

March 17, 2021

Terry Hall (terry@terryhall.law)
Terry Hall Law PC
712 E. Seminary Street
Greencastle, IN 46135

Re: Requested changes to the Posey County Solar Ordinance (the "Ordinance")

Dear Terry:

On behalf of Posey Solar, LLC ("Posey Solar"), thank you for the opportunity to comment on potential language changes to the Ordinance for consideration by the Area Plan Commission Thursday evening. See discussion below regarding actual language for insertion into the Ordinance. A separate document captioned "Ordinance Position Summary" is provided with this communication that explains in more holistic fashion the issues of concern and requested current Ordinance interpretations of Posey Solar for your review and that discussion with your client.

Following are the particular provisions that Posey Solar could support being added to the Ordinance:

1. Section 153.126.02 D—ADD: Subject to compliance with NEC code and the off-taker public utility, the project fence shall i) not feature barbed wire along the top, and ii) shall be similar in appearance to a "game" fence commonly found in agricultural areas.
2. Section 153.126.02 G— ADD: For Non-Participating residences adjoining the project area, the project shall install screening to inhibit the "viewshed" from the leading edge of the foundation of the Non-Participating Residence from all sides that face toward the project. The screening shall consist of compact evergreen hedge in commercially reasonable sizes planted a maximum of twelve (12) feet apart. The specific location of the plantings may be anywhere between the project's fencing and the property line of the Non-Participant owner in the discretion of the project. The project, at its cost and expense, shall maintain the screening upon receipt of notice from the owner of the Non-Participating residence of the reasonable need to do so. Notwithstanding the foregoing, the screening obligations may be waived by the written agreement of the project and the Non-Participating owner. Additionally, for the project life, the project shall plant and maintain perennial vegetated ground cover on the ground around and under the solar panels and in the perimeter buffer area, using a non-invasive species and native or naturalized species where possible in order to reduce stormwater runoff and erosion at the site.
3. Section 153.126.03 B— ADD: Solar panels shall be placed no less than 250 feet from the leading edge of a Non-Participating residence (which setback may be waived by a written agreement between the project and the Non-Participating owner). NOTE—see reference in the Ordinance Position Summary to the option of 300 feet in lieu of 250 feet – however, for this provision to be acceptable, the setback from property line would need to be reduced to 50 feet.

Thank you for your review and presenting this information to your client. Posey Solar is of course available to answer any questions

Sincerely,

Mary E. Solada

MES/cmm
Enclosures

cc: Joshua Chavez
Jarrod Pitts

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1. Acceptable Revisions
 - a. Setbacks from non-participating residence
 - i. 250 feet from solar module to non-participating residence
 - ii. Alternatively, 300 feet from the solar module to non-participating residence would be acceptable if the setback from the property line is reduced to 50 feet. This is our preference as it allows for a greater setback from residences and the 50 foot property line setback as is in line with other Indiana counties and HB1381.
 - b. Vegetation in the “viewshed” of non-participating landowners
 - c. Screening along public roads
 - i. Perennial vegetated ground cover (i.e. native grasses) to be maintained in perimeter buffer areas between public roads and the project fence (consistent with HB1381)
 - d. Fencing shall have no barbed wire and comply with NEC code and utility requirements with a similar appearance to a game fence.
2. Unacceptable Revisions
 - a. Increased setbacks from property line beyond 100 feet
 - i. Given solar is safe and the solar panel height is less than 15 feet there is no justification for increasing setbacks along property lines
 - ii. HB1381 provides for a maximum setback from property lines of 50 feet
 - b. Trees and shrubs along public roads
 - i. Our proposed alternative fencing and perimeter native grass revisions adequately address any “viewshed” concern along public roads.
 - ii. The requested zoning change would serve to make the project unfeasible, adding over \$6M in cost.
 - iii. There are many manufacturing and industrial businesses along Hwy 62 and near the project area with significant visual impacts that do not have and were not required to have vegetative screening along public roads. A few examples include AstraZenica, Green Plains Mt. Vernon, Port of Indiana, Countrymark and Westech Building Products.
 - c. Property Value Guarantee
 - i. There are a number of factors that influence property values and the housing market, and no credible studies have shown an association between the presence of an operating solar field and negative long-term impact on the value of adjacent properties. Various reviews of solar fields and neighboring property values and home sales, including those utilizing data from Indiana, have confirmed there is no long-term impact. These studies look at property values before and after operation of the solar field, fair market value of homes and feedback from local assessors.
 - ii. A property value guarantee would make the project un-financeable given the potential uncapped liability this would create for the project as it exposes the project to factors out of its control such as the economy, local employment, property tax rates, inventory levels, property condition, interest rates, and others.
 - iii. Posey Solar has voluntarily agreed to pay 10% of appraised home value for neighbors within 300 feet of the solar field. This is in addition to the \$1,000 being offered for each year of operation via our Good Neighbor Agreements.

- d. Rezoning to Manufacturing
 - i. Solar is a temporary use. Changing the classification to M-2 can prevent the land from being returned to agriculture use and impinges on property owner rights.
- e. Cash Performance Bond
 - i. Highly expensive and unnecessary as risk will be addressed by security (surety bond or letter of credit) currently provided in ordinance and accepted by many Indiana counties.
- 3. Previously requested revisions to facilitate development of a best practice project
 - a. Drainage Plan approval at time of ILP with notice to Drainage Board at time of Preliminary Development Plan filing.
 - b. Filing Fees
 - i. Increase filing Fee to \$25-50k at time of Dev Plan Application and remove uncapped cost reimbursement section
 - ii. \$1,700/MW paid at time of ILP issuance



Trent Van Haften <trent@vhflawyers.com>

FW: Posey County Solar ordinance - comments of Posey Solar

1 message

Becky Wolfe <Becky.Wolfe@poseycountyin.gov> Thu, Mar 18, 2021 at 9:31 AM
To: "Andy Hoehn (andy.hoehn@plasticreclaiming.com)" <andy.hoehn@plasticreclaiming.com>, "Dave Pierce - Posey County News (dpearce263@aol.com)" <dpearce263@aol.com>, Hans Schmitz External <hschmitz@purdue.edu>, KBrown <Kevin.brown3@sabic.com>, Keith Spurgeon <keithspu@aol.com>, "Kevin Brown (krbrown2008@yahoo.com)" <krbrown2008@yahoo.com>, "Mark Seib (mark.seib3597@gmail.com)" <mark.seib3597@gmail.com>, Mike Baehl <michael.baehl@poseyville.us>, Randy Owens <jrocjo81@yahoo.com>, Randy Thornburg <thorn@tds.net>, Trent Van Haften <trent@vhflawyers.com>

From: Terry Hall <terry@terryhall.law>
Sent: Wednesday, March 17, 2021 1:01 PM
To: Mark Seib <mark.seib3597@gmail.com>; Mindy D. Bourne <Mindy.Bourne@poseycountyin.gov>; Becky Wolfe <Becky.Wolfe@poseycountyin.gov>
Subject: FW: Posey County Solar ordinance - comments of Posey Solar

Mark, Mindy, Becky –

Attached is some information that the developer sent over. I will be forwarding two more emails with information. Mary and I had an initial conversation just now and I am supposed to talk to the project manager this afternoon at 4:30 to get a bit more information on the site plan they included (like how many non-participating residences are surrounded on more than one side by the project). Developer is mostly concerned about increasing the setback from non-participating property lines beyond 100 feet and proposes to add a more protective setback requirement from existing residence that could be up to 300' if the property line setback is reduced to 50' (see the reasoning in the attached letter).

They have also proposed fence modifications and screening (green buffering) language that is worth considering. I will provide more feedback after the 4:30 call.

Terry Hall

(317) 370-7583

terry@terryhall.law

Terry Hall Law PC

712 E Seminary St.

Greencastle, IN 46135

From: "Solada, Mary E" <mary.solada@dentons.com>
Reply-To: "Solada, Mary E" <mary.solada@dentons.com>
Date: Wednesday, March 17, 2021 at 8:57 AM
To: Terry Hall <terry@terryhall.law>
Cc: "Jarrod Pitts (jpitts@tnsk.com)" <jpitts@tnsk.com>, Joshua Chavez <JChavez@arevonenergy.com>
Subject: Posey County Solar ordinance - comments of Posey Solar

Good morning Terry—please find my letter attached which sets out proposed language changes—also find a Solar Ordinance Position Summary for consideration by you and the APC.

Can you please acknowledge receipt? Happy to set a time later today or tomorrow to discuss any comments or questions in advance of the special APC meeting tomorrow evening.

Many thanks

Mary Solada

Image removed by sender.

Mary E. Solada

Partner

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MEMORANDUM

TO: MARIA BULKLEY & NICK GOLDING

FROM: W. TRENT VAN HAAFTEN



SUBJECT: RECORDS REQUEST TO AREA PLAN COMMISSION

DATE: MARCH 26, 2021

CC: MINDY BOURNE, APC EXECUTIVE DIRECTOR

On March 22, 2021 a Request for Records was made to the Area Plan Commission seeking copies of certain records from the Posey County Area Plan Commission. A copy of this request is included in this response.

The records request did not state with any specific particularity a time frame for the records requested. This response is made to address the interpreted request to mean the email communications or other written communications between Tenaska and the Area Plan Commission, and its attorneys, regarding any proposed amendments to the Posey County Solar Energy Ordinance. While some of the documents provided herein are not directly related to the amendment of the Ordinance, they are deemed in purview of our interpretation of what records are being requested.

Please note many of the email communications reflect "Van Haften and Farrar". I requested all emails in response to this request be forwarded to me and I thereafter copied them. The actual emails provided were between those listed email addresses in the email itself.

We reserve the right to amend, supplement or revise this response in the event additional records deemed responsive to your request are provided.

POSEY COUNTY, INDIANA

Request For Records Pursuant To Indiana Access To Public Records Act
(I.C. 5-14-3-1, et seq., as amended)

Date of Request: March 22, 2021 Time of Request: 3:45 pm
Name of person requesting information: Maria Bulkley & Nick Golding
Address: 501 Main Street, Suite 305, Evansville, IN 47708
Phone: (812) 423-3183 Fax: (812) 423-3841
Organization: Kahn, Dees, Donovan & Kahn, LLP

Please identify as specifically as possible the information, record, or document requested (attach additional sheet if necessary)

- Requesting copies of all correspondence and communications between Tenaska and its representatives and the Posey County Area Plan Commission, directly or indirectly through it's counsel, regarding proposed solar energy projects, including, but not limited to, proposed amendments to the Posey County Solar Energy Ordinance.

Please indicate whether you wish to inspect the record or wish to obtain a copy:

Inspect Copy

I understand that the Public Records Act requires an initial response to my request, but not the actual production of records, within a statutorily specified time period. I understand that if I request copies of public records, those copies will be provided to me within a reasonable period of lime after the initial response to my request. I further understand that if the request is denied, Posey County will respond in writing and state the statutory exception authorizing the withholding of all or part of the public record and the name and title or position of the person responsible for the denial. Posey County may provide me with its response to this request:

By mail at _____

By facsimile transmission at _____

Other email to mbulkley@kddk.com and ngolding@kddk.com

Photo Copy Charge: \$0.10 per page for black & white, \$0.25 for color; police accident reports are \$3.00 each. Other charges may apply to cover costs of reproducing materials in other mediums. A fee will be charged for the certification of documents and for the facsimile transmission of documents. Also, you will be charged for postage in the mailing of the requested documents to you. To avoid postage charges, you may pick up documents in person or send a self-addressed, stamped envelope. All charges must be paid to Posey County before the requested documents will be sent or given you.

Signature of person making request s/Maria Bulkley & Nicholas J. Golding