

MINUTES

POSEY COUNTY AREA PLAN COMMISSION CONTINUATION OF SPECIAL MEETING

THE POSEY COUNTY COMMUNITY CENTER
111 HARMONY TOWNSHIP ROAD
NEW HARMONY, IN 47631

SEPTEMBER 13, 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, Mr. Trent Van Haaften – Attorney, Mrs. Mindy Bourne – Executive Director, and Mrs. Becky Wolfe – Administrative Assistant.

MEMBERS ABSENT: None

CONTINUATION OF PRELIMINARY DEVELOPMENT PLAN:

DOCKET NO: 2021-01-SECS1-APC
APPLICANT: Posey Solar LLC
PREMISES: The Posey Solar SECS project area general location (approximately 2,400 acres inside project fence):

1. Project area generally bounded by Darnell School Road on the south, north of Blackford Road on the north, Green Valley Road on the east, and west of McKinnies Road on the west.
2. Western Marrs Township -- Sections 19, 30, 31, and 32 in Township 6 South, Range 12 West, and Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, and 17 in Township 7 South, Range 12 West.
3. Eastern Black Township -- Sections 24, 25, and 36 in Township 6 South, Range 13 West, and Section 1 in Township 7 South, Range 13 West.

APPLICANT/OWNER OF THE ABOVE DESCRIBED PROPERTY HAS REQUESTED:

Applicant requests preliminary Development Plan Approval to develop a Solar Energy Conversion System (SECS) -- Tier 1 (Greater than 20 acres).

MARK SEIB: We've had an engineering report that was given to us since the July 29 meeting. I am going to let Trent read the requirements. After that, each side will have ten minutes to speak and then have the engineer come up and address any questions that the committee may have.

ATTORNEY TRENT VAN HAAFTEN: I was asked to give an overview of how we got to where we are tonight. I would like to state the following: Posey Solar, LLC., along with

participating land owners, have filed application 2021-01-SECS1-APC for the approval of SECS, Solar Energy Conversion System, a tier one facility, provided by the ordinance. Specifically, approval of the SECS tier one facility is being sought under section 153.124 of the Solar Ordinance. The first step in this process has been the submission of the Preliminary Development Plan by Posey Solar. As required by the Solar Ordinance, a special meeting was held on July 29, 2021 for the purpose of conducting a public hearing and consideration by the Area Plan Commission for approval or disapproval of the Preliminary Development Plan. Public comment was taken on July 29, 2021, and upon the end of the public comment, the public hearing portion of the meeting was closed. The special meeting then proceeded with discussion and consideration of the Preliminary Development Plan by members of the Area Plan Commission. During this discussion period, a motion was made to stay the consideration of the Preliminary Development Plan, for the purpose of hiring Barry Tanner and Tanner Engineering LLC to review the Preliminary Development Plan and provide a report to the APC of this engineering report. This motion was passed with the determination of whether Tanner Engineering was available for hire. It was placed on the Area Plan Commission's agenda for their regular meeting on August 12, 2021. At its regular meeting on August 12, 2021, the Area Plan Commission, upon said motion was passed for said motion to engage Tanner Engineering & QualEx Engineering for the purpose of preparing a report for the APC on the Preliminary Development Plan. In addition, at the August 12, 2021 regular meeting, the Area Plan Commission determined that the continuation of the July 29, 2021 recessed meeting occur on September 13, 2021. It was further determined that the same notice which had been provided for the July 29, 2021 special meeting should be provided for tonight's meeting, with notification that tonight's meeting on September 13, 2021 which was a continuation of the July 29, 2021 meeting. Since this is a continuation, the Area Plan Commission received a Preliminary Report and final report from Tanner Engineering & QualEx Engineering. Both the Preliminary Report and the final report were provided to the Attorney Mike Schopmeyer, and Attorney Mary Soloda. The draft of the Preliminary Report was also posted on the Area Plan Commission's website. As for background on the requirements of the Solar Ordinance, once an application for a solar project is filed, the Solar Ordinance requires two public hearings. First, is for consideration of approval or disapproval of the applicant's Preliminary Development Plan. This is the stage the APC is at tonight. The question is whether the Preliminary Development Plan for Posey Solar LLC complies with the requirements of Section 153.124.02 of the Solar Ordinance. The Area Plan may approve or disapprove the Preliminary Development Plan. If they approve, they may also add reasonable restrictions with provisions not otherwise addressed in the ordinance to the Preliminary Development Plan. If approved, the applicant, Posey Solar, LLC. will then be required to submit a Final Development Plan. A public hearing is also required to be held after submittal of the Final Development Plan. Moving forward tonight, the public hearing portion of the meeting has been closed. The Area Plan Commission at its September 9 meeting agreed to allow Michael Schopmeyer and Mary Soloda to address the board concerning the engineering report. Upon conclusion of the attorney's remarks, Barry Tanner of Tanner Engineering will address the board. The discussion and consideration of the Preliminary Development Plan will then be discussed among the Area Plan Commission members.

MARK SEIB: We will now start with Attorney Mike Schopmeyer.

ATTORNEY MIKE SCHOPMEYER: The APC has authorized Tanner and QualEx to undertake a study and has eight deficiencies. For the record, I objected to being asked to go first on behalf of the petitioners and remonstrators. That was denied by the Chair. The project summary... I will go through the eight points... has not been updated for critical and specific information that's required in the project summary. For example, the manufacturers of the solar panels themselves is nondescript and as we put in the record before many of those have been in China done by forced labor. This issue remains open, as well as the tracking system.

Number two is the Visual Impact Report. Tanner and QualEx reported concerns on that. They used mature trees when they are not planting mature trees. That report is flawed and needs to be fixed per the Tanner Report.

The maps, as the Tanner Report notes, did not have the collectors, secondary arteries, primary arteries, and information which is required under this Solar Ordinance for Posey County.

The noise evaluation is severely deficient. I should point out that the noise collection was done next to silos pointing to the highway, which is gaming a noise study. We think that study has been gamed. We think the County would be well served to have an independent noise study. That is a big issue. We have put into record these tracking systems, and the noise, that when they click and move it creates a problem. They gamed the system. We have pictures and would be happy to show you where that was taken. Gaming the system on where you put the monitoring devices. They used a good firm, but they played with the gaming, and it's not fair.

The Development Standards. QualEx and Mr. Tanner had pointed out they have not included any of the documents of the 2014 Building Code and that they will meet those structural elements. That's another deficiency.

The Site Plans are still deficient. They were filed incorrectly; showing inappropriate setbacks after we spent months and months and months. We still think the setback should be 1000', but it is 300' and they still have that wrong. The applications of co-applicants are still wrong. We put that on record the last time and they are still wrong. Mr. Tanner missed that because he was looking at the engineering. They didn't list the email address or phone numbers. That is still not done. They still do not have a mature application. At minimum, as was pointed out by your legal counsel, those should be requirements if we are going to move this onto a final.

Those are the eight points that need to be dealt with. We think the more appropriate action that should be taken, is that this matter should be continued for another 30 days while those very important items are dealt with. Maybe one of them has been dealt with in the Preliminary, but we are not sure about that.

The big issue at the last meeting was the Use and Development Commitment. I am pleased to say we are making progress on that. We had zero progress last time we were here. But there are still seven open items. A big one is drainage. I have submitted to you a drainage map that shows much of this area is in the flood plain. (On file in the Area Plan Commission Office)

I've touched on the setbacks from the road. We think they should be 100 versus 50. We are working on that. There are discussions, but it's not been worked out yet.

The Good Neighbor Agreement. We proposed a broader Good Neighbor Agreement. Mary was going to get back to me, but I have not heard back from them.

The folks at Marrs School have asked that two of the lots near Marrs School be taken out. There has been a counter-proposal on that. I will let Ms. Solada address that. That's a concern.

Landscape view shed enhancement fund. We've asked for that and we haven't heard back on it. It hasn't been denied yet, but that is an open issue.

Retention ponds and drainage. I've kind of touched on the drainage. We've discussed with them that we think a commercial development, there needs to be more detail. I understand that the drainage board... We were told this would go through the State... that it would be filed with the State. Those issues are all open. You can put conditions on those and we think you should. We would rather have an agreement. That's what we're trying to get done.

Another issue is eminent domain. Although the document that we got from Center Point makes it seem like that's behind us. That's another big issue, but maybe we've made progress.

Noise, we've already talked about that, but there's a lot of concern over the noise.

Litigation, where we stand right now, we had to seek sanctions last week. We still do not have the public documents. We had to file litigation because documents have been withheld from us. We were promised those documents, but we had to file for sanctions. Those are further reasons we think this... it's not this council, it is the insurance company that is representing the County. We are not being given the documents. We need a first look at those. That is the fair thing for these taxpayers. We gave you a map to show, obviously, how the people stand with us on this viewpoint. I've never had anything like this, representing remonstrators over the years.

A couple more concerns that I want to delve into a little more deeply is the landscape and view shed enhancement fund. We've used those before with other large commercial developments and that is a fund... this is a fund that allows for the homeowners to apply to put on their property. I'll give you an example, against the hospitals, against the Target center. Some of those, under both of those circumstances, it allows property owners to put some type of buffer on their own property. They apply for the fund. There are groups that can administer that fund. That is probably something you haven't heard of. That is an open item and it is pretty important and could go a long way towards achieving some peace with this.

These drainage issues are complex. I would at minimum, if the board wants to move this on, make that a stern requirement before you grant final, because there are some issues here. They will say to you on their side, that the plantings, which will be potentially 365 days a year plantings, that that will compensate for it. Now it's a field that's fallow for six months each year,

but their contention is that it's improving drainage. If this is a commercial development, I have to think there is potential problems. I don't know what they're going to do at the state. We are asking that you don't only rely on the State. You have the power with this board to deal with those issues. It's a big concern.

The Marrs School issue. At one point you had a much larger setback on schools. We've asked them, and so far, we have gotten nowhere. We do think that needs to be moved back. Again, this is within your power to do that. Maybe there are some ways we can adjust on that.

Those are our issues. I would be glad to answer any questions you may have. I will reserve whatever time I have left for later.

ATTORNEY MARY SOLADA: We have Arevon, the project developer, Tenaska and myself. We genuinely appreciate the effort that you have put into reviewing this application, and all the many nights and behind the scenes of studying all of this material. Thank you so much.

Mike, thank you, because I think we had an excellent conversation with Mike and his client group a few weeks ago. I will talk more about this in a moment. We had nine new conditions arise from that conversation. It was very productive.

Members of the Area Plan Commission, we believe you very wisely chose on July 29 to bring in an independent engineer. We very much respect Mr. Tanner and his relevant experience. You will hear from him yourself, so I don't see the need to recite many of his references in his very thorough report. I will point out page one. It says "applicant provided a very thorough preliminary approval package per the requirements according to the Ordinance." So, we feel good about this application the way it stands before you tonight knowing that it is a Preliminary Development Plan. We have work to do for a Final Development Plan, but we are very proud of this application. We are also proud of the fact that we now have 23 proposed conditions for approval, nine new conditions added since we talked to Mike. I don't think you want me to read them to you, but I know that Mindy and Becky have looked at them. I'm sure Trent and Terry have looked at them. They talk about committing to the vegetative management plan that is filed. We have a 20-acre pollinator park. It talks about fencing. It talks about no use of cadmium telluride panels, which was an initial request. No panel shall exceed 15 feet in height. We have community engagement such as contributions to the fire department on an annual basis. In terms of Marrs School, by the way, there are three new conditions regarding the school. First is number 7 - A representative of Marrs School shall be invited to pre-construction meetings between the Project and the County. We are attempting to stay in communication with Marrs School. Make them aware of what is going on with the timeline of construction, construction staging, etc. We also have a condition regarding security cameras, their height, how they are oriented. We have a condition about... and I think this was derived from Mindy's offices. It says that no more than 300 Megawatts or 2,900 acres within the fence will be developed. That is a condition that says the project cannot be made bigger. Actually, by the time we get to the Final Development Plan, I think we will have less than 2,900 acres. Right now, we are trying to optimize the use of land. I wanted to point that out that it is a good condition. There is a

condition about lighting, its limitations. There is a condition about making sure the number of dumpsters are limited and screened and pick up times of dumpsters. We have a letter from Center Point. I know they have representatives here tonight, but speaking to its desires regarding limitation of its rights of eminent domain and accessibility to the Executive Director and to the public post construction after Center Point takes the project over. We have a condition regarding limited hours of construction. We have a condition that the plan will comply with the Drainage Plan submitted to the County Soil and Water Conservation District. We have to have a Spill Control Plan approved by IDEM. In terms of Marrs School, we will have a gravel or dirt fire break road that we will install on land that is south of the school at the north end of our project area. We will screen any collector substations. We will plant trees, as Mike asked for a long time ago. That was a very reasonable request, Mike. Reasonable attorneys' fees will be awarded if we do not abide by these conditions. That gives them teeth. These conditions will be recorded and it will be recorded against all project land parcels and these conditions will be finalized at the time of the Final Development Plan. Meaning that, we are in a process. This is stage one. We will go to stage two with the Final Plan. I have a feeling we will add a few more conditions at that time. I appreciate your indulgence as I read these off, but there's a lot here. Remember we filed this application back in April. As I go a little bit back in time, I think it is important to provide context for this evening's proceedings. Please remember when our client first secured land in Posey County, that was March 2020. Since then, the Commission wisely took up, at the request of the public last February, March and April, a request to make the Ordinance tougher. We knew when we came to Posey County, and I work on projects all over the State and I can honestly tell you this is the toughest ordinance in the State of Indiana. In terms of the necessary detail to bring an application before you. The amount of third party reports, the detail involved and the review time you can see from your binders. It was a tough Ordinance. You chose to make it tougher. And we are still here. We are still here because we believe in the project. We also believe we can meet all of your standards and we think we have with this application. So, as you know, you increased the vegetative screening requirements, you've increased them substantially. That is not a criticism. That is not a complaint. But this has resulted in the plans before you and increased, by the way, decommissioning bond, increased setbacks where there were no setback for your residential under your March of 2020 Ordinance, now it is a 300' setback from nonparticipating residences. You have high priorities and we applaud you for that. We think that we meet them.

In conclusion, as you know, I think your legal counsel will tell you, your role this evening is to determine if we have met the requirements of the Ordinance. We think we have. We have subject matter experts and many of them are here tonight who would be happy to answer any questions you may have. Given that we meet the Ordinance, given that we've gone, in our view, above and beyond with these 23 conditions, we would ask for your approval of the Preliminary Development Plan this evening so that we can be allowed to file the Final Development Plan where we can provide the final details that Mike and others are asking for. We are happy to provide them. We are well down the road to developing more information. But, we have to have a vote tonight to be able to do that. We need your permission to file the Final Development Plan. We are asking for that approval. We would be happy to answer any questions and very much appreciate your attention. Thank you.

MARK SEIB: Does anyone on the board have any questions?

ANDY HOEHN: You said there were 23 new conditions that you had?

ATTORNEY MARY SOLADA: Twenty-three altogether. We had nine new conditions in the last couple of weeks.

ANDY HOEHN: You have nine new conditions tonight?

ATTORNEY MARY SOLADA: Yes, that is correct. In addition to the letter we sent from Center Point they filed on September 3rd, it addressed imminent domain and such. I don't want to speak for them. I know they are here this evening, but I know that's been a question, so we worked with Center Point to answer that question.

MARK SEIB: Barry Tanner, would you come forward.

BARRY TANNER: I want to briefly go through some of the items. I do feel this was a very thorough attempt at a Preliminary Development Plan. There were some issues that I have found, and we have highlighted. I will try and comment on some of Mr. Schopmeyer's comments. I think some of the items were covered in the final draft. It was originally sent out as a draft for everyone to review, and there was some other information that came in after that.

Section 153.124.02 (A) – I received an email from Kyle Gerking on September 2nd, and an updated summary has been submitted. It listed Jiko Solar (US) Industries as the solar panel manufacturer. NEXTracker will be the tracking system manufacturer. I'm not familiar with those vendors, but I'm not an expert on solar. They did provide those vendors after we submitted the draft.

Drainage – I would kind of defer to the Soil & Water Conservation District with the drainage requirements to review and approve those plans. I would just recommend that the board, if they make any kind of recommendations, make it to the point where you have engineering calculations showing what the pre-developed watershed is versus the post-developed watershed, or something of that nature. That is my recommendation that I would put forth.

Site Plans - When I scaled the drawings, they didn't show the 300' setbacks. They showed 250. When I looked at everything, the solar panels were actually beyond that 300 or greater. Since then they have submitted on their SharePoint Directory updated drawings that appear to show the correct graphical setback at the 300'.

Noise Evaluation Report – I'm not an expert on that. Since the draft report, Kyle Gerking of Tenaska submitted an addendum showing the noise level of the tracking motors.

Visual Impact – I did receive information that the estimated age of the trees shown are 7-9 years old. That wasn't necessarily listed in the Ordinance. As to the visual impact report, to show the

age of the trees, but I could tell that they weren't just the six-foot tall trees that were recommended or required by the ordinance.

Additional comment: The one comment I have is about the 2014 Building Code. That was just a comment that I felt needed to be stated. In my experience, a lot of companies that come from states other than Indiana that do work here, they may just use the 2012 International Building Code. Indiana does have their own code and it does use the 2012 International Building Code, but they do have amendments that need to be followed. For the Final Package submittal, that needs to be noted. So, the building code for structure, and size, and things of that nature, need to be followed. The current Indiana Code is the 2014 Indiana Building Code. It is a 2012 International Building Code with Indiana amendments. That's what it follows, but a lot of vendors build with the International Building Code, and not include the amendments required by Indiana specifically. That was just a comment that I've had issues with in my experience over the years. Again, this report is mainly to review things according to the ordinance. I'm not for or against anything.

MARK SEIB: I think you did a good job. Are there any questions for Barry? It's now up to the board to discuss and take action as they see fit.

RANDY THORNBURG: I think the deficiencies Mr. Schopmeyer stated need to be addressed. I would make a motion to table this for 30 days so we can address these issues.

Mike Baehl seconded the motion.

KEITH SPURGEON: If this Preliminary Development Plan is approved tonight, what is the timeline after that? It sounds like there is some ongoing discussion, and things that need to be clarified. Can these be addressed going into the Final Plan? The Final Plan won't happen any sooner than 30 days anyway, will it?

MARK SEIB: Correct, if it is approved tonight, they would have to give us specifics of locations, and panels, and everything has to be finalized. All of these questions would have to be finalized so we can address it at the final hearing, and go from there. Timewise, I'm not sure. Trent Van Haaften said the Ordinance states that we cannot have another meeting for at least 28 days from the Preliminary. There is a public hearing on the final and as well as a final vote from the board. That can't take place for 28 days after it's been accepted. I would anticipate a little bit longer than that. We've got Indiana Rule 5 that has to be looked at. But that's the quickest that it could come back to us.

RANDY THORNBURG: No other client I know that has come into the Area Plan Commission, all their paperwork has to be in order... I don't want to see any exceptions made for this client. I don't want to see favoritism. It ought to be equal across the board. I think they need to work it out and we give them 30 days to work it out like everybody else has to before it moves on.

Roll call vote (3-6). NO. Motion failed.

Pursuant to Section 153.124 of the Solar Ordinance, Andy Hoehn made a motion to approve the application for Preliminary Development Plan filed by Posey Solar LLC as Application 2021-01-SECS1-APC, subject to the following restrictions or provisions:

1. Attorney Solada had outlined nine new conditions and that those be incorporated.
2. That the engineering firm represented by Mr. Tanner, wants the Indiana Building Code 2014 with amendments included.

Dave Pearce seconded the motion.

KEITH SPURGEON: Did the motion say anything about watershed?

ANDY HOEHN: No, that was not included, but Rule 5 should apply, and the Drainage Board should address that as well.

KEITH SPURGEON: I have one more comment and I think this is more for clarification. They talk about the firebreak road for Marrs School. It says it is north of Marrs School and tonight you said it was south of Marrs School which makes more sense. A firebreak north of the school wouldn't make sense.

ATTORNEY MARY SOLADA: It is north of our project plan and south of Marrs School.

RANDY OWENS: Was the application also deficient on listing the complete contact information for owners? I thought there was a deficiency in listing email addresses, phone numbers for all those participating land owners.

MARK SEIB: I think you are exactly right.

ANDY HOEHN: Attorney Solada, would you please review those nine points?

ATTORNEY MARY SOLADA: To answer the question about naming the applicants, I believe I spoke to Attorney Van Haaften's co-counsel about this issue. Many of our landowners do not have email addresses. There are also some privacy concerns. So, I was thinking that we were deemed to be complete on that point for those two reasons. But, if that is the desire of the Plan Commission, we will submit that information to the extent that it exists. If someone doesn't have an email, we will not make one up. We can submit it in the next couple of days, or we will certainly submit it with the Final Development Plan. I think that might have been a miscommunication between Mrs. Hall and I.

The nine additional conditions:

1. Number 6, which is language I was just referencing. We had originally said when we filed these conditions that training up to twice a year with local fire departments shall be offered by the Project. What we added is that this training will address any requested safety plan or training for Marrs School. We are wanting to stay in communication with the school. We assume the school has some kind of safety training, and we want to be a part of it.
2. The next is number 7, a representative of Marrs School shall be invited to preconstruction meetings between the Project and the County.
3. This condition has been refined based on conversations with Mr. Schopmeyer. No more than 300 megawatts or 2,900 acres within the fence. Acreage may be reduced at the time the Final Development Plan is filed. We think that acreage number will go down a bit. At this time, we are trying to optimize the best use of the land.
4. Trash and debris arising from construction shall be collected within a reasonable period of time and properly disposed. The number of dumpsters that are placed at operational projects shall be limited to two. Dumpsters at operational projects shall be placed where they are not visible to the public or otherwise screened by opaque fencing. Pick up times shall be limited to sunrise to sunset.
5. Number 17, hours of construction of the PV arrays shall be limited to sunrise to sunset except between October 15 and March 15 and that the start time will be no earlier than 7:00 am and conclude no later than 5:30 pm. There can be preconstruction meetings on site that wouldn't necessarily be construction. If the sun is up during the period between October 15 and March 15, then work may proceed outside of these hours during any period when there is appropriate daylight. Non-construction site commissioning and testing may require work outside of daylight hours.
6. Number 20, a gravel or dirt "fire break" road shall be installed on the north part of the proposed Project area and south of Marrs School.
7. Number 21, the Project will cooperate with respect to any future easement request of public utilities pertaining to land under the Project's control.
8. Number 22, the Project collector substation(s) shall be screened from the view from public roads. The screening shall be placed outside the fence line. Arborvitae trees (or equivalent species) will be planted at a minimum height of 6 feet. Placement of the screening will consider minimum ground clearance requirements for any overhead power lines in the vicinity and shall be subject to the NEC Code.
9. These conditions shall be recorded and they will run with the land. They will bind any future owner and reasonable attorneys' fees shall be awarded to any NPL who prevails in any proceedings to enforce these terms. I know this was a very important point to Mr. Schopmeyer because his clients need access to the courts and they don't want to have to pay an attorney fee to enforce.

ATTORNEY TRENT VAN HAAFTEN: Mary, you provided Area Plan with the Conditions to Development Plan which had 23 different items on it. You just pointed out the nine. Are the other fourteen already in the Plan?

ATTORNEY MARY SOLADA: Yes, we filed back in April, perhaps eleven conditions. Then we submitted a couple more. Since the end of August, we added these nine additional. It's been a process, but they are all to be referred to tonight as in the record. All of which we're agreeable to.

ATTORNEY TRENT VAN HAAFTEN: For the members, in your packet for tonight, you would have gotten an email that included the Center Point letter and this Development Plan. I believe these nine were part of Andy's motion and would be number 6, number 7, number 13, number 15, number 17, number 20, number 21, number 22, number 23. Is that correct?

ATTORNEY MARY SOLADA: I believe so.

ATTORNEY MIKE SCHOPMEYER: As I understand the motion as it stands right now, the names, the Code as Mr. Tanner requested, the drainage through the County Drainage Board were conditions. I would suggest that, and obviously what has been submitted in the record as nine, but actually it is a total of 23. As I eluded to in our comments, there are six that are open, and we would ask that you encourage, as your Chairman did at the end of the last meeting, which had abundant affect for this County. Even though you voted it down last time, your Chairman on record said I would encourage you to work together. I will say Center Point helped as well, I think. We made a lot of progress. There is more to be made. But, there are six points. Setbacks from the road. I would encourage that you put in the motion setbacks from the road, consider in good faith in the UDA, the good neighbor agreement, payments... The Marrs School setbacks were a giant issue for these folks. The superintendent has only had one contact with these folks. The comment that they are working with Marrs School (not audible). We think the Landscape View Shed Enhancement Fund should be added. It has been done in other cases. You've kind of dealt with the drainage. Finally, we think there needs to be more done on the noise issue. So, noise, View Shed Fund for the property owners, good neighbor assessments, Marrs School setbacks and road setbacks. There's five items. Mary, is that what we have open? (no answer heard) I think all of those were on conference that have not been resolved. We would ask that you continue, if nothing else, Mr. Chairman, encourage work on those before going on to the Final. Thank you.

MARK SEIB: Mike, I think you are right and that you guys are working on it and still working on it. I think they will continue to work on these items. That's part of the negotiation part of it, and I don't really think we have the...

ATTORNEY MIKE SCHOPMEYER: You have the power in restrictions to say that we should do it in a motion.

MARK SEIB: I understand. That hasn't been brought forth as of yet.

ATTORNEY MIKE SCHOPMEYER: That's why I'm up here. I am encouraging it.

MARK SEIB: Any further discussion? Andy, would you please read your motion?

ANDY HOEHN: Pursuant to Section 153.124 of the Solar Ordinance, I move to approve the application for Preliminary Development Plan filed by Posey Solar LLC as Application 2021-01-SECS1-APC, subject to the following provisions:

That the nine new conditions be incorporated that Attorney Solada outlined and that the International Building Code (2012) also include 2014 Indiana Building Code Amendments.

[The nine new conditions to be incorporated were previously identified as the following:]

"6. A contribution of \$25,000.00 to the MARRS Township fire department upon commercial operation of the solar field, and \$5,000.00 each year thereafter shall be made by the Project, with the first contribution to be made within 45 days of commencement of commercial operations ("COD"). Training up to twice a year with local fire departments shall be offered by the Project. This training will address any requested safety plan or training or MARRS School.

7. A representative of MARRS School shall be invited to pre-construction meetings between the Project and the County.

13. No more than 300 MWac or 2,900 acres within the fence will be developed in the Project area. (Note - acreage may be reduced at time of Final Development Plan filing).

15. Any trash and debris arising from construction or operation shall be collected within a reasonable period of time and properly disposed. The number of dumpsters in place for the operational project shall be limited to 2. Dumpster for the operational Project shall be placed where they are not visible to the public or otherwise screened by opaque fencing. Pick up times shall be limited to sunrise to sunset.

17. Hours of construction of the PV arrays shall be limited to sunrise to sunset except between October 15 and March 15 the start time (if the sun is not up prior to this time), will be no earlier than 7:00 am and conclude no later than 5:30 pm. Prior to construction starting, workers will be mobilizing to work areas, completing safety briefings, pre-work coordination meetings, and preparing to start work. If the sun is up during the period between October 15 and March 15, then work may proceed outside of these hours during any period when there is appropriate daylight. Non-construction site commissioning and testing may require work outside of daylight hours.

20. A gravel or dirt "fire break" road shall be installed North of the Project land and South of MARRS School.

21. The Project will cooperate with respect to any future easement request of public utilities pertaining to land under the Project's control.

22. Project collector substation(s) shall be screened from the view from public roads. The screening shall be placed outside the fence line. Arborvitae trees (or equivalent species) will be planted at a minimum height of 6 feet. Placement of the screening will consider minimum ground clearance requirements for any overhead power lines in the vicinity and shall be subject to the NEC Code.

23. These conditions shall run to the benefit of an NPL who have received legal notice of the Project and shall be recorded and run with the land. They shall be binding on any future owner of the Project. Notwithstanding the foregoing, all such conditions shall immediately terminate and be of no further force and effect upon the expiration or termination of the Project. Reasonable attorneys' fees shall be awarded to any NPL who prevails in a judicial proceeding to enforce the terms of these conditions.]

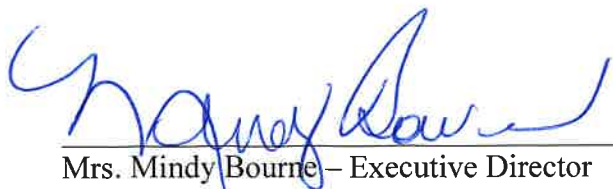
Roll call vote. (6-3) Yes. Motion carried.

MARK SEIB: That motion passes, so the Preliminary Development Plan has been approved. I, as the Chair, ask that you two continue talking.

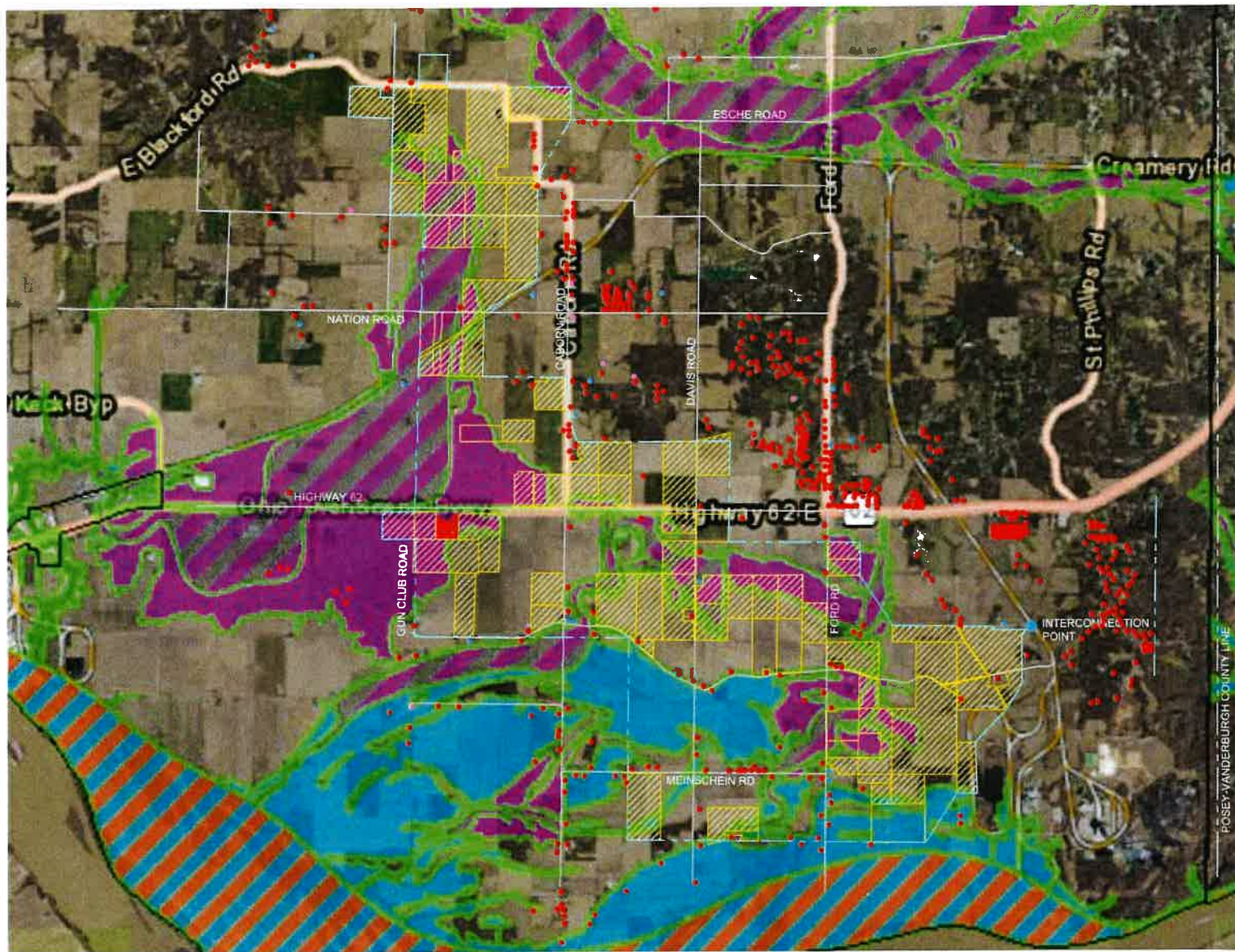
ADJOURNMENT: Andy Hoehn made a motion to adjourn the meeting at 7:01 p.m. Hans Schmitz seconded the motion.



Mr. Mark Seib – President



Mrs. Mindy Bourne – Executive Director



MEMORANDUM	
To:	Posey County Area Plan Commission (“APC”) and Counsel Trent Van Haften
From:	G. Michael Schopmeyer and Nicholas Golding
Subject:	Substantial Issues Identified in Independent Engineer Review of Preliminary Solar Application
Date:	September 10, 2021

The APC authorized the local engineering firms Tanner Engineering, LLC and QualEx Engineering to conduct an independent review of documents submitted by Tenaska/Posey Solar as part of the preliminary development plan application and issue a report summarizing their findings (“Report”). Although the Report provides technical review services only and is not intended to either approve or disapprove of the solar project, it sets forth several substantial issues in which the application was found to not be in compliance with Posey County’s Solar Ordinance or where the APC should make additional recommendations from the applicants. Substantial issues and recommendations that the APC should consider before granting approval include the following:

1. Project Summary – The Solar Ordinance requires that a developer include as part of its preliminary development plan application an initial project summary stating the potential equipment manufacturers to be used in a project. This information was not present in Tenaska’s Project Summary and was noted on the record at the APC’s initial hearing on July 29th.

The Review contains a comment that Tenaska informed the engineering firms via email on September 2nd that it submitted an updated summary listing Jinko Solar U.S. as manufacturing solar panels, NEXTracker as manufacturing the tracking system, and Sungrow as providing the central inverters. However, as of the morning of September 13th, the submitted Project Summary available to the public on Posey Solar’s website has still not been updated to include this crucially important information. We urge that the APC condition any approval on having this information in writing and an updated Project Summary provided to the public.

Issues with these proposed manufacturers should also be noted. Solar panel manufacturer Jinko Solar, which is headquartered in China, has been named in reports conducted by human rights experts as a company using forced labor. In a New York Times article titled “Chinese Solar Companies Tied to Use of Forced Labor” dated January 8, 2021, Jinko was found to have been “accepting workers transferred with the help of the Chinese government from certain parts of Xinjiang, and having laborers undergo ‘military-style’ training that may be aimed at instilling loyalty to China and the Communist Party.” The report further found that “a local subsidiary of Jinko Solar . . . received state subsidies for employing local Xinjiang labor, including at least 40 ‘poor workers’ from southern Xinjiang.” Sungrow, the identified manufacturer of central inverters, is also headquartered in China, with its manufacturing facilities located outside the U.S. in China and India.

2. Visual Impact Evaluation Report – Although the Review found that Tenaska/Posey Solar complied with the requirements for this section of the Solar Ordinance, it recommended that the APC request that an estimated age of tree buffers used in the Visual Impact Evaluation Report be provided. Although the screening trees are only required to be at least 6 feet in height, the trees shown in the photos are much more mature than this, potentially giving an inaccurate impression of the actual visual impact if younger trees are used.

The final draft of the Review contains a note that Tenaska’s Kyle Gerking sent an update email informed the engineering firms that the estimated age of the trees included in the visual impact evaluation report to be 7-9 years old. Tenaska/Posey Solar should either confirm in writing that trees of

this age will be used in this project or provide a revised Visual Impact Evaluation Report showing the actual anticipated impact of the trees to be used in the project based on their true age.

3. Maps – The Solar Ordinance requires that maps of the project site include certain classifications of streets and roadways, including local, collector, secondary arterial, primary arterial, and divided primary arterial. The Review found that Tenaska/Posey Solar’s submitted maps failed to follow this requirement and did not identify streets and roadways by these classifications. The final version of the Review notes that this issue has not yet been corrected, nor have Tenaska/Posey Solar uploaded revised maps to its website that include this required information.
4. Noise Evaluation Report – The Review noted that the initial Noise Evaluation Report did not include impact of tracking motors on the noise level. Tenaska/Posey Solar have since uploaded an addendum stating that the max predicted noise level at residences increases from 39.2 dBA to 39.3 dBA when factoring in noise produced by tracking motors. However, there is no indication in the final Review that this addendum was analyzed by the independent engineering firms. The sufficiency of this testing has been called into question, as only one area on Ford Road closest to the highway where Ford Road is at its busiest was checked. The APC should require this information be reviewed by the independent engineering firms before approving the Preliminary Development Plan application.
5. Development Standards – Although not required by the Solar Ordinance, the Review recommended that the APC request Tenaska and Posey Solar follow code requirements per the 2014 Indiana Building Code for structural design criteria. We would urge the APC to condition approval on this standard being met.
6. Site Plans – The Solar Ordinance requires that site plans show setbacks of 300 feet from nonparticipating residences. The Review noted that Tenaska and Posey Solar’s submitted site plans showed setbacks of only 250 feet. However, Tenaska and Posey Solar have since updated their application and posted new versions of the site plans dated 08/25/2021 correcting this oversight.
7. Applicant and Co-Applicants – Section 153.124.02(B) of the Solar Ordinance requires that names, addresses, email addresses, websites and phone numbers be listed of the Applicants, Owners and Operators and all Co-applicants. However, Tenaska/Posey Solar failed to provide all required information for the listed Owners of the project, as they only submitted the Owners’ names and parcel IDs. The Review did not raise this issue, but this oversight was brought up at the Jul 29 initial public hearing.

MEMORANDUM	
To:	Posey County Area Plan Commission (“APC”), Counsel Trent Van Haaften
From:	G. Michael Schopmeyer and Nicholas Golding
Subject:	Tenaska’s Proposed Use and Development Commitment - Unresolved Items
Date:	September 10, 2021

Since the APC’s initial public hearing on Tenaska/Posey Solar’s preliminary development plan application on July 29th, 2021, Tenaska’s legal counsel Mary Solada of Denton’s has begun to engage us in negotiations over the inclusion of language in a proposed land use and development commitment (“UDC”). This UDC will add legal protection for nonparticipating landowners and Posey County should the project be developed. This memorandum is being provided to the APC to show remaining unresolved items between the parties so that the APC may consider urging parties continue to work towards a resolution on these issues.

Unresolved Items:

1. Setbacks

- No agreement from Tenaska/Posey Solar. Posey Solar Ordinance requires 50 feet from public right of way, 100 feet from non-participating landowner property line, and 300 feet from leading edge of non-participating residence. Increased setbacks key item for nonparticipating landowners opposed to project.

2. Good Neighbor Agreement Payments

- No agreement from Tenaska/Posey Solar on the inclusion of language regarding Good Neighbor Agreement or its sum.

3. Marrs School Additional Setbacks

- No agreement from Tenaska/Posey Solar to increase setbacks from Marrs School. Setbacks remains at 500 feet under Posey Solar Ordinance.

4. Landscape and Viewshed Enhancement Fund

- No language included in Developer’s proposal countering our request to include provision establishing a Landscape and Viewshed Enhancement Fund for neighbors with property lines within 750 feet of project.

5. Retention Ponds/Drainage

- No language included to overcome common enemy doctrine sheet drainage property. Tenaska and Posey Solar contend that by being vegetative throughout the year, runoff will be less than current agricultural uses where land runs fallow for periods.

6. Waiver of Eminent Domain Power

- No language included waiving power to increase size of project through eminent domain, despite being stated on the record.

7. Noise

- No language included providing additional protections on noise levels at nonparticipating property owners.