

The Dorchester County Board of Appeals met in regular session on Wednesday, October 25, 2017 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chairperson, Elizabeth Hill, Vice Chair, Lin Spicer, Cindy Smith, Mike Starling, Walt Gunby, Attorney, and Steve Dodd, Director of Planning.

An introduction was made by Chairperson McCulley, explaining the procedures of this meeting to the audience. She then asked Mr. Dodd to read the first case.

**Case # 2616 - Todd Solar LLC**  
**W & J McWilliams Farms, LLC - Owner**  
**Ryan Showalter – Applicant**

To request the following Board of Appeals approvals: (1) extension of time for the utility scale solar energy system project approved by special exception with Dorchester County Board of Appeals Case # 2588 on January 21, 2016 and (2) variance from the Dorchester County maximum fence height of six ft. (6') to permit seven ft. (7') fencing around the perimeter of the solar energy project. Property located on Harper Road, containing 143 acres, zoned AC - Agricultural Conservation.

Mr. Dodd read the case and all pertinent information into the record.

Ryan Showalter, 300 Academy Street, Cambridge, MD, Brendan Mullaney, 100 N. West Street, Easton, MD and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Showalter advised that he would rely on his written responses and comment on same.

Mr. Showalter reviewed the special exception request. He entered a revised site plan as applicant's exhibit 1 into record. He stated that the location, limit of disturbance and scope of the project have not changed. The revised site plan enhances the landscape and buffering beyond what was originally approved. There are some additional setbacks at the road and several of the neighboring properties. He also entered a binder entitled "Todd Solar, LLC, Board of Appeals Case #2616" into record as applicant's exhibit 2, and reviewed section 5 of the binder, the proposed landscaping plan.

Mr. Showalter then reviewed the variance request, height of the fencing surrounding the project. He also reviewed the criteria requirements for this request.

Mr. Dodd read agency comments into the record. The Planning Commission, based on the information provided, chose to remain silent on the special exception and variance. The Department of Public Works stated they had no comment or objection to the variance sought in this case. A site plan including stormwater management and erosion and sediment control meeting current regulations will need to be submitted for review and approval. The project will also need to meet forest conservation requirements and any applicable wetland disturbance requirements.

David Andrews, 4328 Cabin Creek Road, Hurlock, MD a property owner on the northwest side of the project, spoke about an airstrip on his farm that has been in that

location for about 40 years, used by aerial applicators. He advised that he met with the project developers to talk about safety concerns with regards to the proposed fencing and trees at the end of the runway. Mr. Showalter and Michael Kaplan, Vice President of Renewable Energy for Invenergy advised that they were aware of these issues and intended to address modifications with the Planning Commission during site plan review. Mr. Andrews stated he would prefer there be no fencing or landscape screening within this area.

Jeff Chorman, 30475 East Mill Run, Milton, DE a pilot that uses this runway for aerial crop applications stated that he would prefer there be no buffer or fencing at the end of the runway and spoke about his concerns pertaining to this issue. He stated that glare from the panels should not be an issue for the pilots using the airstrip.

Mark Eberspacher, 3504 Little Creek Ct., East New Market, MD spoke in favor of the project.

Mr. Spicer asked how the Board of Appeals should address the airstrip. Mr. Showalter advised that his clients would be agreeable to reduce the size of the project by one acre around the airstrip. They will coordinate with the owner and pilot to adjust the boundaries. Mr. Showalter submitted a rough sketch, (applicant's exhibit 3, sheet C203) of how the fence and panels could be pulled back 25 ft. off the east edge of the runway extended. Mr. Andrews and Mr. Chorman were agreeable with this change. Mr. Showalter noted his clients would be agreeable to make this change part of the motion.

Mr. Showalter also noted that Invenergy, LLC will be the owner/operator of this project.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decision regarding the criteria for the extension.

After all testimony, Ms. McCulley called for a motion regarding the extension. Mr. Spicer made a motion to grant the extension until January 21, 2019, with the stipulation that the applicant carry through with the modification of the project at the airstrip as noted on applicant's exhibit 3. Seconded by Ms. Hill and unanimously carried.

At this time, each Board Member explained his decision regarding the criteria for the variance.

Ms. McCulley called for a motion regarding the variance. Ms. Hill made a motion to grant the variance for the 1 ft. height difference for the fence. Seconded by Mr. Starling and unanimously carried.

**Case # 2617 - D. Lee Hagadorn, LLC - Owner**  
**Richfield Farms, LLC - Owner**  
**Invenergy, LLC, One South Wacker - Applicant**  
**Ryan Showalter -Applicant**

To request the following Board of Appeals approvals: (1) special exception approval for the establishment of a utility scale solar energy system on lands leased by applicant along Osborne Road and Shiloh Camp Road ("Project"), (2) special exception approval for the installation of a substation on one of two proposed sites to deliver the renewable energy to the electrical grid, and (3) a variance to permit construction of 8 ft. tall security fencing around the project and the substation. Property is located at 4320 Osborne Road Hurlock, MD 21643, Map 22 Parcel 19, containing 76.09 acres, Shiloh Camp Road Map 22 Parcel 23 Lot 2, containing 111.91 acres, Shiloh Camp Road Map 22 Parcel 24, containing 102.31, 4279 and Osborne Road Hurlock, MD 21643, Map 22 Parcel 23 lot 1, containing 88.42 acres. All properties zoned AC - Agricultural Conservation.

Mr. Dodd read the case and all pertinent information into the record.

Ryan Showalter, applicant, 300 Academy Street, Cambridge, MD, Brendan Mullaney, 100 N. West St., Easton, MD and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Showalter advised that they would rely on their written responses and supplement further.

Mr. Showalter addressed the variance for the fence height. He requested that he be allowed to reference the variance criteria from Case #2616, as they are similar requests, with no objection, he explained that this project is requesting an 8 ft. fence around the substation in accordance with Delmarva Power's requirements and a 7 ft. fence around the project. The substation will be placed on the project site in the future. Electricity from the panels will go to this substation, transfer to the Todd substation and then to the Delmarva Power grid.

Mr. Showalter introduced applicant's exhibit 1 – a revised site plan attached to a letter dated October 18, 2017 from Mr. Showalter. This site plan revises landscaping, buffers and some components of the project resulting from comments from neighbors, community and county staff. He also entered applicant's exhibit 2 (exhibit 2) – a binder entitled "Richfield Solar Energy, LLC, Invenergy, LLC, Board of Appeals Case #2617.

Cynda Twilley, 3809 Warwick Rd., East New Market, MD spoke on behalf of the owners. She and her sister own Richfield Farms and her nephew owns the parcel on the other side of Osborne Rd. She noted for the record that they own all the tilled farmland, approximately 2,500 acres of land. She spoke about diversification to sustain farming. She noted that the land in question is not prime land for farming due to ponding.

Michael Kaplan Vice President of Renewable Energy for Invenergy spoke about the company, noting that Invenergy is the developer, owner and operator of the project.

Paul Thienpont, Senior Project Engineer with Invenergy gave a slide presentation on solar power. He also spoke about design, glare, noise and safety concerns. Mr. Thienpont spoke about his role with Invenergy, education and background. Mr. Showalter asked that Mr. Thienpont be entered as an expert in the field of electrical engineering and renewable energy.

Mr. Showalter reviewed the Environmental Review Document (ERD) in exhibit 2, tab 2. He advised that protection of historical and archeological aspects of the property are taken into consideration through the ERD. He noted under tab 3, there is a project review form from the Maryland Historic Trust noting there are no historic structures that would be affected by this project. Approval was granted by Dixie Henry, Preservation Officer, Maryland Historic Trust on July 17, 2017.

He reviewed exhibit 2, tab 5, planting details, types of buffers and overall landscaping plans. He also spoke about the decommissioning plan and bond required by the state. This bond ensures that when the project is decommissioned, the land will be returned to its original state. Mr. Showalter advised that they would be agreeable to let the county decide how to handle the bond and could be a condition of the Board's decision.

Mr. Showalter reviewed exhibit 2, tab 6, photos of the areas surrounding the project and the site plan.

Mr. Showalter then discussed the planting agreement required by the county. The agreement requires inspections, replacement of any portion of the buffer that dies, and a bond that the county can use for replacement of dead or dying plants. Mr. Dodd advised the county requires a surety equal to 120% of the total cost of plantings. Mr. Showalter noted that the bond can be in the form of a letter of credit, cash bond or performance bond. Once the plantings have reached the survival period, the bond would be released. He also noted that once planted, the buffer can not be removed until the project has been decommissioned.

Mr. Showalter spoke about the forest conservation plan for the project, exhibit 2, tab 4. He noted that forest conservation for the 12-lot subdivision on Wanda Rd. was not completed as required when the subdivision was developed. The forestation will be completed during construction of the solar project. Mr. Spicer asked if it would be legal to remove the plantings at the end of the project. Mr. Showalter advised that buffers outside the forest conservation areas can be removed, however, if the plantings are designated as part of forest conservation, they cannot be removed.

Mr. Showalter called James Brewer to speak about the impact of solar panels on agricultural land. Mr. Brewer, 2 Johnson St., Cambridge, MD, advised that he is a certified soil scientist with 40 years of experience. Mr. Brewer stated that with the proposed vegetation under the solar panels for the duration of the project, the vegetation would have a positive impact on the soils. In his opinion, the land could be returned to farmland once the project was decommissioned. Mr. Showalter asked that the Board admit Mr. Brewer as an expert in the field of soil science.

Mr. Showalter called Bob Rich, 7655 Tred Avon Circle, Easton, MD. Mr. Rich holds a plant science degree from University of Delaware. He specializes in seed and turf sales, along with agrochemicals. Mr. Showalter asked the Board to admit Mr. Rich as an expert in plant science and agronomy. Mr. Showalter asked Mr. Rich if in his opinion, the proposed use would affect the property for farming use in the future. Mr. Rich stated that he sees no change to the soils over the course of the project.

Mr. Showalter then spoke about construction of the project. He noted that construction could take from 6-12 months. Once construction is complete, the site will be monitored remotely. The fire department would have access to the facility and be able to shut the project down in an emergency. The site can also be shut down remotely.

Mr. Showalter talked about how the project would be taxed. Once the project is running, property taxes will increase, generating tax revenue for the state and county. He noted that the county recently adopted a bill that extends the personal property tax rate to electrical generating equipment. He advised that if this land remained in agricultural use, revenues would be much less, and if used for mining, the personal property tax would not apply.

Mr. Showalter reviewed exhibit 2, tab 7, speaking about the consistency of the project with the Comprehensive Plan.

Mr. Dodd read agency comments into the record. The Department of Public Works in a letter date September 12, 2017 stated they had no comment or objection to the variance sought in this case. A site plan to include stormwater management and erosion and sediment control meeting current regulations will need to be submitted for review and approval. The project will also need to meet forest conservation requirements and any applicable wetland disturbance requirements. At their September 6<sup>th</sup> meeting, the Planning Commission, based on the information provided, chose to remain silent on the special exception. Mr. Dodd read a letter into record dated September 11<sup>th</sup>, from Barbara and Howard Todd, 6102 Wanda Rd., Hurlock, MD, against the utility scale solar energy project near the Wanda Rd. subdivision or any other residential area. He read a letter from the Mayor and Council of Hurlock, dated October 24, 2017, supporting the project. Mr. Dodd also read a letter into record from Garrett Luthy, President, Dorchester County Farm Bureau. A second letter from Garrett Luthy dated August 24, 2017 was also read into record by Mr. Dodd clarifying the Farm Bureau's position on utility scale solar projects.

Ms. McCulley asked for clarification concerning Mr. Luthy's opposition to utility scale solar projects being considered an agricultural activity. Wendell Meekins advised that he was the vice president of the Farm Bureau when the resolution was passed. He stated that at that time, there was no legislative wording that caused a utility solar project to be a special exception on agricultural land. Mr. Showalter advised that the special exception process they are now going through is consistent with state and county legislative language.

Ms. McCulley asked if there was anyone in the audience that would like to speak in favor of the project.

John Avery, Town Administrator for Hurlock, 403 Academy St., Hurlock, MD clarified the letter of support from the Hurlock Town Council. He advised that the Town of Hurlock had not voted on support for the Richfield project, this was a mistake on his part when drafting the letter of support. The letter of support was intended for the Todd project extension. He also spoke about the solar system the town installed several years ago for the waste water treatment and the savings the town has seen.

Wendall Meekins, a local farmer in the county, advised that he is neither for or against this project, but does think every farmer has a right to do with their land as they see is in their best interest.

Rev. Charles Cephas, President of the Hurlock Town Council spoke on behalf of the Council in support of this project.

Ms. McCulley advised that due to the time, the meeting would be continued to another date and time. She asked for a motion to adjourn. A motion was made by Mr. Spicer to adjourn. Seconded by Ms. Hill and unanimously carried. Time of adjournment: 9:50 PM.

Respectfully submitted,



Steve Dodd  
Executive Secretary