effectively synthetically generate it back to A-1. Because what we did with Southampton Solar,

we took something and rezoned it. We took all the permitted uses, except for agricultural, which effectively, we created an M-1 zone, with conditions.

Michael Johnson states we did not do that. They voluntarily did that.

Supervisor Porter states when I look at the process I take A-1, rezone it to M-2, take out all the M-2 conditions except for solar, what do I have? I have A-1. I have not done anything, except spend time and money to create that situation.

Supervisor Phillips states what is your solution?

Supervisor Porter states all of the other localities that I have seen, permit utility scale solar in both agricultural and industrial zones with a CUP or a Special Use Permit. Which is the same thing. But does not require you to rezone an A-1 to an M-2.

Commissioner Randall states it might be done synthetically, but still gives us that police power with the M-1 to control. In essence, it still gives us that control and the police power that we have.

Supervisor Porter states what is the difference between the control we have on rezoning versus the Conditional Use Permit? I think we have more control on the CUP because we can post conditions. They can only proffer conditions under the rezoning. We cannot require conditions. Is it necessary? Do we need that extra control? Is it really a control point? Do we have control with the CUP? Every time we go through a public hearing or rezoning, to me, it is almost a farce because we do the rezoning and then the CUP and the same people and same discussion and we come up with the same decision, are we doing anything, other than fooling ourselves. Does it create value, or does it just create work?

Richard Railey states just for verification, the City of Chesapeake, it is interesting. They do not allow them in industrial zones, only agricultural zones.

Supervisor Porter states I did not find a single other locality that did not allow it, some allowed it by right, which surprised me.

Michael Johnson states the model ordinance suggests that.

Supervisor Porter states well that is a problem that Accomack had. They had it by right and they had to change their ordinance to a Special Use Permit. That was the big thing that they did. I really struggle with what kind of value does it add but taking this A-1 and rezoning it to M-2, take everything out and make it equivalent to A-1 again.

Chairman Jones states it does not make any sense.

Supervisor Porter states do we have enough control on the CUP to kind of stay away from that machination.

Commissioner Chesson states to me, that begs the same question that I was going to ask in the beginning. Are we better off scrapping this whole process and sticking with what we have? Where we require having a CUP for these facilities right now. We have gone through and been educated with what would possibly be the conditions. Okay. Let's wait for the next application and apply whatever pieces of this proposed ordinance that we want to the conditions. And scrap the whole process. I just thought that I would throw that out there.

Supervisor Porter states I understand and my response would be, I feel that way too, but I will tell you what that would do. It would open us up for criticism for being hard to deal with because we do not have clear guidelines.

Michael Johnson states well what business people like is surety. And if you have an ordinance and they know what the rules are.

Commissioner Chesson states Permit by Rule.

Michael Johnson states that is right. Then they understand that, but if your approach is simply, we are going to look at every one individually. We want them in a heavy industrial zone and we are going to decide the conditions to impose when we see the application. That is not certainty. I am sure that the industry would not be too pleased.

Richard Railey states it sounds like arbitrary and capricious. The catch is, when you apply the terms reasonable and responsible, what does that mean? What it means for an individual judge, consent is reasonable, you could get one judge who would look at this and say that is very reasonable and another judge would say no that it is irresponsible. Until you have a generally held standard case that you can be guided by.

Supervisor Porter states you are right. It is hard to determine what is reasonable. It is easier to determine what is not reasonable. There are certain things that stick out that are truly not reasonable. I think that what we need to do is make sure that we make a genuine effort to do it right.

Richard Railey states let me clarify too, that after you have generated a body of completed cases and you can look at the guidance, then it becomes relatively easy to determine. But until that time, it depends on your individual prospective. I guarantee that if I went around this room, then there would be differences.

Supervisor Porter states I agree. Maybe I am a little more sensitive because of my phone call. I do not want to see us lose the ability to control our destiny.

Richard Railey states just remember exactly what you are saying. At one time, the BZA met constantly because they had to approve a Special Use Permit for manufactured housing. Every one of them. They have not met for years, but they used to meet once a month.

Michael Johnson states four or five applications a month.

Richard Railey states they approved every one of them, but still you had to go through the process. The General Assembly took that away from them. So what is the difference in the manufactured home and a stick built house.

Michael Johnson states same thing with hog farms. General Assembly took that away too.

Supervisor Porter states I guess I have expressed my concern on the zoning and I have not heard a good reason why we need to do it. If you can convince me that we need to do it, then I will support it, but I have not heard a reason why. That does not change anything in my mind. Whether it is A-1 or M-2 restricted, which is effectively A-1. It is the CUP that rules the day. And that is the thing that we need to concentrate on, in my mind.

Commissioner Chesson states I will address as far as M-1. In my opinion, when you are an industry generating power for the masses, it is perceived that it is an industrial. So that may be a reason that I would say, why don't we need to have this use of property classified industrial because it kind of looks like an industry. It does not look like agriculture. That would be one reason why.

Supervisor Porter states I understand your opinion. We differ.

Chairman Drake states it is not a farm. It is a project.

Michael Johnson states any more discussion on that before we move on? Alright. Let's move on to the setback requirement. What are your thoughts on that?

Supervisor Porter states I think that we have to be consistent. I saw the 200 foot setback requirements. I did some calculations and if I went back into Southampton Solar, it required between 200 and 500 more acres of land. And to me, that is a waste of land. But, I do not think that if we have it in M-2 zoning, then I think that we have to adhere to those setbacks. If it were in agriculture zoning, then we need to adhere to those setbacks to a certain extent. Unless we can determine an objective reason that we need to make it bigger.

Supervisor Edwards states I think that I agree with you. We are being arbitrary and capricious if we are changing it to the same zone and have the same setbacks. Like I said before, I think we are going to have to keep with what we have in order to keep in line and not be questioned.

Commissioner Randall states the M-2, is that 75. I cannot find it in my notes.

Michael Johnson states 75 on a primary highway, 35 would be 75. 671 would be a secondary road, it would be 50.

Beth Lewis states on the side property, the side setback when it abuts residential zoning in the M-2 district is 50 feet as well. So if you have residential zoning, not residential use, but zoning.

Commissioner Randall states I think we stick to the M-2. That seems rational to me. I do not think that could be construed as anything other than reasonable and responsible.

Supervisor Porter states in the CUP, is there is a special situation where you have a house, is it possible you could have a required setback in the CUP to be 100 or 200 feet from the house?

Michael Johnson states that is the whole purpose of certain uses requiring that CUP is they may generate odors, noise, or those kinds of things that would adversely impact surrounding land uses. So you have the ability to go in and impose additional setback requirements. You have that ability. I do not know if the noise and odor works for solar, but if there is some compelling reason.

Supervisor Porter states if we need space to put in the screening then we can move it back.

Commissioner Mann states is heat a factor with solar facilities? I am getting some feedback from somebody that had one built beside their house. They said that there was a ten degree temperature rise around their house versus those that are a few miles down the road. Keep in mind, asphalt collects heat and when it cools down, it cools down a lot quicker in the country than it does in a municipal area where there is a lot of asphalt, brick, and mortar. It holds that heat a lot longer. Has anyone else had any concerns expressed on the heat at solar farms?

Michael Johnson states how close are they? 50 feet away from one or 500 feet.

Commissioner Mann states I believe they are about 100 feet from the facility.

Michael Johnson states just curious.

Beth Lewis states I have asked several different experts about the issue of heat. Again, because if the technology and what the panels is doing, if it is reflecting heat, then it is not doing its job. But there is often times an increase in heat because the shading of the property is no longer there due to the trees being removed, so as not to shade the panels. Standing next to a panel should not, and they have not found that it increases heat. It is the lack of shade that makes it feel hotter.

Supervisor Porter states in August, Bruce and I went out to one of the fields and we did not notice any heat at all. It was 90 plus degrees that day.

Commissioner Mann states but the galvanized structures do.

Supervisor Porter states I am just saying that we walked by the panels and we did not notice any change in the heat.

Supervisor Phillips states the panels were not on, so they were not tilted or anything. So we did not notice any change.

Supervisor Porter states other than the heat of the day. No warmer walking by the panels than it was walking in the field. They want the heat to come because that is what creates the electricity. It is converted to electricity.

Commissioner Mann states they want the heat to come?

Supervisor Porter states yes. They want the heat. That is the way that they create the electricity.

Commissioner Mann states I thought that with solar panels, once they got over 75 or 85 degrees that their efficiency goes down. I though heat was a deterrent.

Supervisor Edwards states the colder they are, the more efficient they are.

Commissioner Mann states I thought heat was an enemy.

Supervisor Porter states yes and my answer is yes and maybe.

Commissioner Mann states that came out of the solar industry itself. They said heat was a deterrent. They are not as efficient in really high temperatures.

Supervisor Porter states but it is heat that generates electricity. What is efficient is when you have a cool environment around it and the heat goes in the facility, it triggers a better conversion to electricity.

Michael Johnson states are there any further discussions on setbacks. Does anyone have any other comments?

Supervisor Phillips states including the 200 foot setback from ag and forestry districts and blue line streams, etc.

Michael Johnson states your zoning ordinance does not establish any setbacks for those things.

Supervisor Phillips states I have a question. The way it was written before, one could interpret the setback as saying, if you have two different tax parcels, you would have to have setbacks within an appeal. We need to make clear that is not the case.

Beth Lewis states that is not the case.

Michael Johnson states I think we have made that clear.

Commissioner Randall states I think that Bruce's comment is reasonable. To add that additional language.

Michael Johnson states what is that? We already have it in there.

Commissioner Randall states okay. My recommendation was not to exclude this. I want to be clear. Just to change the 200 for the M-2.

Supervisor Phillips states which would be 50 feet? Or 75? 75. Okay.

Commissioner Randall states 75. That is preservation, which is reasonable.

Supervisor Phillips states again, I am saying it would be a bit smaller than 200 feet.

Michael Johnson states if you think it is reasonable to have a 50 foot setback from an ag and forestall district, Blue Line streams, and a Conservation Easement. Is that what you are saying?

Commissioner Randall states yes. That is conservation, which is always going to be reasonable.

Supervisor Edwards states well it is a CUP, so you can always go with different conditions.

Michael Johnson states you can, other than you have created these design standards that they have to meet, unless you take that out.

Richard Railey states just remember that a CUP is not an absolute because once you place these conditions on one applicant, you cannot place entirely different conditions on another applicant. They have got to be defensibly consistent.

Supervisor Porter but so does you ordinance.

Richard Railey states I think we can agree on that.

Michael Johnson states what do you all think about the berms. Anybody got any comments about the berm requirements?

Supervisor Porter states I like Chesapeake's. Where required. There are areas that may be better without a berm.

Supervisor West states I believe Randolph brought it up, sometimes they create more problems.

Supervisor Cook states you can screen with green material and you are much better off than with the berm.

Supervisor Porter states what we need to have in there, by requiring the screening plan, the landscape screening plan, we have the ability to require berms where we think they are necessary.

Supervisor Cook states in Chesapeake they may have some, depending on how they sit. They have some areas that would be different that we do not have.

Supervisor Porter states maybe on one part we may need a berm there, but depending on the topography, we may not want to have them anywhere.

Commissioner Randall states but who gets to make that decision? You guys?

Michael Johnson states realistically if you leave it in your ordinance that says, we require you to follow the landscape plan and we will require that where we think is necessary. It is going to depend on Beth's review and our third party consultant's review of that to make recommendations for those things.

Commissioner Randall states I am comfortable with that.

Commissioner Mann states so define necessary.

Commissioner Randall states usually if government is in charge, from somebody that has dealt with it from personal experience, the most expensive the option is usually the one that the government picks. Not to talk despairingly about the government. I am friends with Mike, but usually, it is done in a very professional manner. Would you agree? Usually it is done right.

Supervisor Cook states yes, it is looked at very thoroughly.

Commissioner Randall states usually it gives us more, I guess, ambiguity is our friend, in that case. As compared to ambiguity, where we hire a professional engineer just randomly, the person that is building it. It gives the power to us, instead of them.

Beth Lewis states in speaking to the county's cell tower consultant, at this point, he does not know if there are any solar project consultants that do the same kind of work that he does. He says there may be some somewhere, but he does not know of any. So, it is in our ordinance, should the county be able to find such a person, but Mr. Condyles does not know of any such professional at this point. I am sure there will be and there may be in other parts of the country.

Michael Johnson states there are plenty of engineers that have designed the projects, somewhere else that will be glad to review yours.

Beth Lewis states right. A company like his that just specializes in reviewing cell tower submittals. He does not know of any. And yes, with Southampton Solar, they did have it reviewed by another engineering firm.

Michael Johnson states Kimberly Horne and Draper were involved right.

Beth Lewis states yes.

Michael Johnson states any more discussion on the berms?

Commissioner Mann states I have one. Randolph, you mentioned that the berms are an environmental issue of just moving the dirt.

Supervisor Cook states yes, from cost to drainage. A big berm sitting up in a field. Splashes and even blockages of water. You do not need a berm. That means that you have to control the drainage. Maybe somewhere else you did not have to mess with it. It does not even have to be a lot of rain that will cause issues.

Commissioner Mann states well we have gotten a five or six inch rain in 45 minutes. That would cause a problem, I agree. I like the idea of vegetation in place there, but realistically, you will not get a vegetative plant that hides the solar. I have not seen one yet.

Supervisor Cook states who went to the Eastern Shore? The man who owned it had a 5-acre lot and you could not see a path.

Commissioner Mann states but who planted the vegetation?

Supervisor Cook states the company planted the vegetation.

Commissioner Mann states okay. We have one that can block the view, but I have been all over the state of North Carolina and I am not seeing any yet.

Supervisor Cook states I do not think that North Carolina had a strong plan.

Commissioner Mann states they had some vegetation in front of it.

Supervisor Cook states we get what we plan in Southampton.

Commissioner Mann states that was the thing about the berm. I agree with you, it can create a drainage problem if not built properly. But the thing about the berm is you can put Bermuda grass on it and it grows very aggressively in our area. It is something that will survive.

Supervisor Cook states but one little weed gets under that and it spreads. It is unnecessary, in my opinion, something that you are trying to do to have a view, when there are ways of doing that without a berm.

Commissioner Mann states that is why I was asking about the glare issue a while ago. If it was an issue, and I am hearing what you are saying about the issue with planes, but if it becomes an issue with traffic. The berm will block that glare from the highways. But I guess my point is, when you have plants out there and once they die, 20 years down the road. Who is going to replace them? We spent years on the wind break that we built. Replacing it. Nobody had to make us because we were downwind from all that wind erosion. It took 5 years to get it established and we were constantly replanting. Once the vegetation goes up and starts to die, how are we going to make them go back on a yearly basis? And keep that vegetative screening alive and going, especially if we go through a drought period. At least with the berm, you get the grass established and it is there to stay.

Supervisor Porter states only for about half a year. My Bermuda is dying right now. It is dying because of the weather.

Commissioner Mann states but your root mass is still there.

Supervisor Porter states but the question is, if we do not have proper language for the maintaining of the facility for berm, then we need to include that in the ordinance.

Supervisor Cook states there is some maintenance language. For Southampton Solar and Dominion that is a pretty wide strip that they have to maintain.

Beth Lewis states and they are required to submit a $50,000 bond, should the landscaping or fencing, or ground cover fail and they fail to replace it, then the county would do it out of that $50,000 bond. It would have to be refreshed if it got called upon.

Commissioner Mann states how many miles of vegetative growth does this project have? My question is, $50,000, if they just walk away from it, is it enough?

Beth Lewis states it may be enough to cover it one time, but then once it is spent, they would have to refresh it. That was part of their proffer agreement that they would keep a $50,000 account for county to draw upon to replace and repair what they do not, when they are told to do it.

Michael Johnson states I know, Mr. Drake, that you said you had to leave at 7:30. Did you want to add anything to the discussion before you leave?

Chairman Drake states I have enjoyed this, I really hate to run, but Mr. Randall, would you close out our meeting. Thank you for interjecting and the direction. Thank you guys for coming tonight. I am glad to be a part of the meeting. Thanks for the meal. I do need to run. Thank you and good luck.

Commissioner Randall states yes sir, I will.

Michael Johnson states alright. Any other comments on the berms? Alright. Last bullet, surety for the decommissioning. Thoughts and comments.

Commissioner Randall states just to add. There was a lot of discussion about this. I think that the Planning Commission relied on Richard's letter, which was a very well written letter. It kind of talked about fiduciary responsibility, so I think from that perspective is where we were coming from. To think of all the possible things that could happen. And possible from that letter and our tenor or attitude of that night, we possibly could have went a little extreme. When you see this in front of you. We could have maybe lightened up on some of our details.

Richard Railey states if you look at the model ordinance, surety is efficient to ensure performance. That gives you more latitude. The catch is, does it give you too much latitude?

Commissioner Randall states you cannot say what is reasonable and responsible 30 years down the road for performance on this. I think that is almost an impossibility.

Richard Railey states but you can look at your engineering studies. You can look at what typically happens in other places and mold it. I like that because it gives you broader powers. As pointed out earlier, double the cost of construction, may well not be enough 30 years from now. You can use the survey-able information and technology. Listen to the engineers and mold a remedy.

Commissioner Randall states well how can we think outside of the box here? This is what I was thinking as I was preparing for this. I am going to put this as it relates to landscaping and put it in Beth's lap, how do we empower our professionals to have more police powers for enforcement ability. There is a dollar figure to that, that is unspoken. It is less fiscally burdensome from an economic prospective, in looking at the regulation going forward. That is the way I am thinking to do the offset. Does that make sense Richard?

Richard Railey states as we have said many times before, we do not have any zoning police in Southampton County if a complaint is made. It would be nice if we had the resources and the man power to just ride around Southampton County and just look for zoning violations.

Commissioner Randall states but we still have to skin the cat. In order to skin the cat, we are going to have to come out with some out of the box solutions. That is really the most viable thing that I see.

Richard Railey states well to enforce.

Supervisor Porter states when I go back and look at the decommissioning process of Southampton Solar, I think that the approach is reasonable. The question that I have is, how often should we update it? We get to pick the engineer and what they do is, they work on a cost to do the

decommissioning, then they add 20% to it, then they do an estimate on the salvage value of the asset. And that salvage value without any financial encompasses and then they subtract 20% from that. So they get some value for the salvage, but it is only required every five years. Personally, I do not think that is enough because technology changes quickly. The panel's value today, it is hard to estimate its value five years from now. They may have upgraded the panel that has reduced the salvage value of today's panel from $1,000 to nothing. I think, so what we need to do is to maybe have a shorter period, one year, two years, or even three years. I do not know. We need to pick one and recommend that.

Commissioner Randall states five years for a businessman. Engineers, you know all about this, I just think that is a significant deterrent. I agree with everything that you have said. What else do we do that is every five years? I would say, not anything, probably. So is it reasonable and responsible?

Supervisor Porter states but the thing here is, once you do the study and then update, that may be 20% different than the original price. You have the data and go through. Then you have to go through and put the new costs and estimates. You no longer have to go out and say how many panels do I have? And how many posts do I have? You already have that number in your database. So to do an update on an annual or semiannual basis…

Commissioner Randall states but this is just a decommissioning.

Supervisor West states well guys, look at that sentence. Sufficient to ensure performance. Let me throw something out there that makes no sense. How many old schools do you see sitting around Southampton County that we have just abandoned? I am talking about Capron, Boykins, there was one in Ivor. We should have added some money to the school board's budget, so that they could decommission these schools. Look at what those things look like. We simply have to say something in here that says sufficient to ensure performance. This takes care of it. On a review basis every four or five or even three years. Whatever you feel comfortable with. Get together and have that engineer look at it and say this is what we need. It may go up and it may go down. Who knows what it will do. We need to ensure sufficient performance. Meaning to me that it takes it down, clears the site back up, and replaces it. But we do not have anything in place for these school systems and that one affects us. How long has the school in Capron been abandoned?

Michael Johnson states that one burned. You are talking about Drewryville.

Supervisor West states yes, Drewryville.

Beth Lewis states on a one year basis, if we think of the practicality of it, it ends up being ten months, somebody, which would usually be the person in my position, needs to be knocking on the door saying, your year is up. You will have to chase them down to get a revised study. Then if the surety amount changes, then you have to chase them down to get the surety amount changed. And then you are eight months into the next year. Doing it every year, there is not a lot of turnaround time.

Michael Johnson states and realistically, what is your leverage? What are you going to cut off to get them to do it?

Beth Lewis states and surprisingly, there are other duties in my job besides Southampton Solar. I know it is hard to believe, but there are.

Supervisor Porter states Southampton Solar is five years. We cannot go back and change that. We can only respect that. Let us be positive there may not be a whole lot more of these. There may be one or two more that I know of, but I hope there will not be five or ten. Okay. This appears to be a hot button issue for a lot of people and we need to make sure that we have made a sufficient effort dedicated to it, to ensure it is efficient. That is all I am saying. I think the way technology changes in small towns, five years maybe a little long. Is it four years or three years? I do not know the answer. We need to pick what we are comfortable with. If we are comfortable with five years, then pick it.

Supervisor Edwards states in the past we have looked and seen what other localities are doing. Are we looking, Mike, to see how other people are handling this problem? Do we have anybody that has been involved with this?

Richard Railey states I do not believe there has ever been a decommissioning in the United States.

Michael Johnson states every locality that has permitted one, has required decommissioning. But Richard is exactly right. Everyone is grappling with how we deal with it because nobody has actually decommissioned one. The technology is too new.

Supervisor Edwards states what are other people doing?

Michael Johnson states we can find out.

Supervisor Edwards states in the past we have benefitted from what Isle of Wight did, or others in the state. I would like to see how others have tackled this.

Michael Johnson states you have 13 in Virginia that have one.

Supervisor Porter states most of the ordinances that I have read they do not have a plan, but state what they have to do and then they evaluate the plan when it is submitted. They have the authority to accept or reject the plan submitted by the solar company.

Michael Johnson states what I am hearing is that everybody is open to looking at it. Doing a little more research on it. I think that is the best that we are going to do tonight.

Richard Railey states I have been through lots of estimates. I even saw one that said the salvage would totally overwhelm the decommissioning price, there was no need to put up anything.

Beth Lewis states that is what Southampton Solar's says.

Supervisor Edwards states that is pretty ridiculous. You have to have a buyer.

Supervisor Porter states no, that is not what it is looking at. It is looking at a near term cost. In other words, the decommissioning plans do not fund 30 years out. They fund what it takes today to decommission a facility. We do not know what it going to cost 30 years out. We are pretty good about knowing if we did it next year it would cost around 12 million dollars. It might cost 200 million 20 years from now. But based on the study, we believe that it is going to cost 12 million next year. So that means that we need to have 12 million in the pot right now in case it goes belly up and fails.

Commissioner Mann states so the one we have right now, we have 12 million, but the salvage value covers that so there is no bond?

Beth Lewis states Southampton Solar's decommissioning study says 12 million and change to decommission, but the salvage value is 27 million so the proffer says that they get to do the math to come up with that number. They will put a bond with no less than $250,000. Well since today's salvage value is twice what today's decommissioning cost would be, their surety that they will post will be $250,000.

Michael Johnson states but that is because they are brand new panels. They could take them down and put them on a solar project somewhere else. 30 years from now?

Supervisor Porter states my concern is five years from now. It will not be worth 27 million dollars.

Michael Johnson states it will depreciate quick.

Supervisor Porter states I would be more comfortable with a three year because if new panels come out next year, then the value is in the panels when you resell them. Much of the value comes from the resell of the old panels. If a new technology comes out next year, then the value of those panels will go down.

Supervisor West states did you all read this stuff recently about China's production and export to the United States will be cutoff.

Beth Lewis states that is what has happened. Southampton Solar used to get their panels from China, but a tariff has been installed so their supply of panels have been cut drastically. The project is going to take them longer to complete than they originally thought. There are only three companies in the United States that make the panels and they cannot make them fast enough. So their project's installation is going to stretch out.

Supervisor West states we are really in uncharted waters.

Richard Railey states very definitely.

Supervisor West states you still have to ensure it is sufficient to ensure performance. You guys work on it and get some information on it. What needs to be done does not need to be done next month, but soon. You can tell that we have some work to do. Cost of two times might not be correct. There has to be a reasonable way of saying that. I do not want to bring down the big dogs in Richmond on Southampton County because we have some sort of language in our zoning and in our planning that has created this and all of a sudden there is a hierarchy of someone telling us what we can and what we cannot do and we do not have anything to do with it. Just like that pipeline, it is coming through Virginia. I do not care whose side you are on, it is going to come to Virginia and we cannot stop it. You can put up all the signs you want.

Richard Railey states this is the issue, suppose five years from now, it is relooked and reviewed and they decide that the decommissioning cost is twice as much as the original plan. Who is going to pay for that surety bond, which is going to be expensive.

Supervisor Porter states the owner of the project.

Ricard Railey states suppose the owner is insolvent or unable to pay for it.

Supervisor Porter states that is a risk for anybody. That is why it is important to focus on the agreement. As long as there is revenue coming in from the sale of electricity, then the money is going to be there.

Commissioner Randall states well what is the remedy Barry. I am getting back to it. We put all these provisions on government and I do not think practically, what Beth is trying to say in a nice political way, is we have all this on paper. There is going to be no enforcement. And then, they say, we do not have time, it is not in our budget, that is not in our cost. What is the remedy that Beth is going to do to force them to do it? You know how business people are. I think is it going to look great on paper to do this every five years.

Supervisor Porter that is a Richard question. Richard, we have somebody here violating their agreement with us, what are we going to do?

Richard Railey states we are going to force them to take it down and suppose they do not have the money to do it? That is my question. I agree with you, if we are to have any progress, then you have to take a gamble. Maybe it is a gamble. You have to play the probabilities, that is a better way to put it. Still you have got to think about these issues.

Supervisor Porter states let's not forget the business model that you are dealing with. Once you have spent the 180 million dollars and got the facility operating, there is minimal cost. They have minimal maintenance cost with a revenue stream coming in. Say that you have 50 million dollars of revenue coming in each year and you have maybe 5 million dollars of expenses, we can always attach to that revenue stream. I do not know how we would rate with the banks. If the banks are lending on that revenue stream.

Richard Railey states I think we would be junior creditors.

Michael Johnson states second in line.

Supervisor Porter states but the thing about it is, based upon the margin that the banks are requiring, there should be sufficient revenues to cover what we need to do.

Glenn Updike states I would like to make one comment before I leave. Everything that I have seen or heard, it is our opinion. So I guess my opinion is worth just about as much as anything that is written on the pages. You are talking about twice the initial cost. I think that is way, way, way too low. Have you ever tried to take gravel and dirt and separate it? Put the soil back in the original condition. You can dig a ditch and lay a piece of pipe and put up a structure, but it takes ten times longer to tear it down, remove, and replace it. You all are too low. Raise it to at least three. I want you to go and try to separate the gravel from the dirt and putting it back in the original condition, like it is supposed to be.

Beth Lewis states I think a lot of this is scale. When they are in violation of the county code or the zoning ordinance and the property owner does not remedy them, and the county has to remedy them and put a lien on the property. You are talking about a couple of $200 grass cutting bills. That is certainly different than the scale involved here. At this point, Southampton Solar is finishing up Pod A and they are thinking that they are going to start to anticipate final inspections, but there are still things that they have not done to meet the proffers that were part of the zoning map amendment. At this point, our department still has final inspections to hold as leverage. Once those final inspections are done, we do not have leverage any longer. Simple things are becoming difficult to get from them. Things that they have. Once the final inspections are done, they are under commercial operation. There is really not a lot of leverage, I believe.

Richard Railey states that is the situation in Currituck County. Historically, they have the same problem. They have a provision under North Carolina law for a moratorium and that is exactly what they did.

Michael Johnson states alright. There has been a good discussion tonight. I do not know if we have solved any issues. We helped identify some. But I think the best we are going to do tonight is to agree that we have a little more work to do. Go back and look at some things. I want to thank you all for coming out tonight. Also for your participation and comments. I look forward to continued discussion and receiving your recommendation. Thank you all very much.

Chairman Jones states meeting adjourned.

Commissioner Randall states Planning Commission meeting adjourned.

There being no further business for tonight the meeting adjourned at 8:00 p.m.

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Dallas O. Jones, Chairman

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Michael W. Johnson, Clerk

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