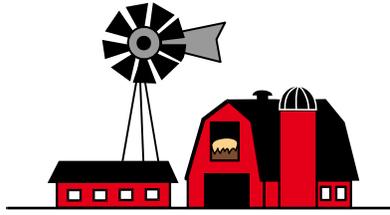


# TOWNSHIP COOPERATIVE PLANNING ASSOCIATION

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-- TCPA --

Date: 8/30/2020

To: Cascade Township Planning Commission  
Cascade Town Board

Re: Conditional Use Permit – CTCUP-20-03  
Cascade Township - Section 19

Public Hearing: On Tuesday, September 15, 2020 after 6:00 pm the Cascade Township Planning Commission will hold a public hearing at the Cascade Town Hall, 2025 75<sup>th</sup> Street NE, Rochester, MN

Request: An application for a Conditional Use Permit for a 134-acre solar garden. The proposed solar garden will produce approximately 10 MW of power supplied to Rochester Public Utilities. The property is zoned A-2; Agricultural Protection District.

Propoerty Owner: Gill Properties, 511 Northern Hills Drive NE, Rochester, MN 55906

Applicant: Westside Solar Partners LLC, Gordy Simanton, 2325 Grand Avenue South, Minneapolis Minnesota 55405

Power Purchaser: Rochester Public Utilities, 4000 E River Rd NE #2813, Rochester, MN 55906

Location: 5516 Valley High Road NW, Rochester, MN  
Located approximately ¼ mile west of the intersection of 50<sup>th</sup> Ave NW and Valley High Road NW on Valley High Road NW.

Olmsted County  
Parcel #'s 74.19.42.073609; 74.19.31.073607; 7419.34.073606; 74.19.42.073610; 74.19.42.071507

Reviewers: Olmsted County Public Works  
Minnesota DNR  
Rochester Public Utilities  
MN Energy  
Olmsted County Assessor  
GGG Engineering

Minnesota Pollution Control  
Olmsted County Planning  
Minnesota Department of Transportation  
Olmsted County Public Works  
Olmsted County Soil and Water  
Olmsted County Health Department

Attachments:

1. Applicant's submittal
2. Location Plat Map
3. Aerial Photo Map

Ordinances in regular type, staff findings in *italics*.

Section 10.52 SOLAR ENERGY FARMS:

A. Purpose: Olmsted County supports the use of solar collection systems and the development of solar energy farms. The development of solar energy farms should be balanced with the protection of the public health, safety, and welfare. The following standards intend to ensure that solar energy farms can be constructed within Olmsted County while also protecting public safety and the existing natural resources of the county. The provisions of this section of the ordinance shall apply within all zoning districts. In no case shall the provisions of this ordinance guarantee rights to solar access.

B. Location and Site Design Requirements:

1. General District Regulations: All elements of the solar energy farm shall meet or exceed all general district regulations based on the applicable zoning district.

*In this instance the parcels are located within an A-2 Agricultural Protection District.*

*Section 5.00 Agricultural Protection District; B. Conditional Uses are as follows: 22. Solar energy farms (photovoltaic systems). All the general district regulations regarding setbacks will be reviewed during the construction permitting process including the additional setbacks required for solar farms. A building permit will be required to install said units.*

*According to the application the units will be on an axis and follow the sun from east to west.*

2. The applicant must submit evidence that the solar power farm can connect to the off-site power transmission system, and evidence of electric power purchase contracts and power transmission contracts, or documentation that the power will be utilized on-site.

*A copy of the agreement to purchase the power is “Appendix F” of the applicant’s submittal.*

3. The land area within the solar energy farm must minimize soil erosion by complying with the standards of Section 10.20 of the zoning ordinance.

*According to the application, EDF Renewable Energy, 10 NE 2<sup>nd</sup> Street, Minneapolis, MN, has entered into a construction agreement with West Side Solar. As stated in their application EDF will provide a National Pollutant Discharge Elimination System permit along with a grading plan and construction plans. Even if very little grading is being done for the actual installation of the solar systems, a grading permit for the roadway and storm water will be required. Since the site was row cropped in the past, some type of cover will need to be planted. The application indicates planting types which when mature will not be taller than the panels.*

*Within the applicant’s Maintenance Plan, it calls for review of any environmental concerns at least annually.*

4. Solar energy farms shall not be located within the Shoreland District or Floodway District. Solar energy farms located in either a Flood Fringe or Flood Plain District shall be elevated to the flood protection elevation.

*Not applicable.*

5. Solar energy farms that utilize concentrating solar power (CSP) devices shall not be permitted to be located within Zones A, B, or C, the Horizontal Zone, the Conical Zone, or the Precision Instrument Approach Zone as designated in the Rochester International Airport Zoning Ordinance #5 as amended.

*Not applicable.*

**Federal Aviation Administration (FAA) Aeronautical Analysis.** While not a Cascade Township CUP requirement, a FAA aeronautical analysis is required before construction can commence. On July 20th, 2020 SolarStone filed a request with the FAA to authorize and conduct an aeronautical study on the proposed WestSide solar facility located on the Gill property. We received a comprehensive FAA report on August 11th, 2020 and this aeronautical study concluded that the solar panels and interconnection utility poles do not exceed FAA obstruction standards. The FAA determined the solar structures and accessories **do not** present a hazard to air navigation or communications to navigational facilities in the surrounding study area.

A copy of the letter of determination is provided in **Appendix G**.

6. Solar energy farms that utilize concentrating solar power (CSP) devices shall not abut or be located across a road from a land management unit of the Minnesota Department of Natural Resources, Olmsted County, or private conservation organization, county or city park, Type 3, 4 or 5 wetlands, or residential zoning district.

*Not applicable.*

7. All power lines used to collect power from the solar panels and all communications lines shall be buried underground compliant with the National Electrical Code or the standards and requirements of the National Electrical Safety Code where applicable. Where existing site conditions preclude the burial below the existing grade of the site the communications and power lines may be placed at ground level and buried with fill material that will permit re-vegetation or that does not cause or generate soil erosion. The connection of the solar energy farm distribution system load center (transformer, substation) to the electrical utility may be located above ground.

*The proposed plan will meet this standard.*

8. All unenclosed electrical conductors located above ground must be contained within structures that control access or must be protected from entry by a six-foot fence. All electrical connections to the utility system must meet the National Electrical Safety Code.

*The National Electrical Safety Code requires a seven-foot-high fence, thus the proposal is for a seven foot high fence. They are proposing the use of an agricultural type fence. This will be addressed in the conditions.*

9. Solar energy farms utilizing concentrated solar power devices (CSP) shall be required to provide a bufferyard "E" where located abutting or across a road from any residential zoning district.

*Some type of bufferyard should be considered for the non-farm properties which are adjacent to the solar installation.*

10. Decommissioning of Solar Farms: The applicant and future owners shall ensure that facilities are decommissioned upon the end of project life or facility abandonment. A decommissioning plan shall be submitted with the project application. Decommissioning shall include removal of all structures and electrical transmission components, and where buried remove all construction above and below grade, and restoration of the soil and vegetation to avoid temporary or long-term soil erosion consistent with Section 10.20 of this ordinance.

*Decommissioning plan has been submitted as part of the application.*

C. Conditional Use Review Criteria: In addition to the criteria identified in Section 4.02, the following additional criteria shall be applied:

1. To issue a conditional use permit, the Planning Advisory Commission must find that the design, construction and operation of a solar energy farm, taking into account mitigation, are not likely to result in a significant adverse impact to the general public, adjacent properties and to natural resources.

a) The site design must be consistent with the following provisions for farms utilizing concentrated solar power devices.

1) Unless specified below, the minimum lot size for uses in this district is 5 acres.

*The proposal is over 5 acres.*

2) Development of the use shall involve the minimum grading necessary to conduct the use. Runoff shall be controlled so that there is no net increase in the amount or rate of runoff from the site following development. For sites for which the use prior to approval of development is cropland or pasture, runoff shall be controlled to a level equivalent to ungrazed grassland.

*The construction plans should address the post development storm water management. This should be addressed in their grading permit application.*

3) Front yard and side street side yard setbacks shall be a minimum of 45' from the road right-of-way line, or, if it results in a deeper setback, 45' from a line measured from and parallel to the road centerline as shown in the following table:

Roadway Design Classification	Expressway		Super 2	Other Arterials and Collectors		Other County and State Roads	Other Roads
	< 10,000	> 10,000		< 10,000	> 10,000		
Volume (ADT)	< 10,000	> 10,000	All	< 10,000	> 10,000	All	All
Setback from ROW	45'	45'	45'	45'	45'	45'	45'
Setback from Centerline	95'	105'	100'	95'	100'	95'	78'

*Setback from the right of way must be at least 45 feet. The proposal as submitted has a setback of 213 feet from the current road right of way. Even if the County were to require additional right of way in the future, the proposal should still meet the required 45-foot setback from the road.*

- 4) Side and rear yard setbacks shall be determined by bufferyard requirements (Section 10.08), but not less than 50 feet.

*Side and rear yard setbacks are required to be 50 feet and the plan as submitted will meet this requirement.*

- 5) Height Regulations for WECS: There shall be no height regulation placed on a WECS. The WECS located in this district shall comply with the setback requirements of Section 10.50.

*Not Applicable*

- b) Where concentrated solar power devices utilizing mirrors are proposed the project will be designed to reduce the likelihood of significant adverse effects to birds. The operation must avoid the creation of bird habitat or habitat for bird prey. The proposed project has been designed and will be operated to protect public safety, and specifically to prevent public access. That portion of the property developed within the solar energy farm must be fenced and gated.

*Addressed in conditions, there is no indication that the project will be using mirrors.*

- c) The proposed facility utilizing concentrated solar power devices has been designed and operated to prevent the misdirection of concentrated solar radiation onto adjacent or nearby property, public roads or other areas open to the public.

*N/A*

- d) The applicant must show that the solar collector system is properly located and aligned or adequately screened from view from the public right of way so as to preclude any glare from the equipment which would adversely impact the vision of motorists on the public right of way.

*The applicant has provided a reflectivity report.*

- e) A bufferyard to screen the system may be required as a part of the conditions of approval. It shall be based on the proximity of residential buildings and the solar collection system to the abutting public rights of way. The vegetation shall consist of canopy and conifer trees.

*Bufferyards should be considered for adjoining properties.*

- 2. In addition to the exhibits required under Section 4.02C, the applicant must submit the following exhibits with the conditional use application unless waived by the Zoning Administrator:

- a) Maintenance plan for grounds surrounding the solar collection systems.

*Included.*

- b) Plan for use, storage and disposal of chemicals used in the cleaning of the solar panels or mirrors.

*The maintenance plan indicates that chemicals shall not be used.*

- c) Where concentrating solar power devices are used the applicant must submit the site plan for review to the Minnesota Department of Natural Resources. A statement from the MNDNR addressing wildlife and habitat impact must accompany the application.

*Not included with the application although there is no indication that concentrating solar power devices are being proposed.*

- d) Submit information explaining how glare generated from the solar collector system will be screened from adjacent properties or that glare will not be created by the system.

*Included.*

- e) A decommissioning plan.

*Included.*

#### Section 4.02 - CONDITIONAL USE:

A conditional use is one that may or may not be compatible with other uses in that district within which it is located. The compatibility of the proposed use must be judged on the basis of the particular circumstances and may require the imposing of conditions. The conditional use will be granted after a petition for the permit has been approved by the Cascade Township Planning Commission.

- A. Criteria for Granting Conditional Uses: In granting a conditional use, the Cascade Township Planning Commission shall consider the effect of the proposed use on the Comprehensive Plan and upon the health, safety and general welfare of occupants of surrounding lands. Among other things, the Commission shall consider the following:

Staff comments and finding are in italics.

1. The proposed use will not be injurious to the use and enjoyment of other property in the neighborhood and will not significantly diminish or impair the values of such property;

*Non-farm building sites are north and northwest of the site on both side of the roadway along with one 10-acre site off the southeast corner. On the Olmsted County Land Use Plan map the property on the north side of the road is within the "Near Term Expansion Area" and properties to the east are planned for industrial type development. Properties to the south are mapped as "Long Term Urban Expansion" and properties to the west are mapped as "Urban Reserve Beyond 2050" all as a part of the City of Rochester's Comprehensive Plan. The Commission could consider if bufferyards should be required for any of these areas.*

*The Planning Commission should consider public input as well as additional information as may be provided by the applicant to determine if the proposal meets this criterion.*

2. The proposed use will not impede the normal and orderly development and improvements of the surrounding property;

*The area is designated as "Urban Service" on the Olmsted County Land Use Plan Map. This indicates that city services are planned for the area in the future. The question the commission should consider is if the solar site should provide buffering now or if any future development would provide the buffering on their properties.*

*We have not received any negative comments from the list of reviewers on this proposal. Solar energy is an environmentally friendly energy source. This proposal meets the stated purpose of this section of the ordinance, so unless public input determines otherwise, this criterion is being met.*

3. Adequate utilities, parking, drainage and other necessary facilities will be provided;

*The site plan provided by the applicant would not seem to impact the drainage of the site. The applicant will need to provide the storm water calculations with the construction plans showing that the proposed use will not increase the amount of runoff more than ungrazed grassland.*

*Once installed, parking should not be a problem. A requirement of the ordinance is that all electrical transmission within the site is done underground. During construction, the applicant will be required to keep all parking and equipment storage off the roadway.*

*Considering the above information and proposed conditions, it is determined that the proposal meets this criterion.*

4. Adequate ingress and egress will be provided to minimize traffic congestion in the public streets;

*Once constructed, traffic to the site should be less than a normal household. No additional driveway onto the parcel is proposed. A change in use access permit will be required from Olmsted County Public Works. The access permit will determine if any upgrades will be required to the roadway and where the access will be. Once the County has determined access requirements, the applicant shall be required to provide a site plan showing the driveway from that access point to their proposed site. In most instances this will be a shared access for both the solar development other site activity.*

*Considering the above it is determined that the proposal meets this criterion.*

5. The traffic generated by the proposed use can be safely accommodated on existing or planned street systems; and the existing public roads providing access to the site will not need to be upgraded or improved by the Township or County in order to handle the additional traffic generated by the use.

*As stated above, traffic, once construction is complete, should be less than a normal household. The current roads that serve the site should be more than adequate to handle the traffic.*

*Considering the above it is determined that the proposal meets this criterion.*

6. Adequate measures have been taken or proposed to prevent or control offensive odor, fumes, dust, noise, vibration, or lighting which would otherwise disturb the use of neighboring property.

*These items will be considered in the conditions of this permit.*

7. The special criteria or requirements indicated in Article X, General Regulations, are complied with;

The following Sections from Article X, General Regulations, found applicable to this proposal, have been considered;

Section 10.06 – Loading Requirements:

*Addressed in number(s) 4 and 5 above.*

Section 10.14 – Noise, Heat, Glare, Vibration, Smoke, Toxic Waste, and Noxious Fumes:

*This will be met with the conditions of the permit if approved.*

Section 10.16 – Exterior Lighting:

*This will be met with the conditions of the permit if approved.*

Section 10.18 – Traffic Visibility Zone:

*Parcel is not on an intersection so this section is not applicable.*

8. The water and sanitary systems are or would be adequate to prevent disease, contamination and unsanitary conditions.

*No sewer or water is proposed or required with said use.*

Conclusion:

Staff has reviewed this request in accordance with the applicable standards and provisions, as included in this report. Based upon review and analysis included above, Staff recommends approval with the following:

Prior to issuing the conditional use permit the following documents must be provided:

- A. Access permit from Olmsted County Public Works.
- B. Landscaping plan if the commission requires one.

Conditions:

1. The use shall not create odor, dust, noise, electrical disturbances, glare, or vibrations.
2. The applicant must obtain and maintain all applicable permits and licenses that are required by federal, state, and local agencies.
3. The site may be inspected at any reasonable time by township officials to ensure compliance with this Conditional Use Permit.
4. Ordinance setbacks must be met unless stricter setbacks are indicated within this permit, then those would apply.

5. There should be no advertising except for a non-illuminated name plate measuring not more than one (1) by one and a half (1-1/2) feet.
6. Fencing will be required around the entire site. The type and height of fencing shall be shown on construction documents and approved by the zoning administrator.
7. Construction should include “Best Management Practices” to prevent soil movement.
8. A change in use access permit, along with any road upgrades required by said permit, must be sought, received and any required work completed, before the proposed use can begin.
9. The narrative and plan submitted with the packet must be adhered to unless it conflicts with the other conditions within this permit.
10. Ordinance setbacks to both fences and structures will be enforced. No fence is allowed within 45 feet of property line abutting a roadway and no structure will be allowed within 50 feet of the property line on the abutting roadway. No fence will be allowed within 45 feet of a property line and no structure will be allowed within 50 feet of a property line. Bufferyards will be allowed within the setback area but not within the road right-of-way.
11. The entire site shall be kept in a reasonably neat and clean appearance, including weed control.
12. Review of Conditional Use Permit. This Conditional Use includes, at the discretion of the Town Board, a periodic review to determine compliance with the conditions of the permit (as stated in condition #3), and whether changed circumstances or conditions require changes to the permit. The Town Board may also elect, upon adoption of an appropriate resolution following verification of a complaint that a condition has been violated, to conduct a review of the permit. Said review shall only take place following written notice to the owner of the subject property and a duly noticed public hearing. Following such hearing, the permit may be amended based on changed conditions and experiences with the site.
13. Violation of the terms of the conditional use permit are subject to the provisions of the CUP and the Township CUP ordinances. Applicant shall have the rights and remedies provided in the CUP. Violations of the CUP may result in revocation of the conditional use permit. The Township shall have all remedies available to it, pursuant to its ordinance, or otherwise available to it in law or equity. Notwithstanding the foregoing, in the event that Applicant fails to perform any of the terms and conditions of the CUP, the Township shall provide

Applicant, in writing, a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis unless the Township determines that threat to health, safety or property require a shorter notice period. If the parties cannot resolve the matter, the Township may issue a notice of violation to Applicant setting forth, in detail, the action(s) that must be taken to remedy the alleged default and a reasonable time period for curing the default.

14. Reimbursement of Township costs. If a permit is revoked, the permittee shall also reimburse the Township for the Township's reasonable costs, including restoration costs and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.
15. Dust control must be provided on driveway during construction.
16. No staging of equipment on road right-of-way. All offloading of equipment shall be done on the property
17. The applicant must remove any noxious weeds prior to their bloom. The property owner or operator shall provide the township clerk with the name, phone number and address of the maintenance company in-charge of taking care of the grounds. If the township receives complaints on noxious weeds, the grounds keeping company shall be contacted and have ten days to address the issue.
18. Bufferyard "E" under Section 10.08 of the Cascade Township Zoning Ordinance shall be provided along the entire north end of the property, the first 100 feet along the east side and the approximately 450 where the proposed fenced area turns and goes south along the north west side. A landscaping plan shall be provided with the construction plans. The plan shall be reviewed and approved by the township zoning administrator. The bufferyard shall be in addition to the required fence and shall be maintained in its entirety as long as the use exists.