



May 13, 2024
Agenda Item #1

STAFF REPORT SHAWNEE COUNTY PLANNING DEPARTMENT

PROPOSAL:

An amendment to the Shawnee County Zoning Regulations implementing a ***one-year moratorium*** on all Limited (Community Scale) and Commercial (Utility Scale) Solar Energy Conversion System(s) and Project(s) in all Zoning District Classifications within the unincorporated portion of Shawnee County. The purpose of the moratorium is to allow the Shawnee County Planning Department and Planning Commission to conduct necessary research, make appropriate findings, and reach a formal long-range decision regarding Solar Energy. Personal (Small Scale or Accessory Scale) Solar Energy Conversion Systems are excluded from the moratorium.

DEFINITIONS:

Moratorium - An interim development control mechanism; temporary prohibition of an activity.

Solar Energy Conversion Systems – a system, machine, or device that converts sunlight into electricity, whether by photovoltaics, concentrating solar thermal devices, or other conversion technology.

Personal (Small Scale or Accessory Scale) Solar Energy Conversion Systems – a solar energy conversion system, and/or the combination of mechanical and structural elements thereof, where the primary purpose of the electricity generated, created, or collected is for consumption by the individual residence or business located on the same site as the solar energy conversion system, and not for transfer or sale to a third party. Net metering may be permitted.

Limited (Community Scale) Solar Energy Conversion Project – a group of people or entities that have collectively joined together to create, collect, and/or use one or more solar energy conversion systems, and/or the combination of mechanical and structural elements thereof, where the primary purpose of the electricity generated, created, or collected is for consumption of members of the group, and not for transfer or sale to a third party. These projects may include appurtenant facilities such as private roads, substations, maintenance buildings, battery storage facilities; the system may be connected to transmission, collector, or feeder lines. Groups may include, but are not limited to, developers, schools, hospitals, farms, or individuals who become investors or shareholders to form said independent power producer groups; it may also include a rural electric cooperative or municipal utility developing its own project to diversify electricity supplies. Net metering may be permitted.

Commercial (Utility Scale) Solar Energy Conversion Project – a facility of one or more solar energy conversion systems, and/or the combination of mechanical and structural elements thereof, where the primary purpose of the electricity generated, created, or collected is for use in a larger electrical network exclusive of individual use; for sale, resale, or off-site use. These projects may include appurtenant facilities such as private roads, substations, maintenance buildings, battery storage facilities; the system is connected to transmission, collector, or feeder lines.

Net Metering – a process where surplus power is transferred onto the grid, allowing customers to offset the cost of power drawn from the utility.

PRESENT USE:

Presently, if the County received an application for a limited or commercial scale solar energy conversion system, it would be processed the same as any other private or public utility structure which facilitates a

transmission, distribution, and/or collection system. Said private or public utility structure would generally require the applicant to first obtain a conditional use permit.

Regulations specific to solar energy conversion systems or projects do not exist in Shawnee County. As such, Shawnee County does not have specific guidelines for requirements such as setback from property lines; setbacks from a residence or roads; limitations on the size, height and density of panels; fencing, buffer zones and vegetation; allowable zoning district classifications; location in comparison to homes, businesses, floodplain, other features; designated truck routes; decommissioning of solar panels and associated infrastructure; bonds; PILOT (payment in lieu of taxes). Without specific regulations, these considerations would be handled on a case-by-case basis for each application.

The Shawnee County Comprehensive Plan does not specifically address Solar Energy Conversion Systems, other than identifying a public survey conducted as a part of the Comprehensive Plan research found renewable energy was not a priority for the community.

BACKGROUND:

In 2022, Shawnee County approved two (2) limited (community scale) solar energy conversion systems for Free State Cooperative / Evergy, utilizing Conditional Use Permits. At that time, concerns were raised by members of the Shawnee County Planning Commission and Shawnee County Board of County Commissioners on the lack of direction from regulations on how to review and consider such applications. After approval of the CUPs, various members of the commissions requested we look into wind and solar farm regulations. As such, this process began. No additional applications have been received, to date, from any solar farm company for solar energy conversion system(s) or project(s).

In 2023, Planning Department staff had been introducing various topics related to wind farms and solar farms at monthly Planning Commission meetings. Speakers included Senator Mike Thompson, Jeremy Goodwin (Chief Meteorologist, WIBW), Joshua Svaty (Kansas Power Alliance), Chris Carey (ppB enviro-solutions), Kyle Edelman (Shawnee County Assistant County Counselor). In September-October 2023, Planning Department staff, in conjunction with the Planning Commission, released a Community Survey to gauge interest in wind and solar in Shawnee County; 894 people responded to the survey.

A motion was made, and approved 6-0, at the December 11, 2023, Planning Commission meeting, to move forward with consideration of a one-year moratorium on new solar farms in Shawnee County. The intent of the motion and vote was to give the Planning Department staff direction on how to move forward in its research and planning. A moratorium will give staff and the Planning Commission time to determine whether solar farms are appropriate for Shawnee County; and, if so, what types of solar farms, as well as draft appropriate regulations, conditions and requirements.

METHOD OF CONSIDERATION AND APPROVAL:

Pursuant to KSA 19-2960, after the adoption of a zoning resolution approving zoning regulations, said resolution (regulations, boundaries, or classifications) may from time to time be **supplemented, changed or generally revised by amendment**. A proposal for an amendment may be initiated by the Board of County Commissioners, the Planning Commission, any zoning board, or upon application of the owner of property affected.

All such proposed amendments shall first be submitted to the Planning Commission for recommendation regarding the amendments. All notice, hearing and voting procedures for consideration of proposed amendments shall be the same as that required for amendments, extensions or additions to the Comprehensive Plan as provided by KSA 19-2958.

Notice must be published in the official county newspaper at least 20 days prior to the date fixed for hearing. (*Note*, only notice of amendments that concern a specific property/boundary line, which can be designated by a legal description and general street location, must be sent to those owners of record located within 1,000 feet of the affected property).

Voting requirements: a quorum of the Planning Commission is more than ½ of all its members. For action on amendments, a vote for or against by a *majority of the members of the commission present* constitutes a recommendation of approval or disapproval; a vote by less than a majority of the members present constitutes a failure to recommend.

The Board of County Commissioners shall consider the recommendation of the Planning Commission, whether it is for approval or disapproval, and may adopt such recommendation in whole or in part, or take no further action thereon. In the event the Planning Commission submits a “failure to recommend,” the Board of County Commissioners may take action as it deems appropriate. If the Board of County Commissioners disapproves a recommendation of the Planning Commission, it shall return such recommendation to the Planning Commission for further consideration along with a written statement of reasons for disapproving the same or with suggested modifications. The Planning Commission shall reconsider such returned recommendation, and within 30 days (or lessor or greater as directed by the Board of County Commissioners) submit a new recommendation or resubmit its original recommendation. No additional public hearing is required unless directed by the Board of County Commissioners. If the Planning Commission fails to deliver its recommendation within such time period, the Board of County Commissioners shall consider such course of inaction as a resubmission of the original recommendation; shall consider such matter, and by resolution, adopt in whole or in part, or revise or amend and adopt, or take no further action thereon, as it deems appropriate.

In Shawnee County, Zoning Regulations have been in place at least since 1956. The most recent Zoning Regulations were approved, as a whole, by Home Rule Resolution 2006-8 in August 2006, with minor amendments made to the text on occasion thereafter.

Proper legal notice of this public hearing was published in the Topeka Metro News on **Monday April 22, 2024**. Because this is a Zoning Regulation (textual) amendment only, no specific owners of record must be notified.

STAFF CONSIDERATIONS AND CONCERNS:

A moratorium is an acceptable use of “interim development control.” It allows an entity time to research, develop, and make appropriate findings regarding a decision. The need for additional time is not unreasonable. The decision on whether, and under what circumstances, to allow Solar Energy Conversion Systems (other than for personal use) in Shawnee County entails the need for more technical research; determining what scale of systems may work with the setup of existing and future development; reviewing and updating other Zoning Regulations and the Comprehensive Plan. A moratorium gives the Planning Staff and Planning Commission time to be prepared before considering any possible application for a system in the future.

STAFF RECOMMENDATION:

Based on the information detailed in this report, and generally recognized planning practices, Planning Staff recommends the Planning Commission **recommend approval of a one-year moratorium** on all new Limited (Community Scale) and Commercial (Utility Scale) Solar Energy Conversion System(s) and Project(s) in all Zoning District Classifications within the unincorporated portion of Shawnee County. Personal (Small Scale or Accessory Scale) Solar Energy Conversion Systems should be excluded from the moratorium. (*Note: The existing solar farms approved by the Board of County Commissioners in May 2022 and June 2022 are not impacted by the moratorium, and may continue to operate pursuant to the conditions of the Conditional Use Permit under which it was approved.*)