MINUTES

POSEY COUNTY
AREA PLAN COMMISSION
SPECIAL MEETING

THE HOVEY HOUSE
330 WALNUT STREET
MT. VERNON, INDIANA 47620

MARCH 18, 2021
6:00 P.M.

MEMBERS PRESENT: Mr. Mark Seib – President, Dr. Keith Spurgeon – Vice President (via Zoom), Mr. Mike Baehl, Mr. Kevin Brown, Mr. Andy Hoehn, Mr. Randy Owens, Mr. Randy Thornburg, Mr. Dave Pearce, Mr. Hans Schmitz, Mr. Trent Van Haaften – Attorney, Mrs. Mindy Bourne –Executive Director, and Mrs. Becky Wolfe – Administrative Assistant.

MEMBERS ABSENT: None

PROPOSED SOLAR AMENDMENT SUBMITTED BY BRIAN A. GOEBEL ETAL.:

MARK SEIB: This evening we are going to be taking up the ordinance change that was requested. I will ask that you mute your phones and we do not want any interruptions. There will be no public hearing. This has already been done. So there will be no public comments being made. It is up to the Committee to discuss and take action as they see fit. If the Committee has a question for somebody that is in the audience, we will allow that from the Committee to ask that question. It will not be that someone can stand up and make a free statement. If you do that, you will be asked to leave the room.

I would like to start with Trent Van Haaften, our attorney. Terry Hall is on Zoom. She is the attorney that helped draft the ordinance as well. I would like to turn this over to Trent to give our mission of what we will be doing tonight.

ATTORNEY TRENT VAN HAAFTEN: I first want to mention the process that's involved. Once a zoning ordinance is passed by a legislative body, in this case Posey County, that State laws says that ordinance can only be amended by a proposal by the Area Plan Commission or the legislative body, which would be the County Commissioners. The Rules of Procedure of the Area Plan Commission takes that one step further and it allows a citizen, a person or company to file a petition to amend the zoning text of the ordinance. So that is what we are dealing with on this in regards to Mr. Goebel's application to amend the zoning ordinance as it relates to the solar ordinance. You've had the public hearing. Once the public hearing is closed, it is up to the Area Plan Commission to consider what they wish to do. They can do nothing this evening, they could adopt the application request in full, they can adopt none of the application request and create your own proposal moving forward to amend the zoning ordinance, or

they can do a hybrid - a little of both. So that is what is to you now in regards to consideration of the application. But understand any proposal that is adopted and passed on to the next level, which is the County Commissioners, is the proposal of the Area Plan Commission. So the application puts something before you, so it is now left to the Area Plan Commission to determine what, if anything, it wishes to move forward. If you adopt a proposal of any sort, it then goes to the County Commissioners, the legislative body of the County, to consider it and they in turn have a number of options with what to do with your proposal that you have put in front of them. It can turn into a back and forth between the Area Plan and the County Commissioners much like recent amendments with the wind side or it can end at the County Commissioners. So that is what you have before you here this evening. Does anyone on the Commission have any questions on the process procedure?

ANDY HOEHN: I have a question. Are you saying this is open now for anything in the ordinance and it is fair game or is it simply on Mr. Goebel's request?

ATTORNEY TRENT VAN HAAFTEN: What is before is what, if any, proposal you want to move on or forward to the legislative body, the County Commissioners.

MARK SEIB: Any further questions? We will take the proposed changes that were filed and we will do one at a time, have a discussion on those and we will then take a vote on each one. We will have a roll call vote to make it official since we have Keith on Zoom. I will now ask Trent to state what the first item is.

ATTORNEY TRENT VAN HAAFTEN: I'm assuming each of you have a copy of what Mr. Goebel submitted. The first section is 153.123 Designation of Use in Districts portion of the ordinance. They are asking for an additional language to be added to that section and that language is in blue text. This would be a request that before a solar project went forward, that the property it would be placed on has to be rezoned to an M-2 prior to the application.

ANDY HOEHN: What are the setback requirements for an M-2?

ATTORNEY TRENT VAN HAAFTEN: What I think Mark is wanting to do… The application basically has four different requests for amendment. I think he wanted to take them one at a time. The first one in the application just deals with section 153.123, which is the aspect of having it rezoned… having land for a proposed solar project be rezoned M-2 before moving forward.

ANDY HOEHN: Correct. And if that were done, what would the setbacks be if it were rezoned to an M-2? Would that change… Does M-2 have its own setbacks?

MARK SEIB: If it was solar or wind, they would still have to meet the requirements of the ordinance for those. It would not play into the factor of what an M-2 is required as a setback.

ATTORNEY TRENT VAN HAAFTEN: I didn't understand your question, Andy. If this was the only thing that was changed, the rest of the solar ordinance would be in place. So you would be dealing with the current setbacks are.

ANDY HOEHN: What are the legal implications of doing this?

ATTORNEY TRENT VAN HAAFTEN: I'm going to pass this to Terry Hall. As you know, Terry was the one involved in the original ordinance, in drafting it. She has dealt with wind and solar ordinances and projects a lot more than I have.

MARK SEIB: Terry, did you hear the question?

ATTORNEY TERRY HALL: I think I understand. The question relates to what would be the effect of approving this type of amendment where the current ordinance says that the Tier 1 and Tier 2 solar project is a permitted use with conditions in the Agricultural district. What this proposed amendment would do would be to remove that condition, permitted use, and make it a permitted use only in an M-2 district. So if a developer wanted to put a solar farm or solar development in an Ag district at this point, the landowner that is leasing their property to developer would have to come in and have that property rezoned to an M-2 district. This would be problematic because solar developments are not like factories. They don't occupy a single, contiguous stretch of land. They are made up of different parcels of land that is owned by different owners that may be adjacent to nonparticipating landowners. So the solar development is not a square or a rectangle of everybody inside, which you would see in a regular zoning. It would essentially be spot zoning with various parcels of land on which solar panels would be placed. It would not be a good use of the Board of Zoning Appeals' time. Nor do I think since the Plan Commission and Commissioners adopted this ordinance allowing these types of developments as permitted uses with conditions in Ag districts, to change it at this point when you've already made the decision essentially when you adopted the ordinance that they would be permitted with conditions and uses. The other issue is that this is leased land. It's the solar developers not owning the land. Therefore, this would require the landowner that wanted to lease their land for a certain period of time and not forever, to have their land changed to a manufacturing district. It could potentially increase their assessed value and at the end of the life of the solar project, if the current landowner wanted to go back to farming, they would have to come back in and rezone it again. A solar farm just doesn't have the same kinds of requirements that an M-2, Heavy Manufacturing or Medium Manufacturing, district would require. They are not going to need parking lots, they are not going to produce air pollution, they are not going to generate lots of traffic. So zoning it to M-2 I think would be impractical for the developer and would not be favorably looked upon by the landowner who would be leasing their land for a certain period of time and would be an expensive process.

RANDY OWENS: How does House Bill 1381 classify this and if it were to become law, would it override our…

ATTORNEY TERRY HALL: I'm not prepared at this time to answer that particular question. I haven't studied that particular house bill that much. I think it has more to do with certain kinds of development standards rather than zoning districts. It seems to me that the purpose of the house bill is to encourage solar development and not prevent local control that would eliminate companies to develop certain kinds of projects.

DAVE PEARCE: House Bill 1381 also addresses setbacks predominately (inaudible)… would pretty much be a statewide setback. So, many of the counties in Indiana, I think like 60 counties have pushed back against that saying we don't want the state telling the counties what they can and cannot do. It needs to be on a local level. I've had to do a lot of study on that with the newspaper.

MARK SEIB: My only thought through this process is that if they have to come and rezone to an M-2 before they can even enter into a lease, it creates the issue that what happens if they don't come and the landowner has already switched to an M-2. Then he has to pay the higher property taxes. Also, if it is an M-2, you can bring any manufacturing that qualifies for an M-2 in there without having a public hearing. I think it does open the door a little too wide to allow for an M-2 to be placed instead of the Agricultural. Anything that comes in Agricultural has to be rezoned and redone through the process of public hearings. But if it is zoned M-2 because of that and they don't come, they could possibly put anything they want, M-2 or lower, on that property.

ANDY HOEHN: I think Indiana is an At Use State. So if you had an M-2 and you farmed it, you would be assessed at the Ag rate. It's an At Use discussion in my understanding. I think you are correct if you are to put a new Sabic on there, yes that door would be open.

MARK SEIB: Maybe that is where we need to have Nancy in here to give us an opinion. Is Nancy in here? Would you come to the microphone please? Nancy is the Assessor for the County. Would you please answer this question? If it is zoned M-2 and they end up actually farming it, how does that fall under the assessment process?

NANCY HOEHN: My assessment process doesn't care what it is zoned. It is as it is being used. If it is zoned Commercial but someone is living there, then I assess that portion as Residential. Therefore, it is At Use. Sabic has ground that is being farmed, so it is an Ag rate.

MARK SEIB: As long as it is maintained and used that way.

NANCY HOEHN: As long as it is continued to be used for Ag, it will be assessed at the Ag rate. That is correct.

DAVE PEARCE: Just this last meeting we denied zoning for a 40 acre field because they were only going to use 4-5 of it for the use of a towing facility. I see this as being a comparative standard because if you are not going to… If you refuse to zone 40 acres

because of being used for 5 acres, how can you change the zoning of a mass amount of land to M-2 before they come?

MARK SEIB: Other discussion? Any motion or action?

MARK SEIB: Dave's motion was to leave the zoning currently as it is and not make the change that was proposed. Is that right, Dave?

DAVE PEARCE: Yes.

ATTORNEY TRENT VAN HAAFTEN: Can we make the motion more specific in regards to stating "leave section 153.123 as is and not amend it"?

ATTORNEY TERRY HALL: Trent, I just have a question. Should it be worded that the APC does not recommend the proposed amendment to Section 153.123 to the Commissioners?

ATTORNEY TRENT VAN HAAFTEN: Yes, that would be more clear.

A motion was made in the affirmative by Dave Pearce that the Area Plan Commission does not recommend the proposed amendment to Section 153.123 to the Commissioner. Randy Owens seconded the motion. Roll call vote (9-0). Yes. Motion passed.

ATTORNEY TRENT VAN HAAFTEN: The second requested amendment that the applicant seeks to amend is Section 153.126.02, the Development Standards. As you can see, they are asking to add language there in the blue which in a general sense is asking for certain green space and solar panel project as well as outside any fencing for solar panels and accessory buildings required under the ordinance. It is referred to as the green buffer.

MARK SEIB: This one is dealing with the green buffer. Discussion? Does everyone know what the green buffer means? We did have a green buffer in the original ordinance and then it got taken out. This is being proposed back in from the application process.

HANS SCHMITZ: So, as worded in the suggestions, a couple of issues that I have – Number one, arbor vitae aren't necessarily native plants and the requirement to transplant those at a point in time when they are exceeding the height of the solar panels is almost impossible without killing half of them in the process from transplant shock. So this arbor vitae in specific requirement does create an unrealistic burden on the project.

RANDY THORNBURG: What is the maximum height of the arbor vitae?

HANS SCHMITZ: Generally speaking, arbor vitae aren't going to get higher than 20-25'. At some point and time, they look kind of Christmas tree like, but they will get large

enough they start breaking whatever height status or dwarf status you put on to them and they start… Have you ever seen them kind of double branching out? So, they do start to lose their aesthetic value once they get so tall.

RANDY THORNBURG: I have some pictures here I'll pass out. It's a double stack. I think these are approximately 10' tall in the picture. Of course you can see it is a nice aesthetic. I don't know everything there is to know about arbor vitae. I think it would make a good green buffer area. I'm definitely in favor of a green buffer area. I think it looks pretty pleasant for all the citizens that were concerned about looking at solar panels.

HANS SCHMITZ: My other concern was that transplant shock was going to require constant replacement.

RANDY OWENS: It says that it should be around the perimeter of any SECS project that is visible from an adjacent nonparticipating landowner or public roadway. The question I have is visible is pretty open-ended. If a landowner owns 300 acres, if they are two miles away and they can see it, then does it still have to have the arbor there?

MARK SEIB: And that is the type of discussion we need to have as far as how far and that kind of stuff. What kind of material or what we would be looking at if we decide to put what I call landscaping in. I've heard a lot of discussion and I know Hans has done a lot more research on this than what I have, but they are looking at things that are 20' tall with shrubs and bushes filling in the lower levels and the valleys and stuff like that. Then comes the invasive species, we don't want any of those brought into the County. We've got that whole process to go through. What happens to them if they die in the winter? Hans, do you have anything else you want to add regarding the plants?

HANS SCHMITZ: Ideally, I would be in favor of native plants. I think you've summed it up pretty well.

MARK SEIB: So, you are in agreement with that kind of height of 20' and filling in with the shrubs and being native? Is that the key words you're looking at?

HANS SCHMITZ: Those are the key words I am looking at as well as this at or exceeding the height of the solar panels. If they have to be that height initially, there aren't a whole lot of ability to transplant plants that are going to meet that requirement.

MARK SEIB: So in other words they are going to have to grow into it?

HANS SCHMITZ: A little bit, yeah.

RANDY THORNBURG: Is there a specific type, Hans, that you would recommend? Have you don't any research on that? I haven't personally and I know you would know more about it.

HANS SCHMITZ: So, our previous language gave it a pretty broad deciduous in evergreen and shrubs, which leaves a lot of variability in what the developer would choose to plant. If we look at comparable things to arbor vitae, a red cedar is somewhat comparable.

MIKE BAEHL: Would you stagger those too?

HANS SCHMITZ: The plants spacing would depend on how quickly you wanted to not see the panels. So if you are going to double stack things, you can plant spacing closer together to achieve a barrier more quickly than if you were to single row anything.

MIKE BAEHL: Do we need to put anything in here about maintaining these if one dies that they replace it with a live one, to keep the underbrush mowed? We need to add that to this also, right? So if one dies, it gets replaced for the life of the project.

MARK SEIB: Yes. It is up to the Committee as to what the restrictions they want to put on them and making sure the landscape is maintained and continues to do its job that it was intended for. Terry, is there anything you want to add as far as what you have seen as far as the landscaping part of it?

ATTORNEY TERRY HALL: Yes, maybe just take a step back and rather than get into the details, discuss a little bit why these kinds of requirements are in these kinds of ordinances and understanding that the way the current proposed amendment is, it would essentially require a fairly high, dense landscape screening planting around the entire perimeter of the project in all of its nooks and crannies as it follows various land lines. Because of the way it is written, it has to be… if it is visible from an adjacent nonparticipating landowner. That is everybody and not just houses. That's the farm field next door, it's the field across the street. It would also require, the way it's written, plantings to shield it from the public right of way. If you look at other ordinances that have considered these kinds of buffer zones, not only just planting of any setbacks, but also planting for screening from the visual view, the purpose of most of those are to screen the residences from the view of the solar panels. As we have looked at other ordinances, the way they are written as well as the model ordinance that was proposed at the end of December last year by IU and the Great Plains Institute, they have written these kinds of provisions to provide flexibility to the developer to create a screening barrier. The purpose of which is to essentially mitigate the impact of the solar farm from nonparticipating residences in the area so that people are going to be protected or have that view shed mitigated. Most of the ordinances that have a landscape plan in there, or landscape requirement in there, would use somewhat flexible language that would say that the developer, when it submits its application along with its visual impact plan and its site plan, it would submit a landscaping plan that would show how the developer plans to mitigate through a green buffer and screening the visual impact from any nonparticipating residences and that the design of that would be left to the developer, subject to approval by the APC as part of the plat process. It would also have some standards in there that would say essentially that it should be made up of native plants.

You can't plant anything that's an evasive species. It has to be maintained for the life of the development by the applicant. It has to be planted in such a quantity and with an expected row height to effect its purpose of screening those nonparticipating residences within a reasonable period of time. So, if you have a buffer screening that is composed of evergreen and deciduous plantings and they grow at 2' a year, they need to be 6' or 8' or whatever. But that would be part of the landscape plan that developer would put together. Most of the ordinances have some kind of general language with some prohibitions like noninvasive species. The other thing is that you really don't want to put a tall planting next to the public right away. We already have a hard enough time seeing around the cornfields, you don't want a tall 20' planting that may impact the sight line of an intersection. Around public rights away, you may want to say that you don't want any planting within 50' of the public right away. That would have to be planted in native forbs and grasses and maintained by the developer. I know that doesn't provide you with specific things, but most all of the language in the ordinances I've looked at, essentially ask the developer to come up with a plan that fits the particular project that accomplishes the purposes for why you would have this kind of provision and in a reasonable period of time and that requires the developer to maintain it during the lifetime of the project.

RANDY THORNBURG: Terry, this is Commissioner Thornburg here. Are you advocating not putting any greenery in public roadways, just nonparticipating landowners?

ATTORNEY TERRY HALL: Well, if there is a house across the street… if there is a nonparticipating house across the public right away from the development, then you would want to put a screening in there. But, you wouldn't want to put a… you wouldn't want to encourage a tall planting next to the public right away that might possible impact the intersection. And the developer doesn't want to do that either because they don't want to be sued for causing a visibility problem.

MARK SEIB: So she is saying when we come to an intersection, we are going to stay back 50' from the public right away. That makes somewhat sense to maintain safety for the County roads and the intersections. I think the green buffer is something that does make sense for us to be able to put up, especially for the nonparticipating landowners, if that comes to be. And putting language in that Hans is talking about native species does provide an opportunity not for just anything and everything. It limits to what is considered for Indiana. I don't know how far we want to go, I hate to say this word, but weeds. How far do we want to put this into some kind of discussion?

KEITH SPURGEON: It seems there are two issues before us here. One is, yes or no, do we want to accept the proposal that is in the petition? If we don't and we are interested in creating some sort of green buffer, which I think has some merit. There have been some good issues brought up Hans and talking about if it is on the other side of a 300 acre field, visibility at intersections. All of those are good things to consider. That may be something we put out there or send this to Terry and others to work out the specific language that would address those kinds of issues. Does that make sense?

MARK SEIB: That has merit too, Keith. I think it also allows for them to, once the developer brings in this before the final plan, they would bring in the specifications as what they were going to do at the different intersections or whatever we feel would be a nonparticipating landowners or any home. It would be up to the Committee to decide. I think that is a very good statement to address that issue.

MIKE BAEHL: I think if a landowner owns 300 acres that are adjacent to it and he doesn't want to participate, if he wants a green barrier, he should get a green barrier. Because he doesn't want to look at them either. Anywhere that the landowner that doesn't participate wants a green barrier, there should be a green barrier.

MARK SEIB: So you are saying they should say if they want one or not, or should it just be an automatic?

MIKE BAEHL: I think it should be an automatic. I think on roadways too.

MARK SEIB: On roadways too? I understand if there is adjacent properties and there is no division between them other than a property line that it may not be necessary to be able to do that. Are you saying the full length of the roadways there should be a green barrier?

MIKE BAEHL: Some people may be offended by driving down a country road and seeing those panels, in my opinion.

MARK SEIB: Terry, I think you were going to say something.

ATTORNEY TERRY HALL: I may not remember what I was going to say. If you did decide that you wanted to work on some language related to this… the current ordinance does require the developer produce what is called a visual impact statement and to propose mitigation and measures that would mitigate the visual impact of the development from certain viewpoints including the residences of nonparticipating landowners, public buildings, parks, churches, anything else that is in the view shed as it is defined in the ordinance. So, the County is not unprotected, per say, by not having a green buffer or landscaping wording right now. If an application were put forward, a Plan Commission could work with that developer to put up screening. As far as making it mandatory on all sides of the project, I've not seen that in any of the ordinances I have reviewed. If House Bill 1381 passes, I don't know exactly what the effect of that would be, because it would essentially say that you can't have anything more stringent than what the provisions would be in that ordinance. Whether it's legal or not legal or if it would withstand challenge. I don't know. One of the difficulties is until we… we are requiring this of the developer prior to any of the panels ever being erected. So, what it would actually look like once built is somewhat unknown. It may be that the person with the 300 acre field and on top of a tractor doesn't want to see solar panels across road, or it may be that after they are built, they really don't care. Depending on how it is landscaped and if they are putting in a pollinator garden and planting flowers and other

things, they may find out they like it. We just have to be careful because putting a tall, planted vegetative barrier around the entire perimeter of one of these larger solar developments is a very expensive process. Especially to maintain it for 50 years. I'm not coming down on one side or the other, I'm just laying out the facts. I think Keith's point was to decide if you are going to recommend or not recommend the proposed amendment as stated and then determine if you are going to recommend other language or no language with respect to screening and buffers.

RANDY OWENS: I'm against making it mandatory just for a couple of reasons. One, it takes the right of the landowner away from them. It forces them to have that barrier there. The second one is that it is very expensive and we are sending the message that Posey County is not open for business and I think that is the wrong message. I think it is something that… I think if a residence is within a certain distance, I think it should be mandatory. But outside that distance, I think it's up to the landowner to make that decision.

KEITH SPURGEON: Terry, did I understand you correctly in saying that our current ordinance already has some protection for that built into it because of the visual impact or line of sight.

ATTORNEY TERRY HALL: It has some protection but it is not specific. The visual impact study includes what is determined to be that the applicant has to include what mitigation measures it is including in its project in order to mitigate the visual impact from those specific views sheds that it took pictures of and puts in the report. That includes nonparticipating residences, public buildings, parks and schools. It could be interpreted that a mitigation measure is a green buffer planting, a green screening planting, that would mitigate the visual impact. It is not specific. It doesn't have the specific language, it just says mitigation measures.

KEITH SPURGEON: So that sort of allows for a case by case interpretation or study of that. Based on how well they answer that, then the Area Planning Commission can either give a thumbs up or thumbs down for the project. Is that correct?

ATTORNEY TERRY HALL: Yes, you can say the mitigation measures are not sufficient for it. So, let's say that they said their mitigation measure from a nonparticipating residence was to plant a flower garden. That doesn't do anything to mitigate that view, the impact of the solar panel view, from that residence. That would be not acceptable by the Plan Commission for the mitigation measure. I would note that developers, while they don't necessarily plant this kind of plant this feet apart right here because they want to be able to craft it for the best affect based on the development they were proposing. They do like to have some kind of standards. So, including the native plants, expected height by a certain year, or width or thickness or something like that, is helpful to them. Otherwise, you could end up with nonnative hedges that die after 10 years because it is cheaper. You would probably want to put some standards in. If you didn't pass anything tonight, I think you would still not have as much protection as if you

put in specific language. It would give you a little time to work on that and perhaps, I don't know what the process is, Trent, if the Plan Commission… if the Plan Commission was to not recommend that language that is proposed, but voted to include language related to protective screening and types of plantings, would it be able to work on the specific wording of that via email or would you have to come back to another hearing in order to pass something?

ATTORNEY TRENT VAN HAAFTEN: We would have to come back to another meeting to pass specific language.

ATTORNEY TERRY HALL: We have played around with some language. If the Plan Commission was interested, I could read some of it. I don't know how much time you want to take to wordsmith it tonight. Mark, what are your thoughts?

MARK SEIB: Let's go through some of the language and that way we can make a decision whether we want to wordsmith it or whatever we need to do with it tonight, or whether we want to table it tonight and come back for another meeting. Why don't you go ahead and give us some of the language.

ATTORNEY TERRY HALL: This is some draft language that we have considered based on some of the other ordinances in trying to keep in the spirit of what the petitioner was requesting. It says it would add a provision to the development standards for a green buffer. It would say something like "the applicant shall include a landscape plan as part of its site plan or separately that provides for installation of screening to mitigate the project's impact on the view sheds from any nonparticipating residence and public buildings. The screenings shall consist of an evergreen hedge planted in such quantity and expected growth height as to accomplish the purpose of the screening. All setback buffers shall be planted in native forbs and grasses and shall not include any invasive plants. The screenings and buffers shall be maintained by the applicant during the life of the project. The screening planting may be in the setback area but not closer than X feet from any public right away." That is a first draft reading.

MARK SEIB: Thank you, Terry.

RANDY THORNBURG: Personally, I would like to see the green buffer zone with double stacked trees of native species. Of course, landscape maintenance included. Everything I have heard has been overwhelming and nonparticipating landowners definitely want screening. They don't want to look at solar panels. Do we need to make a motion to that effect and let the attorneys word it out?

ATTORNEY TRENT VAN HAAFTEN: You will have to have the specific language in front of you in terms of making a motion and a decision on that.

MARK SEIB: With listening to what Terry had and what Randy had, what about the roadways, the intersections? Are we going to have any clear setbacks that there is no

landscaping within so many feet of that intersection? Or are we going to require landscaping and then…

RANDY THORNBURG: I definitely think the intersections need to be clear for visibility purposes.

MARK SEIB: What kind of footage are you thinking?

DAVE PEARCE: I think the State would have a minimum for that. With the county roads and stop signs, there is language in place that provides direction on that. I haven't seen it recently, but I know there is language in there that addresses… (Inaudible)

RANDY THORNBURG: I can speak with the County Highway Superintendent about that. I'm sure he would have more input into it, but I don't have it right off the top of my head.

MARK SEIB: If we leave that open to the standards for that, is that acceptable and we wouldn't have to have a meeting to come back to on that?

ATTORNEY TERRY HALL: You could make that any screening subject to the requirements of the county engineer or the county transportation person, the safety requirements. You can make that subject to other law or other ordinances that you have in your County with respect to public safety.

MIKE BAEHL: I think it should say landowner. I agree with Randy, landowner and homeowner.

MARK SEIB: On nonparticipating?

MIKE BAEHL: Yes.

ATTORNEY TERRY HALL: If you do that, you're back to potentially planting the entire perimeter of the project. These solar developments are not in a single contiguous rectangle. They may consist of 20 different parcels that may not even be connected to each other. To mandate a screening around the entire perimeter… I just want to make sure you understand what you are mandating that. That you would have to screen from all adjacent nonparticipating landowners.

MIKE BAEHL: I didn't say the entire project, I said a landowner that did not want to participate, and if they wanted the screening up, they should get it up. If a farmer wants to farm his ground right next to it and doesn't have it, that is his prerogative. But if he wants the barrier up while he is farming, he should have that barrier up.

MARK SEIB: With or without a home?

MIKE BAEHL: With or without a home.

ATTORNEY TERRY HALL: So is the decision of that farmer buying the land for the entire project. So if the farm is sold, the next owner wants the barrier, can they enforce it under the ordinance?

RANDY THORNBURG: You make it optional for the nonparticipating landowner, but make it mandatory for the residence.

ANDY HOEHN: I think we are mudding the waters here and we are chasing rabbits in the weeds. I would like to bypass this and come back at the end or potentially have another meeting. This is a big enough deal and important enough subject and enough people involved that it is important to get this right. I will sacrifice another meeting if that is necessary.

MARK SEIB: Everybody just nod your head if you are in agreement to take it back up at the end. Keith, do you agree to take it back up at the end again?

KEITH SPURGEON: Yes, I do.

MARK SEIB: So we will take this up… Terry if want to work on language. We do have to have more discussion. Trent, what is our next item?

ATTORNEY TRENT VAN HAAFTEN: The third request of the applicant was Section 153.126.03 Setbacks and Height Restrictions of the ordinance, specifically Subsection B. This deals directly with the setback language. The current ordinance requires a 100' setback from any nonparticipating landowner property line. The applicant is seeking to amend the ordinance to require a 1000' setback from any nonparticipating landowner property line and adding the language "measured from the outer edge of the solar panel."

MARK SEIB: All right gentlemen, what do we think?

RANDY THORNBURG: I know the original ordinance had it at 1000' and it was reduced to 100'. I wasn't involved in that, but I would say 1000' was too far and 100' is entirely too close. Somewhere in the middle there we need to find a setback we can all agree on.

KEVIN BROWN: We did the same thing with the windmills.

RANDY THORNBURG: I think it is better to go from the property line as opposed to the residence. If you have a one-acre lot with a house on it and the house is up towards the front of your lot… a one-acre lot is 280', they could possibly be within 50' of your property line.

MARK SEIB: If you went from the home, correct?

RANDY THORNBURG: Right. I like the idea of the property line versus the residence.

ANDY HOEHN: There's a problem with the property line discussion and that would be if you had an older farm where you had a 40-acre plot and you had a house on it. There really isn't a "property line" for that residence. It's all ag with special exception for the residence. So if you are opting for clarity, you will almost have to go from the foundation and then determine whatever distance you choose to. Or you can use the 100' property line and…

RANDY THORNBURG: Say they do own 40-acres and they want to build in the future and there they are building right up next to the solar panels.

ANDY HOEHN: What I'm saying is there isn't a property line. There is a house on a 40-acre parcel that has been there for 40 years, there is no residential property line, per say. Let's say they wanted to go and have that measured and taken out, then you would have a property line. Some of these, I'm sure, don't have property lines.

MIKE BAEHL: If they owned that 40-acres and they had a house on it, wouldn't you want it outside the 40-acres? There may not be a defined property line, but if they owned 40-acres, don't they own… I mean if there house is in the middle of that, they would want it set so far back…

ANDY HOEHN: Only if they are a nonparticipant. If they are a participant, they don't have a property line to go from.

MARK SEIB: You have a 40-acre property and you have a home in the middle of it, it's the whole 40-acres and then we need to go to the foundation, or whatever, to start that discussion. Is there something we can do from the residential, you know maybe go 200', 300' or whatever from that, and then 100' from the property. That is only if it is nonparticipating. If they are participating, as long as they do a recording of record and they both agreed to allow it to be 50' or 0', then they have it on recording. If somebody new comes in to buy, they would have it in a deed and it wouldn't be a surprise to them after they bought it.

ANDY HOEHN: I think it is going to have to be a hybrid. Maybe 300' from the foundation and 125' from property line. I think it has to be both of those. I don't think either one can stand on its own.

KEITH SPURGEON: I think that's a good point. That is what I was here thinking that we really may need to consider both. There may be instances where the house may be one end of a rectangle and we want the solar panels to be further away from the house, but at the end of the 180-acre lot or 40-acre lot, at the one end of it where my house is not located at, it could be closer to the property line. I think you need to do kind of a

combination of both, so many feet from the residence, so many feet from the property line, whichever is greater.

RANDY THORNBURG: It looks like to me like it would be a conflict for future building. You're going to allow certain footage, and say they want to put their son-in-law and a daughter close by on the land, the setback is going to interfere with where they want to locate.

KEITH SPURGEON: No, the setback is only for the solar panels and is not for the house. We are talking about an ordinance that deals with setbacks for the solar panels. If somebody comes and builds a house on their lot, then they have to meet the setback requirements for the residence on that piece of property. That is different from the setback requirements for the solar panels.

RANDY THORNBURG: So you are denying this location on a property they own, is what you are saying. Because you can't build there because solar panels are there and they own the property and are nonparticipating.

MARK SEIB: I believe what Keith is trying to explain is that if you have a 100' or 125' from the property line, if it is father than whatever that number is from the foundation. If it is 300' from the foundation of an existing home, if they want to add another home, all they have to do is meet the requirements of Ag district on the setbacks. And yes, they would be closer to the panels, Randy. But it would not prohibit them from building 25' off the sides of the property. They could build a home if they wished. They would be closer to the panels.

RANDY OWENS: It would have to be a combination of both (the remainder is inaudible).

ATTORNEY TERRY HALL: It is usually written as both. That no solar panel can be closer than 100' from the nonparticipating property line and no solar panel can placed closer than 250' from the leading foundation edge to the closest solar panel. So that you protect both the existing housing as well as just a buffer zone around land that doesn't have a development on it at this point. Thinking about setbacks, you kind of have to think backwards because it's a setback from the participating landowner's land. So if they have a 50-acre parcel, that 100' setback goes into that 50-acre parcel. It creates a 100' buffer around the parcel that abuts adjacent land that essentially can't be used for anything except mowing. The only reason I bring that up is because as you think about setbacks and increasing setbacks, you need to be careful about stranding property that can't be used efficiently for farming and can't be used for solar. You want to come up with something that protects both the nonparticipating landowner and the participating landowner and it doesn't just strand a big piece of land that someone just has to mow and maintain. It's not useful.

KEVIN BROWN: So, setback property can't be farmed or anything like that, is what she is saying?

MARK SEIB: Terry, I guess that is the question. Say there is a setback of 100', 200', 300' or 500', can that be farmed?

ATTORNEY TERRY HALL: Probably not very efficiently or profitably. I don't know very many farmers that could farm a 100' wide strip that is maybe a 1000' long and do it profitably. And if you increased it to 200' or 300', that's still may not be enough acreage to justify equipment purchases or find somebody to cash rent it. All I'm saying is a lot of times people, when they visualize a setback, you just need to remember to say it is a reduction in the useful land and for the solar development, farming or anything else. It is just land that has to be mowed and maintained. There is a purpose for it; it is to reduce the impact on the nonparticipating adjacent landowner. It is a balancing act.

KEVIN BROWN: Is it the solar company's responsibility to mow all of those setbacks?

MARK SEIB: Yes.

ATTORNEY TERRY HALL: Usually that is part of the lease. If it is part of the green buffer, which the setback normally is, it's not the tall screening but a green buffer. You can make that part of the maintenance.

MARK SEIB: That still cuts down on the distance that would be mowed. Terry is right, if we go 100', a swath for us when we are planting would take about 150'. That's not much to work with.

RANDY OWENS: Plus you wouldn't want the green barrier (the rest was inaudible).

MARK SEIB: Than again, you don't want the corn or tall plants sitting right there on the edge.

RANDY THORNBURG: Hans, do you have any input into the setback?

HANS SCHMITZ: Nothing in addition to what has already been stated.

ATTORNEY TERRY HALL: I want to bring up one more issue that Mark mentioned in that is the waiver issue. The existing ordinance says "no solar panel may be located no less than 100' from any nonparticipating landowner property line." If you added an additional phrase that said "no solar panel, in addition to the 100', no solar panel may be located less than 250' from the leading edge of any nonparticipating residence and that setbacks may be waived by mutual agreement between the owner of the nonparticipating residence or nonparticipating landowner as applicable in the applicant, provided that it does not reduce the setback from any other nonparticipating residence, not subject to a waiver. The waiver is recorded with the Posey County Recorder's Office." It's ok to

allow waivers, but you need to make sure the waiver of one landowner to say you can put the panels 150' from my house and record that, you can't enter into that waiver if it affects his neighbor's protective setback. My only point is if you are going to include waiver language in there, you need to make it more protective of people who don't want to enter into a waiver.

A motion was made in the affirmative by Randy Thornburg to recommend a setback of 300' from the outer edge of the solar panel to the property line of nonparticipating landowners. There was no second. **Motion failed.**

A motion was made in the affirmative by Mike Baehl to recommend a setback of 500' from the property line and 1000' from the residence. Kevin Brown seconded the motion. Roll call vote (3-6). **Motion failed. No.**

MARK SEIB: What can we work out in between?

RANDY OWENS: We've been talking and numerous times we've said 100' from the property line and 250' from the foundation, whichever is greatest.

A motion was made in the affirmative by Randy Owens to recommend a setback of 100' from the property line and 250' from the foundation.

KEITH SPURGEON: Does this include any provisions for waivers?

ATTORNEY TRENT VAN HAAFTEN: My suggestion would be if you have direction, if you want to pass the motion giving direction in terms of general perimeters and make part of that motion that specific language be drafted and considered at the next meeting. I think that might be the best route to go. I don't think you want to sit here and just… You can come down to the idea of numbers, but until you see the full language, whether or not you want to put that full language into the ordinance, I don't think you want to take that step. I do think you could put some direction in regards to what kind of numbers you are thinking about as a Commission and for the public. Then we can come back later with some specific language to adopt or not adopt with that specific language.

RANDY THORNBURG: I definitely agree we need specific numbers on it.

MARK SEIB: So, Randy has a motion on the floor.

Randy Owens amended his motion to make it a direction with exact wording be added.

MARK SEIB: And if there is anything else as far as direction that you want into that setback requirements you made, then that is what we want to put into it. We can talk about that later.

ATTORNEY TRENT VAN HAAFTEN: Let me add this, the direction you give is what Terry will draft. At the next meeting, you will have in front of you that exact language. So it will be a situation where someone makes a motion to adopt that or someone makes a motion to adopt that as amended. At least you'll have that specific language in front of you so both you and the public will know exactly what you are voting on.

RANDY THORNBURG: Your motion was 100' from the property line and 250' from the foundation?

RANDY OWENS: Whichever is greatest.

A motion was made in the affirmative by Randy Owens to recommend a setback of 100' from the property line and 250' from the foundation with specific language to be added and the waiver included. Hans Schmitz seconded the motion. Roll call vote (5-4). **Yes. Motion passed.**

ATTORNEY TRENT VAN HAAFTEN: Section 153.127.01 Post-Construction and Continued Maintenance. Currently, the ordinance requires a decommissioning security be provided. The amendment seeks to delete that portion of providing a bond and essentially providing an up-front cash performance bond held by a financial institution. So the decommissioning cost would be paid up front by the applicant.

MARK SEIB: Does everyone understand what they have proposed? Any questions?

ANDY HOEHN: This question is probably for me and everyone here. What's the major difference between a cash bond, a surety bond or a letter of credit?

ATTORNEY TRENT VAN HAAFTEN: You are talking about putting up the total amount of cash being held or buying an insurance policy or bond that is not going to be as costly to the developer. But, if something should be needed, then it will be covered.

ATTORNEY TERRY HALL: The current ordinance provides for flexibility for different kinds of financial assurances that would be acceptable to the Plan Commission and proposed by the developer. You can purchase a surety bond that is essentially an insurance policy that's paid for on an annual basis or biannual basis or every five years. It is purchased consistently. It ensures the removal cost and restoration of the facilities that are part of the project. A further part of the proposed amendment would remove any credit given to the cost of decommissioning from the salvage value of the facility. I want to make sure that as you are considering this amendment, and I don't know Trent if you are going to put it in two separate (inaudible) or post construction maintenance bonds. A letter of credit is essentially the same kind of thing. There is a surety bond, but it is a slightly different financial instrument in which it is a three party contract and is a little bit more absolute than a surety bond. Or they could put up some other kind of financial assurance. What the proposed amendment is asking for is a fully collateralized… Let's

say the cost of decommissioning the project at 125%, which is what the ordinance requires the financial assurance to be, let's say 5 million dollars. Then the developer would need to put 5 million dollars in cash in a bank before the project is built and maintain it for the entire life of the project in order to ensure they have 5 million dollars at the end of the process instead of purchasing an insurance policy. It would be very expensive and quit unusual not only for this project but for other projects as well.

DAVE PEARCE: Have we asked anyone else to do this?

MARK SEIB: What, a bond?

DAVE PEARCE: No, cash.

MARK SEIB: No, we don't ask for cash bonds. Anytime we do a subdivision or anything such as that, they do the same thing, they put up a bond to ensure that the project is going to be completed and the streets will be completed and so on. And then as those are done, we check them off and we pull that money back out. Discussion?

ANDY HOEHN: I think a bond definitely needs to be in place. What was struck out was deduct up to 65% of the net salvage value. I could see the 125% surety bond, but use 65% of salvage value. I would cut that potentially to 25% or something. I wouldn't know how to estimate the net salvage value on something that I've never seen before.

ATTORNEY TERRY HALL: The decommissioning bond when it's put up and calculated, the developer will have a cost engineer that proposes what the decommissioning cost should be at 125% less the estimated… 65% of the estimated salvage value. The ordinance provides for the Plan Commission to have its own engineer calculate that same bond and then its reviewed every five years during the life of the project to make sure that the markets for salvage and the markets for the cost of removal have stayed the same or if they have moved or if it costs more to remove it or whatever, the bond amount is adjusted. Essentially, it is the same as if you put up a building and you said you were going to remove the building in 50 years and the building was brick and steel, the cost of removing that building would be X dollars minus whatever you could sell the used brick and steel for. So, instead of giving 100% scrape value, this allows for 65% scrape value as a credit against 125% of the full estimated cost. It's inflated on the end of the cost of removal and deflated on the end of estimating the salvage. You're right, none of us sitting here can figure that out. It has to be done by engineers who have experience in this kind of calculation.

RANDY THORNBURG: I'm personally not comfortable with 65% with salvage coming off the 125. That's awful flexible and it leaves too much out there…

ATTORNEY TERRY HALL: Let's make sure that the language is giving you the right impression. Maybe the language is confusing or I'm confused, one of the two. So just to speak in round numbers, let's say that the cost of completely removing the entire facility

is $100. Let's talk in small round dollars. If that is the actual cost of removal, the bond would have to be at least $125. That is 125% of the cost of removal. Against that $125, if the estimated scrap value is $50, then against that $125 bond they would get $35 credit. That would be 65% of the scrap value, not 65% of the $125. So, you would start with the cost of $100 at 125%, it's $125, the scrap value is $50, and 65% of that is $35. That would be $125 minus $35. You post a bond for $90, which is 90% of the estimated cost of disposal. Does that make any sense at all?

RANDY THORNBURG: Yes, but it seems like the 65% could be real flexible upon who is doing the estimating of the salvage value.

ATTORNEY TERRY HALL: It is. It's an estimate, it's a future forecast. And like all future forecast, it may be one sided. Which is why the estimated cost is inflated and the estimated salvage value is deflated to try to err on the side of caution on behalf of the landowners, the adjacent landowners and the County to make sure the facility is completely removed and the land is restored at the end of the project.

DAVE PEARCE: I have to agree with Randy on this. I feel like we need to err on the side of caution. We are looking at approximately 35 years down the road and it is all something that is relatively new.

ANDY HOEHN: The current wording allows it to be evaluated every five years. If that should change, it looks like it could be renegotiated as information becomes more available.

KEITH SPURGEON: A person that the Area Plan Commission chooses reevaluates it. It's not necessarily the company's person doing the estimating. Is that correct?

ANDY HOEHN: Yes, it is a licensed engineer approved by the Area Plan.

ATTORNEY TERRY HALL: Yes. There is an inflation index for an annual adjustment to account for inflation and there is a reevaluation every five years by an engineer acceptable to the Plan Commission to ensure the estimate is still accurate.

MARK SEIB: So every year there is an inflation adjustment and every five years there is an audit done. We still have the 125% and currently we have 65% credit for the value of what that salvage is by an engineer that we pick. So, Dave, what part did you want to adjust?

DAVE PEARCE: I think the percentage of salvage is… 25% might be a little low. Maybe somewhere around 40-45% range.

ANDY HOEHN: It could only be for the first 4-5 years. Once it gets the first review, it could be adjusted at that time. I would opt to be a little conservative on the front end and if we need to adjust it, we can down the road.

DAVE PEARCE: I'm good with that.

MARK SEIB: So, are you saying you want to adjust the 65 down to something else for the first five years and then allow adjustment after five years?

ANDY HOEHN: It's designed to self-adjust after a period of time the way I'm reading it. It's open for discussion after five years.

MARK SEIB: Right. I just want to make sure we all understand what we are talking about numbers wise.

ANDY HOEHN: I would go with a surety bond as opposed to a cash bond. That is not a normal thing to do.

RANDY THORNBURG: I could go for… A surety bond is 125, but I would want the salvage down to about 25%. Nowhere near 65. I think that allows way too much flexibility for the company and we're not protected as a county.

HANS SCHMITZ: I'll make a motion and split the difference and make it 35.

MARK SEIB: So Hans has made a motion, and I'm assuming, Hans, it's a security bond that would be the 125% of the value of the project and then you're saying to go with a salvage value of 35% surety bond.

ATTORNEY TERRY HALL: Can we clarify because the proposed amendment will restrict the type of financial assurance instrument to a cash performance bond, fully collateralized cash performance bond. That's not being recommended, right?

HANS SCHMITZ: Let me restate my motion. I would like to move to make no changes to our original ordinance except to strike 65% of the net salvage value and insert 35%.

MARK SEIB: I'm asking you, Terry, do you see anything wrong with that?

ATTORNEY TERRY HALL: No, if that is the consensus of the Plan Commission. It makes the instrument more expensive, but…

KEITH SPURGEON: Is there an industry standard?

ATTORNEY TERRY HALL: This is sort of the industry standard, what is in here. But, the salvage value market is fluctuating. It goes up and down. One of the reasons why the salvage value is not 100%, which was common in earlier years because, if it is the case, it comes down to the County for whatever reason… Understand that this decommissioning bond is there only in the event if the developer does not remove the property. If the developer or public utility or whoever is the ultimate owner, fails in its

obligation, that is when this insurance policy comes in. So, the salvage value is lesser because the County has to undertake doing this, so they are not going to be as experienced in the salvage market for these types of plants. Which is why 100% salvage value is not given and 65% is. Assuming you may not be as efficient as the developer or the utility in removing and finding a market for that. I don't know the effect of the cost of the financial surety would be to make that kind of change. You would probably have to ask that of an industry developer. If you had a question related to what would be the effect of that on the cost of the financial instrument, I just don't know.

DAVE PEARCE: Are we looking at the first five years and then adjust?

MARK SEIB: Right, but we would still just have the value of 35%.

RANDY OWENS: Terry, when we are talking about the 65%, the net salvage value is fixed regardless of what percentage we assign, right? Because at the end of the project the net salvage value will be fixed and the 65% is just how good the company is at doing the salvaging and how good they are at getting their monies worth. So, we're not really talking about what the salvage value is, we're talking about how good, at the end of the project, the company that is decommissioning is at getting the total worth of what is being salvaged. Is that correct?

ATTORNEY TERRY HALL: If your point is that the salvager who is doing the salvaging is inefficient at their job and it costs them more to do the salvaging then potentially 65% wouldn't be sufficient, or it would be too much. Is that what you are saying? It would dependent on how efficient the salvagers was.

RANDY OWENS: I'll use numbers. Suppose at the end of the project the salvage value is $100,000. The person doing the salvaging, we're saying they are going to be 65% efficient so they would get $65,000 instead of $100,000. When we reduce that to 35%, it would still be $100,000 worth of salvage, but we're saying we are so inefficient we're only going to get $35,000 when we salvage it. Does that make sense? The net salvage value will be whatever it is at the end of the project. All we are talking about here is how good the company doing the salvaging is at getting what they are supposed to get.

ATTORNEY TERRY HALL: The salvage value will go to whoever actually dismantles the project. The actual cash of the salvage value. The only purpose of the 65% credit against the 125% of the estimated cost of decommissioning is to arrive at what the estimated actual cost would be to remove the facility. So, if it costs a million dollars to remove the facility and you get $100,000 of salvage value or $650,000 salvage value, or whatever it is, that you are only going to purchase an insurance policy for the difference between that 125% and 65%. We may be talking past each other here. I apologize if I don't understand what your concern is.

KEITH SPURGEON: Let me see if I understand a little bit here. What we are talking about is decommissioning. That is the topic. At the end of the day, the plan is for the

company to take away everything and get whatever money they can out of the salvage and remove everything. What this language is hedge our bets. What if they don't do that? Then we are left footing the bills. So what we are doing is saying you have to buy a bond, you have to put some money in up front that we can then get access to clean up the land if you fail to do that. We are saying we want you to put up 125% of the cost of decommissioning the project. Now, that will cost you money to do that. You will have to buy a bond. We will give you credit for whatever we get out of for 65% or 35%, whatever we get out of salvage, we will allow that as credit so you don't have to purchase that bond for 125%. We will give you a discount on that for what we will get out of salvage if you fail to do your duty. So on the one hand; you can look at it as a company… Maybe the only interest that the solar company will have is what will this do to the cost of the bond, my insurance, if I fail. Surely, they are not going into a project planning to fail to pick up on that. Hopefully they are not planning on failure. So what this does is it effects the cost of the insurance they need in case something happens and they do fail.

ATTORNEY TERRY HALL: Right.

MARK SEIB: How are we feeling on this? Are we understanding what is being said? Ok, so the motion that is on the floor is to leave the language the way it is except to reduce the 65% to 35%. That is the difference of net salvage value.

ATTORNEY TRENT VAN HAAFTEN: Since you have the specific language in front of you and you know what the change is going to be, I would say if you pass the motion, then that is what you recommendation is for this one and is going to go to the County Commissioners. So, we will not have to consider that again since you have that language in front of you.

KEITH SPURGEON: My own thought is I just don't know what the impact of this change is. How much will it increase the cost of the bond? I don't think we know that.

ATTORNEY TERRY HALL: I don't know that and I failed to tell you that the net salvage value is a defined term in the ordinance. So, if you wanted to make sure you understood what net salvage value meant, it's defined in the ordinance in the definition section.

MARK SEIB: Are there any other questions? I want to make sure everyone understands what we are voting on.

A motion was made in the affirmative to recommend not making any changes to the original ordinance except to strike 65% of the net salvage value and insert 35% by Hans Schmitz. Kevin Brown seconded the motion. Roll call vote (9-0). **Yes. Motion passed.**

MARK SEIB: So unless anyone speaks up, we are going to use that as the language to send to the Commissioners. Trent, was there anything else that was being proposed.

ATTORNEY TRENT VAN HAAFTEN: No, in terms of the application from Mr. Goebel, those were the four requests in regards to amending the ordinance.

MARK SEIB: We said we would come back after we completed those proposals that were given to us and revisit the Development Standards.

ATTORNEY TERRY HALL: Before you move to that, I just want to make sure whether the Plan Commission was going to consider the oral motion that was made at the public hearing with respect to the property value guarantee. That was not included in the application, but the petitioner did make that oral request at the public hearing that the Plan Commission consider making mandatory the property value guarantee that is currently discretionary with the Commissioners. I didn't know if you were going to consider it or not consider it.

MARK SEIB: So, what I was going to do was go through what was being applied and we said we would come back to that and then we would go into any other thing that came out of the public hearing or amongst the Committee itself. Unless someone has an objection to that.

KEITH SPURGEON: Trent, do we have to do a yes or no vote on these items in the application? We did on the first one, but we have not on the others. Or does the action that we took satisfy that?

ATTORNEY TRENT VAN HAAFTEN: The action on the third request for the setbacks, the motion was passed to direct us to formulate language for further consideration. That is the motion on the third request regarding the setbacks. I don't believe there is any up or down at this point.

MARK SEIB: That will be returned for a future meeting as it stands right now.

ATTORNEY TRENT VAN HAAFTEN: The second request in regards to the green buffer asked for discussion to continue later in this meeting. So there is nothing that needs to be done on this right now because I believe the discussion is going to continue. Does that answer you, Keith?

KEITH SPURGEON: Yes. Thank you.

MARK SEIB: I would like to come back in to this green buffer. If there is any language we can work out or language that needs to be sent to our attorneys. This is the same kind of idea that we did on the setback. It's whichever you want to do.

MIKE BAEHL: I think we should have some kind of wording that says that if the nonparticipating landowner wants a buffer, he should get a buffer.

MARK SEIB: So if the participating adjacent landowner wants a buffer, then he should be entitled to a buffer?

MIKE BAEHL: The nonparticipating. The nonparticipating landowner adjacent to the… if he wants a buffer, even if it is on the other side of a 300-acre field, he should get his buffer.

RANDY THORNBURG: You're saying to make that optional as it is presented in here where it is required around any ground mounted solar array or where the array is visible to adjacent nonparticipating landowner or public roadway? You are just talking about giving the nonparticipating landowner an option?

MIKE BAEHL: Yes.

DAVE PEARCE: In previous discussion, I didn't hear anyone that was not in favor of having a green buffer.

MIKE BAEHL: What?

RANDY THORNBURG: He's basically saying that everyone…

DAVE PEARCE: I didn't hear anyone say they were not in favor of a green buffer.

KEVIN BROWN: I think that's a true statement. We just need to add the language.

RANDY OWENS: I think it should be up to the nonparticipating landowner.

ANDY HOEHN: When I look at something that is 40-acres back and it's ag against ag, I think it's participating against nonparticipating, I don't understand what a buffer would do there other than I just don't like driving by this. I don't see that affecting the welfare or the health. I just don't understand it. Now, up against the residence, along a highway, those I think are open for discussion. But where you have ag against ag in the back 40… If you are in there planting it, you're out there for a day or maybe two. Then you are going to have corn that is 7, 8 or 9' tall. No one is going to be back there. I think that's a little over the top. The residential, something needs to be there like a fence or a green arbor. And we're looking at not just this current solar discussion, but beyond that. What is the next thing coming down the road and what do you want that to look like. I would not want to see it required on the back 40.

MIKE BAEHL: I didn't say it was required. I said if the nonparticipating landowner doesn't want it, if he owns 40-acres and he wants that greenery on the backside of that 40-acres, they should put a greenery there. I didn't buy 40-acres out in the country to have a solar field that I can see.

ANDY HOEHN: I'm talking ag against ag. If the guy that is farming it…

MIKE BAEHL: I feel like if a guy doesn't want it and it's ag against ag, he shouldn't have to look at it.

ANDY HOEHN: I guess I don't agree.

RANDY OWENS: I agree with Andy. If somebody wants to farm their land for corn or beans, then they can do that. If someone wants to farm their land for solar energy, they should be able to do that. If there are no residences involved and it is in the back 40, I agree with Andy, it should not be a requirement.

KEVIN BROWN: I think if it's somebody's property, I agree with Mike there. I think if they don't want to look at it, there should be a barrier.

RANDY OWENS: I've been out to places and I've seen factories in the middle of farmland without green barriers. I've seen oil tanks and oil wells and we don't make them put green barriers around that. It seems like we are introducing a hardship.

KEVIN BROWN: I kind of look at this as where I live at and if I would want to look at this. I'm not against it, but I don't want to look at it. That is why I want the green buffer.

HANS SCHMITZ: The word adjacent is somewhat imperative here. I can find places in Posey County where I can see for miles. And if the word adjacent is not in here, then anybody can force a green buffer.

RANDY THORNBURG: I'm still in favor of the green buffer with the double stacked trees and landscaped to nonparticipating landowners. I think they should have that right. It's their property and if they don't want to look at it, they shouldn't have to look at it.

DAVE PEARCE: Is that a right or right of refusal?

RANDY THORNBURG: They will have the option.

KEVIN BROWN: And there may be people that may not care.

HANS SCHMITZ: I would want to see Terry's language she read to us this evening because I didn't have any objection to that language. But I would like to see it in writing before we move forward.

ATTORNEY TERRY HALL: If I understand it, the Plan Commission is coming back for a hearing on the setbacks. Do you want to come back for specific language on the green buffer as well and do a direction, Hans? Is that what you are talking about?

MARK SEIB: Exactly. Hans says yes.

ATTORNEY TERRY HALL: I just have a question, when you say double stack, are you talking about an offset of green plantings so that you have two rows?

RANDY THORNBURG: Yes, a front row with a space in between it and then on the back row you are filling in the gap of the front row.

MARK SEIB: Ok, let's make this somewhat official that we are in favor of the landscaping and for Terry to put language to and give us something to start with whenever we come back with the setbacks.

ATTORNEY TRENT VAN HAAFTEN: As I discussed before, you have the opportunity to create your own proposal. And I don't want to bring everything here, but my discussions with Terry before, she made a point that some of the testimony at the public hearing dealt with the fencing. A concern was raised about barbed wire fencing. You're going to be asking us to draft some language for you. I throw that at there in regards to… would it be fruitful for us to also draft language in regards to fencing. Is that something of interest to the Commission?

MARK SEIB: Definitely. And that was the next thing I was going to go to was the fencing part of it. I think we can be a little more firm on the fencing. We are in favor of the language being drafted for the landscaping and then I was going to go into the fencing. Unless you want to bring that up now.

ATTORNEY TRENT VAN HAAFTEN: You could just make it part of one motion to direct us to have language addressing concerns about the green buffer as well as any (inaudible).

MARK SEIB: There was a lot of concern that came from the public regarding the fencing. We had a 7' fence with barbed wire on top of that. I guess that caught my attention too. I mean, what are we trying to keep out. I think the barbed wire is a little over the top. I think we should bring it down to a 6' fence. That may make it more eye appealing.

ANDY HOEHN: Our current ordinance disallows barbed wire. We have actually had people take barbed wire off their fencing.

RANDY THORNBURG: I don't think barbed wire is necessary.

ANDY HOEHN: When we did our business, we were told not to do barbed wire.

ATTORNEY TRENT VAN HAAFTEN: I just want to make sure we are putting something in front of you that is clear and that you can work with at the meeting.

ANDY HOEHN: I would say yes to that. There is also room for the… I'm not sure where the National Electrical Code comes in on this. I would want that explored as well.

ATTORNEY TERRY HALL: That is one of the things that we want to consider, especially if the public utility is the owner of the facility. There may be specific requirements in height for fencing around electrical components. So, it may be 7'. But, you could ask for fencing that… Like you said, your current ordinance doesn't allow barbed wire. You could ask that the fencing be in character with the zoning district. So in the case of an ag district, I've got a 7' deer fence around an orchard and it's not chain link. So, you can have it in the character that would be suitable to that particular district. But, it would have to be subject to the… It would have to meet the NEC (National Energy Commission) standards.

MARK SEIB: Is there anything else we want to consider in this? We have the fencing and the landscaping.

DAVE PEARCE: Are the roads covered by State Statute?

MARK SEIB: Trent, do you understand that?

ATTORNEY TRENT VAN HAAFTEN: Yes.

MIKE BAEHL: And then, of course, maintain it as well.

Dave Pearce made a motion in the affirmative to direct language to be presented to the Area Plan at the following meeting addressing the concerns you expressed tonight about the green buffer, about fencing and any other legal requirements related to the fencing and buffer. Kevin Brown seconded the motion. Roll call vote (9-0). **Yes. Motion passed.**

MARK SEIB: The property value guarantee was brought up. As you all know, in the ordinance it is a suggestion to the County Commissioners and the County Council that if there is an abatement that has been asked for, that they take a look at possibly adding the property value guarantee. Trent, I guess I need a little definition on this. We do not, as Area Plan, have that authority to implement that. That has to come from the County Commissioners.

ATTORNEY TRENT VAN HAAFTEN: Correct. That is part of the abatement. Right now the ordinance can be read that it is part of the abatement. If you don't have the abatement, there's no property value guarantee. I think that is the question that was raised at the public hearing, is whether that guarantee is part of the ordinance regardless if there is an abatement.

MARK SEIB: So, that would be a recommendation to the County Commissioners if we decide to do that.

ATTORNEY TRENT VAN HAAFTEN: That would be another amendment to the ordinance. That could be your proposal because it was done orally and I believe by our

rules, an application by a citizen to amend the zoning ordinance has to in a written form and put on file. So, that piece would be something you would create as the APC's proposal.

MARK SEIB: What we heard in the public portion of it?

ATTORNEY TRENT VAN HAAFTEN: Correct.

MARK SEIB: With that being said, I believe that means if we want to have in our ordinance that the Commissioners would look at it as part of solar or wind coming into the County and that it would be a recommendation that they look into implementing that.

ATTORNEY TRENT VAN HAAFTEN: We are requiring that there would be a property value guarantee.

RANDY THORNBURG: I will make that motion. Kevin Brown seconded the motion.

DAVE PEARCE: I think the gentleman that made that proposal is here if you would like for him to address it.

STEVE JOHNSON: I am with Tenaska. Having a property value guarantee like that is an uncapped liability and you can't finance a project like that.

MARK SEIB: I want to make this understood, if any of the Committee members has a question for the pubic, they can ask that. It is a question from the Committee.

RANDY THORNBURG: Maria, would you like to say something on that subject?

ATTORNEY MARIA BULKLEY: 501 Main Street, Evansville. I represent the applicant. I have a question about… This came up at the public hearing unbeknownst to us. The current ordinance reads that if there is a tax abatement request by a developer, then there is a property value guarantee for the landowners.

MARK SEIB: No guarantee. It's an option for the County to take it up as far as if they request it.

ATTORNEY MARIA BULKLEY: So, what we are asking, and maybe Mr. Johnson can answer, if they are asking for an abatement then they are going to do the property value guarantee. Since they withdrew the abatement request, we made the motion on the floor that they still give us a property value guarantee to the landowners. And maybe he could address what's different and why is it viable with the abatement an not…I guess they are using the abatement money to fund the guarantee.

MARK SEIB: That gets into the specifics of that project. We don't have that project. We are looking at future projects and what comes down the line.

ATTORNEY MARIA BULKLEY: An appropriate ordinance amendment would be that a property value guarantee be given to the landowners if their property values are damaged by the developer. I can grab it and read it if…

MARK SEIB: You want to mandate it for all property owners, is what you're saying?

ATTORNEY MARIA BULKLEY: Yes. The only applicable instances is if they sell. There are a couple of different instances where it's applicable, but yeah. I think in any case the solar developer comes in with an industrial project and damages the value of the nonparticipating landowner. Yes, I absolutely believe there should be a guarantee. Yes, that is the request we made.

RANDY THORNBURG: I would just like for the Board of Commissioners to have an opportunity to review it. Just to have the option. That's basically where I'm at.

MARK SEIB: Randy, you made a motion to make that a recommendation to the Commissioners no matter whether it's tax abatement to trigger it. It would be the Commissioner's option regardless.

ATTORNEY TERRY HALL: Let's make sure we all understand what the ordinance actually says. The ordinance is in the final development plan approval and there is an Economic Development Agreement requirement. Then it says, "Needed for any project seeking tax abatement or other economic considerations for the project from the government, the applicant shall submit an Economic Development Agreement approved by the County Commissioners." Then it goes through some language. The last sentence of that says, "The Economic Development Agreement may also include a property value guarantee agreement in the form found in 153.129." Therefore, there is a form that the Commissioners could use if they wanted to, in their discretion as part of the Economic Development Agreement, to include a property value guarantee. Right now, if the project is not seeking any accommodation from the government, and it doesn't need an Economic Development Agreement, there is no requirement for a property… there is no discretion to require a property value guarantee and there is no requirement for a property value guarantee mandated by the ordinance within the discretion of the County Commissioners in the process of negotiating an Economic Development Agreement. I want to make sure we understand if you are making a motion that says that anytime a developer potentially injures a nonparticipating landowner's property value, that the developer has to guarantee the property value even though the developer is not getting any economic benefit from the government. I just want to make sure we understand what we are saying here.

RANDY THORNBURG: Yes, I understand what I'm saying. I'm saying I want the County Commissioners to have the opportunity to protect the citizen's property rights and the value of their property.

ATTORNEY TERRY HALL: They do have that discretion in the ordinance as it currently stands. It may be that the petitioner needs to provide us with the specific language and citation in the ordinance that they are asking to have changed. Because it is unclear to me what she is asking to have changed in the ordinance.

MARK SEIB: I think we are getting into two different territories here. Randy has a motion and making that presentation with that explanation. You're also asking for the opposition to give a statement with their interpretation. Am I understanding this correctly?

ATTORNEY TERRY HALL: I'm not sure I understand the difference between what Randy is asking and what the petitioner is asking and how it relates to the ordinance itself as it currently stands. My understanding is that you are making a recommendation to the County Commissioners to amend the ordinance. We just want to make sure what specific part of the ordinance are you amending and with what language.

RANDY THORNBURG: I don't know if Maria wants to address that or not, but my only concern was that nonparticipating landowners get their property values covered. I think it is something we as the executive board, being the County Commissioners, need to be doing. That is what we are elected for.

MARK SEIB: Ok, so I think what Terry is saying is that under the current language, the County Commissioners would still have that option if they wanted to have that property value guarantee in place. Is that correct, Terry?

ATTORNEY TERRY HALL: They do if there is an Economic Development Agreement. There does not have to be an Economic Development Agreement. If a developer does not seek any tax abatement or other economic considerations from the County government, in other words is not a burden on the taxpayer in general so as such as there is not an Economic Development Agreement, then there is no provision in the current ordinance to include a mandatory property value guarantee on the developer. I don't think that a property value guarantee is required of other types of developments without some type of negotiation with the government. The developer is asking for consideration in a financial accommodation. Therefore, it is part of a negotiation the Commissioners could include a property value guarantee.

RANDY THORNBURG: If I'm not mistaken, we had that in the wind ordinance.

MARK SEIB: It's the same thing. Maria, do you have some comments you would like to add on to that?

ATTORNEY MARIA BULKLEY: I like the suggestion that somebody made of letting us bring the specific language to the next meeting or give it to you ahead of time. But, our concern was it appeared that it was something that just came up at the public hearing. Everyone just sort of realized that they withdrew the abatement request but it is still

unclear if they will have an Economic Development Agreement. That still remains unknown. They could still have some type of Economic Development Agreement that doesn't include an abatement. It sort of came to pass that we realized that really if a nonparticipating property owners are going to have damaged land values, we think it would be appropriate for the developer to offer the guarantee in any event. And that is why I was asking the question if they could explain why it is only viable if they get subsidies from the County. So, basically I think I'm understanding now in that scenario. They are only guaranteeing correcting damage to the property values of the landowners that the County is paying for it. That doesn't really seem right. I did look and I think their gross revenues of any developer like Tenaska was 9.9 billion dollars and then Capital Dynamics from Switzerland, who I think is involved, was almost 18 billion dollars. So I'm thinking they could probably afford to help the landowners…

MARK SEIB: Let's not assume, just facts.

ATTORNEY MARIA BULKLEY: Ok, so that is why we brought forth the request. We are thinking the property value guarantee should be up for consideration in any event. We would like to bring the language forth.

ATTORNEY TERRY HALL: My only final comment on this is that it is difficult to change the ordinance in the abstract because of a specific project that is currently not in front of the Plan Commission. There has been no application on any project before the Plan Commission. To change the base law based on what you think what may possibly happen or based on a project that is not in front of the Plan Commission is just concerning.

HANS SCHMITZ: So there is a motion on the floor and I personally can't stand in favor of it until we see something in writing.

MARK SEIB: I guess we need to carry this on out with Randy's motion. Was there a second? Ok, Kevin did second the motion.

RANDY OWENS: We're talking about having specific language brought to us in the future. What is the motion and if we vote on it, is it a recommendation to the County Commissioners:

MARK SEIB: Randy, I'm not putting words in your mouth. You go ahead and say what your motion was, please.

RANDY THORNBURG: The motion was that we go ahead and move this to the County Commissioners for an option to review the property value guarantee for the citizens of Posey County.

MARK SEIB: So if I understand you correctly, then if there is an Economic Development Agreement or tax abatement, then they can address it. If there is not any of those, they can still enforce that as well.

RANDY THORNBURG: Right.

RANDY OWENS: But after we take this vote, we're still going to have language brought forward to accept, right?

MARK SEIB: If that is accepted, that is what the language will be. He is not saying it needs to be brought forth. Randy's motion does not bring it forth. It states that it will be sent to the County Commissioners and it would be an option for them to take up.

RANDY THORNBURG: It may be rejected by the Commissioners.

MARK SEIB: So, does everybody understand what we are talking about on this motion?

ATTORNEY TERRY HALL: The only thing I would add, and it is probably more for Trent or Joe Harrison, is whether the County Commissioners would have such authority to impose in the absence of an agreement, that kind of property value guarantee.

RANDY THORNBURG: Send it to the Board of Commissioners and you find out what the legal avenues are.

MARK SEIB: I guess what I'm saying is before we make a motion that we would have to back up on, maybe we need to have it checked out to see what our obligations may be, whether it has to go to the County Council or to the County Commissioners. What does it have to do? I think it is a reasonable thought that maybe we need to look in to.

RANDY THORNBURG: The Commissioners have the standing as the executive body to demand an ordinance or pass an ordinance.

MARK SEIB: Yes, you do have that authority to pass on the ordinance, but on being able to put a property value guarantee on, I guess that's my question.

ATTORNEY TRENT VAN HAAFTEN: In my view at this point, it would be good to do what we have done on the others and allow specific language to be brought back to you as a Commission and welcome Maria to provide that so that you know specifically what you are addressing. Right now what I am hearing on a motion is basically saying that, and I am not certain exactly the section and all that where I would put this, but just saying that the section of the ordinance that deals with the legislative body .. and there are other legislative bodies that deal with the ordinance. I think what you are saying, Randy, has a discretion to require a property value guarantee with or without an Economic Development Agreement.

RANDY THORNBURG: That is what I am saying.

MARK SEIB: Does everybody understand what is being asked on this vote?

Roll call vote (3-6) **No. Motion failed**.

MARK SEIB: Ok, that failed. Do we want to put something in language and send it to the attorneys and let them work out some language and research the authority?

Dave Pearce made a motion in the affirmative to have the attorneys work out some language and research the authority. Randy Owens seconded the motion. Roll call vote (8-1). **Yes. Motion passed.**

MARK SEIB: Ok, so the language will be sent to the attorneys for them to work out and research. They can work with Ms. Bulkley if they want to just to see what language she has. It will be brought back to the Commission to discuss and decide if that is the kind of language that we want. What else do we have? The only other thing I can think of was the language we sent to the County Commissioners on the wind ordinance that was outside of the zones. We had some language that we wanted to put into the ordinance to clean up some extra added language. The language we had in there about Mindy having the authority to ask for additional reports if needed or if there was something special that came up out of it. Some of that other stuff is what Trent is looking up what exactly was said that was rejected from the County Commissioners because we voted down the zones as well. But I think if we separate now, we can bring the language… a little bit of that clean up back into the mix of this ordinance as we have opened that ordinance up.

RANDY THORNBURG: Do you mean the wind mitigation and consultation zones?

MARK SEIB: No. We are talking about the other language that we had and we sent.

ATTORNEY TRENT VAN HAAFTEN: There was the back and forth on the wind ordinance that dealt with the mitigation zones. There was also a cleanup in regards to the portion for coordination with applicable entities, when all of the reports were going to be done before making the decision on it we were going to add "the following entities and any other entities identified by the Executive Director of the Area Plan Commission as applicable to the applicant shall be contacted." Terry or Mindy may be able to better explain the mechanics of that. It was more or less a cleanup in terms of allowing Area Plan to bring everybody involved in the project together to make sure there wasn't any missing pieces in terms of any overlap. It was more of a logistical or procedural. It wasn't anything to do with substance in terms of where anything can go. It is more the logistical aspect of how the applications were done. The exact same language would be applied to the solar ordinance. Mr. Chair, what I am going to suggest is that, since we are going to be directing other items to all of you that this become part of that package that goes to you prior to the other meeting so you can see it specifically and if you have any questions about it. It was just something that was… When there was the back and forth

with the APC and the Commissioners, this was a piece that said hey we need to clean this up. However, the focus was on the mitigation zones and that is what came back from the Commissioners. So this was never really addressed by the Commissioners. This gives you the opportunity to cleanup these.

MARK SEIB: We voted on it before and we sent it to the Commissioners, so it is not something new for us. I believe it is something that needs to be brought back to us for language that we are wanting to send to the Commissioners. Does anyone have an objection to adding this to our next meeting?

There were no objections.

MARK SEIB: Anything else on your mind?

MIKE BAEHL: I have one thing. I'd like to ask Tenaska people where these panels are manufactured at that you propose to put up?

STEVE JOHNSON: I don't know the exact location they are manufactured. They are manufactured in different parts of the world.

MIKE BAEHL: You're going to put 2,400 acres up and you're not sure where they are manufactured?

STEVE JOHNSON: Well, the panels are manufactured in lots of different countries for various reasons. So If I give you an answer, it may come from Malaysia or it may come from Vietnam. I'm not sure. That depends on the supplier. He sells them.

MARK SEIB: We don't have an application before us, so you can ask the question "where are they normally made".

ANDY HOEHN: I have something I would like the Commission to consider. It would be putting into effect a ceiling on the number of megawatts that could be introduced into the County and we no longer permit once we reach a ceiling and to discuss that and we don't become the only County in Indiana that is losing ground to generating these kinds of things like electricity.

MARK SEIB: Are you asking for the attorneys to research that and see if there is any other language out there or do you want to have a discussion about that right now?

ANDY HOEHN: I don't need to have that discussion. No one even came prepared to hear that. I think it is something that as we look forward we need to look at. I know Indiana is deficient on internally generated electricity. I think each County needs to be represented in fulfilling that. I don't want to see Posey County be the only player in that.

MARK SEIB: Does anyone have an objection for the attorneys to research that?

There were no objections.

ADJOURNMENT: Hans Schmitz made a motion to adjourn the meeting at 8:45 p.m. Mike Baehl seconded the motion.

Mr. Mark Seib – President

Mrs. Mindy Bourne, Executive Director