

# Planning Commission Recommendation & Reasons

Regarding Board of County Commissioners' Eight Directives

May 10, 2022

<b>Planning Commission Recommendation</b>	<b>Reasons for Recommendation</b>
<b>1. Adopt staff clarifications regarding off-site street maintenance and repair <u>and to also include a requirement that repairs shall be completed in a timely manner.</u></b>	<ul style="list-style-type: none"><li>a. Requiring timely repairs improves road safety because unsafe conditions are promptly addressed.</li><li>b. Placing the requirement of timely repairs in the regulations reminds everybody to address the issue and to add a time limit for repairs when the solar facility conditional use permit (CUP) is considered.</li></ul> <p>Dissenting Opinion: The item as proposed needs to be more clear.</p>
<b>2. Adopt clarifications that battery energy storage facilities are allowed in association with Medium-Scale Solar Facilities.</b>	<ul style="list-style-type: none"><li>a. The zoning board can regulate the battery energy storage facility (BESF) through the required CUP for a medium-scale solar facility (MSSF) by adding stipulations such as extra screening (e.g. landscaping and walls) and denying its location in sensitive areas.</li><li>b. BESFs are a needed accessory to MSSFs.</li><li>c. It's an important correction in order to make the proposed solar amendments internally consistent.</li></ul>
<b>3. Adopt a performance standard related to battery energy storage facilities and the requirement of applicants to supply, and assume the costs of, specialized fire safety equipment or other protections, if necessary for such use.</b>	<ul style="list-style-type: none"><li>a. It's important to make sure that we take the financial burden away from the taxpayers and place in on the company.</li><li>b. The requirement upholds the public health, safety and welfare of the county.</li><li>c. The requirement is reasonable.</li><li>d. The fire departments in the county couldn't take the burden of the costs.</li><li>e. It clarifies that this would be a part of the company's project costs.</li></ul>

<p><b>4. Adopt all additional suggested clarifications, modification or corrections recommended by planning staff.</b></p>	<p>a. The staff's recommendations are pretty common sense solutions and they are appropriate.</p> <p>Dissenting Opinion: The stormwater item needs to be more detailed out.</p> <p>Note: The following staff-suggested changes were discussed during the May 10th Planning Commission meeting: a) the Project Extent waiver was modified to parallel the Project Area waiver, b) a requirement that security fences should be designed to promote the surrounding character, c) a requirement that stormwater performance bonds are optional and not required, and d) clarification that surety associated with installation and decommissioning a solar facility can be other forms of surety besides escrow. Other proposed changes were not discussed during the meeting, but a copy of such changes were distributed prior to the meeting and an opportunity was given to pull up any item for discussion.</p>
<p><b>5. Adopt a 20 year Conditional Use Permit term, instead of 25 years, to include a one-time automatic extension for five years if the project remains compliant.</b></p>	<p>a. There's no reason that the solar companies can't make a project work within the 20-year time frame.</p> <p>b. There have been multiple long term CUPs approved in the County. For example, the Southwest Consolidated Zoning Board approved a 30-year CUP term for a solar facility<sup>1a</sup>.</p> <p>c. Longer than a 20-year term, and particularly a 30-year term, gets beyond what land uses can be predicted and planned for and, as a result, the solar facility might block a city's, such as Gardner or Edgerton, development. For example, the mayor down there might wonder "What in the world did these people do 35 or 40 years ago that we can't build an apartment complex out here?"</p> <p>d. It's reasonable to stay within the county's planning timeframes because: 1) we're a very fast-growing county, 2) of the very large size and extent of the solar facility projects, and 3) there are some things that haven't gone so well in the industry.</p> <p>e. This gets us in closer compliance and unison with the conditional use permit regulations.</p> <p>f. A 20-year term is consistent with Edgerton's recommendation.<sup>1b</sup></p> <p>g. A 20-year term is consistent with the term that Douglas County adopted.<sup>1c</sup></p> <p>Dissenting Opinion: The solar company will have shareholders to report to and are going to be more concerned about staying in compliance than anyone else. These are substantial projects and the companies are in it for the long haul, "I've worked for Fortune 500 companies for 40 years, and believe me, no one goes into this thing saying, 'Aw, let's just trail it out for 15 years and we'll just walk away from it.' "</p> <p><sup>1</sup> Clarification of Facts: a) This solar facility is accessory to a residential use and has a project area of less than 1 acre, b) The City of Edgerton's September 28, 2021, memo indicates that a "significantly less" term of 20 years is recommended and c) Douglas County,</p>

Kansas adopted a conditional use permit “time frame” of up to 25 years for “Commercial/Utility Scale Solar Energy conversion Systems”.

**6. Adopt a Maximum Project Area of 1,000 acres, instead of 2,000 acres, including a waiver option.**

- a. This clarifies the position of adjoining cities.
- b. A maximum project area of 1,000 acres protects the cities’ growth areas and is based on the historic fast growth of the fringe cities going back to at least the 1980s.
- c. This value is adjusted from 2,000 acres based on new information and understanding regarding how Utility-Scale Solar Facilities (USSFs) function and are developed and enhanced and based on comment from local citizens.
- d. A USSF could also be developed in neighboring Douglas County so that the combined total area could be large enough to meet the area needed for the solar company in a manner that does not overtake the entire Johnson County landscape.
- e. A maximum project area of 1,000 acres is supported by the County’s consultant, Berkley Group.<sup>1a</sup>
- f. The City of Gardner requested a maximum of 1,000 acres in their May 4, 2022 letter.
- g. Douglas County adopted a maximum Site Area of 1,000 acres<sup>1b</sup>.
- h. The Cities of Edgerton and Overland Park recommend less than 2,000 acres.
- i. 1,000 acres is consistent with the areas to avoid indicated by the County’s consultant, the Berkley Group, such as growth areas, prime farmland, ecologically sensitive sites, historical sites, and adjacent residences.
- j. We should restrict the US Solar Facility size in response to the County’s fast growth and the potentially large scale of a solar project.

Dissenting Opinion: 1) It is important to support solar energy options. “I bought gas this afternoon, and I think we’re going to need all the power and other energy we’re going to have in the years to come. I don’t want to see fracking. I don’t want to see some wind farm or coal plant or something else coming here to makeup what we need to secure energy”; and 2) there’s speculation that a large project is coming to the old Sunflower Plant. It will need a lot of energy and we should be able to support whatever is coming. The future is not going to be other forms of energy.

<sup>1</sup> Clarification of Facts: a) The Berkley Group (BG) memo dated June 2, 2022, clarifies that BG staff conclusions and comments in their February 22, 2022, memo were focused on the Planning Commission’s recommendation of 1,000 acres and did not directly evaluate the possibility of 2,000 acres. Additionally, the BG memo dated June 2, 2022, considered the BOCC remand item of a maximum project area of 2,000 acres and observed that there is a potential 2,000-acre project at the KCI Airport that would be comparable to the size of projects suggested by the BOCC remand and also that BG’s previous analysis did not consider the presence of unique sites or unique land use conditions that may be located in

the localities considered. The BG June 2<sup>nd</sup> memo further concluded that there are areas of the County that are potentially appropriate for project areas greater than 1,000 acres, such as the former Sunflower Ammunition Plant, and that it's a policy decision whether 1,000 acres, 2,000 , or some other value is appropriate; and b) The Douglas County "Site Area" and the Johnson County "Project Area" are not comparable terms, as "Site Area" and "Project Area" are defined differently in their corresponding amendments. "Site Area" will generally be smaller as it only includes the area of the "Solar Modules" and not other areas of the Solar Facility such as driveways, setback areas, landscaping areas, and areas occupied by substations and BESFs. More specifically, Douglas County adopted a conditional use permit requirement that "Commercial/Utility Scale Solar Energy conversion Systems" (CSECs) Site Area shall be limited to no more than 1,000 acres total unless the Douglas County Board of Commissioners approves a modification from the standard based on site specific characteristics which are determined to aid in the preservation of rural character or natural features or to promote the shared agricultural use of the property. As defined in the Douglas County regulations, the Site Area of the CSEC is the cumulative total of the Solar Modules within the facility. A Solar Module is a grouping of solar arrays. A Solar Array is a collection of multiple solar panels that generate electricity as a system, most typically this is a group of solar panels connected to the same inverter.

**7. Adopt a 2 mile minimum distance from a city, instead of 1.5 miles, including a waiver option.**

- a. This clarifies the position of adjoining cities.
- b. The three miles requested by Edgerton is a bit excessive. Two miles is a good compromise and a win/win.
- c. Two miles is consistent with what the cities are requesting for growth.
- d. Our cities have historically had fast growth as illustrated by the maps that Planning staff used in their presentations and the growth of cities within the term that solar facilities will be around will be restricted by a solar facility if located less than two miles from a city boundary.
- e. Two miles is a reasonable recommendation.
- f. The City of Gardner requested two miles in their September 28, 2021, and May 4, 2022, letters.
- g. Two miles is consistent with Edgerton's request of three miles in their September 28, 2021, memo.
- h. Two miles is consistent with Douglas County's regulations<sup>1</sup>.

<sup>1</sup> Clarification of Facts: Douglas County did not adopt any numeric standard restricting the distance of a solar facility from a city, and, instead, adopted the requirement that solar facilities shall be located to "accommodate the future growth of incorporated cities." Additionally, the draft Johnson County comprehensive plan amendments include a similar policy.

**8. Allow consideration and review, if necessary, of impact on surrounding landowners due to the addition of transmission lines to service solar facilities.**

- a. It's important to make sure we put this type of protection in the regulations and to be able to review as part of the conditional use permit.
- b. This is a private enterprise and it is not allowed to use eminent domain to acquire property and easements to run a transmission line from the solar facility to a substation or other point of connection to the grid.