

**Joint City-County Planning Commission
of
Barren County, Kentucky**

November 19, 2018

The Joint City-County Planning Commission of Barren County, Kentucky met in a regular session on Monday, November 19, 2018 at 7:00 PM in the Council Chambers of the Glasgow City Hall.

The following Commission Members were present:

Eddie Atnip	Ricky Houchens
Brad Bailey	Joan Norris
Danny Basil	David Rutherford
Lewis Bauer	Janis Turner
Rondal Brooks	Candy Wethington
Tommy Gumm	Forrest Wise

Freddie Button was absent.

Chairman Gumm called the meeting to order.

A roll call was made with twelve (12) Commission Members present.

I. GENERAL BUSINESS:

Agenda Item # 1 – Approval of Minutes

A motion was made by Rondal Brooks and seconded by Joan Norris to approve the minutes of the October 15, 2018 meeting as presented. Motion unanimously carried.

Agenda Item # 2 – Approval of Invoices

The following November, 2018 invoices were presented for payment.

A motion was made by Forrest Wise and seconded by Eddie Atnip to pay the November invoices as presented for payment. Motion unanimously carried.

Agenda Item # 3 – Committee's Report

There was no Committee report.

Agenda Item # 4 – Treasurer’s Report

The bank balance at the end of October was \$28,614.50. Deposit in the amount of \$4,430.00 consisted of: \$3,400.00 from Barren County fees and \$1,030.00 in fees from the City of Glasgow.

Agenda Item # 5 – Director’s Report

Kevin Myatt, Planning Director, gave the Commission Members a list of their current continuing education hours. He also told of a half day conference in Madisonville, KY on November 30th, 2018. The session will be from 8:00 AM to 1:45 PM and will count as 4.5 continuing education hours and is a free session.

II. PUBLIC HEARING:

1. 111918-01-B – Text Amendment Application – Joint City-County Planning Commission, Applicant/Owner – Text Amendment to include Solar Energy Regulations – Barren County

A public hearing was conducted.

Chairman Gumm reminded everyone on the Commission that any approval or denial must be in accordance with KRS 100.211.

Kevin Myatt, Planning Director, was sworn in and reported to the best of his knowledge all appropriate notices had been posted. Mr. Myatt explained the proposed Text Amendment.

Commission Member Eddie Atnip: I would like to bring up fencing again. We are giving the people 950' of leeway, if you would, to a 1,000' state requirement. I don't see why we could not ask that a fence at the front be 35' from the right of way. If you will notice in the last meeting, approved in the minutes tonight, we had a variance last meeting for a piece of property that had a 30' right of way. So that means unless we do something, we could have a very high chain link fence 15' from the center of the highway out in the county and that could be very much a sight problem. And I see this as a safety problem. I just want to put that on the table, so we can discuss it because I don't think they would object to it, they have to give up the 50', why can't we use 35' of that for a fence setback. I'm just putting that up for discussion.

Myatt: I think one of the big things, Eddie, and I see exactly where you are coming from is that we are singling out the use of this. If we say the use of Solar Farms have to have a fence say 35' off, or whatever it is, we are singling out that in the county, so if I want too, in the county to produce solar electricity as a farm I now have to fall under the rules of a fence is being put there when no other use in the county is required to have a fence put there. If I wanted to have some

type of production for manufacturing, there is no regulations for putting a fence up in our subdivision reg's for them. So, what I'm saying is we are actually, by doing that, we are singling out a use, not a structure, but a use of a piece of property and we don't have any land uses.

Commission Member Atnip: I agree, we are singling out, as a use, we are singling it out.

Myatt: I'm just going for a consistent regulation for all uses.

Commission Member Atnip: I know what you are saying. But a regular fence, fine, it can be on the right-of-way, we not talking about a regular farm fence.

Myatt: Sure, sure.

Commission Member Atnip: We can see through those, generally. But I have seen security fences that you cannot see through. And if you put that in a curve it's going to be a problem, there could be a problem.

Myatt: I understand.

Commission Member Atnip: And I think given what the state has provided for this, that the company would not object doing that and if they don't object to it, I think we can do it.

Commission Attorney Charles A. Goodman, III: Some requirement contained in any kind of ordinance statue regulation is or is not enforceable can only be ultimately decided in court. If there were a fencing requirement, whether or not it would ultimately, we, everybody here would be entitled to his/her opinion as to whether or not it is enforceable, my opinion, is that it would not be enforceable because it pertains to the use of the property and since we don't have county wide zoning then we would be overstepping our bounds. However, having said that, that may not be how it would be ultimately decided. Particularly combined with some other requirements that would impose fencing and, in that regard,, Eddie, if the Commission would decide that a fencing requirement would be in place, I think we would certainly want to avoid trying to establish the type of fencing or the height of the fence because I think that would be somebody else purview and as Kevin mentioned. So, what I am saying is, I'm not real sure that it would be enforceable, but having said that, that's certainly something that could only ultimately could be determined if it's tested in court. And we'll just have to see. It's up to the commission to see what kind of requirements we want to impose and if it turns out that one or more of those requirements, I'm not singling out fencing, the court could determine anything else in here, these sections or subsections could be unenforceable. But if the commission decides that that is the prudent course of action to take, then that what it's decided, and it is ultimately determined that that was wrongly determined, then so be it. I don't think that projecting that on to the ultimate determination, where or not it is enforceable, should necessarily be a deterrent toward making that decision now.

Commission Member Atnip: Then I would like to interject one other thing which I did not bring up earlier. We have a 35' setback for residences from highways now. The only thing we've always looked at is if they are closer, they can be a site problem. We are looking at now putting up a fence which could very well be a site problem. We have the option to move that back, in my opinion, to 45' which would be in line with the housing. It would not be a sight, safety problem.

Myatt: Who would you bring that back for, I'm sorry, who would you bring for, to the 35', who would you, who are we talking about?

Commission Member Atnip: Oh, I'm just talking about a solar farm.

Myatt: OK.

Commission Member Atnip: Any security fencing in height excess of 5', I guess 5' pretty much takes care of a farm fence, any fencing higher than 5', any fencing higher than 5' from a solar farm qualifies for a setback. It doesn't make them take fences down, they've still got that property in between whatever they can use. They know they can't use 50' of it for a solar farm. I'd like to see putting the fence at 35', it's putting it on the same line as the house for "siting" purposes. That's what I'm basing it on solely.

Chairman Gumm: You are saying, if the fence, if they elect to erect the fence it be at 35' or are you making it mandatory that there be a fence?

Commission Member Atnip: No, no, anything higher than 6' would have to be at a 35' setback.

Chairman Gumm: OK.

Commission Member Atnip: That way any farm fences there now stays if they want it but their equipment must be back at least 50' from the right of way. If we put the fence setback at 35', that's on the same line as with the houses, it should not be a site problem. Anyway, that's the reason behind it, I would ask that you add it.

Myatt: It's up to you all, I mean the only thing that I can say is I feel like if we do that, if we go that route, requiring the fence to be back because of the solar farm, that you are regulating what that use is and you are singling out the one use that wants to do with solar energy production that that fence has to be a part of. We have a factory right down the road on 31-E here, it's 100' off the road, at least. They have fencing all the way up to the road. We just have to be careful. I'm afraid it could be something we could get ourselves in trouble with and I understand exactly, and I personally understand exactly what you are saying, and I don't disagree, I mean I understand that it could potentially cause that. One other thing, the Federal Electrical Code requires the fencing to be around, I think, where the production is, the substation.

The small substation is going to be on there, I don't know if it requires it around all the solar panels.

Commission Member Atnip: I don't know.

Myatt: That's what I am saying. They may not elect to put up a fencing. The only fencing they put up may be surrounding their high voltage or voltage comes into the substation to tie into the electrical arm of itself as well.

Commission Member Atnip: That would not be a problem, we would not end up in court.

Myatt: Well, that's not to say that they do not put their substations up front is the only problem with that. When you have a substation, you have it closer to the road to make it easier to get to, easier access to work on. So, the extension of that could be 35' off the road, or 50' off the road. That type of fencing is going to be required regardless of what we want it to do.

Commission Member Atnip: We know it's not going to be any closer than 50' because we have included fencing in the proposal.

Commission Attorney Goodman: And remember it's very dangerous to say we will never end up in court.

Commission Member Atnip: (Laughing) I didn't say that.

Commission Attorney Goodman: (Laughing) Yes you did.

Commission Member Atnip: (Laughing) I said we wouldn't be tested.

Commission Attorney Goodman: I would remind the Commission of this, and some of you lose sight of this, that any setback line we are talking about, any setback line just prescribes how close you can get to the right of way, it doesn't set any requirement about how far back you can go, so that is something you can consider too when you are thinking in terms of uniformity.

Commission Member Atnip: Well, anyway under the statues of KRS 100 for Safety and Welfare, I think we should put it.

Chairman Gumm: Kevin, a Development Plan has to be provided?

Myatt: Yes.

Chairman Gumm: Do we have any leeway in regard in to governing the back point.

Myatt: Well we don't have any with regard to the roadway, the county road supervisor if it's on a county road or the state road supervisor would have ultimate control over site visits. We can only recommend that something be approved, if it's a site problem, visibility problem causing fatalities, crashes or accidents, they are going to have authority over that.

Chairman Gumm: I think we all understand on a straightway, this is not a problem. If it was on a long curve or something like that then it would possibly fall into safety.

Myatt: The same thing goes for out in the country side of Barren County, some have a plank fence, if it is on the state right of way, they have allowed them to have it on there. I'm just saying there is a lot of fencing out there that can cause visibility issues. The state requires those conditions if they have to either remove them or take them down, they are visibility issues. There are a lot of areas in Barren County that we have the same scenario where you have a curve or a long curve where this is limited sight distance, they've got a plank fence up or something like that is clearly blocked, not just like a 5-strand barbed wire fence. So those are not really regulated by the state or county roads.

Commission Member Atnip: You've done a good job of putting this together.

Chairman Gumm: Yes, they have.

Myatt: Brian McKeever, the Planning Administrator, has done a lot of the research.

Chairman Gumm: I suggest that we move ahead with the hearing and come back to this and make a decision if we are going to add anything to the proposed amendment and the ramifications of that at that time.

Chairman Gumm asked if anyone present would like to speak in favor of the proposed amendment.

No one present spoke in favor of the proposed Text Amendment.

Chairman Gumm asked if anyone present would like to speak in opposition to the proposed amendment.

No one present spoke in opposition to the proposed Text Amendment.

Commission Member Danny Basil: I'm not sure I understand Eddie's proposal. Eddie were you advocating requiring them to build a fence or requiring to be set back 35' if they chose to build a fence?

Commission Member Atnip: No, my only intention and voice is for a setback requirement if there is a fence.

Commission Member Basil: You weren't advocating...

Commission Member Atnip: I am not advocating, no...

Commission Member Basil: I think there might have been a little misunderstanding.

Commission Member Atnip: No, whether they put up a fence doesn't bother me, just as long as they don't stick it up on the right of way. The clarification is, any fence they choose to erect, should they choose to erect a fence, that is greater than 5' in height which is our normal "rule of fence" (I will call it) that is already in place there, but if any higher than that would have to be located 35' from the right-of-way.

Myatt: Eddie, if we stayed with the state requirements, we would not have to worry about that.

Commission Member Atnip: If we stay with the state requirements, they won't come visit us. (Laugh) That's why I say I think if we trade 950' for 50'/35'.

Commission Member Ricky Houchens: I'd like to say I feel that Kevin is on the right track because I think you are opening a can of worms if you start singling out a single entity that we are talking about land owners that are probably in the county already and unless we are going to go something to regulate our county direction and really be involved in zoning out in the county, which I could definitely argue we need it for sure, but to single out one land owner that decides he wants to sell energy to make him setback his fence further than if I'm going to have cows and fence off my property and I want every inch I can get that's mine to have a fence on it because I'm responsible for it. I understand the intent and I think it's all good, but I believe we are opening up a can of worms if someone else, say for instance I'm gonna have a junkyard and I'm going to fence that thing off and I'm gonna enclose it so folks can't see in. Why aren't those folks required to have their fence further away from the road because definitely you can't see what's in there, it's in a curve, it's definitely gonna block. You're talking about a person here that lives on Hwy. 63, rollercoaster. So, you know, vision ahead sometimes is not always something that we have as much as we would want. But I just feel that taking the intend of forcing someone to move a fence because again we are talking about, you know it could change hands, but right now we are talking land owners that own land in Barren County and that intent to force them to do something that nobody else has to do. I just feel it is a place we do not need to go.

Commission Member Atnip: I understand what you are saying, but we are not forcing them to move the fence, any fences there would stay.

Chairman Gumm: Any other discussion? If not, I am going to officially close the hearing at this time and the Chair will entertain a motion.

Chairman Gumm closed the hearing.

A motion was made by Eddie Atnip that we would include the requirement that any fencing in excess of 5' be situated with a front setback of 35'.

Motion failed for the lack of a second.

A motion was made by Rondal Brooks and seconded by Ricky Houchens to approve the Text Amendment as presented by Kevin Myatt, Planning Director, and forward to the Barren County Fiscal Court. Motion carried unanimously.

There being no further business to come before this meeting, upon the motion of Janis Turner, seconded by Candy Wethington, and unanimously carried, the meeting adjourned at 7:52 PM.

JOINT CITY-COUNTY PLANNING COMMISSION
OF
BARREN COUNTY, KENTUCKY

By: _____
Tommy Gumm, Chairman

ATTEST:

Janis Turner, Secretary-Treasurer