

Memorandum

Date: October 1, 2023

Project Number:
Project Name: Delaware County Solar Ordinance

From: Cynthia Bowen, FAICP
To: Delaware-Muncie Metro Plan Commission
Copies: Jim Clevenger, Rex Collins, John Coutinho, Jason Donati, Joe Hamilton, Tim Niccum, Joe Russell, John Taylor, Lucas Wright

Subject: Summary of Issues with Related Motions

INTRODUCTION

Delaware County established a Task Force to review its solar ordinance. The charge of the committee was to recommend possible amendments to the existing solar ordinance to continue to mitigate the impacts of solar facilities. The Task Force was not charge with changing the ordinance so that it would prevent solar in the County. Therefore, the purpose of this document is to outline the issues the Task Force members identified during their study and review of materials related to solar ordinances. During their process, the Task Force talked to various solar experts to get a sense for what they were looking for and gain different perspectives regarding a variety of issues. Additional research and supplemental information were provided to the Committee and has been added to these topics to provide a well-rounded overview for the Plan Commission and County Commissioners.

To facilitate discussion, the Task Force used information that was currently in the zoning ordinance solar provisions, information from other solar ordinances from within the State of Indiana, and suggested ordinance revisions presented by Jason Kuchmay at the February 17, 2021 special meeting of the Delaware-Muncie Metro Plan Commission Meeting. The Task Force discussed 14 areas including:

1. Setbacks
2. Property Value Guarantees / Good Neighbor Clause
3. Drainage
4. Fire Protection & Control
5. Fencing
6. Buffers
7. Road Remediation
8. Decommissioning
9. Land Use Limitations / Size of Solar Developments
10. Proper Public Notice / Process
11. Noise, Light & Other Environmental Issues
12. Insurance
13. USA-Made Guarantee
14. Green Task Force / Passports

The current zoning ordinance allows solar facilities as a special use in Delaware County that is approved by the Board of Zoning Appeals.

In reviewing this report it's important to understand who is impacted by a land use decision. In the case of a solar facility, there is the property owner who decides to sell or rent their land to a company to place a solar facility on the subject property. Property owners who are adjacent to the property non-participating property owners who could be impacted by a neighbor's land use decision.

The group met at least seven times to discuss the current ordinance during April of 2022 to December of 2022. During the Task Force meetings as discussions proceeded, members of the Task Force discussed each issue. The members had different perspectives regarding the issues. In fact, at least one member of the Task Force wanted to prevent solar facilities from locating in Delaware County. Many times, Planning Director Marta Moody had to remind Task Force members that the purpose of the group was to present changes to the ordinance and not prevent solar within the county.

The Issue Identification & Recommendation Section below spells out each issue and the majority and minority opinions on each issue. In some cases, there was only a majority opinion. This report also identifies the motions that were taken associated with various issues. Care was taken to try and reflect why the motion failed and the views of both parties on the motion. The following is a summarization of the issues identified by the committee and potential suggestions discussed by the committee as well as motions and the results of those motions under each topic. This section is setup as follows:

Issue Identification: Identifies the issue the Task Force was trying to address.
Narrative: Description of the issue and a summary of discussion of the Task Force
Majority Opinion: The opinion of the majority of the committee.
Minority Opinion: The opinion of the minority of the committee.
Technical Guidance: The professional guidance of the author of the document
Recommendation(s): The recommendations of the committee
Vote: The vote of the committee on the recommendations.

Attached to this report are some of the more important reference materials the Task Force reviewed and discussed during its meetings.

Reference Materials Attached:

1. Delaware County Solar Ordinance
2. Purdue Solar Ordinance Report
3. Comparison of Different Counties with Solar Ordinance (Prepared by Muncie-Delaware County Intern)
4. Grant County Solar Ordinance - property value guarantee (for people who are non-participating homeowner)
5. Summary Information Regarding Kuchmay Request & Existing Ordinance Provision Document



ISSUE IDENTIFICATION & RELATED MOTIONS

1. SETBACKS

ISSUE: Property owners feel blocked in by solar facilities.

The issue is the potential for property owners to be blocked in on all sides, blocking views of countryside/farmland. Discussion took two paths the aesthetic impact of solar facilities and the classification of the use itself.

Regarding the aesthetic impact, the discussion focused on the reasons why people move into the County. In most cases it is because of the open fields and that there might not be a neighbor for a mile. Therefore, having a solar facility locate adjacent to property owner in the County could deteriorate the quality of life of that property owner because of limit views of the countryside and the potential glare from the solar panels.

The aesthetic impact led to the discussion of changing setbacks and whether the solar facility should be classified as industrial use versus having its own setbacks set. This led to other discussions of reciprocal setbacks to property owners who located next to a solar facility, but Planning Director Moody was not a fan of that.

Key highlights of the Task Force discussion included:

- Use the proposed right-of-way to measure setbacks instead of using standard 50-foot option
- Set a minimum setback from a non-participating property owner, but allow a property owner to waive setback requirements and allow project to be closer to property line.
- A buffer map was created to illustrate a 1/4 mile setback from roadways but that would leave a small area in the center if looking at a square mile
- Discussed county's industrial setback standards versus the existing ordinance setbacks and general feeling was to either leave setbacks as they were or change them to industrial standards.

The Majority Opinion

The majority of the group agreed with making some changes to the setbacks. The group didn't think the use needed to be reclassified to an industrial use. Instead, setbacks needed to be adjusted for the road, non-participating dwelling, participating dwelling, property line of non-participating dwelling, and change measurement of participating property to the fence.

The Minority Opinion

The minority of the group agreed that setbacks needed to be adjusted. However, the ordinance should be written in the strongest protection for neighbors with the greatest setbacks, with an opt out provision for the non-participating property owner allowing the setback of the facility to be closer to the property line. The minority group also suggested that the solar company pay the adjacent landowner a percentage of 'royalties' to have a closer setback - something like \$1,000 per year.



Technical Guidance: Many other communities have addressed the aesthetics by adjusting setbacks near the roadway and at the property line as well as requiring large buffer yards with heavy landscaping to mitigate the aesthetic impact and glare from the solar panels.

TASK FORCE RECOMMENDATION:

1. Setback from road (50 feet, existing, no change requested) (1,000 feet from road)
2. Setback from nonparticipating dwelling (250' existing) (1320 feet from participating dwelling)
3. Setback from participating dwelling (100 feet existing, no change requested)
4. Setback from property line (200 feet existing for non-participating)
5. Change measurement from dwelling and property lines to the fence (rather than "solar farm structures")
6. Insert general provision that removes setback requirements from property lines when adjoining properties are a part of the solar facility.

MOTION: Vote to NOT change setback provisions from their current: 50 feet from a proposed right-of-way, 250 feet from a non-participating dwelling, 100 feet from a participating dwelling, 200 feet from a nonparticipating property line.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright

No: N/A

VOTE RESULT: Passes

2. PROPERTY VALUE GUARANTEE/GOOD NEIGHBOR CLAUSE

ISSUE: Is there a change to property values if located next to solar facilities? The discussion surrounding property value guarantee was a major issue for the Task Force and hours were spent discussing this issue. At the heart of the issue is whether local property values adjacent to solar facilities decreased.

At the February 14, 2022 Special Plan Commission Meeting, Jason Kuchmay requested the Plan Commission consider a property value guarantee (PVG) for 10 years for all property within 3 miles of solar facility. The Task Force used this as their starting point for discussion.

After doing some research, Director Moody found that it was an extremely rare practice to include a property value guarantee in ordinances. Kosciusko County is the only county in Indiana that has a property value guarantee, and it was very deliberate as they don't want solar facilities in the County.

Two other counties in Indiana, Posey County and Spenser County have property value guarantees as part of their Economic Development Agreements, which are approved by the County Commissioners. These basically stipulate that if a solar project seeks tax abatement or other economic considerations from the government, a property value guarantee agreement may be included as part of the overall economic development agreement.



Franklin County has a hold harmless statement that states an “owner or operator of commercial solar installation shall provide a hold harmless agreement with all non-participating property owners with property boundaries adjacent to the solar facility site.”

In discussions the Task Force was trying to understand how a property value guarantee would work and when it would go into effect. Who would be responsible for it? Who would enforce it? Key highlights of the Task Force discussion included:

- The impact is too residences and not to farm ground.
- No one knows whether this has been tested in the courts.
- This would be a negotiation between solar company and landowner.
- Solar company wouldn't be able to attain financing if PVG was included in ordinance
- Baker / Tilly Report - Invenergy misled the County Commissioners and County Council by stating there was going to be new money and additional money for community schools. Baker Tilly Report showed that there was no new money or additional money and after tax abatement runs out. That overall it would lower the property tax rate for everyone else.
- People in Gaston wouldn't support a solar project even if there was a property value guarantee - they just don't want solar facilities at all.
- There was a discussion as to whether if you are a donut county/metro area whether your property retains value adjacent to a solar facility versus not being a donut county/metro area
- Solar facilities will not be a benefit to the county day to day for attracting people to the county
- Panels always face east and there is always a glare
- One of the members attorney found fault with some of the language in property value guarantee offered by Tim.
- There was a lot of discussion on the timeframe and the distance by which a nonparticipating property owner should be engaged
 - Ten years is unreasonable time frame
 - 3 miles is too great of a distance
- What does a good faith effort mean? Because there are some people who would not talk to the solar company at all and it isn't fair to the solar company because they made an effort.
- Interested parties means 300 feet or 2 property owners deep
- There was discussion of a summary of survey - its antidotal. People passed this out. Email was sent out to a mass anti-solar email list and then people went out to people who lived near them. Others on committee had issues with this survey.

The Task Force worked through many different iterations and suggestions.

- **Suggestion:** Good neighbor program whereby they get a payment every month from the solar company for the longevity of the project
- **Suggestion:** Settle the issue of the property value guarantee/property protection
 - Original owner to buy it or offer good neighbor policy
 - 1 year to declare their intent to sell - 2 properties deep from the solar facility property, after the farm is operational
- **Suggestion:** Good neighbor policy

- Good neighbor policy was to approach nonparticipating property owners, 2 property owners deep or ¼ of mile, that contain a residence, for an offer to be negotiated between the property owner and solar facility to be a good neighbor. And it can be transferred to the next owner.
- **Option A:** First option would be to add the full scale Property Value Guarantee Tim's 9-page agreement and that would apply 2 property owners deep, 1 year intent to option.
- **Option B :** Add a requirement in the Board of Zoning Appeals application that the applicant (solar company) provide proof of a good faith effort to approach non-participating owners, within 2 properties deep that contain a residence, of an offer to be negotiated between the company and the owner, to be a good neighbor. Add that the good neighbor agreement may transfer with ownership of the non-participating property.), leaving the 2 -property deep stipulation.

Majority Opinion: The majority believed that something was needed to address property valuation. They felt it was important for those non-participating property owners who were going to be impacted most directly to have some type of protection. By giving tax credits, it helps large businesses, but not the individual property owner and more should be done for the property owner. The majority ended up with both the property value guarantee and good neighbor agreement as it would address both property values and how the company deals with nonparticipating property owners (regarding notification).

Minority Opinion: The minority group believed that people who own their own land have the right to increase their own property value by putting solar on their land. They also believed that this would be unwieldy to manage. It would be too hard to implement and manage and that it could set a precedent for other types of projects in the County. That there wasn't a clear delineation that property values had decreased because not many studies had been done on the issue. Even if this was included it wouldn't change some people's mind about accepting a solar facility next door to them.

Minority Opinion: There were also a few on the Task Force who wanted to go beyond the scope of the Task Force and prohibit solar facilities completely. These individuals believed it was immoral that solar companies and landowner who leases the property make money and the adjacent property owners who are affected who don't get protections.

Technical Guidance: This issue is a very complex and emotional issue and the Task Force struggled through discussions because there are many different ideas to consider. The Task Force believed that something needed to be done but wasn't sure what mechanism would accomplish the goal. After talking to several counties, they came up with the idea of a good neighbor policy to be implemented with the property value guarantee. What should also be noted is while there are a few studies that have looked at the impact on property values, there has not been enough to answer the question of whether a solar facility diminishes the property value of a nonparticipating or adjacent property owner.

While the overall committee eventually agreed to include a property value guarantee in the ordinance, the impact on the county will be far reaching. First, a property value guarantee will be a deterrent to any solar company looking to locate within a community. Solar facilities pay property taxes and provide income to the property owner. In researching property value guarantees nationwide, there are not many communities beyond Indiana that have incorporated property value guarantees into any solar ordinance. This could be because this mechanism is

still a new topic or that many communities have determined that the benefits of a solar facility are advantageous and they can mitigate the impact of some of the negative aspects related to large scale solar facilities.

The second issue to consider is that anything that is included within the ordinance is enforceable by the Plan Commission/Board of Zoning Appeals. It is unclear how the County would enforce a property value guarantee or a good neighbor policy. Also, at question is should that be the County's role? Overall, a jurisdiction would not want to put itself in a position to enforce this type of provision because of the complexities of the language surrounding a property value guarantee and that it is an agreement between a company and property owner. A similar circumstance would be the review of covenants in a subdivision. Many Plan Commissions will request to review the covenants of a subdivision, to ensure there is not a conflict with the zoning or subdivision ordinance, however, they clearly state in the ordinance that they will not enforce covenants. That is up to the established homeowners association and involves civil lawsuits. Based on research, there is little body of work on the enforceability of a property value guarantee and the role of the Plan Commission to enforce it once it is in the ordinance. There is a possibility the County could end up involved in a civil lawsuit over the property value guarantee if one is brought by a homeowner.

The third issue is implementation of such an ordinance. If it was included in the ordinance, it should be written that it is an agreement between a nonparticipating property owner and the solar company. What happens when there is the situation that a nonparticipating property owner and the solar company can't come to an agreement regarding the property value guarantee. Is the use automatically denied? As the Task Force noted, not everyone will be willing to speak or deal with the solar company. This could lead to lawsuit from the solar company against the County if clear provisions are not written to protect the County in the decision of approving or denying a solar facility based on the property value guarantee or good neighbor agreement.

Finally, the last issue that wasn't discussed by the Task Force but is a reality when entering into an agreement with companies is the requirements that are included within the agreement. Typically, most companies will require that any property owner who enters into an agreement agree to something like the following:

- Refrain from objecting to the proposed solar facility
- Fully support the project
- Not oppose, in any way, the project at the administrative, judicial, or legislative level
- Do not disclose the amount of the payment the property owner will receive

If property values are impacted, this agreement does not solve that issue. It only serves to pay a nonparticipating property owner and in essence quell any opposition to a solar facility.

Today, based on the limited body of research regarding impacts on property values, property value guarantees, and the fact that they haven't been tested in court, it is my technical guidance that you do not include this in your ordinance. The County attorney and Area Plan Commission office need to truly understand the legal ramifications to the County and what the County's responsibility would be in implementing and enforcing this provision in the ordinance.

The following are the series of motions that were made during discussion through the seven meetings:

MOTION: To approve inserting property value guarantees into our solar ordinance.

VOTE:

Yes - 1 (Tim)

The discussion was about getting more information from 4 counties that have PVG. Tim didn't support table of vote. Johnson County is the outlier, Franklin County was pushing out solar fast, if PVG ordinance was enacted did solar still want to come to the county, Marta made a copy of the process of the PVG from Adams County/Grant County

Table the Motion

Yes - 5

VOTE RESULT: *Table the Motion*



MOTION: Add property value guarantee with the following requirements - offer to original owner to buy it, 1 year to declare their intent to sell - applies to 2 properties deep from the solar facility, offer good neighbor policy.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Taylor, Wright

No: Russell

VOTE RESULT: Passes

MOTION: Approve of Option B: Add a requirement in the BZA application that the applicant (solar company) provide proof of a good faith effort to approach non-participating owners, within 2 properties deep that contain a residence, of an offer to be negotiated between the company and the owner, to be a good neighbor. Add that the good neighbor agreement may transfer with ownership of the non-participating property.

VOTE:

Yes: Clevenger, Coutinho, Donati

No: Collins, Hamilton, Niccum, Russell, Taylor, Wright

VOTE RESULT: Vote fails

MOTION: Combine Option A (put in the Ordinance a requirement for a full scale Property Value Guarantee as previously presented by Tim (the 9 page agreement) adding that it would apply to 2 properties deep and be for 2-3 years, applicable to original owner only and Option B : Add a requirement in the BZA application that the applicant (solar company) provide proof of a good faith effort to approach non-participating owners, within 2 properties deep that contain a residence, of an offer to be negotiated between the company and the owner, to be a good neighbor. Add that the good neighbor agreement may transfer with ownership of the non-participating property.), leaving the 2 -property deep stipulation.

VOTE:

Yes: Clevenger, Collins, Coutinho, Niccum, Wright

No: Donati, Hamilton, Russell, Taylor

VOTE RESULT: Vote Passes

3. DRAINAGE

ISSUE: Drainage issues due to potential blockage of underdrain outlets or damaged tiles.

Kuchmay requested access to underdrain outlets blocked by projects & wanted accountability if a drainage tile is damaged later and creates drainage issue. Planning Director Moody noted the current ordinance requires the submittal of a certified drainage plan. The projects would also fall under the county's drainage ordinance and the drainage ordinance has provisions for drainage access. Therefore, solar facilities couldn't interfere with existing drainage tiles unless mitigation efforts were made. Projects are required to get drainage board approval.

The Majority Opinion

The majority of the group was satisfied with the existing ordinance provisions after clarifications by Director Moody.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION/RECOMMENDATION: No changes needed as the issue is addressed by the existing provisions in the ordinance.

VOTE RESULT: No vote, but agreement by everyone.

4. FIRE PROTECTION AND CONTROL

ISSUE: Detailed safety plan

This issue was an issue that Jason Kuchmay requested at the special Plan Commission meeting on February 14. The request was that there be a detailed fire safety plan, annual training equipment, and detailed site plans, including the equipment so that mutual aid remains beneficial and useful. Planning Director Moody noted that current ordinance requires detailed site plans and a fire safety plan.

Key highlights of the Task Force discussion included:

- Current ordinance doesn't require training at owners/operators expense but it does require specialized training if necessary
- Group discussed that if specialty equipment was needed that the company could provide the equipment



- The group discussed who would determine if specialty equipment is needed and Director Moody responded that it would be Emergency Management who would determine that

The Majority Opinion

The majority of the group was satisfied with the existing ordinance provisions regarding the fire safety plan. The group generally agreed that if special equipment was needed, the solar company should provide it.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION/RECOMMENDATION: To add the word "equipment" after the word training.

VOTE RESULT: No vote, but general agreement by group.



5. FENCING

ISSUE: Aesthetics of fencing along road or home.

Jason Kuchmay requested at the February 17th Plan Commission special meeting that chain link fence not be more than 50% of required fencing. That there should also be required decorative fencing when facing a road or home. Fifty percent of chain link fence should be wildlife permeable.

The Task Force discussed the merits of a chain link fence versus a decorative fence. The purpose of the fence is for safety and to keep people out of the solar facility. Planning Director Moody indicated that the existing ordinance didn't have a provision that not more than 50% of the fence be chain link. It also didn't call for decorative fencing but does have a provision for permeable wildlife fencing but not up to 50%. The existing ordinance has a provision indicating fencing cannot block a wildlife corridor. The existing fencing must be maintained in good condition for the entire operation of the solar facility.

The Majority Opinion

The majority of the group supported the existing provisions and felt that additional requirements were not necessary. One member suggested that barbed wire not be permissible.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION/RECOMMENDATION: Barbed wire not permissible for fence type.

VOTE RESULT: No vote, but agreement by group.

6. BUFFERS

ISSUE: Additional landscaping required to serve as a buffer.

Jason Kuchmay requested at the February 17th Plan Commission special meeting that triple row of alternating conifer and deciduous trees be planted, maintained & replaced as needed. Planning Director Moody explained the existing ordinance is very prescriptive regarding buffer standards. There is a required 50-foot buffer zone and a detailed landscape plan is required, certified by a licensed landscape architect. The landscape treatment will depend on the setbacks.

The Task Force's discussion on this topic was that the county's current standards were adequate. Director Moody suggested a reference to a landscape maintenance plan under Article 20, Section 5 Development Standards was needed. The group agreed.

Key highlights of the Task Force discussion included:

- Should there be an option that small property owners not have to have buffer on all sides
- Use certified organic herbicide

The Majority Opinion

The majority of the group supported the existing provisions and supported the added reference to the landscape maintenance plan.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION/RECOMMENDATION: Add reference to landscape maintenance plan, Article 20, Section 5.

VOTE RESULT: No vote, but general agreement by group.

7. ROAD REMEDIATION

ISSUE: Kuchmay requested developers repave roads alongside new solar facilities

The Task Force did not have a lot of discussion on the road remediation request. Planning Director Moody noted that there has not been a facility come in and cause significant damage where repaving of the road was necessary. In the ordinance, there is a requirement for commercial/industrial to completed traffic impact study and if it reduces the level of service on the road then they would have to fix the road. This has been more of a topic of economic development but the repavement of roads is required in the zoning ordinance.

The Majority Opinion

The majority of the group supported the existing provisions and felt that additional requirements were not necessary.

The Minority Opinion

There was no minority opinion

Technical Guidance: None.

MOTION/RECOMMENDATION: No changes needed as the issue is addressed by the existing provisions in the ordinance.

VOTE RESULTS: No vote, but general agreement by group.

8. DECOMMISSIONING

ISSUE: Ensure there is enough bond to cover the decommissioning costs and they be updated every 4 years.

Part of the Kuchmay request was to ensure that a bond was posted in the amount of 150% of the required estimate of the costs of decommissioning and removal of the commercial solar facility upon expiration of its useful life, or in the event of discontinuance or abandonment.

The Task Force discussed what components were involved with solar facilities, what type of materials were involve with the solar panels and if they were recyclable or if there was a market for recovery of disposal of materials. The Task Force also discussed what should be removed from the ground and if everything buried underground should be removed therefore returning the ground to tillable farmland.

Key highlights of the Task Force discussion included:

- Buried underground and what should be removed from the ground - cabling in the ground and postings in the ground - cable 18 inches and 4ft driven posts - 20 to 24' spacing
- Very lucrative for property owner if the panels and other materials were left in place - the property owner would recycle it themselves
- The current ordinance says to remove everything above including everything down to 4 feet below the ground - the property owner can elect to keep certain things in the ground
- How do we know if they removed something down to 4 feet deep - they wouldn't unless the property owner said something
- Should increase the bond/surety but also take into account the salvage value
- How often do we update cost estimate - cost estimate updated every 5 years, and then update it the year before the lease renewal is up

The Majority Opinion

The majority of the group supported the existing provisions of the ordinance given the fact that some of the materials could be salvaged by the property owner. They agreed with the increase in the bond to cover the cost of decommissioning, if the County would have to do it. The Task Force was very clear that it should be updated periodically, especially one year before the lease ended to ensure that the bond was kept up to date with the cost of decommissioning.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION: For decommissioning, modify existing language to include the following:

1. Remove all facilities above ground and below ground down to four feet in depth
2. Provide a bond/surety for 125% of the cost estimate to decommission, with bond updated as cost estimates are updated
3. Cost estimate must be updated every five years, with estimates paid for by solar company
4. Provide an additional cost estimate to decommission facilities, one year prior to lease ending.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright

No: NA

VOTE RESULT: Passes



9. LAND USE LIMITATIONS / SIZE OF SOLAR DEVELOPMENTS

ISSUE: Conversion of farmland to solar facility. Size of solar facilities

The Task Force had a wide range of discussion when it came to land use limitations. Planning Director Moody indicated that now that the use was a special use and it went to the Board of Zoning Appeals, the Board of Zoning Appeals could put further conditions of the solar facility based on specific site conditions.

The discussion then turned to the conversion of prime farmland to economic development use. Some of the discussion centered around the taking away of prime farmland and the potential future yields and revenue that could come from that farmland. Others were concerned with the size of the facilities and the number in the county. How many solar facilities are too many and what size of a project are people willing to support – 300 acres? 800 acres? 3000 acres?. Again in this discussion, the Task Force had a lengthy discussion about the rights of people to be protected from solar and from landowners who want solar.

Planning Director Moody prepared some exhibits to show what the county would look like if a 1320 foot residential setback was impose and how many areas could really support a solar facility based on that setback. Members indicated that even with that setback, a facility could be 150 acres and theoretically there could be 21 facilities in the County.

The discussion then turned to the size of the facility. Some members expressed a potential limit on the individual size of a facility. Discussion ensued rather the scale of the facility and what determines a large facility. A community/commercial/utility scale solar part spread out over several square miles could produce 1.62GW – which in some members opinion was a very large facility. Discussion turned to solar facilities selling energy to the grid and maybe that should be the classifier for the size of project. The discussion concluded when Planning Director Moody said the group needs to define the size of the community/commercial/utility scale solar and what

that means to them. [Reference note: the Kuchmay report noted that community scale was 5 acres and up.]

The group also discussed that the ability to have a community/commercial/utility scale solar facility should be put on a referendum vote for the county. Planning Director Moody provided some additional information to the group at a later meeting which drove one of the motions.

Key highlights of the Task Force discussion included:

- Need to limit the destruction of farmland so we need to put a cap on it.
- A 1% limit on number of acres that can be converted from crop land to solar.
- A 1% limit on the number of acres under panel or 2.5% total acres in the County convert to solar facility
- When does the size become objectionable?
- Development standards are required to balance the impacts of the use with the quality of life
- Concerned with decisions of Board of Zoning Appeals and their ability to protect property owners
- Should be a referendum on ballot regarding solar
- The group did several calculations but used this for their recommendation: 175,000 for farming based on census, 2% of 175,000 is 3,500 or somewhere close to 1680 acres. That is the maximum size or amount of total acres devoted to solar farms. 2% of 170,000 is 3,400 and so they decided to use that as the maximum.

The Majority Opinion

The majority of the group agreed that there should be a maximum number of solar facilities in the county. They agreed that capping the total acreage of land devoted to solar facilities was important but there was a hesitancy to be too restrictive. The majority of the group also supported a referendum on the issue of whether there should be community/commercial/utility scale facilities in the County.

The Minority Opinion

The minority in the group wanted to have the smallest percentage of total acreage devoted to solar facilities to limit the total number solar facilities and to preserve farmland and protect property owners.

Technical Guidance: One observation to consider is how the County will track the acres being converted to solar facilities. The County will likely need to use their Geographic Information System (GIS) as well as another administrative function to track solar facilities, their approval date, how many acres were approved under panel, and potential end date (or end of lease date). The ordinance should be very clear that only 3,400 acres will be permitted as community/commercial/utility scale solar facilities to be transparent about its processes and so property owners are not surprised if the County reaches that number. I would suggest adding a pre-consultation meeting to the special use process for solar facilities to address this issue.

MOTION/RECOMMENDATION: Impose 1% limit on the number of acres that can be converted from cropland to solar.

VOTE:

Yes: Clevenger, Collins, Niccum, Wright

No: Donati, Hamilton, Russel, Taylor

Absent: Coutinho

VOTE RESULT: Motion was tied. Issue must be revisited.

MOTION/RECOMMENDATION: Impose 2% limit on the number total number of acres in the county that can be under panel that can be converted from agriculture to solar.

VOTE:

Yes: Clevenger, Coutinho, Donati, Hamilton, Wright

No: Collins, Niccum, Russel, Taylor

VOTE RESULT: Passes

MOTION/RECOMMENDATION: We should seek out the procedural costs so that we can put this on our referendum for the November 2022 election cycle.

VOTE:

Yes: Clevenger, Coutinho, Donati, Wright, Collins, Niccum, Taylor

No: Hamilton, Russel

VOTE RESULT: Passes



10. PROPER PUBLIC NOTICE / PROCESS

ISSUE: Solar companies are negotiating a deal with the participating property owner and most nonparticipating property owners don't find out what is happening until it goes before the Board of Zoning Appeals.

Planning Director Moody first explained the process of a special use to the entire committee. There was a discussion about the requirements including a concept plan, detailed site plan, potential wetland delineation and a landscape plan. This would all go before the Board of Zoning Appeals, which would be a public hearing process, and the Board of Zoning Appeals could impose additional conditions because they are given that extra discretion.

Planning Director Moody suggested taking out notice provisions because there is already a general notice provision for special uses. The Task Force discussed when was it appropriate for a solar company to give notice to surround property owners. The Kuchmay document suggested that a solar company notify by certify mail local area news outlets, school boards, and any property owners within five miles of the proposed project site and that it should occur approximately one year, six months, and one month prior to presenting any contracts/leases to landowners. Planning Director Moody noted that there is no way to regulate notification based on providing a contract to a landowner. It would be extremely difficult for the Planning Office to regulate.

The members then discussed notice distance and when notice should occur.

Key highlights of the Task Force discussion included:

- Add to requirements that a licensed landscape architect needs to stamp landscape plans
- 5-mile notice is too far out
- 1-mile notice is also pretty far out
- Before presenting an application to Delaware County Board of Zoning Appeals - the notification should be for a distance of 1 mile PRIOR to submitting an application
- With a change in the notice, the Planning Office would need at least 2 to 3 months for review of the application. A special schedule would be done. For example, they would file in September and it would go to the November meeting. Applications would go on the website.

The Majority Opinion

The majority of the group felt that notice requirements needed to be increased. They all agreed that property owners within 1 mile of the project site should be notified. The went on to put the stipulation that the solar facility should make notice 1 year, 6 months, and 1 month before submitting an application to Delaware County. The Task Force then came back to revise the notice from 2 property owners deep to ¼ of a mile of the project site.

The Minority Opinion

There was no minority opinion.

Technical Guidance: While the need for public notice is incredibly important, the timing of the notice is harder to regulate. The Task Force recommended that property owners be notified within 1 year, 6 months, and 1 month before submitting a solar application. Most applicants apply for any type of process in the County are looking for timely resolution, because a time delay can cost a developer money. On the other side, not giving enough notice to property owners around a site is of a major concern. Most communities use certified mail as notice. However, the delivery of such notice might not be timely depending on the post office and their staffing. Requiring a 1 year or even a 6-month notice could be seen as a hardship on the solar facility and participating property owner, especially if they are ready to go and find out that they have to wait a year before their project comes to fruition. There is currently no other community in Indiana that requires this much advanced notice. Additionally, because this could be seen as a hardship, this could deter solar facilities attempting to locate in Delaware County. The recommendation of a pre-consultation meeting would help solar companies and property owners understand the expectations of the County. It is my guidance that it be a 3-month notification process by which the solar facility submits its application, as part of the application process notifies property owners within ¼ of a mile, and that allows enough time for the application to be put on the website, notification to be sent via certified mail, and public notices to be put on the property.

MOTION: Recommend to County Council to change notification requirements, in addition to the normal ordinance requirements, notify homeowners within 1 mile of proposed site and within 1 year, 6 months and 1 month before submitting a solar application to Delaware County.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Taylor, Wright

No: Russell

VOTE RESULT: Passes

MOTION: Change public notice requirements to at least 2 months before submittal.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright
No: NA

VOTE RESULT: Passes

MOTION: Change notification limit from 2 property owners deep to ¼ mile for solar facilities.

VOTE: All agreed by consensus - no voice vote.

VOTE RESULT: Passes



11. NOISE, LIGHT, AND OTHER ENVIRONMENTAL ISSUES

ISSUE: Noise and light coming from the property and the potential placement of sound generators on the property.

There was some general discussion by the Task Force regarding noise, light, and other environmental issues. The group spent some time discussing the noise that comes from a solar facility. The Task Force ultimately decided that decibels would be picked up past the property line and if it did, the County has a noise ordinance in place. Ultimately it was decided that they would accept Planning Director Moody's proposal to reference the lighting and noise requirements in this section and to add a provision that the solar facility would provide a pesticide management plan to be approved.

The Majority Opinion

They agreed with Planning Director Moody's proposal.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION: Accept Marta's Proposal Under 2.15. "Lighting must meeting the requirements in Article XXX, Section 5, Development Standards. Glare: Solar panel placement should be prioritized to minimize or negate any solar glare onto nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar system. Exterior surfaces of the collectors and related surfaces shall have nonreflective finish. Noise: Sound attributable to the solar farm should not exceed an hourly average sound level of sixty (60) A-weighted decibels as modeled at the property line adjacent to a dwelling or residence zone." And add Solar developer shall provide a pesticide management plan and this plan shall be approved by Delaware County/Purdue Extension and Soil and Water Conservation Service.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright

No:

VOTE RESULT: Passes

Issue: Prevention of water contamination from solar facilities

There was not much discussion about the prevention of water contamination from solar facilities. Planning Director Moody indicated that an amendment was added to the ordinance in February 2022 about testing water. That there needed to be an emergency and safety plan. A mitigation plan needed to have provision that they would do water testing if deemed necessary by EPA, IDEM, and Emergency Management.

The Majority Opinion

The majority agreed that the existing provisions in the ordinance covered the impacts.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION: Not add any additional water testing requirements and keep what has already been written in current ordinance.

VOTE:

Yes: Clevenger, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright

No: Collins

VOTE RESULT: Passes

12. INSURANCE

ISSUE: Kuchmay requests requirement general liability insurance of \$10,000,000 and site pollution liability of \$1,000,000 per 200 acres minimum. Updated every 5 years.

The Task Force had very little discussion on this matter. They agreed with the insurance requirements in the current ordinance. However, they wanted to add in language that it would be updated every five years in case coverage increases.

The Majority Opinion

The majority agreed with the provisions of the existing ordinance and that the Commissioners should require insurance be reviewed every five years in case of increased coverage was needed.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION: Motion to approve proposed language in 2.2 for insurance. “The owner/operator of a solar farm project shall maintain comprehensive general liability insurance coverage with limits of at least \$2,000,000 per occurrence and \$5,000,000 in aggregate, naming Delaware County as an additional insured. Proof of insurance shall be provided to the Plan Commission office prior to the issuance of permits and on an annual basis thereafter. Recommend the Delaware County Commissioners will revisit the insurance limits every five years and may require increases in coverage.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright

No: NA

VOTE RESULT: Passes

13. US MADE GUARANTEE



ISSUE: Kuchmay requested that a provision be inserted that all materials & infrastructure be made in the USA and meet EPA guidelines.

There was some discussion on Kuchmay’s request that all materials be made in the USA and meet EPA guidelines. Planning Director Moody read an ordinance about quality control measures. If there was an issue, there will not be a person to go to remediate the issue because they are not here in the United States. The discussion ultimately focused on adding a statement ensuring the materials conform to applicable industry standards and all local, state, and federal regulations.

The Task Force then discussed the merits of creating a complaint form regarding solar facility issues so that property owners can let the Planning Office know if there was an issue. There was also a suggestion to provide an annual site inspection report that everything is in working order. Another member suggested that a statement could be put in the Commissioners Economic Development agreement that materials should be US Made.

The Majority Opinion

The majority agreed with language proposed by Planning Director Moody. They also recommended that if tax abatement was being considered that local Town Councils consider the use of local workers and contractors to build facilities.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.

MOTION: Add recommended language that Marta has listed under Action Items under 2.11 USA-Made Guarantee: “All solar farm structures shall conform to applicable industry standards as well as all local, state, and federal regulations. Solar farm applicants shall submit certificates of design compliance that solar manufacturers have obtained from UL (Underwriter Laboratories), DNV (Det Norske Veritas) or an equivalent third party.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright
No: NA

Issue: Tax Abatement

MOTION: Recommend to Town Council suggesting future solar developers use local workers and contractors when considering giving tax abatement to solar companies.

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright
No: NA

VOTE RESULT: Passes

14. GREEN TASK FORCE / PASSPORTS

ISSUE: No way to address issues with solar facilities

Kuchmay proposed an oversight committee be created to remediate issues between citizens and solar project operators. The Task Force discussed the merits of this. Planning Director Moody noted that there was already a process in place to deal with issues that might arise from solar facilities. The members then asked Planning Director Moody what else could be done. She indicated that the Planning Office could develop a web application where people can report issues regarding the solar facility. That they could list ordinance provisions in the app and then the public could select what was not being addressed. A nuisance provision could be added to the ordinance.

Key highlights of the Task Force discussion included:

- Create a nuisance provision and give solar facility 60 days to address the issue or come up with a mitigation plan.
 - "Any solar farm or part thereof declared to be unsafe by the Delaware County Building Commissioner by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with an abatement order from said Commissioner or, if applicable, the Decommissioning Plan Agreement. Abatement orders shall allow no more than sixty (60) days for corrections or for a rehabilitation plan to be filed with the Plan Commission office setting forth a timeline for compliance with the abatement order."

The Majority Opinion

The majority agreed with language proposed by Planning Director Moody.

The Minority Opinion

There was no minority opinion.

Technical Guidance: None.



MOTION: To accept the green passport proposal (creation of app and nuisance provision).

VOTE:

Yes: Clevenger, Collins, Coutinho, Donati, Hamilton, Niccum, Russell, Taylor, Wright

No: NA

VOTE RESULT: Passes

