

**CROWLEY COUNTY BOARD OF COUNTY COMMISSIONERS
RECORD OF PROCEEDINGS**

APRIL 10, 2023

CALL TO ORDER

Board of County Commissioners met in regular session on April 10, 2023. The meeting was called to order by Chairman Blaine Arbuthnot at 8:30 a.m. The following were present:

Blaine Arbuthnot-----Chairman
Roy Elliott-----Vice Chairman
Terry McMillian-----Member
LaShelle Benbow-----Deputy Clerk to the Board

Audience: Stephen Land, Jordan Bunch, and Sue Ann Lowery

RESOLUTION NO. 2023-8580

MOVE ITEM NUMBER FIVE LISTED ON THE AGENDA TO ITEM NUMBER ONE

Motion by Elliott, seconded by McMillian to move the Stellar Solar Project resolution to the first position on the BOCC agenda.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8581

APPROVE A RESOLUTION APPROVING THE USE BY REVIEW AND VARIANCE FOR THE STELLAR SOLAR PROJECT

Motion by McMillian, seconded by Elliott to approve a Resolution approving the Use-by-Review and Variance for the Stellar Solar Project. The resolution follows:

STATE OF COLORADO)
) ss.
County of Crowley)

At a Regular Meeting of the Board of County Commissioners for Crowley County, Colorado, held in Ordway, Colorado, on the 10th day of April, A.D., 2023, there were present:

Blaine Arbuthnot,	Chairman
Terry McMillian,	Commissioner
Roy Elliott,	Commissioner
LaShelle Benbow,	Deputy Clerk to the Board

when the following proceedings were had and done, to-wit:

RESOLUTION APPROVING THE USE BY REVIEW AND VARIANCE FOR THE STELLAR SOLAR PROJECT

WHEREAS, The County of Crowley, Colorado has adopted a Planning and Zoning Manual; and

WHEREAS, Stellar Renewable Power (“Stellar”) of 14643 Dallas Parkway, Suite 250, Dallas, Texas 75254 submitted a Use by Review for a solar project in Crowley County (the “Project”) in compliance with the requirements of the Crowley County Planning and Zoning Manual; and

WHEREAS, the Crowley County Board of County Commissioners (the "BOCC") held public hearings with Stellar on February 28, 2023, in a public session to discuss and review the Use by Review application for the Project; and

WHEREAS, the BOCC determined the application meets all of the qualifications and requirements as required by the Planning and Zoning Manual and approved the Project; and

WHEREAS, the BOCC believe the Project will be economically advantageous to the County of Crowley and that they agree with the totality of the BOCC's findings and conclusions.

NOW, THEREFORE, BE IT RESOLVED by the BOCC, that:

1. The Use by Review application (application #2023-01) shall be treated as a single application.
2. The application states that the Project will be designed, constructed, and operated to meet or exceed federal and state safety standards.
3. The Use by Review establishes the Project as an appropriate use of the land, and the use will conserve and utilize Crowley County's natural resources.
4. The application further states that upon completion of the construction of the Project, Stellar will reclaim all disturbed ground, to the extent practical, to pre-construction conditions.
5. The Use by Review establishes the Project will maintain and stabilize the value of the property.
6. The Use by Review establishes the Project will reduce fire hazards.
7. The Use by Review establishes the Project will create a stable pattern of land use.
8. The Use by Review establishes the Project will be economically beneficial to the County of Crowley, Colorado.
9. Stellar shall provide the County of Crowley, Colorado with a 2% use tax on all construction materials used in the construction of the Project.
10. If Stellar undertakes any sales of electricity from the Project to any users/consumers of such electricity in the County of Crowley, Colorado, such sales would be subject to 2% County sales tax; however, since Stellar will sell all of the electricity generated by the Project to a utility where such utility will resell the electricity to its own customers (and the utility will provide a valid Colorado "sale for resale" exemption certificate to Stellar in connection with all such sales), Stellar will not be subject to 2% County sales tax on its sales of electricity generated from the Project.
11. The application provides for extensive revegetation and a reclamation plan that includes proper topsoil handling, trenching, and stockpiling, site stabilization and erosion control, and revegetation soil preparation.
12. Prior to the issuance of building permits for the Project, Stellar and the County will agree upon and enter into a revegetation plan for the disturbed area.
13. Prior to the issuance of building permits for the Project, Stellar and the County shall agree on the estimated cost of implementing the revegetation plan and Stellar shall provide the County with bond or other form of financial security to pay for the revegetation in the event that Stellar does not commence or complete the revegetation in accordance with the revegetation plan.
14. The application provides for the control of noxious weeds and the long-term monitoring of the revegetation and reclamation efforts be appropriate third parties.

15. Prior to the issuance of building permits for the Project, Stellar and the County will agree upon and enter into a weed and pest control plan.
16. Prior to the issuance of building permits for the Project, Stellar and the County will agree upon and enter into a Decommissioning and Restoration Agreement.
17. Prior to the issuance of building permits for the Project, Stellar and the County will agree on the estimated cost of decommissioning the Project in accordance with the Decommissioning and Restoration Agreement and Stellar will provide the County with a bond or other form of financial security to pay for the decommissioning in the event that the Stellar does not commence or complete the decommissioning and restoration activities in accordance with the Decommissioning and Restoration Agreement.
18. Prior to the issuance of building permits for the Project, Stellar and the County shall agree upon and enter into a Road Use Mitigation Agreement.
19. Stellar will observe a setback of one hundred (100) feet from all public roads and forty (40) feet from all other property boundaries for all structures, including any fences.
20. The BOCC has approved the application.
21. This approval authorizes Stellar to construct the Project in Crowley County, Colorado on the real properties described in the application, subject to the additional conditions set forth above.
22. This approval will be in force indefinitely, so long as the terms and conditions of this approval are fully complied with.
23. The development authorized by this approval shall be at all times in accordance with the plans and/or specifications approved by the BOCC as well as the regulations of the County of Crowley, Colorado.
24. The development authorized by this approval shall be in conformity with all applicable federal and state statutes, regulations and rules, as well as all applicable land use controls including, but not limited to, applicable comprehensive or master plans, subdivision regulations, zoning and building codes.
25. Within thirty (30) days prior to each annual anniversary date of the issuance of this approval, Stellar shall submit a report detailing all past activities conducted by Stellar pursuant to this approval including a satisfactory showing that Stellar has complied with all conditions of the approval and applicable regulations. Upon notice to the BOCC of the fulfillment of all conditions of this approval, and the BOCC's concurrence therein, the BOCC may terminate further annual review requirements.
26. In accepting this approval, Stellar agrees to pay attorney fees and costs incurred by the BOCC in the event of any litigation challenging this approval, including litigation brought by Stellar.
27. This is an approval of a site-specific development plan and shall constitute a vested property right pursuant to C.R.S. § 24-68-101, et. seq. for a period of five (5) years from the date of this approval. This resolution shall constitute a development agreement for the purposes of establishing the vested property right.
28. This project shall be subject to an annual review for compliance to the Crowley County Planning and Zoning Board. Failure to comply with any provision of this resolution shall be reviewed by the Planning and Zoning Board and may result in the withdrawal of this variance. Any decision by the Planning and Zoning Board shall be reviewable to the Crowley County Board of County Commissioners, sitting as Crowley County Planning and Zoning Authority.

29. The terms and conditions set forth herein shall be binding upon and run with the land which is the subject of this approval, and shall be enforceable against the successors and assigns of the County of Crowley, Colorado.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8582

APPROVE MARCH 2023 BOCC MINUTES

Motion by Elliott, seconded by McMillian to approve the March 2023 board minutes.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8583

APPROVE DHS DISBURSEMENTS, APRIL 10, 2023

Motion by McMillian, seconded by Elliott to approve the DHS disbursements for April 10, 2023, and authorize transfer of funds in the following amount:

General Fund	\$ 4,000.00
DHS Fund	\$ 6,723.62
Total Disbursement	\$ 10,723.62

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8584

APPROVE DISBURSEMENTS, APRIL 10, 2023

Motion by McMillian, seconded by Elliott to approve the disbursements for April 10, 2023, and authorize transfer of funds in the following amounts:

General Fund	\$ 36,851.50
Road and Bridge Fund	\$ 45,321.16
EMS Fire Fund	\$ 2,532.58
Ambulance Fund	\$ 2,111.86
Water Fund	\$ 8,347.01
Conservation Trust Fund	\$ 2,367.57
Total Disbursements	\$ 97,531.68

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8585

APPROVE SECRETAC DISBURSEMENTS, APRIL 10, 2023

Motion by Elliott, seconded by McMillian to approve the SECRETAC disbursements for April 10, 2023, and authorize transfer of funds in the following amounts:

SECRETAC Fund \$ 500.00

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8586

APPROVE CERTIFICATE OF COST ALLOCATION PLAN FOR FY ENDING DECEMBER 31, 2024

Motion by McMillian, seconded by Elliott to approve the Certificate of Cost Allocation Plan for FY Ending December 31, 2024.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

RESOLUTION NO. 2023-8587

APPROVE AN AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND CROWLEY COUNTY FOR DESIGN AND CONSTRUCTION ASSISTANCE FOR THE CROWLEY COUNTY WATER STORAGE TANKS

Motion by Elliott, seconded by McMillian to approve an agreement between The Department of the Army and Crowley County for design and construction assistance for the Crowley County water storage tanks. \$737,131 will be transferred from the D/T County general fund cash account to the water operating cash account to cover the County's match in funding this project.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Arbuthnot-----Aye
Elliott-----Aye
McMillian-----Aye

OTHER BUSINESS

Sue Ann Lowery inquired on the Stellar Solar Project. Arbuthnot stated that the resolution was approved. She requested a copy of the resolution.

No further business appearing the meeting was recessed.

ATTEST:

Melinda Carter, County Clerk

Blaine Arbuthnot, Chairman