

# Barton County Commission Agenda Meeting Minutes

Recorded audio is available on compact disk upon KORA request to the Barton County Clerk's Office, 1400 Main – Room 202, Great Bend, Kansas 67530.

Phone (620) 793-1835 \ Fax (620) 793-1990 \ Email [clerk@bartoncounty.org](mailto:clerk@bartoncounty.org)

Meetings Live Streamed through **Microsoft Teams** at the following link: <https://bit.ly/3xbkUWp>.

March 29, 2024

The Board of Barton County Commissioners convened this 29th day of March 2024, for a Special Agenda Meeting at the 1500 Kansas location.

*Members present:*

Duane Reif, Commissioner, 1<sup>st</sup> District

Barb Esfeld, Commissioner, 2<sup>nd</sup> District, Chairman

Shawn Hutchinson, Commissioner, 3<sup>rd</sup> District

Tricia Schlessiger, Commissioner, 4<sup>th</sup> District, (Chairman Pro-Tem)

Donna Zimmerman, Commissioner, 5<sup>th</sup> District

Bev Schmeidler, County Clerk

Matt Patzner, Director of Operations

Patrick Hoffman, County Counselor

## **I. OPENING BUSINESS:**

Commissioner Esfeld called the meeting to order at 9:00 A.M.

Commissioner Schlessiger moved to approve the agenda.

Commissioner Reif seconded the motion.

All voted aye. Motion passed.

Minutes of the March 26, 2024, Regular Meeting were not available.

Commissioner Esfeld said public comments would be limited to five minutes and asked that people speaking go to the podium. She thanked everyone for the research they had done and presented to the Planning Commission and commissioners. The commissioners were trying to make the best decision for Barton County. Commissioner Esfeld said that it was the most difficult decision she had to make since serving on the board.

Commissioner Hutchinson said the commissioners had been quiet the last ten months as it was not their place to help Planning & Zoning. To Dr. Witt and his crew, please understand if the "No build zone" was adopted today, you all have won a great victory for Cheyenne Bottoms. The solar panels were fifteen feet stationary objects. Three highways run close to Cheyenne Bottoms with semis traveling the roads. The "No build zone" extends five miles past the highways, more than five miles in some places. Commissioner Hutchinson said that if the zone stood today, you all have won a great victory for Cheyenne Bottoms. He thanked the Planning Commission for taking the time, meeting more frequently, to accomplish this difficult task in a reasonable amount of time. Last April or May, he asked the Planning Commission to have regulations done by the end of 2023, that was why he did not vote to extend the moratorium. Commissioner Hutchinson addressed Andrew Murphy, Great Bend Tribune, saying that he should be ashamed of himself. Commissioner Hutchinson said he received a call from a senator saying this issue was putting brother against brother. The moratorium needed to be lifted, move the regulations along, so that Barton County could begin to heal.

Commissioner Schlessiger said one of her biggest concerns regarding extending the moratorium was the divide in the community. That was the main reason she did not want to extend the moratorium. She was hopeful the healing process could begin also.

Commissioner Hutchinson said the Great Bend Tribune had a responsibility to fairly and accurately report what happened in commission meetings. They had been the official county newspaper for decades.

Andrew Murphy, Great Bend Tribune, asked what he wrote that was untrue.

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Commissioner Hutchinson said he wrote that Commissioner Hutchinson rushed the Planning Commission to get ahead of leases expiring. Murphy said he thought that was read wrong.

Commissioner Schlessiger said there were quite a few inaccuracies in Murphy's article. Murphy said he was willing to speak to both of them and right what was wrong.

Commissioner Zimmerman said she had been around a long time and remembered the days of Seaboard. She remembered how it divided the community and took years to get past the hurt. This was a really difficult vote. When running for office, she pledged to listen. She had listened carefully and had done research, it was difficult to represent everyone when the community was so divided. They were all trying to do their best, represent the county and move forward.

## **II. NEW BUSINESS:**

### **A. RESOLUTION 2024-10: A Resolution Amending Article III of the Barton County Zoning Regulations, Version II:**

-Judy Goreham, Environmental Manager, will provide details. The Zoning and Subdivision Regulations were adopted in 2000 and later revised in 2013. The Planning Commission now recommends amendments to Article III to allow for the following new conditionally permitted uses: Large Scale Non-Commercial and Commercial Scale Solar Energy Conversion Systems (SECS) in all of the zoning districts within Barton County.

Judy Goreham, Environmental Manager, said the first thing she was presenting was Article III of the Zoning Regulations. This was the District Regulations section with seven different zoning districts and a very clear way to see what was permitted and what was conditionally permitted. Anything listed as conditionally permitted required an application that would be sent to every landowner within 1,000 feet, informing them of the public hearing. The Planning Commission would then make a recommendation to the commissioners, who could accept it, return it with further instruction or reject it. Today, this was a zoning amendment and required the same process. In Article III, the only thing new was, in every one of the seven zoning districts, large scale non-commercial solar systems and commercial scale solar systems had been listed as conditionally permitted. If the no build area was adopted, there could be no building in that area but everywhere else that Barton County had jurisdiction, would be conditionally permitted for every single type of large-scale application. The recommendation of the Planning Commission was to adopt the changes.

Commissioner Hutchinson said to be clear, if adopted, the entire county would be in a conditional use permit area. He said there had not yet been an application for solar and asked Goreham why there had not been one. Goreham said one was not submitted before the moratorium went in place.

Commissioner Hutchinson said it was the first moratorium in Barton County history so they could take their time and do it correctly. If adopted, going forward, when an application was made was when we would learn where this was going, how big it would be. Goreham said what landowners would be involved, how modules would be set up and storage facilities. Goreham said a lot of the details would be learned at that time.

Commissioner Hutchinson said there would be a public hearing for every application. Goreham said in the document, the Planning Commission was recommending a provision be included that a solar company would have to send a letter, explaining the project, to every landowner with a mile of a proposed project ahead of an application being submitted. This would provide transparency up front from the solar company.

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Commissioner Hutchinson said his point was when the Planning Commission had public hearings, citizens were asking why Acciona was not answering their questions. It was not yet about Acciona because they had not filed an application.

Commissioner Zimmerman moved to adopt Resolution 2024-10, A Resolution Amending Article III of the Barton County Zoning Regulations, Version II.

Commissioner Hutchinson seconded the motion.

All voted aye. Motion passed.

## **B. RESOLUTION 2024-11: A Resolution Adding Article VIII-B – SECS to the Barton County Zoning Regulations, Version II:**

-Ms. Goreham will provide details. The Planning Commission recommends the addition of Article VIII-B – SECS to the Zoning Regulations. This article sets minimum requirements for all future development of Large Scale Non-Commercial and Commercial Scale Solar Energy Conversion Systems (SECS) in all of the zoning districts within Barton County.

Judy Goreham, Environmental Manager, said this involved the meat and potatoes of the solar regulations. Goreham said she wanted to go over things that were different from the public hearing document that was submitted and reviewed. They received a lot of feedback from the public and there were a lot of key issues over the next two meetings that the Planning Commission looked at, considered and made decisions on. One of the things that changed as a result of that was the 500' setback that was set up initially to a residence. It was changed to a 1,000' setback to a property line. The reason for the change was because of the dangers of the batteries. If they caught on fire, they could not be put out but must burn out. Right now, the recommendation was to adopt a 1,000' setback from a property line to any battery storage and any panel. The 1,000' setback can be eliminated if an adjoining, willing landowner lets you come closer. Goreham said they were asking for consideration of adopting the public notification requirement. This was something that came through from Douglas County. They required a letter be sent to every landowner within one mile of a proposed solar project area. A person and phone number must be designated also to take questions prior to submitting an application to the county. This puts all the pressure on the solar companies to be transparent and upfront with everyone. Douglas County also requires a solar company to hire a third-party engineering firm to take an application and go through the details of everything required, a very daunting task. One application Douglas County received took 6 people four months to go through. Groundwater monitoring and soil sampling plans were beefed up quite a bit. A solar company would be required to offer testing to landowners with an existing well within a certain distance. This would give them a baseline test for comparison if an extraordinary event occurred. It would also be done at the beginning of decommissioning and again at the end of decommissioning. The battery storage areas had an enormous potential for pollution so the Planning Commission also wanted to require monitoring wells wherever KDHE said was necessary regarding battery storage areas. The solar company would be responsible for all testing and monitoring of the water. The Planning Commission also added the Kansas State Historical Preservation Office to review the project site. They wanted this to be done to protect the rich history of the county and be sure nothing would be destroyed.

Goreham said at the study session last Tuesday with the commissioners, she went through line by line every little thing that changed. While doing that, she found some inconsistencies with the setbacks and corrected those areas. The County Engineer assisted with the way it was written for soil testing, he felt it was too vague. They wanted to add language to make that more clearly defined.

Commissioner Esfeld said there were people in the no build zone that were in areas that would not be contested. Could an application be submitted for those areas. Goreham said not for commercial scale, only non-commercial. Goreham said that brought up the point that what they had been working on had nothing to do with private, small solar use. If someone wanted to put a solar panel on their home, barn or

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other structure, they needed to contact her about floodplain requirements, zoning district setbacks and getting a building permit. The no build zone affected large scale non-commercial and commercial.

Patrick Hoffman, County Counselor, said the commissioners had asked him to provide a legal review of the solar energy conversion system recommended regulations from the Planning and Zoning Committee. First, I believe a short recap of the history of this issue was in order.

Hoffman said in May of 2023 it became clear that statewide interest in Solar Energy Conversion Systems on a commercial scale was increasing dramatically. At the time, Barton County had no regulations of any kind related to such a land used. As counselor I advised, and the Commissioners agreed to impose a moratorium on any commercial solar development until the end of the year so that the Planning and Zoning Board could draft regulations. This was the first moratorium of any kind in Barton County history, but the Commissioners believed it was appropriate to deal with the situation. That moratorium was later extended until April 1<sup>st</sup> for a total of over 10 months of time to draft regulations.

The Planning and Zoning Board has drafted regulations and voted to recommend them to the Commissioners. Some legally significant portions of those regulations include:

- A 'no build' zone for the purpose of protecting wildlife completely banning solar energy development in over 49,000 acres of the county.
- The regulations as written require setbacks of 1,000 feet from the property line (not residence) of an adjoining landowner unless the neighboring landowner consents. For comparison, Large Scale Manufacturing Facilities have a 50 foot setback, and most other structures require a 15 foot setback.
- The regulations require significant groundwater and soil testing.
- The regulations require significant additional information as part of the permitting process.
- The regulations require decommissioning bond to ensure that the project will be removed if abandoned for any reason.

From a legal perspective, I evaluate these regulations on the basis of potential legal challenges. My analysis is that the county could face a challenge by landowners within the 'no build' zone for making that area too large; the county could also face a challenge by the environmentalist from making the area too small. My recommendation would be to uphold the planning commissioners' recommendation and defend it if challenged.

Similarly, the 1,000 foot setback from a property line requirement is exceptional and will be the largest setback in Kansas by a considerable distance. I would recommend instead either of the following options:

- Send the entire recommended changes back to the planning commission with direction to write regulations clearly banning use of Solar Energy Conversion Systems; or
- Revise section 8B-106(g) as follows:

## g. Setbacks.

- 1) All Structures shall be located in compliance with the setbacks required for that zoning district or as otherwise set forth in this article.
- 2) The solar panels/arrays and appurtenant structures shall be located a minimum of 1,000 feet from the property line of a tract with a residence located on the tract, unless a lesser

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setback is agreed to by the owner of the property and approved by the Barton County Commissioners.

Goreham asked Hoffman if there was not a residence on the adjoining property, what would the setback be.

Commissioner Hutchinson said they felt that was overlooked. If someone waived the 1,000 foot, what would the setback be.

Hoffman asked Goreham if they had a default setback in there. Goreham said it started at 500'. Hoffman said he did not have the answer.

Commissioner Hutchinson said if there ever was an application, and go into the conditional use permitting phase, to be aware that there was no defined setback from a road.

Goreham said everything in the ag district had a 50' setback.

Mary Ann Stoskopf, Planning Commission member, said she asked what the average width was of a township road. They range anywhere from 40' to 60'. The property line, assuming the road had been graded straight for the last 120 years, was basically the center of the road. In the instance of a 60' road, that would be 30' to the edge of the ditch, and then 20' into the property. Stoskopf asked Hoffman if that was correct. Hoffman said he believed so.

Hoffman continued:

3) Buffering or screening landscaping, fencing, agricultural uses, and access drives may be within this setback.

4) Battery storage shall not be located within 1,000 feet of the property line of a tract with a residence located on the tract.

With the remainder of the section unchanged.

Finally, I do have concerns about the manner in which the water and soil testing provisions were written, only because in places they rely on agencies outside the county's control to act and they may be subject to different interpretations by future planning and zoning members. My recommendation is that these concerns would be resolved, and the intent of the planning commission remain intact with the following revision to section 8B-106 (t)

t. Modifications.

Upon a written request by the applicant, the Barton County Planning Commission may consider a modification from the standards if said modification is found to be necessary and is consistent with the purpose and intent of these regulations. The Barton County Planning Commission shall make recommendations to the Barton County Commission on requested modifications in conjunction with their recommendation on the conditional

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land use permit. The Barton County Commission shall make the final determination on all modification requests.

- 1) Items that are available for modification are the size of the Project Area, height of the solar panels, amount of grading possible, and the location (above or below ground) of electrical interconnections and distribution lines, changes to the procedure for testing soil and water, and any other revision deemed appropriate to implement this code.

Hoffman said the discussion we just had demonstrated that a person could not anticipate every potential issue that could come up with land use. From his perspective, he preferred a little bit of wiggle room so the Planning Commission could look at it and go from there.

This could be accomplished with a motion to uphold the recommendation of the Barton County Planning Commission to adopt the proposed addition of Article VIII-B - SECS to the Barton County Zoning Regulations, Version II, and add in your motion the revisions to 8B-106 (g) and (t) as found in the letter from the County Counselor.

Commissioner Hutchinson said the 1,000' setback was the largest in Kansas. The original recommendation was 500' from an existing residence. We are not trying to kill the project but rather give input and power to people living in the county homes. Please work with these people and protect their rights as you want your own protected. 1,000' from your house may not be enough but 1,000' from your property line that had a house, that was a significant setback that gives people a say in where this could happen.

Hoffman said after talking to other attorneys about similar issues, two things stood out with this: robust no build zone and 1,000' setbacks. These were both out of the norm.

Goreham said we have Cheyenne Bottoms here, nobody else had that, made us a unique county.

Hoffman said he was not saying those were bad, they just stood out. He respected what the Planning Commission had done.

Commissioner Schlessiger said what Hoffman outlined was from the feedback that all of the commissioners had been receiving.

Hoffman said they were trying to protect homeowners while balancing everything.

Stoskopf said the 1,000' setback to an existing residence was what the Planning Commission proposed. In the edits that Acciona proposed, they asked that the setback be very specific to the foundation of a residence. That was why they added the wording to 1,000' from the property line.

Dan Witt asked if a landowner had a solar panel that gets damaged by hail, can they bury it on their property. Goreham said no, that would not be following the Barton County Solid Waste Management Plan. Witt then asked if it could be taken to the landfill. Goreham again said no. Witt said it was common sense to protect Cheyenne Bottoms, it was a unique place.

Steve Neeland said if a property were leased by Acciona and all the surrounding properties were not leased, he did not feel the adjacent property owners would sign off on a reduced setback. Neeland said talking about compromises, where was the compromise for himself as a landowner, he did not feel it was

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fair. Where his property was located, he had to deal with the landfill and people dumping trash on the property because they do not want to pay landfill fees. Birds and geese have been eating their crops for many years. Neeland said we do not really know what effects solar panels would have on the area. There were no studies showing the flyway would be affected. The birds seem to adapt well over the years with cities growing and highways being built.

Max Christiansen asked about Kansas Statute 2-3201, conserving and protecting farmland for production. He said solar was not an agricultural product. Christiansen felt the statute made the project illegal.

Hoffman said landowners could decide what to do with their property whether it be for agricultural or other uses.

Christiansen felt the statute said ground could not be taken out of agricultural use and said the ground would never go back to agricultural after solar panels.

Hoffman said houses could not be built on agricultural land if the statute were the way he was interpreting it.

Christiansen asked how Acciona could lease 8,000 acres according to Great Bend Post when the issue had not been passed yet.

Goreham said those were private leases between Acciona and landowners.

Commissioner Hutchinson said between a private company and citizens.

Commissioner Hutchinson moved to adopt Resolution 2024-11, A Resolution Adding Article VIII-B – SECS to the Barton County Zoning Regulations, Version II with the revisions to VIII-B-106 (g) and (t) as found in the letter from the County Counselor.

Commissioner Zimmerman seconded the motion.

Motion passed 4-1, Commissioner Reif voted nay.

Commissioner Reif thanked the Planning Commission for their countless hours and dedication. He appreciated Acciona wanting to invest in Barton County and possibly improve the economy of central Kansas. He was not fond of the project when Acciona first approached the commissioners and they admitted that they did no research of the area before they made plans. He was concerned that a company that size would fail to do so and questioned their motives. Commissioner Reif said he contemplated all the feedback he received from his constituents so his due diligence was to vote no.

## **C. RESOLUTION 2024-12: A Resolution Amending the Official Zoning Map of Barton County:**

-Ms. Goreham will provide details. The proposed Resolution provides for an amendment to the official Zoning Map of Barton County. It essentially sets forth a "no build zone" that is one mile outside the existing zone for the Wind Energy Conversion Systems (WECS). If adopted, it will pertain to all future development of Large Scale Non-Commercial and Commercial Scale Solar Energy Conversion Systems (SECS) in Barton County.

Judy Goreham, Environmental Manager, said this was the official zoning map. The map had an additional one mile outside the existing wind energy area. There were seven other potential maps made as a result of the public meetings that were held. At the March 14<sup>th</sup> meeting, they voted until they had enough votes to pass a map. Goreham said as a landowner, she did not want anyone telling her what she could or could not do on her land, she understood where everyone was coming from. The area that Acciona had leased represented about 1.8% of the county. There were more than 576,000 acres in the county. The proposed no build zone was 49,000 acres, a little less than 10% of the county. Non-participating landowners represented over 98% of your constituents.

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Commissioner Schlessiger moved to adopt Resolution 2024-12, A Resolution Amending the Official Zoning Map of Barton County.

Commissioner Hutchinson seconded the motion.

Motion passed 4-1, Commissioner Reif voted nay.

Commissioner Hutchinson said now it goes to planning and zoning for Great Bend.

Commissioner Esfeld asked Goreham about the three-mile area around the City of Great Bend. Goreham said when zoning was adopted in 2000, within the first year, any city in Barton County had the opportunity to take up to three miles around their city back from the county. Three of the cities took a one mile area around them and Great Bend took three mile area around it.

### III. OLD BUSINESS:

#### **A. RESOLUTION 2024-09: A Resolution Providing for a Temporary Moratorium on Commercial Solar Energy Project Development within the Unincorporated Area of Barton County, Kansas:**

-Patrick Hoffman, County Counselor, will provide details. With the adoption of Resolution 2023-25, the Commission extended the temporary moratorium on commercial solar energy project development in the unincorporated area of Barton County until March 31, 2024. The Commission will consider a brief extension to the deadline. This item was tabled on March 26, 2024, to this Special Meeting.

Patrick Hoffman, County Counselor, said the commissioners could vote to end the moratorium or let it expire on it's own.

Commissioner Hutchinson said to let it expire on its own.

Commissioner Esfeld said we do not need a motion, just allow it to expire.

### V. ENDING BUSINESS:

1. Announcements
2. Appointments

### VI. OTHER BUSINESS:

Commissioner Schlessiger – represents District 4 and has tried to balance the different needs in her district. She felt they compromised, landowners and wildlife advocates both would be disappointed. Landowners, many multi-generational, were some of the best stewards of the land. Wildlife advocates were passionate about the preservation of Cheyenne Bottoms. As we let the moratorium expire and put these zoning regulations in place, let us remember that we are neighbors and friends. Do not tear each other down, keep an attitude of respect and work through difficult issues like these.


### VII. ADJOURN:

Commissioner Hutchinson moved to adjourn at 10:11 A.M.

Commissioner Schlessiger seconded the motion.

All voted aye. Motion passed.

ATTEST:

  
\_\_\_\_\_  
Bev Schmeidler  
Barton County Clerk

  
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Barb Esfeld, Chairman