

CASE No. 2021-00127
RHUDES CREEK SOLAR, LLC
SUPPLEMENTAL RESPONSE TO SITING BOARD'S FIRST REQUEST FOR INFORMATION

10. Detail the status of any applications for zoning changes or conditional use permits that are required for this project.

Original Response: The Hardin County Development Guidance System Zoning Ordinance sets for zoning regulations for Hardin County. The Hardin County Planning and Development Commission (“Planning Commission”) adopted Ordinance 2020-011, whereby it authorized a solar facility greater than one acre to be considered as a conditional use on land designated in the A-1 (Agricultural), I-1, or I-2 (Industrial) zones. The Rhudes Creek Solar project is planned for land that is currently zoned as R-2 (Residential). Accordingly, the land will need to be re-zoned and receive a Conditional Use Permit (“CUP”) prior to construction and operation.

Following the Hardin County ordinances, Rhudes Creek previously applied for a zone change and conditional use permit with the Planning Commission. A hearing on those applications was held on June 15, 2021, during which the Planning Commission unanimously voted to approve the zone change from residential to A-1 (with a condition that some of the land would remain R-2 if the CUP was denied) and subsequently voted to deny the CUP.

On July 15, 2021, Rhudes Creek Solar filed a Petition for Declaratory Judgment and Verified Complaint and Appeal (“Petition for Declaratory Judgment”) in the Hardin Circuit Court. This case was docketed as Case No. 21-CI-994. In the Petition for Declaratory Judgment, Rhudes Creek Solar challenged a procedural defect that was created by a discrepancy between a state statute and the local ordinance. By judgment entered on September 13, 2021, the Court agreed and found that the Hardin County ordinance failed to comply with KRS 100.203(6) because the ordinance failed to give the applicant for a zone

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change and CUP the opportunity to elect to have the CUP heard by the Board of Adjustments. Accordingly, the Court held that the prior proceedings before the Planning Commission are not valid. Hardin County did not appeal that decision.

ibV Energy Partners is communicating and coordinating with the Hardin County Attorney's Office and Planning Commission on the next steps in the process for potential approval of the zone change and CUP. Prior to the Planning Commission's consideration of the renewed application for a zone change, Hardin County sought to amend its zoning ordinance in order to comply with KRS 100.203. On October 19, 2021, the Planning Commission approved a recommendation for a text amendment to the zoning ordinance. The Hardin County Fiscal Court held a first reading of that ordinance on October 26, 2021. It is anticipated that the Fiscal Court will vote to approve the text amendment after a second reading of the ordinance at the November 9, 2021, meeting. Rhudes Creek Solar anticipates that the Planning Commission will consider the zone-amendment application at the regular meeting scheduled for December 7, 2021. If the Planning Commission approves the zone amendment, Rhudes Creek Solar anticipates that the Board of Adjustments will consider the application for CUP at its regular meeting on January 6, 2022.

Supplemental Response: As stated at the evidentiary hearing on January 13, 2022, the Hardin County Planning Commission approved the zone change from residential to agricultural on December 7, 2021. A hearing by the Board of Adjustments was scheduled for January 6, 2022, but it was postponed due to inclement weather. The hearing on the conditional use permit was rescheduled for March 3, 2022. Rhudes Creek has notified the Board of Adjustments to continue that March 3, 2022, hearing. Rhudes Creek anticipates that the hearing will be rescheduled at a later time.

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Rhudes Creek requests the Siting Board issue approval for the construction certificate with the understanding that, prior to the start of construction, Rhudes Creek will comply all local planning and zoning requirements that existed on the date the application was filed, including obtaining any necessary conditional use permit.

Witness: Legal; Robin Saiz