

December 7, 2021

To: Johnson County Planning Commission

From: Sean Pendley, AICP – Deputy Director
Jay Leipzig, AICP, CEcD - Director

Re: Amendments for Proposed Solar Regulations

On November 16, 2021, the Planning Commission held a public hearing for the proposed updates to Chapters 2 and 8 of the *Johnson County Rural Comprehensive Plan* and to Articles 2, 18, 23, and 33 in the *Zoning and Subdivision Regulations for Johnson County* to address utility-scale solar facilities. Following public comments, the Planning Commission recommended additional changes to the regulations and voted to continue the meeting to December 14, 2021 to allow time for staff to provide additional research and revise the regulations. The proposed changes are summarized below, and the proposed regulations are attached in its entirety. The Berkley Group has also provided an attached memo with recommendations for the proposed regulation changes.

Based on comments made by the Planning Commission at the public hearing, additional updates were made to Article 23, Section 6(B)(14)(d): *Utility-Scale Solar Facility Development and Performance Standards*. Original text presented to the Planning Commission on October 26, 2021 is in red. Changes were presented at the November 16, 2021 Planning Commission meeting and these revisions are noted in blue. The Commissioners voted again on key issues to get consensus on the proposed regulations and the most recent changes after the November 16, 2021 public hearing are noted in green.

Term: Permit Term of US Solar Facilities: A conditional use permit for a US Solar Facility may be approved for a period not to exceed ~~twenty (20)~~ ~~twenty-five (25)~~ twenty (20) years.

At the October 26, 2021, a straw vote was conducted to address the term of a Conditional Use Permit. The straw vote recommended a term of 25 years. This motion passed with a vote of seven (7) to three (3), with seven (7) votes in favor of a 25-year term.

On November 16, 2021, a new straw vote was conducted to revert the term of a Conditional Use Permit for a Utility-Scale Solar Facility at 20 years as originally recommended by staff. That vote was seven (7) to one (1), with a majority in favor of reducing the term of the Conditional Use Permit to 20 years.

Maximum Project Area: The minimum Project Area of a Utility-Scale Solar Facility shall be more than ~~ten (10)~~ acres in size, and the maximum Project Area shall not exceed ~~2,000~~ 1,000 acres.

The straw vote at the October 26, 2021 meeting indicated no clear direction to change this requirement. The straw vote was five (5) to five (5), with five (5) assenting votes for 2,000 acres with no waiver proposed. The five (5) dissenting votes were for a different project size or those wanted a waiver for this requirement.

On November 16, 2021, a new straw vote was conducted addressing the size of the project. At that time, the vote was eight (8) to zero (0), all in favor of reducing the Maximum Project Area with no waiver.

Distance from Cities: Such Solar Facilities shall be located greater than 1-mile 1.5 miles (two) 2 miles from any city limits, with the exception of non-contiguous areas of a city (which are also known as “islands”) that are less than 80 acres in size, from which there shall not be such a requirement.

At the October 26, 2021, two straw votes were conducted to address the minimum distance a facility could be from a city. The first straw vote recommended the minimum distance a project could be from a city was two (2) miles from a city with a waiver. This motion did not pass with a vote of six (6) to four (4), with six (6) votes opposing this motion. The second motion was for 1.5 miles from a city with a waiver, which passed with a vote of six (6) to four (4), with six (6) assenting votes.

On November 16, 2021, a new straw vote was conducted addressing the minimum distance a project would be allowed from the cities. At that time, the vote was five (5) to three (3), a majority in favor of increasing the Distance from Cities from 1.5 miles to two (2) miles with a waiver option.

Properties Surrounded by Utility-Scale Solar Facilities: During the November 16, 2021 Planning Commission meeting, Commissioners expressed concerns that properties not included in a project (i.e., non-participating properties) could potentially be surrounded by a project, generally on two or more sides, and this could have significant impacts to those properties. The Commission requested new language to be considered prohibiting the Project Area from abutting more than two (2) sides of a property or more than 50% of the exterior property lines of non-participating properties. As an alternative to prohibiting a project area from abutting non-participating properties on two (2) or more sides, staff and the consultant recommends additional setbacks and screening to be provided in the respective areas where solar facilities surround properties outside the Project Area. The Berkley Group memo includes additional recommendations for this new requirement.

Therefore, Staff recommends the following language to be included in the Utility-Scale Solar Facility Development and Performance Standards:

- Non-Participating Parcels Surrounded on Two (2) or More Sides by a Utility-Scale Solar Facility: If a Project Area abuts a non-participating parcel on two (2) or more sides or more than 50% of the exterior property lines, then the setbacks shall be increased an additional 50 feet along the shared property line according to the minimum setback requirements set forth in Subsections 6(B)(14)(d)(3)(a) and (c). This additional setback shall not apply to setbacks within the Project Area (interior setbacks). Furthermore, additional screening may be required in addition to the minimum requirements set forth in Subsection 6(B)(14)(d)(8) of this Article. For the purpose of this section, “non-participating parcel” shall mean a parcel that is not located within the Project Area.

Project Extent Area: Based on the Planning Commission’s recommendation to reduce the maximum Project Area from 2,000 acres to 1,000 acres, the Commission asked whether it was appropriate to also reduce the Maximum Project Extent or to eliminate the regulation entirely.

Upon review, staff and the consultant recommend keeping the Maximum Project Extent of four (4) square miles (2,560 acres) as currently drafted. Based on the recommendation made by the Planning Commission, the area of individual projects could be no greater than one thousand (1,000) acres, and no disconnected portions of projects could be located more than one-half (0.5) mile from the balance of the Project Area. These requirements establish limits on the area to which a project could spread. In addition, an increase for the Project Extent limit was previously considered in association with a maximum

Project Area of 2,000 acres but a waiver option was provided instead. Staff recommends keeping the waiver option for Project Extent as drafted. As noted in The Berkley Group memo, the regulation establishes a predictable and reasonable maximum limit for projects that incorporate disconnected areas.

Therefore, staff is recommending no change to the Project Extent requirements as currently drafted below.

- The maximum Project Extent of a US Solar Facility shall be four (4) square miles (which is 2,560 acres).

Waiver: In the event that an applicant desires to deviate from this Project Extent requirement, the application may only be approved if findings are made by the Board of County Commissioners that the proposed use is in keeping with or does not conflict with planned uses for the area, that the distance between non-abutting tracts does not exceed one-half mile in distance, and the deviation from the maximum project extent does not create adverse impacts on adjoining properties. The applicant shall submit written information to the BOCC indicating the circumstances which are believed to necessitate the need for a deviation from the locational requirement.

Project Area and Project Extent Map: The maps have been revised to show examples for maximum Project Area of 1,000 acres and maximum Project Extent of four (4) square miles or 2,560 acres.



This illustration is for comparison purposes only to describe the Project Area and Project Extent.

The Rural Comprehensive Plan: Revisions were also made to the Comprehensive Plan policies relating to city development to note the change for minimum distance from cities to be two (2) miles to follow the draft regulations. The proposed text for the Comprehensive Plan and Zoning Regulations is attached in its entirety.

DeSoto Annexations/Changes to City Buffer Map:

On November 18, 2021, the City of De Soto approved two large annexations, including a portion of the former Sunflower Army Ammunition Plant property (6,009 acres). These annexations will have an effect on the area that is eligible for utility-scale solar facilities in the unincorporated area. Attached is an updated 2-mile buffer map with the recent DeSoto annexations. With a 2-mile buffer from the cities, the current remaining land area for utility-scale solar facilities is 10,391 acres in the County.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission review and make changes, as needed, to the proposed amendments to the *Johnson County Rural Comprehensive Plan* and the *Johnson County Zoning and Subdivision Regulations* relative to the guidelines for Utility-Scale Solar Facilities, and forward a recommendation to the Board of County Commissioners.

Suggested motions for Planning Commission consideration:

AS DRAFTED BY STAFF

I move that the Planning Commission adopt Resolution No. PC 21-01 which recommends to the Board of County Commissioners amendments to the Johnson County Rural Comprehensive Plan and Johnson County Zoning and Subdivision Regulations as drafted by Johnson County Planning Staff regarding Utility-Scale Solar Facilities as recommended by county planning staff, and to authorize the Chairman to sign the Resolution with the attached amendments for submittal to the Board of County Commissioners for its consideration and adoption.

OR

AS AMENDED BY PLANNING COMMISSION

I move that the Planning Commission adopt Resolution No. PC 21-01 which recommends to the Board of County Commissioners amendments to the Johnson County Rural Comprehensive Plan and Johnson County Zoning and Subdivision Regulations regarding Utility-Scale Solar Facilities as recommended by county planning staff with the following revisions recommended by the Planning Commission (list revisions). I further move to authorize the Chairman to sign the Resolution with the revised amendments for submittal to the Board of County Commissioners for its consideration and adoption.

Attachments: November 16, 2021 Planning Commission minutes, Draft Regulations, PC Resolution No. 21-01, Berkley Group Memo, 2-Mile Buffer Map, and Public comments received after November 16, 2021