MINUTES

POSEY COUNTY
AREA PLAN COMMISSION
SPECIAL MEETING

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

MARCH 31, 2021
6:00 P.M.

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

MEMBERS ABSENT: None

THIS MEETING IS TO DISCUSS AND TAKE ACTION ON PROPOSED AMENDMENTS FOR CONSIDERATION TO SOLAR ORDINANCE (ORDINANCE SECTIONS 153.120) AND WIND ORDINANCE (ORDINANCE SECTIONS 153.130):

MARK SEIB: The first thing that we are going to take up in the agenda are the setbacks. We are going to take them one at a time. You received language from our attorneys, Trent Van Haaften and Terry Hall. We have some of the language that we asked them to put together for us. We will start with any discussion concerning the setbacks. We will do a roll call vote on everything since one of our members is on Zoom. Where do we want to start with the setbacks? You can see the language in the paperwork you have in front of you. Terry roughly put wording in there for the sake of making the language flow. We can now change and do whatever we want or take it to whatever different language we want.

RANDY THORNBURG: I find these distances totally unacceptable. I think they are entirely too close. Shelby County has 660-foot setbacks, 500 in Madison County, and you did represent both of those counties, as I understand it. I was just wondering if you could tell the audience why we are less than 50 feet from a public right away, 100 feet from a nonparticipating landowner, and 250 feet from the foundation of a nonparticipating residence? What is the difference between Shelby, Madison, and Posey County? Our citizens want 500 feet and we get a 250-foot setback.

ATTORNEY TRENT VAN HAAFTEN: I am going to pipe up here for a second. The ordinance, or the proposed draft language, which you have, at our last meeting, there was not anything specific in terms of the language in the current ordinance. So, one of the

concerns was you have to decide if you are going to pass on the language to the Commissioners. The motion that was passed was the 250 feet here. Therefore, that is what she drafted. I just want to be clear that she hasn't taken anything beyond what you guys passed at the March 11th meeting. What you have is what you directed us to draft, so that is what you are given. Now what you do with it is on your own.

RANDY THORNBURG: I am just stating the facts that she represented Shelby and Madison County and Posey County residents want 500 feet.

ATTORNEY TERRY HALL: For the record, I did not represent Shelby County and Madison County.

RANDY THORNBURG: That is not what I understand.

ATTORNEY TERRY HALL: I am sorry you are mistaken.

MARK SEIB: What else?

KEVIN BROWN: I agree that this is way too close. We need to come up with a different number than this.

ANDY HOEHN: I have done some homework and went to looking at setbacks and googled it to see what is out there in the world. Housing and Urban Development have setbacks required at 300 feet from a caped off well. They consider it dangerous or hazardous. I am not implying solar is either of those, but I think if they are going from a hazardous entity, do 300 feet. I would like to see this moved to 300 feet from the leading edge of a nonparticipating residence.

MARK SEIB: Andy are you making that a motion or just want to have a discussion?

RANDY THORNBURG: From the residence or the property line?

ANDY HOEHN: The 250 moved to 300. I'll make that as a motion.

MIKE BAEHL: 300 feet, that is not near enough. In my opinion, it should be at least 300-500 feet from the property line not the residence. They don't know all of the hazards yet of what these solar panels can do to a person that is close to them. Can anyone answer that?

ANDY HOEHN: I talked to my insurance agent today and I said "if I put these on my house what is my insurance rate going to do?" He told me that my insurance rate is going to go up for one reason and that is because you are going to increase the value of your roof. They have nothing there about fire or about anything. My son has them on his roof right now. I could accommodate if you could give me some real reason in writing why

you are picking the distance you are picking. I have no issue if someone can bring up here something in writing then the distance is up to whatever the facts are.

KEVIN BROWN: I can show you a bunch of emails from the public here why they don't want them that close. I think you have the same emails.

ANDY HOEHN: I absolutely do and I have some from the other side that is saying it is too far away. Show me the facts. I have emails and I understand that. However, I want to see something in writing. So bring me something is writing and I will absolutely consider it.

RANDY THORNBURG: I don't think it absolutely has to be in writing. You have consensus opinion from the emails, and I am talking hundreds that I received and the public is totally unsatisfied. I don't think writing has anything to do with it. We do work for the citizens of Posey County. This board does and I do as a Commissioner. If we can find a happy medium here between the corporation and us that is fine. I want to see the citizens represented also. I don't want to see them disregarded and let the corporation get its wish list. That is not what we are here for.

ANDY HOEHN: I don't see that is the case. Yes, we are here for the citizens but we are here for their welfare, safety and health. The outline is in the ordinance of what we are here for. I have a document from HUD at the federal level saying that oil derricks are unsafe and you need to be 300 feet away from them. These are not as unsafe as I would say an oil derrick is and I lived within 100 feet from one for many years.

RANDY THORNBURG: Safety is not the only concern. It is the aesthetics and being that close to it and the devaluation of their property. I have had two phone calls this week from individuals that were going to sell their home just because there is a possibility that the solar panels might come in and will devalue their home. They said it will definitely go down. I don't think that you have the right to come in and devalue someone's property. I am not opposed to solar panels in the proper place, but the citizens do not like this geographic location.

DAVE PEARCE: Randy you mentioned two counties that had higher setbacks. I have done extensive research over the last week and a half. Five counties around here, 250 feet is more than twice any other surrounding county. Perry, Spencer, Gibson…Vanderburgh have no setbacks. Everybody else is 100 feet.

RANDY THORNBURG: They are not Posey County.

DAVE PEARCE: Randy, you had mentioned the other two counties. If you don't want the other counties around here considered, then why do you want two counties over 300 miles away considered?

RANDY THORNBURG: There are other reasons why people of Posey County want. I just threw those two out there for comparison. The numbers are so ridiculous. Would you want those that close to your residence?

DAVE PEARCE: It wouldn't bother me a bit.

MIKE BAEHL: Does anyone on the board have solar panels next to their house?

DAVE PEARCE: If you drive to Poseyville, you talking about the famers not wanting them…the Eisterhold's have them within 100 feet of their front door, on both sides of the road.

RANDY THORNBURG: Personal choice.

DAVE PEARCE: Exactly, but you are not giving everyone a personal choice.

MIKE BAEHL: I don't think you can compare the Eisterholds. It is for them. It is not to be sold on the grid. They use that right there and what they don't use, I don't know if they get paid or not, but their solar panels are for them. On a day like today until noon, they had to buy electricity just like you and I because it wasn't sunny. If they want to spend enough money for 7 to 10 years before they even break even…they don't have a thousand-acre field or 150-acre field of them. They have a small area where you can park about four semis. And what the son has on the other side is even less. I think that has nothing to compare with this. What bothers me is we are taking 2,500 acres out of production and we have Green Plains, Valero, CGB all within sight of this acreage.

DAVE PEARCE: We are not taking anything out of anything. We are not. Our job is to establish setbacks. Our job is not to say if we are going to have solar energy or not. Our job is to decide what a fair setback is.

MIKE BAEHL: 100 feet is not fair.

DAVE PEARCE: I have never argued that. I have never said that 100 feet is fair.

MIKE BAEHL: But you seconded Andy's motion for 100 feet.

DAVE PEARCE: 300 feet from a building.

MIKE BAEHL: But that is from a building, not a property line. So, you can still be 100 feet…

MARK SEIB: We haven't got to that part yet. The motion is only for 300 feet from a non-participating residence.

ATTORNEY TERRY HALL: I don't know the gentleman that did the extensive research on the setbacks, but I tried to do that as well and looked up 27 counties that currently has some kind of solar ordinance in them. I did not see Madison as having 500 feet, I think the Board of Zoning Appeals approved a project there between a special exception permit. I think that they just settled on that. I don't think the ordinance actually requires that, but I could be wrong. However, in the 27 counties, Shelby County does have, they just passed, a very large setback after they have had two very large solar farms, one of them permitted and one of them up for permitting. But of the other counties, including the current IU model ordinance, and I am not coming down one way or another I am just telling you the facts, most of them. Just looking at the residence from the solar panels to a nonparticipating residence, it's 200 feet, 100 feet, 150 feet, 200 feet, 220 feet, 100 feet…essentially 250 feet is more than 80%-90% of the counties that have a standard at all. Some of the counties just have "use the existing setbacks". Some of the counties just use the existing setbacks for the district plus a buffer yard. The buffer yard in that particular county was 50 feet. Gibson County, even though they have done away with their building and zoning ordinances, they did pass a solar and wind ordinance and their setback is 25 feet from the nonparticipating property line and 150 feet from the residence foundation. The IU model ordinance that was published in December of 2020 had 50 feet from the property line, or the right away and 150 feet from a nonparticipating residence. I am not saying that those are correct or incorrect; all I am saying is the only county that I found that has 250 feet is Shelby with their increase. Before they didn't have any ordinance that did solar until those two projects came in, they just currently passed one. Marshal County has 75 feet from the property line and 250 feet from the corner of the current residences.

RANDY THORNBURG: Didn't Gibson County just vote down their ordinance for zoning?

MARK SEIB: They dismantled the ordinance committee. Then the Commissioners did their own zoning ordinance, which is what Terry just said.

ATTORNEY TERRY HALL: It is just wind and solar, it is not full land use permitting. They don't have any zoning except for wind and solar. Just for clarification so we know what we are voting on, that is in the language that you were provided on the setbacks it also includes in that 250 feet from the leading edge of a nonparticipating residence, it also includes that same 250 feet from the leading edge of any public building, the property line of any recreational area or the property line of a public or private school. I just want to make sure that if you are going to vote on the motion it is for all of those various entities.

MARK SEIB: Terry, right now Andy's motion is 300 feet.

ATTORNEY TERRY HALL: Right, I just wanted everyone to know it is 300 from the leading edge of someone's house.

MARK SEIB: But you also have 250 feet from the leading edge….

KEVIN BROWN: So, it will be 250 feet from a school?

MARK SEIB: Right, but that is just the numbers to start with for us to have the discussion.

ATTORNEY TERRY HALL: It is the property line of the school, not the building.

MARK SEIB: Right. The schools, the churches those kinds of things, it is 250 feet from the property line.

ATTORNEY TRENT VAN HAAFTEN: I think you should clarify with Mr. Hoehn in regards to his motion if he wants the 250 feet replaced with 300?

ANDY HOEHN: Yes.

MARK SEIB: The motion still stands.

RANDY OWENS: It's more than just a residence, it is the leading edge of any public building and so on.

MARK SEIB: Are we going to take it piece by piece or one big motion?

ATTORNEY TRENT VAN HAAFTEN: Andy, your motion is to replace 250 feet with 300 feet, correct?

ANDY HOEHN: Yes.

ATTORNEY TRENT VAN HAAFTEN: The only thing changed is 250 feet will be taken out and replaced with 300 feet. The last time you directed the attorneys to draft language to your consideration. You now have language before you for your consideration. It is now your job to refine that language, to reject it, or do what you want with it.

RANDY OWENS: This current motion…a second motion could be made to separate the leading edge of any public building, property line, school, etc., is that correct?

ATTORNEY TRENT VAN HAAFTEN: Yes.

MARK SEIB: Or you can ask for an amendment that would be voted on before the main motion. Your choice.

Andy Hoehn made a motion in the affirmative to recommend changing the setbacks from 250 feet to 300 feet from a nonparticipating residence. Motion seconded by Dave Pearce. **(6-3) Yes. Motion carried.**

MARK SEIB: That motion passes. Is there any other discussion on the setbacks?

RANDY THORNBURG: Are you talking about this section that we just got done amending?

MARK SEIB: Yes. If you want to amend the setback to the schools more than the 250 from the property line or….

RANDY THORNBURG: I'll make a motion to the first sentence that no solar panel shall be located within 500 feet from any nonparticipating landowners' property.

KEVIN BROWN: I will second that motion.

ATTORNEY TERRY HALL: I just want to make sure that the Planning Commission remembers that the 500-foot setback is from the nonparticipating landowners' land. If you increase that setback distance, A. I think you muted the 300-foot setback from the residence, because if it is 500 feet from the property line, I think you swallowed up the other setback. But you are leaving a large strip of land around the participating property owner's land, that is not going to be used for solar panels or leased or potentially not profitable for farming either. It would just be vacant. Sometimes talking about setbacks that concept gets lost.

HANS SCHMITZ: 500 feet is a lot of land to sit idle.

ANDY HOEHN: It is a long way off the line but it will also add an assessment below ag, because it will no longer be ag. It will go into some potentially not classified, or unusable property. You are going to drop a lot of ground out of your tax roll rather quickly.

RANDY THORNBURG: Tenaska said it could all be farmed.

MARK SEIB: We are not here to talk about Tenaska, we are here to talk about the ordinance. This ordinance is for anyone who comes. No one has filed.

RANDY THORNBURG: What is stopping people from farming the 500 feet?

MARK SEIB: If it is a leased piece of property then it would be up to the leased company weather or not they want it to be farmed. It is not the landowner's choice. Once they lease, they lose that authority and ability. And it could be farmed, I am not saying it wouldn't.

RANDY THORNBURG: Any solar prospect I heard that we have talked to always throws that out there as a positive, that you can farm the land around it. That is all that I am assuming here.

Randy Thornburg made a motion in the affirmative to recommend changing the setbacks from 300 feet to 500 feet from a nonparticipating property line. Motion seconded by Kevin Brown. **(3-6) No. Motion fails.**

MARK SEIB: That motion has failed. Would anybody else like to make a motion?

RANDY OWENS: I would like to make a motion. I would like to separate the 300 feet from any nonparticipating residence from the rest of that paragraph. I would like to insert for the rest of those items, such as schools, recreation areas or anything like that, that we make it 500 feet.

ANDY HOEHN: So, after the period, it would read; no solar panel shall be placed within 500 feet from the leading edge of a public building or the property line of any recreational area or school? I will second that. Does anyone know how much that is going to affect? Are we talking Marrs School? Is that all that we are talking about here? It would be anywhere in the County?

MARK SEIB: Correct. Trent, is that the way you read it?

ATTORNEY TRENT VAN HAAFTEN: Yes, this is the County ordinance.

HANS SCHMITZ: If you have an older child that does leave the property, 500 feet give you 167 steps to coral them.

MIKE BAEHL: If you are going to make it 500 feet, at least make it 1,000.

RANDY OWENS: What evidence says 500 is right or wrong?

MIKE BAEHL: I just think we should keep them away from the schools. At least 1,000 feet.

RANDY OWENS: 500 feet is over two square acres and that is from the property line.

ANDY HOEHN: Every one of these schools, if they are doing their diligence, will have a fence around them anyways. If they can get away now, then they can get into a cornfield a whole lot quicker and they would be lost cows in a cornfield for months at a time. I don't know of any school that doesn't have some kind of fence out.

KEVIN BROWN: Marrs doesn't have a fence all the way around it.

ANDY HOEHN: The recreational area does, the playground.

KEVIN BROWN: I don't think it does.

MARK SEIB: Okay, we are not going to single out Marrs.

Randy Owens made a motion in the affirmative to recommend changing the setbacks to 500 feet from the leading edge of a school or recreational area property line. Motion seconded by Andy Hoehn. **(6-3) Yes. Motion carried.**

MARK SEIB: Any other changes? We have the 300 feet from any nonparticipating homeowner and 500 feet from schools and public recreational areas. Any other changes? Trent do we have to accept the 100 foot as well because there is no motion that is on the floor to accept that?

Attorney Trent Van Haaften reads the solar ordinance section 153.126.03 (B).

ATTORNEY TRENT VAN HAAFTEN: Right now, the status of solar ordinance section 150.126.03 (B) is that no solar panel may be located less than 100 feet from any nonparticipating landowner property line or less than 50 feet from a public right away. No solar panel may be located less than 300 feet from the leading edge of the nonparticipating residence. No solar panel may be located less than 500 feet from the leading edge of any public building, the property line of any recreational area or the property line of a public, private, or parochial school. Setbacks with solar panels between participating land ownership shall conform to the zoning district requirements.

MARK SEIB: Okay, now should we have a motion to accept it as a whole?

ATTORNEY TRENT VAN HAAFTEN: I don't believe procedurally, you will need to because the way you moved so far, but if you wish to that is fine.

MARK SEIB: Does anyone wish to have it as a whole?

Dave Pearce made a motion in the affirmative to recommend accepting it as a whole. Motion seconded by Keith Spurgeon. **(6-3) Yes. Motion carried.**

MARK SEIB: Our next item is the landscaping.

ATTORNEY TERRY HALL: If we could just make sure that, there is two other conforming amendments for the solar ordinance before we change the setbacks. And it's there under paragraph two, on the memo. It's the paragraph, the solar ordinance section. They are just clean up items. The 153.126.03 (A) had a requirement that the Commissioners would have to approve anything in a required setback. Well they can't put

anything in a required setback, without going to the Board of Zoning Appeals. So that language didn't seem to comply with your current processes which is, the Board of Zoning Appeals would make a final determination on any variance to those setbacks and it wouldn't have to go to the Commissioners. There is a strike out language in that one. And in the solar ordinance 153.126.03 (G), which is down below, we just we talked about variances to that and it just says that the variances have to go to the Board of Zoning Appeals for approval. Then I added language, that if approved the variance be recorded on the property records so that in the future, if there has been a variance granted by the Board of Zoning Appeals that runs with the land and in any future owner understands that that variance has been there. So those are just two clean up items. I'm happy to answer any questions, but, as we were making changes to the setback area, it just seemed like a good time to clean up any other items that will…make it clear.

ANDY HOEHN: Terry, 03 (G) allows for sidebar agreements between participating and nonparticipating? They go through the BZA and then they make a record of it?

ATTORNEY TERRY HALL: Yes.

Hans Schmitz made a motion to recommend amending Solar Ordinance Section 153.126.03 (A) by striking the required setback. Motion seconded by Andy Hoehn. **(9-0) Yes. Motion carried.**

ATTORNEY TRENT VAN HAAFTEN: Okay, the word allowed is then inserted, so allowed variances may only be granted for relief from 153.126.03 (B), however, the variance application must include an executed agreement between the applicant and all participating and nonparticipating landowners affected by the request of variance prior to consideration of the variance request by the Board of Zoning Appeals and add the language and, if approved, the variance must be recorded on the property at the Posey County Recorder's Office.

MARK SEIB: Okay, does everyone understand? Any further discussion?

Andy Hoehn made a motion to recommend approving Solar Ordinance Section 153.126.03 (G). Motion seconded by Dave Pearce. **(9-0) Yes. Motion carried.**

MARK SEIB: Now, are we ready to move into landscaping?

ATTORNEY TRENT VAN HAAFTEN: The following language would be added to Solar Ordinance Section 153.126.03(H), the applicant shall include a landscape plan as part of its preliminary development plan, visual impact mitigation report or separately. The landscape plan shall provide for installation of screening to mitigate the projects impact on the view shed, or sheds, from any adjacent nonparticipating residence, public building, public recreational or state local designated scenic areas or roads in public,

private or parochial school. This would be the view shed screening. The view shed screen should consists of a mix of non-evasive evergreen and deciduous trees and hedges planted in at least two offset rows at not less than three feet in height planting and with an expected growth height sufficient to accomplish the view shed screening purpose. Setback areas required under section 153.126.03 setback buffers unless continued in a use permitted in the zoning district shall be planted in native forbs and grasses and may include pollinator gardens. The landscape plan shall provide for the maintenance, including controlling invasive species of the view shed screening and setback buffers during the life of the project. The view shed screening may be located in the setback buffer and view shed screening located in the setback buffer of a public right away or in a public or utility easement shall conform to safety standards set by the applicable regulatory body.

MARK SEIB: And the regulatory body would be like the County Highway Superintendent?

ATTORNEY TRENT VAN HAAFTEN: Well, if you're on a county road then it is the county that is the regulatory body. If you are on a state highway, you are going to deal with the Department of Transportation, INDOT. I am trying to think if we have any federal lands in this county.

MARK SEIB: Discussion?

RANDY THORNBURG: Yes, on the height of the planting. I think that 3 feet is inadequate. They were asking for 6 to 8 feet. 3 feet could be a twig sticking off the top of a 2-foot tree. I think 6 to 8 feet would be a much better number.

MARK SEIB: That would be the beginning of the planting. You are saying that you would be more interested in 6 foot.

RANDY THORNBURG: Yes. I will make a motion to change that from 3 feet to 6 feet.

DAVE PEARCE: At planting time, you want to change it from 3 feet to 6 feet?

RANDY THORNBURG: Yes, similar to what I passed around.

ANDY HOEHN: This is a question for Hans. What is the survival rate of a larger tree as opposed to a smaller tree?

HANS SCHMITZ: You can get by with 6 foot okay. You do, when you transplant any tree of size, plan on digging a hole twice the size of the height of what you are planting to make sure that the soil is disturbed enough to allow it to take root. You are talking with the two off set rows, depending on the final height of the tree; it should be feasible to be able to transplant 6-foot trees.

DAVE PEARCE: I can't see any differences than what we gave them to work with. I have no problem with 6 feet if Hans thinks that is something that is going to live.

MARK SEIB: We really worked that one over quite a bit.

MIKE BAEHL: I thought that we had discussed not putting the view screening; it would be the setback area? I thought the other week we talked about the setback area, then the view screening, then the fence, then the solar panels? The view shed screening should be after the setback, not in the setback.

MARK SEIB: Okay, so the language does say the view screening may be located in the setback buffer. So, you are saying that the view screening should be after the setback buffer?

MIKE BAEHL: Yes.

ANDY HOEHN: Point of order, all we really have here is the change in height of the tree. If we want to come back and do that then we can come back and do that.

MARK SEIB: Okay, we can take the 6-foot as the motion that was made to be the change and we can take that and then we can come back and make another motion for the next change as well. So we have a motion currently for the height of the growing plants to start at 6-foot.

Randy Thornburg made a motion to recommend changing 3 feet to 6 feet. Motion seconded by Kevin Brown. **(9-0) Yes. Motion carried.**

MIKE BAEHL: The view shed screening may be located in the setback buffer, but my motion is that the view shed screening be after the setback buffer.

DAVE PEARCE: Mike does that mean it would be right up against the solar panels?

MIKE BAEHL: They would have to scoot the solar panels in. What is the use in having a 100-foot setback if you're going to put a green space right up against these people's property?

ATTORNEY TRENT VAN HAAFTEN: Just so I am clear, we're looking at that sentence that says, view shed screening may be located in a setback buffer? Are you wanting to say that the view shed screening shall be located in an area beyond the setback buffer?

MIKE BAEHL: Yes.

ATTORNEY TERRY HALL: Well, I just want to make sure that everybody understands a couple of things. One, I have yet to see an ordinance that says that the setback, with the screening, is an addition to the setback buffer. So, requiring the screening to be on the outside of the setback is essentially increasing the setback. So you're adding more land between the properties. The other reason why most of the time the screening is allowed to be within the setback, is that the location of the screening to mitigate the visual impact may be 50 feet from the solar panel or 25 feet from the solar panel, or it may be, you know, 75 feet from the solar panel or 200 feet from the solar panel, but within that setback buffer or in order to mitigate the visual impact from the affected residents. So, requiring it to be outside of the setback buffer may not in fact provide the best visual screening, based on the topography of the land.

HANS SCHMITZ: As I understand this, basically, if you were to have 8-foot, let's give it a couple years to grow, you will have an 8-foot, double row vegetative buffer. Generally speaking, we don't have too many people taller than 8-foot in the county, so if it were closer to the property line that would achieve the mitigation of the visual screening much sooner than it would if they were sitting right next to 12-foot solar panels.

DAVE PEARCE: That is 8 or 10 feet between the row and the solar panel it would hide the solar panels better than if it is sitting right up against them.

ANDY HOEHN: Yeah, it should be as close to the nonparticipating as possible. And the problem you are going to have is if you ever get to decommissioning and you have this ag ground but you put in two rows of trees, now you're going to have to pull those out of the middle of a field and then you are going to have to de-stump the place. You're putting an enormous burden, an unnecessary burden, on that location. That doesn't make sense to me.

ATTORNEY TERRY HALL: I just wanted to add to Hans' observation that if you push the screening up against the solar panels, you have to increase the setback again because the solar panel has to be moved off to account for the shape, that would come off of the screening and it would have to be outside the fence, probably, and the fencing around the solar panel arrays are usually somewhere between 10 and 20 feet or possibly larger from the solar panels. So you've got the solar panel, then an access space, then a fence, than a setback, you know going to have a buffer area and then somewhere in there would be to the screening, if you allowed it to stay in the buffer.

ATTORNEY TRENT VAN HAAFTEN: Do you want me to read how this will sound at this point?

MARK SEIB: Go ahead Trent.

ATTORNEY TRENT VAN HAAFTEN: So, we had one motion to amend it, which was adopted, so I will incorporate that. So, as the motion sits before you now, or as the amended language, sits before you now for 153.126.03 (H). The applicant shall include a landscape plan as part of its preliminary development plan, visual impact mitigation report or separately. The landscape plan shall provide for installation of screening to mitigate the project's impact on the view shed from any adjacent nonparticipating residents, public building, public recreational or state local designated scenic areas or roads, and public, private or parochial school. This is the view shed screening. The view shed screening shall consists of a mix of noninvasive evergreen and deciduous trees and hedges planted and at least two offset rows at not less than, six feet in height at planting and within expected growth height sufficient to accomplish the view shed screening purpose. Setback areas required under Section 153.126.03 The Setback Buffers, unless continued in a used permitted in the zoning district, shall be planted in native forbs and grasses and may include pollinator gardens. The landscape plan shall provide for the maintenance, including controlling invasive species of the view shed screening and setback buffers during the life of the project. This is the sentence that Mike's motion deletes the following sentences, you see it, and it would read as follows; the view shed screening shall be located in an area beyond the setback buffer. Then the remaining language is any view shed screening located in the setback buffer of a public right away or in a public or utility easement shall conform to safety standards set by the applicable regulatory body. That is how the section of the ordinance would read.

RANDY OWENS: I have a question for Hans. If you have that double screening, how many feet would it need at the end of the setback…how much more are we extending the setback by doing this?

HANS SCHMITZ: It depends on your choice of species as far as what the double row looks like. I think what Terry was mentioning earlier was that the additional setback, more than the screening, is keeping the panels from getting shaded out most of the time. The actual vegetative setback could be as little as no less than 12 to 20 feet to achieve a double row, probably a touch more.

RANDY OWENS: Okay, 20 feet plus whatever shading.

KEITH SPURGEON: If I understand this correctly, Terry, pipe in when I'm done and correct me, but the language we're considering, this specific section is part of the language of the ordinance that we would eventually use to approve or disapprove or make a recommendation of some sort on an eventual project. This language speaks to the applicant providing a plan on how they will mitigate the visual impact on nonparticipating members. Depending on how good a plan they put together, might impact whether or not we eventually approve or disapprove the program. The original language that said "may be located in setback buffers" doesn't say that they couldn't locate it, like Mike was saying, further back. The plan is what they're to do…the ultimate goal is to mitigate the visual impact. The original language gives room for them to put it

in the setback area if that's the best way to mitigate visual setback, it also allows them to put it further back if they want. The ultimate goal is to mitigate the visual impact on it. So, by saying you shall put it on the other side, now we're resetting requirements that provide less wiggle room. I think the purpose of this section was to say "you got to provide us with a plan on how you're going to mitigate the visual impact. Here are some minimums that we want." At minimum, the goal is to again, mitigate that visual setback, and these are the minimums that you need to do. You could put it in the setback buffer, it could go beyond that, if that is what's needed. The original language gives us flexibility to put it where it best meets the needs, I think. Terry does that make any sense?

ATTORNEY TERRY HALL: Yes, that is the purpose of it. It is for the developer to propose a plan for the Planning Commission's consideration that does in fact mitigate the view shed from the residences and other areas. The other thing to potentially keep in mind, and you don't know until you actually have a project in front of you and can actually see, these are not… the solar panels… there may be areas where the solar panel itself… the setbacks are minimums. They may, in fact, be 500 feet from a residence or 500 feet from the property line because of the topography of the particular landowner's property, there may be a county ditch in between, there may be all kinds of things. The idea is to give the developer the ability to use that topography from where the residences and the view from the residences, the other buildings in, and put that screening in the best place possible.

RANDY THORNBURG: Are we able to hear from the attorney that is representing the citizens?

MARK SEIB: If you have a question for them.

RANDY THORNBURG: I was just wanting to know her thoughts on the setbacks with the screening as the motion stands.

ATTORNEY MARIA BULKLEY: I'm an attorney with Kahn, Dees, Donovan, and Kahn. My address is 501 Main Street; I represent the citizens group, applicant Brian Goebel. A couple things you asked what our thoughts were on the landscaping plan, of course we agree not putting it in the setback is better increasing the setback. One thing I wanted to mention, we were trying to follow along as Mr. Van Haaften was reading how this would go. It occurs to me the way he read it, it sounds like the view shed screening is only going to be required between designated scenic roads and highways vs. how we talked about it at the last hearing which there would be view shed from public roads. I think that is really important. That's something that was really bothering me as I was listening that it sounds like the language was stripped again to make it only requiring trees between designated public…maybe Mr. Van Haaften can read that again since we were not provided the benefit of having anything in writing to go by, I think you said that it was that trees are only going to be required between…

ATTORNEY TRENT VAN HAAFTEN: First, nothing was stripped. This is what was presented.

Attorney Trent Van Haaften read the section again.

ATTORNEY MARIA BULKLEY: My thought was I thought we were discussing… My thoughts are that we need a robust view shed screening between all of the things listed, including public roads and rights-of-way. What it seems like it has morphed into is maybe only a view shed screening from a designated scenic road. I don't feel like that was the intent from the Plan Commission from the last meeting because we were talking about taking care of intersections and things like that. Our thoughts are to go back to the 6-foot tall double stack is much better. My area of concern, my thoughts are still that it seems like that hit was greatly reduced from what it seemed like you were talking about last time. So, I would like to get some clarification on that. Yes, we do not want to be able to see any panels from any roadway not just designated scenic roadways. I don't even know what those would be.

ATTORNEY TRENT VAN HAAFTEN: I think those are one of those things that can be read either way. It doesn't fall within the motion before you at this point in time, so it might be right for further discussion.

MARK SEIB: So, what that basically means is that this is not every county road?

ATTORNEY TRENT VAN HAAFTEN: In terms of getting off track…you have a motion right before you. I don't think that it falls under that particular motion.

MARK SEIB: True.

Mike Baehl made a motion to recommend amending the view shed screening to be located after the setback buffer. Motion seconded by Randy Thornburg. **(3-6) No. Motion fails.**

MARK SEIB: Any additional changes that anyone would like to have made to this section? I will add that landscaping does not cover the full length of any and all roads.

ATTORNEY TRENT VAN HAAFTEN: I don't believe so, but let's ask Terry.

ATTORNEY TERRY HALL: No, it does not screen every road front. Probably for a couple of reasons. One is, when you get out on a county road, there are utility easements usually on both sides of the road already. You may not be able to plant in those utility easements. The other issue is you are talking about putting permanent, tall, thick trees on the participating landowner's land across their entire right-of-way because they have chosen to do solar farming rather than formal farming. I just want you to remember that these projects are on leased land. The developer does not own the land. The landowners

own the land and will continue to after the project ends. That setback buffer is already land that has been set aside of theirs and to require a planning along every county road. The other thing that you might remember is at the last hearing you were given a, and I think it's been made public, a preliminary site plan or a proposed possible solar project and as you can see those solar projects are not one big rectangle, or one big square, they are individual land areas of different landowners that are in the same general area but they may not be actually contiguous with each other. Therefore, the amount of roadway that you're talking about screening may be fairly large. The perimeter of the project is not a square or rectangle. If you're going to screen the entire perimeter of the project, that's a lot of miles of screening.

MARK SEIB: Any other action or discussion?

HANS SCHMITZ: Question, what does it take to locally designate a road as scenic? Is this such a case where the applicant provides their plan and the body that is looking at that plan has the ability to state that these roads are scenic you've got to include the buffer?

DAVE PEARCE: That is the way I read it, as it stands now, the wording here. That is the way I read it. Once the plans are presented, then the body which they presented to has the right to change it. That is the way I read this.

ANDY HOEHN: The only scenic byway that I am aware of is Highway 62. It is designated that by the State from Ohio to Illinois. I don't know of any other authority to do that. I am not saying they can or can't, I am just not aware of it.

KEVIN BROWN: With that being the case all along 62 wherever there are panels there is going to be a buffer?

MARK SEIB: I believe Andy is right. That has already been determined by the State. But Hans I cannot answer that as far as weather or not the County can have the authority to designate a road that might not already be designated.

HANS SCHMITZ: Well, so I bring this up because if we were to change it to state all roads and we had a county road that was a dead-end road and everyone happened to be participating, I don't think anyone would want that particular vegetative buffer. But if we changed it then it would be required.

MARK SEIB: Does everyone understand what he is talking about? Do we want to change that or did we want to reword that?

ANDY HOEHN: Could you repeat that?

HANS SCHMITZ: If you have a county dead-end road and participating on both sides, I don't think in that situation you would want to require the buffer. If we change it to "all roads" have to have this buffer, I think you would want the ability of a local body to designate the roads required to have the buffer.

MARK SEIB: Okay. Currently the language is that it doesn't require landscaping through the whole process…

HANS SCHMITZ: The question is the obtuse language about local designated scenic areas or roads and how those roads can be locally designated.

ANDY HOEHN: To my understanding, the State designates that. I don't know of any County that has done that and I am certain this County hasn't. There are a lot of other things that start to fall when you designate something as a scenic byway or scenic route.

HANS SCHMITZ: Scenic is an Indiana code as something that…

ANDY HOEHN: I think it is a federal definition. I think Indiana was forced to adopt it to get funding for those roads to come through on the four-lane highways.

MARK SEIB: Do we have a motion on anything pertaining to the landscaping?

ANDY HOEHN: I would like to make a motion on where it says the setback areas required under 153.126.03 unless continued in a use permitted zoning district shall be planted in native forbs and grasses may include pollinator garden, I would like to add "as approved by the County Extension Agent", so that we can verify that those are native.

ATTORNEY TRENT VAN HAAFTEN: Correct me if I am wrong, I believe Andy…

Andy Hoehn read his motion as stated above.

KEITH SPURGEON: I don't have a disagreement with that, but do we really need that language? By law, the County Extension Agent is a part of this Planning Commission and would be a part of the discussion and the vote when we would approve a landscape plan. Right? Doesn't that mean that he is already incorporated in that?

ANDY HOEHN: I don't know that he would be in that grouping. I think those go out to the Site Plan Committee.

MARK SEIB: The County Extension Agent has the opportunity as well as the County Surveyor. We pick either one as far as sitting on the Area Plan. It is up to the Area Plan to choose which one they want, so it is not a guaranteed seat.

KEITH SPURGEON: Gotcha.

HANS SCHMITZ: I amend the motion by striking "approved" and inserting "verified".

Hans Schmitz made a motion to amend the motion by striking approved and inserting verified. Motion seconded by Andy Hoehn. **(9-0) Yes. Motion carried.**

Andy Hoehn made a motion to amend the motion to include approval from the County Extension Agent. Motion seconded by Randy Owens. **(9-0) Yes. Motion carried.**

MARK SEIB: Any other discussion or motion? Seeing none, let's move on. The next item is fencing.

ATTORNEY TERRY HALL: I am sorry, did we actually pass the 153.126.03 (H) as changed?

ATTORNEY TRENT VAN HAAFTEN: If we want to be consistent with how we handled the other, we had the final motion for the entirety after…

MARK SEIB: Dave made a motion to accept the motion as an entirety with the changes that we made.

Dave Pearce made a motion to accept the motion as an entirety. Motion seconded by Andy Hoehn. **(6-3) Yes. Motion carried.**

MARK SEIB: The motion passes and the next item we have is fencing.

ATTORNEY TRENT VAN HAAFTEN: Solar ordinance section 152.126.02 (D) all solar panels and accessory buildings for the project must be fenced in with a fence not less than seven feet in height. That is the language of the original ordinance and the following language would be added, not less than seven feet in height and shall not include any barbed or high tensile wire. It shall be of a type compatible with the character of the zoned area and shall be compliant with applicable NEC standards.

MARK SEIB: That is the language that we had our attorneys draw up after we had our discussion on the fencing.

Andy Hoehn made a motion to accept the motion as written. Motion seconded by Hans Schmitz. **(9-0) Yes. Motion carried.**

MARK SEIB: The next item that we have is property value guarantees.

KEITH SPURGEON: Have we passed, in that last document at the very beginning, there was the paragraph E that talked about coordination with applicable entities? Did we pass that or do we still need to do that one?

MARK SEIB: That is the housekeeping. That is the last item we have on our agenda.

KEITH SPURGEON: Okay.

ATTORNEY TRENT VAN HAAFTEN: On this particular item there were two proposals sent to you. One is listed as "Exhibit 1" and the other as "Exhibit 2". I would also like to add that Ms. Bulkley emailed some language as well and it was distributed to you this afternoon, same as the others.

MARK SEIB: Trent you mentioned that we also received one from Maria Bulkley and that was emailed to the Committee today.

ATTORNEY TRENT VAN HAAFTEN: It was received by Terry last night. I know the email from Terry was forwarded to me last night at 7 o'clock. Maria followed up today with confirming that Mindy got it. Shortly after Becky sent it out to all of you.

MARK SEIB: What we have here is the property value guarantee. What is in the ordinance is basically that it is a recommendation to the County Commissioners and to the County Council that if there is property tax relief or an economic development plan that is done, that it is suggested that they take a look at property value guarantees. We had a lot of discussion about this at the last meeting. This is what has been discussed, you have seen this and it was sent to you this week. Is there any discussion?

ATTORNEY TRENT VAN HAAFTEN: Terry has provided you with two different approaches and I think she can explain those.

ATTORNEY TERRY HALL: I was following what the Plan Commission discussed on March 11 and the instructions given. I think there was a… Mark is correct; the current ordinance says that in the negotiation of an economic development agreement, the County Commissioners could include, as part of that agreement, a property value guarantee that would essentially provide some kind of relief for those landowners who are potentially more affected by the project than landowners on the other side of the County. There was a concern that the property value guarantee could only be offered as a part of an economic development agreement and the citizen applicant petitioner made an oral motion at the earlier meeting that they would like to have the property value guarantee mandatory. So, the Commission took that up and discussed it at their last meeting. So in keeping with that discussion, what was heard from the public, and what the petitioner was asking for. Exhibit 1 essentially takes the property value guarantee not completely away from the County Commissioners. It could still be included in the economic development agreement, but it does make it mandatory for the largest solar farms, the 20 acres or more, and that the owner, the applicant, shall offer either a property value guarantee agreement substantially in the form found in the ordinance or in the alternative. The applicant may propose a form of compensatory property value mitigation upon reasonable evidence that such alternative is as good or better than the

process and form found in section 153.129. That's the first option that the Commission could look at which would be some kind of mandatory program for potentially compensating owners who may see a loss in value of their housing after the project is built. Then I made some changes to the property value guarantee. This guarantee was originally included in the ordinance under discussion for a wind farm. That's where most property value guarantees originated, was next the wind farms. When it got put into the ordinance it appeared that there had not been conforming changes. When the form was put in there to conform it to what a solar farm would be, which is a little bit different than a wind farm. So, in 153.129 and 153.139, because you'd have to make conforming changes to both the solar and the wind ordinances if you're going to change this, I think. It identifies different changes in the property value guarantee form itself. One of the things about the form is the type of program that's outlined in the ordinance is that the value… if there is a difference in value from the appraisal done prior to the project being built and after the project is built, that value is realized by the owner, if the property is sold. If the property is not sold, there isn't a value that's real. So, I added some language, if the Commission wanted to consider it that would allow the applicant to either offer what's in the ordinance or offer a different program that the Commission could determine was as good, or better, provided that there was evidence by the applicant that showed the difference that might provide a different kind of property value mitigation that Commission found to be better than the form found in the ordinance itself. The property values guarantee form in the ordinance had blanks in it and it still has blanks in it. Some of the things that you'd have to determine if you were going to fill in all those blanks is, who does it apply to, how long is the guarantee for, how long does the property have to be marketed, what is a bonafide third party offer in order to determine if there has been an actual offer that is below the pre-project appraised value. So, you would either have to fill those in or leave those blank and have the applicant propose those terms. So that was the first one, which would the first proposed change which would make some kind of property value mitigation, that the applicant would have to propose to the Planning Commission as part of its application. The second, exhibit 2, on page eight was in response to some of the discussion from the Commission members who wanted to leave the economic development agreement…leave the negotiation of the property value guarantee in the hands of the County Commissioners, whether or not it was part of an economic development agreement. An economic development agreement that can exist outside of a request for tax abatement if there's any other financial considerations by the applicant, such as a safety plan that's going to require additional equipment or additional manpower. I think that the current project that has made some public statements about the fact that they are going to be providing some funds to the County for those. So, that could be part of an economic development agreement, it does not have to be part of a tax abatement. But what we did was we added a sentence at the end of the existing 153.124.03 (G) section that says, "if the County Commissioners determine that the project may affect the property values of nonparticipating landowners, the Commissioners shall negotiate a property value guarantee agreement in the form found in 153.129 or 153.139, in the wind ordinance, or in the alternative, the applicant may propose a form of compensatory property value mitigation upon reasonable evidence that

such alternative is as good or better than the process and form found in 153.129 or 153.139". So, the first proposed amendment puts the negotiation and acceptance of the property value guarantee on the Commission and the applicant has to propose something. The second proposal says that the County Commissioners, if they find that there is a potential affect on the property values and nonparticipating landowners, then the Commissioners will negotiate that agreement. Those are the two options.

RANDY THORNBURG: I would like to hear from Maria on this.

ATTORNEY MARIA BULKLEY: I do have red lines of what we provided, if anybody would be aided by following along. Our proposal was that, instead of it being an optional property value guarantee that it would be a mandatory property value guarantee. We didn't change very much of the language and the ordinance other than to say that a property value guarantee would be given to the neighbors instead of just at the option of whomever. We really didn't change very much other than to say, it would be a must not a maybe, and that would take a lot of anxiety off of people to know that they were really getting a property value guarantee. Of the choices that I heard Terry read, it is difficult for us to follow along because we don't have anything on paper to look at or just trying to listen. Of the two choices that she said you had as options, I didn't recognize what I submitted as one of the two options. This is language that we were asked to submit and it was our motion at the Plan Commission hearing we moved to have a property value guarantee amendment to the ordinance. If you don't have a copy of what we submitted, I very much appreciate the opportunity to hand it out and I'd also very much appreciate the opportunity to have to be able to read what you're looking at because I can't compare it to what we're proposing, because I have never seen it before.

ATTORNEY TRENT VAN HAAFTEN: From a purely process standpoint, a citizen request to amend the ordinance is to be in writing, per Area Plan. So, you asked that at the public hearing about the question. So in terms of process, I mean there's not the formal process has not been followed with the Commission has opened that up to allow that. Like I said, we got this today. I know we have forwarded it to everybody, so I don't leave any impression that the Commission members haven't seen it.

ATTORNEY MARIA BULKLEY: Well, I heard somebody say they didn't have a copy and I brought extras if anybody wants a copy. Also, if it's possible for us to see what the two options were that were recommended by your Council, if that's available to us. I wouldn't mind looking at it. I'm just going to hand Mr. Hoehn a few copies to pass down to anyone who doesn't have them. I don't know what the two options were that were circulated to you are objectionable per se, I just have never seen them before. Did you want me to look at that or is that not possible?

ATTORNEY TERRY HALL: When giving out copies make sure that the exhibits are distributed not the memorandum.

RANDY THORNBURG: Maria has the distance on hers with 1 mile of residence/land owners.

MARK SEIB: The way I read hers this afternoon. The 1 mile would be encompassing anyone that lives within 1 mile from the solar field.

RANDY THORNBURG: Considering I got two calls this week from people interested in selling their residence, I like the idea of having a "shall be offered" as a part of the property value guarantee.

MARK SEIB: So, Randy, exhibit 2 is what you are suggesting?

ANDY HOEHN: #2 was "may" negotiate, correct?

MARK SEIB: Yes.

RANDY THORNBURG: I am talking about Maria's.

MARK SEIB: Her proposal.

RANDY THORNBURG: Talking about property value guarantee shall be offered by the owner or operator of the SECS project to all residence and landowners within 1 mile of solar panel. No property value guarantee shall be required of the owner utilizing the solar energy, solely for their personal use.

ANDY HOEHN: I don't see where any of these are worded sufficient to make the landowner upkeep the property. What would keep me from being within a mile of the solar panel and deciding to store used tires on my property?

RANDY THORNBURG: So, it would go by appraised value then?

ATTORNEY MARIA BULKLEY: Ours already has it in there. They have to maintain their property; they cannot just let it go. It is in the last paragraph.

ANDY HOEHN: Who is to oversee that? Who is to make sure it is maintained and that it is done?

ATTORNEY MARIA BULKLEY: In our version of the property value guarantee, we just used the ordinance as it was already written and only changed the part of it having to make it mandatory, as opposed to only being triggered if there is an economic development agreement. The question about who would make sure the property was appropriately maintained; I think that would be a question for Trent or Terry because that is the way the ordinance already existed. One question I have about the two options Terry provided…I think the question we would have is, are both of these contingent upon there

being an economic development agreement? If so, the main difference with ours was, if there was a solar project, we would just want the property value guarantee to be in effect. As I read option 1 and 2…and I may be misreading them, I'm trying to understand if both of these are triggered only if there is an economic development agreement.

HANS SCHMITZ: Both are under the EDA subheading.

ATTORNEY TERRY HALL: No, they are not. It's a little bit tricky. Exhibit one says that it adds new section J to that 153.124.03, which is the solar, and 153.134.03. So, on page five, exhibit 1, (J) that property value guarantee that is all underlined, that's all new language. And it's independent of the economic development agreement which is 153.124.03 (G).

HANS SCHMITZ: Okay, I understand that. Now, on exhibit 2, that is not the case.

ATTORNEY TERRY HALL: In two, it leaves it with the Commissioners; it does not make it contingent on an economic development agreement. It simply says that if the County Commissioners determine that the project may affect the property values of nonparticipating landowners, the Commissioner shall negotiate property value guarantee agreement in depth in the form found in the ordinance or in the alternative some other form of compensatory property value. I don't know if your emergency services and fire services or County are private, but most every large project is going to have some kind of agreement with the County related to all kinds of things, even if there was no tax abatement requested. That would be how the Commissioners would potentially be involved.

RANDY THORNBURG: Personally, I am not comfortable with it being contingent upon the economic development agreement or a tax abatement.

ANDY HOEHN: So, which projects, beyond going forward, would that be the next SABIC, the next Co-op, the next GAF? We are setting a precedence here that will go wider than wind or solar. I would hope that if there were economic stress by anyone that would believe it was derived from solar or wind that they would first go to the solar or wind owner and have a conversation.

MARK SEIB: If I understand this by reading it, on exhibit 2, that other economic considerations that can be almost anything but the Commissioners would want to put into the project to make it so that it could be taken up at that time with that, as far as a property value guarantee correct?

ATTORNEY TERRY HALL: Yes, other economic considerations would be, with the developers asking for any particular additional services from the County, related to the project.

MARK SEIB: That is like the fire, the ambulance, and whatever else.

ATTORNEY TERRY HALL: If the idea is to leave the negotiation to the Commissioners, you could put in language that the applicant shall negotiate a property value guarantee agreement with the County Commissioners. Either this form or in the alternative, propose something else. It depends on who you want to negotiate that economic agreement for the property value. If you want to make it mandatory. First, do you want to make it mandatory, second who do you want to negotiate it, and third what form do you want it.

KEITH SPURGEON: One of my thoughts would be I'm not sure about making it mandatory but I kind of liked the idea that the people that are negotiating it might be the County Commissioners that established tax rates for the County or at least one of the entities that establish the County tax property tax rate. Let them be the ones to kind of figure out if there needs to be a property value guarantee and what that form would look like. It seems like there's a lot of variables in there and they might be the better ones to do that. Just my thoughts.

RANDY THORNBURG: I think it should be the County Commissioners since we are the elected officials and this board is appointed. This is a recommending board to the County Commissioners. County Commissioners have final authority on it.

KEVIN BROWN: I think if the County Commissioners are a deciding board then we should let them decide.

MARK SEIB: Exhibit 2?

KEVIN BROWN: All of it.

MARK SEIB: With exhibit 2, if that is what you are wanting to do, then that is the language that we would have to adopt, unless you want to change the language.

RANDY THORNBURG: There is minimum change to Maria's version versus the other one.

MARK SEIB: I think Maria's version is mandatory and what Kevin is talking about is it is given to the Commissioners as an option with all of the explanation that you guys gave us as far as being the elected officials of the County.

RANDY THORNBURG: I don't have a problem with it.

MARK SEIB: This is the one that has really kept me up at night. I want to make sure that the property is covered and if it is necessary. I want to make sure that we do it right with how we do it and make sure that it is not a burden. I want to make sure that anyone that comes in here and can follow the rules that we have in play. However, I think that this one is the one where I don't think that the Area Plan should be the one to make that determination because we deal with the land permit usages. The County Commissioners deal with… number 1, being elected and number 2, the Commissioners set the different tax rates. I don't want to leave out the County Council. They provide the tax abatement. At this point, I think number 2 looks more attractive or a better business sense. The negotiations would have to take place before the final is permitted by the Area Plan. Just like if the County Commissioners have to deal with the roads. If there is a company wanting to come in, they would have to deal with the Commissioners on the roads.

RANDY THORNBURG: My primary concern is the individual landowners don't get their properties devalued and lose their equity at no fault of their own.

ATTORNEY TERRY HALL: Before you make a motion, in listening to your conversation, one of the alternatives, Mark, that you and one of the other gentlemen we're talking about, to leave it with the County Commissioners. If you go back to exhibit one, where it says 153.124.03 (G), economic development agreement. If you just strike the first clause so just take out "for any projects taking tax abatement or other economic considerations for the project from the government." Just strike that and start with "the applicant shall submit an economic development agreement approved by the County Commissioners". Even if they don't want tax abatement. Then you could leave in that segment, the last sentence that's got a strike through on it, leave that in and add the language that…"or an alternative, as proposed by the applicant, the Commissioners find as good or better on reasonable evidence". Then the form in 153.124.129. That may get you where you want to be, which is the only thing that doesn't do is it doesn't mandate, a property value guarantee but it would require an economic development agreement for the large solar farms. If they had the economic development agreement, if the County Commissioners believe that it needed to have one, would have to have a property value guarantee agreement in this form, or some alternative. I'm just offering that not to confuse you but to maybe make it a little bit simpler.

RANDY THORNBURG: Maria do you have an opinion on that?

ATTORNEY MARIA BULKLEY: I think it's a little bit confusing even if you strike that first sentence. I think it is still confusing by leaving it under the economic development agreement heading. I think that maybe it would be ideal to come up with a sentence that formulates exactly what they want to do and put it in its own section. It gets buried and muddied inside of here. Then to address some of the concerns, for example, that Mr. Hoehn raised, if you look at the existing language in your ordinance that was in the form of property value guarantee, it talks about when this is applicable.

It's not just a carte blanche situation. There has to be an attempt to sell, it has to not sell for six months, there has to be a couple of baseline appraisals established. That's a process that you have very well set forth already in the current ordinance. You could take the current ordinance, if you don't like the first sentence that I have, making it mandatory, you could just take that sentence that Terry read and put it at the beginning and maybe modify it a little bit about making it the discretion of the Commissioners. I think the rest of it would still work because you already have the triggering events and the process laid out. It feels like if you use exhibit one or two it kind of gets a little bit muddy and confusing. Those will just be my two cents.

RANDY THORNBURG: My personal opinion on it, I don't want it tied to economic development agreement. I don't want it contingent upon that.

ATTORNEY MARIA BULKLEY: Yeah, I understand what you're saying. She was saying, even if you made the language, the applicant shall submit an economic development agreement. Instead, you could just say "the applicant shall offer a property value guarantee as required by the Commissioners". Instead of making it confusing about what the economic development. I agree that makes it confusing, because when you think about an economic development agreement you think about something that the developer is getting, in this instance they're more giving. But it's to mitigate the effects of the project on the property values. I think maybe it's not really clear. To make it a one-sided economic development agreement would be my thought.

MARK SEIB: I guess the only thing that I find a little hard is, on Exhibit 1, is that you are also tying the Commissioners hands with years and distance and everything else. I think that each case needs to be evaluated separately and looked at separately to determine how much a value guarantee needs to be put into play if the Commissioners feel that is a necessity.

RANDY THORNBURG: Kevin did make a motion to send this to the County Commissioners.

ATTORNEY TRENT VAN HAAFTEN: When you say, "send it to the Commissioners," does that mean not recommend anything and let the Commissioners decide how to amend it or is there specific language you want to send to the Commissioners?

KEVIN BROWN: I just want to send it to the Commissioners.

MARK SEIB: You're saying to send it to the County Commissioners and they will determine the action.

ATTORNEY TRENT VAN HAAFTEN: Because of the way the State Statue reads it would be that there's no recommendation. There are one of two ways to do it, either vote

to make the Area Plan Commission say there is no recommendation in regards to the property value guarantee or simply not add that to anything that we send to the Commissioners and it's within the power and authority of the County Commissioners to take what is said by the Area Plan Commission and change, add, whatever. So, I guess that's what I am after. We draft what we have certified to send to the Commissioners. You want no mention of property value guarantee, or do you want no recommendation in regards to property value guarantee? I'm more worried about what ends up on paper.

KEVIN BROWN: I say just send it with no changes and let them determine.

ATTORNEY TRENT VAN HAAFTEN: Do you move that there be no recommendation made in regards to property value guarantee amendment?

KEVIN BROWN: Yes.

MARK SEIB: Discussion?

ANDY HOEHN: Yeah, I don't see us solving that one here tonight. I would rather it go to an elected board than an appointed board.

KEITH SPURGEON: Does that mean that the current language in the ordinance regarding property value guarantee remains the same? We're not making any recommendation about changes at all?

MARK SEIB: Correct. Kevin's motion is that the current language stays the same.

RANDY THORNBURG: Maria, I would like to hear your opinion on that.

ATTORNEY MARIA BULKLEY: I think what I heard you say is that you would like the Commissioners to decide on when the property value guarantee applies versus sending it forward with no recommendation. I think that needs some clarification. Then I wanted to clarify with Trent the process. So, since we made the motion on the floor at the last meeting and you said they were entertaining in any way tonight, if they make no recommendation on the language then at the Commissioners hearing, they will get a chance to adopt, reject, or modify anything that came forward to them. If it comes forward with the recommendation of no change to the language, then they can still propose different language and then it has to come back to you. The way I understand, not the State Statue, but the local ordinance, the way I understand that it reads is that whatever is recommended goes forward to the County Commissioners and then they can, as I said, adopt, reject, or modify as they see fit. They still have to send it back to the Plan Commission for re-review, but they don't have to take…and that's like a 45 day process. But they still don't have to do what you recommend they can then it goes back to them again to do whatever they want to do, that is my understanding.

ATTORNEY TRENT VAN HAAFTEN: There is a back and forth process that wherever a request for an amendment originates, it goes back to the other body, the Area Plan or the Commissioners. Ultimately, it is going to end up in the Commissioner's hands.

ATTORNEY MARIA BULKLEY: Yeah, I noticed the State Statute didn't seem to have the back and forth or really address when an amendment is put forth by a citizen, but your local ordinance did, and it made it go back again.

ATTORNEY TRENT VAN HAAFTEN: As mentioned at the last meeting, the State law allows either the Area Plan Commission or the County Commissioners to originate an amendment to a zoning ordinance. Posey County is different. In its Rules of Procedure, it allows a citizen to just petition the Area Plan. Once that citizen has petitioned the Area Plan, it then becomes the Area Plan's baby, for lack of a better term, so it takes that process of originating with the Area Plan. Whatever it decides then goes. Now, had Area Plan shot everything down that the citizen proposed, then the citizen under the Rules of Procedure, do have a right to appeal to the County Commissioners. However, since it sounds like this Commission is moving something new to the Commissioners, it's going to be moving to the Commissioner's and the ball is in their court.

ATTORNEY MARIA BULKLEY: I think what we need to do is clarify with this what they're trying to move to the Commissioners because I've heard two different things. I've heard the motion that we're in discussion over right now is let's move it forward just say "we're not changing it, Commissioners, we want you to decide whether you want to change it". Then I also heard....

ATTORNEY TRENT VAN HAAFTEN: When I read this in terms of what will go to the County Commissioners "is the Area Plan Commission has taken no action on changing the property value guarantee issue within the ordinance".

ATTORNEY MARIA BULKLEY: Okay, so they are taking no action on the proposed language or no action on any language?

ATTORNEY TRENT VAN HAAFTEN: No action on any language. Then it lands with the Commissioners. If they want to do something, change it, add it, not do anything either, it is in their court.

ATTORNEY MARIA BULKLEY: Okay. So, I guess my only comment I would have, Mr. Thornburg, is whether you were wanting to send it forth to the Commissioners with no changes or were you wanting to send it to them to change it? I heard both ways. I have heard "we want to send it to the Commissioners to have them make the appropriate changes versus we want to send it to the Commissioners with no changes which would

suggest we like it the way it is.". I'm hearing we don't really like the way it is, but we want them to decide.

ATTORNEY TRENT VAN HAAFTEN: The way I read the statue is that this Commission with the motion is "no recommendation from the Area Plan". Which is, in essence, we neither say yay or nay or anything of that nature. It falls in their lap and they decide if they want to bring it up, if they don't want to bring it up. It's in the Commissioners lap.

MARK SEIB: That is the motion we have before us.

ATTORNEY MARIA BULKLEY: I just want to make sure we're clear on the motion. The motion is to do nothing versus the motion… is a different motion might be we're making a motion to have them clean it up or modify it in some way versus we're recommending that they do nothing? I kind of heard both. We're recommending that they do nothing that was the motion, but a different motion might be recommending that they adjust it, we just want them to decide on the language. So that's all I have.

MARK SEIB: Okay, so the motion that we have before us with Kevin making the motion and Randy second is not to send any language concerning the property value guarantee to the Commissioners. That is the motion that is before us. Any more discussion?

Kevin Brown made a motion to make no recommendation from the Area Plan Commission to the County Commissioners regarding the property value guarantee. Motion seconded by Randy Thornburg. **(9-0) Yes. Motion carried.**

MARK SEIB: The last item we have is Housekeeping Amendments.

ATTORNEY TRENT VAN HAAFTEN: This goes back to the last discussion the Commission had with the County Commissioners in regards to the wind ordinance, the back and forth there. This was noted that it didn't really have any impact on the main issue of that location of windmills. This was a cleanup that basically pulled the Executive Director into a position of being able to tell an applicant you've got to take your information here, you've got to get approval from here and that's a very general explanation. But it's basically a cleanup from what was missed when the ordinance was originally passed. Terry can give you a little more detail than that.

ATTORNEY TERRY HALL: Trent is correct. It would apply to both the wind and the solar ordinances in the exact same positions. The second cleanup is just adding an additional section under the final development plan approval that simply has the applicant, that's the (B) under one housekeeping amendments on the memo. It just simply has the applicant verify that there weren't any significant changes between the preliminary development plan approval and the final development plan approval that

would require them to go back and record names with any entities. If they want to vote on them separately or together for both solar and wind, it just depends on how you want to address it. It's actually four amendments.

MARK SEIB: Do we want to go ahead and read through that?

ATTORNEY TRENT VAN HAAFTEN: Section 153.134.02 (E) and Section 153.124.02 (E), the coordination with applicable entities. The applicant shall submit a summary report identifying the entities. The applicant has communicated and coordinated with respect to the project. The report shall list the entity name, the primary contact person at the entity and contact information, the dates of coordination, and a list of documents submitted to each agency. The report shall also transmit any comments, suggestions, concerns, approvals, or disapprovals with respect to the project issued by the entity and/or communicated to the applicant. The following entities and the following languages added "and any other entities identified by Executive Director of the APC as applicable to the applicant, shall be contacted". The original ordinance lists a number of entities that have to be contacted. What this does is, if the Executive Director says okay there's an entity outside what we've listed already, you need to also contact them and deal with them. It doesn't necessarily just limit it to the entities that are listed in the ordinance. This would also add section (H) to 153.134.03 and 153.124.03 as follows, this is all new language. (H) the applicant states that the report submitted for preliminary development plan approval remain true and correct and there has been no change. So, you come in with your first preliminary development plan, as you get towards the end, if things have changed… well if things have not changed, you have to verify that, if they have changed and you can't verify it then there is a safe guard in making sure all the changes are identified and then verified by the applicant and if there has been no change in the project that would require the applicant to resubmit the project for coordination with applicable entities.

MARK SEIB: Those are the amendments.

Hans Schmitz made a motion to accept Section 153.134.02 (E) and Section 153.124.02 (E) with the language as written. Motion seconded by Dave Pearce **(9-0) Yes. Motion carried.**

KEITH SPURGEON: This motion is to adopt this for both wind and solar?

MARK SEIB: Correct. He did not mention Section (H). This is just for Section (E) at this time.

Hans Schmitz made a motion to accept Section 153.134.03 (H) and Section 153.124.03 (H) with the language as written. Motion seconded by Andy Hoehn **(9-0) Yes. Motion carried.**

ADJOURNMENT: Kevin Brown made a motion to adjourn the meeting at 8:38 p.m. Andy Hoehn seconded the motion.

Mr. Mark Seib – President

Mrs. Mindy Bourne, Executive Director