

ORDER GRANTING A SPECIAL USE PERMIT

Sasser Solar, LLC

The Wayne County Board of Commissioners, convening as the Wayne County Board of Adjustment (Board) met in regular session on March 7 and April 4, 2023, to consider an application for a Special Use Permit for a Solar Facility filed by Sasser Solar, LLC (Applicant) pursuant to the Wayne County Zoning Ordinance, Article 5, Section 54 (Special Uses).

Having reviewed the application, the report of the Planning Director Berry Gray, and having heard all the evidence and arguments by the Applicant and those in attendance, the Board makes the following Findings of Fact by a vote of 5-1 based upon substantial evidence presented:

FINDINGS OF FACT

1. The application was duly filed and complete.
2. Notice of the application by posting of the property, notification in a newspaper of general circulation, and notice to surrounding owners was properly accomplished as required by statute and the Zoning Ordinance of Wayne County.
3. The application is for the construction of an 80-megawatt solar facility on approximately 1,180 acres owned by Goldsboro Milling Company, G & L AG Properties, Maxwell Foods LLC, and Six Maxwells, LLC and, described as Parcel IDs: 3514598631, 3514777003, 3514785137, 3514866539, 3514975820, 3515602459, 3515717657, 3515908920, 3515913251, 3524056505, 3524089381, 3524141936, 3524196040, 3524197583, 3524216815, 3524271737, 3524289502, 3524298672, 3524329974, 3524336539, 3524421210, 3524440303, 3524455066, 3524501957, 3524505875, 3525009919, 3525011953, 3525113367, and 3524433539.
4. All witnesses were under oath and all parties were given opportunities without time limit to present evidence and to cross-examine witnesses.
5. The underlying tract is zoned RA-20 (Residential-Agricultural), a zoning district that allows solar facilities subject to an applicant meeting the standards of a special use permit.
6. The Applicant presented the following competent, material and substantial evidence in its application, other written materials, and through witness testimony, that it meets the standards in the Wayne County Zoning Ordinance precedent to the issuance of a special use permit, as follows:
 - A. **The proposed use does not affect adversely the general plans for the physical development of the county and will not be contrary to the purposes stated in these regulations.**

1. Solar facilities are listed as allowed uses in this zoning district, subject to issuance of special use permits. Such listing establishes a legal presumption that the use is legislatively presumed to be consistent with the general plans for development. No contrary evidence was presented to challenge this legal presumption.

2. The Solar Energy Ordinance establishes numerous operational and developmental requirements for solar facilities. Meeting these requirements establishes further legal presumptions that the proposed solar facility is consistent with general plans for the development of the county.

B. The proposed use will not adversely affect the health and safety of the county residents and will not be detrimental to the use of development of adjacent properties or other neighborhood uses.

1. The Applicant presented a report by Thomas Cleveland, consulting engineer, and testimony by Mr. Cleveland himself regarding the aspects of solar technology, which explained in detail why solar facilities will not adversely affect health and safety. Among the facts presented by Cleveland are:

a. The materials used are primarily steel, glass, and products found in most household electronic appliances.

b. Photovoltaic electricity is emission free, and produces no emissions for absorption into the air, ground, or water.

c. If battery storage is used, the batteries have demonstrated over time and wide use to be safe.

d. Electromagnetic fields (EMF) exist anywhere there is electricity, and the EMF from a solar farm is lower than from cell phones and wireless internet. At the perimeter of a facility, EMF is so low that it cannot be distinguished from background EMF

e. All equipment will meet or exceed the standards of the National Electric Code, and all equipment is listed with and will contain the stamp of Underwriters Laboratories, a safety consulting and certification company that specializes in the public adoption and drafting of safety standards for electrical devices and components.

f. The facility will be surrounded by a fence to protect both the public and the facility from unauthorized access.

2. Sasser Solar also produced the following substantial evidence that this facility will not be “detrimental to the use of development of adjacent properties or other neighborhood uses:

a. Solar facilities do not create environmental noise that would disturb the emotional health of residents. In most circumstances, someone standing at the closest point off-site is not able to hear the slight and barely audible hum generated by inverters in the interior of the facility.

b. Water that hits the panels is absorbed into the ground and is not diverted from groundwater collection in aquifers. There are no products or by-products that can leach from the panels to harm groundwater.

c. Once construction has been completed, there will only be two to three visits per month for routine maintenance. Most days will have no vehicle trips. Accordingly, traffic does not present a danger to public safety.

d. Solar facilities are dark at night.

e. This facility will be concealed by existing or planted vegetation. Therefore, it won't be easily seen, and it won't be heard, have lights, or generate perceptible traffic.

3. The Applicant also produced a 79-page Market Impact Study by Kirkland Associates, presented by Nick Kirkland, who used paired-sales analyses consistent with the standards of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice. His study demonstrated that there will be no harm to the market value of adjoining properties caused by this facility. Among other things, the market impact study demonstrated that a land use that has a negative effect on nearby property values is called an "external obsolescence." Common factors that make a land use an external obsolescence are noise, unreasonable traffic generation, dust, lights, odor, and threats to public health, and there is nothing about a solar facility's quiet, odorless, dust free, low traffic characteristics that would make it an external obsolescence. His studies using paired sales analyses demonstrated that there would be no effect on values of adjoining properties.

C. The proposed use will not be adversely affected by existing uses and will be placed on a lot of sufficient size to satisfy the space requirements of said use.

The Applicant presented evidence in the form of the application itself and site plan produced by Kimley-Horn that existing uses would not adversely affect the solar facility and that the site was of sufficient size to accommodate the proposed facility.

D. The proposed use will not constitute a nuisance or hazard because of the number of persons who will use such a facility, the vehicular movement or the noise or fume generation.

1. Solar facilities produce no audible noise or fumes, and they are quieter than many agricultural operations.

2. This facility will have maintenance teams visit the property approximately twice a month during growing season and less often during colder months, and otherwise be an unmanned facility. By ordinance, a 30-foot easement to public right of way shall be provided.

3. No aspects of a solar facility generates fumes.

E. The proposed use shall be subject to the minimum dimensional requirements of the district in which it is to be located and shall conform to the off-street parking and loading regulations.

1. Sasser Solar has produced a site plan sealed by engineers at Kimley-Horn that demonstrates compliance with all dimensional requirements of this district and the Solar Energy Ordinance, including proper height and setback requirements.

2. No off-street parking is required.

F. Opposing Testimony

There was no competent, material, and substantial evidence presented by opponents that the applicant failed to meet any of the SUP standards, although neighbors did raise concerns about width of buffers and access.

ADDED CONDITIONS

The Board requires the Applicant to meet the following conditions and hereby imposes them and incorporates them into this SUP. The first two conditions must be addressed prior to issuance of building permits:

1. The project owner shall partner with the U.S. Department of Agriculture (USDA) representative at Seymour Johnson AFB to allow USDA access to the project to observe/collect real-time data and provide mitigation strategies to reduce bird attractants.

2. The project owner shall implement long-term bird mitigation efforts on-site as part of the development plan.

3. The project owner shall implement and share an accompanying scientific study to capture pre-construction bird/wildlife data for applicability to the larger USAF/DoD and FAA discussion. Post-construction bird/wildlife data will be provided after the building permits are issued and project is operational.

4. The project owner shall provide Seymour Johnson Air Force base a Solar Glare Hazard Analysis Tool report based on the locations and heights provided in the base's comments, inclusive of the intended panel type and coating (e.g., deeply textured glass, etc.).

5. The project owner shall develop 50-foot vegetative buffers along Indian Springs Road as shown on the site plan prepared by Kimley-Horn.

6. The project owner shall leave an undisturbed 200-foot vegetative buffer along the east side of the property owned by Mr. Larry Grady and a 100-foot undisturbed vegetative buffer north of Mr. Grady, as shown on the site plan prepared by Kimley-Horn.

7. The project owner shall leave a 200-foot undisturbed vegetative buffer running approximately 1,200 linear feet, as shown on the site plan presented by Kimley Horn. The site plan presented at the public hearing April 4, 2023, showed a 100-foot vegetative buffer along Broadhurst Road, but the applicant offered the binding condition that the buffer should be increased to 200 feet.

8. The site access near Gurney Lane was moved and is properly shown on the site plan submitted by the applicant on April 4, 2023.

9. The applicant agrees to prominently flag the vegetative buffers described in Added Conditions Nos. 5, 6, and 7.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law by vote of 5 to 1:

1. All local and state notice requirements were met.
2. The rights of the Applicant and witnesses to participate fully in the proceeding were met and protected.
3. Sasser Solar, LLC presented competent, material, and substantial evidence that it complies with all standards in the Wayne County Zoning Ordinance precedent to the issuance of a Special Use Permit.
4. Sasser Solar, LLC is entitled to a special use permit as a matter of law, and it shall be required to meet all special conditions imposed by this permit.

Ordered this 4th day of April, 2023 and signed and filed with the Clerk to the Board this 11th day of April, 2023.




Barbara Aycock, Chairman
Wayne County Board of Adjustment