Albemarle County Planning Commission
May 23, 2017

The Albemarle County Planning Commission held a public hearing on Tuesday, May 23, 2017, at 6:00 p.m., at the County Office Building, Room #241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Karen Firehock, Vice-Chair; Daphne Spain; Mac Lafferty; Pam Riley; Jennie More; Bruce Dotson; and Bill Palmer, University of Virginia Representative.

Other officials present were Scott Clark, Senior Planner; Amelia McCulley, Zoning Administrator/Director of Zoning; Andrew Gast-Bray, Director of Planning; Sharon Taylor, Clerk to Planning Commission; and John Blair, Deputy County Attorney.

Call to Order and Establish Quorum

Mr. Keller, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

From the Public: Matters Not Listed for Public Hearing on the Agenda

Mr. Keller invited comment from the public on other matters not listed on the agenda. Being none, the meeting moved to the next agenda item.

Consent Agenda

Ms. More moved to approve the Consent Agenda as presented. Mr. Lafferty seconded the motion, which passed unanimously (7-0).

Public Hearing: ZTA 2016-00007 Utility Scale Photovoltaic Generation Facility

Ordinance amending Sections 18-3.1, Definitions, and 18-10.2.2, By Special Use Permit of the Albemarle County Code. The ordinance would amend Section 18-3.1 by adding a definition of solar energy systems. The ordinance would amend Section 18-10.2.2 to allow solar energy systems by special use permit in the Rural Areas (RA) zoning district.

Mr. Scott Clark presented the staff report, stating that he would be covering for Margaret Maliszewski, the lead planner on this item. Mr. Clark reported that this is a zoning text amendment for adding a definition in the permitted use to the zoning ordinance for photovoltaic energy generation facilities in the Rural Area zoning district. He stated that the project applicant hopes to develop a photovoltaic energy facility in Albemarle County; however, no form of energy generation is currently a permitted use in the RA zoning district, so the ordinance would need to be amended to make it a permitted use before the applicant can apply to create the use.

Mr. Clark stated that on April 5, 2017, the Board of Supervisors adopted a resolution of intent to amend the zoning ordinance to permit this use in the rural areas. He said there were two changes to the zoning ordinance: adding a definition for "solar energy system," which is specific to a photovoltaic facility; and to amend the RA section of the zoning ordinance to make solar energy systems a permitted use by special use permit in that district. Mr. Clark noted that staff wants to ensure that the ZTA is appropriate under the comprehensive plan goals, and in this case, they felt it was appropriate under both the natural resources objectives and the recommendations of the local climate action planning process, which the Board approved in 2010.

Mr. Clark said the rural areas section of the Comp Plan has criteria for considering newly permitted uses in the rural areas: the uses should relate directly to the rural area and need a rural area location; they should be compatible with and have a negligible impact on natural, cultural and historic resources; they should not conflict with nearby agricultural and forestal uses; they should reflect a size and scale that complements the character of the area in which they will be located; they should be reversible so the land can easily return to farming, forestry, conservation, and other preferred rural uses. Mr. Clark noted that photovoltaic facilities can definitely be removed and are usually required to be removed once they go out of use, with a typical lifetime of 25-30 years. He stated that they can be taken away, and a requirement for decommissioning can be included in the conditions for a special use permit.

Mr. Clark stated that additional criteria include: they should be suitable for existing rural roads and result in little discernible difference in traffic patterns, and unlike other commercial or retail uses considered for the rural areas; the traffic impacts of a solar generation field are initial construction and occasional maintenance, with not much else occurring on the site. He said the uses should generate little demand for fire, rescue and police service; the sites would not be occupied and most activity would relate to maintenance, and the sites are usually fenced, so there is not much need for emergency services. Mr. Clark stated that the uses should be able to operate without public water and sewer, there was no such need in this case, and the site should be sustainable with available groundwater, as well as being consistent with other rural area policies.

Mr. Clark said that if this use were added to the ordinance, some of the factors to be considered during the review of individual special use permits include: impacts to cultural and historic resources; impacts to agricultural and forestal uses; visibility and screening; glare and reflectivity from the panels themselves, reversibility and decommissioning; storm water runoff; tree and habitat loss, if any; noise; setbacks; security fencing; and any other relevant concerns that arise. He stated that all of those factors would be considered during the individual special use permit review. Mr. Clark reported that staff recommends adoption of the proposed ordinance, with the changes to the definition and the addition of the use itself, and he presented motions for the Commission to consider.

Ms. Spain asked if there was any discussion of maximum size, or if that would be part of the site-dependent review that occurs.

Mr. Clark responded that staff had not discussed a maximum, and he was not sure if there was a practical maximum for these facilities – but his guess was not. He added that he assumed there

would be a relatively small number of them, and he was not sure that staff could predict what the maximum might be.

Ms. Spain asked if the equipment would be removed and paid for by the provider, or if the County would pay for it.

Mr. Clark responded that it would be a responsibility of the landowner and provider, with a condition imposed on them by the County.

Ms. More said that the staff report indicates it would not affect the residential solar installations currently classified as a by-right accessory use, and she wondered about agricultural businesses such as orchards and farms that would be using the solar installation for the purposes of powering their operation.

Mr. Clark responded that if it were rooftop installations, this would not affect them; if it were ground installations of a half-acre or more, they would need to get a special use permit.

Ms. More asked if staff was aware of any agricultural operations that were doing that and would fall into this category.

Mr. Clark replied that the largest on-ground solar facility installation has been about a tenth of an acre.

Ms. Firehock said that there was screening from the road and neighbors, but if the fields were quite large, to make it economically viable, there would be a certain number put up. She stated that she had concerns about the impact to the viewshed, as they could occupy a hillside and be visible to neighbors. She asked Mr. Clark if staff had discussed incorporating an extra level of analysis, such as the technology of viewshed analysis is used, to ensure these were not becoming part of the viewshed and scenic backdrop.

Mr. Clark stated that he thought the County already had or could get licenses for the software needed to do that analysis, and they did not have a hardline standard by which to measure acceptable amounts of visibility – but staff could at least describe to the Commission and Board what the approximate area of visibility would be, and it would be a judgment call from there.

Ms. Firehock agreed that there could not be a hard number to compare it to, but they would be assessing the potential visual impact of the facilities, with the Commission and Board using their discretion as to whether it was acceptable or recommending alternate positioning so it would not affect the views.

Mr. Clark responded that staff could include the boundaries of historic districts or locations of known historic sites within that visibility block.

Ms. Firehock noted that it could be tricky, given the Southern Albemarle and Southwest Mountains historic districts, and there were some huge swaths in which the landscape was considered part of the district.

Ms. McCulley confirmed that this was the case.

Ms. Riley asked if anything under a half-acre would not require a special use permit and would have no site review process.

Ms. McCulley responded that for it to be use by right, it would have to be under a half-acre and would have to be serving an onsite use as an accessory to that primary onsite use. So if it were a quarter-acre but did not have a primary use on the property served by the solar power, it would not be an accessory use – it would be a primary use.

Mr. Clark pointed out that if it were an accessory use, it would just require a building permit.

Ms. McCulley confirmed this, stating that what staff has discovered in processing permits is that almost all users are going with building-mounted solar, and those who are not are very small. She added that long term staff hoped that with time and experience to create a tiered structure with more opportunities for by-right uses, similar to the County's approach with cell towers, creating some performance standards. She said that this was not something they could do with an expedited zoning text amendment.

Mr. Dotson said that staff had mentioned cell towers, and it struck him as being two polar extremes – with no standards and no submittal requirements unique to the solar use, versus cell towers that were approached with extreme caution. He asked under what circumstances staff would see the Commission saying no to a solar farm, stating that with cell towers, the County established visibility – not aesthetics – as the major criteria. Mr. Dotson asked if there was some kind of standard or primary variable they could consider, and whether there were conditions under which they would say no.

Mr. Clark responded that the difference between the solar facilities and cell towers is that they have had to move cell towers into the by-right category, and some of those have performance standards that can be applied. He stated in this case, for a half-acre or larger field, none of them would yet be by right, but they could be reviewed now with standards to be developed in the future, with smaller applications possibly moving into a by-right with standards category. Mr. Clark emphasized that the County was starting with a high bar that required Board approval for all solar facilities, applying criteria for any special use permit in the rural areas plus a few that were specific to this use. He said there was not a hard line where a certain number of criteria would mean a definite no, but that was true of most uses like this.

Mr. Dotson stated that SP submittal requirements stipulate "and anything else determined to be necessary by the planning director," such as photo simulations.

Mr. Clark clarified that before an applicant can submit a special use permit, they must do a mandatory pre-application meeting, in which staff develops a checklist of items that need to be submitted as part of that application before it can be accepted and reviewed – and that could be required in this process as well.

Ms. McCulley added that the generalized special permit factors include things such as no substantial detriment to adjacent lots, the character of the district is unchanged, the proposal is in harmony with the purpose and intent, and public health, safety, and welfare. She said that if a solar facility were on a property that was an historic site, she could envision a scenario in which a solar farm was proposed in such a way it jeopardized the status of the historic designation, and that might be grounds for denial.

Mr. Dotson commented that he felt this as something the Commission and Board should think about.

Mr. Lafferty asked if there was any thought given to the buildings that would have to be placed onsite.

Mr. Clark responded that the applicant could give examples in his presentation, but staff's understanding was that those facilities were fairly minimal, with not much there other than the panels themselves and whatever electrical equipment was necessary to move the power off to the grid.

Mr. Lafferty asked if that implied a substation.

Mr. Clark said that with the application that came to the County, the substation already existed, and one of their location criteria was to find a field that was big enough, clear enough, and facing the right direction – but was also next to a substation, which reduced the number of candidates fairly quickly.

Mr. Lafferty noted that they would still have to run high-tension lines to the facility.

Mr. Clark responded that this was a big expense for the applicant to run those lines from a site to a substation that was far away.

Ms. McCulley mentioned that they would also lose power over a distance.

Mr. Clark commented that this was wasteful.

Mr. Keller said that he had asked John Blair and Greg Kamptner to go back and provide a history of the cell tower and how that policy developed, and whether it started this way, with a special use permit.

Mr. John Blair reported to the Commission that this started as a special use permit, which was probably the most restrictive way to view the land use regulation, in terms of having to come before the Commission and Board for approval. Mr. Blair said the Commission was probably aware that the policy was developed in the year 2000, which led to regulations established for the tiered system. He stated that he did not know for certain, but if this became a major with multiple separate applications, given that this was obviously a burgeoning industry across the country, the Commission and Board may want to consider developing a tiered system, as well as evaluating distribution versus generation. Mr. Blair said that as of right now, the plan is to start with the

special use permit process for these applications, unless the Commission and Board favor a different approach.

Mr. Keller stated that he had three points he wished to make to staff. He said that he had been dealing with viewshed analysis since the mid-1970s, and in his work on the study of Monticello many years ago, they evaluated what could be seen from the foreground, middle ground and background – with different levels of standards at those different points. Mr. Keller noted that there had been a lot of research and evaluation done on viewsheds, so this was not really a new idea. He said that his second point pertained to vegetation suppression and how it would be managed on this site, as it was an issue, and whether this would be best practices or if it would generate concerns similar to chemicals and runoff. Mr. Keller stated that his third point of concern related to development patterns and what degree of topographic manipulation would be allowed to accommodate these facilities, and the configuration of internal access roads to the units as they were being serviced.

Mr. Keller opened the public hearing and asked to hear from the applicant.

Mr. Seth Maughan, director of projects for SolUnesco, addressed the Commission and expressed support for his zoning text amendment. Mr. Maughan reported that SolUnesco is a Reston-based renewable energy developer, currently focused on the Virginia market and utility-scale solar within that market. He stated that the company has a specific site in mind pursuant to this ZTA, but was cognizant of the fact that the scope went beyond this site. Mr. Maughan stated that his presentation would speak more broadly to utility-scale solar and the development process, but he would be happy to answer questions about the site.

Mr. Maughan reported solar in general was booming currently, providing many jobs for the U.S. and Virginia, and he noted the exponential increase in capacity across the state. He stated that utility-scale solar was legitimately becoming competitive and was often beating historical energy generation forms from an economic standpoint. Mr. Maughan said that utility-scale solar was usually ground-mounted arrays, with power not used onsite but instead put into the grid and used on another site for a purchaser. He pointed out that the facilities were safe, with no emissions and no audible noise, and rays no higher than a row of corn, and SolUnesco would work with the County on screening, as part of the special use permit process. Mr. Maughan said that historically in Virginia, solar has been purchased by corporate buyers, but utilities were finally starting to gain a greater interest in procuring renewable energy. He presented a list of corporate buyers, noting the more well-known companies in the U.S. that have made a public commitment to procuring renewable energy – with Amazon responsible for two utility-scale solar projects in Virginia and Wal-Mart recently deciding to go 100% renewable. Mr. Maughan stated that Dominion recently released its long-term procurement investment plan, recognizing solar as having the lowest levelized cost of energy, largely because of their fuel price forecasts for traditional forms of energy generation.

Mr. Maughan reported that the benefits of utility-scale solar to the County are that it provides landowners and opportunity for revenue that might not otherwise be available to them, often exceeding alternate uses of the land; a short-term economic boost during construction, with supplies and jobs procured locally when possible; the projects are very passive and provide a

small increase in revenue to the County through fees and taxes; and the sites do not drain County resources at all, as they collect sun and feed it into the utility system as solar energy. He stated that an additional benefit is that the facilities offer the County a possibility to be seen as forward thinking and progressive, which seems to be a value in Albemarle County, as evidenced by participation in the SolSmart program, which seeks to remove barriers to solar growth. Mr. Maughan noted that one way to earn points toward that designation is through passive of zoning text amendments like this one. He said that 19 counties in Virginia now have utility-scale solar projects approved through the special or conditional use permit processes, and he pointed out that these were just the counties that had approved specific projects – with a much greater number of counties allowing for these projects to apply. He noted that SolUnesco is already working with Orange County, which is allowing for applications but has not yet had an approved project.

Mr. Maughan stated that SolUnesco had achieved site control of their project locally, so the next relevant steps in the development process were to go through the state Department of Environmental Quality permit by rule process, which was a very rigorous exercise that involved a lot of field surveys to establish whether there were environmental or historical resource concerns; and the special use process for the County, beginning with this ZTA. He stated that there would also be interconnection studies with the utility, which has already begun with Dominion, and the purpose of that process is to ensure the facility is not stressing the utility's infrastructure and that it can handle the capacity to be put on the lines. Mr. Maughan said that everything looked very promising thus far with those aspects, adding that this ZTA did not greenlight any project – it simply created a process by which a project could be considered by the County, with opportunity for feedback throughout.

Mr. Maughan stated that SolUnesco's next step would be to apply or a special use and would appear before the Commission again to answer questions about the specific project. He said that there have been concerns about the viewshed, and one of the company's first steps had been to approach Monticello. He said that the projects were typically dark and matte silver and were not highly visible from afar, blending into dark mountainsides. Mr. Maughan stated that the issue of glare had been brought up a Monticello, and SolUnesco commissioned a report specifically for them, which showed no impacts at those distances. He said that the technology being used for this site would be a single-access tracker that tracked the sun all day, up to 60 degrees from parallel, with the systems absorbing sunlight and any reflection being reflected back to the sun. Mr. Maughan noted that opportunities for glare arise when the point is not fixed and the sun can hit a low angle and bounce it back up, with more detail about this in the Monticello study. He stated that there would be no buildings onsite, with the substation already existing and some inverters and transformers being small – about the size of a trailer. He stated that they would plant grass to keep down weeds, with that grass mowed periodically and no pesticides anticipated to be needed. Mr. Maughan stated that while there may be minimal grading required to flatten out the site, there would not be excessive topographical changes.

Ms. Spain asked if the location of the site was being considered near Monticello.

Mr. Maughan responded that the site was southeast, about four or five miles away from Monticello, and from that point, he could only find the site by using a pair of binoculars. He

emphasized that his assessment, as well as the assessment of the company that did the glare report, showed that there should not be an impact.

Mr. Clark clarified that the site is located at the southeast corner of the intersection of Route 53 and Milton Road, near Eagle Church.

Ms. Firehock invited speakers from the public.

Mr. Jeff Werner of the Piedmont Environmental Council addressed the Commission and stated that the PEC supports the intent of the ZTA and welcomes the opportunity to see solar power generation coming into the County. He said that the ZTA was necessary to allow for the site location and would allow for special use permit requests throughout the County, and stated that the PEC's position has shifted since commenting to the Board of Supervisors in April. Mr. Werner explained that this process has not included development of corresponding supplemental regulations, and 21 of the 29 by-right uses in the rural area have supplemental regulations; and 33 of the 48 uses allowed by special use permit have supplemental regulations. He noted that the County had unique requirements for things such as clubs and lodges, day camps, and covenants and monasteries – so it was difficult to argue against adopting stringent guidelines and regulations for solar energy systems. Mr. Werner stated that after PEC discussed this with the applicant, they now view this as an opportunity to use the SP process to guide and inform the development of supplemental regulations. He emphasized that the PEC was not suggesting that the County and applicant be partners. In addition, the PEC would likely push the County to raise the bar beyond what the applicant would like to see, but it does provide some opportunity for collaboration and trust. Mr. Werner added that if the special use permit should be delayed, deferred, withdrawn, or denied, the County still needed to establish the regulations. He noted that some of the issues the PEC raised with the Board were preservation of prime agricultural soils and the need for limited grading; minimizing impervious surfaces; retaining agricultural uses such as grazing of livestock onsite as a preferred option; incorporation of a viewshed analysis and the impact of the site on the national park and other locations.

Mr. Morgan Butler of the Southern Environmental Law Center addressed the Board and stated that SELC typically appears before the Commission regarding the Charlottesville-Albemarle project, an initiative to support sustainable land use and development patterns. Mr. Butler said that they aim to ensure a thriving community, while respecting the natural, historic and community resources that define the area. He stated that as a regional organization working across the Southeast, SELC also works to promote the expansion of clean and renewable energy sources, with the goal of promoting solar generation in a way that prevents adverse impacts to the many rural area resources and values the Comp Plan endorses. Mr. Butler noted that an ordinance change like this one, allowing a new use in the rural area, would often be proposed with a set of supplemental regulations designed to ensure that a baseline level of protections would be in place for any project that comes forward. He stated that with SolUnesco's proposal, however, the Board has directed staff to expedite the ZTA, with the idea that the SP process would allow for in-depth review of site-specific impacts and the development of protective conditions. Mr. Butler said that SolUnesco seems to be willing to allow its application to serve as a pilot project that will allow the County to explore the issue with a concrete proposal on the table – developing specific conditions for that project, as well as determining what supplemental

regulations may need to be enacted for all proposals going forward. He stated that this could be quite useful, but it was important to acknowledge the risk involved to the applicant with this approach, as there were already a number of broader questions that would likely arise during review of that proposal, which may end up being thought through and worked out as part of this SP applications, rather than developing supplemental regulations up front. Mr. Butler said that SELC feels there are additional questions as part of this discussion: whether these facilities would be subject to the County's critical slopes provisions, and whether a certificate of appropriateness would be required for facilities located along entrance corridors. He stated that the SELC supports allowing solar farms by special use permit in the rural areas, but there were important questions to be addressed when the first proposal came forward, which may demonstrate the need for a set of supplemental regulations for this use. Mr. Butler said SELC looks forward to working with the County and the industry to ensure that solar facilities are implemented in harmony with other rural area uses promoted in the Comp Plan.

Mr. Keller invited the applicant to address the Commission again.

Mr. Maughan thanked Mr. Werner and Mr. Butler for their input, stating that their comments were very much in line with SolUnesco's discussions with Mr. Werner about this being a pilot project that could help inform the County as to what may be required with supplemental regulations, if necessary. He offered to answer questions.

Mr. Dotson said that Mr. Maughan had mentioned revenues to the County and asked if he could share what the revenues might be and how they would work in light of HB-3105.

Mr. Maughan responded that Virginia passed legislation several years ago that exempted projects under 20 megawatts from the machinery and tools tax, which meant that localities did not get a lot of money from them. He stated that solar projects are extremely expensive and compete with more conventional forms of energy on a long time scale, with solar facilities' costs all up front and conventional energy providers' costs pertaining to fuel costs. Mr. Maughan said that solar farms could cost as much as $100 million to build, and if they had to pay machinery and tools tax every year, it would sink the projects – which was the reason the legislation was passed. He stated that the revenue opportunities for the County pertain to building fees, and SolUnesco would work with the County on developing an appropriate fee structure that would provide some notable revenue. He stated that because the facilities represent a change in land use, there would also be some additional taxes for the landowner, which the company would cover.

Mr. Dotson stated that there was issue with the cost index that the state used for educational expenses for localities, and asked Mr. Maughan to clarify this.

Mr. Maughan explained that there was an oversight in the way the composite index had been calculated, which accounted for localities receiving the machinery tools tax but not factoring in the exemption – and this was affecting the amount of money provided from the state to localities for education. He stated that this has since been addressed with a letter from the SCC, and SolUnesco has developed a series of blogs on it, which appears on the company's website.

Ms. Spain asked if the 14.1 MW stood for megawatts, and what DC-11 stood for.

Mr. Maughan explained that the facility generated an AC or alternating current and delivered DC or direct current.

Ms. Spain asked what MWAC stood for.

Mr. Maughan responded that it was megawatts of alternating current.

Mr. Palmer asked if the applicant in these solar generation facilities had an impact, for example, if a public utility like Dominion would give the County less leverage to possibly deny or request changes in this type of facility.

Mr. Keller asked about the relationship between SolUnesco and Dominion.

Mr. Maughan replied that they were entirely separate, with SolUnesco dealing with them on interconnection and arriving at interconnection agreements whereby they will deliver a specific amount of solar-generated DC to their grid.

Mr. Lafferty asked if they plan to store any energy onsite.

Mr. Maughan responded that they did not, as this was increasingly popular in the news but the technology was not quite there for it to be economical. He stated that in the next decade or so, that model would likely be built more, but for this specific project and those in the near future, there were no plans to do that.

Ms. Riley asked about the benefits and incentives for landowners, as SolUnesco would be leasing the land, not purchasing it.

Mr. Maughan responded that SolUnesco offers either purchase or lease, and for the specific project in eastern Albemarle, the landowner has chosen to lease – with the exact amount being confidential, but the lease terms typically being greater than what a landowner could earn through farming or forestry. He said that it wouldn't be ten times as much, but it would likely be double. Mr. Maughan noted that this project's lease was 25 years with an option to renew for another 10 years, depending on how well the equipment is doing. He stated that the company has factored the projects to earn all the money in 20 years, so anything beyond that is extra, although the project could last longer if the equipment was still functioning well.

Mr. Keller commented that the owner has the responsibility to remove equipment, and asked if that meant SolUnesco and similar corporations would be leasing land and putting equipment on it until its life was done, and then moving and putting the facilities on new, unused lands.

Mr. Maughan responded that SolUnesco would be responsible through its contractual obligation with the landowner for removing that, and confirmed that this would be bonded – with funds set aside for it, as stipulated in the contract with the landowner. He added that the scrap value of the recyclable material would be worth enough to justify removing it, just on those grounds.

Mr. Lafferty asked if the process would eat up 25% of the energy.

Mr. Maughan responded that he did not think it was that high, but as with any form of electro-generation, the efficiency was not perfect – and the same goes for nuclear and coal.

Ms. Riley asked about supplemental regulations to address the viewsheds, which would include more than just Monticello, and asked what was required in other localities – specifically regarding the viewshed.

Mr. Maughan responded that this was the first time SolUnesco had to do a ZTA, as a lot of counties had existing ordinances that allowed them to apply directly. He said there were other localities that had supplemental regulations, such as Rockingham and Mecklenburg counties, and some of those had been shared with staff. Referencing a slide presented, he stated that the majority of localities listed went through with a standard special or conditional use permit, on top of existing ordinances.

Mr. Lafferty asked if there had been any issues with airports in terms of glare.

Mr. Maughan responded that anything within three miles of an airport required glare analysis, but SolUnesco has not built within three miles of an airport. He stated that one of the first and largest utility-scale facilities was located on an Air Force base in the Southwest U.S., and the commander of that station spoke with SolUnesco and provided feedback that it really wasn't an issue, with the U.S. Airforce being willing to build them at the end of the runways.

Mr. Blair stated that if it were Dominion, they would still need to get an SP for a solar-generation facility.

Mr. Keller closed the public hearing.

Ms. Firehock clarified her earlier comment and said that the County was not interested only in the views from historic places but was also concerned about the quality of life for rural residents who enjoy a rural view. She stated that there were some things typical in the rural area, such as silos and barns, and these facilities were not invisible, so she would be considering visibility when reviewing an SP. Ms. Firehock stated that the visibility would impact more than just adjacent landowners, as it could be visible to those beyond the neighboring parcel. She emphasized that she wanted to do more sophisticated analysis using land image technology.

Mr. Keller asked for confirmation from Ms. McCulley that the land would remain agricultural but would have a special use approved.

Ms. McCulley confirmed this.

Mr. Blair stated that the quirk that had developed in the composite index, which dictates how much localities receive from the state for school funding, was that the old interpretation would hurt the County's composite index because they wouldn't be generating revenue due to this

exemption – but the state tax commissioner issued a letter that cleared that up, and this would not be taken into account for the composite index, and there would be a hold harmless interpretation.

Mr. Dotson stated that solar energy systems also include non-photovoltaic systems, and he wondered if the term "solar energy systems" might be overly broad.

Mr. Clark responded that because the definition in the proposed ordinance only refers to photovoltaic systems, this should be adequate, although it may change in the future as other systems were developed.

Mr. Dotson said that if it is included as part of the use itself, not just in the definition, it makes it less likely that someone could misinterpret it later on.

Ms. More stated that since the County is looking at an expedited approach with the special use permit and supplemental regulations, if they were considering this to be the process, with the applicant being involved with the process instead of having it in place ahead of time, based on what the Board was requesting.

Mr. Clark responded that the expectation is that if the new use is adopted and this applicant or another comes in very soon with an application for a specific site, all of the topics laid out might eventually end up in the supplemental regulations – possibly even for a by-right version of the use – and would be included in the conditions of approval for the special use permit. He emphasized that they would be reviewing the same factors and limiting the use in the same way, with the first few done through conditions until they have more experience with how these works, prior to coming up with standards that apply to all of them.

Ms. More said she would suggest that there is some value in reviewing the supplemental regulations that other localities have in place.

Mr. Clark agreed.

Mr. Lafferty stated that he encouraged the County to pursue use of solar panels, noting that when he lived in Chapel Hill, the state of North Carolina helped subsidize them. He said that the panels ran an entire dairy and ice cream shop, and in Europe, every farm has them – with the solar cell cost dropping by the day.

Mr. Keller noted that the glare analysis mentioned by the applicant was not on staff's checklist.

Mr. Clark responded that it was an FAA requirement to have that analysis done near airports.

Mr. Keller stated that since they are concerned about glare, they may wish to further explore it, especially with the initial solar facilities – just as they have with the balloon tests and the location of certain apparatus on cell towers.

Mr. Clark said it was definitely something they could consider further, and he did not know if the

FAA analysis was relevant to ground impacts or not, but some type of glare analysis could be worked into the review.

Mr. Keller stated that there had been some euphemisms used for grading, such as "smoothing out the land," but they were all in agreement in the County that they would like to see as little topographic manipulation as possible. He said that it may be possible to put the elements of this facility on the land so there is relatively little manipulation.

Ms. Firehock noted that there would also be equipment brought in for the facilities and road access for that process, and said that while she strongly supported alternate energy, she would prefer putting them on dry, flat land that was not prime agricultural soil that would be covered up – so there were some impacts to the landscape.

Mr. Lafferty moved to recommend adoption of ZTA 2016-00007, Utility-Scale Photovoltaic Generation Facility. Mr. Dotson seconded the motion, which passed unanimously (7-0).

Committee Reports

Mr. Keller invited committee reports

Commissioner Spain reported that the Pantops Community Advisory Committee had met the previous evening and staff had presented the master plan and how it may be updated, along with the process for doing so. She noted that it was a timeline but no specific dates yet, and commented that it had been a very thorough review and would appear on the CAC agenda in the near future.

Commissioner Spain reported that the Places 29 CAC had also met the previous week and discussed the funding initiatives prioritized for that region, and they were also considering an area bus tour so that CAC members will know exactly what the boundaries are. She mentioned that Supervisor Normal Dill attends both CACs, and asked fellow Commissioners if their Supervisors also attended regularly.

Commissioners confirmed that their Supervisors attend regularly.

Commissioner Riley reported that on May 18th the 5th and Avon Street CAC met and primarily reviewed the neighborhood funding initiative results. Supervisors Palmer and Randolph were there and talked with us about the next steps in terms of the Board of Supervisors initiative.

Commissioner More reported that the Acquisition of Conservation Easements (ACE) Committee had met and reviewed the new pool of applicants for 2017. She said the committee reviewed the criteria by which they rank properties, and this was a good time to review how different aspects of the property were weighted in establishing priority properties, which they would continue to discuss. Ms. More noted that the Historic Preservation Committee did not meet in May.

Commissioner More reported the Crozet CAC met last week and the discussion was largely surrounding the neighborhood funding called the NIFY projects. The list was refined at the

previous meeting so the group spend a lot of time looking at those projects that ranked the highest. We had a huge amount of community feedback and so they ranked projects those $50,000 and under and then those above which helped people sort out and prioritize those projects. Supervisor Ann Mallock does attend all of our meetings. Emily Kilroy was there. She said the CAC just continued to discuss which projects they would see and we were given direction on how the Board would move forward in mid-June when they meet again. They also discussed creative alternatives.

Commissioner Spain pointed out one of the points made was the Board has decided to allocate some amount of money to every CAC area, which was not clear before. She thought that was also reassuring to members.

Commissioner Dotson reported the Rio 29 Small Area Plan Group held a charrette last week. The official report of the results won't be in until next week. But, my own take was there were three options laid out for the area. One that it would function as the center of the county. A second was it would be the center of 29North. The third option was that it would simply be a center amongst many centers in the county. My sense of the reaction to those was that people were sort of in the middle range; they did not so much see it as being the center of county. He thinks there was some concern about having greater density, greater intensive activity but not too much. Therefore, I am waiting to see what the actual summary of the results is that comes back from the staff.

Commissioner Dotson reported the Residential Impact Fiscal Committee had our initial meeting last week and sort of two things emerged in my mind. One was looking specifically at how the county might within the current state laws find a way to offset some of the cost impacts of residential development. Theme two, and Mr. Butler in particular made comments to this effect, was to look much more broadly at the issue of "impacts" not just necessarily the "cost impacts" of development and to look at some innovative other tools that had been successfully used in other locations. Therefore, the committee pretty much agreed that we needed to do both of those neither to the exclusion to the other and that they both were urgent. Therefore, we are going to split our time on two fronts as we go forward rather than addressing one and then the other.

Review of Board of Supervisors Meeting – May 10, 2017.

Mr. Andrew Gast Bray reviewed the actions taken on May 10, 2017. Of interest to the Commission was the Riverside Village, Woolen Mills and LL Bean.

New Business

Ms. Rebecca Ragsdale reported that staff wanted to update the Commission on an item that was on the Board's May 3 agenda, residential transient occupancy. She stated that terminology had come up frequently in these discussions, with a lot of people referring to this as Air B&B, Homestays, and short-term rentals, but in terms of the County's ordinance, this means transient lodging in residential homes. Ms. Ragsdale said they discussed this with the Board at a May 3 worksession, because when the Community Development work program came up at the Board in March, they indicated a high level of interest in transient lodging. She noted that staff would

review four issues related to transient lodging, and the Board direction was to primarily discuss taxation issues related to this type of use and make any necessary changes so it is clear in the code that transient lodging is a taxable activity.

Ms. Ragsdale stated that the County has had the need to look at this in the Comprehensive Plan, and there is a strategy in both the Development Areas and Rural Areas sections of the plan, which is why this was on staff's list for discussion with the Board – to study the issue and the extent to which it is occurring, and address whether the County needs to do anything about it. She said that transient lodging was becoming increasingly popular, so it was a good time to discuss it, and staff wanted to proceed in a way that meets the Comp Plan strategies and strategic plan goals related to preservation of rural areas, ensuring quality of life, and addressing neighborhood impacts in the development areas, as well as recognizing some of the economic aspects of these types of uses.

Ms. Ragsdale stated that there were four topics discussed with the Board, including clarification to the BPOL/licensing section of the County Code and the section pertaining to transient occupancy tax requirements. Ms. Ragsdale stated that she would update the Commission on legislation at the state level that would become effective in July, and the term the state has used in that provision in the state code is short-term rental registry, Senate Bill 1278. She said the other topic is how to move forward with consideration of changes to the zoning ordinance and the timeline for proceeding. Ms. Ragsdale reported that the tax code sections would be going to the Board in June, with the Finance Department taking the lead, and that would level the playing field. She noted that staff had listened to a number of different webinars, as well as reviewing what other localities around the state and country were doing, but the County would modify the code section to stipulate that transient lodging is taxable in the same way as traditional bed & breakfasts, hotels and motels.

Ms. Ragsdale reported that with the short-term rental registry, the new state code provision includes the language of "may," not "must," and it does not in any way affect existing local authority to regulate and tax these uses. She said that the registry would be administrative in nature, would be yearly, and could incur a fee related to registry costs, requiring the name and address of the operator. Ms. Ragsdale stated that this would also provide some additional enforcement tools, and any issues with non-compliance could mean prohibition of rental operation after three substantiated complaints – as well as fines. She said that staff was working with the County Attorney's office to determine the best place in the code for this and the easiest way to take advantage of it.

Ms. Ragsdale stated that staff was letting the Commission and Board know what was already allowed in the ordinance, and there could be up to five rooms rented in a single-family detached dwelling, used as such in the development areas. She said that in the rural areas, an operator may also have guest rooms in accessory structures, but the total for both would still be five. Ms. Ragsdale noted that on rural area properties with two single-family detached dwellings, there could be up to two bed & breakfast uses. She mentioned that in the ordinance for the rural areas, these uses are referred to as bed & breakfasts; in the development areas residential districts, the uses are called accessory tourist lodging. Ms. Ragsdale stated that when the County changed rural area regulations in 2012, they wanted to make a distinction, so they called it bed &

breakfast in the rural areas – but it could also be more of an Air B&B-style activity. She stated that an owner cannot rent out their entire home without an owner or manager present, and this type of activity was not associated with townhomes or apartment units, and accessory structures in the development areas were not allowed to be rented. Ms. Ragsdale added that special events cannot be done as part of transient lodging rental and would still require a separate special use permit.

Ms. Ragsdale reported that staff reviews parking for transient lodging and there is a zoning clearance application, which is handled as a staff-level review in the Zoning Department, whereby staff determines that all requirements have been met in terms of the zoning ordinance; there is also a fire marshal inspection and determination that fire alarms meet current code; and where applicable, there may be an application needed with the Health Department, and that is a $40 fee. She stated that she has seen an increase in these types of applications, and once zoning clearances are approved, a user would need to get a business license and get set up with Finance for tax purposes – if they meet those thresholds.

Ms. Ragsdale reported that since 1990, the County has reviewed 84 applications, and the new County View system enables staff to break this down between bed & breakfasts and accessory tourist lodging. She pointed out that either because they don't know they need to comply with regulations or are choosing not to contact the County, there are people operating without the proper approvals, which factors into compliance. Ms. Ragsdale stated that in looking at hosting platforms online, staff has identified about 120 listings, with about 2/3 or 73% in the rural area, and 1/3 or 27% in the development area – and about 2/3 overall able to meet current regulations, based on what online listings reveal, and 1/3 of them not able to meet regulations.

Ms. Ragsdale reported that going forward, the Board would have another worksession on July 5th to explore the topic beyond their May 3rd discussion, and they would address how to close the compliance gap, whether to keep current regulations as they are or whether they want to consider whole-house rentals whereby an owner or manager might not be present, and whether to consider those options for other housing types. She stated that staff would not recommend rental of accessory units in this way, as they should be available for living space, not transient lodging. Ms. Ragsdale reiterated that staff does not recommend changing special event requirements, and also does not recommend changing the number of guest rooms. She said that the Board directed staff to move forward on the tax changes, and after the July worksession would discuss the next steps for the zoning study. Ms. Ragsdale noted that the Board had seen staff's draft public process when it was presented at the May worksession that staff hoped to re-address in June, but that item was bumped until July, at which time they would visit that and other issues, including staff's information from other localities.

Ms. Riley asked for clarification as to whether staff's recommendation to be considered of "periodic whole house/apartment rentals" meant there would not need to be an owner onsite.

Ms. Ragsdale responded that staff had put that on the list of things to be considered, with the owner or manager not present onsite during rental, but someone being available by phone if there were any issues. She pointed out that putting the items on the list doesn't suggest that any other regulations would change with regard to safety – building inspection, fire marshal, and parking.

Ms. Riley asked if it was fairly well-established practice in other localities to not require the owner or manager to be onsite during rental.

Ms. Ragsdale responded that it varies, but some other localities have added provisions in their ordinances but have limitations as to the number of days per year they could do that type of rental.

Ms. Elaine Echols stated that one of the concerns about not having an owner/manager is the potential for a "party house," and the County has a requirement for accessory apartments as a resident manager. She said that this has been a starting point, but other localities do allow for whole-house rental a number of times a year, which seems to be increasingly popular. Ms. Echols stated that the Board may want to put something out that is more conservative or more liberal, but what has been presented is a place to start.

Mr. Dotson asked if renting a house for the summer, which is three months, would still be considered transient lodging.

Ms. Ragsdale clarified that transient lodging is for less than 30 days at a time, and anything longer would make them a resident.

Regarding the attached units in the development area, such as Belvedere, Mr. Dotson asked if the specific zoning would trump the general zoning.

Ms. Ragsdale replied that the ordinance did not allow it in those types of units – only a single-family dwelling that is used as a single-family dwelling. She stated that in this process, they would consider that neighborhood models create their own codes of development and must list uses as to whether they are allowed or not. She added that this use was not permitted in carriage houses or garages with extra space.

Ms. Echols stated that the accessory units and carriage units were intended to be affordable housing, so the transient lodging recommendations are in keeping with that.

Ms. Firehock stated that in terms of periodic rentals, this seems problematic as there are not nighttime zoning police or a means by which to effectively enforce the presence of an owner or manager onsite during rental.

Ms. Ragsdale responded that there would be a permitting process and regulations, and if people violate them, it's usually complaint driven. She stated that staff would determine what issues have arisen in other localities prior to making any changes in the ordinance, but they do want to address the existing compliance gap before it gets any bigger. Ms. Ragsdale noted that there would be publicity and outreach so that it was clear and simplified as to what is required for compliance.

Ms. Spain asked if other localities had distinguished between the large corporate organizations such as VRBO and Home Away, versus individuals who advertise independently.

Ms. Ragsdale clarified that the land use regulations have not been dependent on how rentals are publicized, online and elsewhere.

Ms. Echols noted that the number of facilities were based on the number of rooms, and a proprietor may be advertising each room separately – so they could all be in one house. She said that staff was surprised at the numbers they uncovered, and her estimate is that there are probably 15-20% more rooms, but perhaps not as many facilities as might be assumed by doing an online search with VRBO and similar.

Ms. Spain asked how staff determined the 2/3 compliance figure.

Ms. Echols responded that they went to each site and tried to glean what was being offered, and the different host information and comments from renters provide insight in this regard.

Mr. Lafferty stated that at one point, UVA had compiled a list of people willing to rent out their homes, with their own inspection to see if it met their standards, and he encouraged staff to coordinate with the University on this.

Mr. Keller noted that if it is still in existence, there is a $60 fee required to have your property advertised there. He said that one of staff's draft recommendations is to have apartments included as transient lodging, and asked if a jurisdiction could elect to omit one specific housing type.

Mr. Blair responded that legally, they could, because currently the County has in effect chosen a certain housing type.

Mr. Keller asked if they had spoken with the police department about this type of transient housing in apartment complexes in the County.

Ms. Ragsdale responded that they have not.

Mr. Keller encouraged staff to do that, as there has been a concern among police that it can provide a cover because of the number of units and the types of operations – even things like human trafficking – that can be easily moved around through the facilities easier than in single-family detached units or townhouses.

Mr. Keller also asked about the BPOL tax and the impact of increasing that annual figure.

Ms. Ragsdale responded that there is a threshold for when BPOL is required, and there has been discussion that Finance may recommend increasing that.

Mr. Keller asked if the amount allowed by the state as transient housing tax differs for counties and cities in terms of what they can charge for that.

Ms. Ragsdale responded that she was not sure if there was anything in the state code limiting the transient occupancy tax limits, and the amount is 5% to be sent in monthly, based on gross receipts – with the lodger technically paying the tax and the host collecting it and sending it into the County.

Mr. Keller commented that if someone was doing this legally and was making $2,000 a year on five rooms, that would put them above the BPOL and that would kick them into that tax structure as well. He noted that the County was essentially missing out on two forms of taxation.

Ms. Ragsdale stated that it was not being collected because of the existing compliance issues.

Mr. Keller asked if the Commission was expected to make a recommendation for the Board.

Ms. Ragsdale replied that this is just intended to be informational at this point, and staff wants the Commission to be prepared going forward as they discuss the topic further. She confirmed that there is more work to be done on the land use portion part of this, per the Board's direction.

Ms. Echols said that staff's impression from the Board is that they want this to go quickly once the decision is made to move forward with this, and staff wants to minimize any surprise on the part of the Commission.

Mr. Keller commented that this report from staff was extremely clear and organized, and both Ms. Echols and Ms. Ragsdale's verbal presentations have been very clear. He also noted that the numbers seem to be low in terms of units.

Ms. Echols said that staff approached this by taking the role of a guest trying to find a place to stay, with parameters such as Charlottesville, Albemarle, Greene, Louisa, etc. – and the only way to determine exact location was to go in and read each listing.

Mr. Keller stated that the next Planning Commission was scheduled for June 20, and asked if Commissioners had vacation dates already established for the summer.

Ms. Firehock suggested emailing those dates, as she had significant travel ahead and it would take too long to go through it verbally.

Mr. Keller agreed, providing everyone would respond in a timely fashion.

Mr. Keller noted there will be no meetings on Tuesday, May 30, 2017, June 6, 2017 and June 13, 2017. The next meeting will be on June 20, 2017.

Adjournment

Mr. Lafferty moved to adjourn the meeting. Ms. More seconded the motion, which passed unanimously (7-0).

With no further items, the meeting adjourned at 7:48 p.m. to the June 20, 2017 Planning Commission meeting at 6:00 p.m., Lane Auditorium, Second Floor, County Office Building, 401 McIntire Road, Charlottesville, Virginia.

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Andrew Gast-Bray, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)

Approved by Planning Commission
Date: 7-11-2017
Initials: SCT