

May 3, 2022

**To:** Planning Commission

**Fr:** Jay C. Leipzig, AICP, Director

Sean Pendley, AICP, Deputy Director

Karen Miller, Senior Planner

**Re:** Regulating Solar Facilities -- Reconsideration of Draft Amendments to the Johnson County Comprehensive Plan and Zoning Regulations and Two Published Safety Standards

**BACKGROUND:** Over the course of a year and 9 public meetings (7 of which entertained public comment including city comment), the Planning Commission (JCPC) worked to draft amendments to the Rural Comprehensive Plan and the Johnson County Zoning and Subdivision Regulations for the purpose of regulating Solar Facilities, including Utility-Scale Solar Facilities, within unincorporated Johnson County. Also included were the adoption and incorporation by reference of two published safety standards regarding Battery Energy Storage Facilities associated with Solar Facilities. Once drafted, the proposed amendments were considered at a public hearing on November 16, 2021, and the JCPC final recommendations were sent to the Board of County Commissioners (BOCC) on December 14, 2021.

Upon receipt of the JCPC's recommendations, the BOCC studied the draft amendments with Planning staff during a Committee of the Whole (COW) on February 24, 2022, and set a public hearing for April 4, 2022, to further consider the matter. During the public hearing, the BOCC considered staff and consultant presentations and approximately 40 comments made in person or virtually during the hearing in addition to other information in the Record of the Proceedings, which can be found at <https://www.jocogov.org/solar>, which is the County's web page dedicated to the consideration of solar facilities.

During the public hearing, the BOCC voted to return the amendments and standards to the Planning Commission for further consideration of eight (8) items, the details of which are enumerated in the following sections. The BOCC further requested that the JCPC provide responses and recommendations regarding the eight (8) items by May 24, 2022. In the event that the JCPC does not provide a recommendation by this date, the JCPC's recommendation issued on December 14, 2021, will again be submitted to the BOCC for their consideration.

Upon return of the matter for reconsideration, the BOCC has several alternative actions available, as follows: 1) approve as recommended by the JCPC, 2) amend and approve the proposed changes, 3) choose not to approve the proposed regulations, or 4) continue for more study and consideration.

**DRAFT COMPREHENSIVE PLAN AND ZONING REGULATION AMENDMENTS INCORPORATING BOCC DIRECTIVES:** In order to assist the Planning Commission, staff has revised the comprehensive plan and zoning regulations amendments recommended by the JCPC on December 14, 2021, to include the eight items returned by the BOCC to the JCPC for further consideration. This version of the solar regulations will be referred to as the "draft May 10<sup>th</sup> amendments", a copy of which is attached to this memo.

The purpose of the draft May 10<sup>th</sup> amendments is to provide a version of the proposed regulations that accepts the eight items requested by the BOCC for further consideration. It is anticipated that the JCPC will consider each of the eight items and then, upon consideration of a particular item, decide to either: 1) retain the proposed change within the draft May 10<sup>th</sup> amendments or 2) amend the draft May 10<sup>th</sup> amendments to reflect the JCPCs recommended change.

**PLANNING COMMISSION DISCUSSION AND RECOMMENDATIONS:** In response to the number and complexity of items to consider and the need for efficiency due to the time limit imposed upon the JCPC, the JCPC chair and staff will 1) assist the JCPC to make an INITIAL MOTION to recommend the draft May 10<sup>th</sup> amendments to the BOCC, 2) lead the JCPC through an item-by-item discussion of each of the eight directives to determine if the JCPC desires to retain the item as written in the draft May 10<sup>th</sup> amendments or desires to amend the item and provide a different recommendation, and 3) circle back with the JCPC to the INITIAL MOTION in order to incorporate the adopted amendments and vote on the FINAL MOTION. These three steps are outlined as follows:

**STEP ONE -- Bringing the Initial Motion onto the Floor:** Moving to adopt the draft May 10<sup>th</sup> amendments together with seconding the motion initiates discussion of the returned items and brings the motion onto the floor for further discussion. **A vote on the motion is not required at this time. Instead, the JCPC may now consider each directive in turn and may vote to amend the directive, if desired.**

**Suggested INITIAL Motion:** *I move that the Planning Commission recommend to the Board of County Commissioners adoption of the May 10<sup>th</sup> amendments to the Comprehensive Plan and Zoning Regulations regarding the regulation of Solar Facilities as drafted by staff in response to the April 4<sup>th</sup> Board of County Commissioners directives.*

**STEP TWO – Discussing the Eight (8) Remanded Items and Amending the Initial Motion, if Desired:** Through a series of votes regarding the below eight remanded items, the JCPC may amend the above INITIAL MOTION in order to provide further recommendations to the BOCC. To accomplish this task, after the initial motion is made, each directive item will be upheld or amended by the JCPC through the following process:

1. The chair will introduce the directive item to be discussed;
2. Planning staff will describe the item and the draft text, then take questions;
3. Each Planning Commissioner will be given an opportunity to comment upon the item;
4. The JCPC chair will then entertain motions related to the item;
5. If the motion has a second, each Planning Commissioner will be asked to provide a reason for his/her vote; and
6. If there is not a decision to amend the item, it will be considered upheld as proposed by staff by the JCPC and the JCPC chair will advance to the next directive item.

This process will be repeated for all eight directive items. Completion of this process will determine the directives that are upheld by the JCPC and the directives that are amended by the JCPC and will formulate a set of recommendations and draft amendments to be forwarded to the BOCC for their final consideration regarding the regulation of Solar Facilities. The next section sets forth the eight BOCC directives.

**EIGHT (8) ITEMS DIRECTED FOR FURTHER CONSIDERATION:** In a series of votes during the April 4, 2022, public hearing, the BOCC instructed the JCPC to review and reconsider the following items. *Each item below is also enumerated with a reference to the location of the proposed text changes in the May 10<sup>th</sup> amendments. (Please note that within the May 10<sup>th</sup> amendments blue text indicates BOCC remand items and green text indicates staff suggested clarifications, modifications, or corrections.)*

***Directive 1: Clarification how off-site street maintenance and repair will be required of the applicant and administered by county staff.***

County Legal staff reviewed and edited sections relating to documentation of road conditions and road improvement, maintenance and repair.

Details are located on pages 37-39 of the draft May 10<sup>th</sup> amendments.

***Directive 2: Clarification that battery energy storage facilities are an allowed use in association with Medium-Scale Solar Facilities.***

The revised text includes this request and is located on pages 46 and 47 of the draft May 10<sup>th</sup> amendments.

***Directive 3: The addition of a performance standard related to battery energy storage facility uses requiring the solar facility applicant to supply specialized fire safety equipment or other protections, if necessary for such use, and the requirement of applicants to supply, and assume the costs of, specialized fire safety equipment or other protections, for the purpose of upholding the public health, safety and welfare.***

The revised text includes this request and is located on pages 41 and 42 of the draft May 10<sup>th</sup> amendments.

***Directive 4: A 25 year Conditional Use Permit term instead of the JCPC's recommended 20 years, with a one-time automatic extension for five years if the project remains compliant.***

The revised text includes this request and is located on page 26 of the draft May 10<sup>th</sup> amendments.

***Directive 5: A Maximum Project Area of 2,000 acres, instead of the JCPC's recommended 1,000 acres, including a waiver option.***

The revised text includes this request and is located on page 27 of the draft May 10<sup>th</sup> amendments.

***Directive 6: A 1.5 mile minimum distance from a city, instead of the JCPC's recommended 2 miles, including a waiver option.***

The revised text includes this request and is located on pages 27 and 28 of the draft May 10<sup>th</sup> amendments.

***Directive 7: A consideration of adding CUP standards if necessary for impact on surrounding landowners due to the addition of transmission lines to service solar facilities.***

The revised text establishes that as part of the review and consideration of a Utility-Scale Solar Facility conditional use permit (CUP) application, the off-site impacts of private electrical transmission lines may be reviewed for aesthetic impacts and detrimental impacts to the public health, safety and welfare and to neighboring landowners. Review of the CUP may include proposed routes and distances from right-of-ways. Details regarding the transmission line route and connection to the grid are required as part of the application materials.

Details are located on pages 21, 22, and 23 of the draft May 10<sup>th</sup> amendments.

***Directive 8: Additional suggested clarifications, modifications or corrections recommended by Planning staff.***

Within the draft May 10<sup>th</sup> amendments, clarifications, modifications and corrections recommended by Planning staff are indicated with green text. The following are selected staff-suggested changes:

- a. Revision of the Project Extent Waiver to parallel the Maximum Project Area Waiver. Text located on page 27.
- b. Modification that security fencing should be constructed with materials and a design that promotes the surrounding character. Text located on page 30.
- c. Modification that a stormwater performance bond may be required rather than shall be required. Text located on pages 39 and 40.
- d. Clarification that the guaranteed funds associated with decommissioning and reclamation can be other forms of surety in addition to escrow. Text located on pages 42 and 43.

**STEP THREE – Circling back to the Main Motion on the Floor, Incorporating the Amendments to the Motion, and Voting on a FINAL MOTION:**

***Suggested FINAL Motion:*** *I move that the Planning Commission recommend to the Board of County Commissioners adoption of the May 10<sup>th</sup> amendments to the Comprehensive Plan and Zoning Regulations regarding the regulation of Solar Facilities as drafted by staff in response to the April 4<sup>th</sup> Board of County Commissioners directives and to include the approved JCPC amendments for the reasons indicated during discussion.*

**Attachments:**

Draft May 10<sup>th</sup> Amendments - Comprehensive Plan and Zoning Regulation Amendments recommended by Planning Commission on December 14, 2021, and revised by Staff to incorporate Eight Remand Items;

BOCC Special Meeting Briefing Sheet, April 4, 2022 (attachments to this document are located under the April tab of the solar web page, as referenced below);

BOCC Special Meeting Verbatim Transcript, April 4, 2022;

BOCC Special Meeting Minutes, April 4, 2022;

BOCC Committee of the Whole (COW) Staff Memo, February 24, 2022 (attachments to this document are located under the February tab of the solar web page, as referenced below);

BOCC Committee of the Whole (COW) Caption File, February 24, 2022;

Comments from the Cities of Gardner, Edgerton, Olathe and Overland Park (these documents are located under the May tab of the solar web page, as referenced below);

Douglas County Solar Regulations (this document is located under the May tab of the solar web page, as referenced below); and

The Record of the Proceedings, including Public Comments, can be found at <https://www.jocogov.org/solar> which is the County's web page dedicated to the consideration of solar facilities.