

Henderson City-County  
Planning Commission  
November 5, 2019

The Henderson City-County Planning Commission held a meeting November 5, 2019 at 6:00 p.m., at the Henderson Municipal Center, 222 First Street, 3rd floor assembly room. Members present: Chairman Herb McKee, David Williams, Kevin Herron, David Dixon, Gary Gibson, Kevin Richard, Rodney Thomas, Mac Arnold and Attorney Tommy Joe Fridy. Doug Bell, Gray Hodge, Dickie Johnson, and Bobbie Jarrett were absent. Staff present: Director Brian Bishop, Claudia Wayne, Theresa Curtis, Heather Lauderdale and Chris Raymer.

***MEETING BEGAN AT 6 PM***

Chairman McKee: Let's call this November 5, 2019 meeting of the Henderson City-County Planning Commission to order.

Madame Clerk, will you please call the roll?

Madame Clerk, do we have a quorum?

Heather Lauderdale: Yes.

Chairman McKee: So mote it be.

The Chair will entertain a motion to go into ***Public Hearing.***

***MOTION WAS MADE BY KEVIN RICHARD AND SECONDED BY GARY GIBSON TO GO INTO PUBLIC HEARING.***

Chairman McKee: We have a motion and a second. Any discussion?  
All in favor, signify by saying aye.

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

Chairman McKee: We are in public hearing.

First on the agenda in public hearing are the minutes from the October 1, 2019 meeting. If you've had a chance to review those, are there any additions or corrections?

***MOTION WAS MADE BY KEVIN RICHARD AND SECONDED BY RODNEY THOMAS TO APPROVE THE OCTOBER 1, 2019 MINUTES AS DISTRIBUTED.***

Chairman McKee: We have a motion and a second. Any discussion? All those in favor, signify by saying aye.

***ALL: AYE***

Chairman McKee: Any opposed?

***OPPOSED: NONE***

Chairman McKee: Next on the agenda Amendments to Henderson City Zoning Ordinance, Appendix A Zoning.

Mr. Bishop, can you please explain what you're asking us to do?

Brian Bishop: Yes sir.

If you guys would, bear with me. What I'll do is read the exact language of what we'll be doing officially, and then I'll give you the Laymen's Terms of it.

Item B on the Public Hearing Items: Amendments to Henderson City Zoning Ordinance, Appendix A Zoning.

The Planning Commission will consider adding Article 4, Section 4.22, Solar Energy System. Pursuant to the direction of the Board of Commissioners, to have the Planning Commission hold a public hearing of the zoning ordinance to determine the appropriateness of amending the ordinance to allow solar energy systems and any necessary change to this section pursuant to Kentucky Revised Statute 100.211.

Essentially what has happened on October 8, the Board of Commissioners has requested that we hold a public hearing on the proposed language that you will find in your packet.

The proposed language would govern the placement of Solar Energy Systems (SES). There are roughly three (3) different systems that we would look at. This is a very broad view of those systems.

So, are there any questions on the general issue of what we're doing here?

Chairman McKee: These are commercial installations, not individual?

Brian Bishop: They will govern both.

Chairman McKee: Both?

Brian Bishop: Correct.

Before I get started, I'll give you kind of the Cliff Notes versions of the ordinance text. Do you guys have any specific questions before we get started; before we start digging in?

David Dixon: Are these systems regulated in any way currently?

Brian Bishop: They are sir.

David Dixon: So, this is in addition to their current regulations?

Brian Bishop: I believe there would be state and federal regulations that would govern these systems. We would also have local reviews on certain items. If you will bear with me one second, I will give you a heads up on that.

David Dixon: Ok.

Brian Bishop: From the general standpoint, the Planning Commission Staff conferred with the City Attorney and the Codes Department. So, Mr. Ray Nix is here as well if you have any questions, he can help elaborate on that as well.

The Ordinance will address three (3) levels of Solar Energy Systems (SES).

Level 1 systems are largely going to be roof-mounted solar systems which is what you would see on someone's house or building so they can generate electricity for their own use or that would be eventually put back into the grid.

We also looked at what is called Solar Shingles in the City version. We thought this may be more appropriate for the city where you have more dense, urban uses.

The Level 1 SES's are not allowed in RF-1 and RF-2 zones, this is mainly for aesthetic reasons; that's the Riverfront zone where we would like that to be a more natural environment.

Level 1 SES's are allowed in other aesthetically sensitive zones such as the Gateway zone, Central Business zone, things like that provided they give adequate screening and that they match the architectural nature of the building that they will be going on.

Level 2 SES's are going to be ground-mounted systems that you would see; an array so to speak. Those would be allowed in the Agricultural and both Industrial zones. In the AG zone, they shall not exceed ½ acre, and they will require a building permit from the City Codes staff.

Level 2 will also not exceed 10 acres in the Industrial Zone. If they do that, that would come back to the Planning Commission for a full site review; a full site plan, like we would if it were a commercial use.

Commissioner Williams, you have a puzzled look. Is there anything...

David Williams: Are you saying if it exceeds 10 acres in size it will come to us or...?

Brian Bishop: Up to. They cannot exceed 10 acres but any industrial site plan with solar panels; a solar panel farm would come back to the Planning Commission for approval.

David Dixon: So, anything between ½ an acre and 10?

Brian Bishop: It depends on which zone.

In an Ag zone, up to ½ acre would be under the review of the City Codes staff. Any industrial zone up to 10 acres would be the limit but that still comes back to the Planning Commission whether it's one acre or 10 acres.

David Dixon: Ok.

David Williams: Let me ask a question. An SES, that's a use ½ acre in an AG zone, right?

Brian Bishop: It's hard to describe it like that.

David Williams: What I'm saying is, if you had a 100 acre farm, how many of these things could you put on that 100 acre farm?

Brian Bishop: It depends on what level you're talking about.

The Level 2 that we're discussing right now, you would only be allowed ½ acre worth of panels.

David Dixon: Because you're in an Agricultural zone.

Brian Bishop: Correct.

David Williams: Now, if you subdivided your farm, you could have more, you could put one in each subdivision?

Brian Bishop: Yes.

David Williams: Ok.

Brian Bishop: A little side note in the City; the City does not have large tracts like that so we don't think that's anything we would address in the City normally, we're going to see more of that in the County; which is probably where we're going to have the most discussion here tonight.

David Williams: There is a fairly large AG lot in the City down along Canoe Creek.

Brian Bishop: Is everybody ok, so far?

David Dixon: I'm sorry, can we go back to Level 1 real quick?

Brian Bishop: Sure.

David Dixon: Item 4 here, Level 1 Solar Energy Systems are allowable in all other zones. So, we're talking Commercial, R-1, and R-2?

Brian Bishop: Correct.

David Dixon: Anything that's not mentioned in the previous three points.

Brian Bishop: Yes sir.

David Dixon: Thank you.

Brian Bishop: One thing that we would do is we would limit the panels themselves to 25'. The Ordinance specifically does not address utility poles and things like that that would be needed for the systems; and that is due largely to aesthetics. We would not want neighbors looking out and seeing just huge panels, solar panels.

Everybody good so far? I know this is weird, we're throwing a lot of new stuff at you.

Chairman McKee: When you say good, do you mean do we all understand what you're saying?

Brian Bishop: Yes.

Chairman McKee: Very good, go ahead.

David Dixon: You mean 25' in height?

Brian Bishop: Yes, measured from the highest point on the property.

Rodney Thomas: Say that again.

David Williams: Yeah, say that again now. Are you saying 25' in height including the ground elevation?

Brian Bishop: Yes. You would start at the base of the panel, the pole for example, and then measure up 25'.

David Williams: Ok.

Brian Bishop: Does everyone understand so far?

The height level would not exceed 25'. Setback requirements shall meet the setback in the zone in which they are located.

We would not allow any signs, other than the signs required for emergency contact information.

Lighting on the Level 2 would not be intrusive and would be prohibited unless it's required by any state or federal regulations. Basically, we don't want large eyesores.

David Dixon: In point 8, under the Level 2 category it references lighting on Level 3; should that not say Level 2?

Brian Bishop: I believe that's a type-o.

David Williams: It does allow for safety lighting?

Brian Bishop: Correct.

David Williams: You wouldn't want someone running across the field and running into it.

Brian Bishop: Moving on to Level 3. Level 3's are only allowed in the AG and Industrial zones. Again, the height shall not exceed 25' unless it includes poles, antennas, or anything needed for the project.

Setbacks here will be more restrictive. All equipment must be at least 50' from a property line. If there are interior property lines, let's say two properties are adjacent to one another, we would not require setback

lines from that; they could go closer to the line. But on a property line that's on the exterior of the property, you would be looking at 50'.

All equipment shall be at least 100' away from a residential structure. If it is near a residential structure, a screen requirement would be in place. You would have an 8' fence with double rows of staggered pine trees, and the pine trees must be located on the outside of the fence. The use of barbed wire and fences will not be allowed when it is adjacent to residential property.

All Level 3 SES's; lighting shall not be intrusive, and will be prohibited except that required by the federal or state regulations.

Again, anything in the Industrial zone would come to the Planning Commission for full site plan approval that we would be used to seeing. With that site plan, we would have a de-commissioning plan.

A lot of us may remember the Green Coal Company episode that we had where the coal company packed up and left, and we were left with a very large hole that was very destructive and not beneficial to the county. So, what we would require would be a 1% Security Bond for the entire cost of their construction project. That would be housed at the Planning Commission office like we would any other bonding if it were a construction project like a subdivision where we bond the streets, water lines, and things like that; it would be handled in a similar nature.

The de-commissioning plan will take effect when there are at least 12 months of electrical general not happening, and there are some other details in there about that.

So, that's a really, really brief version of the Ordinance. Is there anything I have left out or anything you would like to elaborate on?

David Williams: Brian, I do have a question. As far as de-commissioning in 12 months of non-operation, can we allow for if some reason it's just not advantageous to operate for 12 months or so but they

maintained the property at the top level, they don't let it degenerate with the intention of starting it back up again?

Brian Bishop: We did not address that directly but from a staff standpoint, if it's something that we've had constant communication with the company and we realize what's going on, I don't think that would be an issue from a staff's standpoint.

Mac Arnold: Brian, so far we've discussed this is more for individual or private development, correct?

Brian Bishop: The Level 1 are really going to deal with that.

Mac Arnold: Alright, public utilities? It doesn't apply to any of those does it? If they decide to go solar...

Brian Bishop: I would probably let Mr. Heimgartner address that if he doesn't mind.

Chairman McKee: Would you please state your name and address for the record sir?

Chris Heimgartner: Chris Heimgartner, I'm the General Manager for the Henderson Municipal Power and Light.

So, typically...

Chairman McKee: Could you please give us your address for the record?

Chris Heimgartner: 100 Fifth Street, Henderson.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, and nothing but the truth so help you?

Chris Heimgartner: I do.

Chairman McKee: Please proceed.

Chris Heimgartner: Thank you.

So, a public utility typically would not make a direct investment in a Solar Plant simply because we don't pay taxes, so the tax breaks don't benefit us. So, the economics of it just doesn't work out.

Typically what will happen is a public utility such as Henderson Municipal will go ahead and contract with a third party who would then build the power plant, and then we would take the power from them under contract for 20-25 years. So, it would be a third party that owns and operates the plant, and the utility, typically is the receiver of the power.

Brian Bishop: Mac, does that answer your question?

Mac Arnold: Yeah. Would the size of these referred to be adequate for public utilities to generate enough off of them to make it worthwhile?

Chris Heimgartner: So, I think when you look at the experience of California for instance, it's really clear that if you have enough small units, it matters. You're looking at 25% of their total power generated from residential rooftops. So, these are not big installations each but there's millions of them; enough small ones do matter.

The type of utility scale installation we're looking at is typically on the order of 25 to 250 megawatts. The latest information that I've seen is it's between 8-10 acres per megawatt. So, if you want 100 megawatts, you're looking at about a thousand acres generally used on the upper end. So, Level 3 SES's would be the ones that we would be looking at as a utility.

Mac Arnold: Ok.

Chairman McKee: Quick question. If you had a contract, would the contract with the company be to continually generate electricity for the 20-25 year period?

Chris Heimgartner: Not exactly.

What would happen is we would go ahead and contract with them at a set price or an escalating price, it depends on what would be acceptable to both parties for the output of the plant; whatever that may be.

So, you don't contract for a fixed amount of power on a given day because it could be cloudy, clearly you're not going to get much generation at night so what you look at is we agree to take power from a particular vendor under contract at say \$35 per megawatt hour, just to throw out a number. We would pay them for every megawatt hour they generated before the term of the contract. Some vendors want to have that number escalate over time and others want just a flat fee for the term of the contract, it all depends on who you're contracting with.

Chairman McKee: If for some reason they are not generating power for 12 continuous months, none, zero, not a fluctuating amount but zero, will you still be under contract with them if they fired back up again to continue to sell you power?

Chris Heimgartner: Probably. I think that's an attorney question.

Chairman McKee: I'm trying to determine if Dave's question was something that we need to be concerned about; looks like it is.

Chris Heimgartner: So the way these plants cease operations if you will, the panels themselves get less efficient over time, and this isn't a huge drop off so, at the end of 20-25 years it may be producing 75%-80% of its initial output. So there's a curb where these things start to produce less, and less, and less. There comes a point where the owner of the facility would say, gosh, it's not worth my while to run people out here to do maintenance on it anymore, we're at a break-even point, and then they would notify us that they want to cease the contract. Then, obviously the County would be notified, and they would have to clean up the site.

More likely what will happen is they get to the end of that, the panels start to loose efficiency, and lo and behold their maintenance guys are in

there replacing panels and the output stays relatively flat. These are good deals for both the utilities and the generator.

Chairman McKee: More questions?

You'll be hanging around won't you?

Chris Heimgartner: I'll be here.

Chairman McKee: Thank you sir.

David Dixon: I have another question Mr. Chairman for staff.

Chairman McKee: Please do.

David Dixon: How many locations do we have in the city that would fall into the Industrial zone? It could be 10 acres in size; where these projects might land.

Brian Bishop: To get that number, I would need to get to GIS. I wouldn't say there is a lot, you have some sites at the end of Borax Drive that the city currently owns, which is probably not what the city would want to do to that property; they want to see industrial sites there, not solar farms.

It's a limited amount, it's not a lot but there are probably a few.

David Dixon: Ok.

Chairman McKee: Further questions for staff, or anybody for that matter?

Rodney Thomas: Do you have any pictures of what these things look like on homes?

Brian Bishop: We could look some up if you like.

Rodney Thomas: We don't have to do it now, I just wondered how big of an eyesore it is.

Brian Bishop: Chris, would you mind answering that?

Chairman McKee: On homes?

Rodney Thomas: On homes, yes.

Chairman McKee: On rooftops?

Chris Heimgartner: I think they're beautiful, they're absolutely stunning! They add to every property.

Brian Bishop: They're aesthetically pleasing.

Chris Heimgartner: They are aesthetically pleasing. It depends on how they're designed. It depends on how the house faces because you're going to want it on southwestern exposure. Is it going to be the same color as the composite shingles that are underneath it? How much is it going to be raised off the roof? Usually they're raised like 6" to 8", so they're really just flat on the roof and really not that noticeable.

Brian Bishop: What's the size of a typical panel?

Chris Heimgartner: Well, a typical panel is about 2' x 4'.

Rodney Thomas: Ok. What about the ones on the ground, same thing?

Chris Heimgartner: No, they can be much larger.

There are standard sizes, and I think Mr. Williams has one; he's got one that's made from 2'x4' panels but they're set up on a much larger array. So, when you put them on the ground what you mount them on limits what size it's going to be.

Rodney Thomas: Thank you.

Brian Bishop: Commissioner Thomas, one thing if you'll look at the Level 1 systems, we want to account for solar shingles, which is probably be something coming in the future because they're smaller and more aesthetically pleasing. So, that's something else that would address your concern; something that would still look nice and not be detrimental to the neighbors but still efficient and useable.

Mac Arnold: Brian, something just crossed my mind. Basically, what we're discussing here is solar electrical energy. I have seen solar panels basically heating like swimming pools, using them for the plumbing process; will that be encompassed in...

Brian Bishop: That is not anything we've addressed. That would be independent of this.

Mac Arnold: If someone did that, they wouldn't have to worry about complying with these regulations, right?

Brian Bishop: No, not based on this ordinance.

Mac Arnold: Ok.

Chairman McKee: Out of curiosity if for some reason what we're about to do, turns out to have some part of it that is not acceptable, the Planning Commission could initiate an amendment to this and forward it then to the City for acceptance?

Brian Bishop: That is correct. We could originate a zoning text amendment.

Chairman McKee: Thank you.

David Dixon: We're asking in these Level 1 systems.... First of all, these panels, do they have to follow the line of the roof?

Brian Bishop: Not necessarily.

David Dixon: Can they stand up on their own?

Brian Bishop: Not necessarily.

David Dixon: They could stand up then, independently away from the rooftop?

Brian Bishop: They could.

David Dixon: Then, we're asking them to be enclosed or screened?

Brian Bishop: Correct.

David Dixon: To insure that they're not visible from street level.

Brian Bishop: Depending on the zone, correct.

Like say if it was in the Central Business District, that way it would be more aesthetically pleasing, and not take away from the historical nature of downtown.

David Williams: So, if we looked at the 100 block between First and Second Street on the west side, how do you envision being able to put solar panels up there?

Brian Bishop: That's a good question. I think a lot of that is going to be dependent on the roofline.

Chairman McKee: Chris, feel free to...

Brian Bishop: Answer if I'm incorrect here.

You were talking about just traditional, one family structure with...

David Williams: No, I'm talking about the commercial district.

Brian Bishop: Oh, the Central Business District?

David Williams: Yes.

Brian Bishop: A lot of that, I think, Chris make sure I'm saying this correctly, those would have roofs that are flat, so those panels would be mounted flat. So, that way they get maximum exposure from the sun at all angles. Is that right, Chris?

Chris Heimgartner: Well, those are typically mounted on what they call single axis trackers so they would be up at an angle but they would be set back from the edge of the roof. So, they likely would not be visible from street level at all.

Brian Bishop: But they would adjust to a flat...

Chris Heimgartner: No, they would just be at an angle and track the sun, on a single axis tracker.

Brian Bishop: But if was a flat roof, would anyone ever have them on a flat....

Chris Heimgartner: (Shaking his head no)

David Dixon: I've never seen a flat one.

Chris Heimgartner: When you've got an angled roof, a lot of times, in fact every time I've ever seen one, and I've seen literally thousands of them but if there is an angled roof, they're mounted flat on the roof. But if it's a flat roof, they've got them on an angled rack.

David Williams: So, we aren't concerned necessarily with the panels being visible from another building, on top of another building?

Brian Bishop: Not necessarily. Say for example we're looking out that way, it's going to be hard to miss them. But on the street level, we wouldn't want people looking up and seeing them, taking away from the historical nature of the building.

Like for example, if you're in the Soaper Building, you're going to see every one on the rooftops.

David Williams: I was just thinking, you could probably see it from Indiana as well. I mean, no matter how low you put them, you can stand on the other side of the river and see the tops of the building over there.

David Dixon: That's why we're making a distinction in these zones, correct?

Brian Bishop: Correct.

Like for example, RF-1 and RF-3 zones which are more aesthetic and more natural, we're not allowing them there at all because we don't want to detract from the natural beauty of the river.

David Williams: Let me ask you, how financially feasible would it be for someone to own a downtown building...

Rodney Thomas: Like me.

David Williams: Yeah, a good case in point...to put a few solar panels up there that's not visible from the street. How feasible is that?

Chris Heimgartner: The question you're asking me is what kind of payback period you'd have and whether or not it would meet the individual's (inaudible) rate, that's probably what you're asking.

David Williams: What I'm asking is every building owner downtown going to want to mount solar panels on the tops of their buildings.

Chris Heimgartner: I seriously doubt it.

David Williams: There's no financial incentive there?

Chris Heimgartner: The first thing is, you look at where around the country these things have been installed and where the market penetrations seem very high, it's typically where your utility rates are very, very high. That's simply not the case here in the Midwest, and certainly not the case in Henderson.

So, your payback is lengthened out because the cost of power here is so much less.

The second thing is you're going to have to retro-fit the electrical systems on a lot of those buildings to accommodate it, you may not just be able to run circuit up there, you may have to replace main switches and there is going to be a lot of work to do. So, unless you're building a new building it gets more expensive pretty quickly.

Brian Bishop: Also that's assuming that the structures are substantial enough to hold the additional weight.

Rodney Thomas: That's a good point.

David Williams: We're not looking at Space Odyssey 2001 then?

Chris Heimgartner: No, I don't think so. I do hope to see as new construction happens around not just Henderson but around the whole country that a lot of solar gets integrated into it because that's the time to do it, when it's new. Clearly the riverfront area, downtown area; that's not the case. We've got historic buildings there where we have to preserve the character of the area.

Chairman McKee: Thank you Chris.

Chris Heimgartner: Thank you.

Chairman McKee: Any other questions?

David Dixon: Just so everybody is understanding this, perhaps it would be good to explain what is RF-1, RF-2, RF-3, and RF-4? What's the difference, where's it at?

Brian Bishop: Ray? Do you have your zoning ordinances handy? Would you mind answering that question?

Ray Nix: Ray Nix.

Chairman McKee: And your address please?

Ray Nix: Barret Court, Code Enforcement office.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, and nothing but the truth?

Ray Nix: I do.

Chairman McKee: Please proceed, Mr. Nix.

Ray Nix: Riverfront 1 (RF-1) is considered recreation; active and passive.

Riverfront 3 (RF-3) is strictly green space that we have along the Riverwalk and downtown along the river.

Riverfront 2 (RF-2) is considered commercial property in and along Water Street.

Riverfront 4 (RF-4) is the residential component that's in and along Water Street.

So, therein lies those four, different Riverfront zones.

Chairman McKee: How far north does it go? The golf course?

Ray Nix: We've got the colors up here that we can show. (Referring to the GIS map projected on the large screen)

Chairman McKee: Does it go to Twelfth?

Ray Nix: So, for instance, the parks along the river would be Riverfront 1. You can imagine any of the different components of Water Street where we have commercial developments vs. residential developments, those would be the R-2 and R-4.

So, absolutely prohibited in the recreation and green space zones. Does that answer the question?

David Dixon: Thank you.

Chairman McKee: Thank you Mr. Nix.

Brian Bishop: Chairman McKee I believe you were correct. Twelfth Street is the end of that zone.

Chairman McKee: Thank you sir.

Any other questions, commissioner?

David Dixon: No, thank you.

Chairman McKee: Any other questions?

Is there anyone here who would like to speak for or against?

Mr. McCollom? Would you please state your name and address for the record.

Charlie McCollom: My name is Charlie McCollom, my address is 2829 Tippicanoe here in Henderson.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, so help you?

Charlie McCollom: I do.

Chairman McKee: Please proceed sir.

Charlie McCollom: I think your language is overly broad, and I think it's too vague. You know, what is not intrusive? Somebody's got to make that decision. You're talking about lights.

If I've got a piece of equipment, I want to be able to put a light on it, a nightlight at least. I do it on my farm, ok.

So, this is not clear as to what I can do and what I can't do. If it's my farm, I should be able to do certain things to it without asking anybody. I guess I'm a little bit of a Libertarian, I mean, it's mine, and that's what I want to do with it.

You talk about the person that has to clean this up afterwards, if I'm the Lessor and I don't care right now, they're letting me use the power off of it because it's not producing enough, I want to keep it I don't necessarily taken down. That ought to be something I contracted with them, I should have some choices as a Lessor to be able to contract some of that information with them.

It's down to 55%, I think somebody told me today it goes down to three-tenths of a percent a year so, over a long period of time it goes down so now it's producing 50% of what it did. If I've got a farm and I can't sell it, and I want to use it for a while, why should I not be able to use that energy? What you're telling me, I think is I can't do what Mr. Williams did on his property and I would like to do that, ok. And I would like not to come and have a site plan, and do all this stuff.

Secondly, another thing is I don't want to build trees in front of it! That defeats the purpose of solar energy guys! You're creating more cost for the developers. I don't particularly want a pine tree that grows really, really tall, there's got to be something better you can do to do that.

Would we not be able to do this at The Farmer and the Frenchman; what we did?

Brian Bishop: I'm not sure why you're asking me.

Charlie McCollom: Because you're the Planning Commissioner and you're the one proposing this.

Brian Bishop: I'm not the Planning Commissioner, I'm the Planning Director.

Charlie McCollom: So you're the Planning Director, ok.

Brian Bishop: That's probably more of a question suited for Randy because he would be the zoning administrator, not the Planning Commission. I don't enforce.

Chairman McKee: Mr. Fridy?

Tommy Joe Fridy: The City Commission initiated this ordinance.

Charlie McCollom: But they didn't write this ordinance.

Tommy Joe Fridy: Well, we didn't write it.

Claudia Wayne: Yeah.

Charlie McCollom: Then where did you get it?

Tommy Joe Fridy: They got it somewhere or another.

Charlie McCollom: The City got it?

Tommy Joe Fridy: The City got it, I believe they did. I was not asked to participate in this.

Let me answer what I can.

Charlie McCollom: Please.

Tommy Joe Fridy: Then you can ask anyone you want to.

The City initiated this and asked the Planning Commission to hold a public hearing and make a recommendation.

Charlie McCollom: Ok.

Tommy Joe Fridy: To either consider public comment, make recommendations to change it if they choose, and send it back to the city. Now, there is a separate ordinance for the county.

So, unless your farm is in the county....

Charlie McCollom: It's not but a house may be, and I should be allowed to put on, like you were talking about the shingles; they're fantastic. You can't tell the difference in them unless you know what you're looking at. So, why should I be prohibited from doing that if I live on the river in Mac Arnold's house, or if I live over down here near Adams Street on the river, why should I not be able to put shingles on my roof if they're going to produce electricity? If I'm going to live there a long time, they last a long, long time; they last about 50 years. Why should I not be allowed to do that?

David Williams: Are we prohibiting shingles on the roof? I don't think we are.

Charlie McCollom: I thought you said you couldn't have it in those zones on the river?

Brian Bishop: Those are solar panels, not solar shingles.

Charlie McCollom: Ok, so you can do solar shingles. I can't put solar panels down below the bank of the river?

Brian Bishop: No. You can't put anything below the bank on the river right now that would still be floodplain regulated.

Charlie McCollom: It's above the floodplain, where I'm thinking of.

Brian Bishop: What's the zone? Is it RF-1 or RF-3?

Charlie McCollom: RF-1.

Brian Bishop: Here we go, Level 1 Solar Energy System, other than solar shingles.....Central Business.....Level 1 Solar Energy Systems are allowed in Riverfront-2 (RF-2) and Riverfront-4 (RF-4) zones.

So, you said RF-2 so they would be allowed in RF-2.

Charlie McCollom: It's RF-1, I think.

Brian Bishop: Ok, Solar Level 1 are prohibited in RF-1 and RF-2 zones.

Charlie McCollom: So I couldn't do it, that's what you're telling me?

Mac Arnold: I think what the difference is he's saying in the River District zone, and you're thinking of maybe R-1 zones.

Charlie McCollom: Next to your parents' house.

Mac Arnold: Ok, that would be R-1, that wouldn't be...

Brian Bishop: That's not Riverfront zoned. That's what we were talking about, the zoning.

Mac Arnold: That is in the downtown area.

Brian Bishop: Would you show the map again?

Charlie McCollom: That's ok. So, it's not the property on the river? I can put them in my backyard if I wanted to?

Brian Bishop: Yes.

Charlie McCollom: What's the reasoning for the barbed wire? What's the situation on that?

Brian Bishop: Safety.

Charlie McCollom: For who?

Brian Bishop: Children.

Charlie McCollom: I mean, every fence on my farm has barbed wire on the top rung, am I doing something wrong?

Brian Bishop: Again, you're confusing county with city.

Charlie McCollom: So, this isn't going to be in the county?

Brian Bishop: This the City Ordinance, not the County Ordinance.

Charlie McCollom: So the county's is not going to be that way?

Brian Bishop: The County has different proposed language that these folks are going to...

Claudia Wayne: Yeah.

Charlie McCollom: Not to be argumentative but I guess I am, your all's substations, I know the one on Fifth Street does not have barbed wire but I think the one on Hwy 41 A has barbed wire around the top of it. Are ya'll going to take that down?

Brian Bishop: Who's ya'll? We're not ya'll. That would be directed at Mr. Heimgartner.

Charlie McCollom: Are you all against having the barbed wire? I mean, I want to keep kids out of my property and I don't want them to damage my equipment or get hurt themselves.

Chris Heimgartner: With regards to a substation, you've got to take reasonable care to make sure people get in. The one at First Street, the fencing is constructed so that it's not climbable so there is no need to put anything up at the top.

If you've got a chain-linked substation, you don't want someone to be able to get up over the top, especially kids.

Charlie McCollom: You wouldn't want them to get into your power grid, would you?

Chris Heimgartner: It wouldn't be our power grid.

Charlie McCollom: If you owned a power grid, you wouldn't want people to be able to get into it. You don't want them to damage it, you don't want them to get electrocuted, you don't want them to get hurt, and you don't want them to damage your property.

Chris Heimgartner: It's a little different than a substation though. A substation has high voltage. There is only low voltage typically in the solar rays. So you're not really looking at the same level of danger.

Maybe I'm confused, but didn't it say there was no barbed wire allowed on fencing that was adjacent to residential property only.

Brian Bishop: Correct.

Chris Heimgartner: So, the rest of the perimeter could be barbed wire across the top.

Charlie McCollom: How far would you have to be away from the residential property?

Brian Bishop: We said one hundred feet.

Charlie McCollom: That's a long way. What's happened in most of our farms is people have cut off their five little lots whenever we did our planning and zoning. So, you've got residential property next to, wouldn't that be residential property there.

Brian Bishop: You're dealing with generalities, I can't answer general questions that you're spilling out there.

Charlie McCollom: Ok, go to 41 A, and look on my mother's farm, and tell me if that's not residential, and I can be more specific.

Brian Bishop: Again, you're discussing county versus city ordinance.

Charlie McCollom: Aren't we here on both of them?

Claudia Wayne: But we're just now doing... we haven't done the county ordinance yet. He just did the city.

Charlie McCollom: Ok.

Claudia Wayne: Ok, the county is next.

Charlie McCollom: Is that going to be a different hearing?

Claudia Wayne: No, it's tonight.

Tommy Joe Fridy: It is a different hearing...

Charlie McCollom: I understand. I apologize then. I thought we were basically doing them all at the same time and I understand.

So, I will let you all worry about the city then.

Brian Bishop: Thank you.

Chairman McKee: Would anyone else like to speak about this text amendment, the city version, model, serial number.

Mr. McCollom, could I please ask you a question?

Your comments are not directed at all towards the city version of this...

Charlie McCollom: They are, and I don't mean this in a bad way but you live on the river, my wife would like to have a house on the river. I don't really care to have a house on the river, I mean I guess it would be nice but I'm sort of happy where I am. But that doesn't mean that I won't move when my wife tells me to because that's pretty much what I do, I like to get along. So, it does concern me if I, and the house I'm referring to is David McBride's old house. I've talked to them maybe about buying it at some point in time when they're ready to move to Louisville. So, that does concern me because I like to be independent. I like to have my stuff. I've got a gas generator on my house, after the ice storm when you couldn't go to Wal-Mart or any place and buy gasoline because nobody had any electricity because the places were down, you

didn't have cash money then you were in trouble. So, I like to be prepared.

Chairman McKee: In the residential riverfront zones, shingles are allowed, correct?

Brian Bishop: I believe so.

Chairman McKee: Just not panels.

Brian Bishop: I don't believe that's accurate either.

Brian Bishop: I will read Level 1 because that's going to be most appropriate for what Magistrate McCollom was talking about.

1. Level 1 Solar Energy Systems are prohibited in the RF-1 and RF-3 zones.
2. Level 1 Solar Energy Systems, other than solar shingles are allowed in RF-2, RF-4, Central Business District, Gateway Zone, Henderson Innovative Planning District only if the SES is enclosed or screened to ensure that such features are not visible from street level and are compatible to the architectural style of the building.
3. Level 1 Solar Energy Systems which are solar shingles if visible from the street are a conditional use in RF-2, R-4, CBD, Gateway Zone, and Henderson Innovative Planning District and must match the existing facade and architecture of the building.
4. Level 1 Solar Energy Systems are allowable in all other zones other than those listed in subsections (1) and (2) above.

Chairman McKee: Let's go back to the panels in the Residential Riverfront zones particularly. Are they allowed and under what conditions are they allowed?

Brian Bishop: They are not allowed in RF-1 and RF-3.

Chairman McKee: Not allowed.

Kevin Herron: Which is greenspace and recreational areas.

Brian Bishop: Which is most likely going to be publically owned anyway.

Kevin Herron: Right.

Brian Bishop: In RF-2, RF-4, CBD, Gateway zone, Henderson Innovative Planning District are allowed as long as they are screened to insure that such features are not visible from street level.

Chairman McKee: So if they are on the rooftop in a residence, they are not allowed?

Brian Bishop: Which zone are we talking about?

Chairman McKee: RF-2 or RF-4.

Brian Bishop: RF-2 they are allowed as long as they are screened to ensure that such features are not visible from street level, and are compatible to the architectural style of the building.

Chairman McKee: RF-2 is commercial?

Brian Bishop: Yes.

Chairman McKee: What about RF-4?

Brian Bishop: RF-4 is residential. Is that correct, Ray?

Ray Nix: That's correct.

Chairman McKee: Not allowed.

Brian Bishop: They are allowed if they're screened appropriately.

Mac Arnold: Not the shingles, that's just the panels.

Brian Bishop: That's the panels.

Chairman McKee: Just out of curiosity when you contemplated this, how do you screen rooftop panels so you couldn't see them? How would you envision doing that?

Brian Bishop: There could be multiple ways. If it was a flat roof you could provide screening that way say, via plantings.

Chairman McKee: Most residential roofs are hip roofs though, they're not flat.

Brian Bishop: Correct.

Chairman McKee: So, how would you screen it?

Brian Bishop: Most likely those would be done on an angle. Mr. Heimgartner is that why if it were a pitched roof, would you have the panel parallel to the roof?

Chris Heimgartner: You put it on the western face. So, if you can't see the western face from the street, you just mount it flush like you would ordinarily and you would be fine. It would literally be blocked by the building itself.

Chairman McKee: Thank you.

Mr. McCollom, does that cover your concerns?

Charlie McCollom: Sort of. I guess the city they wouldn't be obligated to comply with this, they're exempt from planning and zoning am I correct?

Tommy Joe Fridy: Yes.

Charlie McCollom: But because one thing I do really like, I don't know that Henderson would ever get forward enough to do this but the new walkway/bike path that Evansville has all along 41; panels, panels, panels, panels. They light each light up, it's really, really nice.

David Williams: Are you talking about the individual panels mounted on the posts?

Charlie McCollom: Yes.

David Williams: Are we restricting those at all?

Brian Bishop: Not at all.

Chairman McKee: Thank you Mr. McCollom.

Charlie McCollom: Thank you.

Chairman McKee: Any other questions? Anybody else like to speak?  
This is the city now.

David Williams: I have one question. When we say pine trees as screening, did we specifically say pine trees?

Brian Bishop: We did.

David Williams: I recommend changing that to evergreens. I think if we go with some of these conifers, they don't have to get so high.

Chairman McKee: Just out of curiosity, why did you eliminate the pine trees in the beginning?

Brian Bishop: Did we eliminate?

Chairman McKee: Why did you use the term pine tree?

Brian Bishop: I think pine tree was just a generic term for an evergreen.

Chairman McKee: So if it gets switched, it's not going to be an issue?

Brian Bishop: It's not an issue for us.

Chairman McKee: Ok. Any other questions or comments? Mr. McCollom?

Charlie McCollom: We're talking about Green Coal Company. In that particular case the coal company and the bonding company had the same board members, and they both went bankrupt; went under. So, you just need to make sure that whoever you've got has got a separate identity or they've got some kind of way to hold their feet to the fire. That was one I wish I had seen coming.

Chairman McKee: Thank you Mr. McCollom.

Any other comments, questions?

David Williams: TJ, will this come as a recommendation?

Tommy Joe Fridy: I can't hear you, I'm sorry.

David Williams: This is coming to us to approve or disprove a recommendation to the City?

Tommy Joe Fridy: Yes.

David Williams: Ok. So, we will state it as a recommendation to the City?

Tommy Joe Fridy: Yes. Like a regular rezoning or map amendment.

David Williams: Ok, so we just say we recommend for approval or disapproval this text as amended...

Tommy Joe Fridy: You make a motion, you amend it, and then you recommend it with the recommended edit.

Chairman McKee: The first order is the motion itself, and then the amendment?

Tommy Joe Fridy: I would do the amendments first, either way will work.

Chairman McKee: At this point, we only have one suggested amendment, correct?

David Williams: That and the edit on #8 on page 2 here.

Chairman McKee: Oh, the type-o.

Any other questions or comments? The Chair will entertain a motion.

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY GARY GIBSON TO PASS A RECOMMENDATION TO THE CITY TO APPROVE AMENDMENTS TO SECTION 4.22 SOLAR ENERGY SYSTEMS (SES) TO AMEND LANGUAGE ON LINE 8 OF PAGE 2 AS PRESENTED, "LIGHTING ON LEVEL 3 SES SHOULD BE CHANGED TO LIGHTING ON LEVEL 2 SES", AND ALSO RECOMMEND THAT ANY PLACE THAT REQUIRES SCREENING BE CHANGED FROM PINE TREES TO EVERGREEN TREES.***

Chairman McKee: We have a motion on two amendments, correct? We need a second. All those in favor, signify by saying aye.

***AYE: ALL***

***OPPOSED: NONE***

Chairman McKee: The amendments are approved.

Now, on to the amended version.

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY DAVID DIXON TO RECOMMEND THAT THE COMMISSION RECOMMEND TO THE CITY APPROVAL OF SECTION 4.22, SOLAR ENERGY SYSTEMS (SES) AS AMENDED AND PRESENTED.***

Chairman McKee: We have a motion and a second, any discussion?

Madame Clerk, will you please call the roll?

***AYE: ALL***

***OPPOSED: NONE***

Chairman McKee: The recommendation is approved to be forwarded on to the City.

.....

Chairman McKee: Next on the agenda, the County version. Mr. Bishop, will you please guide us?

Brian Bishop: Yes sir. I have to warn you guys the City version was the easy one.

**Amendments to the County of Henderson Code of Ordinances to be codified in Appendix “A” Zoning-** The Planning Commission will consider adding **Article XXX, Solar Energy Systems (SES), Section 30.01 Design Standards and Section 30.02 Requirements.** This amendment is hereby referred to the Henderson City-County Planning Commission as required by KRS 100.211. The Henderson City-County Planning Commission shall hold at least one (1) public hearing after proper notice and make a recommendation back to the Henderson County Fiscal Court within sixty (60) days of the date of the receipt of the proposed text amendment.

The Fiscal Court voted on October 1 to originate this zoning text amendment. So, with that being said, I’ll get in to the meat and potatoes of this one. It’s going to be a little different because of the different nature of the city and county. We don’t have the urban nature in the county that we do in the city.

So, Planning Commission staff conferred with the County Judge, County Attorney, and Codes Department staff. This ordinance also addresses three (3) levels of Solar Energy Systems.

Again, in the Industrial zone, any SES of any size shall come to the Planning Commission for a site plan. The height of any ground-mounted SES shall not exceed 25’ as measured from the highest natural grade below each solar panel, excluding utility poles and antennas constructed for the project. Is everybody good so far? That’s pretty similar.

Level 1 systems are largely roof-mounted systems that can be installed on code compliant structures or any ground-mounted system on an area

up to 50% of the footprint of the primary structure on the parcel but not more than 1 acre, and not more than 25' tall building.

Moving on to Level 2. Level 2 systems are ground-mounted systems not included in Level 1. Level 2 systems are allowed in the AG and both Industrial zones.

Level 2 systems in the AG zone. The area of the SES shall not exceed ½ acre in size, and shall require a building permit issued by the Henderson County Codes Department. In areas exceed ½ acre, a site plan shall be required by the Henderson City-County Planning Commission.

Level 2 systems in Industrial zones shall not exceed 10 acres, and shall require a site plan approved by the Henderson City-County Planning Commission. Setback requirements for Level 1 and Level 2 SES shall be in compliance with the zoning classification for the parcel in which they are located.

This is the thing that will probably cause the most discussion.

Level 3, the utility grade, as Mac brought up earlier. Level 3 SES are only allowed in the AG and Industrial zones. The height of any Level 3 shall not exceed 25' and shall be measured from the natural grade.

Again, we're excluding poles and antennas constructed in conjunction with the project.

Setbacks for Level 3 SES shall be more restrictive. All equipment shall be at least 50' from a property line. There shall be no setbacks from interior property lines. All Level 3 shall be screened by 8 foot fences with double row of staggered pine trees. The trees shall be located on the outside the fence. The use of barbed wire and sharp pointed fences shall be prohibited when adjacent to residential properties.

Level 3 light shall not be intrusive and prohibited except where required by State or Federal regulations.

All Level 3's in the Industrial zone, again, come back to the full City-County Planning Commission.

Again, we have requested that the bonding of 1% be included for the project so that way we can assure for decommissioning if necessary. That is similar to the City version, and I will do my best to answer any questions that you may have.

Chairman McKee: Questions for staff?

Kevin Richard: So Brian, just to clarify, only Level 3 requires any kind of screening per this ordinance?

Brian Bishop: If it's adjacent to residential property. For example, if it's a large farm that is 1,000 acres and there is no residential screening or residential properties, we're not requiring screening.

David Williams: The lighting restrictions, just taking into what Judge McCollom had asked, can we allow for sufficient lighting for safety and security.

Brian Bishop: Absolutely. That was the intent of this ordinance.

Tommy Joe Fridy: It doesn't say it now.

Brian Bishop: That would be something we would definitely entertain as a recommendation.

David Dixon: That would amend Line F on Page 2? Is that where we're talking?

Brian Bishop: Correct.

David Dixon: We are limiting the size of these acres to 10?

Brian Bishop: In the Industrial zone.

David Dixon: And what about the Agricultural zone?

Brian Bishop: Those can be as large as they need to be. Most likely we'll see hundreds of acres of those panels.

David Dixon: And that's allowed in the AG zone but not in the Industrial zone?

Brian Bishop: Correct.

David Dixon: What's the thinking there?

Brian Bishop: The thinking there was that we did not want Industrial zoned property being taken for solar farms when it was more valuable for an Industrial use.

David Williams: Is that not more or less seizure? More or less is that government intrusion on how...?

Brian Bishop: In my opinion, no. Because they, in turn, can turn in a request for rezoning from the Agricultural use.

David Williams: In an Industrial Park?

Brian Bishop: Industrial Park or Industrial zone?

David Williams: Industrial zone.

Brian Bishop: Industrial zone. Say 4 Star for example has 20 acres that's zoned Industrial, they could absolutely request a zoning change to Agriculture.

David Williams: Because I could foresee some of the corporations that buy these large campuses around them so they can control who's next to them or what's being seen, they could say well this would be a good use for this property if we put solar panels on it and produce electricity. I don't want us to preclude that possibility.

Brian Bishop: I understand.

Chairman McKee: Let's take Century Aluminum for example, that's a lot of acreage. Could they do it or not, without getting rezoned?

Brian Bishop: The way the ordinance was written, they would absolutely be able to because that's an accessory use to their primary use.

We're talking about a stand-alone parcel with no structures on it.

David Williams: What is somebody had one of these lots in an Industrial zone and they don't have any immediate plans for it but it would be advantageous for them to use it for this purpose for a limited time.

Brian Bishop: For example, if someone had 20 acres, they could subdivide it into two, 10 acre tracts, or rezone to Agricultural.

David Williams: And 10 acres would be legit, ok very good.

David Dixon: I guess the question is why make them take those extra steps?

Brian Bishop: Just to the nature of the property.

A lot of times if you have an Industrial zoned property it's probably is going to be near the river or near something that makes it conducive to an Industrial use, and would most likely not be used for a solar farm.

But we do have large, Industrial tracts out in the county that could theoretically be used for that, and we did not want to exclude those properties from this use.

David Dixon: You have a choice what to do with your property. If it's on the river and you think it's better served for a manufacturing facility, fine. If it's a large expanse farther away, and you think it would make a solar farm, fine. I don't understand why we're asking people, or talking about the possibility of having to ask for a rezoning, or having to get a subdivision and then... I just don't see why those extra steps... (Inaudible) distinction between the AG zone and the Industrial zone for this use.

Brian Bishop: With all due respect, we do that with every use that we would address.

So, for example if someone at the Riverport had 20 acres or near the Riverport that was zoned AG, we would force them to rezone to an industrial use for a factory to go there. Is that a good comparison?

David Dixon: Perhaps my comparison is not so good. I don't see the kind of impact from a solar farm as I do from a large manufacturing facility.

Brian Bishop: Is your suggestion to remove the 10 acre restriction?

David Dixon: I think we should treat both zones the same in this regard.

Brian Bishop: So, we would remove the 10 acre restriction?

David Dixon: That's what I'm asking about.

Brian Bishop: That's the prerogative of the Planning Commission.

David Dixon: If there are reasons to leave it as it is then I want to do the right thing.

Brian Bishop: From staff's standpoint the Industrial property is extremely valuable for the industrial use in that we would want new industry to come in so we would want to make sure that space is still available for a new manufacturing plant, or a new widget factory for lack of a better term.

David Dixon: So this serves a larger economic development goal?

Brian Bishop: From our standpoint yes.

Chairman McKee: At the end of the day, how will this be expressed in the zoning ordinance? In the County Zoning Ordinance, how will the onlooker from New York City be able to come look and see exactly what they can and can't do?

Brian Bishop: It would be written as it's been presented theoretically. They will be able to read the ordinance and say it's zoned Industrial... if my property is 10 acres of Industrial I can put a solar farm there.

Perhaps I'm not understanding the question.

Chairman McKee: So, there will not be a permitted use or a conditional use analysis done as the Zoning Ordinance currently appears, this will be a separate section of the Zoning Ordinance if you're contemplating a solar farm?

Brian Bishop: Correct, just as the floodplain section reads.

Chairman McKee: The reason I ask is that would mean that there is no possibility of a conditional use in an Industrial zone for a solar farm.

Brian Bishop: It's expressly stated that it's a permitted use. I don't understand why you would have a conditional use.

Chairman McKee: Industrial zone.

David Dixon: Larger than 10 acres?

Chairman McKee: Yes, larger than 10 acres.

Brian Bishop: This is strictly a recommendation. If the Planning Commission thinks that that is not adequate...

Chairman McKee: Well, I'm trying to deal with Commissioner Dixon's concern. I could see where you would say that Industrial property is valuable, I get that. The question is how much of the owners wishes are we willing to take into consideration? Do we want to allow them as a conditional use to put the solar in? I'm asking a question, I'm not entering into any debate here.

David Dixon: I would think the market would decide what the best use of an Industrial lot would be. So, if the market dictates the best use of an industrial lot would be to produce solar electricity or any product;

energy product, that's what it would be used for until it became not? In which case they would tear out the solar panels put in for a widget plant.

Chairman McKee: So, at this point I would like to ask if there is a recommended amendment to this ordinance; a change you would like to propose?

Mac Arnold: One thing I have as I'm sitting here thinking about this, the Level 3's here say pine trees planted 15 foot of centers outside of the property. I can see pine trees in the early years, the canopy is basically down on the ground. When you say pine tree, you could end up with in 20 or 50 years, the canopy may be up 50' or 75' in the air and that's clear site from ground level up to that point; there's nothing really obstructing and the idea is to obstruct the view of it. So, by saying pine trees, you allow someone to plant those, are you going to come along and say now you have to take those down and plant something else, or...?

Brian Bishop: No, we're completely open with that. That would be similar to any screening requirements that we would handle with any rezoning.

Mac Arnold: As David said earlier, I think the conifers or something are maintained, and not to exceed the height of the 25' or whatever the height of the panel could be would be a good way to put that in there. When you say tree, they can get way up there in the years to come; not initially. Say in 50 or 75 years from now they may not be serving any real purpose as far as screening whatsoever.

Brian Bishop: Do you have a recommendation?

Mac Arnold: I would think something that would not grow more than 25' or 30' in height or whatever, which I'm not sure would be the best ones for that.

Brian Bishop: What about this. What if we substitute the word evergreen, and then when they come in with a site plan we let them, like any other rezoning, they're able to suggest the type of screening that they would like. The Planning Commission again, has oversight on that.

Mac Arnold: Ok.

Brian Bishop: That's the point of the site plan so that this body has oversight.

Mac Arnold: Ok. So you can kind of make sure that doesn't happen. Because I can just see in the future, probably past our lifetimes, when the trees get that size if the concept is to screen that panel, they've gone way above their height that they're going to serve any benefit to that part of it. Unless, like I said, they were 100' deep, you're really not going to get much obstruction.

Like I say, to put evergreens in there might be the way to say that, possibly.

Chairman McKee: Commissioner Williams?

David Williams: I was going to ask Commissioner Dixon if he wanted to state the language on the suggestion he made on in the Industrial zone; the size of it.

David Dixon: Perhaps I've misread this. Now, I'm reading; "In an AG zone the area of the SES shall not exceed ½ acre in size", in an Industrial zone the area of the SES shall not exceed 10 acres in size."

So, the AG zone is more restrictive, not less.

Brian Bishop: You're talking about under "B", Level 2 Solar Energy Systems?

David Dixon: Correct.

Brian Bishop: In an Agricultural zone, the area of the SES shall not exceed ½ acre in size, and shall require a building permit issued by the County Codes Department.

David Dixon: Uh huh.

Brian Bishop: So, in that case the County Codes Department is reviewing the site plan via the building permit.

Exceeding ½ acres a site plan will be required by the City-County Planning Commission. Again, it comes to you guys.

Chairman McKee: Over a ½ acre?

Brian Bishop: Over a ½ acre.

David Dixon: It can exceed with a site plan.

Brian Bishop: Yes, absolutely.

David Dixon: Ok.

Brian Bishop: It depends on who's going to review it.

Kevin Richard: And it defaults to a Level 3 at that point, right?

Brian Bishop: No limit.

Chairman McKee: It could be a thousand acres?

Brian Bishop: It could be a thousand acres, absolutely. It probably will be.

David Dixon: Have we heard other testimony here?

Brian Bishop: There are folks here to address that.

David Dixon: I'm not prepared to offer an amendment until I hear what folks have to say.

Chairman McKee: Ok. Please come to the podium Mr. Iriti.

Please state your name and address for the record.

Tony Iriti: Tony Iriti, CEO of KYNDLE, and 136 Second Street in Henderson.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, and nothing but the truth so help you?

Tony Iriti: I do.

Chairman McKee: Please proceed.

Tony Iriti: I'd like to address the body a little bit later as well but in this particular issue dealing with industrial, I think Brian has a great point in there that we have so little industrial land that it really needs to be protected in some way, with the idea of being able to rezone a portion of it into AG if you need to.

I'll give you a real example of that, and that's our 4 Star Industrial Park. 4 Star Industrial Park is bifurcated by CSX main line on the west side of that track, it would take 4 Star Industrial Park about \$4 million dollars to extend services, extend the bridge, and do all those things to that land. It really can't be used for industrial development, and that may be a piece of property that 4 Star would look at if one of the companies were interested in that for solar but it could very easily be turned back into agriculture if it could at all.

As far as like Century Aluminum and Tyson would be another one in that respect.

In my opinion, and Mr. Heimgartner can really tell you even better, the amount of power that each of those few facilities use, it would probably would make financial sense for them to try and do their own solar. What makes more sense is having the restrictions for these large type of facilities to be able to get that power to the power provider. So, if there are some ways around it, with that I would say that everything is ok with that because most of the large industrial properties that are zoned today are publically owned.

Chairman McKee: Very good sir, thank you Mr. Iriti.

So, we're at a lull here. Are we ready to go ahead with public comments?

Please come to the podium. Please state your name and address for the record.

Katya Samoteskul: My name is Katya Samoteskul, I can spell that for the record if you like.

Heather Lauderdale: Please.

Katya Samoteskul: K-a-t-y-a S-a-m-o-t-e-s-k-u-l, and my address is 1 South Wacker Drive, Suite 1800, Chicago, Illinois 60606.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth and nothing but the truth so help you?

Katya Samoteskul: I do.

Chairman McKee: Please proceed.

Katya Samoteskul: Thank you.

I represent INVENERGY, we are a renewable energy developer based in Chicago. We are the largest, privately held renewable energy company in the North America. We have 14 projects in Illinois, we have a lot in development all across the Midwest; wind, solar, natural gas, you name it. So, I really appreciate an opportunity to speak with you to give you some comments on how we see the ordinance. It's really great that you guys are looking into it as we have an early stage development in Henderson County so we would love to know what the rules are. It's very good to be a part of this process.

So, one thing I wanted to first ask because we have 3 comments, and the first one starts with a question so we might actually have only 2 comments but in terms of the requirement on the screening, you guys were discussing staggered pines versus evergreens. Currently the way

it's written, to us it reads that screening is required along public right of way which means roads or adjacent residential use. So, it reads as both and it sounds like the intent was only around residential uses?

Chairman McKee: Mr. Bishop?

Brian Bishop: She's actually right. It does read both because it possibly could read both.

For example, if there was a residential use across the street it would need to be screened from that as well.

Does that make sense?

Katya Samoteskul: Yes, it does.

Chairman McKee: Do you have suggestions for language to clear that up so it wouldn't be confusing.

Katya Samoteskul: To say that screening is required where project is adjacent to non-participating residences.

David Williams: Non-participating residences?

Katya Samoteskul: Yes, because we assume that the land owners who have residences and signed up don't necessarily need screening, and that makes sure we protect the land owners who didn't...

Brian Bishop: Are you referring to Item D?

Katya Samoteskul: Yes.

David Dixon: You mean landowners that are receiving power generated by the...

Katya Samoteskul: No. We lease land, we ask landowners to sign a long term solar lease and easement agreements. Some wish to participate, some don't. Some live on the property that they're signing up for solar, some don't. So, if they're signing up to participate, we

assume they're ok with seeing the project whereas those who might be just neighbors wouldn't necessarily make that...

Brian Bishop: Would it be appropriate to say adjoining, non-participating residential properties?

Katya Samoteskul: At the end, would keep the land at 15' on center from public right of way....that is a bit of a confusing...

Chairman McKee: Mr. Fridy?

Tommy Joe Fridy: Do you have your comments in writing?

Katya Samoteskul: I unfortunately do not have a red-line for you, I was just marking up on my sheet of paper. But that's what I was suggesting to clarify specifically adjacent to non-participating residences because also we weren't really sure how to interpret the 15' on center from any public right of way. Does that mean from the center of the public right of way or 15' from the road?

Brian Bishop: No, 15' from tree to tree.

Katya Samoteskul: From tree to tree. So maybe it would be helpful to clarify that just for our purposes.

Chairman McKee: Thank you.

Katya Samoteskul: Ok, so that was one, thank you.

In terms of why that's important to us is because we did like a rough chart calculation of what it would cost to put trees along the perimeter; it's an addition \$2-\$3 million dollars. The way that we look at it is that cost would then be added into the project model and that effects the price that we can offer to Big Rivers or any other potential off-taker for the project. So, effectively that cost is being passed on to the consumer, and it doesn't protect people; if nobody lives near the road, we would prefer not to have to install screening there and only install screening where people live and actually see the project.

Chairman McKee: Mr. Bishop?

Brian Bishop: I agree completely with that, it's an unnecessary expense. The intent was strictly, residential properties.

If this was a project on gravel road XYZ, and there are no residential properties on it, that absolutely is a non-issue for staff.

Tommy Joe Fridy: It doesn't matter how it's paved.

Brian Bishop: I understand, I was implying there was no one living there.

Chairman McKee: How close? Two properties away? You can see it but you're not... what does that mean?

Brian Bishop: Adjoining is a defined word.

Chairman McKee: Adjoining, is that what you intended to say, adjoining property owners?

Brian Bishop: Yes. It's right here in Item D; adjoining residential properties.

Chairman McKee: So, across the road would apply.

Brian Bishop: For a typical rezoning, if there was a property across the road, they would get send a letter because they are an adjoining property owner. This is the same standard that we would use in a typical rezoning.

Claudia Wayne: Yeah.

Chairman McKee: For their purposes...

Brian Bishop: For their purposes it would need to be screened.

Chairman McKee: Across the road...

Brian Bishop: Or the length of the residential property, not the entire length of the project.

Chairman McKee: Ok. Is that clear?

Katya Samoteskul: Yes. Also, for the record we've done that in other counties where that wasn't required, we just did it because that's a good neighbor and a responsible way to do it.

Chairman McKee: Thank you.

Katya Samoteskul: Thank you.

So, my second comment is on decommissioning. If you go to that section and it's #2. It currently reads, "A decommissioning plan shall be submitted at the time of application by the party responsible for decommissioning and the land owner."

Typically land owners are not involved in the decommissioning plans. We hire professional engineers who's certified and has knowledge of how projects are decommissioned. They prepare the decommissioning plan. In my experience, land owners don't want to be involved in preparing decommissioning plans or providing guidance because they don't know how projects are decommissioned? So, we understand that it is a burden on the landowner to participate in this process, they wouldn't necessarily want to. I was just wondering what the intent was.

David Williams: Is it your intention there or the county's intention that the landowner ultimately be satisfied how the land is reclaimed?

Brian Bishop: The landowner would be a co-applicant in that they own the property.

David Williams: Do you understand that?

What we're trying to do is protect the landowner, just like with the strip mining. We asked that the property be restored to such extent that the landowners are happy with it.

Katya Samoteskul: That is in our agreement as well. Once we terminate, we have to return the land to the condition it was in.

Brian Bishop: Can I interject please, Commissioner Williams?

David Williams: Please.

Brian Bishop: You guys are kind of being burdened with something that you have absolutely nothing to do with. You've heard us mentioning surface mining rezoning's, and reclamations projects; we may be a little overly cautious with that. That may be something we're accidentally conveying to you guys that we don't mean to. So, if you have any questions about that, please feel free to ask.

Katya Samoteskul: Yes, thank you.

Chairman McKee: Let's talk a minute about the bonding for putting it back. Most of the agreements I've seen give that surety to the landowner, not to the government. Can the government participate in the landowner's bonding surety? By that I mean the company that installs the project is going to give the reclamation bonding to the landowner but this is going to require also that bonding come to the government. Is that clear? Am I saying that correctly?

Brian Bishop: I'm not 100% sure about that.

Chairman McKee: Who is the beneficiary of the bonding in the ordinance?

Brian Bishop: The County would be, via the Planning Commission.

Chairman McKee: So, that's what I'm saying. The landowners getting it, the county's getting; is that two separate bonds or just one?

Brian Bishop: From this ordinance, bonding to the landowner is completely separate and that would be a civil matter between that company and the landowner, we are not getting in that fight.

Now, if the landowner chose to require as part of their lease agreement a separate bonding, that's completely up to them. We're only dealing with the 1% in this ordinance.

Chairman McKee: Is that clear?

Katya Samoteskul: Yes, it is.

Chairman McKee: And acceptable?

Katya Samoteskul: Yes, because a lot of times landowners ask for it, and we typically provide that language and we also provide bonds to the county. I believe our agreements have language that we provide the bond to the county, the landowner basically as a beneficiary of that bond by the default of living in the county; by being a resident of the county.

Chairman McKee: Thank you, please proceed.

Katya Samoteskul: One more comment if I may?

David Dixon: Just so I understand what you said earlier. The question is who should submit a decommissioning plan, and your recommendation is that the landowner should not be involved in submitting a decommissioning plan?

Katya Samoteskul: Right. Our recommendation would be to remove “and the landowner” from that line so the burden of the decommissioning plan submission is on the developer who is the ultimate owner and the responsible party to remove but I understand what you are trying to achieve.

Chairman McKee: Do you have a comment Mr. Bishop?

Brian Bishop: From our standpoint like with any rezoning or anything they are co-applicants so that would be listed as well.

I understand her point, it’s completely valid. If the landowner chose not to participate, and Mr. Fridy please correct me if I’m wrong here, if they had signed all appropriate documents they would not necessarily have to come to this meeting.

Tommy Joe Fridy: You’re reading a lot in there because we require the zoning applicants to come to the meeting.

Brian Bishop: Correct but they don't necessarily have to speak if they are represented, correct?

Tommy Joe Fridy: They don't have to speak, of course.

Chairman McKee: Legal counsel could represent them.

David Dixon: They could submit a decommissioning plan, the landowner could and never have to show up down here, they're just submitting a plan.

Brian Bishop: Agreed, but as some point they should be...our standpoint is that they should be a co-applicant. So in some form or fashion they need to be shown they acknowledge the plan that has been put forward as a property owner.

Chairman McKee: Mr. Fridy?

Tommy Joe Fridy: Acknowledging, I'm not disagreeing with staff and with the county, I didn't participate in this. But being a co-applicant and having signed off on this are totally two different things. If you're a co-applicant then you have responsibility.

Mac Arnold: I was sitting here trying to think, and that goes back to the former strip mining. If a farmer had ground that the coal company had rights to strip mine, and then they stripped and moved out of the area, you're saying the landowner is partially responsible to get that farm back to its original condition which is putting an extra burden on him.

Brian Bishop: I can only speak to the intent. The intent was that the applicant, or the company and the owner both acknowledge the decommissioning plan.

Chairman McKee: Why.

Brian Bishop: As a property owner I think you're responsible for the actions on your property, are you not?

Chairman McKee: It depends, you could contract it away.

David Williams: Are you ultimately responsible even though you contracted it are you the person of last resort?

Chairman McKee: Depends.

Mr. McCollom, please come to the podium.

Charlie McCollom: As a landowner, now the power has degraded and they want to go away, and there's fiberglass poles in the ground and I want to use them, and I'm the landowner. Can I not amend my plan and they leave 100' of these poles up so I can put my own unit in and run my farm on it or something? Can we not leave some change where I could do something to my....so I could use this and they don't have to tear it all out? Why should they have to tear it all out if I can use part of it?

Brian Bishop: Staff is completely agreeable with that.

Rodney Thomas: Shouldn't that be part of the plan?

Charlie McCollom: I don't know, you don't know what they're going to allow you to do until you see the future and know how long they use it and what they're going to do with it.

Chairman McKee: Mr. Fridy?

David Dixon: It will be between the landowner and the developer, if they have such an agreement in place or can make such an agreement.

Charlie McCollom: That would make sense to me.

Tommy Joe Fridy: The way the ordinance is written they may not be able to but...

Chairman McKee: Mr. Fridy?

Tommy Joe Fridy: Mr. McCollum is an expert in oil and gas law, I'm telling you that he is.

In the decommissioning, that isn't what you call it but it's what we call it in the industry, if there is something bad, if there are pump-jacks that

haven't been removed, if there's plugging that hadn't been done, if there are spills, I can go on and on but whose responsible?

Charlie McCollom: Well, the person is but usually they disappear.

Tommy Joe Fridy: I know, but is the landowner responsible?

Charlie McCollom: No.

David Williams: Is that set by state ordinance?

Tommy Joe Fridy: The Lessee is responsible...

Charlie McCollom: The State has a reclamation bond that is supposed to take care of that but there's not enough money. There have been so many abandoned wells, and things not plugged. Most of those materials have some scrap value, or the pump-jacks and those things, and then there's a question of whether they belong to the landowner. If they've been there for a long time, they've been abandoned, there's no production and really the only way to solve that is to go to Circuit Court and get the judge to say, "It's yours now". But who wants to go to Circuit Court and spend money on an attorney and do that kind of stuff?

Chairman McKee: There are two issues at hand. One issue is, is the landowner going to be equally liable with the company for the plan, A. Then B, can the plan be amended at some point in time down the road like you're suggesting?

Charlie McCollom: Say I want to take over this operation from them, they want to walk away and get out from underneath their bond, and I would have to step up in some form or fashion I guess. If I want to operate my own, does the landowner operating his own project have to have a bond?

Chairman McKee: The real question is who is getting protected here?

Charlie McCollom: True.

Chairman McKee: Who needs to be protected? Is it the landowner? Is it the county? Both? How?

Charlie McCollom: Both, probably. You don't want land that's not usable, that's been grown up and is not productive now. If you've got this stuff buried in concrete, most of it usually is, it takes some stuff to get it out; you can't go back and start farming it right then.

Chairman McKee: You've done this a lot? Could you comment?

Katya Samoteskul: Yes. The decommissioning bond is placed in the name of the county for that exact reason so the landowner doesn't have to deal with it themselves. Because you have more authority, more expertise, more ability to hire one contractor using the funds from the bond to pay them to remove everything from everyone's property if we fail. From our perspective, we don't want an individual landowner; what if they're elderly and they don't have a family to deal with that themselves. So, in our perspective a county bond protects the landowner as well and protects the county, and gives that better value for everybody.

Also, if you say the decommissioning plan when submitted, the landowner has to acknowledge that it was submitted. Mechanically that becomes difficult because a lot of the times if they need to sign a page that they've looked at, they don't know what they're looking at. We have large projects sometimes, sometimes we have 20 landowners. You have to track all of them down, sometimes they are elderly or if they live in another state it becomes very difficult to get that consent. A lot of times they might view that as they are sharing liability in this, and we are in the business of developing solar projects, we take responsibility for them and we feel like it's on us to make sure that the bond is there in place, the decommissioning plan is prepared with a professional engineer, and people who have the stake in it are the ones taking the responsibility. INVENERGY has 72 surety bonds in place, they've never been challenged, they've never been drawn upon. So, we have a

very good record of keeping with those agreements in the United States and elsewhere.

Chairman McKee: Mr. Fridy, could you comment on that?

Your example of pump-jacks and so-forth, and who's responsibility that was at the end brought some clarity to this, I believe. So, do you have comments further about this particular circumstance?

Tommy Joe Fridy: My only comment is who do you intend with this ordinance to hold responsible? Whomever it is, that recommendation should be made up to the county even if you don't make it in exact wording. We didn't word it, and can send it back to them and ask them to craft the words but when you have a co-application, you at least have an implication that you're making the landowner have some responsibility.

That's too strong. It could have that implication.

David Dixon: Are we discussing who is going to post the bond? Is that what we're talking about?

Chairman McKee: No.

Brian Bishop: The intent was entirely that the landowner would acknowledge what was being done on their behalf on their property as a co-applicant.

David Dixon: And we're talking about their responsibility in regards to a decommissioning plan? That's where the landowner pops up in point #2 here on page 2.

Brian Bishop: Correct. Someone...

David Dixon: Point #1 only talks about a developer.

Brian Bishop: Correct.

David Dixon: I assume that's not the landowner.

Brian Bishop: Are we talking about #1 or #2?

David Dixon: Well, both. I'm trying to figure out which one we're arguing about.

Brian Bishop: My understanding is we're arguing about #2.

David Dixon: That's what I thought, too.

Tommy Joe Fridy: I don't think we're arguing.

David Dixon: No, no. The one's we're trying to clarify.

Brian Bishop: The intent from the staff's standpoint is that the landowner is acknowledging that this potential development has a plan going forward affecting their property, and that they should acknowledge that.

David Dixon: Could we change it to say that the decommissioning plan has been submitted by the party responsible for decommissioning and approved by the landowner, or something like that?

Tommy Joe Fridy: We could say, with notice to the landowner. After this, I'm quiet. This is not my deal.

Chairman McKee: I think after pointing out there are magic words that put the responsibility on the landowner, and the question is are you trying to avoid that?

Tommy Joe Fridy: Yes.

Chairman McKee: Are you trying to avoid the landowner? If everything "poofs" away, if the bond goes away, and the developer goes away, and all that's left sitting there on the landowners property, and we're talking about 25-30 years down the road, what happens?

Brian Bishop: Can I muddy the waters a tad bit more?

Chairman McKee: Sure.

Brian Bishop: Hypothetically in that scenario 20 years from now, any potential project is long gone, the developer is long gone, and it has become a nuisance. Whoever the Codes Administrator is at that time gets a complaint by an adjoining property owner. These are unsightly, they are damaging my property value, do something about it. The Codes Department is going to write a violation letter. Who is that letter going to go to?

Chairman McKee: The landowner.

Claudia Wayne: The landowner.

Tommy Joe Fridy: Who do you want it to go to?

Brian Bishop: It's not who we want it to go to, who is legally owning that property?

Tommy Joe Fridy: What if it's an oil and gas lease with pump-jacks, and tanks, and tanks leaking, who do you send it to?

Brian Bishop: From the Codes Department standpoint, we always send it to the landowner.

Tommy Joe Fridy: Wrong. Charlie McCollom just told us. The landowner has no responsibility.

David Williams: That's by state statute, correct?

Charlie McCollom: I think so. But there is an inspector you can send it to. There are people that are responsible.

Brian Bishop: Ok, let's not use that as an example. That's a whole different set of statutes that are muddying the waters.

Tommy Joe Fridy: It's statutory.

Brian Bishop: What if it's an abandoned house, and it's not a pump-jack which we deal with on an everyday basis. Abandoned houses or junked cars.

Charlie McCollom: That's more like it.

Tommy Joe Fridy: It's different.

Brian Bishop: Again, it's an abandoned structure. It's not an oil jack or whatever, it is an abandoned structure that the Codes Department would have to go write a violation letter to. It's going to the property owner.

Chairman McKee: Let's assume in this situation that the property owner is nearly bankrupt, no resources. What's the county going to do when it gets that letter?

Brian Bishop: No different than they would right now. They would probably go to District Court and try to work with the property owner as ethically and feasibly as possible.

Rodney Thomas: What's the 1% bond for?

Brian Bishop: Decommissioning.

Rodney Thomas: Ok. So, when do they get their money back?

Brian Bishop: When everything is done.

Rodney Thomas: How much money are we talking about?

Brian Bishop: It depends on the size of the project.

Rodney Thomas: Enough to clean it up?

Mac Arnold: Now that's something we need to look at because we had a lot of bonds on residential developments, and when it got time the bond wasn't even near close enough to take care of what had to be done.

Brian Bishop: Are you suggesting the escalation factor?

Mac Arnold: I wonder if that would not be beneficial. To make sure that the bonds maintains an equivalent value for decommissioning because it could change. Where it may only take a half-million to do it today, in 30 years from now that may be \$5 million to decommission it.

Brian Bishop: Have you had any experience with that?

Katya Samoteskul: You could escalate it with inflation. If you want to maintain the same language, the simple language, a lot of the county's require the developer when they are developing the plan with a professional engineer to come up with an estimate, and that accounts for the value of salvage, and then the bond is based on that. Then, that amount get re-evaluated every 5 years. Some counties are more comfortable with longer periods of time but that way it is insured that it stays correct, and being evaluated so it gets adjusted accordingly.

Brian Bishop: Is that something you would submit in your decommissioning plan?

Katya Samoteskul: Yes. But that section would need to be adjusted to account for that.

Claudia Wayne: Uh huh.

David Dixon: The decommissioning plan, according to this would include one of the points, #5, who is responsible for the decommissioning? That would be the location in the decommissioning plan where the landowners are not named because they are not responsible for decommissioning. Does that take care of our concerns about the landowners?

There are 6 points listed here about what's included in a decommissioning plan. One of them being simply to state who is responsible.

Chairman McKee: Did you comment on that in your other circumstances? At the end of the day, if the surety bond is not enough to decommission, what happens? You're gone, your company has gone bankrupt.

Katya Samoteskul: If our company is going bankrupt, somebody else will own that asset and all the contracts that come with it. Within our

contracts it says that we have to remove everything from a depth of 3', and restore the property to the use that was similar to what it was, like an agricultural use. So, the owner of that assets, if we do go bankrupt, is still responsible to make sure that happens.

Now, in 30 years we can't predict what happens but we have some landowners in the audience and I'm a little concerned that they might be worried by participating; if they have to be in some way you know even implied that they're liable if something happens to the project, and like the bond is not enough and it can't be decommissioned, I think that gives them a reason for pause. Because when they sign with us they make a significant choice, they're compensated for it, it says also in the agreements that they allow us to use their property in applications, and also by defaulting these kind of agreements. We tell them and there are sections on liability and indemnification, and we make sure that they are fully protected so it's almost like they wouldn't be. Like, it changes their rights and responsibility which I'm not sure that they would necessarily see that as a positive.

So, I would suggest...

Claudia Wayne: I think the question is the surety bond is not through your own company. It's a separate deal that is if ya'll walked away, that surety bond is still there and it can be called.

Katya Samoteskul: If it gets renewed annually, and we have surety bonds with the number one insurance agencies, and it is...

Claudia Wayne: (Inaudible)

Katya Samoteskul: Well, that's the way everybody does it and we're backed by multi-billion dollar investors and corporations. So, our surety bonds, and I've told you there have been 72 of them; we've built 146 projects and we're not new to this business, and that bond is there, especially if it's re-evaluated that means that it's being adjusted or if it's adjusted with inflation, it means that the amount is there to make sure

that everything is decommissioned. If we can't do it, if we don't do it. I mean these assets are really valuable when they operate so at the end of their useful life, there is still salvage value in them, they will be decommissioned, and I know you have an experience with coal and I don't know what that feels like and you're trying to protect yourself but there is so much you can foresee, and we want to take responsibility for this and we really would like that and I'm not sure if the landowners have the desire and expertise to be a part of it in a meaningful way.

David Williams: As far as your company is concerned, which seems to be a very good company, a very reputable company and so on and so forth; there are others out there. Just like our experience with good coal operators and bad coal operators, and good oil operators and poor oil operators and we have problems with all of them. That's what have to protect against, it's not you but the other guy.

Brian Bishop: Chairman McKee?

Chairman McKee: Yes sir?

Brian Bishop: From a staff's standpoint I just want to make sure we are not married to this language and we are open to any and all suggestions.

Chairman McKee: What I would like to explore further with you is first of all, in your decommissioning plan you would make a commitment to both the landowner and to the governing body, and that commitment would be backed by a surety bond that is a one year contract with an adequate insurance company, shall we say that you renew annually.

Katya Samoteskul: Yes, and that's a standard, that's not something we choose to do that is how it's structured.

Chairman McKee: So, question #1, how do you determine annually if the amount of that surety bond needs to be raised?

Katya Samoteskul: So, that goes from the requirements in the ordinance; how often do you want that to be re-evaluated? You guys

didn't structure it that way. The way I understand it is that it's posted for 1% of the cost of the system and that's it, and that's what Mr. (inaudible) brought up if it needs to be adjusted with inflation or how other you evaluate it. So, that's one of the ways you do it but the way we've done it and maybe gives you more comfort is when a professional engineer does it, they put their name to it. These are experienced companies that do this for a living; U.L. is one of them, and Tetra Tech, and then that is evaluated every 5 years and evaluating it more often is more burdensome on everybody but it could give you comfort, and that adjusts for the cost of labor, the cost of materials. The decommissioning itself is just labor intensive, it doesn't really require much work. Then when you look at salvage value, the value of copper, aluminum, steel, and glass on a secondary market and as that value changes, you might see adjustments. That would be on the developer to adjust that bond up or down, and that is usually done with a professional engineer, again.

Chairman McKee: My second question, what is your experience with concerns like those expressed here tonight, for the landowners in the event that something goes wrong? Something doesn't work like it's planned? Let's say for just dark sky conversation the surety bond is gone, you're gone, and the decommissioning didn't happen. Now all that's left is the landowner and the county, how is that dealt with?

Katya Samoteskul: There is still salvage value. There is glass, tons of glass, tons of copper, tons of aluminum, and just like any building there are salvage companies that will come and decommission just for the value of the salvage. I can't give you specific numbers, I can't give you any particular examples because we haven't done it, and to my knowledge nobody has done it because the industry is still pretty new but the value, just in terms of the cable itself for a project that we are thinking of that would be a few hundred-thousand feet of cable; that's a lot of aluminum. Most of the weight of the solar panel is glass and aluminum as well. There is copper, there is silicon, and in 10 or 15

years there will more demand for raw materials. There are more recycling opportunities so, that equipment does have value and we believe that just like in a building or a barn somebody can come in and decommission a barn and just say I'll keep the value of the salvage. So, that's another backstop.

Chairman McKee: From what I understand, people just don't worry about it. Based on salvage value, etc., they just stop worrying about it?

Katya Samoteskul: Yes. They accept that they're not protection for them and the reward is worth taking that risk, and the ones that don't, do not ultimately sign.

Chairman McKee: Thank you.

Katya Samoteskul: Yes.

David Dixon: But they do have protection when they agree...

Katya Samoteskul: Yes, participating...

David Dixon: That's an agreement between your company and the landowner.

Katya Samoteskul: Yes.

David Dixon: We are not a party to. The county is not a party to.

Katya Samoteskul: Correct. That was the answer to the question what if the surety bond went away.

David Dixon: Bonds would come to the county, that's what we established earlier, right?

Katya Samoteskul: Yes. So, there are two levels of protection. One is our responsibility, contractual obligation to the landowner. Which means we have to decommission up to a depth of 3' and restore the ground to the condition it was in once we're done. That's the obligation

to the landowner. Then there is a second one, responsibility to the county which goes through the bond.

Chairman McKee: Is the nature of the surety performance, in other words at the end of the day if a claim has to be made on the surety, is then the surety company responsible for decommissioning the site?

Katya Samoteskul: The way I understand it is let's say we failed to decommission and you have to draw on the bond, you get access to the amount.

Claudia Wayne: The money comes to, it come to the county.

Chairman McKee: The County would then be responsible for the decommissioning.

Claudia Wayne: Just like it does if we call in a subdivision.

Chairman McKee: But there are performance and payments bonds that...

Claudia Wayne: You have to stay on top of it. Whoever is going to do it is going to have to stay on top of it especially if they renew them every year, then a new copy is going to have to (inaudible) bond. It would be a lot of stuff to stay on top of.

Chairman McKee: My suggestion to you all is that you consider performance in addition to payments. That's not for me to do, that's for ya'll to do.

David Williams: Do you want to state that again?

Chairman McKee: If you just get the money, it's not like paving and sewer lines, this is decommissioning a solar farm. How many people do you know that do that? Where are they?

David Williams: True. But we did find someone to decommission a power plant.

Chairman McKee: You can, you can. It's feasible. I just said consider it.

Any other questions, comments?

Katya Samoteskul: Just one last one.

Chairman McKee: Please.

Katya Samoteskul: I've kind of mentioned it a couple of times. Currently the decommissioning section, just states removal of non-utility owned equipment; conduit, structures, fence, roads, and foundations. It does not provide a depth limit. So, we suggest that you add a depth limit up to 3', for example. That is a standard in our agreement, I think that's a lot of the companies in the industry using that. The reason for a limit is that if you assume that everything, absolutely everything has to come out you have a lot of disruption; you have a lot of disturbances. We use prairie grasses under all of our projects in the Midwest. So, they build up significant root systems, they build up nutrients in the soil, it becomes great farmland over 30-35 years of project operation. If you have to remove absolutely everything, you disrupt absolutely everything and it might not be in the best interest of the landowner to have that kind of destruction. If the landowner agrees they are fine with the depth of 3', we suggest that is also added to the ordinance but not have a depth limit.

Chairman McKee: I'm sure we'll get some comments on that in a little bit but thank you for your suggestion. Do you have any reaction to that, Mr. Bishop?

Brian Bishop: No sir, that's perfectly reasonable.

David Dixon: In Section 2 there, it's been proposed that we end that phrase with "to a depth of 3'"?

Katya Samoteskul: Yes.

David Dixon: Remove all equipment, conduit, structures, fencing, roads, and foundations to a depth of 3'?

Katya Samoteskul: Yes.

Mac Arnold: I would question that. Maybe if you went just a little further, maybe at least 4'. I'm just trying to think on all sides of this stuff. If they put a footing in the ground, it may be more than 3'. It could be, if they're putting post in or whatever it might be deeper so I just want to make sure that we don't get ourselves caught there.

Chairman McKee: Comments?

Katya Samoteskul: Typically the cables are buried somewhere between 3'-4'. Then, we don't use any concrete, we pile steel drives with them, and then steel poles hold the solar panels. We will just try to pull all of those out because it does deeper than 4', it depends on soil conditions. But if we can't pull it out without disrupting a ton of space, it would be nice to have some sort of depth floor.

David Dixon: So, 4' would be ok?

Katya Samoteskul: 4' would be ok, and anything deeper than that becomes more expensive.

Chairman McKee: If 4' is the depth, are you going to try to bury the cable 4 ½ feet so you don't have to take them up?

Katya Samoteskul: No. It increases the cost dramatically, it's extra millions of dollars to go deeper than 4'.

Chairman McKee: So, is the reason for the 3' so that you bury the cables 3 feet 4 inches you don't have to take them up?

Katya Samoteskul: That really depends on the soil type and soil condition.

Chairman McKee: Your objective is not to leave the cables in? Take the cables up? What is your objective?

Katya Samoteskul: If they are below 3', we would leave them out and that's an understanding we have with the landowner because our agreement is to remove everything at 3'; that's what I'm saying about the potential disruption. There's a lot of cables that will be installed, if you have to remove all of it, it might be more disruptive and if it's buried below 3' it wouldn't interfere with normal farming operations.

So, that's ultimately the negotiation between us and the landowner. If the landowner is comfortable with 3', then they would have an option to do that. If the landowner is not comfortable, then we'll have to do what's in the agreement.

Chairman McKee: It kind of takes it out of your and the owners' hands and puts it in the counties hands.

Katya Samoteskul: Yes.

David Williams: I would suggest that the installation of these cables and other sub-structures is not that disruptive to the soil structure of the property. In other words, it will still support plant life. When you reclaim, again going back to the coal industry and strip mines, it takes a long time for that soil to actually get back to where it's a producible soil variety.

You are not taking everything and turning it over, you're more or less burying cables in a trench as you go. So, it would be more disruptive to take the cable out than it would be to leave it in the ground.

Chairman McKee: I concur, that's why I asked that question.

Katya Samoteskul: Thank you very much.

Chairman McKee: Where did we end up there?

David Williams: 4' wasn't it?

Mac Arnold: Yes.

Chairman McKee: So everything at 4' and up has to come out. That's good.

Mac Arnold: I wasn't thinking of buried cables, I was thinking more like footers. If there were concrete pilings put around stuff, then make sure you get all that stuff out of there. Of course it's not going to be easy for someone to go down 3' and cut it off. They're either going to have to dig it all out or not to get the things out like that.

When you start talking about cables, I don't think there would be a problem with that.

Kevin Richard: I'm thinking your typical field with drain tiles, after you get to a certain depth it doesn't matter what's really in the field, right? As long as you have good soil, you can still plant, right?

Brian Bishop: Commissioner Arnold, are you comfortable with 3'?

Mac Arnold: Yes. Let's go ahead and make it 3'.

David Williams: I'm not sure where that's going to be inserted. It's not after... can anybody read me the language?

David Dixon: Yes. Under Point #2, we're listing off what's included in a decommissioning plan. Removal of all non-utility equipment, conduit, structures, fencing rows, and foundations to a depth of 3'.

Chairman McKee: Mr. McCollom, do you have a comment?

Charlie McCollom: I don't mean to be belaboring this but I think this is a little overly broad, and let me explain what I'm talking about.

DeWalt makes a device that you can charge 4 of their 5-amp hour batteries with; plug it in. That same device has built into it an inverter, and you can use it to power a saw or whatever. You can also hook up a solar panel to that device and they make about a 50 watt one that comes with it; that's not the one I wanted to use because it's not big enough. I wanted to put 2, 340 watt panels on my barn but the problem with that

device is that it will not charge and use it at the same time. You've got to flip a switch and do one or the other. There are devices that can make it where you can do it. Somebody is going to come along with one or I'm going to build one for myself but it's just going to be something so I can turn the lights on in the barn so I can see what I've got out there. There's no electricity to it, and I shouldn't have to go through this for a 2,000 watt thing, is my thinking. I shouldn't have to go through this procedure for a 2,000 watt thing that I'm going to put up and I can buy. You can buy things like this and hang them on your... you know, temporary solutions and what not. This is not something I should have to do, I don't think. That's my opinion. I think if I wanted to do it individually, if I wanted to put in a 20,000 watts I should be able to do that for my personal use on my farm without having to go through this.

So, I think there should be a differentiation between another one, between these three that we've got, and something that the landowner should be able to do himself. Whether it's a 2,000 watt one or a 20,000 watt one or like Robbie's got about a 40,000 or 50,000 watt one; that, to me... we're encroaching on people's lives and what they're allowed to do on their property and I'm not trying to hurt anybody else. My farm is pretty big, it's not going to hurt anyone else. So, that's one point.

Mr. Dixon on your point about the industrial, could you not make that a conditional use on anything larger than 5 acres, 10 acres or something? That's just a thought.

Then my other thought is we were talking about this screening and how far it is. I don't mean to be, there is a site between your house (speaking to Claudia Wayne), and there's 10 solar panels that if you got your binoculars out, you could probably see it from your house. You could see it but you probably wouldn't know what it was because it's about between a 1/2 mile and 3/4 of a mile from the site. Do you have to screen that when it's that far away? I mean, to me that seems like that's ridiculous. That you should have to, when it's 3/4 of a mile away from

the next house. I mean, it's a long valley between there, you can get your binoculars out and see them but should you have to put up trees; evergreens? The other neighbor put his own 15' fence up so we didn't have to do that.

Chairman McKee: What is your reaction to that, Mr. Bishop?

Kevin Richard: Brian, I have one question. So, the point of putting the solar panel on your barn; it looks like as long as that solar panel doesn't cover more than 50% of your roofline, this doesn't apply?

Brian Bishop: It does not apply. He could go do it right now.

Kevin Richard: He could have a giant solar panel on his barn.

Claudia Wayne: Yeah.

Charlie McCollom: That's a good thing because that's... so, I've got a pretty good size barn.

Kevin Richard: You could put a big solar panel on it, too.

David Dixon: It can't be more than 25' tall.

Chairman McKee: What about the screening?

Brian Bishop: What was the distance as far as screening? I guess staff didn't account for the binocular factor; we didn't account for that. It was directly adjacent, that's why we wanted to use the term adjoining, not 2 away or 3 away.

Gary Gibson: Are we trying to make this too complicated? Come on now. Get back to the packet we've got here, and go from that. We could bounce this stuff off all day.

Brian Bishop: From a staff's standpoint, we don't have history with this, we are not experts in this which is why I consulted with Mr. Heimgartner and Mr. Williams because they are the experts. It's fluid for a reason. It's fluid because it can come back to the county to be

amended. It can come back to the Planning Commission for another recommendation, that's the entire point of the vagueness. We don't know enough to know how strict it should be to be quite honest.

David Dixon: Plus, Fiscal Court could vote it down.

Brian Bishop: Exactly, they have the final say.

David Dixon: They've already taken a vote on this once, right?

Brian Bishop: Correct.

Charlie McCollom: It was 4-1.

Chairman McKee: We had an abstention it looks like.

David Dixon: One absent, one abstention.

Chairman McKee: Would you like to speak sir? Come to the podium.

State your name and address for the record.

Ian Rice: My name is Ian Rice. That's Rice, spelled like the food. I live in West Palm Beach, Florida at 634 Fern Street.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, and nothing but the truth so help you?

Ian Rice: I do.

Chairman McKee: Please proceed sir.

Ian Rice: I'm here today on behalf of NEXtera Energy Resources. We're a large, all the above energy company. We own a fossil fleet, a nuclear fleet but we're best known for developing wind and solar assets. We're currently active in 36 states, 4 Canadian provinces, and I would echo INVENERGY's comments. We're really pleased to see a county that is willing to pass an ordinance today. We appreciate an opportunity to provide comments, and we have brought a red-line of our comments.

So, broadly speaking, I think it's the Level 3 Solar Energy Systems that would be our focus in the ordinance.

Any solar system that would be built in the county would fall within that categorization. I think many of our proposed revisions would echo what INVENERGY presented today. I think the three (3) major revisions that we're proposing would be the exclusion of electrical substations in the height restrictions. Some set-back revisions that we're proposing as well as clarification around visual buffers which I know has been a topic of conversation this evening. Finally, we've also proposed some revisions to the surety bond at the conclusion of the ordinance. I'm happy to specifically walk through the red-line or simply answer questions that the commission might have, whichever you prefer.

Chairman McKee: Which do you prefer?

Brian Bishop: I have spoken to these folks and they have been very good to deal with. They are very friendly, and very knowledgeable. I would request that you go through the red-lines so that everyone understands, and so some of the folks in the audience can hear it.

Chairman McKee: Does anyone object?

Please proceed, sir.

Ian Rice: Absolutely. So, the first revision that we're proposing is on Page 1, underneath C, Level 3 Solar Energy Systems. Moving then to Solar Energy Systems (SES) should comply with the following criteria: at Section A, we're proposing the exclusion of substations as a named category along with the existing exclusion of utility poles, and antennas.

That speaks to the fact that it would be entirely common and ordinary for a substation to run as high as 30'-35', we don't expect that it would be substantially above that.

Worth noting also is that typically from the ground, these solar systems would be perhaps 8' off the ground at their highest point. So, we think

largely that this exclusion captures an ordinary system but for the substations.

Moving on, on our red-line. C, under Setback requirements for Level 3 SES; we've proposed that all equipment be at least 25' from the perimeter property lines of the project area. That's the only revision we're proposing to this particular section. This is very much in line with some ordinances that we've seen in other counties around the country. I believe that the 25' also aligns quite well with the existing setback requirements in Industrial zones.

Brian Bishop: Correct, exactly. 25' is directly taken from the Industrial zone for a side set-back.

David Dixon: We have 50' in the original version.

Ian Rice: That's correct.

David Williams: So, you're ok with making it 25'?

Brian Bishop: Yes, that would be in line...and we spoke about that. 50' could have been a little too aggressive there, so 25' seems like a nice number that is industry standard, and it's already in the zoning ordinance in the Industrial zone.

David Dixon: Thank you.

Ian Rice: So, for Section D, the screening; we've proposed more revisions to this section than to most.

We're proposing that all Level 3 SES shall be screened with an 8' tall fence, and a visual buffer lighting screen to reduce the view of the SES from residential dwelling units on adjacent lots (including those lots located across the public right of way.) The existing natural tree growth and natural land forms along the SES perimeter may create a sufficient buffer and shall be preserved when reasonably practicable. Where no alternative plan is approved, a double row of staggered pines planted 15' on center from any public right-of-way or adjacent residential shall be

used. The pine trees shall be located outside of the fence. The use of barbed wire or sharp pointed fences shall be prohibited in or along any boundary adjoining residential properties, excluding barbed wire located at least 6' from the ground.

Chairman McKee: Why did you say that; 6'? What's your experience?

Ian Rice: We want to make sure that we comply with any federal or state safety requirements. We also want to prevent animals, children, and strangers entering the system. So, it's intended as a safety measure. We spoke with Brian and his colleagues to get some clarification around the original intent of barbed wire. We understood the intention was to avoid barbed wire in a cow situation around the system which is not our intention either. Ordinarily, we would be building a 7' chain-linked fence around the systems.

Brian Bishop: With barbed wire?

Ian Rice: Potentially.

David Dixon: With barbed wire on the top foot?

Ian Rice: That's right.

Chairman McKee: Thank you.

David Dixon: What's the visual buffer lighting screen?

Ian Rice: Originally we had included some language of a visual buffer to reduce the view of the SES. The lighting screen we introduced on our final revision to these comments. Intention there, we understood there were some concerns potentially around the light from the system bothering neighbors. So, that's why we had included this additional language. Certainly a visual buffer would be sufficient, ordinarily for our purposes. We were trying to stay within the spirit and the intent of the original draft language.

David Williams: I think I was misreading that. I was thinking you were using some kind of lighting to screen rather than pine trees.

Ian Rice: Certainly not the intention.

David Williams: Ok.

David Dixon: So, what might a visual buffer lighting screen be?

Ian Rice: Some form of vegetated growth could be the case. We'd also like to acknowledge, you know if there is natural land forms by the system if it's invisible by the neighbors based on a hill that may naturally be in their viewpoint. It seems overkill to then plant a row of pines. Additionally, if there is existing vegetative growth, we likely aren't going to remove tree lines around the perimeter of properties given that very naturally provides a barrier from the neighbors. So, our hope and expectation would be that we wouldn't plant another row of pines around existing forestation.

David Dixon: This would come to us in a site plan, right?

Brian Bishop: Correct, you would still have oversight.

David Dixon: Not to mention if no alternative plans are approved, then we're back to the double row of staggered pines?

Ian Rice: That's right. The revisions here in this section as with the surety bond, what we've tried to do is open the door to a conversation with the commission to satisfy your needs and your risk requirements while also including a base case, base standard as originally envisioned so that there is always clarity. At minimum this will be the standard met, if we're able to propose a satisfactory plan that makes sense for visual buffering or an alternate form of security, for example a letter of credit would be one example that is satisfactory to the commission that it be envisioned within the ordinance without requiring a variance.

David Williams: How would you answer Mr. McCollum's question about the distance element, as far as screening is concerned? You were talking about way off, a reasonable distance from the road.

Ian Rice: I mean I think we would probably echo the thought that the "binocular standard" is difficult for us to meet. Certainly the nature of these systems being that they're ordinarily only 8' off the ground typically, until you're right beside the system you're unaware that it's there and it's smaller than an ordinary residential structure in terms of elevation from the ground, for the most part.

David Dixon: On a couple of points your red-line differs from the previous advice we got. I noticed that you left in the reference to the landowner in point #2; G (2). Any thoughts on that?

Ian Rice: Possibly an oversight on our part to be perfectly candid. I think we would probably agree with the principal that it should our responsibility to decommission the system and to be posting surety bonds for that purpose.

David Dixon: Then the issue of removing the equipment, etc., etc., etc., foundations to a depth of 3'. I see you have not made that (inaudible).

Ian Rice: We have not. Again, I would say 3' is an industry standard, and we consider that a reasonable threshold to work within, and it appears in a great many solar agreements including many of our own solar leases.

If I were then to return to "G", and walk through our revisions to G: 1, as well as G: 2.

Section G, Decommissioning of Level 3 SES shall be as follows:

1. The developer shall post a Surety Bond, or other form of security acceptable to the county, for the abandonment of the site and in the event the Commission must remove the facility. Abandonment shall be when the SES ceases to transfer energy on a continuous

basis for twelve (12) months. The surety bond shall be one (1) percent of the total cost of the SES, unless otherwise agreed to by the county and the developer.

Chairman McKee: Translation?

Ian Rice: Translation, we think it makes sense to include a base by case standard of surety bonds as outlined here. It could be that it's possible to satisfy the commission's risk needs with a letter of credit or alternate security, not the commission under this language would of course reserve the right to approve so we would like the flexibility to propose something within the ordinance, within the bounds of the ordinance that might not take this exact form but can still meet the county's needs.

Chairman McKee: Did you anticipate staff, that the surety have one-year renewable characteristics as probably would a letter of credit as well or maybe even more frequently reviewed?

Claudia Wayne: I thought, I mean most of them were one (1) year. You know, up for one (1) year and then we would get a new surety bond. They renew it every year, they come to the Planning Commission just like anything else.

Chairman McKee: When you get notified that it's maturing, and if you don't get the surety replaced, you call the existing surety...

Claudia Wayne: Yes, before it expires.

Chairman McKee: This is a little different because it lasts way out there.

Claudia Wayne: You know, I've got some bonds that are old. I have a list, and I know when they're coming due.

Chairman McKee: What I'm saying is that the call for the decommission will be in the neighborhood of 20-30 years from the date entered... most of us probably won't be around that long. My question

is do you think you've adequately addressed that part of it? That's my question, and I don't mean to delay, go ahead.

Ian Rice: Progressing into G: 2 A decommissioning plan shall be submitted at the time of application by the party responsible for the decommissioning and the land owner and must include the following: (1) Defined conditions upon which the decommissioning will be initiated. i.e. there has been no power production for 12 months, the land lease has ended, or succession of use or abandoned facility, etc.; (2) Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations; (3) Restoration of the property to substantially the same physical condition that existed immediately prior to the construction of the SES; (4) The time frame for completion of decommissioning activities; (5) the party currently responsible for decommissioning, and; (6) Plans for updating the decommissioning plan.

David Dixon: Why the distinction between development and construction?

Ian Rice: I guess immediately prior to development versus construction of the SES, I think the intention here is to say, well suppose we have a property that is timber, and the land owner removed timber under the option period.

Ordinarily in a Solar Lease Agreement or purchase option you would have typically 3-5 years of option on a property in which the landowner continues to use the property as see fit, and solar developers make regular payments so they may exercise a lease or purchase the property in the future once they have their necessary permits, off-take agreements for electricity, and have satisfied the transmission studies and requirements in order to feed power onto the grid, amongst other things.

So, what this is saying is the standard by which we should be required to restore the property is, at the moment, where we exercise our option and

begin construction versus the beginning of the option prior which could be 3-5 years in the past where the owner may have chosen to do something with the property that wasn't material to solar.

David Williams: I would add that sometimes it's not possible or may not even be desirable to restore it to the original condition.

Ian Rice: I think that's right. A common example we see is that some landowners request that if we built interior roads, on decommissioning many landowners will express, of course now we're talking about into the future but landowners have expressed an interest of can I retain the roads on decommissioning if you make roadway improvements in their property boundary. So, that would be a simple example of that.

David Williams: How would your company, how do you think they would respond to decommissioning your plant, and the landowner says, hey, I kind of like the electricity I'm getting from this plant how about I just take it over?

Ian Rice: So, a few things; the landowner will not be receiving free electricity. Ordinarily we would have purchased the property or more commonly we would be a tenant to the landowner so we would be paying them rent, and no in-kind provision for electricity consumption. The electricity is typically being purchased by a large utility or a market participant. So for example a large, industrial consumer.

Beyond that, we've had some landowners in other states make a request to that nature, we explored it, and then concluded that if not possible for us to enter an agreement to that nature for the simple reason that it will have an impact on our Federal Tax eligibility.

David Williams: Ok.

Chairman McKee: As you are thinking out loud how could the scenario that Mr. McCollom described, I want to keep that infrastructure, I don't want you to take it out, I want to keep it, and we've got consideration

from the Planning Commission, the county, your consideration. How would you deal with that?

Ian Rice: At the conclusion of the lease if it's the landowners' preference that they retain the equipment on the site, is that not right?

Chairman McKee: So then you require them to post a decommission bond?

Ian Rice: No, that's not our intention. I think our base position would be if we're required by the county to post a decommissioning plan, that's creating a liability for us to honor that decommissioning plan. So, I think we would certainly be hesitant in the extreme to walk away from that without at least exploring what the county as well as our landowner what the (inaudible) is there.

You know, we appreciate...our business relationship, and for instance with our landowners we're also intending to be in this community for over 30 years. So, we want to be good corporate citizens as well as protect neighbors which is why for example, we recognize it's entirely natural and makes sense to include provisions for some kind of visual screening in a local ordinance.

Chairman McKee: Does your agreement provide that you can keep leasing, keep being a tenant of the landowner or extension?

Ian Rice: It depends on the individual agreement, would be the short answer.

Our ordinary agreement with the 30 year lease agreement with two, 5 year options to extend. But, that is on a case by case basis.

Chairman McKee: Normally the equipment is used up by then isn't it, if you haven't replaced it?

Ian Rice: Yes, so typically the equipment is under warranty for 25 years from the manufacturer, 30 years is a very comfortable lifetime projection for the equipment. The reason for the option period beyond the initial

30 years is entirely likely that the system will still be producing at a satisfactory level beyond year 30. So, if we have the provision to continue to generate electricity, and it makes economic sense we would naturally like to continue to do so but what's difficult for us to anticipate is the end of useful working life near 32 or years 37. The previous comments about the decommissioning examples because of the fact that even the oldest utility scale systems in the United States or around the world typically haven't reached their 30 year, end of life today.

Chairman McKee: Questions? You'll be around for a little while?

Ian Rice: I'd be happy to stay.

Chairman McKee: Thank you very much sir, we appreciate it.

David Williams: Thank you.

Chairman McKee: Speaker could you please state your name and address for the record?

Courtney Pelissero: My name is Courtney Pelissero, and my address is 7650 Edinborough Way, Suite 725, Edina, Minnesota.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, and nothing but the truth so help you?

Courtney Pelissero: Hello again, my name is Courtney Pelissero and I'm a permitting associate with Geronimo Energy. I'm here on behalf of Geronimo to provide comments on this draft county ordinance.

I had several comments prepared but both previous developers have covered them. So, I would like to keep this very short but I do think that all of us developers are on the same page which suggests that we're all following the industry standards with our suggestions.

With NEXTera's red-lined comments, Geronimo agrees with all of the red-lines I just want to add one, additional revision.

So in NEXTera's red-lines...

Chairman McKee: Mr. Fridy, excuse me.

Tommy Joe Fridy: I forgot to ask the gentleman if he would like to submit his comments into the record, and if you're going to make comments on his record, let's take a second and do that.

Ian Rice: Yes, absolutely we would recommend submitting our comments formally into the record, including the red-line. Thank you.

Chairman McKee: Thank you sir. Now please proceed.

Courtney Pelissero: Thank you, sorry. Just for clarity I wanted to add a comment to it based off of theirs.

NEXTERa has suggested that the applicant could submit a screening plan but if not, then you would follow with the double rows, staggered pines planted 15' on center from any public right-of-way or adjacent residential use. Geronimo would recommend removing the section that says any public right-of-way so that screening would only be from an adjacent, non-residential uses; as was discussed with INVENERGY'S comments.

David Williams: Will you mind re-stating that please?

Courtney Pelissero: Sure.

Tommy Joe Fridy: Do you have that in writing? Only yours? At the end would you submit it if we give you a copy back?

Courtney Pelissero: Yes, I will be happy to submit it.

Tommy Joe Fridy: So we can be clear on what you're...

Courtney Pelissero: The general idea, with INVENERGY's comments we discussed is that it is unclear the draft ordinance is written. It's suggested that screening was required from any public right-of-way, and from an adjacent residential use. We want to clarify that the screening would only be required from adjacent non-participating residential uses, not from public right-of-way.

Chairman McKee: And that is what you will submit?

Courtney Pelissero: Yes, and I can submit that in writing.

Chairman McKee: Thank you, anything else?

Courtney Pelissero: No, we agree with the previous comments.

Chairman McKee: We appreciate you being here, thank you.

David Dixon: Just quickly, there was some comment...

Tommy Joe Fridy: Will you give us your written comments to put in the record, and we'll give you a copy back if you would like.

Courtney Pelissero: Yes.

Tommy Joe Fridy: If you would tell any of the staff here how we can get it to, or you can pick it up tomorrow.

Courtney Pelissero: Ok. Would you like that conversation after the public hearing?

Tommy Joe Fridy: Yes ma'am.

Courtney Pelissero: Ok, I'll stick around.

Chairman McKee: Thank you.

Courtney Pelissero: Thank you.

David Dixon: Earlier there was some reference to why that public right-of-way reference is in here.

Brian Bishop: Yes. Our intention was if there was a residential structure across the road, across the right-of-way; that would still be considered adjoining from what we practice. So, we would still want that to be screened. Not from the public right-of-way itself, if there was nothing across from the public right-of-way, then screening would not be required.

David Dixon: Ok.

Chairman McKee: Mr. Hubiak, please state your name and address for the record.

William A. Hubiak: William A. Hubiak, P.E., Henderson County Engineer; 4079 Shady Hollow Drive.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth, and nothing but the truth so help you?

William A. Hubiak: I do.

Chairman McKee: Please proceed.

William A. Hubiak: I've got two questions and concerns about the bonding issue, to make sure that we're covered.

1. The 1%, do we know what the average cost per acre is for construction? Average cost per acre of construction?

Chairman McKee: If you're asking that question of one of the speakers...

William A. Hubiak: Yes.

Chairman McKee: You ask it of me. Could I invite one of you if you would like to speak on behalf of all of you the average cost per acre of construction? Can you please come to the podium if you're going to opine.

Ian Rice: Ian Rice from NEXtera Energy. I'd say it varies very widely. It depends a lot on topography, terrain, environmental standards, etc., so with that large caveat I would say that we tend to think more of these things more so on a megawatt basis in terms of pricing, it's typically 8-10 acres of megawatts. In terms of the full construction price, that's privileged so that's something that we share with the utility and parties that we contract with but we probably can't enter that into the record today.

William A. Hubiak: That leaves us a very broad number as far as the decommissioning. Have we decommissioned any solar panels?

Ian Rice: The annual large majority systems would not have been decommissioned. The utility scale solar industry in the United States has really grown very rapidly over the past 10 years, but particularly the last 5-6. So, given that we see that 30 year life span, very few systems would have reached end of play; if any.

David Williams: Can I ask you, what is the typical cost of one of your installations? Can you just...

William A. Hubiak: He's not going to give you that, he just said that earlier.

David Williams: No, I mean you certainly... and those would have to be put on the record I would think.

Ian Rice: What I will say in broad terms is that the systems we're proposing in Henderson County are industrial size, utility scale projects that would be a capital investment of certainly tens of millions of dollars or likely hundreds of millions of dollars.

David Williams: So, 1% percent of tens to hundreds of millions of dollars, ok.

Chairman McKee: So, is appropriate to ask somebody where the 1% came from?

William A. Hubiak: My concern is the 1% of not knowing what we're looking at as far as decommissioning, is that going to be enough to decommission it when you're talking in such large scale; this was my question. We're dealing with something we don't know and we have no experience with. Obviously with the life span, they don't have very much knowledge of it either. So, to protect the county in the ordinance, we might want to check the 1% number.

The second thing is salvage value. That shouldn't enter into the equation at all after 22 years of being the County Engineer and dealing with recycling, that number is so volatile we have no idea what that number is if any. The biggest weight in a solar panel is glass. I can tell you right now we get zero value on glass. If I didn't re-use it as back fill on drainage structures, that's the only thing we get paid for. Nothing else, zero dollars. The rest of the copper and the aluminum are light-weight items and we have no idea what that's going to be in the future. So, that would be my recommendation to not include any salvage value in the calculations.

Last thing in our dealings with dealing with other bonding requirements both coal mining in our county, and with subdivision regulations, it's my experience that we should not allow a letter of credit, and that we require an actual surety bond that is renewed on an annual basis or at least every 4 years with the calculations, 5 years whatever they want to do, with the calculations for inflation for the decommissioning to protect the landowner and our regulations.

David Williams: Can you explain why you would not like a letter of credit to be used?

William A. Hubiak: You were talking about a company, and I'm not slighting the company by any means but you know we're talking about somebody who is not here, a letter of credit is just from the bank, and it's not actually a surety if something should happen. You heard the price of the project, in the millions of dollars so, 1% of hundred million dollars is a million dollars. A million dollar surety bond compared to a million dollar letter of credit, I think our County Attorney and our governing body would be a little bit more at ease with an actual bond in hand.

Chairman McKee: So, have we ever had a problem calling on a letter of credit?

William A. Hubiak: They're not normally given in that magnitude.

Chairman McKee: But we get them right? We've gotten them?

Claudia Wayne: That's mostly what we get, a letter of credit. We don't really, we've not... in public improvements accept insurance bonds anymore because they're hard to collect.

William A. Hubiak: The mining bonds have all been surety bonds.

Chairman McKee: Anything else Mr. Hubiak?

William A. Hubiak: That's all, thank you very much.

David Williams: Claudia, in reference to your comment, the surety bonds are hard to collect and the letters of credit are more easily collected?

Claudia Wayne: Oh yeah because it's a bank, a financial institution... surety bonds mostly come from insurance companies. The Planning Commission as far as our public improvements, we do not accept bonds from the insurance company but that's not talking about them because this is kind of a totally different situation. We accept cash escrow or letters of credit; the Planning Commission does now.

Chairman McKee: We used to take surety bonds but we quit?

Claudia Wayne: Yes.

Chairman McKee: I don't know who to... in my limited experience is it's better to have a letter of credit than a surety bond but, I'm still intrigued with the idea of a performance bond so that in the event that something happens, and everything goes to Jell-O you've got a substantial financial company standing there to get the job done, and not have the burden on a county. I hear what Mr. Hubiak is saying as well.

Is there anybody else who would like to speak? Please come forward. You're already sworn in so speak away.

Katya Samoteskul: Thank you. I know that we've talked a lot about screening. I took the liberty of combing some of the suggested edit from NEXtera and ours in to one section. I was wondering if you could consider it as proposed language. I can read it. I don't have a typed red-line but I'm happy to tear out a page of my notebook if that's acceptable or just read it into the record as I wrote it.

Chairman McKee: Mr. Fridy, your preference?

Tommy Joe Fridy: Both.

Katya Samoteskul: Ok.

Chairman McKee: So just read it into the record, then turn it over to staff before you leave.

Katya Samoteskul: So this is for D.

All Level 3 SES shall be screened with an 8' tall fence. A vegetation screening plant to reduce the view of the SES from residential dwelling units on adjacent lots will be submitted for approval to the Planning Commission. The existing natural tree growth and natural land forms along the SES perimeter may create a sufficient buffer and shall be preserved when reasonably practicable. Where no alternative plan is approved by the Planning Commission, a double row of staggered evergreens planted every 15' where the SES is adjacent to non-participating residential dwelling units. The evergreens shall be located outside of the fence.

Who should I hand it to?

Tommy Joe Fridy: Heather, the Clerk.

Katya Samoteskul: I'm sorry, this is not very professional.

Heather Lauderdale: Thank you.

Katya Samoteskul: Thank you.

Chairman McKee: Thank you. Would anybody else like to speak? Robbie, Mr. Parrish, anybody? Mr. Iriti?

Tony Iriti: I will be brief because I know I'm the last thing maybe before the UK game, and it's already started.

I just wanted to say thank you to Brian and Claudia, and the rest of the staff, and to you as a Planning Commission for taking up this whole issue dealing with an ordinance for solar.

From an economic development standpoint, I'm just going to give you a couple of for instances. We've had companies that have come in looking at Henderson County, making ridiculous claims, in my mind of wanting 100% renewable energy. We all know that can't happen without buying a lot of it on the market and those kinds of things but that's the kind of pressure that HMP&L and Big Rivers, and folks are under and some companies even, as I say, kind of the difference between a vegetarian and a vegan is that they come in and they say if you want to be my supplier, you have to be green as well. So, this is not an issue that is going to go away anytime soon and if I've heard it once, I've heard it a million times is people trying say that the Planning Commission is so non-business friendly or unfriendly to business. This is a great example here tonight of how business friendly Henderson County is and we really are here. Brian and Claudia have taken time out of their schedules to meet with these companies that you've heard tonight, listening to their sides understanding that, and trying to put together a great ordinance that everybody can live with. As you well know, when both sides win that's the kind of deal your looking for. Thank you for giving me a few minutes this evening, and congratulations Brian and Claudia.

Chairman McKee: Thank you Mr. Iriti.

Mr. Williams?

When you get to the podium, please give your name and address for the record.

Robbie Williams: Robbie Williams, I farm here in Henderson County and I'm at 13305 Hwy 1078 S.

Chairman McKee: Do you swear the statements you are about to make are the truth, the whole truth and nothing but the truth so help you?

Robbie Williams: Yes I do.

Chairman McKee: Please proceed.

Robbie Williams: First of all I would like to commend this body for addressing something this technical. I would like to say that the most detailed discussion that I've ever had with any public official was this weekend when Brian came out to my farm. He did that on his own time, and I was thoroughly impressed. I would like to extend an invitation to this body to come out to the farm. I've built 90,000 watts of solar, a lot of it with my two daughters.

We've got all different types. I hope most of it is aesthetically pleasing, that's our goal. I think a lot of times the things that are new are sort of looked at with reservation but I really think that clean energy is our future. We've done a lot of energy storage research, if you look at the ages of the talented that have come to Henderson Kentucky to promote solar; the contractors and representatives, I think it says something about the future industry and future economic development. I think that's what we want Henderson to be seen as, as a progressive entity, a progressive panel. I would like to quote Ed Whitfield when he was in town one time, one thing Ed said was we need an energy mix, he gestured just like this, we need to make things work together. And I think the kind of innovation that these companies bring to the table and the economic development brings to the table is something that Henderson needs and I would just like to invite everybody to come out to the farm and look at the solar panels on my farm.

Thank you very much.

Chairman McKee: Thank you sir.

Brian Bishop: Mr. Williams has a great set up. He is far too kind first of all. Second of all he's being far too modest. His set up is very cool and interesting. He also has a nice, awesome woodshop that you should check out too. Very fun, very educational, and very entertaining. You should all go check it out.

Chairman McKee: His talents go way beyond that. If you ever go to Audubon Museum and theatre there, he did that design and creation goes to Robbie Williams. It's fabulous, it is fabulous. Go look at it.

Would anybody else like to speak?

David Williams: Mr. Chairman, in this group hug that we're having I wanted to give my appreciation to the industry representatives for coming and spending valuable time. I know all of you are highly paid and taking time to come to Henderson and help us with this ordinance is really meaningful in the sense that you're here pro-actively and to help us form this ordinance or help us recommend this ordinance to our governing bodies, and instead of showing up after the fact when you're actually trying to permit something and arguing at that point becomes a lot more problematical, so thank you very much, all of you.

Chairman McKee: Thank you very much.

Would anybody else like to speak?

Do you have a recommendation Mr. Bishop?

Brian Bishop: Mr. Fridy and I, please chime in on this, there's been a lot of suggestions on this, a lot of worthwhile suggestions we should take. It's going to be hard to sort through them all tonight, it may be something that we take all the suggestions, consult with the Fiscal Court and their attorney, and ask that we re-write the ordinance with those suggestions and then bring it back to the Planning Commission for

another public hearing. It may take a little longer but it may be a more effective ordinance.

Kevin Richard: That was actually going to be my motion that I made too.

Brian Bishop: The industry representatives gave very good recommendations, and quite honestly there has been so much going on I couldn't sit down and write it out if I had to. So, that would be my recommendation.

Chairman McKee: Did anyone have any other suggestions?

David Williams: I would just add that we make sure the correct representatives that have been here tonight that we circulate that as well, and make sure they have comments on it prior to the next meeting.

Chairman McKee: Let's figure out how to put that in the form of a motion.

David Dixon: I don't think we necessarily agreed on all those changes yet so that needs to be made clear.

Chairman McKee: If I understand correctly, what you're suggesting is that the transcript from this meeting be presented to Fiscal Court for them to sort through and see what they want to send back here, and we'll have another public hearing?

Brian Bishop: Yes.

Chairman McKee: At which time we could settle on all of the changes and recommend to the Fiscal Court for approval. The City Commission as well?

Brian Bishop: Just the county.

David Dixon: I think we're pretty much in agreement on multiple things, but I think there are a couple of little things we just keep coming back to we don't want to forget about.

Chairman McKee: Are we in agreement to do that? Does anyone disagree? Do we have a motion?

***MOTION WAS MADE BY KEVIN RICHARD, AND SECONDED BY GARY GIBSON TO RECOMMEND THAT THE PLAN YOU JUST SPELLED OUT BE FOLLOWED AND WE MEET NEXT MONTH TO REVIEW.***

Chairman McKee: That's a motion, I need a second. Madame Clerk, will you please call the roll?

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

Chairman McKee: Very good.

Next on the agenda is to go out of **Public Hearing**.

***MOTION WAS MADE BY DAVID WILLIAMS AND SECONDED BY RODNEY THOMAS TO GO OUT OF PUBLIC HEARING.***

Chairman McKee: All those in favor signify by saying aye.

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

Chairman McKee: We are out of public hearing.

The **June Finance Report with Audit Adjustments Completed**, is that Mrs. Curtis?

Theresa Curtis: Yes.

Chairman McKee: Speak to it.

Theresa Curtis: After all the audit adjustments completed, we ended up for June 2019 at 92% of budget. I just need a recommendation for approval for June 2019.

Chairman McKee: The Chair will entertain a motion.

***MOTION WAS MADE BY MAC ARNOLD, SECONDED BY GARY GIBSON TO ACCEPT THE JUNE FINANCE REPORT AS SUBMITTED.***

Chairman McKee: We have a motion and a second, any discussion?

Chairman McKee: All those in favor signify by saying aye.

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

Chairman McKee: Next is the **October Financial Report**.

Theresa Curtis: Yes, we're at 37% of budget.

Chairman McKee: The Chair will entertain a motion.

***MOTION WAS MADE BY MAC ARNOLD, SECONDED BY RODNEY THOMAS TO ACCEPT THE OCTOBER REPORT AS SUBMITTED.***

Chairman McKee: All those in favor signify by saying aye.

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

Chairman McKee: Next on the agenda is the **Bond Report**, Mrs. Wayne?

Claudia Wayne: We're releasing Popeye's bonding. The Dollar Tree is also completed, and releasing erosion control and sewer.

Chairman McKee: Any comments or questions?

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY GARY GIBSON TO ACCEPT THE BOND REPORT.***

Chairman McKee: Any discussion? All those in favor signify by saying aye.

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

Chairman McKee: Approved as presented.

Administrative Business; the County Zoning Review Committee will meet in November on the 13<sup>th</sup> and the 20<sup>th</sup>, is that correct Mr. Bishop?

Brian Bishop: Yes sir.

Chairman McKee: The public is invited, all of us are invited.

Is there any other business to come before the Planning Commission?

Hearing none, the Chair will entertain a motion to adjourn.

***MOTION WAS MADE BY KEVIN RICHARD, SECONDED BY GARY GIBSON TO ADJOURN.***

Chairman McKee: All those in favor signify by saying aye.

***AYE: ALL***

Chairman McKee: Are there any opposed?

***OPPOSED: NONE***

**MEETING ADJOURNED AT 9:00 P.M.**

**I, HEATHER LAUDERDALE, hereby certify that the foregoing is a**

**true and accurate transcription of the Henderson City-County Planning Commission Meeting of November 5, 2019 to the best of my ability.**

---

**Heather Lauderdale, HCCPC Clerk**

X

---