

CAPTION FILE

Johnson County Board of County Commissioners

Committee of the Whole

Thursday, February 24, 2022

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>> Chairman Eilert: At this time, will call to order the Board of County Commissioners for the purpose of our Committee of the Whole meeting. Will the Clerk, please call the roll?

>> Clerk: Commissioner Fast?

>> Aye.

>> Clerk: Commissioner Meyers?

>> Meyers, aye.

>> Clerk: Commissioner O'Hara?

>> Here.

>> Clerk: Commissioner Hanzlick?

>> Hanzlick, here.

>> Clerk: Commissioner Ashcraft?

>> Chairman Eilert: He's in the building. He'll be back.

>> Clerk: Commissioner Allenbrand?

>> Aye.

>> Clerk: Chairman Eilert?

>> Chairman Eilert: Eilert, here. We do have a quorum, all are present. The Committee of the Whole, the purpose of our meeting today, is to receive information from the planning staff consultants who have been working with the staff as well as the planning commission, and the planning commission recommendations in regards to solar farms. The purpose of this meeting today is only to receive information, and no decisions will be made as a result thereof. One decision that will need to be made is to talk about scheduling the public hearing time and place,

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because a public hearing is required. Following that public hearing, then the commission will be charged with making a decision in regards to the recommendations that have been made by the planning commission. Due to the requirement that there has to be public notice for a period of time, the public hearing probably will be somewhere about 30 days from now. So, that will not be an immediate next week. So, at this time, we are open to receiving the information from the staff. I understand our consultants will be virtual. So, anyway, Mr. Jay Leipzig, Director of Planning. The floor is yours.

>> Thank you Mr. Chairman. Members of the commission. I'm pleased to be here today to present this work to you. What we will be discussing will be about almost a year's worth of work discussing utility scale solar and review by the planning commission, work with our consultant, looking at other solar facilities, and gathering as much information as we can about these type of facilities. I want to make a couple of brief introductions and some thank yous while I can here for just a moment. I was going to introduce Karen Miller. Karen is our senior planner. Some of the newer commissioners, you probably don't see Karen as much. Karen is a very -- I think she's been with the department about 26 years. Has been our primary focus is long-term comprehensive planning. Kind of our specialist for doing regulation and plan amendments. Pleased to have her involved in this project. And also Sean Pendley. You see Sean Pendley every week at various meetings. I'm pleased to have them up here with me this afternoon and want to thank them for the work they've done. In my 25 years, 26 years of planning, this has been a very challenging project. It's one of the more complicated ones I've been involved with. We're excited to present these regulations to you. I also wanted to introduce our consultant. Darren Cove, Mable Zaner, and Lindsey Edwards, with the Berkeley group. These folks have been with us. We had an introductory meeting in January and there was a Committee of the Whole before this body in March of 2021. But I wanted to thank them for their work in getting to this point. What you're looking at today are really best practices on a national level. Best practices from the land use perspective as well as the utility industry and some of their knowledge and expertise in putting these together. Also wanted to thank Rick Lind from our legal staff, Peg Trent, for the countless hours they have spent reviewing these documents and making sure that they are in good order for you today. I believe we will be able to have answers to your questions. Including Beau Boisvert is here as well if there are questions about that. We also have Public Works representatives as well. If there are questions about roads or infrastructure, be happy to answer those. As I said, I think we have a pretty good team to be able to answer all the questions you might have.

You have quite a few documents in front of you. I wanted to point these out in your packet so you are aware of what we will be discussing a kind of a framework for the discussion today. We have a PowerPoint that provides a high-level overview for you and a summary of the regulations. There's also a memorandum that's dated February 22nd from me, Sean Pendley and Karen Miller, that provides more detailed explanation of the recommendations from the planning commission. So, there's some additional background in that material you might find helpful. That's about a four or five-page document. We also have the draft regulations themselves. The regulations include amendments to our comprehensive plan, which is here in front of me, as well as our amendments or subdivision regulation, the draft amendments. So this document is roughly about 72, 73 pages. So that is all of the -- everything in its entirety that we will be discussing today and that we've been working on for the past year. So, with that, as the Chairman just noted, the purpose today is to really provide a more detailed explanation, go through what the amendments

are and the proposed regulations in regard to utility scale solar. And talk about those and any questions you might have in this regard. So, in summary, as I mentioned, this really encompasses a lot of work. I also want to thank the Planning Commission for their countless hours in going through these documents. The Planning Commission meets on regular basis on the fourth Tuesday of every month. We have had five regular meetings, January through September of 2021. Also had three study sessions, August and October. There was public comment available at all of those meetings. So we have had eight meetings of the Planning Commission. Also had a public hearing scheduled on November 16th, 2021. Then Planning Commission made the recommendation on December 14th, of 2021. So, spent a significant amount of time studying this issue and reviewing best practices and working with staff and the consultant. So, as we have said, mentioned, this item was brought before you on March 11 of 2021. Had Committee of the Whole. Kind of an introduction. And I believe the consultant was there for that meeting as well to introduce the topic. Today, Committee of the Whole today, we will have a public hearing that will be announced shortly sometime in the future. But, that kind of provides an overview of where we are. But we did want to spend some additional time making this presentation before you. So we have some time to study this issue.

Okay. First part we're going to talk about are the comprehensive plan policies. I'm going to provide a brief introduction. And Karen Miller is going to provide more detail on the amendments. Sean Pendley is also going to provide detail on subdivision regulation and what those proposed changes are. As you know, real comprehensive plan is our guidebook for the county. Guides development. There are certain priorities and goals that are identified in that comprehensive plan.

>> Chairman Eilert: Jay, could you pull that microphone a little closer?

>> Yes, I have a tendency to scoot back from the chair. Promote rural character in open spaces. Provide for future city growth and development. And protect existing and future residential uses, parks, historic sites, other public amenities and environmentally sensitive areas. So, if you think of these utility scale solar regulations in a nutshell, and their impact, these goals are really how we are trying to integrate the utility scale solar into these goals within our comprehensive plan. So that's kind of a general framework for staff's perspective. When we begin to put this together and balancing those needs from the, for the regulations, as well as the public's needs and those concerns as well. A couple of other things I wanted to point out. There has been significant amount of public comment. In response to that, staff has dedicated or created an additional county web page dedicated to solar. There is a link on the front page of the county's website, and any documents related to solar are collected on that. So that will all be part of the public record. I thought that was a rather innovative approach to make sure we capture everything and all of that material, and documents are kept in one place and can be archived accordingly.

>> Chairman Eilert: Mr. Ashcraft, did you have a question?

>> Commissioner Ashcraft: Mr. Chairman, I apologize for coming in a few minutes late. Are we going through the presentation or afterwards?

>> Chairman Eilert: Let's proceed through the presentation. Then we can ask questions. So, make notes.

>> That concludes my introductory comments. I'm going to turn it over to Karen Miller.

>> Chairman Eilert: Ms. Miller. Can you pull it closer?

>> Yes. As Jay indicated, we started out by looking at what those unique impacts of this new technology would be. Because planning staff hadn't really considered the idea of a utility scale

solar facility before. So, we determined that, really, the important impacts that we would need to look at would be its very large scale. These can go up to hundreds or thousands of acres, which is far bigger than some of our biggest uses that we have dealt with. For instance, the Sunflower quarry. Then, also, it's a very long life span. A minimum of 20 acres, but probably more like -- sorry, years, 20 years, and probably more like 30 or 40 years. Even maybe longer. Because the industry doesn't quite know what its life span is. Perhaps they can retool it at the end of 20 and 30 years and get even more life out of it. So, we decided that those were the big impacts. So, what we decided we needed to be careful about would be the impacts on the development of cities. We don't want these things to get in the way of the normal annexations and growth outward of the cities. And also just, in general, the preservation of open space and rural character. We looked at all of that, and we decided, yes, we can have utility scale solar facilities, as long as we appropriately control them. And find reasonable but effective standards to address these impacts. And so, with that -- well, first, before I go into the specific standards. And each of the standards that I'll go over today, we have chosen for its ability to regulate these concerns the county has. But just to kind of talk about solar facilities in general. So, typically, when a company tries to assemble a utility scale solar facility, in the Midwest at least, they like to use the existing fields and farms, because it's perfect for their use. It's already kind of graded. It's kind of flat. It's this area that is readily available for them to come in and put their solar facilities. Now, with such -- for the larger scale solar facilities, they will need to assemble several of these area, of the farmer fields. For example, if this is a typical field, they would come in and here would be typically a tree line around that existing hay field or crop land. And then sometimes there's natural elements that run through, like streams. And then, they would find those areas to put in their solar panels. We refer to those sometimes as PV panels, which stands for photo voltaic panels. That's the material that absorbs the sunlight and converts it to energy. This is a typical configuration. We will have a field. It will have this natural vegetation around it. And then around these groups of photo voltaic panels, which we call PV pods, these groupings, they will have fencing around it. We don't want the fence to go completely around just the ring of the field because that blocks movement of wildlife. So we prefer fencing around these various pods. They will have driveways come in. And so, a utility scale solar facility will typically be a collection of these areas. And I'll talk a little bit more later on about how we measure that project area and when we say solar facility, exactly what we mean.

So, the first development standard that we chose was looking at the CUP term. And we landed upon 20 years. Our reasons behind 20 years was that's a typical planning period. So when we create comprehensive plan, we choose a 20-year plan because, typically, in planners' experience pretty much everywhere, we have found we can kind of predict growth about 20 years into the future. If we start going 30, 40 years, then that becomes -- we become less able to predict what's going to happen. Nothing is perfect. Things happen that we don't predict. But, in terms of planning, 20 years is something that we generally feel we can do. And we choose a maximum project area of 1,000 acres. We talked with our consultants and the consultants said that, up to now, generally, a really reasonable area would be 1,000 acres. That would be the upper limits of, generally, what they had been seeing. Now, that trend is increasing. I'll just make a note. If you look at other jurisdictions and look at their areas, be careful on how you compare things. Because I've noticed that some of the really large solar facilities are often in the desert and they're for arid areas. They're not typically in the Midwest. Also, they're not typically near urban areas. So just be careful of that one idea that we have of protecting the growth of our

county.

Then, also, we landed upon this idea of not only 1,000 acres, but of a maximum project extent. That limits the geographic disbursement of the solar facility. On the next slide, I'll look into how project area and project extent interplay and why we have those. And also, a waiver is available as written now, for the project extent, but not available for the CUP term or the project area. This is a visual showing what we mean by project area and project extent. So, planning staff was thinking about when the -- the business is starting to collect these parcels on which to put these solar facilities, when you're dealing with hundreds or thousands of acres, it would be very difficult to have a completely contiguous project area. And we decided that it would be probably unreasonable to require everything to be contiguous, the whole solar facility. So, we decided -- we thought, well, what would be reasonable? So it would be reasonable to allow them not to be completely contiguous, but to require them to be at least a half a mile from each other. In this first visual, the project area, everything in pink would be a -- within -- a single solar facility. So, the single solar facility would have all of the PV panels. It would have invertors. It would have possibly substations, if any. Battery, energy storage areas, if any. And all of the landscaping, fencing, all of that thing. So the project area has all of that land that's participating in the solar facility. So, we're not making them be -- make them abut each other or allowing them to be within a half mile; but we don't want this to kind of devolve into this one solar facility, taking up a major portion of the county. We want to control it and have it compacted into a single solar facility. So, the second visual for project extent, we decided that we could control this geographic disbursement with a box, that all of the solar facility needed to be in a rectangle that's a maximum of four square miles. This is something to allow some flexibility, but also have some control over the solar facility. So we just don't have this random huge area that we would be having to review is one conditional use permit.

So, the next standard that we introduced was the maximum coverage area. The reason that we want to control this maximum coverage area is if you think of a solar facility, if 100% of it is covered with solar panels or equipment, we are going to have some trouble with stormwater management. We won't be able to maintain all the vegetation. We will have trouble with open space. It won't promote the rural character. So we had some guidance from our consultant. And our consultant said that if you have a coverage area of no more than 70%, meaning that no more than 70% of it is covered by those PV pods, then you won't tend to have trouble with all of these things, that you will be able to manage your stormwater much more effectively and have better vegetation retention and so forth.

Then the other thing that we think is very important is looking at the distance from the cities of those solar facilities and providing a protective buffer so that we can account for their projected future growth. To do this, we have reached out to the cities. We have talked to those cities. We invited the cities, whoever would like to attend, to one of our planning commission meetings. City of -- instead of attendance, some of the cities gave us letters. Then we were also invited to an Edgerton planning meeting and we had some information there. So we collected a lot of this information and presented that to our planning commission and set upon a two-mile buffer area. But to be reasonable, to have a waiver option available, because sometimes it would be appropriate to be closer to the cities. For instance, if the city doesn't plan out for two years. For instance, if the city is planning for an area and they don't have any issues with that solar facility in that area. So, there's many examples of why it could be appropriate to have a waiver. So, in that waiver option, we would get input from the cities and bring that to the Board of County

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Commissioners, and the Board could decide if it's appropriate to grant a waiver or not. But the choice would be up to our Board of County Commissioners.

Another standard we have is distance from another solar facility. We have at least two miles between solar facilities. We thought that was important. So that we could control the proliferation of solar facilities. If we couldn't control that, we have one next to another, next to another, pretty soon we would have a 4,000 or 5,000-acre facility. This is simply to control the geographic distribution of a solar system throughout the county.

Setbacks is something that's important to regulate. We started out in our initial discussion with very conservative setback. We initially recommended 150 feet from the project boundary. We got input from the industry that this was too conservative. We thought about it, and we thought, well, what we really trying to do, to accomplish. We set upon 50 feet from the project boundary. To give you some comparison, that is currently what any structure has to be from the roads and the out -- from the setback. The 50-foot setback of the solar facility structures from the project boundary is taken from our rural setbacks. Also just to note that even agricultural barns, and other agricultural structures have to meet a 50-foot setback currently from the road. We also it was also appropriate to have a setback of 150 feet from substations and battery charge facilities from the boundary. Then also because dwellings are a more sensitive area, we have a heightened setback to dwellings. All of the solar facility equipment and structures have to be at least 250 feet from any existing dwelling. The setback requirement works in tandem with screening. We have setback from the outer, and within that, if appropriate or required, would be any kind of screening. So, at first, initially, when we started talking, we recommended screening around the entire project boundary. Again, we got from feedback from the industry that it's a little bit too conservative. We listened and thought about what are we really trying accomplish. We identified the sensitive areas of existing retention zoning and use from the road. The setbacks in combination with the screening can be real protective of that character and open spaces and it can protect those sensitive areas. And that screening can be accomplished by using existing registration, but some sort of fencing or burming if that's appropriate or desired. And also is available.

Here's an example of some existing landscaping around PV pods. So each of these strips is like one photo of optic pod. Also, you may or may not be able to see it, there's been a row of existing landscaping added. With that, I'll turn over the next discussion to Sean.

>> Thanks Karen. Good afternoon. I'll continue on with some development standards that are proposed in the regulations and also go through some of the changes of the planning commission recommendations and talk about next steps. In addition to all of the development standards that Karen has explained. They are such large-scale, with various amounts of equipment, there needs to be guarantees for the removal of these. These are obviously long-term. Some may last 40, 50 years. Very new development. But it is going to last some time. That's why additional use permit is appropriate way of process. But there needs to be some guarantees for reclamation and removal when they are no longer needed. We have standards in place for the decommissioning of the facilities and all of the equipment, that includes all equipment above ground and below ground. May be conduit. Possibly overhead power lines. And the distribution equipment. At some point in time, when it's no longer needed, it needs to be removed so we need to have guarantees in place. Different types of guarantees we may have may consist of escrow letters of credit and bonds. They are to cover a number of things besides just the removal of the equipment. It's also to stabilize the land and restore the ground to its next use. First, all won't be

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agricultural uses. That's what the land and county would like to see. The remaining will remain rural. The recommendation in this bond will also cover disposal of materials. You have to follow all other demolition and requirements. As I mentioned, forms of guarantees would include escrow letter of credit or bonding. These estimates are going to be required for the guarantee, to include all cost estimates from an approximately year and that would be provided at the time of the use event. These estimates do not include salvage value. That's something in talking with our consultant, we identified that is a common practice. Some may include salvage value. However, we don't recommend that because it's very difficult to assign a value when we don't know what that value trial could be. As mentioned, it was important. When talking with those cities and we will show some maps here showing some of these examples. We recognize that was a big concern and to not interfere with future growth and development of the cities. Also annexation will have a big impact on that. When these areas where facilities will be developed is important to look at as the city is growing. As you all know, the recent city of DeSoto for the former Sunflower Ammunition Plant. Essentially, doubling the size of the city. Including large area over 6,000 acres. So we will have an impact where it could be located because we want to be outside of the cities and we want to have a buffer. I also want to note one of the planning recommendation will go for a minimum of two-miles. With that recent annexation and DeSoto, it essentially will result in about just over 1,000 acres in the unincorporated areas. I'll show some maps in a minute. The planning commission did recommend a waiver for that, too. Although there is this minimum, there is opportunities when appropriate a facility could be located within that two miles. Let's say didn't or good reason why. Might say partially on the other one. Maybe that's an appropriate place to allow that facility.

I'll try not to advance too fast. This is the property that I was referencing that does show -- the cities are identified in light green, as you can see, looking at DeSoto with the Sunflower property. The two-mile buffer area is identified in the orange or pink color here. That's representing a two-mile buffer around all current city limits. Bright green are those that would be eligible. If we take all of that into account, those bright green as of now are the areas that would fall outside. This represents an area of just under 10,000 acres. I can show some examples, too, of what we looked at and I can show those for comparison at the end.

Through the process, as we have discussed, through all these meetings, we've had several comments from the public. Many people who attended provided comments. A lot of concerns for residents in the -- in addition to the impacts for neighbors and properties, was the potential for a non-participating property, or a property that's not within the solar facility to be surrounded by a facility. So there's all of that concern regarding that. We did discuss in the draft regulations, we included a requirement where a project area abuts a non-participating parcel on two or more sides or more than 50% of the property, it would be surrounded, essentially, an additional 50-foot setback in addition to the minimum setbacks. So, essentially, it basically doubles the setback requirements. They would have to increase it and additional screening may be required. So where appropriate, if there was no existing vegetation, maybe they would be required to provide trees or other types of screening in addition to that increased setback.

This table here represents some of the key development standards that we have discussed today with the CIP term, maximum project area, minimum distance from cities, and setbacks. It's showing the planning commission recommendations in terms of at times when we started the initial draft and staff representation, going through the public hearing, and included some of the recommendation. And finally, the recommendation to the BOCC, which is the bottom row. If

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we look at the top row, for example, for the 20-year term. Staff started out. That's consistent with our comprehensive plan. We look at 20-year life span. That's appropriate time where that could be a permitted for a large facility. How far, in going through additional questions and doing more research and understanding how these facilities operate, they -- the life span could be much longer than 20 years. And to be consistent with the, maybe 25 years was more important. Ultimately, the Planning Commission in reviewing it believed that 20 years was appropriate for the term. That was their eventual recommendation. I think it was, again, to be consistent with the comprehensive. In the maximum. We initially started out maximum area of 1,000 acres. That was based on our research and reviewing early facilities, early solar facilities, here in the U.S. Maximum about a thousand acres. However, trend will be growing towards much larger facilities. Staff had seen up to 2,000. That could be appropriate if all the -- eventually decided 1,000 maximum was appropriate because that would be land area for utility solar and that still allows the needs for the unincorporated area of the county, presuming open space and protecting rural character. Minimum distance, as we discussed, final recommendation for two miles. Staff had initially started with a one-mile buffer. To be respectful for cities. Then pushed it up to 1.5 miles. Finally arriving at the 2-mile buffer. There actually weren't very much changes in terms of the setback to what was eventually approved. Some of the minimum setbacks were decreased; however, we start consistent. That should be minimum 250 foot. That stayed consistent throughout. There weren't many other changes except when properties are surrounded by a solar facility.

Finally, some of the key recommendation. As we discussed, the Planning Commission recommended maximum term of 20 years. And these are changes that we will -- maximum project area was revised from 2,000 acres to, and minimum distance from cities changed from 1.5 miles to 2 miles. There are some additional items we wanted to discuss in terms of the next hearing with the Board of County Commissioners upcoming date. There are some things that we have identified that we believe would be helpful to update in the draft language. There are some inconsistencies for medium solar facility. Big enough to become utility scale but not large scale. There is some language in here we need to revise being consistent where energy would be allowed. As well as providing additional qualifications for street maintenance and repair. This is something that we have identified in consulting with other jurisdictions where they have had solar facilities developed. We recognize that's a potential big impact to local roads. That during the construction of these facilities, they could have a major impact on roads. We need to have strong language in the regulations that would protect those. We want to continue to address. We do address it in the regulations, but we would like to update that. Then, any other revisions to the regulations recommended by the board would require remanding it back and then return for BOCC adoption. That's kind of the next steps I wanted to go through. That concludes our presentation. I am happy to go through the maps, if there are questions regarding that. We have that in these slides as well so we should go through the different maps. But agree at this point we wanted to open it up for questions and discussion. And as Jay noted, our consultant is also available on the meeting as well.

>> Chairman Eilert: Let me ask you this: Would you prefer to have consultants make some --

>> It's up to you, sir. I'm not sure if they have anything to add to our presentation at this point.

>> Mr. Chairman, could I make one additional comment?

>> Chairman Eilert: Go ahead.

>> To follow up, to be clear. When an application is submitted, which would be reviewed by the

zoning board, and then that body would make a recommendation to the Board of County Commissioners. Each application would include a site plan. So the site plan would show all setbacks, location of panels, everything that you would typically see in a site plan. Also include staff review of consistency in fire code. Looking to make sure there is adequate ingress and egress, situation with emergency situations, and ensuring there's access to the site as well as movement of the traffic is important. It would be reviewed with each application. Each application, if you compare it to something similar to, like, a quarry, for example, are always very land use applications. This would be very similar. There's a very -- there's a lot of things.

>> Chairman Eilert: Let me clarify. The information you presented was presently reviewed by the staff; is that right? I'm getting a little bit confused, Mr. Pendley. You've outlined the Planning Commission final recommendation. That's really the absence of the proposal?

>> That is correct. Yes, that table I identified include both some of the original recommendations from staff and then also going through the process. The draft that's before you that's included in your packet is the entire draft regulations. And that does take into account the Planning Commission recommendations.

>> Chairman Eilert: Okay. Let me ask you this. We have all received comments. One of the issues that keeps coming for those who have concerns is that the -- the difference between the 25 years and the 20 years, that historically these need 25 years. And yet the Planning Commission has recommended 20 years. Can you explain that action?

>> Yes. That's correct. I think the Planning Commission's recommendation for 20 years came back to the typical planning period of 20 years for the comprehensive plan. But you're correct that -- in hearing from different experts and different proponents, these facilities often last much longer. In the investment provided by the utility provider as well as the land leases, they typically enter into with private property owners are at least 25 years. So that's what I was requested. In reviewing that, staff felt that that would be potentially appropriate. We are going to have conditional permit use renew, if at the end of that term, they are still in place, that would be renewed. The Planning Commission wanted to be consistent.

>> Chairman Eilert: To be consistent with what our current requirements is, which is up to 20 years. Is that right?

>> Yes, that is correct.

>> Chairman Eilert: All right. Other questions? Ms. O'Hara?

>> Commissioner O'Hara: Thank you, Mr. Chairman. I'm trying to think back a year ago when we were first talking to the consultants. When they first were talking to us, I believe that they mentioned that this is unusual for solar facilities to be located in urban fringe area and a robust area such as Johnson County. Was that mentioned by the consultants at that time?

>> Commissioner O'Hara, there was some discussion from the public about that. I know, though, that in terms of reviewing other projects around the country, you know, and obviously, it's an expanding industry. So there have been, even in this past year, there's new projects brought online. I was looking at that. So, I think there was some comments from that, it might have even been the public. But I think if you look at other products that have been built and constructed, it's somewhat -- I think we're unique in terms of Kansas, and our immediate area, but there are projects, other areas of the country, in, for example, California, and Texas, that are fairly well-populated areas. Similar in size and population. But have projects of this size as well. So it's not, as Sean mentioned, the trend is for them to increase even currently 1,000 acres, but they seem to be getting larger and larger.

>> Commissioner O'Hara: Okay. So the projects that are closer to growth areas are more like in the thousand acre range?

>> Or more than that even. It really varies. If you look at projects, even three years ago, or 1,000 acres, where most of them would land. If you look at current projects or projects proposed, they seem to be trending towards larger amounts. I think our consultant might be able to address some of that.

>> Commissioner O'Hara: Okay. And then the concern of viability of the project, whether it has a 20-year CUP or 25-year CUP. Actually the Planning Commission and Board of County Commissioners, we're looking at this as land planning, and that all ends in the highest and best use. The bracket, that is a concern of the applicant, and really is not our concern. Is that correct?

>> I think the -- very good question. The typical lens, when we review applications in planning. Not just the Johnson County planning department, throughout the country, is that 20-year period. There's always a 20-year time period. What makes it unique is that it exceeds that. Many of these typical, these projects have most, and I'm just speaking generally if you look around the country of how they're regulated. They're regulated through a conditional use permit for something similar to what we are proposing, but it seems like those terms exceed 20 years. It's just unique from a land use planning perspective because this project is -- generally the life span of these exceeds that 20 years.

>> Chairman Eilert: Perhaps the consultant can speak to that shortly. Ms. Hanzlick, did you have question?

>> Commissioner Hanzlick: Yes. Thank you, Mr. Chair. Have a number of questions. I won't ask them all at once. It seems like there's a lot of questions about the actual safety of the facility, the safety of the panels. I wondered if you, or perhaps our consultant, can address that maybe to provide some clarification, if there is anything hazardous in those panels. Because I've heard some concerns about that, that there will be leaching into the soil. Is there any danger of them catching on fire? I've heard this concern also. And how much of those panels in the -- or the tracking system are potentially recyclable. I think it would be helpful to clarify and address those concerns.

>> Jay Leipzig. I'll begin to address part of the questions and I'll have the consultant answer your last question. I will say, when we, conducting our research on this site, and we met with fire chiefs, and also our county building official who is an expert on the fire code. We looked at our -- we currently are on the 2018 international fire code in the county and there are provisions in that code that deal explicitly with battery storage facilities and those type of issues. So they're fairly well-known. There are and specifications that the facility would be built to meet the code requirements. And the benefit there again would be international fire code, it's a standard used throughout the country. So typical apparatus and the mechanisms within those. They're fairly similar. Not standardized, but I think you see similar equipment throughout the country. So we did look at it in terms of fire code and ensuring we had the capabilities to mitigate something like that in an unfortunate event. With that, I'll turn it over to Darren that can talk about that.

>> This is Karen Miller. Can I add one little extra bit of information to that? We worked really closely with consultants. We looked at what was in our 2019 adopted fire code and what had been after that. So when we come to a public hearing in front of you, whenever that will be, you'll notice that we will do a public hearing to adopt two standards by reference. Those two standards were created more like in 2020 after our codes were adopted. So, those standards adopted by reference will help us make sure that battery energy, so facilities are safer. So, one of

them requires the applicant to use equipment that's been tested at the factory and built to a certain standard. And that is to prevent thermal runaway with battery energy storage facilities. So that means that all of that equipment will be the newest most up-to-date equipment. Then the other standard you possibly will be adopting is based on just the installation and running of the energy storage. So, we have looked at that and we are ensuring that with all of our standards and codes, it will be the most up-to-date.

>> And Darren, if you are available, if you would like to answer the additional question the Commissioner had.

>> Chairman Eilert: Somehow, we need a higher volume. Cannot hear you. Still not there. I'm sorry.

>> You're about two counties away.

>> Speaker: [Off mic].

>> Clerk: Try it again, please.

>> Chairman Eilert: No, you are still about two miles away.

>> Speaker: [Off mic].

>> Are you guys having a hard time hearing Maury and I?

>> Chairman Eilert: No. But still --

>> Try it again, Penny. No.

>> Process of elimination.

>> Chairman Eilert: Closer to the microphone. And speak up.

>> Is that better? On the tax abatement part of it, I believe this is going to be a TIF project.

Typically, those are done by the cities. Then if they're approved, we maintain the market value of them and the property owner does pay the taxes, which is then given back to the city for reimbursement on their capital gains as they develop the property. That's, as I understand, that's how that is probably going to work.

>> Chairman Eilert: Do I understand there's some state requirement that gives a break?

>> The state, I believe, does give them a break as well; but I don't know a lot of the details on that piece.

>> That one I know.

>> Chairman Eilert: I thought it was about ten years.

>> Yes. There's ten years on the equipment, correct.

>> Chairman Eilert: On the equipment. Okay. Ms. O'Hara?

>> Commissioner O'Hara: Yes. All alternative energy in the State of Kansas, they are exempt from property taxes for ten years. It was for as long as they were alternative energy facilities; but that was changed to ten years. And I will have to get clarification as to whether that is real estate and equipment, or if it's just equipment. I thought it was real estate and equipment, but I could be in error.

>> It is actually just personal property.

>> Commissioner O'Hara: Just the personal property. Okay. And, so, if it's developed in the county, I don't think we would be giving it a TIF. They would just be getting the tax exemption for the ten years. Similar to IRBs.

>> Chairman Eilert: So the state, there is direction by the state to promote this kind of activity then, I would assume

>> Yeah. They created a statute to deal with windmill turbine energy, and then the solar became popular, they added that into that, I believe, last year's amendment to the bill.

>> Chairman Eilert: All right. Thank you. I don't know, Jay or Sean or Ms. Miller. Again, looking at the differences in the Planning Commission recommendation to some of the other recommendations, it is 1,000 acres. Staff recommended 2,000 acres. 1,000 acres would be about a section and a half. The discussion involving that decision, can you enlighten us?

>> Sure, Commissioner. Jay Leipzig again. I will say in terms of the size, when, in the initial draft, was 1,000 acres, that was based on just kind of thinking about what projects we looked at in the past, what has been proposed. Further meeting with consultant thought the current trend is that that is significantly more than that. But when we were thinking about 1,000 acres, that was contiguous in my mind. As we started looking at and thinking about the potential solar farm in the Midwest, or in Johnson County, for example, where we have a lot of natural topographical features, you know, different crops and farm fields and things, and different features in that land. Really, the contiguous idea, to me, it seems a better approach would have been to expand it to more than 1,000 acres, using 2,000 and have it be non-contiguous. That's when we started to develop the idea of the project extent. That is some of the reasoning, Chairman. I think, you know, and Planning Commission, the work they did was just extraordinary in terms of reviewing this and reviewing the proposal. So, they felt about 1,000 acres I think something that might be suitable would be to offer a waiver on that requirement. Might be something worth considering. But it gives some additional flexibility. If justification could be made about why a waiver might be appropriate.

>> Chairman Eilert: Well let me ask you a follow up question. Are there any other waivers that accompanied the Planning Commission's recommendation or discussion thereof?

>> Yes, sir. Jay Leipzig again. There's waivers on the screen requirements, waivers on minimum distance from cities of two miles. There's a waiver available on that. But the current recommendation, Planning Commission does not allow a waiver on the 1,000 acre size, nor the term of 20 years.

>> Chairman Eilert: Okay. All right. Other questions? Ms. Allenbrand.

>> Commissioner Allenbrand: Thank you, Mr. Chair. I have several questions. Again, I was also looking at what the staff was recommending. To me, seems more in line with some of the other solar farms that are going up around the country. So, that was something that I had a question on, why we changed so much. But I know the Chairman already asked that. I had some of the same questions Commissioner Hanzlick did. But also I've heard that the -- that there's leakage from the panels that go into the soil and it causes flooding. So I'd like to have some clarification on that. The other question I have is if somebody -- and are you going to look at -- I mean, I was at an event and got an earful from a gentleman who was farming and he said, who are you -- he did call me young lady, so I do appreciate that -- but who are you to tell me what I produce on my land and who are you to tell me I have to sell my land to any city or any developer to develop housing. I should have the right to produce my own. This is my way of producing for my grandkids and I can keep my land. So, I think we have to be very careful how we dictate that to a landowner. So, that might be something that you look at when you're looking at this. The other thing was I know you talked about disposables, I heard comments that they caused waste. They have leakage. I think Commissioner Hanzlick also asked are they recyclable. I've heard conflicting stories. Then I also heard, right, on the Sunflower property, if they did decide to have, since they annexed it in, if they did decide to have some solar on there, if it's with the city and the city decides they want to do that, it's something they can do.

>> If you would address that.

>> Sure. Darren Coffey with the Berkeley group. I have with me Lindsey Edwards and Michael Ziniker. I'll ask them to chime in if I say something that triggers another idea from their standpoint. I'll first give the disclaimer that I am a land use planner and land use expert, and not an engineer and not an expert of hazardous materials. But I will give you my opinion based on our experience over the years. Going back to the initial questions, why the 20-year term. Again, we have seen this range from there is no term to a 20-year term. The industry strongly prefers no term. Because of financing considerations and the size and complexity of these facilities. And all the intricacies it takes for them to secure the financial component. However, Johnson County, not unlike a lot of other communities around the country, they have a pretty strong tradition of a 20-year term. That's for the stated reasons of it's the planning horizon per the comprehensive plan. So, these facilities are typically 30 plus years, 40 plus years, really. So, what's the difference between a 20-year term and 25-year term? I don't know. And that is definitely a consideration for the applicant. It is much less of a consideration for the municipality, as was indicated previously. I think these are still viable with 20 or 25 year term, but the preference from the industry is no term. The question is is this a typical size recommendation from urbanized area? I would say staff -- county staff recently to do some research, which we found to be very interesting. There are an increasing number of these facilities around the country in more urbanized areas. The tendency had been to avoid those areas and do them in more rural areas because the cost of the land is lower. But with data centers, Amazon, Facebook, Microsoft, a lot of these companies are driving the locations of facilities to be in more urbanized areas. I would say that the 1,000-acre limit is fairly typical -- I wouldn't say it's a little bit on the large side, I would say 2,000 would be a little bit on the large side for an urbanized area based on the research that we have recently conducted. But the 1,000 acres, to me, that research showed that that size range is probably the right ballpark to be in as a maximum range. I'll talk more about that. So, typical size, you know, there is -- there's nothing typical. A lot of the adverse impacts, the potential impacts, that staff has gone over in terms of process screening, distance requirements, those are all typical of utility scale solar regardless of where they're located. It's just when they're located in an urbanizing county like Johnson County, you've got a whole lot of competing land use pressures that more rural counties may not have and typically don't have. So, the size does become a more sensitive issue. How much of your future land use do you want to be under panel versus competing interests? Also, where the 20-year term comes in because that gives you the ability to reevaluate. It would probably I guess be renewed for another 20-year term. But 20 years is a long time. What were we doing 20 years ago? And what did the land use patterns look like? So from a biased planning perspective, I think it's prudent for an urbanizing county to say 20 years. Are you halfway through the life of this project? Do you still want to continue it as-is? What has changed for you? Here is what has changed for us. And does it make sense to continue the relationship? With regard to hazardous materials. To the best of our research knowledge, and we use the North Carolina State solar Institute. I forgot their exact name. But we use them a lot for this type of typical knowledge. Any hazardous materials that are in these panels are parts of the components. It does not leach into the soil. It does not cause groundwater contamination. What does leach from galvanized posts is zinc. There's an oxidation that occurs. It has been found that higher concentration levels of zinc can go into the ground from panels that have that chemical process occur. If you're a peanut farmer or you want to be one, and your future land use is peanuts, that can be a significant issue. Otherwise, to the best of our knowledge, it is not a significant issue. And the land could be restored similar to its original condition and farmed into

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the future. These facilities are relatively new. So, the research on a lot of these questions is still emerging. How viable is agricultural activity? How fast would a forest regrow in the area? A lot of those questions are still under study. In terms of fire. It's much -- it hasn't been an issue to our knowledge with panels. I have raised the question in the southwest of when they have those massive fires if they sweep through facilities, what does that do. That may become an increasing concern globally with the climate change happening. Battery storage, is definitely an issue. And the recommendation that we worked with Johnson County staff on are the best practices with regard to fire safety. And we always recommend a condition in any use permit that's being considered that requires the applicant to work with local public safety officials on what the plan would be in the event that a battery container would catch on fire, or there's an emergency in any solar facility, and how would emergency personnel gain access to that facility. What would their response be? How would they stage, et cetera.

How much material is recyclable? The industry will tell you most of it. A lot of it -- a significant amount of it, I am not in the salvage business and I don't believe anyone there is in the salvage business. That is why we recommend that you retain the full amount of what it would cost to decommission the facility regardless of what the salvage value would be, and minus of what that proposed number would be. That's going to be to the benefit of the industry or whoever is being hired to decommission the facility at that time. Which would be 15, 20, 25, 30, 40, 50 years from now. But, supposedly, much of the material is recyclable. It's just a matter of where are those facilities and how is the recycling industry at the time that decommissioning occurs. A lot of unknowns there.

The other question I noted was the 1,000 acres versus 2,000 acres. I do feel that the Planning Commission did a good job of pulling that back from 2,000 to 1,000. My opinion is that it would be reasonable to have a 1,000-acre maximum facility with the possibility of a waiver. Maybe a waiver up to a certain amount, like 50% of the maximum size. Or, if the Board of Commissioners wanted to be a little more lenient, perhaps, the 2,000 acres would be okay with no waiver. So, an absolute maximum ceiling. I guess my professional preference would be either 1,000 acres max or 1,000 acres with a waiver.

Any time you build in a waiver, whether it's for size, screening, distance, you're going to get requests for that waiver. So, it's a good question to ask where are we willing to bend on that and where are we not willing to bend on that. I think I've addressed the question of panel leakage. To the best of our knowledge, there is no hazardous material leakage that comes from these facilities. There is no underground water contamination that comes from these facilities. Stormwater runoff can be a significant issue. That is why there's a maximum panel coverage of 70% per site. That's why there's screening. That's why we have regulations that talk about the avoidance of wetlands. The implementation of wildlife corridors. The third party review of stormwater facilities, erosion and sediment control practices and measures. Third-party review, third-party inspections of these facilities. When you have 1,000 acres, that's a lot of area to cover. We also, during a conditional use permit, and we haven't talked about it much during this process because it's already complex enough. But usually when a project comes in, we will look at it and say based on how this project is laid out, we think it should be done in three phases. With no more than 400 acres per phase. So, in other words, you're not going to have 1,000 acres of bare soil open. You're going to have 300, 400, 500 at the most acres open. Then it will be stabilized before you move on to the next phase. So there are ways you can do, mitigate the effects of stormwater. If a facility is done correctly, it will not increase the stormwater in an area.

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And I contend it's possible it can improve the stormwater conditions in certain areas. But it is not to be taken lightly, not to be glossed over, or it can cause significant impacts on adjacent property owners if it's not done well.

I think I've talked about disposal practices. We just always have conditions that say best available practices. Hopefully, those continue to evolve at the federal, state, and local levels. But that's about as good as I can give you with that.

I believe those are the questions that were asked, that it was requested our opinion on. Michael, Lindsey, anything you want to add?

>> I believe you covered it.

>> All right. Happy to answer any additional questions as they come up.

>> Chairman Eilert: Let me ask you a couple. You referenced 70% of the acreage would have panels. So, if there's 1,000 acres, that means 700, for instance, would have panels on it?

>> Yes, sir. Panel coverage. Under panel would be a maximum of 700 acres.

>> Chairman Eilert: Okay. The oxidation, if I've got that correct, of the ground you mentioned. I didn't completely understand that.

>> Yeah. The clean-up.

>> Chairman Eilert: I guess I would like to have something specific. Completely different. But we have had experience of contaminated ground that needs to be cleaned up in this county.

[Laughter]

>> Chairman Eilert: And would not want to fall into a situation where it could not be properly and appropriately, immediately cleaned up. Is that possible?

>> I believe so. I mean, I think that's an excellent question to ask an industry representative either offline or during the public hearing. I don't recommend getting into a back and forth with anybody during a public hearing. But, that is a good question for the industry to be able to answer. To the best of my knowledge, there are two primary types of posts that either a fixed tilt or a mobile array can go on. That's either galvanized pipe or aluminum. I think galvanized tends to be sturdier. They can drive them into the ground. When you have galvanized pipes, when they solder the seam, if it's a fixed tilt, there can be an oxidization at that seam in particular. But galvanized pipes do have some level of oxidization. Again, not a chemist, not an engineer. But that is what can create zinc to leach into the ground. That is the only thing that I'm aware of that has been found to leach into the ground. And that doesn't even need to be mitigated. Again, the only crop I'm aware of that's sensitive to that is peanuts. And I don't think that's a primary crop in Kansas. We have had a site where that was a case, but they moved on and said we don't want to do peanut farming again so that's a non-issue. To the best of my knowledge, there is no hazardous leaching, leakage, groundwater, anything, issue that we're aware of with these facilities.

>> Chairman Eilert: Commissioner Hanzlick, you had a question?

>> Commissioner Hanzlick: I just wanted to ask Mr. Coffey to clarify a statement he made in regard to the acreage. Did I hear you say that you felt comfortable with 1,000 acres with a waiver or 2,000 without a waiver? Did I hear that correctly?

>> Yes, I believe that would be reasonable. Although, you know, the Planning Commission hard-lined at 1,000 max is not unreasonable either. But, yes, I did state what you just said.

>> Commissioner Hanzlick: Thank you.

>> Chairman Eilert: Mr. Meyers.

>> Commissioner Meyers: Thank you, Chair. My comments, first, the decommission and

reclamation is extremely important to make sure that that is proper and understood and enforced. Also protection of our infrastructure, the roads. Again, dealing with other projects, as mayor, with the landfill, for instance, the amount of traffic that's increased due to the landfill being situated where it is. I know that protection of infrastructure needs to be written in and that is important also. My first comment was right along the lines of yours, Chairman, on the CUP of 20 years. I was just -- I saw a waiver on a couple of the other items and was wondering why there wasn't a possible waiver on the 20-year CUP. I'm understanding what I'm hearing. I don't know enough about finances, the financial part of it, to know whether something is going to be able to be done or not done just based on a 20-year CUP. So, that's my comments at this time.

>> Chairman Eilert: Mr. Ashcraft?

>> Commissioner Ashcraft: Thank you, Mr. Chairman. Ms. Miller, thank you for the presentation, you and your staff. Very good job. Couple of observations, if I could. This has been kind of being discussed in the stratosphere for many months, well over a year in some sectors. Yesterday was the first time that I was introduced to the substance of the issue. And I've been approached by many people, and I've submitted ex parte standards and refused to talk to people, but have received many communications one way on this issue. And I will tell you, I have started to read the changes in the land use plan. All due respect, it's mind-numbing. Lots of terms of art or jargon. It's going to take me some time to get through it. But I am interested, particularly, Ms. Miller, you said this, and I respect it, you indicated -- maybe it was Mr. Leipzig -- about using best practices to try to bring forward a plan. And I appreciate those efforts. What I would like to see, and the discussion I'd like to have with you in the very near future is systemically go through what both the proponents and opponents of solar farms and what they like and dislike. There are lots of things floating out there. I think several commissioners have raised issues. I've heard all the same things, and many, many more. I am a little hesitant to get into it because right now the conversation is fragmented and I don't have a good standing, understanding, of what's being proposed. That's not a reflection on you. You did a very good job of setting the framework. But the one issue that really gives me pause is the issue of the funding -- or, the tax expectations, and Commissioner O'Hara and the Chair raised that issue. And what we will be asked to do either explicitly or implicitly by taking action on this. I have a certain sensitivity to those issues. Because I thought we were looking at just land use planning. But if that directly links to tax planning and tax activities, I've got to understand that. And I did not see anything implicitly or explicitly stated in the documents that I received yesterday. If it's in there, I apologize, I missed it.

>> Chairman Eilert: Okay. All right. Ms. Fast, did you have a question?

>> Commissioner Fast: Yeah. I guess I'm going to -- no disrespect to our consultant. But listening to our land use experts, I've listened to Douglas County, Jackson County, and 1,000 acres is what they're saying is what was the average about five years ago. Kansas City, Missouri, is going to put in 2,000 north of us. And Iowa is 3,500. Missouri is 1500. I would like to -- I mean, the land use experts that I've been listening to, a lot of the other counties disagree, so I would like to have the research, where the current planning that's going on, what we're seeing across the country, the sizes now are 1500, 2,000, 3,000. They're not -- he's giving research from several years ago. So I would like the up-to-date. That's why, staff, I know you recommended 2,000 because that recommendation, right, was based on where the industry has been going. Like Kansas City, Missouri, they're putting that in next to the airport. North of us in Iowa is 3,500. Central Missouri, by urban area is 1500. So, can you give us, you know, where, in terms of you

know, all these that are in the planning stages? Because you obviously base that 2,000 on a reason. You just didn't throw that out. Right, Jay?

>> Yes, Commissioner Fast. Jay Leipzig. I can do that. As I said, the idea being whether 2,000 or originally when we had proposed 1,000, it was in my mind thinking it was contiguous, then we started doing additional research and looking at this Midwestern model, thinking the 2,000 acres would be appropriate. I also want to mention, you mentioned other counties, Douglas County, has their proposal, staff recommendation is for maximum of 1,000 acres, but then the county commission can essentially, with justification, override that.

>> Commissioner Fast: But in Douglas County, the 1,000 acres only counts where the solar panel is. So that's totally different, like the Chairman said, we are saving 70% of 1,000. So we are not doing 1,000 acres, we are doing 700. But Douglass County does 1,000 where every panel is. So I want to say this is apples and oranges when we compare to other areas. Is that correct?

>> Well, yeah, that's why I was mentioning the contiguous item. Yeah, if 1,000 acres contiguous, which is what Douglas County is proposing, for example. So, when staff had presented 2,000 acres, that was non-contiguous. So, where we still look at that project extent. And then with typical development patterns we have in the county, if they're contiguous like that, that doesn't make sense for us.

>> Commissioner Fast: Across the country, a lot of farmers are having crops under their solar panels. That's becoming the new innovation. I think there's a lot of fear, all of this land, it's lost from solar panels. But that's not what's happening. A lot of farmers are using that land for agriculture use, too. But that would be a contract between the farmer and the county, right? The height of their panels, so they could have an agriculture use. We don't regulate the height of the panel? Or do we?

>> Commissioner. Jay Leipzig. We do regulate the height of the panel. I will say that in terms of, if you look at moving panel -- I'm sure there's a technical term for it, but panels that move and rotate, yes, that's becoming a more common practice is combining, growing crops, some kind of use underneath it. If it's a stationary panel, they cannot. But the newer technology is that they rotate.

>> Commissioner Fast: So our regulations would allow that? That they could grow crops under it?

>> This is Karen Miller. So, the maximum height of the lower edge of the panel is set at 10 feet. For the reason that if you have much higher, the rainwater, when it runs down the panel, it causes a lot of erosion underneath and stormwater issues. But the way it's written, it does not preclude agriculture. In fact, our consultant has mentioned some areas have, like, sheep grazing under the panel. But they mention things like cattle are too destructive to the actual solar panels.

>> Chairman Eilert: Well, back the to 70% factor. If you had 1,500 acres maximum, then you're really talking about 1,050 acres of the solar panels, or 2,000, 1,400. Anyway, I think that's something to think about. Ms. O'Hara?

>> And the purpose of that is to build in that open space.

>> Chairman Eilert: I'm sorry. What?

>> And the purpose of that is to build in that open space so that you preserve that rural character.

>> Chairman Eilert: That's good. I'm not complaining about the 70%. I'm just, you know, if we stick with 1,000, then you're really only talking about 700 acres. Ms. O'Hara?

>> Commissioner O'Hara: If we go with 1,000 acres, it's occupying four square miles is how we have it laid out now. Because it's not contiguous. The 1,000 acres is not contiguous. If we go to

2,000 then we are actually impacting 8 --

>> Commissioner O'Hara: It's the way --

(Indiscernible Speakers Overlapping)

>> This is Karen Miller. When we had the 2,000 recommendation, we had the four square mile project extent. When the Planning Commission reduced it to 1,000 acres, they didn't change the square mile project extent.

>> Commissioner O'Hara: Okay. So, at 2,000, could actually, with it not being contiguous, could fit within four square miles. Is that what you're saying?

>> This is Sean Pendley. That's correct. The project extent is variable. That is not a set measure. That could be -- the maximum we are saying four square miles. But how the facility is developed is what will dictate how large that is. It's kind of difficult to demonstrate that without an actual application. But certainly we envision that any one facility should not extend more than a four square mile area. And you could still allow, theoretically, a larger maximum project area, over 1,000 acres, and it still would be subject to that four square mile or the maximum, 25/60 total project extent.

>> Commissioner O'Hara: And then the two-mile buffer between other solar facilities, does that include in adjacent counties? Or is this visualized that Douglas County and Johnson County solar farms could be contiguous to each other?

>> That only applies to unincorporated Johnson County because we don't have control over other jurisdictions.

>> Commissioner O'Hara: Okay. So, could, reasonably, it could be that the two facilities actually are one. It's just that the county line runs through it, so our two-mile buffer would not be in play. Is that correct?

>> I would say that's possible. There could really be -- none of our regulations can apply to Douglas County and vice-versa. So, yes, it's possible that a facility could be developed in Douglas County and Johnson County. And they could be miles apart because the jurisdictions have separate regulations.

>> Commissioner O'Hara: Okay. So when we allow the solar facility not to be contiguous, then what about the landowners that are in between? I mean, are those the folks that are most concerned? That they're basically surrounded by solar farm because it's not contiguous? I'm just asking because I don't know.

>> This is Sean Pendley. I would say that that is possible. That's why -- the Planning Commission had recommended we research that and provide additional setback requirements or additional regulations to address a situation like that. If a parcel that was not included within a project area was in between two parcels that did and they were not contiguous. That's why we recommended additional setbacks to apply in those common property lines and those situations they would have to have additional --

>> Commissioner O'Hara: And the 50-foot setback, is that from the center of the road?

>> There are different setbacks that apply. Setbacks that apply for the maximum, for the project area. You have a 50-foot minimum setback around the entire --

>> Commissioner O'Hara: Right. The perimeter. Is that from the center of the road?

>> So, no. So, the 50-foot setback is from the project boundary.

>> Commissioner O'Hara: Okay.

>> And then also it's from -- the project boundary or the official street line, whichever is closer to the solar facility. So, if a project boundary is -- as property line that's up against a road, then we

would look at either that property line or the street line and then measure the setback from that. Which is exactly how we handle setbacks currently for structures.

>> Commissioner O'Hara: Thank you.

>> Chairman Eilert: Excuse me. Ms. Allenbrand.

>> Commissioner Allenbrand: I'm sorry, Mr. Chair. I wasn't quite finished. So, also I was wondering, so what is the traffic? How much traffic is going in and out?

>> Jay Leipzig again. I'll address part of that. I don't know exact numbers. I know that you have significant traffic during the construction phase of the facility. So, obviously, we would want to ensure there's protections during that initial construction phase with delivery of equipment and as the area is being constructed. After construction, there's really very little traffic impacts at that point. But, there again, as mentioned, we would want to ensure when a site plan is reviewed that we look at emergency egress out of the site and access for emergency vehicles to be able to maneuver around and get to all areas of the site efficiently.

>> Commissioner Allenbrand: And is there going to be an inspector inspecting these sites? Is somebody going to be responsible for going out there to see if they are being maintained and when they are actually under construction?

>> Yes. Commissioner. We would administer, as any other typical construction project. Where there would be a series of inspections. I would assume in this there would be independent inspections as well for specialty type inspections to ensure that those connections are made and that things are up to code. But, yeah, we administer, like any other construction project, where we would be on-site reviewing it, and ensure that everything is functioning properly.

>> Commissioner Allenbrand: And is this going to lower the cost of the residents that live around this area with the solar panels? Is this going to help relieve some of the burden of power?

>> Chairman Eilert: You know, I've thought about that. I don't think you can specifically say that. The power generated will go into the power grid. And, you know, it's kind of like whether it's a wind turbine out in western Kansas, or a solar panel farm somewhere else. Our utility may be having access to that power. And that we are already benefiting to a certain extent from that kind of access. So, I think to think about the power generated by a solar farm in Johnson County staying in Johnson County is probably not correct. Am I wrong, consultant?

>> That is a very good answer, and I agree with it completely. Unless you are an electric cooperative or you have a smaller facility that is specifically geared towards serving in a directed area, then you're exactly correct. And utility solar is almost always, as you described it. It goes under the grid. And then where it goes from there is based on demand. So there is no local utility relief on power bills from these facilities.

>> Commissioner Allenbrand: Also, again, if somebody could get to us the information if there is TIF money or what they're asking for so that we know the correct answer. So, I think having money in escrow for cleanup, or something happens, company goes out of business, I think that's a great idea. And the Chair may know this. Who holds that escrow? Is that in the, in the county? 20 years is a long time, like we said, or 25 years. If something happens to the property, who is responsible for that?

>> Chairman Eilert: I think that's my experience in those kind of issues are that is -- that is developed at the time of the bond or whatever requirement is put in place. Could be a bank. Could be an insurance company. Could be a deposit somewhere. I don't know.

>> Chairman, Jay Leipzig. I will address that. Just concur with what you just stated. I think it varies by the project. I know that Rick Lind, or our legal counsel is also on the Zoom call. He

might be able to address that. But it does vary. Yes, it's usually either a title company or bank or some other financial institution that carries that bond or the escrow.

>> Commissioner Allenbrand: And then, this is the last thing. I also want to thank the planning staff, the planning commission, the zoning boards, all the volunteer time that went in. I know it hasn't been easy no matter what side you're on. I know the amount of e-mails and information I received on both sides of the fence, you know, either pro or against it. So, I really appreciate that. And I, too, like Mr. Ashcraft, I am -- now it's time that I just want anybody to know that please feel free to contact me and I'll set up meetings now to discuss what their interests are and if they have any suggestions before the public meeting. Then when will you have the public meeting? When will that be announced?

>> Chairman Eilert: We are working on that. And we have a possible date. And we need to talk about date and time of day. And we do have a possible location. So, we can talk about that when the discussion is concluded. One thing that I would like to see, and I don't know whether it's consultant or whether we hire somebody else. But, you know, those who are pro, discount the concerns about, you know, the runoff, the oxidization, or whatever, hazardous materials. So, I would like those questions to be answered before the public hearing so -- from a source that is not -- does not have, you know, an interest.

>> A dog in the fight.

>> Chairman Eilert: If you will. So, I think that would be helpful.

>> Commissioner Ashcraft: Mr. Chairman, process question.

>> Chairman Eilert: Yes, Mr. Ashcraft.

>> Commissioner Ashcraft: I'm sorry. I was going to ask counsel if we could get some elaboration on ex parte communications related to this process. That's been an issue in previous efforts that we have had to address, Mr. Chairman, and this one definitely has a lot of energy. And I just want to make sure I understand appropriately where the Commissioners in our quasi-judicial role should be standing on this issue.

>> Mr. Chairman. Peg Trent, Chief Counsel. Thank you for that question, Commissioner Ashcraft, as I sat back there and heard, Commissioner Allenbrand. I wanted to remind each and every one of you that in this process, right now, it's very critical that you're getting the information as one. And that that information, as Jay spoke earlier, is why they have set up a website to put all comments on, for you to review, under one location. But we are about to have a public hearing. And you're sitting in a different role when you are about to adopt these regulations, and/or take action on them. At this point, the safest bet is not to be having ex parte communications at this point. And, at this point, I will further elaborate on that in my friendly reminder, getting into specifics. But at this point, it's probably not prudent to go down that path right now.

>> So, Ms. Trent, so we're not supposed to talk to our constituents that are in our district that have questions and concerns so that we can go back to the public meeting -- because we're supposed to make a decision.

>> Peg Trent: Correct. The communication can come in through written. But what's happening is you're getting more -- one piece of information at one level and not to all of you, and so you're not getting the same information. And that's why we're trying to place it all together. I have an e-mail going out to you about the efforts planning has taken in consultation -- is that correct, Jay, with your office? On how we can coordinate all these comments together?

>> That's correct.

>> Peg Trent: And we have a process we are going to be putting forward. We just wanted you to get the information today. And it was my intent to immediately send out that process then and kind of discuss this, what you can and can't do.

>> Commissioner O'Hara: Counselor, isn't there a difference between this is legislative rather than quasi-judicial? Because we are --

>> Chairman Eilert: It's quasi-judicial, as I understand it. Correct?

>> Peg Trent: Correct. That's why we are concerned right now. In addition, I am concerned because you will be hearing potentially applications which cannot be commingled, these are regulations in front of you right now.

>> So you're saying this is not legislative --

>> Peg Trent: It is. But it's also quasi-judicial. You have a public hearing. Taking public comments. I disseminated to you some training material yesterday, and you probably didn't get to it because of your meeting today. But if you would take a look at this journal that I have provided you that really -- and that's what Commissioner Ashcraft is acknowledging -- it really lays it out really well for you. And I'd rather not go into more detail here publicly; but I'm just trying to give you the restrictions right now carefully as you move forward.

>> Commissioner O'Hara: I do have one other question. And this is to staff. Lithium batteries do tend to catch on fire. They are extremely flammable. So, I guess I'm concerned about the fumes. Because this is west-southwest, possibly -- well, it would be west and possibly southwest of residential and more populated areas. And I don't know. This is just a question. How do we deal with that? I mean, if we have a fire, we're going to have toxic fumes. So, is that an issue that the fire chiefs have considered?

>> Chairman Eilert: I think that's one of the -- I would call it the hazard questions that need to be specifically answered, yes.

>> Commissioner O'Hara: Thank you, Mr. Chairman.

>> Commissioner O'Hara, Jay Leipzig. Just to reiterate. We did meet with fire chief and building official and looking at the fire code issues. However, that's something that is part of their overall review. If something catches on fire, the fumes and how to mitigate that is part of that review process.

>> Commissioner O'Hara: So I guess I need to know, because I don't know, how toxic are lithium batteries?

>> Yeah. We will do some additional research and find out exactly what is involved with that.

>> Commissioner O'Hara: Okay. Thank you.

>> Chairman Eilert: Ms. Hanzlick.

>> Commissioner Hanzlick: Yes. Thank you. In preparation for this issue, I've tried to educate myself with a lot of reading. I wanted to get back to a question Commissioner Allenbrand asked about how the oversight of the facility -- and it's my understanding that they usually don't require much staffing. So there's not going to be a lot of cars or trucks in and out that perhaps an on-call maintenance person. And my understanding is that there are a lot of control systems in place that provide alerts if something goes wrong, like a fire or something else like that. Is that -- am I understanding that correctly?

>> Commissioner Hanzlick, Jay Leipzig again. Short answer to your question is yes. That's a great question to ask industry representatives. But that is my understanding as well. Staff also had an opportunity to see a farm, or a utility scale operation firsthand and there was -- I was amazed at the technology that's available. And that's monitored continuously. But that would be

a great question for the industry.

>> And just a note that we require any sort of battery energy storage facility to be within a containment center, system. So you have the battery, it's in a containment system. Those look like just a regular shipping container. And it also is required to have a management system that continually monitors it. And we also have required inspections. And we also have emergency preparedness plan as part of the regulations that requires coordination with the applicant and all of the emergency personnel. And we have it in our regulations, but that is also a requirement of the building and fire codes.

>> Thank you. Just wanted to follow up on that. The Chairman asked for information from a disinterested party. I thought that's what the Berkeley Group was. I thought they were our disinterested consultant?

>> This is Sean Pendley, planning staff. Berkeley Group is a local governmental consulting agency. They are experts in land use planning regulations. They're not experts in environmental planning; however, they do have experience in reviewing those regulations. So I think as Mr. Coffey indicated, he has extensive experience in local land use planning. But if the specific question would be regarding the detailed environmental planning or environmental regulations, that may require some additional research. That's something I guess staff can certainly consult and research, too.

>> Thank you.

>> Chairman Eilert: Mr. Ashcraft.

>> Commissioner Ashcraft: Thank you, Mr. Chairman. Two comments. One about process. Then one about the land use plan. Mr. Chairman, I don't know if you recall, but about ten years ago, we had a somewhat similar situation involving a winery where we had to act in a quasi-judicial role. And I remember it well because some of us were not necessarily well-versed, and made certain comments, obtained certain conversations. And it causes a certain level of angst as the process develops. And I think the advice of counsel is good. It is unusual for us, but it will potentially avoid us having troubles as this unfolds, regardless of which side you may be on in terms of the conversation. So, I just appreciate the counsel of the county attorney. The second thing, Mr. Chairman, it's related to what Commissioner Allenbrand asked, and Commissioner Hanzlick, and O'Hara expanded upon. Because I was looking -- have been looking at the land use plan. For example, under No. 11(a), it talks about battery storage facilities and requirements to coordinate with local emergency units, to maintain conformance with county, state, and federal codes. And the question -- you don't have to answer today -- comes to mind is do we have that capacity, or is that something we are going to have to develop? Because we cannot -- I would submit we should not look at this in isolation. This could be one of a number of facilities. And I don't know what that capacity would require. But I suspect it may not be one that's already existing either in the county or for municipalities and their fire department, their emergency services, that might be first responders to that. So, it goes to the deeper issue of safety, but also cost. So, I look forward to learning more.

>> Chairman Eilert: Okay. Commissioner Allenbrand.

>> Commissioner Allenbrand: Thank you, Mr. Chair. I appreciate Commissioner -- [Laughter].

>> Chairman Eilert: Take your pick.

>> Commissioner Allenbrand: I appreciate his question. And I appreciate Ms. Trent. I just want to clarify. I wasn't going to be meeting with anybody that's putting in a permit because I don't

know who is going to put any land to use. So I appreciate that. So the best thing is to read the e-mail that you sent us? I was in meetings all day yesterday so I have not had a chance. Then they are going to have a source where they can provide information. And there may not be any questions after today's meeting because they've heard things; but, yeah, it is difficult when people are calling you and sending me e-mails and you can't talk to 'em.

>> Chairman Eilert: It's a -- it's always been a challenge, yeah. I've had conversations that I had -- I tried to outline that I cannot talk about the specifics. But be glad to talk about process. And what can happen there. Which brings up the subject of a process, again. And we -- excuse me. Ms. Fast.

>> Commissioner Fast: Yes. We're on the end. I would really appreciate to have an expert outside the Berkeley Group. I've heard a lot of frustrations. I would like to have someone from the Kansas Corporation Commission, the energy office, to talk about the southwest power pool. We do benefit by having this power source that goes into the southwest power pool and how that connection from the wind turbines in Kansas, they're part of that pool. Area farmers say it's less in utility bills from being located next to wind turbines. So I think we need experts on how transition of energy works. So I think that's a question that a lot of people have, how does transmission flow. And that's their expertise at the Kansas Corporation office. And I guess when you are talking about process, at our meetings, the next meeting, do we say yes we agree with planning? No, we agree and send back? Is it really just a yes, no vote?

>> Chairman Eilert: We have no vote until the public hearing is held.

>> Commissioner Allenbrand: I know, but after that. I'm saying once we deliberate --

>> Chairman Eilert: The Commission can alter or endorse the Planning Commission recommendation.

>> Commissioner Allenbrand: Not at the first meeting, we can't.

>> Chairman Eilert: Following the public hearing.

>> Commissioner Allenbrand: My understanding is either we agree with the Planning Commission or we send it back. We can't waive it -- amend it until after they have a chance --

>> Chairman Eilert: Well, again, let me go back. Following the public hearing, I would anticipate that this body would make a decision whether to endorse the Planning Commission recommendation, or recommend changes. If you endorse and approve, that's it. If you recommend changes, then it goes back to the Planning Commission for further consideration, and then comes back to the Board with whatever decision the Planning Commission makes. The second time it comes from the Planning Commission to the Board, the Board makes the final judgment on whatever issues they want. So, that's the process. Now, as to getting there, to the public hearing. There is a suggestion that due to notification processes that we have to complete, that the public hearing be held on Monday, March 4.

>> April 4?

>> Chairman Eilert: Yes, April 4, I'm sorry. We're almost there. April 4th, Monday, April 4th. And that we hold it at the Embassy Suites, which would allow us to have a greater participation in person. It would be hybrid. We could receive public comment both in-person, as well as virtually. The question is what time of day would we start? I think we need to think in terms of maybe 3 p.m. or 3:30 p.m., something like that. I don't know how many speakers we might have. But two-minutes apiece to state your opinion. At one of our hearings, we had 60 people. We might easily have 100 people at this hearing. So, the public hearing might even go on, what, three, four hours, something like that.

>> Mr. Chairman.

>> Chairman Eilert: Yes, Ms. O'Hara?

>> Commissioner O'Hara: I would suggest noon so that it doesn't -- so that we could get -- even if it would stretch on six hours, we would still have a decent time to eat dinner.

>> Chairman Eilert: Well, yeah, we talked about that. I guess there is some thought that starting at noon there would be a lot of people who might have to take a full half day off from work, looking like that, and inconvenience them in that regard. I think that's why the 3 p.m. or 3:30 p.m. And if we have to stay there until 8 or 9 o'clock at night, that's the job we asked for. So, any other thoughts? Mr. Ashcraft.

>> Commissioner Ashcraft: Thank you, Mr. Chairman. We are not trying to make a decision at this moment in terms of time, are we?

>> Chairman Eilert: Not necessarily time, but I do think we need to pick a date.

>> Commissioner Ashcraft: Thank you. And I will be flexible. The time is an issue and we have to find the balance. If we start too early and get lucky and don't have many comments, then people that have to work would miss out. But if we start too late and it goes longer, honestly, I've only got so much brainpower in trying to make a good decision after four, five, six hours of deliberation late at night. May not be the best way to make policy.

>> Chairman Eilert: You never had to make a decision at 12:30, or 3?

>> Chairman, this is Penny, County Manager.

>> Chairman Eilert: Yes.

>> The sooner we can decide on the time would be helpful because we do have publication notification time. So, Jay, you might give us -- when is the latest we could decide? We also need to secure an off-site facility which we have to hold for this day. So, the sooner we can get a time scheduled would help us all.

>> How about 1:30?

>> Chairman Eilert: I'm sorry?

>> How about start at 1:30?

>> Chairman Eilert: Well, that might be possible. Again, I still prefer 3 or 3:30 myself, so -- Ms. Allenbrand.

>> Commissioner Allenbrand: I kind of would agree with you, Mr. Chair, because I know people work and there's a lot of interest around this. I know the charter started at 4 and I know that some of our planning meetings, they have been what, 4:45.

>> Commissioner Ashcraft: Not that late, no.

>> Chairman Eilert: Well, the suggestion is 3 or 3:30 p.m. or 1:30 p.m.

>> Commissioner Ashcraft: Split the difference and make it 2.

>> Commissioner Fast: Let's do 2.

>> Can we do 2:30?

>> Commissioner Ashcraft: Do I hear 2:15?

>> Commissioner Allenbrand: Yeah. 2:40.

>> Chairman Eilert: I'm going to suggest we start the public hearing at 3 p.m. There will be virtual opportunities. So, those who have other obligations and want to speak, that would be an option. I'm thinking about, in our process with virtual comments at the public comment, we take all the virtual comments first. But I'm thinking that maybe we do 30 minutes of virtual and 30 minute of in-person so that we can kind of split the time and somebody comes in person and has to wait two hours until the virtual comments get done. That's just my thought.

>> Mr. Chair, I would agree with that.

>> Chairman Eilert: Well, do I hear a motion for 3 p.m.? Do I hear any motion?

>> I'll make a motion for 2.

(Indiscernible Speakers Overlapping)

>> Chairman Eilert: Ms. Fast made a motion for 2 p.m. Is there a second on that?

>> I second it.

>> Chairman Eilert: There is a second for 2 p.m. Any further discussion?

>> Would you make an amendment to 2:30?

[Laughter]

>> Chairman Eilert: Yes, well, an amendment would be in order -- or could be done. But, anyway --

>> I would just say because there is going to be virtual involved, I think that helps an awful lot of people that won't be able to be there whether it's because of work or not. And if it is because of work, they're going to, you know, it's important enough to them, they're going to be there whether they have to be at work or not. They're going to have time off or work something out with their employer. But because of virtual, I think the 2 o'clock start works fine because those people have the opportunity to speak virtually.

>> Yeah, they could come in on the phone.

>> Chairman Eilert: All right. Well, the motion before us is to begin the public hearing at 2 p.m. Will the Clerk please call the roll?

>> Clerk: Commissioner Fast?

>> Aye.

>> Clerk: Commissioner Meyers?

>> Meyers, aye.

>> Clerk: Commissioner O'Hara?

>> Yes.

>> Clerk: Commissioner Hanzlick?

>> Hanzlick, aye.

>> Clerk: Commissioner Ashcraft?

>> Sure.

>> Clerk: Commissioner Allenbrand?

>> Allenbrand, aye.

>> Clerk: Chairman Eilert?

>> Chairman Eilert: Eilert, aye. So I have seven votes in favor. 2 p.m. will be the start time. And it will be on Monday, April 4th, at Embassy Suites.

>> Chairman, this is Penny again, County Manager. Just wanted to do full disclosure. I don't think this will change your mind at all and I'm not suggesting you should. I just want you to be aware.

>> Commissioner Ashcraft: KU won't be in the finals.

>> National basketball game. I didn't know if you knew that.

>> Chairman Eilert: I'm sorry. That's not a factor. The obligations are taller than that entertainment opportunity. Okay. Well, any questions, Mr. Leipzig?

>> No, sir. Thank you for your time. I appreciate it.

>> Chairman Eilert: Okay. Well, you know, I know the staff has put in a great amount of time on this question, as well as the Planning Commission, so, thank you all very much. We are

adjourned.

>> Thank you, Mr. Chair.

[4:06 p.m.- Adjournment.]

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