

STARKE COUNTY BOARD OF COMMISSIONERS
MINUTES
WEDNESDAY, NOVEMBER 17, 2021

Pursuant to adjournment comes now the Starke County Board of Commissioners and meet in a Joint Session with the Starke County Planning Commission at 5:30 PM, in person at the Starke County Annex Building, Knox, Indiana, with Charles Chesak, Bryan Cavender, Mark Gourley, Bill Crase, Todd Jackson, Denise Cultice, Karl Swihart, Howard Bailey, Phil Woolery, Boz Williams, and Todd Lawrence present and the following proceedings were held to wit:

The meeting of the Board of Commissioners joint with the Starke County Planning Commission was called to order by Commissioner President Charles Chesak directly at 5:30 PM.

WORK SESSION REGARDING THE SOLAR ENERGY ORDINANCE 2019-10

Commissioner Chesak asked who on either boards would like to begin the meeting with their suggestions or concerns in regards to changes to the current solar energy ordinance 2019-10. Planning Commission Vice-President Todd Jackson stated the reason why we are having these meetings is to clarify the solar ordinance in general, there are a lot of gray areas right now. His first concern would be on Page 2, Section 8, it currently states "To the greatest practical extent, all electrical wires and utility connections for CSES shall be installed underground, except for transformers, inverters, switchyards/substations, and controls. The planning director will take into consideration prohibitive costs and site limitations in making his or her determination." The gray area that he feels is the "prohibitive costs" statement. He would like to clarify either a percent cost of the project or a total dollar amount that would classify as a prohibit cost. Todd Jackson stated the second thing is it is not clearly defined in the ordinance itself about heavy equipment running on the property, whether it be running lines underground, heavy equipment in general, ground disruption, and possible tile damage to a field. He would like to see within the ordinance itself that the company would be responsible for repairing the tile damage. He would also like to see a definition for acres for each individual project itself. Whether we put a cap on what is allowed by each individual project to utilize within a given area or a percentage of the amount of acres of available farmland within Starke County, or a cap on the available acres within each township. He would like a clarification of acreage within the ordinance itself.

Phil Woolery asked about the legality of limiting certain percentages, he is not sure that would even be acceptable or legal if it is allowable in this zoning district. Attorney Lucas advised he is not familiar with any existing ordinances that state a maximum of certain percentages can be used within the agriculture district and he is not sure what the authority for that would be but what they could do and he is not saying it is a good idea, is divide the agricultural district into more than one district and at least make it more difficult to put them into a certain area. For example, for a prime farmland district. He stated they could also have municipalities have a different zoning classification. Attorney Bedrock advised they may be able to file it under general welfare. For example, it is for the general welfare of the county that they limit it to 2000 acres for solar, but these questions have not been litigated in the State yet so it is hard to provide a definitive answer on it. Planning Commission President Bill Crase advised he is concerned about the setbacks around preexisting homes in the areas of where these are going in place. The current verbiage reads "Ground mounted solar Panels/arrays shall be set back a minimum of 50 feet from any adjoining property line and a minimum of 200 feet from a foundation, he does not feel that this is enough.

Bill Crase advised he feels that we need to protect the person that was there first, the person that comes in and buys after the fact then so be it. He would like to see at least 600 feet from the property line itself. He would also like to see the verbiage change in Section 8 of page 2 from "The Planning Director" to "The Planning Commission Board". Commissioner Cavender asked how they are going to define what "prohibitive cost" are. Bill Crase advised that there are going to be wires above the ground and there will be animals in them. Somebody in there could rub up against them and it should be a public safety consideration. Phil Woolery advised that the wires would be in their fence and animals chew on all sorts of stuff, irrigation wise. Bill Crase stated there are still people going inside that fence all the time and we need to look out for their wellbeing too. Phil Woolery stated that should be on the company and the company still has to follow all the codes as listed in the ordinance which would also include safety standards. Bill Crase advised he disagrees. Commissioner Gourley advised he has been reading through the state bill that they opposed in the spring, which he opposed it because the state does not need to be telling Starke County how to run things, but as far as solar goes there are a lot of good things in there and may be useful as far as flushing out what's in our ordinance. It addresses the underground and above

ground cables. It states "All cables up to 34 ½ kilovolts located between inverter and project substations shall be located and maintained underground at least a depth of 48" below grade and not to interfere with drainage tile or drainage tile repairs." He advised there is something in there about the expense part that was mentioned with the above ground wires that we might take a look at. He stated there are items greater and of lesser value in the State's plan and presented some examples. He feels that some of the items mentioned in the State's plan would be a good starting place for some changes. Commissioner Chesak advised that the set-back is one of the biggest concerns he has heard from a lot of people and is something they should be looking at the most.

Planning Commissioner Member Todd Lawrence stated he came through Jasper County a few weeks ago and noticed they have started their solar projects there. It is hard to cover all the variables and we should be talking to other counties such as Jasper County, such as their ordinance and find out what they are doing. He advised that he was speaking with Lisa Dan and she advised that Jasper County hired Baker Tilly that helped them with their ordinance, economic development agreement and engineering aspects as part of the project. Lisa Dan stated that if we were to hire a consultant in this aspect, the individual form Next Era stated they would pay for these costs and she believes any of these solar developers that are coming into our area would do the same thing. Todd Lawrence feels that Jasper County knows what they are doing and we should take a look at examples to help narrow down the gray areas and in setting up their ordinance. Commissioner Chesak advised that our ordinance was based off of Jasper County's ordinance with a few changes. Boz Williams advised that he did speak with Next Era today and they will be meeting with him on the 30th of November. Nick Cohen, President of Mammoth Solar advised that they would reimburse because many of these matters are technical and can become complicated.

Attorney Lucas advised that they have already started on that process. They have been in contact with the firm Barnes and Thornburg, which Baker Tilly is working for Barnes and Thornburg, we have already been in contact with them for a while and we are just firming up the details. He stated we are going to be bringing them in and not just for the purpose of expertise but also because there is some benefit to some consistency in the various jurisdictions. Attorney Lucas advised that the benefit of drawing off of the State's own solar plan is that it makes it harder for the state to come back and say your rules are crazy if you have similar rules and follow state standards but alter them a little bit. Bill Crase said the number one complaint he has had is the notification process. He advised nobody listens to the radio anymore and no body reads the paper. One of the concerning things was that people just didn't find out about it and he asked if there is anything they can do to change that process where someone has to send out letters to the adjacent property owners when the solar company is applying for the permit. Attorney Lucas advised that in a prior version of this ordinance included that this would be a conditional use but that part of the ordinance was rejected. If it had been done as a conditional use, notices would have gone out to all the adjacent land owners and there would have been an opportunity for some of these issues such as the set-backs to be discussed. However, the decision was made to cut that out of the ordinance. Attorney Lucas advised they can go back and review anything in the ordinance and change it.

Attorney Lucas stated the conventional way to do this would be to make this a conditional use. He explained for those who do not know what conditional use means, it means that it is presumptive that, that use is appropriate in that district so it's hard to turn someone down on a conditional use but there is a notification process for adjacent land owners and a reasonable process for attaching permits, you can't just deny the permit because you don't like the person. It is presumptively acceptable within that district but there is the notification process. It does add some burden on everyone to go through all that because you do have a lot of parties to be notified. Todd Lawrence made a comment about the notifications process, he advised that when they put up all their hog barns they had to notify all the adjacent property owners and he believes there should be some type of notification process in the ordinance. Bill Crase advised he did meet with Superintendent Dipert at the Starke County Highway Department and working on the maps a little better so we are not destroying roads or subdivisions in this process. Commissioner Gourley asked Attorney Lucas if they have taken action yet with a Road Use Agreement. Attorney Lucas advised that Barnes and Thornburg does have a Road Use Agreement but they have not been able to schedule a meeting yet to discuss but it is in process.

Commissioner Gourley advised he would like to see battery or energy storage addressed. Although Mammoth Solar may not use any battery or energy storage there may be a different solar company that comes in that does use battery and energy storage so at some point it should be discussed within the ordinance. Commissioner Gourley also questioned the timeline when the insurance bonds are done. It is not quit clear as to whether or not it is done before or after the permits are issued. Bill Crase stated similar to Commissioner Gourley's concern, he would like to know who holds the bond for the cleanup

process. Attorney Lucas advised he believes the bonds are currently held by a third party organization but he can't site that at this moment. A short discussion was held about the pumps at the lake in helping to maintain the lake levels at Bass Lake. Bill Crase advised that at that Property Owners meeting, they were told that the county would not be involved in any outside barbers as it is viewed as an outside agreement. He also stated the wells do not belong to us, none of that is considered county equipment and we do not, as a county, want to be responsible for it.

Phil Woolery advised that Purdue has a survey of solar ordinances around the state and he can get some numbers on some of the items being discussed including setbacks. Attorney Luas advised this would be helpful in drafting the changes being made to the current ordinance. Todd Jackson asked the Mammoth Group when they plan on submitting their plans to the county for approval. The engineer with Mammoth advised their first package will be issued on Monday that includes about 80 % of the civil design, general layout and other items. Todd Jackson then stated with that being said we need to jump on this and get everything laid out and defined because we need this ordinance to approve their plans going forward but the starting point for the Planning Commission board is this ordinance to show the guidelines and rules and the next steps along the way. Attorney Lucas advised that the Mammoth Solar group has already started their process. Commissioner Gourley advised that they are too far along with this first one to be changing things before they start submitting, but we do have an opportunity to get things defined and in order for the next project. Commissioner Chesak stated that he does not think we could do that with one but not the others, by exempting one but not the others. Attorney Lucas stated that they are already grandfathered in with the current ordinance.

Boz Williams stated that going back to the set-back he does not think it should go by acreage, it should be one set number. Bill Crase stated that number should be made from the property line and not from the foundation. Chris Shelmon with Mammoth Solar advised for clarification they did submit preliminary plans back in May to the Technical Review Committee and now they are coming in with the final. Commissioner Chesak advised they will take a couple comments but the comments should be limited to 1 minute. Larry Wickert, who lives in Starke County, advised when they are talking about the setbacks on the houses think about if the person's house is already 600 feet away from the property line and then they are going to make it another 600 feet. This is the reason they went from the foundation with the number. They might change the number that they have but it would be fairer for everyone if it was the number from the foundation. Nick Cohen, President of Mammoth Solar Project Doral LLC, stated that you will find that developers are generally easy to work with and if there is someone that is in an objectionable position, a landowner, they don't even need their arms twisted, they will work with those people. Generally speaking if they did something like 600 feet, what it would do is take economic opportunity away from the people who are signed on by making a larger buffer to their property and useless. Then it would create a situation in which more acres are needed to satisfy the number of agricultural lots needed for the project. Nick Cohen advised they could go by a case by case basis and generally they don't even look at the distance they go out and talk to the land owners. If someone calls and they have an issue they will work with them. Maybe they would not put the panels at all near them or they may agree to certain landscaping feature. Whatever it is, it is a good faith effort and he believes all the developers would be honest that way.

Nick Cohen advised that when it comes to solar the line is tapped out. At the moment he can't see another project beyond ours and the next project coming in behind them. The line is completely tapped out and a lot of developers have land positions but many of them have recently withdrawn from the queue because it is dead on arrival. He does not see a situation where there will be a lot more solar coming. There is only so much solar that the world needs and we are there. He believes within two years these projects will be built and we will not be hearing much more about solar. Nick Cohen also stated that getting back to the conversation about hiring the experts, in most of the places where we are developing projects, they do hire the experts, like what you are doing and they bring in an engineer because a lot of things like the DC cabling and other things that are civil design related, they have a professional engineering firm that comes in and does it and then the developer usually offers to pay for it. That way the county will have an expert that is working directly for the county and the county's needs and he strongly recommends that. Chris Shelmon advised that many counties are already doing this for drainage boards. Nick Cohen advised there are a lot of benefits that this project brings and it is a huge investment, hundreds of millions of dollars and there is a revenue stream here in the tax deal they have with Starke County, which is easily 2.5 to 3 million per year and hopefully the county will equitably distribute the money around the county entities but they are looking forward to being a good neighbor in every possible way and even if it not written here they will work with Starke County. Whatever you guys need they want to compromise and make it easy. They also want to keep their schedule. You have their pledge that you have them as a partner.

Mike, a resident of Bass Lake, stated this is his first meeting and he believes that they have all heard a lot of miss information about what's actually happening. He expressed that it feels like no one want to take the time to explain, "hey we have an ordinance" and he sees now that we do have an ordinance and certain definitions that already exist in the ordinance in regards to the buffering systems that need to be put in place. He also made a comment about the Bass Lake pump. Jeff from Hoosier Solar advised that a good developer is always a partner of the community because whatever we do here will follow them to the next place and anytime you get word of someone being uncooperative or difficult it would make their next project difficult. He wanted to address the concerns about the wiring cable and he believes the questions that are being asked are the right questions. Jeff advised that in the United States there are over 5000 utility scale solar installations and over 130 gigawatts installed already. Every single project has above ground DC wiring cable. The solar panels themselves have wire connected to them and then from there you have to run wire either to a disconnect or a combiner and almost always that is above ground and everything after the disconnect and after the combiners is underground. He thinks the suggestion to limit it for a percent of valuable impact is an insightful suggestions but definitely not the right one. What he would encourage the county to do is approach the ordinance and limit the above ground cable to the disconnects and combiners and everything after that must be underground because that is how solar is constructed. This would comply with code and it is very safe. These sites would be monitored 24 hours a day during construction and post construction will have some type of camera or set up as well. Nick Cohen stated that they will have physical security as well at these locations.

Jeff from Hoosier Solar advised he would like the boards to consider limiting the above ground cable to the disconnects and combiners because it is low voltage and is PV rated wire and you can not 100% limit above ground wiring cable. Commissioner Gourley advised that the way Jeff described it is in the State's recommendation plan as well. Jeff advised it is very rare to see AC cable located above ground. Dennis Bope stated he thinks the 600 feet, with respect to Mr. Crase, is way too much. There is going to be a fence whether the fence is far away or near there is going to be a fence. So he thinks the 600 feet is not fair. Rich Linkus advised he just wants the boards to keep in mind that he believes we need to limit the amount of solar farms in the county, the amount of acreage and the size of them. Lisa Dan, Director of Economic Development stated that this ordinance was put in place about a year and a half ago and our first solar developers came in and they took this ordinance and based their plans and project on this ordinance, they have presented their information based on this ordinance so her opinion is that this is the ordinance for the solar project. Todd Jackson corrected her and stated that this ordinance was put in place two and a half years ago. Todd advised that as these things come to light and they need clarified. The last thing they want to do is have these gentlemen or other people coming in submitting a project or submitting plans and then us going through and saying well this does not follow the ordinance or it is in a gray area of the ordinance. His whole deal with this is make it black and white and simple.

Boz Williams asked about the "prohibited costs" again and how they are going to deal with them. Attorney Lucas suggested to confer with the experts they will be hiring, Barnes and Thornburg, for this area but he agrees that that part needs to be improved a little bit. Prohibited costs is an engineering question and we are going to need some consulting to be able to figure out the right direction to go with that one. Attorney Lucas also advised that he believes we have the issues of noticing neighbors to be resolved and the issue of setbacks to be resolved. Attorney Lucas stated he wants to clarify that when someone comes in under and existing ordinance/zoning plan and have taken action they are under that one, but they have been very flexible and easy to work with but we can't make drastic changes at this point in Mammoths plan. Nick Cohen advised they will work with them with any concerns.

With there being no further public comments and no further business, Commissioner Gourley made a motion to adjourn the meeting. Commissioner Cavender seconded the motion and the motion was approved with all ayes. The meeting was adjourned at 6:53 PM.

**STARKE COUNTY PLANNING COMMISSION
NOVEMBER 17, 2021**

Bill Crase, President

Todd Jackson, Vice-President

Denise Cultice

Karl Swihart

Phil Woolery

Todd Lawrence

Boz Williams

Pamela Starkey,
Secretary to the Planning Commission

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STARKE COUNTY BOARD OF COMMISSIONERS

Charlie Chesak, President

Bryan Cavender, Vice-President

Mark Gourley

Rachel Oesterreich, County Auditor
& Secretary to the Board of County Commissioners