

JOHN H. CLARKE (1942 - 2003)
JAMES L. CLARKE
J. KIRK CLARKE
MICHAEL M. CLARKE

PHONE 606-564 5527
FAX 606-564-4536

CLARKE AND CLARKE
ATTORNEYS AT LAW
119 SUTTON STREET
P. O. BOX 427
MAYSVILLE, KENTUCKY 41056

RECEIVED

DEC 01 2021

PUBLIC SERVICE
COMMISSION

December 1, 2021

Kentucky State Board on Electric Generation and Transmission Siting
Kentucky Public Service Commission
211 Sowers Boulevard
P.O. Box 615
Frankfort, KY 40602

RE: Renewed and Restated Notice of Intent to File Application of AEUG Mason Solar, LLC for Certificate of Construction for: an approximately 250 Megawatt Merchant Electric Solar Generating Facility in Mason County, Kentucky pursuant to KRS 278.700, et seq., and 807 KAR 5:110
Case No. 2021-00170

To whom it may concern:

Please be advised I represent the Mason County Joint Planning Commission.

Owen McNeill, Mason County Judge Executive, has forwarded to me a filing received by your office from AEUG Mason Solar, LLC regarding a potential Merchant Electric Solar Generating Facility in Mason County. The Mason County Joint Planning Commission disputes the local setback requirements set forth in that filing.

Specifically, AEUG Mason Solar, LLC's filing states that our local setbacks are "100 feet (in) the front yard, 50 feet for a side yard and 30 feet for rear yard." Those are the setbacks for A-2 zones under our Land Use Management Ordinance. However, George Larger, Administrative Official for the Joint Planning Commission, issued a determination letter on April 30, 2021 setting forth his interpretation of our Ordinance as applied to Solar Energy Systems and Merchant Electric Generating Facilities specifically. A copy of that determination letter is attached hereto and incorporated herein by reference. Mr. Larger has determined that, *at present*, Merchant Electric Generating Facilities are only a permitted use in I-3 Rural Industrial zones and **are prohibited in all other zoning classifications including A-2 zones**. AEUG Mason Solar, LLC issued a notice of appeal of that determination to the Mason County Board of Adjustments on May 25, 2021. That appeal is currently held in abeyance by agreement of AEUG Mason Solar and the Board of Adjustments.

Kentucky State Board on Electric Generation and Transmission Siting
Kentucky Public Service Commission
Page Two

The Mason County Joint Planning Commission has been considering regulation of solar energy for the entirety of 2021. The Commission recently held a two night public hearing on a potential text amendment to our Land Use Management Ordinance that more specifically regulates solar energy in Mason County. I anticipate that the Commission will make a recommendation to the Mason County Fiscal Court and City of Maysville regarding that text amendment sometime in the first half of 2022. I believe AEUG Mason Solar agreed to holding its appeal in abeyance in large part due to the active work of the Commission in working towards this recommendation to the Fiscal Court and the City whatever that ultimate recommendation ends up being. Regardless, until that recommendation is made and the Fiscal Court and City act on it one way or the other, the Mason County Joint Planning Commission stands by the determination letter issued by George Larger in April, 2021.

Please feel free to contact me at the above address or telephone number if you have any questions or concerns regarding this letter.

Yours very truly,



Michael M. Clarke

CLARKE AND CLARKE



Mason County Joint Planning Commission

Mason County Board of Adjustment
Maysville Board of Adjustment
Maysville/Washington Board of Architectural Review
216 Bridge Street
Maysville, KY 41056

George K. Larger, III, AICP



April 30th, 2021

To Whom It May Concern:

**RE: Unclassified Land Use Determination Letter – Solar Energy Systems –
Maysville and Mason County, Kentucky**

Within the past year, there has been a surge of interest in the development of Solar Energy Systems (“SES”) in Mason County. Currently, SES are an unclassified land use; pursuant to Section 406.61 “Unclassified Uses” of the Maysville/Mason County Land Use Management Ordinance (“zoning ordinance”), I am authorized to determine in which category unclassified land uses are classified. I have determined that SES shall be classified as an industrial use. Regarding inquiries as to the compliance of SES with the zoning ordinance, I offer the following:

Merchant Electric Generating Facilities – SES that qualify as merchant electric generating facilities defined by KRS 278.700 and regulated by KRS 278.704 are most similar to the Wind Energy Conversion Systems (“WECS”) land use in the zoning ordinance; therefore, merchant electric generating facility SES are currently permitted uses only on land zoned I-3 Rural Industrial and are prohibited in all other zoning classifications, which is consistent with local regulation of WECS. Also, as SES are an unclassified land use with the zoning text amendment process currently in progress to regulate them, the setbacks established for merchant electric generating facility SES by KRS 278.704 are still valid, since no local setbacks have been instituted to have primacy over them.

Exempt SES SES facilities of a municipally-owned electric systems or a public utility regulated by the Kentucky Public Service Commission or the Federal Energy Regulatory Commission are exempt from planning and zoning pursuant to KRS 100.324. SES facilities located on property qualifying as a farm in service to an agricultural use defined by KRS 100.111 are largely exempt from planning and zoning.

Accessory Structures – Ground-mounted SES to be used as accessory structures are currently considered to be industrial uses, are permitted only on industrial land, and are prohibited in all other zoning classifications.

Rooftop and Integrated SES Rooftop and integrated SES, which are mounted on or are an integral part of a structure, are expected to be permitted in all zoning

classifications once the zoning text amendment process has been completed, as they are located on or integrated into new and existing structures rather than being considered a separate land use. Therefore, they are currently permitted in all zoning classifications and are subject to the building permit application process.

Historic Preservation – All SES proposed to be on or integrated into structures located in either historic district and visible from a public way will require Certificates of Appropriateness from the Maysville/Washington Board of Architectural Review.

Determination – SES are only permitted as primary or accessory uses and structures on industrial land, are to be considered structures in terms of setbacks and other requirements in the zoning ordinance, and are prohibited in all non-industrial zoning classifications except when exempt from the planning and zoning process. SES that qualify as merchant electric generating facilities are only permitted uses on land zoned I-3 Rural Industrial, are subject to setbacks defined by KRS 278.704, and are prohibited in all other zoning classifications. Rooftop and integrated SES are permitted on structures in all land use classifications and may require Certificates of Appropriateness.

Please feel free to contact me if you have any questions.



George K. Larger, III, AICP
Planning & Zoning Administrator
Maysville/Mason County, Kentucky

