

July 10, 2024 Six (6) Point Document Regarding Silfab Solar Proposed Fort Mill Facility

The following document is presented in support of the argument that Silfab Solar, Inc.'s proposed use of the property located at 7149 Logistics Lane, Fort Mill, SC 29715 does not meet the intent of the Light Industrial Zoning classification assigned to that property. It will also demonstrate why York County Management should immediately issue a written notification of its intent to uphold the lawful decision made by the York County Board of Zoning Appeals on May 9, 2024.

Each point of this written document will have the following three parts:

- I. Outline of the current York County position as presented to the York County citizens ("the People") to support the original staff recommendation.
- II. Outline of the People's position as to why this development should not be allowed in Light Industrial (LI) zoning.
- III. Reference material to support the People's position.

Point #1

- I. In the Staff response to The Board of Zoning Appeals on May 3, 2024 paragraphs 3 – 4 of the Conclusion states: (Paragraph 3) "Rather, the Board would have to find that staff erred in determining that solar panels are a product of Computer and Electronic Products Manufacturing. This would require the Board to either attribute the product to another type of manufacturing, or find that it does not meet any defined use in the Zoning Code, and is thereby prohibited in York County. (Paragraph 4) Staff recommends that the Board uphold and affirm the Zoning Administrator's Interpretation regarding the various code sections related to uses permitted in the LI district".
- II. The People challenge the Conclusion above as being inconsistent with York County SC Code of Ordinances, Chapter 155, Subchapter J: Definitions and Acronyms. The definition for Industrial, Light reads: The assembly, fabrication, or processing of goods and materials by means that do not ordinarily create noise, smoke, fumes, odors, glare or health or safety hazards outside of the building or lot where the assembly, fabrication, or processing takes place; where the processing is housed entirely within a building. LIGHT INDUSTRIAL does not include hazardous material treatment and storage facilities, plating or enameling, or petroleum and gas refining. The Conclusion is also inconsistent with York County SC Code of Ordinances, Chapter 155, Subchapter D: Development and Design Standards, Code 155.948 Other Performance Standards. Zoning Staff and Administration have based their support solely on whether or not the NAICS classification of "Electronic Products Manufacturing" or "Computer and Electronic Product Manufacturing is allowable in the LI District and have disregarded any other compelling considerations such as toxic and explosive chemicals, toxic waste and toxic fumes all of which present a health and safety hazard to the community regardless of any mitigation processes to be put in place. This is evidenced in both the May 3, 2024 Staff letter to The Board of Zoning Appeals and the June 25, 2024 York County Management Statement in which both documents attempt to defer any responsibility for

processes and chemicals to be within the “sole jurisdictional authority and purview of SCDHEC”. While that statement may be true regarding DHEC jurisdiction it does not take into account the role DHEC plays in providing its approvals and permits. The DHEC review simply reviews the proposed facility and processes, determines if the process meets DHEC requirements, and provides feedback on what steps need to be taken to meet requirements if necessary. One very important factor that DHEC does not take into consideration is the actual location in which this facility is proposed to be built and operate. In other words, DHEC does not consider whether the proposed facility will be constructed in a Residential Zone, a Light Industrial Zone, a Heavy Industrial Zone, etc. That very important consideration falls squarely in the Zoning Administration’s purview per the York County SC Code of Ordinances.

The People contend that Zoning Staff and Administration erred in their responsibility to review this proposed project in light of the entirety of the Zoning Code description and not simply the appropriate NAICS classification. If they had reviewed the proposed facility versus the full intent of the code with the consideration that DHEC does not determine appropriate zoning, then they could only have reached the conclusion that the proposed use did not meet the LI classification.

III. Refer to:

- Exhibit B: June 25, 2024 York County Management Statement on Silfab Solar, page 3.
- Exhibit C: York County SC Code of Ordinances, Chapter 155, Subchapter J 155.1301 Defined Terms.
- Exhibit D: May 3, 2024 letter from Staff to The Board of Zoning Appeals, page 4.
- Exhibit G: Partial List of Silfab’s Pollutants and Explosive Chemicals.
- Exhibit H: Silfab Solar Modeling Analysis, Table 10.
- Exhibit J: York County SC Code of Ordinances, Chapter 155, Subchapter D: Development and Design Standards, Code 155.948
- Exhibit K: York County SC Code of Ordinances Chapter 155, Subchapter A Introduction, Code 155.002, Purpose
- Exhibit L: York County SC Code of Ordinances Chapter 155, Subchapter B Zoning Districts, Code 155.041, LI (Light Industrial)

Point #2

IV. In the statement issued on June 25, 2024, York County Management makes reference to a December 27, 2022 letter addressed to Judi Quinby which they claim “gave Silfab the legal right to develop the property for its intended use”.

V. The People challenge this as being an inaccurate statement for the following reasons:

- a. The letter simply points out the current zoning designation as LI and states the intent of LI District zoning.
- b. The letter acknowledges that the proposed use, as described, is “principally permitted”. It does not state that it is permitted by right because solar cell manufacturing is not specifically listed as an allowed use. Since it is not a by right development, the submittal is subject to discretionary review by Zoning Administration which is certainly warranted in this case given the controversial types and amounts of toxic and explosive chemicals involved.

- c. The letter clearly states it does not “constitute a permit and outlines what additional steps need to be taken for permitting.
- d. Nowhere in that December 27, 2022 letter does it state that it implicitly grants any legal rights to Silfab to develop the property for its intended use. For that matter, nowhere in that letter is any reference made at all to Silfab Solar, Inc.

VI. Refer to:

- Exhibit A: Copy of December 27, 2022 letter addressed to Judy Quinby.
- Exhibit B: Copy of the unsigned York County Management Statement issued on June 25, 2024.

Point #3

- I. In the June 25, 2024 Statement York County Management contends that “The decision by the BZA on May 9th did not apply to Silfab. The BZA was aware of this fact at the time of the meeting and communicated that to the public in attendance”. The statement goes on to say “The BZA decision on May 9th applies only to future projects in the light industrial district and refers to Code 155.1095; ...Any **DEVELOPMENT** (emphasis added) that occurs after the Zoning Code interpretation has been issued is subject to all applicable requirements of this Chapter, as revised by the interpretation”.
- II. The People contend that any statements made stating that the May 9 BZA hearing decision does not apply to Silfab are erroneous. The first comment that the BZA was aware that the May 9 hearing itself did not apply to Silfab does not pass the common sense test. Listen to the closing minutes of the video of the May 9 hearing. The motion is made as follows: “To reverse the interpretation of the Zoning Administrator that would allow solar panel manufacturing as a permitted use in a Light Industrial District”. The motion carries immediately and unanimously after an approximately 4 hour session. Why would the BZA as a whole come to this decision if they were aware that any decision they made that evening was not applicable to the appeal as submitted regarding 7149 Logistics Lane, Fort Mill, SC 29715? Secondly, how is it possible to interpret the wording of Zoning Code 155.1095 as not applicable to the entity that sparked the appeals hearing, namely Silfab Solar? Such an interpretation means that any zoning appeal, past, present and future, does not apply to the entity that caused the appeal to be pursued. By that logic, then there is no recourse available to the People to challenge any specific Zoning decision because it only applies to “future projects”. Makes no sense. The intent of 155.1095 is clearly to “grandfather” operations already existing at the time of any revised Zoning Code interpretation. The key point here is “already existing” which Silfab Solar operations is not.
- III. Refer to:
 - Exhibit B: June 25, 2024 York County Management Statement on Silfab Solar.
 - Exhibit E: York County SC Zoning Code 155.1095.
 - Exhibit I: York County SC Code of Ordinances, Chapter 155, section 155.1301, Defined Terms.

Point #4

- I. The York County Management Statement issued June 25, 2024, taken as a whole document, can only be interpreted as an attempt to provide Silfab Solar with an zoning change because the due process of filing for a variance has not been observed.
- II. The People contend in this document that the Silfab Solar proposed facility location does not conform to the definition of Light Industrial as per York County SC Code of Ordinances, Chapter 155, section 155.1301 Defined Terms and that the Zoning Administrator and Staff have erred in their recommendation to allow Silfab Solar to proceed. Given the previous sentence, the People also contend that any attempt to allow Silfab Solar to proceed with the proposed facility at 7149 Logistics Lane, Fort Mill, SC 29715 would require a zoning variance submittal, hearing and subsequent approval which has not taken place. Therefore, the June 25, 2024 York County Statement on Silfab Solar is erroneous in stating that the December 27, 2022 letter to Judi Quinby “gave Silfab the legal right to proceed to develop the property for its intended use”. That interpretation amounts to an illegal zoning change without due process.
- III. Refer to:
 - Exhibit A: December 27, 2022 letter to Judi Quinby.
 - Exhibit B: June 25, 2024 York County Statement on Silfab Solar.
 - Exhibit C: York County SC Zoning Code 155.1301.

Point #5

- I. The June 25, 2024 York County Management Statement on Silfab Solar also states: “In many cases, zoning verification letters are issued months or years before a project begins. Those developments can’t be jeopardized by later requests for zoning interpretations from opponents of those projects”.
- II. The People contend the following:
 - The above statement would be true if the York County Zoning Administrator and Staff had made the correct evaluation of the use request. That is not the case here. Staff made an error and attempting to allow Silfab to move forward only compounds that error and potentially increases any damages Silfab Solar may attempt to obtain through legal action.
 - The People are not “opponents of the project” per say but do oppose the attempt to allow Silfab Solar to proceed given the erroneous Staff interpretation and recommendation. The People do not oppose Silfab Solar as a company nor Solar Module Manufacturing and Assembly as an industry. It simply needs to be directed to the appropriately zoned district, that being Heavy Industrial.
- III. Refer to:
 - Exhibit B: June 25, 2024 York County Management Statement on Silfab Solar.

Point #6

- I. The York County Management Statement issued June 25, 2024 lays out a timeline and attempts to provide a rationale for why this project is being allowed to proceed. In other words, it’s done and it’s too late to do anything about it because permitting is underway.

- II. The People contend that there are definitely grounds within the York County SC Code of Ordinances to support stopping this project. Chapter 155, Subchapter H Enforcement, Code 155.1239 states the following: Revocation of Permit or Approval (A) Basis for Revocation. A permit or approval may be revoked by the Zoning Administrator at any time prior to the completion of the use, building, structure, development, site improvement, or subdivision for which the permit was issued, when the Zoning Administrator determines that one or more of the following conditions is present:
- 1) There is departure from the plans, specifications, or conditions as required under the terms of the permit;
 - 2) That the permit was procured by materially incorrect information;
 - 3) That the permit was issued in error;
 - 4) That any of the provisions of this Chapter are being violated.
- III. Refer to:
- Exhibit B: June 25, 2024 York County Statement on Silfab Solar.
 - Exhibit F: York County Zoning Code 155.1239.

Conclusion

The People request that York County Council take the appropriate steps to:

1. Notify Silfab Solar of York County Management intent to uphold the May 9, 2024 Board of Zoning Appeals lawful vote to “reverse the interpretation of the Zoning Administrator that would allow solar panel manufacturing as a permitted use in a Light Industrial District; and
2. To revoke any permits or approvals that may have been issued to Silfab Solar as per York County SC Code of Ordinances, Subchapter H: Enforcement, section 155.1239 Revocation of Permit or Approval, Basis for Revocation: (3) That the permit (or approval) was issued in error.

Respectfully,

_____ Date



Exhibit A



PLANNING & DEVELOPMENT SERVICES

York County, SC

December 27, 2022

Judi Quinby
3343 Peachtree Rd NE Suite 1600
Atlanta GA 30326

Ref: Zoning Verification for 7190000201

To whom it may concern,

This letter is written to inform you that the laws and regulations of York County, South Carolina govern the referenced property, tax map parcel 7190000201. The property is located 7149 Logistics Lane in the Fort Mill community. It is currently owned by RG Baxter Lane LLC. The property zoned **Light Industrial District (LI)**.

The intent of the **Light Industrial District (LI)** is to create and protect industrial areas for light manufacturing and distribution. LI is intended to accommodate less intensive industrial uses with operations primarily conducted indoors. The district's less intensive uses protect nearby residential areas from the encroachment of heavy industrial uses. Whenever possible, this district should be separate from residential districts by natural or structural boundaries such as drainage channels, sharp breaks in topography, strips of vegetation, traffic arteries, and similar features. LI is generally appropriate for areas designated as Industrial, Employment Center, or I-77 Corridor Employment on the Future Land Use Map.

Within the Light Industrial District (LI) zoning district **Electrical Equipment, Appliance, And Component Manufacturing** as defined below is a permitted use.

Electrical Equipment, Appliance, And Component Manufacturing: Establishments that manufacture products that generate, distribute, and use electrical power, such as electric lamp bulbs, lighting fixtures, and parts; small and major electrical appliances and parts; electric motors, generators, transformers, and switchgear apparatus; and batteries, wire, and wiring devices.

The use as described in your request (manufacturing of photovoltaic cells and PV modules) is considered electrical equipment, applicant, and component manufacturing and is therefore principally permitted. Please be advised that establishment of this use at the subject site will require civil site plan review.

This letter does not constitute a permit. This letter only states that the site can, with the proper permits, be used for the aforementioned use. All of this information is determined by the York County, South Carolina Code of Ordinance. If you need any additional information regarding this, please feel free to contact me at (803) 909-7235.

Best Regards,

Emily Stephens
York County Zoning Technician

Exhibit B (1 of 3)



YORK COUNTY MANAGEMENT STATEMENT ON SILFAB SOLAR

June 25, 2024

York County, SC: York County Management has heard the many concerns voiced about the Silfab Solar site in the Fort Mill area. While we take the issues raised seriously and encourage public comment, we also want to make sure our citizens have accurate information. We believe many of the concerns raised are based on misinformation.

At the outset of the Board of Zoning Appeals (“BZA”) meeting on May 9th, the Board Chairman made this statement:

“The case as we hear it is very limited. It only regards whether or not one particular activity can occur in a light industrial zone. It has no specific reference to any particular location, any particular project. It is a generic representation of that particular type of manufacturing, in that particular zoning district. That is all.”

The decision by the BZA on May 9th did not apply to Silfab. The BZA was aware of this fact at the time of the meeting, and communicated that to the public in attendance.

Moreover, Silfab received an official zoning verification letter 18 months ago in December of 2022. As a verification by York County staff, and outside of and independent from any action by York County Council, the letter confirmed for Silfab that solar panel manufacturing is allowed in the light industrial zoning district. **That official letter gave Silfab the legal right to develop the property for its intended purpose.** In fact, for any business choosing to locate in York County, verifying zoning is the very first step taken before a major development can begin.

In many cases, zoning verification letters are issued months or years before a project begins. Those developments can’t be jeopardized by later requests for zoning interpretations from opponents of those projects.

The BZA decision on May 9th applies only to future projects in the light industrial district. As our County Code states:

§ 155.1095 SCOPE OF APPROVAL. (A) A Zoning Code interpretation will become effective upon execution by the Zoning Administrator. (B) A

Exhibit B (2 of 3)

Zoning Code interpretation does not authorize development. **Any development that occurs after the Zoning Code interpretation has been issued is subject to all applicable requirements of this Chapter, as revised by the interpretation.** (*emphasis added*)

As for the processes, chemicals and products to be used on site at Silfab; reviewing, approving and monitoring chemical use and storage is within the sole jurisdictional authority and purview of SCDHEC. Silfab has received the necessary permits to construct its facility. In response to public inquiry, York County sought and received additional information supporting SCDHEC's issuance of its permit to Silfab and underscoring the Company's efforts to protect the public health and safety in its operations. This information can be located at: [PowerPoint Presentation \(yorkcountygov.com\)](#) and [Silfab-SCDHEC-StatementPDF \(yorkcountygov.com\)](#)

Below is a timeline which details the history of the Silfab site to the current date.

TIMELINE

In 1992 the County rezoned a large parcel owned by the Eubanks family to LI (Light Industrial). The property includes what is now the Silfab site at 7149 Logistics Lane, as well as land later bought by the Fort Mill School District in 2017 and 2020, all zoned LI.

In 2019, York County Planning approved a traffic analysis for three buildings, including 7149 Logistics Lane, and in 2020 approved subdividing those parcels.

In August of 2021, responding to external requests, York County Economic Development asked Planning whether solar panel manufacture was allowed in the LI District both in the current code, as well as the updated code, which was being developed. Planning confirmed that both versions allowed it as "Electronic Products Manufacturing" or "Computer and Electronic Product Manufacturing" in the LI District.

In March of 2022, the County updated its zoning code. As part of that update, schools were eliminated as a permitted use in the LI and Industrial (ID) Districts to minimize the potential incompatibility of schools with industrial settings.

In October of 2022, the school district applied to rezone its undeveloped land to build two new schools, and Council granted that request in March of 2023. The adjacent parcels remained LI.

On December 21, 2022, Silfab approached the County about zoning. The Company provided information on the business, and classified its use as "Semiconductor and related Device Manufacturing." Planning staff confirmed that solar panel manufacture was allowed in the LI District as "Electrical Equipment, Appliance, and Component Manufacturing."

Exhibit B (3 of 3)

On December 22, 2022, Silfab requested an official zoning verification letter from the County.

On December 27, 2022, Planning issued that letter which stated that solar panel manufacture was allowed in the LI District as “Electrical Equipment, Appliance, and Component Manufacturing.” Arguably, a more appropriate use description might have been “Computer and Electronic Product Manufacturing,” but both are allowed in the LI District. Once such a letter is issued, it can only be appealed within 30 days.

From January through October of 2023, Silfab leased the site, applied for a Fee-In-Lieu of Tax (FILOT), received a state development grant and submitted several items to the County including: an updated traffic study, upfit plans, power supply letters, and confirmation of water and sewer availability.

In the summer of 2023, Silfab applied for its air permit from DHEC and received the permit on March 1, 2024. The air permit covers the safety of the plant on a routine basis, extensive emergency planning, and accident prevention requirements.

In January of 2024, Planning staff started receiving emails from residents about zoning issues.

On February 14, 2024, a county resident requested an interpretation as to whether solar panel manufacturing was allowed in the LI District.

On February 16, 2024, the Zoning Administrator notified the resident that solar panel manufacturing was allowed in the LI District based on staff’s analysis. There was no reference to Silfab or any particular site in the response.

On March 14, 2024, the resident appealed that determination to the Board of Zoning Appeals.

On May 9, 2024, the BZA heard the appeal and reversed the Administrator’s determination.

Meanwhile, from February to May of 2024, prior to the appeal hearing, Silfab submitted various plans for the property related to signs and upfit of buildings, including a civil construction plan and an associated stormwater permit for a new parking area and moving utilities. Silfab also received conditional site plan approval from the County.

On May 30, 2024 the BZA issued its formal written decision on the appeal.

Currently, there is a 30-day appeal period which expires on June 29th.

INCIDENTAL SIGN. A small permanent sign, freestanding or attached to a building, used in addition to the primary sign types for the property, such as wall signs and monument signs, and that has a height and scale subordinate to the primary sign types allowed for the property. Examples of typical incidental signs include occupant names or directories, directional information, drive-through menu boards, gas pumps, and parking information. The list of examples does not limit the content of incidental signs. The County will not review the content of incidental signs.

INCINERATOR, COMMERCIAL. A facility that processes waste using controlled flame combustion to break down the waste.

INDUSTRIAL, HEAVY. The assembly, fabrication, finishing, manufacturing, packaging, processing, or distribution of goods and materials by means that ordinarily have greater than average impacts on the use and enjoyment of adjacent property in terms of noise, fumes, odors, glare, health, and safety hazards, or that otherwise does not constitute "light manufacturing."

INDUSTRIAL, LIGHT. The assembly, fabrication, or processing of goods and materials by means that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where the assembly, fabrication, or processing takes place; where the processing is housed entirely within a building. **LIGHT INDUSTRIAL** does not include hazardous material treatment and storage facilities, plating or enameling, or petroleum and gas refining.

INFLATABLE DEVICE. A temporary sign type where air inflates an object with or without a portable blower motor that provides a constant flow of air into the device. The device consists of flexible fabric, and rests on the ground or a structure.

INTEGRAL SIGN. A permanent, attached sign embedded, extruded, or carved into the material of a building façade or constructed of bronze, brushed stainless steel or aluminum, or similar material and permanently attached to the building façade so that it is an architectural detail of the building.

INSTITUTIONAL USE. A non-profit, public, or quasi-public use, such as a religious institution, library, public, or private school, hospital, or government-owned or government-operated facility.

(J)

JUNK, SALVAGE, SCRAP, OR WRECKING YARDS. Any use involving the commercial storage, selling, or processing of inoperable, disused, dismantled, or wrecked vehicles, equipment, or machinery or the storage or the processing of scrap metal, waste paper, rags, or other scrap, salvage, waste, or junk materials.

JURISDICTIONAL. In reference to wetland or stream features, means that the U.S. Army Corps of Engineers determined the water body to fall under their definition of waters of the United States. SCDHEC has determined the presence and location of water bodies that falls



Exhibit D (1 of 6)

York County Board of Zoning Appeals
Meeting Date: May 9, 2024
Case No. Z24-2AA



To: The Board of Zoning Appeals

RE: Appeal of Administrative Decision - Zoning Administrator's Interpretation of various Zoning Code sections related to uses permitted in the Light Industrial (LI) district.

Appellant believes the administrative decision is erroneous and appeals to the Board to review and correct the determination related to uses permitted in the LI district.

Date: May 3, 2024

APPELLANT SUBMITTAL: *see Attachment 1*

BACKGROUND

On February 16, 2024, York County Zoning Administrator Rachel Grothe provided a Zoning Code Interpretation (Attachment 2, herein after "the Interpretation") to Mr. Walter Buchanan ("Appellant") in response to a request (Attachment 3), seeking clarification on several code sections related to uses permitted in the LI district. The Zoning Administrator provided responses to seven specific questions that the Appellant laid out in his request.

On March 14, 2024, the Appellant submitted an Administrative Appeal application.

ANALYSIS

In the submittal, the Appellant has enumerated five points that allege the Zoning Administrator erred in the Interpretation. The applicant's statements are paraphrased in material part below for brevity (refer to Attachment 1 for full statements). Staff provides the following responses to the Appellant's stated relevant factors pertaining to this administrative appeal:

1. **§155.015(A)** Staff states the purpose statements are not regulations. Staff put a period where there is a comma and it in fact states, "The purpose statements are not regulations, but rather a summary of the district character and regulatory intent."

Staff Response: In the Interpretation, staff stated that the purpose statements for the LI and Industrial Development (ID) districts, recorded in §155.041(A)(2) and §155.042(A)(2),

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respectively, are not regulatory provisions in and of themselves. Therefore, there is no demonstrated ambiguity or need for clarification or interpretation of the purpose statements, and no interpretation was provided pursuant to §155.1094(B): “The Zoning Administrator may deny or reject a request if there is no ambiguity or need for the clarification demonstrated by the applicant.”

In this appeal, it is implied that the Appellant believes this decision is erroneous. The Appellant points to the following sentence in §155.015(A)(2): “The purpose statements are not regulations, but rather a summary of the district character and regulatory intent.”

As §155.015(A)(2) states, the purpose statements describe the intent of each district’s creation and provides no regulatory provisions to be implemented and interpreted. Regulations for uses in the LI and ID districts can be found in Subchapter C: Use Regulations, which implements where each use may be located, along with any applicable conditions.

2. §155.270(G) Unlisted Uses Prohibited. Any use not listed for an applicable zoning district in the Use Table is prohibited. It does not give any reference to the North American Industry Classification System (NAICS). There is no reference in the code that if it is not listed we refer to NAICS. The NAICS has a category for solar cell manufacturing by itself, and it is not combined with electrical components.

Staff Response: In the Interpretation, staff stated that “solar panel manufacturing” is defined in the Zoning Code under the “Computer and Electronic Product Manufacturing” use. §155.270(G) states, “Any use not listed for an applicable zoning district in the Use Table is prohibited.” As Computer and Electronic Product Manufacturing is listed as a permitted use in LI, ID, Business and Technology Park (BT), and Urban Development (UD) districts, §155.270(G) does not apply.

In this appeal, it is implied that the appellant believes the determination—that solar panels are a manufactured product permitted in the Computer and Electronic Product Manufacturing use—is erroneous. Further, it is implied that the appellant believes that “solar panel manufacturing” is prohibited because the product is not defined in the Zoning Code as its own, distinct use.

The uses defined in the Zoning Code are *heavily* informed by NAICS, particularly manufacturing uses. This classification system is commonly used by jurisdictions across the country to help inform and define uses in zoning codes, including York County. While this system was created by the U.S. Bureau of Labor Statistics to track economic activities in North America, it was developed on the principle that businesses that are similar in form or function, or that use similar production processes, should be grouped together.

NAICS is organized into a “ladder” system, which gets increasingly granular on the type of economic activity described with each “step” down the ladder. All economic activity is broken into twenty different Sectors. Businesses within these Sectors are refined into 96 Subsectors. Subsectors are further refined into 308 Industry Groups. Industry Groups are then categorized into 689 NAICS Industries. Lastly, NAICS Industries are grouped into 1,012 different six-digit National Industries. Below is the example of how manufacturing

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is refined through each step, as it relates to solar panel manufacturing. Notice how each step becomes more specific and narrower moving down the ladder.

- **Sector:** 2-digit code: 31-33 Manufacturing
- **Subsector:** 3-digit code: 334 Computer and Electronic Product Manufacturing
- **Industry Group:** 4-digit code: 3344 Semiconductor and Other Electrical Component Manufacturing
- **NAICS Industry:** 5-digit code: 33441 Semiconductor and Other Electrical Component Manufacturing
- **National Industry:** 6-digit code: 334413 Semiconductor and Related Device Manufacturing

“Solar panel manufacturing”, as a narrowly-defined business, is grouped in NAICS under National Industry 334413 Semiconductor and Related Device Manufacturing, which includes fuel cells, semiconductors, microprocessors, photovoltaic cells and devices, silicon wafers, and solar cells, among other related products manufactured by such businesses (see <https://www.bls.gov/bls/naics.htm>). 334413 Semiconductor and Related Device Manufacturing is an industry under the 334 Computer and Electronic Product Manufacturing NAICS subsector.

To help illustrate the reciprocity between the Zoning Code and NAICS, refer to Attachment 4. As shown in the table, all 19 of the Zoning Code’s manufacturing uses are directly attributable to NAICS manufacturing subsectors. The defined terms and the manufacturing subsectors are verbatim. This is by design.

Put simply, there are millions of different kinds of products that are manufactured, and it would be impractical to define every single product as its own unique type of manufacturing use in the Zoning Code. Semiconductor and Related Device Manufacturing (334413) is a 6-digit National Industry, as narrowly defined as the NAICS system gets, and even that category lists 34 different end products in the industry, including solar cells (see Attachment 4). There are over 1,000 different 6-digit National Industries, each of which includes scores of end products. The sheer volume of product types necessitates organized categories of manufacturing in the Zoning Code. This is why all manufacturing uses in the code are matched to NAICS subsectors, the most reasonable level of organization to codify into zoning.

If the Board were to determine that solar panel manufacturing is not allowed as a Computer and Electronic Product Manufacturing use (NAICS subsector 334), it would upend the entire manufacturing use classification system in the Zoning Code, and put in doubt whether any manufacturing at all is allowed in York County. As a source of business, trade, and other economic categorization, NAICS modeling lends support to the Interpretation. Moreover, and in addition, notwithstanding “solar panel manufacturing” not being identified specifically by name in the Zoning Code (but being identified in the Interpretation as falling under Computer and Electronic Product Manufacturing), the Interpretation supports the otherwise legal use of private property as not being disallowed automatically by a specific use term or phraseology not being identified precisely by name.

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3. §155.948 Performance Standards. Our question was stated, knowing up front, they will violate the code, was not acknowledged in the staff response. Nowhere does the Code state that we rely on or refer to the South Carolina Department of Health and Environmental Control (DHEC).

Staff Response: The Performance Standards section of the York County Zoning Code is intended to protect the public health, safety, welfare, and quality of life by regulating the emission or existence of dangerous, detrimental, and objectionable environmental elements. The standards apply as long as the emitting land uses are in existence; the uses must “perform” according to the expected standard.

The Performance Standards do not outright ban any emission of noise, radiation, fumes, vibration, humidity, or odor, nor do they preclude any specific uses, materials, or operations from locating in the County. Rather, the standards are implemented through substantiated evidence of a breach in performance, **evaluated in terms of the controlling state or federal standard** that are set for any particular emission.

Contrary to the Appellant’s statement, §155.006 Relationship to Other Regulations, discusses how other regulations from state and federal agencies apply.

“§155.006(B) The use and development of land and structures is subject to all applicable requirements of this Chapter, Chapter 154, and all other applicable requirements of the County Code and state and federal law.” (emphasis added).

Because the federal government sets controlling environmental standards against potential adverse effects to the public, as administered by the state of State Carolina through DHEC, the applicable standard would need to be breached in order for there to be a violation of the County’s performance standards. To find otherwise would be to erroneously suggest that the York County Zoning Administrator can determine what level of emission is considered unsafe, regardless of U.S. Environmental Protection Agency (EPA) standards; or worse, that no emission at all is allowed in York County, and industry as a whole would not be permitted to operate in the County, even within established EPA limits.

Moreover, and in order to avoid an impractical or absurd result, the *Performance Standards* section must be read in conjunction with other provisions of our Code, and not read in isolation, as suggested in “§155.006(B). For instance, § 155.1236 (Violations within the Enforcement Subchapter) of the York County Code of Ordinances specifically references the Performance Standards section of the Code (§ 155.945, et seq.). In practice, therefore, the Performance Standards define the types of activities for which complaints can be investigated and sanctions potentially issued. In certain cases, York County must defer to agencies with exclusive jurisdiction to regulate the alleged violations.

4. Definitions. Three of our questions referred to the definitions. The staff response was that the definitions were not regulations. However, definitions are legally binding, otherwise why would they be in there?

Staff Response: As stated in the Interpretation, the definitions for “Light Industrial” and “Heavy Industrial” are not regulatory in and of themselves. It is Subchapter C: Use Regulations that lays out the specific regulations that apply to all uses in all zoning districts, including the Use Table. Subchapter J: Definitions and Acronyms, simply provides a common meaning for terms used in the Zoning Code, and is not itself for implementation.

Therefore, there is no demonstrated ambiguity or need for clarification or interpretation of the definitions of Light Industrial and Heavy Industrial, and no interpretation was provided pursuant to § 155.1094(B).

5. § 155.975 Approval Criteria. In considering an appeal of an administrative decision, the Board shall apply the standards of this Chapter, other applicable law, and previous interpretations of this Chapter by the Board. What we would like to see is a previous approval of a 70-foot smokestack or show me where this has been denied.

Staff Response: In the Appellant’s fifth and final point in the submitted appeal, he has deviated from the appealable content of the Interpretation. No request was made of staff to interpret § 155.975, nor was any reference made to smokestacks in the Interpretation. Therefore, the appellant’s final enumerated point is not germane to the appeal.

BOARD OF ZONING APPEALS DECISION

Part 2: Appeals of Administrative Decisions of the Zoning Code empowers the Board to hear appeals of an administrative order, requirement, decision, or determination in the enforcement of the code.

The Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination, and has all the powers of the officer from whom the appeal is taken to issue or direct the issuance of a permit.

In considering an appeal of an administrative decision, the Board shall apply the standards of the Zoning Code, other applicable law, and previous interpretations by the Board. The Board has not previously made an interpretation responsive to this appeal.

The Board must issue a written decision within 45 days of the hearing.

CONCLUSION

The Appellant requests that the Board reverse staff’s Interpretation and determine solar panel manufacturing “be considered heavy industrial”, and not permitted in the Light Industrial district.

The request, as stated, is invalid and not within the Board’s power to grant. Computer and Electronic Products Manufacturing is a use permitted in the LI, ID, BT, and UD zoning districts. It is not possible to determine that the use not be allowed specifically in LI without a text amendment to the Zoning Code. Text amendments to the Zoning Code are the exclusive purview of York County Council, after review and recommendation by the Planning Commission.

Rather, the Board would have to find that staff erred in determining that solar panels are a product of Computer and Electronic Products Manufacturing. This would require the Board to either attribute the product to another type of manufacturing, or find that it does not meet any defined use in the Zoning Code, and is therefore prohibited in York County.

Staff recommends that the Board uphold and affirm the Zoning Administrator's Interpretation regarding the various code sections related to uses permitted in the LI district.

Submitted by:



Rachel Grothe, MCRP
Zoning Administrator

Attachments:

- Attachment 1: Administrative Appeal Application
- Attachment 2: Zoning Code Interpretation
- Attachment 3: Interpretation Request (application)
- Attachment 4: NAICS Manufacturing Subsector Information

(C) The Zoning Administrator shall render only one interpretation per issue. If an interpretation is requested on an issue previously addressed, the Zoning Administrator shall provide a copy of the previous interpretation.

§ 155.1095 SCOPE OF APPROVAL.

(A) A Zoning Code interpretation will become effective upon execution by the Zoning Administrator.

(B) A Zoning Code interpretation does not authorize development. Any development that occurs after the Zoning Code interpretation has been issued is subject to all applicable requirements of this Chapter, as revised by the interpretation.

§ 155.1096 RECORDKEEPING. see definition of DEVELOPMENT - Exhibit I

(A) **Identification and Retention.** All code interpretations shall be numbered consecutively in order of their issuance. The Planning and Development Services Department shall maintain such interpretations for public access and review in hard copy and on its Internet site until the applicable section of the Zoning Code, if applicable, is amended to provide the necessary clarification.

(B) **Indexing.** The Planning and Development Services Department shall establish an index on its internet site that refers to the applicable section of the Zoning Code, if applicable, and the identification number of the code interpretations that relate to that section.

§ 155.1097 RESERVED.

§ 155.1098 RESERVED.

§ 155.1099 RESERVED.

§ 155.1100 RESERVED.

§ 155.1101 RESERVED.

§ 155.1102 RESERVED.

§ 155.1103 RESERVED.

§ 155.1104 RESERVED.

(c) If the buffer area is of insufficient size, width, and depth to support an adequate number of new replacement trees, comply with a plan the Zoning Administrator may authorize or order to provide an increase in the buffer depth beyond the minimum required by this Chapter and/or require the use of larger caliper trees;

(d) Ensure that no new or replacement trees or vegetation are planted within 10 feet of the side property lines outside buffer areas; and

(e) Ensure that, in replanting or replacing trees or vegetation under the mitigation and restoration provisions of this Paragraph, any damage to ground cover vegetation resulting from the use of heavy equipment in the implementation of an approved mitigation and restoration plan is reestablished through reseeding or replacement of damaged vegetation immediately after completion of the planting of new trees or vegetation.

(2) The Zoning Administrator may order, authorize, or approve such additional requirements as may be necessary or appropriate in mitigation, restoration, or replacement plans, including requiring such plans be prepared by an arborist or landscape architect, in order to preserve and protect the buffers established by this Chapter, and to mitigate and restore removed, damaged, or destroyed trees and vegetation within the buffer area.

(3) The mitigation and restoration provisions of this Paragraph shall be cumulative to, and not in substitution or replacement of, any other remedies provided under this Chapter or by law.

(4) Any person who may have a substantial interest in a decision of the Zoning Administrator with respect to a mitigation or restoration decision under this Paragraph, or any County official charged with the enforcement of the County Code, may appeal such decision by filing an application for appeal of an administrative decision in accordance with Subchapter E: *Procedures*.

§ 155.1239 REVOCATION OF PERMIT OR APPROVAL.

(A) **Basis for Revocation.** A permit or approval may be revoked by the Zoning Administrator at any time prior to the completion of the use, building, structure, development, site improvement, or subdivision for which the permit was issued, when the Zoning Administrator determines that one or more of the following conditions is present:

(1) There is departure from the plans, specifications, or conditions as required under the terms of the permit;

(2) That the permit was procured by materially incorrect information;

(3) That the permit was issued in error; or

(4) That any of the provisions of this Chapter are being violated.

(B) **Notice.** Written notice of the revocation shall be served upon the owner, the owner's agent or contractor, or any person employed in the building or structure for which the permit

Partial list of Silfab's pollutants and explosive chemicals Exhibit G

pollutant name	emissions tons/year	DHEC category	MAAC-24 ug/m3	modelled concentration	% of allowable	on site gallons	use gallons/year
Toluene	0.48	3	2000.00	not stated	###	not stated	132
HCl	*** 8.21	1	175.00	36.79	21%	10,560	360,114
HF	*** 0.48	3	2.05	1.74	85%	15,850	703,812
SiF4	*** 0.33	?	?	not stated	###	?	
VOC's	100	?	?	not stated	###	?	
Silane	N/A	unknown	unknown	not stated	###	4,400	not stated

HCl = Hydrochloric acid emits same

HF = Hydrofluoric emits Hydrogen Fluoride

SiF4 = Silicon TetraFluoride (no tank listed - emission from process?)

VOC's = Volatile Organic Compounds (many are toxic according to DHEC response)

Silane is extremely explosive (ERG shows "may ignite when exposed to AIR).

ERG = Emergency Response Guide shows 1 mile evacuation radius

DHEC definitions:

Category 1: Low Toxicity - Those pollutants which cause readily reversible changes which disappear after exposure ends

Category 2: Moderate Toxicity - Those pollutants which may cause chronic reversible or irreversible changes that are not severe enough to result in death or permanent injury

Category 3: High Toxicity - Those pollutants which may cause chronic effects that result in death or permanent injury after very short exposure to small amounts

MAAC-24: Maximum Allowable 24-hour Concentration, units of micro grams per meter cube

***NOTE: If acid scrubbers do not malfunction

###NOTE: emissions below threshold to require concentration calculations

DHEC response to public comments state that the acid scrubber stack would increase from 19.7' to 70'.

The emissions will be released 24/7 at a rate of 90 feet per second. The estimated total amount of hazardous pollution in the receptor area is 110 tons per year. The actual amount of pollution will be more than this, but DHEC is only required to total the amount in the receptors. The amount outside the receptor area and potentially between the receptors is not included in the totals.

These numbers do not account for accidental release.

Table 10
Modeling Analysis
 Silfab Solar
 Fort Mill, SC

Source	Description	Criteria							HAP/TAP				Total from Generator tons/year
		NO2 tons/year	CO tons/year	PM10 ⁽¹⁾ tons/year	PM2.5 ⁽¹⁾ tons/year	SO2 tons/year	VOC tons/year	HF lbs/day	HCl lbs/day	Toluene lbs/day			
Module Manufacturing	Line 1 Module Assembly Line	0	0	0	0	0	32.867	0	0	0	0	0	0
	Line 2 Module Assembly Line	0	0	0	0	0	32.867	0	0	0	0	0	0
	Line 3 Module Assembly Line	0	0	0	0	0	7.752	0	0	0	0	0	0
	Labs/Testing	0	0	0	0	0	0.109	0	0	0	0.109	0	0
Cell Manufacturing	Phase 1 Scrubber	0	0	0	0	0	0	1.032	20.832	0	0	0	0
	Phase 2 Scrubber	0	0	0	0	0	0	1.032	20.832	0	0	0	0
	Printing	0	0	0	0	0	21.2	0	0	0	0	0	0
	Paste	0	0	0	0	0	5.1	0	0	0	0	0	0
Storage Tanks	HF-BST-01	0	0	0	0	0	0	0.29	0	0	0	0	0
	HF-BST-02	0	0	0	0	0	0	0.29	0	0	0	0	0
	HCl-BST-01	0	0	0	0	0	0	0	1.63	0	0	0	0
	HCl-BST-02	0	0	0	0	0	0	0	1.63	0	0	0	0
Emergency Generators	2 Emergency Generators	0.0093	0.0020	0.0007	0.0007	0.0006	0.0007	0.0	0.0	0.0	0.0	0.002	0.002
	Total	0.0093	0.0020	0.0007	0.0007	0.0006	99.90	2.640	44.928	0.109	0.002	0.002	0.002
Standard No. 8 de minimis Threshold (lbs/day)								0.025	2.100	24.000		Exempt	
Standard No. 2 de minimis Threshold (tons/year)		5.0	5.0	5.0	5.0	5.0	N/A					Exempt	
Modeling Required (Yes/No)		No	No	No	No	No	No	Yes	Yes	No	No	No	No

⁽¹⁾ Assume PM10 and PM2.5 are equivalent as worst case.

Key components of a data center include routers, switches, firewalls, storage systems, servers, and application-delivery controllers. Typical supporting equipment includes back-up batteries and/or power generators, cooling units, fire suppression systems, and enhanced security features. This definition includes cryptocurrency mining operations.

DAY-NIGHT AVERAGE SOUND LEVEL (DNL, also symbolized *Ldn*). The A-weighted average sound level in decibels during a 24-hour period with a 10-decibel weighting applied to nighttime sound levels.

DBH (DIAMETER BREAST HEIGHT). The diameter of a tree as measured at a point 4.5 feet above the tree's base.

DECIBEL (DBA). The standard A-weighted unit for measuring sound, as perceived by the human ear.

DECORATIVE POLE. A pole that is specifically designed and placed for aesthetic purposes and may have attached informational or directional signage and/or pole banners.

DENSITY, GROSS. The number of dwelling units located or proposed to be located on a parcel divided by the gross area of the parcel.

DEVELOPMENT. Any man-made change to or subdivision of improved or unimproved real estate, including the construction of or substantial improvements to buildings or other structures that requires a permit or approval from the County. Development includes the placement of mobile homes, mining, dredging, filling, grading, paving, excavation, or drilling operations. The term **DEVELOPMENT** also includes design and planning of a **DEVELOPMENT** unless otherwise specified.

DEVELOPMENT PERMIT. Any permit or approval governed or required by:

- (1) [Chapter 150: Building Regulations;](#)
- (2) [Chapter 151: Floodplain Management;](#)
- (3) [Chapter 152: Stormwater Management and Sediment Control;](#)
- (4) [Chapter 153: Planning and Development;](#)
- (5) [Chapter 154: Land Development Code;](#)
- (6) [Chapter 155: Zoning Code;](#)
- (7) [Chapter 156: Temporary Emergency Dwelling Permits;;](#)
- (8) A Development Agreement;
- (9) A Special District plan or similar regulating plan; and

Table 155.947-2: Maximum Sound Levels Using Pre-1960 Octave Bands

Octave Bands (Cycles per Second)	Sound Levels (dB) (max) ¹
20 - 75	77
75 - 150	65
150 - 300	58
300 - 600	54
600 - 1200	50
1200 - 2400	47
2400 - 4800	44
4800 - 10 KC	42

Key: dB = decibels | max = maximum allowed

¹ Between the hours of 7:00 p.m. and 7:00 a.m., the permissible sound levels at residential district boundaries shall be reduced by 5 dB in each octave band, or in the overall band for impact noises.

§ 155.948 OTHER PERFORMANCE STANDARDS.

- (A) **Fire and Explosive Hazards.** All activities and all storage of flammable and explosive materials at any point shall be provided with adequate safety devices against the hazards of fire and explosion including adequate firefighting and fire suppression equipment.
- (B) **Radioactive Emissions.** There shall be no radiation emitted from radioactive emission measured at the lot line.
- (C) **Fumes, Vapors, and Gases.** There shall be no emission of any fumes, vapors, or gases of a noxious, toxic, or corrosive nature, which can cause any damage or irritation to health, animals, vegetation, or to any form of property.
- (D) **Vibration.** There shall be no perceptible earth vibrations measured at the lot line.
- (E) **Heat, Cold, Dampness, or Movement of Air.** Activities that could produce any adverse effect on the temperature, motion, or humidity of the atmosphere beyond the lot line are prohibited.
- (F) **Odor.** There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive at the lot line. Any process that may involve the creation or emission of any such odor shall be provided with both a primary and a secondary safeguard system so that control may be maintained in the event of failure of the primary safeguard system.

SUBCHAPTER A: INTRODUCTION

§ 155.001 TITLE.

This Chapter is known and may be cited as the Zoning and Development Standards Ordinance of York County, and may be cited and abbreviated as the “York County Zoning Code” or the “Zoning Code.”

§ 155.002 PURPOSE.

The purposes of this Chapter are to:

- (A) Implement the Comprehensive Plan;
- (B) **Protect, promote, and improve the public health, safety,** morals, convenience, order, appearance, prosperity, and general welfare of the County by providing for the orderly development of land within the county;
- (C) Lessen congestion in the streets;
- (D) **Secure safety from fire, panic, and other dangers;**
- (E) Provide adequate light and air;
- (F) Prevent the overcrowding of land;
- (G) Avoid undue concentration of population;
- (H) Protect scenic areas;
- (I) Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements;
- (J) **Promote desirable living conditions and the sustained stability of neighborhoods;**
- (K) **Protect property against blight and depreciation;**
- (L) Secure economy in governmental expenditures;
- (M) Conserve the value of land and buildings;
- (N) Enforce the most appropriate use of land and buildings and structures;
- (O) Conserve natural and environmental resources;
- (P) Preserve agricultural land and working farms;
- (Q) Protect historical and cultural resources;

(C) **Permitted, Conditional, and Special Exception Uses.** See Subchapter C: *Use Regulations*.

§ 155.040 RI (RURAL INDUSTRIAL).

(A) **Purpose.**

(1) The Rural Industrial District (RI) accommodates, in areas outside the Urban Services Boundary (USB), industrial uses that:

- (a) Are compatible with rural character;
- (b) Do not require urban services, such as water and sewer; and
- (c) Typically require large land areas and separation from residential uses or where the primary activities typically occur outdoors.

(2) Whenever possible, this district should be separate from residential districts by natural or structural boundaries such as drainage channels, sharp breaks in topography, strips of vegetation, traffic arteries, and similar features.

(3) RI is appropriate for areas outside the USB that are designated as Agriculture on the Comprehensive Plan Future Land Use Map, but is not necessarily appropriate in all areas with this designation.

(4) RI may be appropriate in or adjacent to areas designated as Rural Center on the Comprehensive Plan Future Land Use Map.

(B) **Dimensional Standards.** See Subpart 2.2: *Base District Dimensional Standards*.

(C) **Permitted, Conditional, and Special Exception Uses.** See Subchapter C: *Use Regulations*.

§ 155.041 LI (LIGHT INDUSTRIAL).

(A) **Purpose.**

(1) The intent of the Light Industrial District (LI) is to create and protect industrial areas for light manufacturing and distribution.

(2) LI is intended to accommodate less intensive industrial uses with operations primarily conducted indoors. The district's less intensive uses protect nearby residential areas from the encroachment of heavy industrial uses.

(3) Whenever possible, this district should be separate from residential districts by natural or structural boundaries such as drainage channels, sharp breaks in topography, strips of vegetation, traffic arteries, and similar features.