Zoning Ordinance Suggestions

Section 80.06.06 -Commercial & Intermediate Alternate Energy Systems

Date: December 19, 2024

To: Area Plan Commission

Submitted by: Alternate Energy System Work Group

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Scope:

This proposal includes updating the Frankin County Zoning Code to incorporate at minimum State of Indiana statutes related to AES found in section IC-8-1-42. Other suggestions come from community concerns raised during the project.

Document Format:

Text with ~~strikethrough~~ is suggested to be removed

Text in **black** is current code

Text in **green** is the current Indiana state statute

Text in **red** are suggestions for changes to the Indiana state statute or existing code.

Sections from IC 8-1-42 that were not included in evaluation:

IC-8-1-42-1 through IC 8-1-42-9: Procedural language

IC-8-1-42-11: Ground Cover and Vegetation Plan

IC-8-1-14-16: Sound Level Limit

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Updates Referencing IC-8-1-42

Current Code

C.1.a.1 Height-Ground-Mounted SES

~~1. SES shall not exceed an overall height of 20 feet.~~

IC 8-1-42-10 d. Setback Requirements

Permitted Districts: I-1, I-2

A project owner may not install or locate a Commercial SES system on property in a unit unless the height of the SES solar panels are not more than twenty~~-five~~ (20) feet above ground level when the SES arrays are at full tilt. However, a permit authority or a unit may not impose a clearance requirement between the ground and the bottom edge of a system's solar panels.

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Current Ordinance

C.1.g.3 Equipment Installation

~~(a) All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.~~

~~(b) To the greatest practical extent, all electrical wires and utility connections shall be installed underground, except for transformers, inverters, substations and controls. The Board of Zoning Appeals will take into consideration prohibitive costs and site limitations in making their determination.~~

Recommended Amendment

IC 8-1-42-13 Equipment Installation. To the greatest practical extent, all electrical wires and utility connections shall be installed underground, except for transformers, inverters, substations and controls. The Board of Zoning Appeals will take into consideration prohibitive costs and site limitations in making their determination.

a) All cables of up to thirty-four and one-half (34.5) kilovolts that are located between inverter locations and project substations shall be located and maintained underground, as feasible. Other solar infrastructure, such as module-to-module collection cables, transmission lines, substations, junction boxes, and other typical aboveground infrastructure may be located and maintained above ground.

b) Buried cables shall be at a depth of at least thirty-six (36) inches below grade or, if necessitated by onsite conditions, at a greater depth.

c) Cables and lines located outside of the SES system project site may:

    a. be located above ground; or

    b. in the case of cables or lines of up to thirty-four and one-half (34.5) kilovolts, be buried underground at:

        i. a depth of at least forty-eight (48) inches below grade, so as to not interfere with drainage tile or ditch repairs; or

        ii. another depth, as necessitated by conditions; as determined in consultation with the landowner.

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Current Code

C.1.i ~~Security~~

(1) ~~For ground-mounted SES, perimeter fencing shall be a six (6) foot tall chain link fence (with three strands of barbed wire at top) around the perimeter of the site.~~

(2) SES fencing shall be set back a minimum of one hundred twenty (120) feet from the center of an adjacent roadway or eighty (80) feet from a non-participating property line.

(3) commercial SES fencing the distance, measured as a straight line, from the nearest outer edge of the SES system to the nearest point on the outer wall of a dwelling located on a nonparticipating property, is at least six hundred thirty (630) feet from any nonparticipating residence.

(4) SES fencing shall be set back a minimum of two hundred thirty (230) feet from a cemetery.

Recommended Amendment

IC-8-1-42-11 Fencing

(1) The SES shall be completely enclosed with chain link fencing that is at least six feet in height or an alternative style of fencing in the development plan that is approved by the APC.

Current Ordinance

C.1.q General Requirements (New)

Recommended Addition

IC 8-1-42-14 Glare minimization;

A SES system must be designed and constructed to:

(1) minimize glare on adjacent properties and roadways; and

(2) not interfere with vehicular traffic, including air traffic.

Current Ordinance

C.1.r General Requirements (New)

Recommended Addition

IC 8-1-42-15 Signal interference

A SES system must be installed in a manner so as to minimize and mitigate impacts to:

(1) television signals;

(2) microwave signals (examples-cell phone and Wi-Fi);

(3) agricultural global positioning systems;

(4) military defense radar;

(5) radio reception; or

(6) weather and doppler radar.

Proposed Amendment

2.j Operation and Maintenance

IC 8-1-42-20 "Force majeure event";

a) As used in this section, "force majeure event" includes the following:

b) Fire, flood, tornado, or other natural disasters or acts of God.

c) War, civil strife, a terrorist attack, or other similar acts of violence.

d) Other unforeseen events or events over which a project owner has no control.

e) If a force majeure event results in a SES system not generating electricity, the project owner shall:

(1) as soon as practicable after the occurrence of the force majeure event, provide notice to the permit authority of the event and of the resulting cessation of generating operations; and

(2) demonstrate to the permit authority that the SES system will be substantially operational and generating electricity not later than twelve (12) months after the occurrence of the force majeure event.

(3) any restoration work associated with a force majeure event shall have a written restoration plan approved by the County Commissioners and executed by the Executive Director of the Plan Commission to ensure timely clean up and restoration.

f) If the SES system does not become substantially operational and resume generating electricity within the time set forth in subsection (e)(2)

(1) the SES system is considered abandoned as of the date that is three hundred sixty-five (365) days after the date on which the SES system last generated electricity, unless the project owner demonstrates to the County Commissioners that the project owner is using all commercially reasonable efforts to resume generation; and

(2) all SES system project assets shall be removed in accordance with section 18(c) of this chapter not later than one (1) year after the date of abandonment specified in subdivision.

g) In the case of presumed abandonment, if the project owner fails to remove the SES system project assets not later than one (1) year after the date of abandonment, the permit authority may engage qualified contractors to:

(1) enter the project site;

(2) remove the SES system project assets;

(3) sell any assets removed; and

(4) remediate the site; and may initiate proceedings to recover any costs incurred.

Current Ordinance

~~C.3 Decommissioning Plan~~

~~a) Prior to receiving approval under this Ordinance, the Board of Zoning Appeals and the applicant, County Commissioners, and owner and./or operator shall formulate a decommissioning plan approved and signed by the County commissioners and the applicant, outlining the anticipated means and cost of removing a SES at the end of their serviceable life or upon becoming a discontinued or abandoned use to ensure that the SES is properly decommissioned.~~

b) ~~Surety Bond-Commercial SES~~

~~(1) Applicant for a commercial SES shall provide a bond, or other proof of financial responsibility that is of an amount determined by the County Commission to be sufficient to satisfy the decommissioning agreement requirements.~~

~~(2) Other proof of financial responsibility may be:~~

~~(a) Cash advance to county to be released upon completion of decommissioning plan.~~

~~(b) An arrangement whereby the county would have access to the funds in an escrow account or other type of account held by a bank, until the completion of the decommissioning plan.~~

~~(3) Bond shall be released upon receipt of a certificate of inspection by the office of the Area Planning Executive Director indicating that the decommissioning plan is complete with no unresolved issues related to the plan.~~

c) ~~A decommissioning plan shall include, at a minimum, language to the following:~~

~~(1) Assurance: Written assurance that the facilities will be properly decommissioned upon the project life or in the event that the facility is abandoned.~~

~~(2) Cost estimates: The applicant shall provide a contractor cost estimate for demolition and removal of the SES facility which cost estimate shall include any offsetting effects of salvage value. The cost estimates shall be made by a competent party: such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning SES.~~

(3) Cost adjustments: Terminology shall be included in the plan that provides cost estimate adjustments derived from the US Bureau of labor Statistics Consumer Price Indexes (CPI) to protect against inflation.

d) Discontinuation and Abandonment

(1) Discontinuation: All SES shall be considered discontinued use after six (6) months without energy production, unless a plan is developed and submitted to the Executive Director outlining the steps and schedule for returning the SES to service.

(2) Abandonment by the owner or operator: In the event of abandonment by the owner or operator, the applicant will provide an affidavit to the Executive Director representing that all easements for solar collection shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within one (1) year of expiration or earlier termination of the project.

3. Removal

(1) An applicant's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of six (6) feet below ground level within three hundred sixty-five (365) days of the discontinuation or abandonment of the facility, and restoration of the project area to as near as practicable the condition of the site immediately before construction of such improvements by the owner, (unless otherwise agreed to by the property owner) or by Franklin County at the owner's expense.

4. Written Notice

(a) Prior to implementation of the existing procedures for the resolution of such default(s), the Executive Director shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and./or operator a reasonable time period not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default(s).

5. Costs Incurred by the County

(a) If the county removes a solar plant and appurtenant facilities, it may sell the salvage to defray the costs of removal. By approval, the permittee or grantor grants a license to Franklin County to enter the property to remove the solar plant pursuant to the terms of an approved decommissioning plan.

Proposed Amendment

C.3 Decommissioning-Restoration Plan and Agreement

a. Prior to receiving an Improvement Location Permit and Building Permit, under this Ordinance, the applicant, owner and operator shall submit and shall enter into a Decommissioning-Restoration Plan and Agreement with the County Commissioners outlining the anticipated means, costs and method of payment of all costs in carrying out such Decommissioning-Restoration Plan and Agreement at the end of the SES life or the life of any part of a SES, upon becoming abandoned use.

b. Discontinuation and abandonment

i. Owner operator shall give written notice of intent to abandon use of a SES facility 60 days prior to the discontinuation of electrical production to the County Commissioners and Area Planning Department.

ii. A SES or portion of a SES shall be considered an abandoned use after six (6) months without energy production unless a Rehabilitation Plan developed by the SES owner and SES operator is submitted to, and approved by, the County Commissioners outlining the necessary procedures and time schedule for commencing or returning the SES to energy production. Failure by the SES owner and/or operator to commence, energy production at such SES or return such SES to energy production within the time schedule which has been approved by the County Commissioners said SES or portion of SES shall be considered an abandoned use.

c. Removal and Restoration

The SES owner and/or the SES operator is required to remove and restore all physical material including topsoil, pertaining to the SES above ground level and all improvements of said SES below ground level to the original state prior to construction ~~a depth of forty-eight (48") inches~~ for all SES's declared irreparably damaged, and/or an abandoned use and/or a public nuisance. All materials shall be removed and the SES site restored within three hundred sixty-five (365) days of the discontinuation of energy production or in accordance with agreements developed by the project owner. A SES which is irreparably damaged or abandoned shall within said time limit (365 days) require the SES owner and/or SES operator to have completed restoration of the SES site to as near as practicable to the original condition of the SES site prior to the development of such SES. If any portion of the SES is found to be hazardous in nature by State or Federal regulatory agency(ies) or required to be recycled the SES owner and/or SES operator is required to remove as prescribed by law.

d. Identification and Removal of Hazardous Materials

During removal and restoration, the SES owner/operator shall identify all hazardous materials as regulated by State and Federal regulatory agencies (such as the EPA and IDEM) as well as non-hazardous materials and indicate the appropriate handling, storage and transport during disposal and/or diversion of both.

e. Performance Guarantee

Prior to issuance of an ILP or Building Permit, the applicant must provide the County with a performance guarantee in the form of a bond, irrevocable letter of credit and agreement, or other financial security acceptable to the County Commissioners in the amount of ~~125%~~ 150% of the estimated decommission and restoration cost minus the salvageable value, or $50,000 whichever is greater. Estimates shall be determined by an independent licensed engineer, approved by the County and funded by the SES owner/operator.

~~Unless otherwise agreed to by all parties,~~ Every five (5) years a new engineer's estimate of probable cost of Decommissioning and Restoration shall be submitted for approval in the same manner as the initial submission, and the bond, letter of credit, or other financial security acceptable to the county shall be adjusted upward or downward as necessary. A new estimate will be submitted to the Commissioners prior to the sale of any portion of the SES and the Performance Guarantee adjusted appropriately and made part of the sales contract.

All expenses involved in such removal and restoration shall be paid by the SES owner and SES operator, or removal and restoration will be completed by Franklin County at the SES owner's expense and SES operator's expense as specifically provided by the Decommissioning-Restoration Plan and Agreement.

f. Written notices

Prior to implementation of any procedures or remedy for the resolution of any SES owner's and/or operator's failure to decommission the SES pursuant to the Decommissioning-Restoration Plan and Agreement, and/or Rehabilitation Plan and/or the Ordinance, the County Commissioners shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period not to exceed sixty (60) days, except upon such longer time to which all said parties agree, for good faith negotiations between the SES owner and/or operator and the County Commissioners or its duly appointed representative, to resolve the default(s). In the event the negotiations fail to resolve the default issue(s), either party may pursue any and all remedies available by the terms of the Zoning Ordinance and/or Decommissioning-Restoration Plan and Agreement and/or Rehabilitation Plan.

g. Costs incurred by the County

In the event, after written notice, the owner and/or operator shall fail to enter into a Rehabilitation Agreement or decommission the SES in accordance with the Zoning Ordinance and the Decommissioning-Restoration Plan and Agreement, the owner and/or operator shall pay all reasonable cost, including reasonable attorney fees, incurred by the County to remove the SES. The County shall be entitled to apply the salvage value of the SES to the costs of removal, subject to any rights of the SES Owners lenders.

Current Ordinance

C.5.c Drainage and Erosion Control Plan

(1) The drainage and erosion control plan shall comply with section 80.08.05 Soil Survey Drainage, Erosion and Sediment Control.

(2) All existing drainage fields shall be maintained as originally designed.

(3) No existing drainage field shall be disturbed or impede service to or from non-participating Landowner.

(4) The site shall be scanned using ground penetrating radar (GpR) technology to locate and map any existing drainage tile or other unknown structures.

Recommended Amendment

IC 8-1-42-17 Damage to drainage infrastructure; repair; installation of new infrastructure

(5) All damages to waterways, drainage ditches, field tiles, or other drainage related infrastructure caused by the construction, installation, maintenance and decommissioning of a SES system must be completely repaired by the project owner or remedied with the installation of new drainage infrastructure so as to not impede the natural flow of water. All repairs must be completed within a reasonable period of time and:

(1) to the satisfaction of the county; and

(2) as stated in an applicable lease or another agreement with the landowner; subject to applicable federal, state, and local drainage laws and regulations.

Commercial and Intermediate AES Application Checklist

SECTION 80.06.06
COMMERCIAL & INTERMEDIATE ALTERNATE ENERGY SYSTEMS

COMMERCIAL AND INTERMEDIATE AES APPLICATION CHECKLIST

Project Name: _____

Applicant Name: _____Date: _____

Application

- ☐ Demonstration of Need
- ☐ Utility Notification
- ☐ Fee Collected Amount _____

Payment Date _____

Development Plan

- ☐ Insurance and Guarantees
- ☐ Decommissioning and Restoration Plan

- ☐ Financial Assurance Type: Bond Cash Other
- ☐ Assurance of Decommission
- ☐ Decommission Cost Estimate

- ☐ Drainage and Erosion Control Plan

Ground ☐ Covering Plan

- ☐ Utility Plan
- ☐ Fire and EMS Plan
- ☐ Site Layout Plan
- ☐ Road Use and Maintenance Agreement
- ☐ Project Description
- ☐ System Specifications
- ☐ Manufacturers Equipment Specifications
- ☐ Compliance to Standards

Additional Updates Requiring Legal Review

The following amendments to the current zoning ordinance not related to new state ordinances are suggested (in red):

C.2.b.2 Insurance and Guarantees - Commercial SES

The owner or operator of any commercial SES shall provide a hold harmless agreement with all adjacent non-participating landowners with property boundaries adjacent to the site. To prevent moral hazard, such hold harmless provision shall only apply to negligence and not to willful, wanton, or reckless conduct and shall only hold the adjacent non-participating property owner harmless for damages greater than $100,000 per occurrence.

Citizen Concern

Hold Harmless Agreement – adjoining property owners should not be liable for any damage, with exceptions as already outlined. Currently, the ordinance includes a threshold of $100,000, which should be removed.

Reference to the decision on this section of the ordinance as reported by the local newspaper.

Whitewater Publications

Franklin County Commissioners approve solar ordinance

April 27, 2021 at 8:50 p.m.

Reeves noted suggested changes to the hold-harmless provision clause: the provision would only apply to negligence, not willful or wanton conduct, and only cover damages over $100,000. He likened it to a deductible. Commissioners agreed.

C.2.b.4 Insurance and Guarantees-Commercial SES

The owner or operator of any commercial SES 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 landowner with a residence located within ~~one thousand (1000) feet~~ one mile of any commercial SES.

Citizen Concern

Property Value Guarantee – the county should draft the property value guarantee agreement, which has not yet been completed.

Property Value Impact – update the ordinance to reflect new studies indicating that home values can be impacted up to 2 miles from the project. The current 1,000' stipulation is insufficient.

Suggest the following language to address the property value guarantee:

PROPERTY VALUE GUARANTEE

Legal Name of Owner and Operator of the (Legal Name of SES project) and their assigns and successors in interest (hereinafter jointly and severally referred to as "Guarantor") agree to guarantee (the "Guarantee") the value of all owner-occupied residential dwellings owned by all Non-Participating Landowners owners of record (hereinafter referred to individually as "Owner" and collectively as "Owners") as of the date of the granting of secondary approval of the Development Plan for the [Legal Name] for properties which are located within one or two miles (APC must choose) of a SES solar panel as shown on the approved Site Plan contained within the Development Plan in all directions and to guarantee the value of all residential dwellings owned by Owners whose ownership is of record in the office of the Franklin County Recorder on the date of the granting of preliminary ~~secondary~~ approval of the Development Plan.

Fair market value will be established by, at a minimum, two licensed appraisers acceptable to both the developer and the property owner. If the property value of a home decreases, relative to comparative property market fluctuations, and a home or landowner is unable to sell his property within one year after the SES is erected, the developer will pay that landowner the difference or buy the property at the baseline fair market value determined prior to construction of the SES.

No permit for construction shall be given by any department until all property value guarantee agreements have been filed with the Franklin County planning department. A surety bond shall be provided in the amount of three percent (3%) of the assessed value of all properties within one or two miles (APC must choose) of any part of the solar facility for the life of the project. The surety bond shall be used to pay for appraisals, cover decreases in value of affected homes, buyouts, and other uses to achieve the goals of this section.

Zoning Ordinance Suggestions

Section 80.06.06 -Commercial & Intermediate Alternate Energy Systems

Property value guarantees are not controlled, arbitrated or guaranteed by Franklin County. Franklin County is not responsible for any costs associated with property value guarantees.

Addition to Section:

2.b.7 Insurance shall be maintained for the project's duration.

C.2.e. Change in Ownership

(1) It is the responsibility of the owner or operator listed in the application to inform the Executive Director of all changes in ownership and operation during the life of the project, including the sale or transfer of ownership or operation.

Citizen Concern

Operations and Maintenance – property owners should be involved in each step of the application, especially decommissioning. The owner/operator should hold the bond for the project's duration.

(2) Duties and obligations of each owner/operator of a commercial SES shall be joint and several, and shall be binding upon all heirs, successors in interest, and assigns. At least thirty days (30) days prior to any transfer of any ownership interest, written notice shall be given to the Franklin County Commissioners and the Plan Commission. All Agreements, bonds, and other financial assurances provided for 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 Franklin County Commissioners. Any transfer of ownership interest without prior approval of replacement documents shall constitute default and shall not relieve the original responsibility of liability.

C.2.f. Shadows

~~1. No solar apparatus shall cast an appreciable shadow on surrounding properties solar production facilities.~~

1. No solar apparatus shall have shadows that extend beyond non-participating property lines.

C.5.g **Road Use and Maintenance Agreement**

(1) A Road Use and Maintenance Agreement (construction and deconstruction) for all oversized loads must be drafted in accord with the Franklin County Highway Department and approved by the Franklin County Commissioners. Financial assurances shall ~~may~~ be required.

(2) The County Highway Superintendent and/or appropriate county road personnel shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The County Highway Superintendent and/or appropriate county road personnel may choose to require remediation of road damage during or upon completion of the project and is authorized to collect fees for oversized load permits. If repairs are not made in a timely manner, the County Highway Superintendent and/or appropriate county road personnel is authorized to make repairs and charge the Applicant a reimbursement fee to cover the costs of repair. ~~Such fees shall be established at the start date of construction and may be revised at three-month intervals.~~

(3) Traffic control and emergency services analysis shall be completed and approved by the county as part of the road use and maintenance agreement. Costs shall be paid by the developer.

(4) A corporate surety bond shall be required by the County Highway Superintendent and/or appropriate county road personnel to ensure the County that future repairs are completed to the satisfaction of the County. The bond shall not be released at the conclusion of construction of the project, but it may be reduced to cover any damages or losses from the operation and maintenance of the project.

(5) If the Applicant or its contractors require material changes from the approved Road Use and Maintenance Agreement or if post completion repairs, improvements, or expansions require oversize and overweight loads or involve new routes, an Amended Road Use and Maintenance Agreement must be approved in the same manner as the initial plan.

(6) Any violation of the approved Road Use and Maintenance Agreement may be subject to fines established by the governing body having jurisdiction over the roadway(s) affected.

80.03.16: A-AES AGRICULTURE ALTERNATIVE ENERGY SYSTEM DISTRICT

For the purpose of sound and efficient management of all agricultural land in Franklin County and to allow Alternate Energy Systems in agricultural areas in a regulated manner, all A-AES regulations, specifications, or standards covered by this Ordinance are hereby made identical to those of the A-1 district.

80.03.16 A-AES AGRICULTURE ALTERNATE ENERGY SYSTEM

A. Permitted Uses

1. Wherever in ordinance, "A-1" is mentioned, those specifications also apply to the "A-AES" district with the exception of Conditional Uses.
2. Only the Conditional Uses set for in SECTION 80.06.06 – COMMERCIAL & INTERMEDIATE ALTERNATE ENERGY SYSTEMS shall be allowed in A-AES, subject to appropriate Class 3 Conditional Use approvals. Ordinance # 2021-4 dated April 20, 2021.

B. Other Requirements for the A-AES District

1. A commercial or intermediate alternate energy system requesting a permit for conditional use in a district not currently zoned for such use shall follow the procedure found in 80.11.09 Rezoning of Land.
2. Upon the successful decommission of a commercial or intermediate alternate energy system site rezoned as A-AES, the Commission shall initiate an amendment to the Zoning Map so the land will be zoned back to its previous use.

Additional Comments:

This update adding section B is intended to clarify the process for managing the zoning of an A-AES district.