

Findings Regarding Area Plan Commission's Solar Farm Certified Ordinance Recommendation June 30, 2022

History:

January/February 2021-commissioners discussed potential state legislation that would have been adverse to local home rule regarding solar energy. This sparked concerns of an ordinance being enacted prior to July 1, 2021. The Indiana state legislature backed off pushing mandatory regulation to recommended legislation which allowed Grant County to begin a dialogue on solar energy systems.

Following the October 18, 2021 commissioners solar summit meeting, and four plus months of research developing discussing with department heads (Highway Department, Drainage Board, Area Plan, Emergency Management Agency, Etc.), and four separate drafts; draft four of the Grant County Solar Ordinance was sent to area plan commission for review and recommendation by the commissioners. At that time the ordinance was considered 90% complete with some loose ends to tie up. This particular ordinance for consideration reviewed 32 counties and averaged their requirements.

February 2022 APC meeting did not have quorum. Commissioner's Ordinance draft was set aside by the APC on March 7, 2022 with no apparent review or discussion to its content.

The APC held two solar workshops, since taking over the solar ordinance review. The board of zoning appeals has been very influential in the APC decision although the BZA has no authority regarding ordinance adoption or recommendations. State law states the BZA has no place in ordinance development and infers separation of powers.

Area Plan conducted the public hearing regarding solar on April 4th, 2022 following a cumulative six months of discussion the APC set aside the commissioners proposed ordinance. The APC chose to recommend to the commissioners an ordinance provided by Mr. Ed Hartman, BZA Chairman, without any public review of the proposed ordinance or conversation with the lawyer that drafted the proposed ordinance for Mr. Hartman. This ordinance now referred to as draft seven or certified ordinance recommendation was voted on without ever being publicly reviewed by APC.

The Board of Commissioners received certification of the proposed ordinance on April 18th, 2022. The Board of Commissioners are required to act within 90 days (by July 17th, 2022) or said ordinance becomes effective without their action.

Throughout the course of the solar discussion I have heard testimony at the solar summit, APC meetings, Educational Summit, Drainage Board. I have had discussions with those on both sides of the ordinance issue. I have received data, letters and phone calls. I present these findings to Grant County Board of Commissioners for review and discussion as we consider the proposed solar ordinance recommended by the Grant County Area Plan.

Findings:

1. Indiana Code 36-7-2-8 solar energy systems-reasonable restrictions Sec. 8 (b) a unit may not adopt any ordinance which has the effect of prohibiting or of unreasonably restricting the use of solar energy systems other than for the preservation or protection of the public health and safety. (c) ... It is the policy of this state to promote and encourage the use of solar energy systems and to remove obstacles to their use.
2. Grant County currently has 4 solar farms that have been established without regulation or ordinance.
3. The proposed ordinance was initiated from the President of Grant County Board of Zoning Appeals (BZA) which is outside the scope of its judicial nature. Further, an attorney was consulted and did preparation work on a Grant County proposed ordinance, but did not meet or discuss with BZA nor APC.
4. There was no discussion of the proposed ordinance by the APC members prior to the vote. See video of APC meeting dated April 4th, 2022 on YouTube at "Grant County Government". Several questions asked during the Public Hearing were not addressed/answered.
5. Current ordinance provides less definitions than draft number four. We should not leave any issue to speculation but define these issues as specifically as possible. The definitions need to add depth as they give clear concise information.
6. The APC certified document eliminates the concept of major/minor solar farm energy systems. It appears that the APC's intent is to intentionally require Variances for Minor Solar over 5 acres from the start. There must be residential, minor and major designations based on personal (residential) and/or small enterprise use. The current proposal would curtail or eliminate Minor Solar Economics. Current solar farms in Grant County include three of four that are larger than 5 acres. This would add Annual Fees for Minor Solar Farms over 5 acres. Again, best practice, is that you don't write an ordinance that will knowingly require variances from that ordinance from the start.
7. Road use agreements, economic development agreement, decommissioning agreement and liability insurance should rest with the commissioners based on the fact commissioners represent all of Grant County in legal actions.
8. Areas in current form of this ordinance are ambiguous where previous drafts were specific on requirements. Specifically Department Heads are not brought in for review.
9. The unique individual characteristics of each solar farm energy system presents a compelling argument that each application be treated on its unique situation size, terrain, drainage resources and the local community it affects. Each project should not be assumed to be a "one-size-fits-all" philosophy.
10. With regard to property value guaranteed agreements, the State of Indiana deemed such legislation unreasonable and was not included in state guidelines for solar farms.
11. The key issue in this ordinance issue is the effective protection of both sides of property rights. Constitutional rights regarding property rights would include the

property owner's right to utilize their land as they see fit based on reasonable regulation.

- a. Regarding setbacks, the 1320 ft setback requirement is the most restrictive in the State. The current Purdue University "Snapshot" for renewables, based off 46 current Indiana Solar Ordinances shows a Median setback of 200' from Non-Participating Dwellings and 50 ft Median Setback from property lines. It could be noted that the 1320' setback would also negate minor solar (again, unless they get a variance), more proof that there must be Minor & Major Solar or Lesser Setbacks.
 - b. Regarding "Municipal Setbacks," this setback negates minor solar over 5 acres inside of Incorporated Areas.
12. National corporations in our community anticipate green energy will be a part of local initiatives or they will seek other communities for future development. This could have major effect on employment. See:

Corporations Missives for Renewables:

- **Walmart 100% Renewable Energy by 2035 (50% by 2025)**
 - <https://corporate.walmart.com/newsroom/2020/09/10/walmart-and-schneider-electric-announce-groundbreaking-collaboration-to-help-suppliers-access-renewable-energy>
- **General Motors 100% Renewable Energy by 2035**
 - <https://www.gm.com/stories/renewable-energy-sustainable-strategy>
- **Huhtamaki 100% Renewable Energy by 2030**
 - <https://www.huhtamaki.com/en/media/media/press-release/2022/huhtamaki-signs-a-virtual-power-purchase-agreement-in-the-united-states-covering-30-of-its-electricity-usage-in-north-america-marking-a-major-step-in-its-ambition-to-use-100-renewable-electricity-by-2030/#:~:text=Press%20release-.Huhtamaki%20signs%20a%20Virtual%20Power%20Purchase%20Agreement%20in%20the%20United,100%25%20renewable%20electricity%20by%202030>
- **AEP to add 5,000 MW of Renewable Energy (several updates)**
 - <https://www.aep.com/news/releases/read/1583>
- **American Woodmark to begin study to "Utilize renewable energy".**
 - [file:///C:/Users/rmalott/Downloads/AWC Investor Presentation%20\(1\).pdf](file:///C:/Users/rmalott/Downloads/AWC%20Investor%20Presentation%20(1).pdf)
- **APC Recommended Solar Ordinance negates most "Minor" Solar Farms (over 5 Acres), this will eliminate Small Business, Schools, Universities, etc...from installing Solar Farms.**
 - **APC Recommended Solar Ordinance would not allow either Taylor or IWU Solar Farms.**

Respectfully Submitted,

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Grant County Commissioner, District 2