

The Muscatine County Zoning Commission met in the Board of Supervisors Office on Friday, April 9, 2021, with Chairperson Tom Harper and board members Carol Schlueter, and Virginia Cooper present, Brad Akers was absent. Eric S. Furnas, Planning, Zoning & Environmental Administrator and Dixie Seitz, Office Administrator were also in attendance.

Others present for this hearing: Jerry Anderson.

Tom Harper: I will open this Zoning Commission meeting for this public hearing. The Muscatine County Zoning Commission is a five member group of residents of the County who are appointed by the Muscatine County Board of Supervisors. We serve as non-professionals and without compensation. Our purpose is to advise the Muscatine County Board of Supervisors on managing the growth of the County. This involves reviewing subdivisions, rezoning requests, the use of public property, and reports related to land use policy and long range planning. Recognizing that our decisions will not satisfy everyone, we attempt to base our decisions on what is best for the long term interest of the County. We ask for your input, pro or con, on issues before us in order that we may formulate the best decisions possible. Please take this opportunity to share your thoughts and concerns with us. Our recommendations are not taken lightly by the Board of Supervisors, but the Board of Supervisors, your elected representatives, make the final decisions on all issues. Eric, would you like to read the request?

Eric Furnas: You guys are probably overdue for appointing a new chair and vice chair to serve until November 7, 2021. You should probably take action on that first.

Tom Harper: Okay, I will open nominations.

Carol Schlueter: I will make a motion to nominate Tom Harper for chairperson.

Tom Harper: Is there a second?

Martha Peterson: Second.

Tom Harper: All in favor of nominating Tom Harper for chairperson, please say Aye (3) Nay (Harper) Absent (Akers). The motion is approved. Now for vice chairperson.

Virginia Cooper: I will make a motion to nominate Brad Akers for vice chairperson.

Tom Harper: Is there a second?

Carol Schlueter: Second.

Tom Harper: All in favor of nominating Brad Akers for vice chairperson please say Aye (4) Nay (0) Absent (Akers). The motion passed, Brad Akers will be the vice chairperson. Okay, let's move onto item #01.

Eric Furnas: Zoning Agenda Item #01. Review and possible recommendation to the Board of Supervisors of proposed amendments to the Muscatine County Comprehensive Plan and the Muscatine County Zoning Ordinance regarding adoption of an ordinance regulating Utility-Scale Solar Energy Systems. This proposed amendment will affect all unincorporated parts of Muscatine County, Iowa.

Tom Harper: Okay, if you could give us some more background on this?

Eric Furnas: Sure, so this is something that I started working on months ago and it kind of got put on the backburner. So probably over a year ago now, there was a solar development company that came in and talked to us. They were reaching out to land owners in the West Liberty and Atalissa areas about potential leads. We had some back and forth with them and they had some

questions, but that project never came to fruition. But most recently, Muscatine Power & Water contacted me and advised that they were planning on a project, likely in two phases. Phase would be on their ground on the MPW well field for the first field of solar panels. But were and are confident that most likely there would be a phase two that would be spilling out into areas of the county. So we dusted off the solar energy draft ordinance and started working on that. Again, what I have sent to you is a combination of... Originally it came from Linn County, they had a nice solar energy ordinance so I used a lot of that. I researched a lot of energy sites, I reached out to Farm Bureau because of the ag land. I got some input from their legal counsel as well and it was implemented into the draft ordinance. So one of our main concerns, and this was really early on and I had reached out to Jerry Anderson with that project over in the West Liberty area, it was covering a large number of acres of fairly prime farm ground. This project... I can't really tell you where it would be located, but it probably would be done on the island somewhere. However, it really would be where they could get the right amount of acres with access. This ordinance would need to be finished anyway, not just for the MPW project but because solar is happening around the country. There is also a slight amendment being proposed for the Comprehensive Land Use Plan on the Visions, Goals and Policies page. Our Comprehensive Plan does and will continue to stress protection of farmland and it identifies it as one of our most value resources. However, with renewable energy they need to look at the economic benefits ... and we can get into more of that if you want to, but basically that is how we got to where we are now.

Martha Peterson: I have some questions. Do we want to consider the corn suitability rating of the land or not?

Eric Furnas: Well originally that was something that I thought of right away. In fact that's one of the things that I reached out to Jerry Anderson here, when that other group was proposing these on prime farmland. So he can kind of tell you what Farm Bureau's approach is to that.

Jerry Anderson: Yes we did talk it over and we appreciated Eric reaching out to us about this.

Tom Harper: I will have you state your name for the record.

Jerry Anderson: Jerry Anderson. So I appreciate Eric reaching out to us. We have huge concerns over the farm ground that would be converted, you know you can't get it back. And quite possibly that the property rights would have the proper framework.

Eric Furnas: Right and to answer your question Martha, that's basically why we didn't put the corn suitability rating in it, because of the pulse of the landowners and certainly because of the farmers in Muscatine County. As you said, they have some thoughts about the property rights and letting the farmer make those decisions. We do, and I don't know if you picked up on it in this particular ordinance but it would only be allowed in three different zoning districts. Under a Special Use Permit in A-1 District and the other two areas would be I-1 Light Industrial and I-2 Heavy Industrial District, those would be a permitted use. They would still have to submit their formal application, but we wouldn't have the ability to require a fence, other than junk yards is required to have a fence around it.

Virginia Cooper: How much weight did other counties that have plans in place that are active and actually have solar institutions set up... how much weight did they put on the CSR? Or is that reflected in what you have written?

Eric Furnas: Well when I put out a request for information, I didn't receive many responses.

Tom Harper: The only large scale operation around here is in Louisa County and I haven't been down there to see that. But I know that it's south of Wapello somewhere.

Martha Peterson: Yeah, it's right on Hwy. 61. I don't recall a fence being around it. Do you remember seeing that Dixie?

Dixie Seitz: No, I don't recall. There's also one north of Wilton.

Eric Furnas: Well the fencing that we would be requiring is more for security.

Martha Peterson: Yeah, that's what I was wondering about, how high is the fence? If you are going to have plantings underneath it, fodder as well as flora, how high are these fences? Can deer jump over them and graze? Or are you going to be so high that deer can't get in there?

Virginia Cooper: Yeah, like at the substations where you have those fences.

Martha Peterson: I don't believe it said specifically how high.

Eric Furnas: Right. I think the national electrical code for substations and industry is six to seven feet high and three strands of barbed wire. It's a pretty deer resistant fence. You know it would be about eight feet by the time you get the barbed wire.

Martha Peterson: So you could almost have animals grazing in there and keeping the weeds down and the growth down. Just so they wouldn't eat the panels like goats might. (laughter)

Eric Furnas: I actually came across an article, I can't tell you what state it's from, but they have actually used herds of ... actually that was a vineyard, sorry. But I think because of all of the apparatuses and stuff within that contained area, I'm not sure that they would want to use...

Martha Peterson: Yeah, it probably would be up to the landowner.

Eric Furnas: No, I would say that it's going to be up to the company that has the lease on the ground.

Martha Peterson: Yeah, if they want to allow it.

Eric Furnas: They will be required to maintain vegetation. I think we put in this about obnoxious weeds.

Martha Peterson: Forbs... I never knew what forbs was.

Eric Furnas: Yeah, generally they place them in rows and then they just run something right down in between them.

Tom Harper: I don't see anything in here about power storage. Is that something that needs to be considered in this? Because the storage wouldn't have to be with the panels, it could be somewhere else.

Eric Furnas: Well I think it would have to be on the leased ground as part of the project. In my mind and the interpretation of the code, when I talked to them, that's all a part of that project.

Virginia Cooper: It's all contained in that leased area?

Eric Furnas: Yeah, I mean... I'm not an expert but I mean the converters and things like that, it's going to be within the approved project area.

Tom Harper: Yeah, I mean converters have to be there but the storage... I mean that's involving and could be anywhere.

Virginia Cooper: Do we need to state that?

Eric Furnas: If you want to make that recommendation, I can certainly implement. I don't think that Farm Bureau would have any objections to that. And again, I am open for suggestions, whatever you think... I mean, you folks are the guiding group on this. So whatever you want to recommend, we can put in utility connections under general requirement, I think it's on the third page. We can add a sentence that states all components of the project or storage conversion ...

Tom Harper: I think that's fine.

Virginia Cooper: Yeah, I think that as soon as we don't cover it than...

Tom Harper: I don't think that it needs to be more specific, I think it needs to be more general. But right now storage is an involving technology.

Eric Furnas: I'm just coming up with some language here...

Virginia Cooper: Well I would think that any company that is installing them would have some pretty severe security.

Carol Schlueter: Yeah, I think so too.

Virginia Cooper: That's a lot of money to leave unprotected.

Tom Harper: How high are the panels down in Wapello? Are they about 10 to 12 feet off the ground?

Carol Schlueter: I don't know, I've never seen it.

Martha Peterson: Well they aren't all that high, but it's hard to tell from the road, they are at an angle and vary. But I think the stands are about five feet tall, do you think?

Eric Furnas: Okay, how about this... all components used for the collection, conversion and storage of energy shall be contained within the leased area, excluding the overhead transmission lines.

Virginia Cooper: I'm good with that.

Carol Schlueter: Sounds good.

Martha Peterson: Do you have a plan for wind energy too or is that...

Eric Furnas: Yeah, we have one already in place for the large commercial ones that wouldn't apply to the private ones. This one wouldn't apply to the smaller private ones either. This is a utility scale grade, you know. People, farmers, everyone is still able to have their own as long as it is for personal use. Obviously you can trade credits back, but the main use of it is not for profit and sale.

Virginia Cooper: So when they fill out the application and they have to submit all of the other background information to explain what they are doing and the decommissioning... who makes the decision as to whether that is satisfactory or not?

Eric Furnas: Well that will be... a lot of that is going to be up to ... we'll look to make sure that they have what looks to be like a fairly solid decommissioning plan. But the landowners, and I believe that they will, they are going to want to look at it and feel comfortable with the decommissioning plan before they sign the lease. We wanted to build some language in there so that we could help protect our landowners but at the end of the day, people sign contracts with different entities all the time and it's kind of buyer beware. I mean, you need to be comfortable with the contract that you are getting. We probably won't be putting ourselves in a situation ... that we aren't going to likely tell someone that we are not satisfied with the decommission plan and you can't sign the lease with them.

Virginia Cooper: Right as long as they have a decommissioning plan.

Eric Furnas: It's required, but how thoroughly and watertight it is ... there's going to be some responsibilities of the participating landowner.

Virginia Cooper: Yeah and my only issue would be that after the lease is over and maybe the decommissioning is on the low end and they accepted it and that land sold and then the next person has this massive problem with...

Eric Furnas: Broken tile lines and components still there...

Virginia Cooper: Yeah, with whatever is left behind. I mean, I think as an overall... I mean, if you are the one that's going to be evaluating the decommissioning and it covers clean up and it's pretty complete...

Eric Furnas: We are going to require that there is one there, but I'm not sure how. It's going to have to address or it's going to have to at least speak to the items that are required. But again, I think that the individual owners are going to have to...

Carol Schlueter: Right, that is his responsibility.

Tom Harper: And no matter how tight you have it, it is always subject to litigation.

Eric Furnas: Right. We just don't want to get into a situation where we are being over cautious and preventing a landowner from participating.

Virginia Cooper: No, I think as long as you are satisfied with the decommissioning plan.

Tom Harper: Or whether there isn't a plan versus what's in a plan. Okay, so what actions do we need to take here?

Eric Furnas: Well did you have any more questions Martha? I see your list there.

Martha Peterson: No. (laughter)

Eric Furnas: I mean, that's what this hearing is about.

Virginia Cooper: So who determines what is in the decommissioning plan? Or is it just what is listed here?

Eric Furnas: Well it's what is listed there is what we expect to see addressed or mentioned in their plan. That's a minimum, but you know, the individual landowners may require more at the advice of their counsel. If I was a landowner leasing 40 acres I am going to probably have my lawyer look at the lease. I think they are 20 year leases, is that right Jerry? Is that what you have been seeing? So they might have a little more trouble, depending upon what the corn prices are today versus a year and a half ago. I mean, our hope is that

MPW will keep phase two down there close to phase one. I mean, they have a new transmission line in the works that's basically across the bypass out to a substation there along Bayfield and on up.

Tom Harper: Well it's going to follow the existing line that is there now.

Eric Furnas: Yeah, they are replacing it and eventually it will tie into the substation at Hwy. 38 and 170th Street. REC is redoing a transmission line from that one east. Anywhere where there is a new transmission line, there could potentially be or be attractive to solar companies. They are telling me that they are trying to get it located down on the island. But we just have to have something in place to address it wherever they are wanting it because there could be another company within six months that's doing this.

Martha Peterson: Technology could change too and make it a little different.

Eric Furnas: It could.

Virginia Cooper: Are we ready then? What do you need?

Eric Furnas: Well let's deal with the solar ordinance as one motion and we'll talk about the little addition in the Comprehensive Plan, it's pretty minor but I think we'll address those in two motions. Actually Tom why don't you... when you get to that point, close the public hearing on this one and so it will be very clear that it's a separate action since we are amending the Comprehensive Plan. I have a potential motion written out that addresses the sections and subsections. So again, to be clear, we are adopting these provisions which will be adding Chapter IX to our Land Use & Policies portion of the Code of Ordinances. We are going to add Utility-Scale Solar Energy Systems. We will also be amending the A-1 Agricultural District Ordinance.

Virginia Cooper: But that's later after we close this?

Tom Harper: Yes, once we close this public hearing.

Eric Furnas: I just wanted ...

Virginia Cooper: So why don't you just give me that so that I can read it correctly?

Eric Furnas: So we are adding it as a Special Use Permit in A-1 Agricultural District. So the Board of Adjustment will still have a review procedure for any proposed projects or proposals in the A-1 Agricultural District. Then we are adding it as a permitted use in I-1 Light Industrial District. So that would automatically allow it in the I-2 Heavy Industrial District. Anything that is allowed in the I-1 Light Industrial District is permitted in I-2 Heavy Industrial District. So we don't have to amend the I-2 Heavy Industrial District Ordinance. We would just be amending the A-1 Agricultural District and I-1 Light Industrial District Ordinances.

Virginia Cooper: So it's both of them?

Eric Furnas: And then we can talk about the Comprehensive Plan one.

Virginia Cooper: Okay, so I move...

Tom Harper: Wait, let's close the public hearing. I need a motion to close the public hearing.

Jerry Anderson: I just wanted to add from a Farm Bureau's perspective... we do believe that it is the landowner's responsibility to make the best decision that they can for themselves.

Virginia Cooper: Well honestly, I don't know anything about decommissioning a site like that. I just don't know what it takes to do that. But as long as the way it is written that everyone is satisfied with the perimeters that we've set so far, than I just... I just don't know what it would take to do that. So I am happy with this.

Jerry Anderson: The conversations that I had with others... you are dealing with large equipment and you just don't know.

Tom Harper: Yeah, I guess that's it... whatever we decide today, how can we make sure it is enforceable years from now? But that's like on landownership, when they sign that lease and that contract it stays with that landowner and like with environmental issues, the next purchasers or the next owner inherits those environmental issues. I guess... do we need... I guess that's something that we should ask the county attorney.

Carol Schlueter: But isn't it that the landowners responsibility? If they sell it, than the buyer needs to figure that out.

Eric Furnas: You have to disclose any binding leases or anything like that, I mean, that gets disclosed during property transfer time. So the buyer, if he is responsible, is going to want to review the conditions of the contract that he is basically purchasing. Our intent here was to require enough information, if you look at the decommissioning, just the anticipated manner in which the project will be decommissioned, the site restoration actions, and the estimated cost of decommissioning. Just to get enough information that the landowner can then see these issues and make a good decision on what was important to them. Because there is some back and forth with these things, I saw it with the transmission line that MPW had. They didn't give quite enough when you are talking about compaction of an acre across the front and they were able to get a little more money out of MPW.

Carol Schlueter: To me, the landowner has to either be really sharp on this or have a good attorney that is. Because they have to also look at down the road when they want to sell their ground, is it going to take the value of the ground down because that is on the land? So to me, it is up to the landowner to really stay on top of this.

Martha Peterson: Then need to put in a timeline for decommissioning too because they can just do it when they get around to it.

Carol Schlueter: Yeah.

Martha Peterson: But that would be up to the individual negotiator too.

Tom Harper: Okay, I will ask for a motion to close the public hearing.

Carol Schlueter: So moved.

Martha Peterson: I'll second it.

Tom Harper: All those in favor of the motion please say Aye (4) Opposed (0) Absent (Akers). The motion passed, the public hearing is closed. So we'll move on to the next phase of this and have some motions.

Virginia Cooper: I move that we recommend to the Board of Supervisors that Title III of the Muscatine County Code of Ordinances be amended by adding Chapter IX, Utility-Scale Solar Energy Systems as presented, that Title III, Chapter II, Article III, Section 3 be amended by adding Section 3.31, Utility-Scale Solar Energy Systems as a Special Use Permit, and that Title III, Article X, Section 2

be amended by adding Section 2.8, Utility-Scale Solar Energy Systems as a Permitted Use.

Tom Harper: Is there a second?

Carol Schlueter: I'll second it.

Tom Harper: A motion has been made and seconded as read, any other discussion? Hearing none, all those in favor of the motion please say Aye (4) Opposed (0) Absent (Akers). The motion carried. Is there another one?

Virginia Cooper: Yes, pertaining to the past discussion from the public hearing I move that we recommend to the Board of Supervisors that the Muscatine County Comprehensive Land Use Plan be amended by adding the following language to Chapter 2, Vision, Goals and Policies, County Goals: Encourage the creation and use of alternative and renewable energy resources and consider the economic and environmental benefits of renewable energy when considering the conversion of farmland.

Tom Harper: Is there a second to that motion?

Carol Schlueter: I'll second it.

Tom Harper: Okay, a motion has been made and seconded to recommend to the Board of Supervisors to amend the Comprehensive Land Use Plan, as stated. Any discussion? Not hearing any, all those in favor of approving the motion please say Aye (4) Opposed (0) Absent (Akers). The motion carried. Is that it?

Eric Furnas: Yes.

Tom Harper: So we are adjourned.

Eric Furnas: Yes, and I appreciate everyone's time at looking at all of this. I had to go and google some of this during this process. And I appreciate Farm Bureau's input Jerry.

Carol Schlueter: Yeah, that was nice.

Eric Furnas: So we'll see. But thank you.

MUSCATINE COUNTY ZONING COMMISSION
By Eric S. Furnas, Planning, Zoning & Environmental Administrator