

RESOLUTION NO. 2023-07

**BEING A RESOLUTION OF APPROVAL TO AMEND THE TEXT OF THE
DELAWARE COUNTY COMPREHENSIVE ZONING ORDINANCE REGARDING
SOLAR ENERGY**

- WHEREAS,** the State enabling act for planning and zoning empowers the Board of Commissioners of Delaware County, Indiana to adopt a zoning ordinance and also provides for amendments to said ordinance as deemed necessary from time to time; and
- WHEREAS,** a zoning ordinance may establish one or more districts which may be for agricultural, commercial, industrial, residential, special, or unrestricted uses and any subdivision or combination of these uses; and may, in each district, regulate how real property is developed, maintained, and used; and
- WHEREAS,** solar energy systems are an alternative energy source that produces electrical energy in an environmentally beneficial manner without the production of greenhouse gases and can offer economic development benefits to local government and residents such as increases to the tax base, revenue generation for landowners and the creation of temporary and permanent employment; and
- WHEREAS,** amending the zoning ordinance to regulate the location, construction and operation of solar energy systems is necessary and appropriate to achieve and secure the benefits and to avoid and/or minimize the impacts; and
- WHEREAS,** a solar committee was established and charged with making recommended amendments to the existing solar ordinance to continue to mitigate the impacts of solar facilities while not preventing solar farms in Delaware County; and
- WHEREAS,** due to the untimely death of the Executive Director, a consultant was hired to review the solar committee's work and recommendations and provide a summary of those recommendations; and
- WHEREAS,** the consultant, a professional certified planner, proposed some additional amendments; and
- WHEREAS,** the Delaware-Muncie Metropolitan Plan Commission has given legal notice of a public hearing for consideration of the proposed amendments in order to forward a recommendation regarding said amendments to the County as required by law; and
- WHEREAS,** the Delaware-Muncie Metropolitan Plan Commission has given reasonable regard to the comprehensive plan; current conditions and the character of current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible growth and development.

NOW, THEREFORE, BE IT RESOLVED by the Delaware-Muncie Metropolitan Plan Commission that the text of the Delaware County Comprehensive Zoning Ordinance be amended, changed and supplemented as follows:

SECTION 1. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A APPLICATION REQUIREMENTS shall be supplemented and recodified by inserting a new Subsection A1. as follows:

1. Pre-Application Meeting

Prior to submitting an application, the solar farm is required to meet with the Planning Director at least thirty (30) days prior to the anticipated application submission to discuss the proposed request, and to become more familiar with the applicable requirements. The anticipated agenda date will be used in all public notice requirements.

SECTION 2. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A3. Maintenance Plan shall be recodified and supplemented to include requirements for a landscape maintenance plan and a pesticide management plan as follows:

4. Maintenance Plan

d. Landscape Maintenance Plan. The solar farm shall provide a landscape maintenance plan consistent with the requirements in ARTICLE XXX, Section 5 DEVELOPMENT STANDARDS, Subsection B5.i.

e. Pesticide Management Plan. The solar farm shall provide a pesticide management plan to be approved by Delaware County/Purdue Extension, and Soil and Water Conservation Services.

SECTION 3. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A4. Decommission and Restoration Plan and Agreement shall be recodified and amended to ensure that there is a bond sufficient to cover the decommissioning costs by amending the first paragraph as follows:

5. Decommission and Restoration Plan and Agreement.

A Decommission and Restoration Plan shall be submitted and shall form the basis for a Decommissioning Agreement to be approved by the Delaware County Commissioners. The decommission plan shall include a reliable and detailed estimate of the costs of decommissioning prepared by a professional engineer or contractor who has expertise in the removal of solar facilities. The plan shall include a performance bond or other approved method of providing appropriate surety for the cost of decommissioning as set forth in the agreement. *in the amount of 125% of the cost estimate to decommission the solar farm. The cost estimate shall be updated every five (5) years and one (1) year prior to the lease end by a professional engineer or contractor who has expertise in the removal of solar*

farms. The cost estimate updates shall be paid for by the owner or operator of the solar farm.

SECTION 4. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A6. Emergency/Fire Safety Plan shall be recodified and supplemented with the word “equipment” to verify that specialized training and equipment shall be provided to the at the owner/operator’s expense, as follows:

7. Emergency/Fire Safety Plan.

An emergency and fire safety plan shall be provided to the Delaware County Emergency Management Agency for approval and the local fire departments whose jurisdiction is included in whole or in part within the solar farm project area. Any specialized training *and equipment* shall be provided at the owner/operator’s expense. If entrances are locked, Knox boxes and keys shall be provided at all locked entrances to the applicable emergency personnel. The names and phone numbers for the electric utility provider and the site operator, the 911 addresses and GPS coordinates shall be provided as a part of the plan and shall be posted at each entrance to the solar farm project.

SECTION 5. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A8. Notification of Project shall be recodified and supplemented to increase the notification requirements as follows:

9. Notification of Project

a. The applicant shall provide notice of intent to locate a solar farm to all property owners within one (1) mile of the boundaries of the solar farm within one (1) year, six (6) months, and one (1) month before submitting an application to Delaware County regarding the special use of a solar farm.

b. In addition, for the Board of Zoning Appeals hearing, ~~The~~ the applicant shall provide a copy of the written notice sent to all surrounding property owners within 300 feet or 2 properties deep, whichever is greater, from the boundaries of the solar farm project area along with proof of the sending of such notice (i.e. return receipts or certified mail receipts). The applicant shall also provide a list of the surrounding property owners to whom notice was sent.

SECTION 6. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A shall be supplemented with a new subsection A10. to add insurance requirements as follows:

10. Insurance

a. The owner or operator of the solar farm shall maintain a current comprehensive general liability insurance policy covering bodily injury and property damage, and

cyber insurance to protect from data breaches and other cyber security issues. The insurance shall be in the amount of \$2,000,000 per occurrence and \$5,000,000 in aggregate, naming Delaware County as an additional insured. Proof of insurance shall be provided to the Plan Commission office prior to the issuance of permits and on an annual basis thereafter. Failure to maintain insurance shall result in cancellation of the Improvement Location Permit by the Planning Director.

- b. it is the responsibility of the owner or operator of the solar farm to inform the Planning Director of all changes in ownership of any insurance policy during the life of the project, including the sale or transfer of ownership or policy cancellations. The County shall be named as a notified party by the insurance provider in the event there is a lapse in coverage.*
- c. Terminology shall be included in any and all insurance policies that provides policy limit adjustments derived from the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) to protect against inflation. The County Commissioners may review coverage amounts as often as every five (5) years and modify, as necessary, to determine if appropriate limits have drifted too far from the CPI adjusted level.*

SECTION 7. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection A shall be supplemented with a new subsection A11. to clarify requirements for changes to an existing solar farm, as follows:

11. Changes to Existing Solar Farm

Once an application is approved, any change to the solar panel footprint or adding additional property shall be considered a new application subject to the ordinance standards and procedures in effect at the time of the change. An application for said change does not affect any prior approvals.

SECTION 8. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, shall be recodified and supplemented with a new Subsection B to establish land use limitations in order to protect agricultural uses, as follows:

B LAND USE LIMITATIONS

The County is concerned with the preservation of farmland and therefore has limited the total number of acres that can devoted to solar farms within Delaware County. The maximum number of acres devoted to all solar farms under panel is limited to 3,400 acres.

SECTION 9. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection C SETBACKS is recodified and amended to alter setback requirements from structures to fences and property lines, as follows:

D SETBACKS

1. A minimum fifty (50) foot setback shall be maintained from the *closest point of the* solar farm ~~structures~~ *security fence facing right-of-way* to the road right-of-way line, existing or proposed, whichever is greater.
2. A minimum two hundred (200) foot setback, which includes a screening buffer and other native vegetation as described below, shall be maintained from the solar farm structures to any non-participating owner's adjoining property which contains a dwelling, as measured from the property line to the solar farm ~~structures~~ *security fence*. If the adjoining property does not contain a dwelling, the regular F Farming Zone side and rear setbacks of twenty-five (25) feet and fifty (50) feet, respectively, shall apply.
3. A minimum two hundred fifty (250) foot setback shall be maintained from any non-participating dwelling to any solar farm ~~structure~~ *security fence*, ~~not including security fencing if applicable~~. A minimum one hundred (100) foot setback shall be maintained for all other dwellings.

The setbacks set forth in items 2. and 3. above may be reduced by up to 50% with a written waiver from the property owner(s).

SECTION 10. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection F FENCING is recodified and supplemented with a sentence to verify that barbed wired fencing is prohibited, as follows:

G FENCING

Facilities that are to be enclosed by security fencing shall have the fencing located on the interior of the buffer area. Solar farms that do not coincide with livestock shall use wildlife- permeable fence, fencing with larger holes than a traditional chain-link fence that allows for small-to medium-sized animals to move freely through the fence for at least ten (10) percent of the fence lines where the 10% shall be evenly distributed along each quarter mile section and at identified wildlife corridors. Wooded areas of 10 acres or greater must be incorporated into wildlife corridors so that fencing does not prevent access to the wooded area by large animals. Substation locations identified on the site plans will be allowed to use traditional chain-link fencing around the entire structure. Fencing shall be maintained in good condition for the life of the solar farm operation. *Barbed wired fencing is prohibited.*

SECTION 11. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection G GROUND COVER is recodified and G3. shall be replaced to require a pest management plan, as follows:

H GROUND COVER

- ~~3. No pesticide use is permitted on the site, however, this provision does not apply to pesticide use around on-site buildings or other spot treatments for invasive species as may be deemed necessary to protect public health and safety. Plant material must not have been treated with systemic pesticides, particularly neonicotinoids.~~
- 3. An integrated pest management plan shall be submitted indicating the approach for site preparation and on-going ground cover maintenance. Nothing is intended to prevent pesticide use around on-site buildings or spot treatments for invasive species as may be deemed necessary to protect public health and safety. Plant material must not have been treated with systemic pesticides, particularly neonicotinoids.*

SECTION 12. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, Subsection N GENERAL PROVISIONS is recodified and a new O4. shall be added to verify that industry standards are required to be met, as follows:

O GENERAL PROVISIONS

- 4. All solar farm structures shall conform to applicable industry standards as well as all local, state, and federal regulations. Solar farm applicants shall submit certificates of design compliance that solar manufactures have obtained from UL (Underwriter Laboratories), DNV (Det Norske Veritas), or an equivalent third party.*

SECTION 13. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, shall be supplemented by inserting a new Subsection P establishing a property value guarantee as follows:

P Property Value Guarantee

The owner or operator of any solar farm shall agree to a property value guarantee agreement drafted by the County with the purpose of protecting against diminished value of a non-participating adjoining property owner with a residence located within two (2) property owners deep. Such agreement shall include at least the following:

- 1. Within twelve (12) months of the completion of the solar farm, a non-participating adjoining property owner may request an appraisal of their residential property based on similar properties located at least two (2) miles aware from a solar farm project. Such appraisal shall be conducted at the expense of said Owner/Operator and can be conducted by a mutually agreeable appraiser.*

2. *If no agreement on an appraiser can be reached, the non-participating property owner and the project owner/operator shall each select an appraiser and those appraisers shall cooperatively select a third, independent appraiser to conduct the appraisal.*

The County is not responsible for enforcing the Property Value Guarantee.

SECTION 14. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, shall be supplemented by inserting a new Subsection Q establishing a good neighbor policy as follows:

Q GOOD NEIGHBOR POLICY

The owner or operator of any solar farm shall agree to negotiate a good neighbor agreement with adjacent non-participating property owners to facilitate positive relationships with adjacent non-participating property owners. A solar farm should make a good faith effort to approach non-participating owners, within 2 property owners deep that contain a residential dwelling. Such agreement shall include at least the following:

1. *The good neighbor agreement is transferable with ownership of the non-participating property.*

The good neighbor agreement is between the solar farm and the non-participating property owner and is not enforceable by Delaware County.

SECTION 15. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, shall be supplemented by inserting a new Subsection R to verify that all requirements of a solar farm remain in effect with a transfer of ownership, as follows:

R TRANSFER OF OWNERSHIP

Add duties and obligations of each owner/operator of a solar farm shall be joint and several, and shall be binding upon all heirs, successors in interest, and assigns. At least thirty (30) days prior to any transfer of any ownership interest, written notice shall be given to the Delaware County Commissioners and the Plan Commission. All agreements, bonds, and other financial assurances provided under this ordinance shall remain in full force and effect upon any transfer of ownership interest until the successor in interest delivers replacement documents for approval by the Delaware County Commissioners. Any transfer of ownership interest without prior approval of replacement documents shall constitute a default and shall not relieve the original responsibility of liability.

SECTION 16. That ARTICLE XXXI SPECIAL USES, Section 13 SOLAR FARM REQUIREMENTS, shall be supplemented by inserting a new Subsection S NUISANCE to add a method to address issues with solar farms, as follows:

S NUISANCE

Any solar farm, or part thereof, declared to be unsafe by the Delaware County Building Commissioner by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with an abatement order from said Building Commissioner or, if applicable, the Decommissioning Plan Agreement. Abatement orders shall allow no more than sixty (60) days for corrections or for a rehabilitation plan to be filed with the Plan Commission office setting forth a timeline for compliance with the abatement order.

SECTION 17. That ARTICLE XXXIII DEFINITIONS, Section 2 TERMS AND MEANING shall be amended and recodified to include a new definition, as follows:

Good Faith Effort: Obtaining written acknowledgement that there has been an attempt to contact non-participating property owners that is reasonable under the circumstances. One such way is a certified, return receipt mail could be considered a good faith effort.

SECTION 18. That all reference to the term “Solar Farm” throughout the Delaware County Comprehensive Zoning Ordinance shall be changed to “Solar Facility”.

SECTION 19. That this Resolution is hereby adopted this _____ day of _____, 2023.

**DELAWARE-MUNCIE
METROPOLITAN PLAN COMMISSION
BY:**

Allen Wiseley, President

ATTEST:

Acting Secretary