

IREDELL COUNTY PLANNING BOARD

The Iredell County Planning Board met on Wednesday, February 5, 2020 at 7:00 p.m. in the Commissioners Meeting Room of the Iredell County Government Center (Old Courthouse) at 200 S. Center Street in Statesville, NC.

MEMBERS PRESENT

Harry Tsumas, Chairman
Doug Holland
Robert Palmes
Chris Carney
Tracy Jenkins
Raymond Burnette
Jerry Santoni
Melissa Neader
Scottie Brown

STAFF PRESENT

Matthew Todd
Leslie Meadows
Cindy Nicholson

Absent

Kristi Pfeufer
Mark Davis

Chairman Tsumas called the meeting to order.

CONSIDERATION OF TEXT AMENDMENTS (For Recommendation)

Mr. Matthew Todd, Planning Director, presented the following text amendments for *recommendation* based on proposed text amendments to Chapters 2 & 3 of the Iredell County Land Development Code:

Solar Farms

Mr. Todd states the county has had solar farms in the code for over 10 years and there has been a couple of amendments during that time. The most recent was a few years ago when the county added some phrasing for decommissioning and updating what is referred to as the model ordinance for the state. As always, staff looked at surrounding counties and counties throughout the state to see how Iredell County's setbacks compared to what other counties are doing.

At the time, it went through and the Board approved it. Right after it was approved, the commissioners asked that it be sent back to this group to reconsider if these should be allowed with a special use permit in rural areas. The Planning Board voted yes, leave it as it was. It has stayed in that form for a couple of years.

Back at the Commissioners fall retreat, the Commissioners directed staff to move forward with some specific amendments which include changing it from a special use permit process which goes through the Board of Adjustment for approval. Thus, a quasi-judicial process becomes a legislative process which would come through the Planning Board and then to the County Commissioners. The other change the Commissioners specifically asked for was the decommissioning and bonding requirements that were in the code.

Mr. Todd said with it being with the Board of Adjustment, staff asked that they have a decommissioning plan which they have to prove to the Board of Adjustment how they will actually decommission rather than just saying they will. With changing it to a legislative process, it does make sense that the county has something where we have that financial security that the county can basically step in if for some reason the owner/operator does walk away from the project.

Mr. Todd said those are the two major things that have been requested. Staff has looked to see what else could be changed by again going back to the model ordinance and researching surrounding counties' solar ordinances, to come up with this text amendment. Also, from the last meeting, there were a few changes that are in blue in the staff report. This is really intended to have regulations specifically for a solar farm. This would not regulate someone that is looking to put solar panels on their roof top for residential or commercial.

Mr. Todd reminded the Board that a couple of years ago, with a conditional rezoning process, the code was changed to say you didn't have to do a site plan, which gave a lot more flexibility for someone coming through the process. With a solar farm, the county does want a site plan provided. The first (A) on the staff report is basically saying the exemption exists for other conditional rezonings, but it will not pertain to solar farms. A site plan that shows how the property will be developed will have to be provided for solar farms.

Mr. Todd states that all related equipment has to be enclosed by a fence. Specifics on removal of solar energy systems are provided; they have 6 months to complete the decommissioning if it goes without power for 12 months, the ordinance requires some type of third party engineer to come in and estimate what the cost would be for removal and then that cost is used for the financial guarantee. Also, the amendment to restore the land to a condition reasonably similar to its original state before development, which is something that may happen 25 years or more from now.

Chairman Tsumas asked if there is a site plan requirement for Board of Adjustment process.

Mr. Todd said yes.

Mr. Todd states something else that is new, is recording at the Register of Deeds of the decommissioning plan that has to be updated every 5 years to help alleviate the cost changes over that time frame. The rate is 1.25 times over the actual cost to make up for any inflation that would occur. Mr. Todd also noted the setbacks stayed the same at 500 feet from any existing residential dwelling, which from comparison, is pretty high by looking at other jurisdictions. It was added that they do 50 feet from perennial streams after previous meeting discussions.

Mr. Todd said screening has also been a topic for these sites. Most applicants coming through this process have always been willing to add screening as part of the requirement. Our code does have screening requirements for commercial uses but not necessarily for a use that is allowed in a residential zoning district. The county felt like through a conditional rezoning process, being able to allow the screening on a site by a case-by-case basis specific to a site and specific to neighbor's concerns would be best rather than having a blanket screening requirement.

The county has seen previously where solar farms come through the process and are approved and never move forward. With this process, if someone rezoned it to a conditional zoning district for a solar farm and then that falls through, that property really is only allowed to do a solar farm. The ordinance for our conditional process, that was done years ago, basically requires the county to look back at those properties that have been rezoned conditional, and if no progress has been made on the development, it is supposed to be brought to the attention of the Commissioners and let them decide to rezone it back or leave the conditional zoning in place. Therefore, a cross reference was added to hopefully take care of some of those issues and have a mechanism in place to flag it and go back through the process to rezone it back to its original zoning.

Chairman Tsumas asked if that would be involuntary

Mr. Todd said it could be involuntary. It would be brought back to the Board of Commissioners and noted that it was not developed like it had been petitioned to, and ask what the Board wants to do. If they choose to take it back through the process, that would not mean that they would approve or deny, but it would go back through the process.

Mr. Santoni asked if those permits have a time expiration on them.

Chairman Tsumas said no, it is not like a Special Use Permit, it is a conditional zoning, you use it or lose it.

At this time, the Board had discussions about solar panel life expectancy and time frames regarding number of years of operation without issues, etc.

Mr. Carney then spoke about actually seeing the contracts with some solar farm projects and states they are all 20 years guaranteed, and renewable for 20 years whether it be with Duke Energy (which bids 40% of the projects currently) or whomever. They almost all have some kind of bonding requirement included for cleanup. The reason you see

them in cycles is because there are 2 year tranches and you will see a big push and then a little slow down. Contractually, the landowner is contracted for 20 years with a renewal at 20 years and is specifically based on the idea that the solar panel has a 20-year life expectancy. From the point of this Board, the real argument is does the county have the stopgap in place that requires the landowner to have it cleaned up to specified requirements.

During this time, the Board discussed requiring a Special Use Permit versus a conditional rezoning, and the differences of each when dealing with site plan specifics and time frames. Mr. Carney said he loved the idea of having a 2-year time frame to begin work once approved, either doing the project or not being able to complete it, and return through the process again.

Mr. Brown asked if there were a set number of acres involved.

Mr. Todd replied no.

Mr. Carney asked if there is a tool that sets an expiration date.

Mr. Todd said that question has come up a lot of times with other uses also, it's been debated that the Board of Adjustment can set it as a condition. Typically, a Special Use Permit does not have a timeframe, they are good permanently. He does not recall ever setting conditions for a timeframe on one. It has been debated, but can't answer that question other than it has been an issue in the past with others uses and it has never been figured out with a legal mechanism to guarantee that would happen.

Mr. Palmes asked to clarify the list of uses that are allowed for whatever zoning, when it is put under a conditional zoning, isn't that limiting uses allowed? He feels this seems as though we are expanding but not limiting, which would not be a conditional use, that would be a special use. Do the Commissioners look at a case after it goes through Board of Adjustment?

Mr. Todd said no.

Mr. Palmes said this seems as if it is a Special Use Permit but going through a legislative process rather than the Board of Adjustment.

Mr. Todd said he understands Mr. Palmes point and it is confusing, but the county attorney has vetted this from a legal standpoint. Other uses in the county code like the Planned Unit Development (PUD), which allows for a mixture of a subdivision and commercial uses, is setup the same way. This has been in the code for 30 years, and other jurisdictions have the same thing and there are no issues with it.

Mr. Palmes asked about making its own zoning for Special Use because it is restricting a Residential Agriculture (RA) property to a solar use. Can a house be put on this afterward?

Mr. Todd said it would depend on how the applicant submitted their application like any other conditional use. The county encourages applicants to not submit only one use, but narrow the list down to give themselves some flexibility.

Mr. Brown asked if you change RA to solar, does the RA goes away?

Mr. Todd said it would be RA with conditional zoning, then you would look at the file to see specifically what the conditions were.

Mr. Carney clarified they could still say they wanted to do agricultural as well as solar if that time comes.

Mr. Todd said yes, if they noted that in their application to say they at some point wanted to do a major subdivision on their property for example.

Chairman Tsumas asked would they have to list subdivision as a use? If they had conditional zoning on the property, is it restricted to solar?

Mr. Todd said if they put that on their application, yes, that is all they would be able to do. If they specifically noted other uses that were allowed in an RA district, they could do other uses if they are specifically in the table of what is allowed.

Chairman Tsumas asked about including all those uses on a site plan if it is site specific.

Mr. Todd said other uses on the table would not require a site plan, only a solar farm in that district requires a site plan.

Mr. Carney verified that agriculture is always applicable, even if they said solar, agricultural would still be ok.

Mr. Todd said yes, they could do anything agricultural.

Mr. Carney said just not build houses.

At this time, Mr. Santoni presented his research (see attachment with the staff report) he had gotten together and provided the Board. He states he will also have an addendum next week that he will be added (see attachment with the staff report). He reiterated his concern for potentially contaminated water and spoke about Currituck County drilling wells 20 feet deep for ground water monitoring wells to test every 2 years.

Mr. Carney said that is not saying the water is contaminated.

Mr. Santoni said that is correct, it only says you have to monitor it. The point he says is there is enough concern that they are encouraging testing of the ground. No longer just stabilizing it, but making sure the ground is not contaminated, and if it is, what will be done about it. There are mechanisms to report results, and safety precautions that are being put in place after 15 – 20 years of experience. Mr. Santoni states NC has created

a commission to look at decommissioning that will be coming out by 2022. He feels it would benefit the county if we looked at what different counties have done and we learn from them.

Ms. Neader asked Mr. Santoni of all the counties he researched, only 1 has had a moratorium on solar facilities. What was the reasoning behind it?

Mr. Santoni said yes, Currituck County, the moratorium was just lifted last month after 2 years. This county found the same types of issues that he has outlined in his research, such as contamination of the property, unsightliness with neighbors not wanting to look at these panels, etc.

Mr. Holland asked Mr. Todd about the mention of the state looking into a plan to decommission these sites, is that correct?

Mr. Todd read an article on what the state of NC is saying. Mr. Todd said it is his understanding, that the state will be pulling together true experts in this field because they have the means to pull in the right people to craft something that will address all those concerns. The county has to put a lot of emphasis in the NC Clean Energy Group, because our legislatures fund them. It is the NC model ordinance that the county has used for years to look at when amendments have been made. They are looking for alternative energy options and claim they are neutral and present neutral facts. They have a 15-page document that states the negative health and safety impacts of these facilities are nonexistent. Yes, there are hazardous chemicals in these panels, but they are at levels that does not make a difference. They also have another document that talks specifically about solar and agriculture with no issues. Just a couple years ago, they came to Statesville and did a presentation to the farming community and anyone else that was interested in the region, about how well the two go together.

Mr. Todd said anyone can read articles from all over the country, yes other counties are doing things, example with Currituck County, they have 2,000 acre facilities and had political push due to having a lot of solar farms in the area. They felt the need to slow down, and look more closely at solar development, being a coastal tourism county having a high water table, etc. A completely different scenario.

Mr. Holland said from the standpoint of decommissioning, if the state will be coming out with a set of rules in 2 years, the county will be covered under the new rules.

Chairman Tsumas said in the meantime, we have to address this now prior to when the state comes out with theirs. There are several things to be addressed: the unsightliness of these sites, the water runoff/contamination potential, and the legislative side.

Chairman Tsumas said he would like to hear the opinions of the Board on the unsightliness. Is the normal screening with 100' setbacks enough?

Mr. Holland said he thought that could be addressed site specific, with conditions.

Mr. Todd said the county wanted to reiterate that screening requirements may be added to address site specific neighbor concerns as part of the conditional rezoning process. Even though that could have been a condition anyway, the county wanted to draw attention and show that the Planning Board and Board of Commissioners have to consider site specific screening requirements on these requests because of the terrain around this area. A set height may not be applicable in all cases. The county has also run into issues where farmers do not want certain types of screenings used because of shade issues. Therefore, it gives the flexibility to be site specific.

Mr. Carney said he likes that it be site specific instead of set. It would be horrible to require a berm and demolish natural acres of hardwood trees for that berm. He would prefer to keep a natural barrier to begin with if possible.

Mr. Holland said every request will be different and the conditional zoning process will allow for site specific recommendations.

Mr. Carney said he understands Mr. Santoni's concerns but, if we can't do solar, nuclear, coal, etc., every time the county comes into the discussion of energy, it comes with concerns of the what-if's of new technology, so where are we going to go from here. He too has looked at studies that say there is a negligible risk to it, but he does think there is a massive visual risk. If the county decides to make this so restrictive, Raleigh will let the county know that they do not agree with us. We might not love what we have been handed, but the county has to accept clean energy. This is the cleanest energy that people are putting on the table in front of us. We need to deal with what is in front of us right now. Solar energy will come whether it is on our rule system or Raleigh's system either way.

Chairman Tsumas wanted to clarify if this will fall under the ordinance that the county has in place concerning containment and runoff.

Mr. Todd said the applicant would have to go through the Erosion Control review process for the development of the site and will have to have Erosion Control measures in place.

Chairman Tsumas asked if it would count as impervious.

Mr. Todd said no, the state does not consider solar panels impervious. The county doesn't really have storm water control. Yes, the county has generic statements, but these sites, will be large acreage sites for the most part. The natural contour will prevail of where the water is running. They will stay vegetative under the panels, and not have runoff like a parking lot or roof of a building.

Mr. Santoni said you can have stormwater runoff coming off but not causing erosion, but still diverting more water on the other properties.

Chairman Tsumas said Mr. Santoni was talking about contaminants. Stormwater rules are different. They are designed for contaminant control. They catch in a basin and release it slowly and is designed for that. If you have the natural flow, that is where they put the basin.

Mr. Palmes states with stormwater retention or detention, it has to do with the amount of concentrated flow you put on somebody and also the contaminants because the contaminants get in the pond, theoretically go to the bottom of the pond, the water is skimmed off the top, and let it go. Erosion control does not trigger a stormwater review, it is two separate subjects. They only get lumped together because a civil engineer does both of them on the same project. When you increase the impervious area is when it triggers Raleigh. They are related, but not the same thing. By requiring an erosion control plan does not constitute a stormwater study.

Mr. Holland said the site will have vegetation under these panels. There will not be a lot of runoff, the grass will filter the water.

Mr. Carney said the streams, in his opinion, are really the main point of what information Mr. Santoni provided. The streams are what triggered his concern. The county should really keep solar farms away from streams. Therefore, you have extra ground between the site and the stream.

Mr. Palmes said vegetation will slow down the flow, but his point is a stormwater review is not going to be triggered if this gets approved. Mr. Palmes said not to change the subject, but also does a Special Use Permit require a site plan right now?

Mr. Todd said yes.

Mr. Palmes asked if a Special Use Permit requires a site plan, that site plan triggers an erosion control plan, then why does this need to be in a legislative process if the Board of Adjustment process already has a site plan?

Mr. Todd said because the Board of Commissioners wants to make the final decision on these.

Mr. Palmes asked how long do they have to decommission, 6-months? If they are given a timeframe to decommission and it's not within that timeframe, are they penalized and does that need to be in the amendment?

Mr. Todd said at that point, it would turn into zoning violation which would have fines associated with it.

Chairman Tsumas asked if it is a fine or does the county pull the bond.

Mr. Todd said there would be a point when the county would pull the bond. This would depend on how much progress was being made during their 6-month timeframe, are they actually making progress. It would be like any other violation, the county might work with them, because if the county has to go through that process, you don't know how long that would take and the county does not have the staff to go out and decommission. It would have to be put out for bids to get it taken care of, so there is a balance there in that process.

Chairman Tsumas said if the applicant is the one that went out of business, the county would have to pull the bond, correct?

Mr. Santoni asked what would happen on the ones that would take a year to build and then they abandon this project halfway through?

Mr. Todd said it's in there as a requirement that the landowner and tenant must notify the county when the site is abandoned whether it be during construction or 5 years after being constructed if for some reason they walk away.

Mr. Santoni asked can abandonment be defined in the amendment if it's not been in use for a certain amount of time.

Chairman Tsumas said in theory, what would happen if they had a timeframe to complete the project and for some reason it takes longer to complete.

Mr. Carney recalled that happened in housing where they got started and then the permit had to be extended. The county needs to be reasonable or else someone will tell us that the county is unreasonable.

Mr. Todd said it is kind of like building a house, all they have to do is to keep the permit active and can take as long as they want. In reference to this, how do we set a timeframe that they have to have it completed by a certain time.

Mr. Carney said before they start putting a solar panel in, they have an agreement with Duke Energy to take this much energy, they go and they shop it, Dukes agrees to take an X amount of megawatts from them, and then have a 20-year agreement and then go build it.

Chairman Tsumas said if they wait around for 3 years they've lost 3 years of income because they didn't finish it.

Ms. Neader said and then they are also paying a landowner.

Mr. Carney said yes, they had already sunk cost into it at that time.

Chairman Tsumas said he feels there is a lot more to it than we realize, but we have to deal with what is in front of us now.

Mr. Carney said he would like to see the vegetative buffer increased for perennial streams.

Mr. Todd said there was nothing in place and the county put it at 50 feet by looking through the code at other uses, but can set it at whatever the Board suggests.

At this time, John Allen, Iredell County Board of Adjustment member asked to speak. Mr. Allen said the Board of Adjustment has dealt with these solar farms over the last several years, and has spent hours listening to official testimony and there are a lot of unanswered questions that the Board of Adjustment does not get answers to. The first being, there has never been any opposition attorney under oath say there was toxicity in removal. Nobody in the ordinance is required to have panels up front or have samples of panels up front, therefore, there is never anyway of testing the panels. So there really is no evidence that exists because they never really had samples. Next, licensed appraisers under oath, have never shown any loss of value to adjoining owners.

Chairman Tsumas asked Mr. Allen if they were to say there may be a loss of property value, wouldn't it be the neighbor's responsibility to bring an appraiser to give that evidence with the Board of Adjustment? With the Planning Board, anyone can say that.

Mr. Allen said yes, and licensed appraisers have been brought in, and the licensed appraisers have never said it damages the value of adjoining properties.

Mr. Carney verified with Mr. Allen that the Board of Adjustment has had full-fledged lawyers from both sides to argue this point.

Mr. Allen states yes, for months at a time.

Mr. Allen also spoke regarding the question if this is the best use of the land. He said he is not sure if that is a question the Board can answer or not. There are many potential uses for the land, do you want that and is there a size limit or not.

Mr. Brown made the statement, is that the Board's choice, or is that the land owner's choice.

Mr. Allen said that is something this Board will have to decide.

Mr. Holland said, in most cases, there is not another use that would generate the income that solar energy generates for that farmland.

Mr. Allen questions if you can require the panels to be raised higher in order for animals to graze under them to have a dual purpose.

Mr. Brown said he has seen they are doing that in a couple of other countries. Therefore, dual purpose.

Mr. Allen said few cases that have come before the Board of Adjustment, are for tracking panels that follow the sun. The panels that are stable, per testimony, says they are only able to make energy one hour a day, so can you require them to be trackable? The one that was turned down in the county previously, was basically oversized. People in the community that were related with government, came and testified that 400 acres was too big and did not fit the character of the area proposed. Although, as far as he can tell, there has never been anything about size as a pre-requisite. Mr. Allen said those are just some of the observations he made while listening to the discussions tonight.

Mr. Santoni asked what the average sizes with solar farms previously being brought before the Board of Adjustment.

Mr. Allen said they have ranged from 50 – 200 acres.

Mr. Holland said he does not think you can limit the size.

Mr. Santoni said it's interesting how other counties he has researched, put new ordinances in to limit size.

Mr. Allen said everyone that has gone to the state for appeal after being denied, has always been overturned and received approval.

Mr. Holland asked Mr. Todd either way it goes, Board of Adjustment versus Legislative, it can still go to court?

Mr. Todd said yes.

Mr. Santoni asked Mr. Allen with those coming before the Board of Adjustment being owners, lawyers, stakeholders, etc., did they ever talk about technology?

Mr. Allen said all those that came before the Board were asked all kinds of questions. Some of the companies that came in brought attorneys, appraisers, experts on engineering, electrical, solar, FAA and reflectivity, etc., in order to answer any type of questions. Mr. Allen said the Board of Adjustment has to listen to the experts, and there has never been any testimony given to show any toxicity (never had a physical sample either to show of where purchased or manufactured) or loss of property value.

Mr. Todd said the experts have shown there is no toxicity, again, that is only for what is existing now. There may be a brand new panel out 2 years from now that we possibly won't know anything about. It is an evolving technology.

Mr. Brown said this will be a continuing thing as years go on and solar energy gets bigger and bigger.

Mr. Todd reminded the Board the state is also working on some things along with what is being proposed here tonight. It can be tabled but he needs clear direction of what this Board is looking for or if the Board is comfortable with making small changes, and send this part through as asked, or leave it as a special use permit process.

Mr. Todd said we are here looking at solar use, just the same as a residential or commercial use. The county is not looking at what materials are being used on those sites either.

At this time, the Board discussed what Mr. Allen had spoken about in reference to how things are presented and whom presents to the Board of Adjustment. Also, the differences in this use staying with Board of Adjustment or changing to a legislative process with pros and cons of each.

Mr. Carney made a motion to approve the solar farm text amendments with the increase for buffer on streams from 50 feet to 100 feet.

After Mr. Carney made the motion, more discussion ensued.

Mr. Carney then asked Chairman Tsumas at 9:00 p.m. if it were reasonable to take a 5-minute recess.

Chairman Tsumas agreed to a 5-minute recess.

At 9:05, the Board reconvened and Chairman Tsumas asked if there was any further discussion on this motion and said there had been a motion made.

Mr. Santoni states he would recommend to table this motion and share all the information he has collected from other ordinances and give time to look at best practices. At the next meeting, come forward and propose technology and devices that can be added, along with how to communicate this information. He suggested including Mr. Allen and other Board of Adjustment members if they so choose.

Mr. Brown asked if a motion can be tabled after a motion has been made?

Chairman Tsumas reminded Mr. Santoni there has already been a motion made, would Mr. Santoni need to accept a substitute motion?

Mr. Carney said Mr. Santoni's is a procedural motion and it could supersede the original motion that was made. Mr. Carney said he appreciates what Mr. Santoni is saying, however, feels this motion has been heard by nine Board members thoroughly already and if one person is changed for next month, it would have to be presented all over again. In his opinion, it would be unfair to the process. Mr. Carney recommended taking Mr. Santoni's notes and pass them to the Planning staff and have the notes incorporated in the report that goes to the County Commissioners for them to discuss. The decision will go to them regardless.

Chairman Tsumas said since Mr. Santoni is asking for the motion to be tabled, he would need a second motion.

No one seconded motion made by Mr. Santoni to table.

Chairman Tsumas advised Mr. Santoni to prepare what he wants to write up and forward to Mr. Todd to be included in the report to the Commissioners.

Chairman Tsumas at this time, clarified that the Board will be voting on the package that has been presented tonight with one addition, which is to increase the buffer on streams to 100 feet.

After no further discussion, Mr. Carney made a Motion to recommend approval of the zoning text amendments with one addition being to increase the buffer on streams to 100 feet and make a finding that the approval is consistent with the adopted 2030 Horizon Plan and that said approval is reasonable and in the public interest and furthers the goals of the 2030 Horizon Plan because it aims to mitigate future development concerns, and addresses changes in the alternative-energy industry within a developing county. Mr. Holland seconded said motion, vote was 6-3, those opposed Tsumas, Palmes, & Santoni.

VOTE: 6-3

Tsumas – would prefer Board of Adjustment to hear this type of case.

Palmes – Board of Adjustment can take presented factual information and make a subjective decision on something that is allowed in the zoning for a special use permit.

Santoni – feels some issues need to be addressed that the Board of Adjustment can't address and incorporate those in as other best practices and learn not to re-create something we don't know anything about. Also, have solid footing based on other counties experiences from the last decade or two.

OTHER BUSINESS: None

UNFINISHED BUSINESS: None

MINUTES: Mr. Santoni made a motion to approve the January 8, 2020 meeting minutes, seconded by Mr. Burnette. All were in favor.

MONTHLY COMMITTEE ASSIGNMENTS: None

ADJOURNMENT: There being no further business, Chairman Tsumas declared the meeting adjourned at 9:14 p.m.

Cindy Nicholson
Administrative Assistant

Date Read and/or Approved