

**FLUVANNA COUNTY PLANNING COMMISSION  
REGULAR MEETING MINUTES**

**Carysbrook Performance Arts Center  
8880 James Madison Hwy  
Fork Union, VA 23055**

**Wednesday, November 8, 2023**

**Work Session 6:00 pm  
Regular Meeting 7:00 pm**

**MEMBERS PRESENT:**

Barry Bibb, Chair  
Mike Goad, Commissioner  
Bree Key, Commissioner  
Howard Lagomarsino, Commissioner  
Lorretta Johnson-Morgan, Commissioner  
Patricia Eager, Board of Supervisors member

**ABSENT:**

None

**STAFF PRESENT:**

Eric Dahl, County Administrator  
Douglas Miles, Community Development Director  
Dan Whitten, Fluvanna County Attorney  
Jason Overstreet, Senior Planner  
Valencia Porter-Henderson, Administrative Programs Specialist

**STAFF AT WORK SESSION:**

Tori Melton, Finance Director  
Aaron Spitzer, Parks and Recreation Director  
John Lye, Lake Monticello Water Rescue  
Bobby Popowicz, Public Utilities Director  
Captain Sean Peterson, Sheriff's Office  
Jim True, Emergency Medical Services

**A. CALL TO ORDER, THE PLEDGE OF ALLEGIANCE AND A MOMENT OF SILENCE:**

At 6:00 pm, Chair Bibb, called the November 8, 2023 Work Session to Order, led in the Pledge of Allegiance and then he conducted a Moment of Silence.

**B. Capital Improvement Plan FY25-FY29 - Rankings**

Fluvanna County's new Capital Improvement Plan (CIP) for FY25 – FY 29 has been prepared by the Finance Department in conjunction with the County Administrator. The CIP Plan has been forwarded to the Planning Commission for their review, in accordance with Virginia State Code §15.2-2239: Local Planning Commissions to prepare and submit annual capital improvement programs to the governing body, in our case it is to the Fluvanna County Board of Supervisors.

Several of the same CIP requests from last year were presented, so there was little change in these requests to the Planning Commissioners they were of status updates on these projects. The Schools Division had taken care of their additional school bus orders with other funding.

Eric Dahl, County Administrator stated that there were no more comments from county staff. The Planning Commissioners were ready for the FY25-FY29 CIP Plan to go to a Public Hearing. The Planning Commission will conduct a Public Hearing on December 12th, 2023 at 7:00 pm.

**Substantial Accord State Code requirements for Solar Facilities: Dan Whitten, County Attorney**

**Virginia Code §15.2-2232 Review**

- ▶ Once approved and adopted by the governing body, the comprehensive plan controls the general or approximate location, character, and extent of each feature shown thereon.
- ▶ Unless such feature is in fact shown on the plan, or is exempt from review under one of several statutorily specified categories, or unless the locality determines that the proposed feature is in substantial accord with the plan even if not expressly identified, then no street or connection to an existing street, public building, public structure, public utility facility, or public service corporation facility other than a railroad facility, an underground natural gas or underground electric distribution, whether publicly or privately owned, can be constructed, established, or

authorized unless approved by the planning commission as being substantially in accord with the plan.

**Substantial Accord Review for Solar Facility under §15.2-2232(H)**

- ▶ All solar facilities shall be reviewed for substantial accord with the comprehensive plan in accordance with this section.
- ▶ Solar facility deemed to be substantially in accord with the comprehensive plan if:
  - ▶ (i) such proposed solar facility is located in a zoning district that allows such solar facilities by right;
  - ▶ (ii) such proposed solar facility is designed to serve the electricity or thermal needs of the property upon which such facility is located, or will be owned or operated by an eligible customer-generator or eligible agricultural customer-generator under § 56-594 or 56-594.01 or by a small agricultural generator under § 56-594.2; or
  - ▶ (iii) the locality waives the requirement that solar facilities be reviewed for substantial accord with the comprehensive plan.

**When does §15.2-2232 Review Take Place**

- ▶ In connection with a substantial accord determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204.
- ▶ A locality may allow for a substantial accord review for such solar facilities to be advertised and approved concurrently in a public hearing process with a special use permit.
- ▶ However a Louisa Circuit Court held that a “2232” review is not required prior to rezoning and special use permit application approval. Such review is only required before a particular element of public infrastructure is actually located on the ground. *Merrick Land Trust I v. Bd. of Sup’rs of Louisa Cnty.*, No. 6158 (Louisa Cnty. Cir. Ct. Nov. 20, 2001).

**Appeal of Substantial Accord Decision under §15.2-2232(B)**

The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within sixty days from its filing. A majority vote of the governing body shall overrule the commission.

**§ 15.2-2316.9. Effect of executed siting agreement; land use approval.**

- ▶ Approval of a siting agreement by the Board of Supervisors shall deem the solar project or energy storage project to be substantially in accord with the comprehensive plan of the host locality, thereby satisfying the requirements of §15.2-2232.

C. **Adjournment:** Chair Bibb closed the Work Session at 6:40 pm.

**1. CALL TO ORDER, THE PLEDGE OF ALLEGIANCE AND A MOMENT OF SILENCE:**

At 7:00 pm, Chair Bibb, called the November 8, 2023 Regular Meeting to Order, led in the Pledge of Allegiance and then he conducted a Moment of Silence.

**2. DIRECTOR’S REPORT – Douglas Miles, AICP, CZA, Community Development Director**

**Fluvanna County Planning & Community Development Staff**

- **Ben Frashure**, Code Compliance Officer/Zoning Inspector started on Monday, September 25th and he is a 20 year resident of Fluvanna County and has been performing code enforcement inspections and posting zoning signs for our office.
- **Joanna Lehtinen**, Planner/GIS Technician started on Monday, November 6th and she lives in Charlottesville. She will be assisting with 2040 Comprehensive Plan document and compiling the Planning Commission’s 2023 Annual Report.

**November 2023 – AFD Case and SUP Case Submittals**

- **AFD 23:01 Quaint Lea and Nahor** – New Agricultural and Forestal District request along the north and south sides of Nahor Manor Road with approximately 404 +/- acres.

- **SUP 23:10** – New Special Use Permit request for a Daycare use that would be for infants up to school age children by providing commercial child care in the Cunningham District.

Date	Time	Observed Holidays and Upcoming Meetings	Location
NOV 10	CLOSED	Veteran’s Day Holiday Observance Day	Countywide
NOV 23-24	CLOSED	Thanksgiving Holiday Observance Days	Countywide
DEC 5	4-7 PM	FEMA Open House Community Meeting	Morris Room
DEC 12	6:00 PM	Regular Planning Commission Meeting	Carysbrook Theatre

**3. PUBLIC COMMENTS #1**

Chair Bibb opened the Public Comments at 7:07 pm by giving each public speaker a limit of five minutes to speak in person, and asked that they state their name and address for the record. With no one else wishing to speak in person, Chair Bibb closed the first round of Public Comments at 7:07 pm.

**4. DRAFT MINUTES:**

<b>MOTION:</b>	To Approve the Regular meeting minutes of the Planning Commission of October 10, 2023.				
<b>MEMBER:</b>	Bibb	Goad	Key	Lagomarsino	Morgan
<b>ACTION:</b>		<b>Motion</b>		<b>Second</b>	
<b>VOTE:</b>	Aye	Aye	Aye	Aye	Aye
<b>RESULT:</b>	<b>5-0 Approved, as presented</b>				

<b>MOTION:</b>	To Approve the minutes of the Planning Commission of October 18, 2023. (Joint Meeting with Board of Supervisors)				
<b>MEMBER:</b>	Bibb	Goad	Key	Lagomarsino	Morgan
<b>ACTION:</b>		<b>Second</b>		<b>Motion</b>	
<b>VOTE:</b>	Aye	Aye	Aye	Aye	Aye
<b>RESULT:</b>	<b>5-0 Approved, as presented</b>				

**5. PUBLIC HEARINGS:**

**SUP 23:01 White Oak Tree Solar, LLC** – A Special Use Permit request in the A-1, Agricultural, General District to permit a Utility-scale, solar generation facility under §22-4-2.2 on 439 +/- acres and known as Tax Map 49 Section A Parcels 1, 5 and 8; Tax Map 48 Section A Parcel 35; Tax Map 48 Section 14 Parcels 4, 5, 6 and 6-A. These parcels are generally located east of Rockfish Run Road (SR 683) and west of Shores Road (SR 640) in the Rural Preservation Area and Fork Union Election District.

**Douglas Miles** provided a PowerPoint presentation and an overall summary of the Special Use Permit case request for a utility-scale solar generation facility known as White Oak Tree Solar.

**Recommended Conditions:**

Fluvanna County Staff recommends Approval of the proposed Utility-scale solar generation facility provided that the impact upon the surrounding property owners is minimal. Staff has proposed recommended conditions to ensure that this use complies with all Federal, State and County Code requirements:

1. This Special Use Permit is granted for an up to 38-megawatt utility scale solar generation facility to White Oak Tree Solar, LLC or any successors as the owners or operators of such use on the Property.
2. All site activity required for construction, expansion, and/or operation of the utility scale solar generation facility (the “USSGF”) shall be limited to the following days and times: All pile driving and site deliveries shall be limited to the hours from sunrise to sunset Monday through Saturday. All other site construction and expansion activity may occur Monday through Sunday from sunrise to sunset and be in compliance with the County noise ordinance, as amended.

3. A Construction Traffic Management Plan (the "CTMP"), including certain mitigation measures shall be developed by the applicant, owner, or operator and shall be submitted to the Virginia Department of Transportation (VDOT) and the County Administrator or his designee for review and approval. The CTMP shall address traffic control measures, pre- and post-construction road evaluation, and any necessary repairs to the public roads that are required as a result of any damage from the USSGF site construction and/or expansion.
4. A Site Parking and Staging Plan shall be submitted as a part of the Site Development Plan approval process that demonstrates a site access plan directing both employee and delivery traffic to minimize conflicts with local traffic and state roads leading into the site to avoid traffic delays during the peak construction times.
5. A Construction Mitigation Plan shall be submitted as a part of the Site Development Plan approval process that addresses dust mitigation whereby water trucks or other approved methods shall be utilized to minimize dust on all construction roads and keep soil and sediment on the Property. Burning operations must follow all local and state burning restrictions and distances from property lines and combustibles. The plan must address both dust and smoke migration so as not to be of a general nuisance to adjoining property owners during site construction, expansion, and/or burning operations on the Property.
6. A minimum of a one hundred fifty (150) foot setback shall be maintained from the property line to the solar panels or associated equipment from all public right-of-ways and all agriculturally and residentially zoned properties, either occupied or unoccupied, until such time as the USSGF is decommissioned per the Decommissioning Plan. Once the USSGF had been decommissioned, the setback shall become the underlying zoning district setback amount for such districts.
7. A minimum of a three hundred (300) foot setback shall be maintained from occupied residential structures existing at the time of SUP approval to the solar panels or associated equipment.
8. The existing perimeter woodlands vegetation shall be preserved as a buffer strip with a minimum width of seventy-five (75) feet. The woodlands preservation area shall be placed in a recorded landscape easement to be recorded at the time of building permit issuance and shall terminate upon the decommissioning of the Project.
9. A fifty (50) foot vegetative buffer utilizing double staggered rows of evergreen trees planted every ten (10) feet on center with a minimum planting height of four (4) feet and achieving eight (8) feet in height within three (3) years shall be installed where there is not existing mature vegetation on the perimeter of the Property along the public right-of-way or adjacent to agricultural or residential land uses. Groundcover for the site should consist of a variety of native groundcovers that benefit bees, birds, and beneficial insects and the use of any synthetic herbicides to control and maintain groundcover areas post-construction or post-expansion shall not be permitted.
10. The applicant shall install a permanent security fence, consisting of chain link, 2-inch square mesh (or comparable fencing), a minimum of 6 feet in height around the USSGF prior to the commencement of operations of the USSGF. Failure to maintain the fence in a good and functional condition will result in revocation of the special use permit.
11. The applicant, owners, or operator shall coordinate directly with the Fluvanna County Fire Chief to provide solar energy educational information and/or training to the respective County personnel. Such information and/or training shall address County personnel responses to the solar energy facility use in regards to how to respond to any emergencies that may occur on the Property. The Fire Chief shall be provided with the construction manager's direct contact information during construction or expansion and the remote manager's direct contact information during site operations.
12. Payment of all applicable rollback taxes for parcels in the land use program shall be paid a minimum of forty-five (45) days prior to the County's issuance of a land disturbance permit.
13. The applicants, owners or operator shall notify VDOT and Fluvanna County in writing thirty (30) days prior to commencing any site construction or logging activity on the Property.

14. A Decommissioning Plan shall be approved by the County Administrator or his designee prior to approval of a Site Development Plan or any building permits being issued for the USSGF. If the USSGF is completely inactive or substantially discontinuing the delivery of electricity to an electrical grid for a continuous twenty-four (24) month period, it shall be considered abandoned. The applicant, owners, or operator shall provide notice to the County Administrator or his designee in writing once the property becomes completely inactive as a USSGF. The decommissioning of the site shall commence within six (6) months of the date of receipt of such notice from the applicant, owners, or operator to the County. Such notice shall contain the name and physical address of the entity performing the decommissioning of the solar generation facility.

15. Surety. Unless the utility scale solar generating facility project is owned by a public utility within the Commonwealth of Virginia, the net costs of decommissioning shall be secured by an adequate surety in a form agreed to by the County Attorney, including but not limited to a letter of credit, cash, bond or a guarantee by an investment grade entity, posted within 30 days of the project receiving its certificate of completion or equivalent from Fluvanna County to operate the use. If adequate surety is required, the cost estimates of the decommissioning shall be updated at least every five (5) years by the applicant, owners or operator, and provided to the County. If the USSGF is sold to an entity that is not a public utility, the Special Use Permit shall not transfer to the purchaser until such time as adequate replacement surety is provided for the USSGF. At its option, the County may require that a surety amount be increased based upon the net cost of decommissioning the use and as approved by the County Attorney.

Harry Kingery, Commonwealth Energy Partners (CEP) he provided a Powerpoint presentation.

Chair Bibb opened up the Public Hearing at 7:40 pm by giving each public speaker a limit of five minutes to speak in person and asked that they state their name and address for the record.

- Sandra Radford 121 Mulberry Drive: Discussed the pros and cons of solar.
- Kimberly Duran 745 Rockfish Run Rd: Spoke in opposition to the project.
- Clyde Royston 534 Rockfish Run Rd: Spoke in opposition to the project.
- Martha Mcaloon 56 Pine Lane: Spoke in opposition to the project.
- Corvin Flynn 319 Shiloh Church Rd: Spoke in opposition to the project.
- Barry Meade 912 Shores Rd: Spoke in opposition to the project.
- Jason Sweeney 3456 James Madison Hwy: Spoke in opposition to the project.
- Suzie Morris 6840 Thomas Jefferson Hwy: Spoke in opposition to the project.
- Karen Bowles 5520 James Madison Hwy: Spoke in opposition to the project.
- Mario Kuhar 3247 West River Rd: Spoke in opposition to the project.
- Michael Pruitt 9925 Elden Way Pl, Henrico: spoke on behalf of the property ownership.
- Nadine Armstrong 2979 Bremono Rd: Spoke in opposition to the project.
- Betty Arritt 356 Sanctuary Ln: Spoke in opposition to the project.

Chair Bibb asked for a 5 minute recess at 8:43 pm. Chair Bibb reopened the meeting at 8:48 pm.

Harry Kingery: Answered some of the questions that were asked.

With no one else wishing to speak in person Chair Bibb closed the Public Hearing at 8:55 pm. Chair Bibb opened up the discussion to the Planning Commissioners on the special use permit.

**Chair Bibb:** stated that he had a lot more questions and he would like if some of the citizens' questions would be answered going forward by the applicant and are we going to be behind?

**Mr. Goad, Commissioner:** stated that it would be pulled out of land use either way. He would like to hear more on solar from Fluvanna County staff. He feels there is not enough information on solar projects to move forward right now.

**Mrs. Johnson-Morgan, Commissioner:** stated that she has major concerns about solar. What are the effects in Virginia? We need to find appropriate places or areas that would be better for the solar facilities here in Fluvanna County.

**Mr. Goad, Commissioner:** stated that he would rather be late to the game to make sure he has all the information as needed than not enough information on solar projects.

**Mrs. Johnson-Morgan, Commissioner:** There is a need, but where in the county should it be for solar projects. We do not want to push the younger people out and still need more information on Substantial Accord reviews especially for this solar project.

**Vice Chair Lagomarsino, Commissioner:** stated that we need to see both sides to really form an opinion. Solar is very new to Fluvanna County. It is about getting all the information so that we can make an informed decision. **Chair Bibb:** stated that we all need more solar information.

<b>MOTION:</b>	I move that the Planning Commission recommends deferral of SUP 23:01 White Oak Tree Solar, Inc. as a Special Use Permit in the A-1, Agricultural, General District to permit a Utility-scale solar generation facility under 22-4-2.2 on 439 +/- acres and known as Tax Map 49 Section A Parcels 1, 5, and 8; Tax Map 48 Section A Parcel 35; Tax Map 48 Section 14 Parcels 4, 5, 6, and 6-A along with the fifteen (15) recommended conditions found in the staff report.				
<b>MEMBER:</b>	Bibb	Goad	Key	Lagomarsino	Morgan
<b>ACTION:</b>		<b>Motion</b>			<b>Second</b>
<b>VOTE:</b>	Aye	Aye	Aye	Aye	Aye
<b>RESULT:</b>	<b>5-0, Recommended Deferral for 60 days to January 9, 2024</b>				

**SUP 23:08 James River Water Authority** – A Special Use Permit request in the A-1, Agricultural, General District to permit Major Utilities under §22-4-2.2 on 75.5 +/- acres known as Tax Map 61 Section 1 Parcel 6 – raw water intake and pump station; Tax Map 53 Section A Parcels 54, 56, 58, 59 and 59A; Tax Map 53 Section 11 Parcels 6, 7, 8, 10, 11, 11A and 19; Tax Map 53 Section A Parcels 52, 53, 56A and 76; and Tax Map 61 Section A Parcel 1; and Tax Map 61 Section 1 Parcels 1 and 2B – that have a below ground 24-inch raw water pipeline. These parcels are generally located south of Bremono Road and along Bremono Road (SR 656) and then along East River Road (RT 6) in the Columbia Community Planning Area, Rural Residential and Rural Preservation Districts and the Columbia and Fork Union Election Districts.

**Douglas Miles**, provided a PowerPoint presentation from Fluvanna County staff on the request.

**Recommended Conditions:**

1. The construction, operation and maintenance of the James River Water Authority (JRWA) raw water line and pump station shall comply with local, state and federal permitting requirements.
2. The vehicular access to all businesses, residences and/or the farms along the raw water line route shall be maintained at all times. The James River Water Authority (JRWA) and/or its contractors shall be responsible for returning all the affected access points or mailboxes to equal or better conditions upon project completion.

Eric Dahl, County Administrator, spoke as a JRWA board member on this application request.

**Project Need:**

- Long term water source for Fluvanna & Louisa County
- Remove reliance on wells and groundwater sources
- Drought reliability (2002 drought)
- Economic Development
- Accessible fire hydrants (13) along the route

**Project Description:**

- The proposed improvements associated with this application include:
  - A raw water intake at the James River
  - A raw water pumping station to be located on the Rose Property
  - A below ground 24’ diameter raw water pipeline (approx. 4 miles)
- The pumping station includes an above ground structure, elevated above the existing flood plain grade.
- The raw water intake is the structure that will be located below grade in the James River.

**Project Progress:**

- Department of Environmental Quality (DEQ) Permit has been issued
- U.S. Army Corp. of Engineers (USACE) Permit pending at this time.

- Phase I and Phase II cultural resources surveys completed
- Phase III cultural resources firm selected, work pending USACE permit
- Property acquisition and ROW easements underway
- Final Design and Construction contract executed

**Discussion:**

**Mrs. Johnson-Morgan, Commissioner:** asked if this will this bring water to Fork Union?

**Mr. Dahl, Administrator:** replied, yes.

**Mrs. Johnson-Morgan, Commissioner:** which direction will the water go?

**Mr. Dahl, Administrator:** replied, that is yet to be determined. Once the JRWA gets the preliminary report funds then we will know what the best way to go is.

Chair Bibb opened the Public Hearing at 9:37 pm by giving each public speaker a limit of five minutes to speak in person, and asked that they state their name and address for the record. With no one else wishing to speak in person, Chair Bibb closed the Public Hearing at 9:38 pm.

**Chair Bibb,** stated he thinks that this will be a good idea and investment for Fluvanna County.

**Mrs. Johnson – Morgan, Commissioner:** stated, she agreed.

**Mr. Goad, Commissioner:** stated, he agreed.

**Mrs. Johnson-Morgan, Commissioner:** asked is there a time frame for the JRWA project now?

**Mr. Dahl, Administrator,** replied an optimistic start is spring to summer of 2024 for the project.

**Mrs. Eager, BOS representative,** stated this is a really good project for Fluvanna County.

<b>MOTION:</b>	I move that the Planning Commission recommends Approval of SUP 23:08 James River Water Authority a Special Use Permit request in the A-1, Agricultural, General District to permit Major Utilities under §22-4-2.2 on 75.5 +/- acres known as Tax Map 61 Section 1 Parcel 6 – raw water intake and pump station; Tax Map 53 Section A Parcels 54, 56,58. 59 and 59A; Tax Map 53 Section 11 Parcels 6, 7, 8, 10, 11, 11A and 19; Tax Map 53 Section A Parcels 52, 53, 56A and 76; and Tax Map 61 Section A Parcel 1; and Tax Map 61 Section 1 Parcels 1 and 2B – that have a below ground 24-inch raw water pipeline along with the two recommended case conditions found in the staff report.				
<b>MEMBER:</b>	Bibb	Goad	Key	Lagomarsino	Morgan
<b>ACTION:</b>		<b>Motion</b>			<b>Second</b>
<b>VOTE:</b>	Aye	Aye	Aye	Aye	Aye
<b>RESULT:</b>	<b>5-0, Recommended Approval with two conditions</b>				

**6. PRESENTATIONS:**

None

**7. SITE DEVELOPMENT PLANS:**

None

**8. SUBDIVISIONS:**

None

**9. UNFINISHED BUSINESS:**

None

**10. NEW BUSINESS:**

None

**11. PUBLIC COMMENTS #2:**

Chair Bibb opened Public Comments #2 at 9:42 pm by giving each speaker a limit of five (5) minutes to speak in person and asked that they state their full name and property address for the record. With no one coming forward wishing to speak in person, he closed the Public Comments period at 9:42 pm.

**12. ADJOURNMENT**

Chair Bibb called for a motion to adjourn the November 8, 2023 Planning Commission Regular meeting with Vice Chair Lagomarsino motioning with Commissioner Goad seconding his motion.

<b>MOTION:</b>	Adjournment				
<b>MEMBER:</b>	Bibb	Goad	Key	Lagomarsino	Morgan
<b>ACTION:</b>		<b>Second</b>		<b>Motion</b>	
<b>VOTE:</b>	Aye	Aye	Aye	Aye	Aye
<b>RESULT:</b>	<b>5-0</b>				

The Planning Commission’s Regular meeting was adjourned at 9:43 pm.

Minutes were recorded by Valencia Porter-Henderson, Administrative Programs Specialist.

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**Barry Bibb, Chair**  
**Fluvanna County Planning Commission**

APPROVED