

**Shelby County Plan Commission
Meeting Minutes
Tuesday
October 22, 2024**

Members Present:

Terry Smith
Kevin Carson
David Lawson
Jeff Powell
Charity Mohr
Jason Abel
Megan Hart

Members Absent:

Mike McCain

Staff Present:

Desiree Calderella – Planning Director
Jason Clark – Plan Commission Attorney – Via Zoom

Call to Order and Roll Call:

Terry Smith called the October 22, 2024, meeting to order at 7:00 pm in Room 208 A at the Court House Annex.

Approval of Minutes:

Megan Hart made a motion to approve the minutes from September 24, 2024, with two corrections (1) to revise ‘Terry Smith asked for a motion to add a ban on use of herbicides’ to ‘Terry Smith asked if there was a motion to add a ban on use of herbicides’ (2) to add that Mike McCain had recused himself due to the identification of a potential conflict of interest. Charity Mohr seconded the motion. The minutes were approved 7-0.

Old Business:

RZ 24-08 – COMMERICAL SOLAR ENERGY SYSTEMS (CSES) UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT: Applies to unincorporated Shelby County.

Desiree Calderella provided a summary of the solar ordinance amendments as indicated in the meeting materials.

The Board opened the hearing for public comment.

Blake Newkirk, who lives at 3319 S Shelby 750 W, indicated that a solar company could request a variance to reduce the setback requirement from the road, that the ordinance also requires a large setback from development in the A3 District, and that the setback requirement protects neighbors. She indicated that she has not seen any other industry seek to make decisions on the items that the County chooses to include in its ordinance.

Jeff Clark, who lives at 5871 N 300 E, asked who would be responsible for maintaining required landscaping. He asked if the County had received any feedback from Mathies landscaping regarding appropriate species of trees.

Jared Wren, Senior Manager of Development and Stakeholder Engagement with Hecate Energy, posed a list of questions to the Board (see attached).

Kyle Barlow, who lives at 2688 S 625 W, indicated that the County has the right to choose what type of development it allows in the County. He played a video demonstrating the sound of pile driving heard at a quarter mile to show the importance of implementing solar project setbacks.

Jane Thurston, who lives at 6440 N 700 E, asked if a waived setback by one property owner could result in location of a facility closer to an adjacent property owner who has not agreed to waive the setback.

Rachael Barlow, who lives at 2688 S 625 W, expressed support for the setback requirement included in the ordinance amendment. She suggested adding baseline well testing to the ordinance. She referenced an issue with contamination of a residential well in Posey County due to trenching associated with a solar project. She recommended not lifting the moratorium on solar development until the County updates its Drainage Ordinance.

Zonda Stead, who lives at 4444 S 600 W, indicated that neighbors of the Speedway Solar project have expressed concern with noise during construction of the facility.

Justin Parker, who lives in Jackson Township, expressed concern that Hecate had asked the Board questions as a way to threaten the Board.

Jane Thurston, who lives at 6440 N 700 E, expressed concern with the drainage issues caused by the Speedway Solar project.

The Board closed the public comment portion of the hearing.

Desiree Calderella addressed questions asked during the public comment portion of the

hearing. She explained that all property owners within a setback area would need to agree to waive the setback in order for the setback to be waived. She explained that Mathies Landscaping had determined that the proposed landscaping would provide a healthy, visual buffer and recommended not specifying species of trees. She explained that the ordinance requires the solar project owner to maintain landscaping. She explained that the items outlined in Section 3.12 of the ordinance amendment referenced by Hecate provide broad guidance to the Plan Commission and County Commissioners when making a decision on a rezoning. She indicated that most of the other questions posed by Hecate relate to economic considerations rather than zoning considerations. She explained that Indiana Code allows for establishment of zoning overlay districts and that an overlay district does not constitute spot zoning.

Megan Hart asked clarifying questions about the responsibility for maintenance of landscaping.

Jeff Powell asked clarifying questions about the elements of a solar facility which must comply with the setback requirement and about the requirements for placement of landscaping.

Megan Hart noted that the proposed ordinance no longer has a requirement for placement of the required landscaping within 15 feet of the property line.

Desiree Calderella recommended amending Section 3.15 F 1 to state: Evergreen Trees: One (1) evergreen tree shall be planted for every five (5) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line. All required evergreen trees shall be at least five (5) feet in height at the time of planting. Any tree designated by the Zoning Administrator as an invasive species or with poor characteristics for a location shall not be permitted

In response to the questions submitted by Hecate, Jason Abel asked if the ordinance violates any legally recognized property rights.

Jason Clark explained that he cannot guarantee that the ordinance does not violate any established property rights, however, that the Plan Commission has the prevue to make a recommendation on the ordinance because the Board has gone through a deliberate process to create a well-reasoned and rationally based ordinance.

In response to the questions submitted by Hecate, Jason Abel asked if the ordinance bans any types of industry or economic development.

Jason Clark indicated that the ordinance does not appear to ban any types of industry or economic development.

In response to the questions submitted by Hecate, Jason Abel asked if the ordinance

creates winners or losers in a clear defacto manner with regards to zoning in Shelby County.

Jason Clark explained that any individual zoning petition that comes before the Board resulting in a decision in a sense has a winner and a loser. However, the ordinance establishes a set of rules, rather than rendering a decision on an individual petition.

Megan Hart recommended amending sections 3.15 A C 2 and 3.15 A F 2 to replace the words ‘in perpetuity’ with ‘for the life of the CSES Overlay District’.

Megan Hart read a statement into the record (see attached). She recommended adding a section to the ordinance “CSES District Size: cumulative area of all land within the CSES Overlay District shall be limited to 1% of the acres of Total cropland in Shelby County, Indiana as determined by the latest available data provided by the Census of Agriculture, which is conducted by law under the “Census of Agriculture Act of 1997,” Public Law 105- 113 (Title 7, United States Code, Section 2204g). Additionally, only 1 individual CSES project shall be permitted within a 10-year period, beginning at the date of final CSES Overlay District approval of the first project.”

Charity Mohr explained that members of the community who had attended a recent candidate forum had expressed concern due to the unknowns regarding development and long-term impacts on solar projects. She emphasized that the County should have standards for road use agreements.

Desiree Calderella explained that the ordinance requires a road use agreement, however, delegates determination of the specific standards to the County Commissioners because road use falls under the prevue of the Highway Department rather than zoning officials.

Jeff Powell indicated that the County should consider updating the Drainage Ordinance.

Kevin Carson spoke about the public records request submitted by Hecate after the previous Plan Commission meeting.

Megan Hart made a motion to make the following amendments to the presented ordinance:

- **Amend Section 3.15 C to replace the words ‘in perpetuity’ with ‘for the life of the CSES Overlay District’.**
- **Amend Section 3.15 A F 2 to replace the words ‘in perpetuity’ with ‘for the life of the CSES Overlay District’.**

- Amend Section 3.15 F 1 to state: Evergreen Trees: One (1) evergreen tree shall be planted for every five (5) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line. All required evergreen trees shall be at least five (5) feet in height at the time of planting. Any tree designated by the Zoning Administrator as an invasive species or with poor characteristics for a location shall not be permitted.
- Add a section titled CSES District Size: The cumulative area of all land within the CSES Overlay District shall be limited to one-percent (1%) of the acres of Total cropland in Shelby County, Indiana as determined by the latest available data provided by the Census of Agriculture, which is conducted by law under the “Census of Agriculture Act of 1997,” Public Law 105- 113 (Title 7, United States Code, Section 2204g). Additionally, only one (1) individual CSES project shall be permitted within a ten (10) year period, beginning at the date of final CSES Overlay District approval of the first project.

Kevin Carson indicated that he would favor restricting the size of a project to less acreage. However, he seconded the motion. **The motion was approved.**

The Board discussed the process for adoption of the ordinance by the Commissioners and options regarding extending the Solar Moratorium.

Charity Mohr asked if the ordinance limits the hours of operation during construction of a solar facility.

Desiree Calderella explained that the County Commissioners have a noise ordinance that limits hours of operation during construction.

Megan Hart made a motion of vote on the Solar Ordinance as presented, with the amendments approved in the previous motion, and Charity Mohr seconded that motion. **The ordinance with amendments was APPROVED 6-1**, with Terry Smith casting the dissenting vote.

New Business:

None.

Discussion:

Megan Hart and Charity Mohr encouraged the Commissioners to update the Drainage Ordinance and to implement standards for Road Use Agreements prior to lifting the Solar Moratorium.

Jeff Powell agreed that the County could review the drainage ordinance prior to any proposed solar project moving forward.

Adjournment:

With no further business to come before the Board, Jason Abel made a motion to adjourn. Charity Mohr seconded that motion. The meeting was adjourned.

Terry Smith
President

Date

Jason Abel
Secretary

Date

Questions for Shelby Co Plan Commission from Hecate Energy

Hecate Energy seeks to be a good partner and engage with Shelby County stakeholders in a transparent way. To that end, Hecate Energy's project team and legal counsel have reviewed the proposed redline changes and are seeking a few clarifications.

Regarding Section 3.12:

- How does the PC define "sparsely populated rural areas"?
- How does the PC define "industrial areas along the I-74 corridor"?
- How does the PC define "protected from harm and destruction"?

General Clarifying Questions:

When drafting this redline ordinance, what consideration did the PC give to economic benefits, and the potential loss of revenue associated with a more restrictive ordinance?

When drafting this ordinance, to what extent did the PC consider the property rights of landowners to freely enter into commonplace commercial and residential real estate transactions with solar companies?

Does PC plan to offset lost revenue of landowners who are unable to participate in a solar project due to the nature of the proposed setbacks?

What consideration did the PC give to the potential impacts of increased electricity prices for Indiana residents due to a lack of generation capacity? Put differently, less supply and more demand equates to higher electricity prices. Was this part of the methodology by which this redline was drafted?

Does the PC have any concerns related to the drafting of an ordinance excluding specific industries setting precedents that could be used to ban or inhibit other economic development in Shelby County?

If the ordinance is adopted as drafted, does the PC have a concern related to the implementation of this "spot zoning" style approval process setting precedents for picking winners and losers in Shelby County?

Megan Hart Statement

Shelby County's Comprehensive Plan states on page 95 under Land Use Goal #2: Ensure future development decisions enhance and don't detract from our rural character and agricultural function. Right below that it lists the following 2 strategies: 1: Preserve prime farm land and agricultural field road frontage in rural areas of the county. 2: Conserve agricultural land. Shelby County Indiana only has 199,029 acres of tillable land per the 2022 Census of Agriculture. That number will never increase. There will always be houses that need to be built, existing businesses that need to expand, and new business that bring jobs and value to the communities of Shelby County. We as a plan commission must be responsible when we look at the ordinance for the commercial solar energy systems and not forget how massive these projects are. There are no other types of development that Shelby County has seen that completely change the land forever at this scale.

In March of 2019 Speedway Solar was approved for 1792 total acres for the project. Based on Shelby County Plan Commission Meeting Minutes from 2019 to today only 1205 acres of land have been rezoned from A1 and A2 to something other than agriculture. That does not include the Speedway Solar project as it was not rezoned. So, one project removed 1.5 times more land from ag use than nearly 6 years of rezoning. That is significant.

Shelby County has been a rural farming community for generations. Shelby County is attractive to families, because of that rural living atmosphere, not because of our solar energy generating facilities. Solar is new. It is an industry that is constantly changing and improving. It will continue to do so over time, which is great. It is vital that Shelby County consider this type of development very carefully and slowly, because of the massive amount of land these projects consume. The projects can take many years to complete construction and start generating electricity. For reference Speedway Solar was approved 5.5 years ago and still has not generated electricity. We also must take into consideration that once a project has started generating electricity, we need time to evaluate the impacts on the community and environment along with time to make a plan to move forward if an issue arises. An example would be that drainage issues don't always show themselves immediately. It can take a few years to understand the extent of an issue well enough remedy it and to put a plan in place for the future. Additionally, technology, efficiency, and safety of solar power generation will improve over time. For those reasons I suggest that we only allow CSES projects to be installed slowly over time. If we don't do that, then we can wipe out 5% or more of our irreplaceable tillable land in a matter of a few years. It would take decades to remove that same amount of farmland by building homes and businesses in the county.

I also recommend that only 1% of Shelby County's tillable land be allowed to be removed from ag use per Commercial solar energy systems project. Speedway Solar took 0.812% of Shelby County's tillable land according to the latest Census of Agriculture data available at the time of the project approval.

I recommend that we add a section to the overlay district ordinance titled CSES District Size. In that section I would like to add *the cumulative area of all land within the CSES Overlay District shall be limited to 1% of the acres of Total cropland in Shelby County, Indiana as determined by the latest available data provided by the Census of Agriculture, which is conducted by law under the "Census of Agriculture Act of 1997," Public Law 105- 113 (Title 7, United States Code, Section 2204g). Additionally, only 1 individual CSES project shall be permitted within a 10 year period, beginning at the date of final CSES Overlay District approval of the first project.*