

FACTSHEET

TITLE: TEXT AMENDMENT NO. 17010 -

Amend various sections of the Lincoln Municipal Code relating to Commercial Solar Energy Conversion Systems.

BOARD/COMMITTEE: Planning Commission

APPLICANT: Terry Wittler on behalf of Beach Solar, LLC

RECOMMENDATION: Approval (7-2: Corr, Edgerton, Finnegan, Harris, Washington, Scheer and Hove voting 'yes'; Beckius and Weber dissenting)

STAFF RECOMMENDATION: Approval.

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: None present at hearing.

REASON FOR LEGISLATION:

To increase the number of zoning districts where Solar Energy Conversion Systems are allowed and amend the special permit to add additional conditions that ensure compatibility with surrounding uses.

DISCUSSION/FINDINGS OF FACT:

1. This text amendment and associated Special Permit No. 17012 had public hearing before the Planning Commission on May 24, 2017.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on pp.1-5, concluding that the Comprehensive Plan notes that the City should encourage renewable energy sources. This text amendment would greatly expand access to solar energy throughout the community by creating a distinction between "large" and "small" systems. The special permit for small systems would allow for community solar projects in residential districts while minimizing impacts on the surrounding neighborhood. The staff presentation is found on pp.6-7.
3. The applicant's testimony is found on pp.7-8. There was no testimony in support or in opposition to this text amendment.
4. On May 24, 2017, the Planning Commission voted 7-2 (Beckius and Weber dissenting) to recommend approval of this proposed amendment.
5. On May 24, 2017, the Planning Commission voted to grant a 4-week of Special Permit No. 17012 to allow for readvertising of the legal notice to include a request for a waiver to reduce the yard along Interstate 80 from 25 feet to 5 feet. Public hearing on the special permit was delayed to June 21, 2017.

FACTSHEET PREPARED BY: Geri Rorabaugh, Administrative Officer

DATE: May 26, 2017

REVIEWED BY: David R. Cary, Planning Director

DATE: May 26, 2017

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 24, 2017 PLANNING COMMISSION MEETING

PROJECT #: Text Amendment No. 17010

PROPOSAL: To increase the number of zoning districts where Solar Energy Conversion Systems are allowed and amend the special permit to add additional conditions that ensure compatibility with surrounding uses.

CONCLUSION: The Comprehensive Plan notes that the City should encourage renewable energy sources. This text amendment would greatly expand access to solar energy throughout the community by creating a distinction between “large” and “small” systems. The special permit for small systems would allow for community solar projects in residential districts while minimizing impacts on the surrounding neighborhood.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

ASSOCIATED APPLICATIONS: Special Permit No. 17012, Capitol Beach Solar

HISTORY:

February 2015 Text Amendment No. 15001 was approved to add Commercial Solar Energy Conversion Systems (CSECS) as a specific use in the zoning ordinance. CSECS facilities are allowed in the Industrial district by right and AG district by special permit.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page 11.2 Promote renewable energy sources.

Page 11.7 Local government entities, including all local utilities, should strive to increase utilization of renewable energy sources such as wind power, hydropower, solar energy, biomass, and geothermal energy.

Page 11.7 Continue to encourage and expand wind and solar access to buildings and other land uses.

ANALYSIS:

1. This text amendment would increase the opportunity to implement Solar Energy Conversion Systems in zoning districts across the City. The changes are summarized below:
 - a. Amend the existing Commercial Solar Energy Conversion System (CSECS) definition into “Small” and “Large” categories.
 - b. The table below summarizes where Solar Energy Conversion Systems would be allowed as a primary use. A blank box indicates that solar systems are not allowed a primary use.

District	CSECS (existing)	Small System (proposed)	Large System (proposed)
AG	Special Permit	Permitted	Special Permit
AGR		Special Permit	
R1-R8		Special Permit	
O1-O3		Special Permit	
RT		Special Permit	
B1-B5		Permitted	
H1		Permitted	
H2-H4		Permitted	Permitted
I1-I3	Permitted	Permitted	Permitted

- c. Amend the Solar Energy Conversion System special permit to provide additional conditions that ensure compatibility with surrounding land uses.
2. Smaller solar systems are currently allowed by right in any district as an accessory use. A common example would be solar panels on the roof of a house to supplement the homeowner’s electricity costs. This text amendment only addresses Solar Energy Conversion Systems as the primary use on a lot; it does not change the existing policy of allowing solar systems as accessory uses.
 3. Key elements of this proposal are explained below.

27.02 - Definitions

~~**Commercial Solar Energy Conversion System.** Commercial Solar Energy Conversion System shall mean a commercial grade solar energy conversion system (CSECS) intended to be used primarily to provide off-site power.~~

Solar Energy Conversion System (Large). Large Solar Energy Conversion System shall mean a solar energy conversion system intended to be used primarily to provide off-site power, with a rated capacity over 100 kilowatts (kW), and is the primary use on a lot or premises.

Solar Energy Conversion System (Small). Small Solar Energy Conversion System shall mean a solar energy conversion system intended to be used primarily to provide off-site power, with a maximum rated capacity of 100 kilowatts (kW), and is the primary use on a lot or premises.

Commercial Solar Energy Conversion System is removed as a use. It is replaced with two categories of Solar Energy Conversion Systems based on rated capacity.

The 100-kilowatt threshold to separate “large” and “small” solar systems is based on two

factors:

- a. The Lincoln Electric System (LES) "Customer-Owned Renewable Energy Generation Program" allows for a maximum energy rating of 100 kilowatts (kW). This program allows owners of these systems to sell the electrical output to LES.
- b. Wind Energy Conversion Systems (WECS) are separated in the zoning ordinance using this same criteria. Commercial WECS have an energy rating of over 100 kilowatts (kW), while WECS (non-commercial) are 100 kilowatts (kW) or less.

4. **27.06.090 - Utilities Use Group Table**

Large Solar Energy Conversion Systems would be allowed by right in the following districts:

H2 - H4	Highway Commercial
I1 - I3	Industrial

H1 was not included since there are only a few small areas with H1 zoning. These small areas would not be appropriate for a large-scale solar operation.

Large Solar Energy Conversion Systems would be allowed by special permit in the AG district.

Small Solar Energy Conversion Systems would be allowed by right in the following districts:

B1 - B5	Commercial
H1 - H4	Highway Commercial
I1 - I3	Industrial
AG	Agriculture

Small Solar Energy Conversion Systems would be allowed by special permit in the following districts:

R1 - R8	Residential
RT	Residential Transition
AGR	Agriculture Residential
O1 - O3	Office

The special permit allows for additional conditions to ensure compatibility with residential uses. The O and RT districts were included in the special permit since they are often adjacent to residential uses.

5. **27.63.830 - Solar Energy Conversion System Special Permit**

The special permit includes the following conditions for Large Solar Energy Conversion Systems.

- a. *The system uses photovoltaics to convert solar energy into electricity.*
- b. *On-site transmission lines shall, to the maximum extent practicable, be placed underground.*
- c. *Where said use is adjacent to residential zoned land, park land, school property, or major entryways or corridors into the city, town, or village, visual screening through setbacks, berming, and other techniques may be required by the Planning Commission as appropriate and necessary to address the site-related impacts of the Solar Energy Conversion System on adjacent property and major entryways or corridors.*
- d. *Each Solar Energy Conversion System facility shall have a decommissioning plan outlining the means, procedure, and costs of removing the machines and all related supporting infrastructure and a bond or equivalent enforcement resource to guarantee removal and restoration upon discontinuance, decommissioning, or abandonment.*

These are the conditions of the existing Commercial Solar Energy Conversion System (CSECS) special permit. They would be carried over to apply to this proposed special permit.

- e. *Must meet setback requirements of the district unless adjusted by the Planning Commission.*

As a principal use, Solar Energy Conversion Systems should meet the main structure setbacks per the zoning ordinance.

In addition to conditions a-e, Small Energy Conversion Systems utilizing the special permit would be subject to the following:

- f. *In Residential districts, the system should be owned primarily by residents in the surrounding neighborhood.*

The purpose of this language is to support “community” solar projects that involve residents of the surrounding neighborhood. This would prevent an outside entity from operating a small-scale commercial solar operation in a residential district.

- g. *The system should be located on an outlot or lot otherwise not intended for residential development.*

The goal is to prevent buildable residential lots from being converted to solar systems as a primary use.

- h. *The height of the solar collector and any mounts shall not exceed 20 feet when oriented at maximum tilt.*

The typical maximum height in residential districts is 35 feet. A maximum height of 20 feet would help reduce any visual impact from solar arrays.

6. The City of Lincoln Design Standards include screening requirements for commercial uses adjacent to residential. Even when a special permit is not required, Solar Energy Conversion Systems would require screening if located adjacent to a residential district. The requirement is a 60 percent screen from zero to ten feet. This is typically accomplished with a six-foot privacy fence.
7. SolSmart, a program funded by the U.S. Department of Energy SunShot Initiative, has awarded a “bronze” designation to the City of Lincoln for taking steps to encourage solar energy growth. This text amendment would continue the City’s commitment to solar energy.

Prepared by

Andrew Thierolf, AICP; 441-6371; athierolf@lincoln.ne.gov
Planner

May 15, 2017

APPLICANT: Beach Solar LLC
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TEXT AMENDMENT NO. 17010

TEXT AMENDMENT NO. 17010 TO AMEND VARIOUS SECTIONS OF THE LINCOLN MUNICIPAL CODE RELATED TO COMMERCIAL SOLAR ENERGY CONVERSION SYSTEMS:

May 24, 2017

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Scheer, Washington and Weber.

Staff recommendation: Approval.

Corr disclosed this item was presented at the Mayor's Neighborhood Roundtable meeting.

Staff Presentation: Andrew Thierolf of the Planning Department stated that Special Permit No. 17012 relies on passage of this text amendment. This amendment is about solar conversion systems, or solar panels. They are allowed as an accessory use in any district and as a primary use in AG District by special permit. This amendment would increase opportunities for solar conversion systems throughout the City and amend definitions by clarifying the differences between large and small systems. There are some conditions for solar systems in residential districts. One is that the owner or owners needs to reside in the community to support the project. The other is that the panels must be located in an outlot where other uses are not likely.

This particular project is at Capitol Beach. They are looking to have a community solar facility located on the west side of West Lakeshore Drive. They would install a 100-kilowatt array in an outlot that is designated as floodplain and flood way and not suitable for any other use. The applicants have formed an LLC that would have up to 20 members, all residents of Capitol Beach. They worked with LES to work out details.

It should be noted that the applicant would like to request a reduction to the yard along the property line. As noted in the Staff Report, the setback would be 25 feet, as per the district. The applicant would like to take it down to less than that, which would need to be added as a waiver. Therefore, a deferral of the special permit is requested to allow for readvertising.

Thierolf clarified that the text amendment can be acted upon today.

Corr asked if I-80 is considered an entryway corridor. Thierolf said he believes so. Corr asked about trees and grade changes and if there is a berm at the site. Thierolf said there does appear to be a berm that would screen the lower 6-8 feet of the panels. Corr wondered if it is an entryway, if there needs to be additional screening with trees. Thierolf explained this is considered a positive by LES and the City, so it should not necessarily be hidden from I-80. Corr noted her concern about glare from the panels impacting traffic. Thierolf said Nebraska Department of Roads will review that aspect. If they have concerns, that would be of interest.

Washington wondered if the Airport Authority had any comment. She also wondered about the original purpose of the outlot in this community and if it will continue to function the same way.

Thierolf said these are floodplains and wetlands so they are not developable. A determination was made that there would also be no impact to the waters and there would be no displacement of potential flood storage.

Beckius expressed his concerns that as an outlot, this property is currently not taxable. He expressed concern about placing an income-generating entity on the property and whether that will change the lot's taxable status. Thierolf said the Assessor said it would not affect the value. They do not view these panels as commercial uses for taxable purposes.

Corr asked for information about flood-proofing panels. Thierolf said the electrical elements are above flood elevation. They will need to comply at the time of building permit.

Beckius asked for another example of uses of outlots, noting that his homeowners association installed a well. Thierolf said irrigation wells are a common use. Some have sheds for stowing mowing equipment; though, typically, they do not have structures. Beckius said that it is the City and County position that even though it would have a use, it would still be "unusable" and would not be taxed. Thierolf said that is his understanding.

Hove asked about the change to the setback and confirmations from Department of Roads and the airport. Thierolf said right now, the Staff Report states there should be a 25-foot setback off the fence-line. There would still be a large setback even with the reduction, but confirmation from Department of Roads is needed. The Airport Authority made a general statement that it will not impact pilots.

Scheer asked if this information will be available by the next meeting. Thierolf said we included them as Conditions of approval.

Washington noted that one condition was to not require a decommission for small facilities. She asks that the condition be stricken to account for a time when the panels may no longer be of use in order to restore the floodplain to its original state. Thierolf made note of this and will mention it to the applicant.

Rorabaugh noted that due to legal advertising, the associated special permit would not advance until the regular Planning Commission hearing of June 21, 2017.

Proponents:

1. Terry Wittler, 1930 Surfside Drive, stated LES has a favorable program for solar energy in Lincoln. Solar panels on homes do not currently require any approval. His neighborhood is looking for an allowance for freestanding solar panels, which the codes do not currently allow. The City suggested an amendment, with the conditions. The land for this proposed site is too low to ever be developed. The property extends approximately 150 feet to the fence line, and then an additional 200 feet to the interstate, so it is unlikely there will be issues with distance to the road. Solar panels are designed to absorb the sunlight and are not reflective, so that should also not cause concern. They will be oriented to the south and west and will not face drivers on the interstate. The reason for the waiver request is that we would like to have as few rows as possible so the panels need to be wider.

Beckius asked why the neighborhood chose to utilize an LLC for the creation and ownership of this project. Wittler said that was primarily for administrative convenience. LES indicated they would not want to deal with 25 individual owners. The same applies to insurance. It is easier to have a single policy for one group of investors. It is also a goal to avoid conflicts relating to which panels are generating electricity should any part of the panels gets damaged.

Beckius asked how the idea of using an outlot came to fruition versus using a regular lot that could otherwise be developed. Wittler said there are very few available and they are around a quarter million dollars.

Hove asked if there is a plan with LES in place. Wittler said the agreement with LES is that its program guarantees it will purchase electricity at current rates for 10 years. There is currently no decommissioning plan. The panels could be removed and located elsewhere if operational.

Hove asked if the LLC will maintain the panels. Wittler said they will. They live in the neighborhood so there will be monitoring and there is a system to tell us how much is being generated.

There was no testimony in opposition.

Staff Questions:

Beckius asked what would happen if someone were to buy an outlot and then build. Thierolf said they would have to apply to have it treated as a lot first. Beckius expressed his concern that a company is making an improvement that is taxable, noting that otherwise he loves the project. This is an outlot that isn't taxable that has an income-producing structure on it. Thierolf stated that is why he reached out to the Assessor to verify the information. Beckius said he hesitates as a Planning Commissioner to say it is fine to use an outlot to generate income, and yet, it will not be taxed. It does not seem equitable to others in the community.

Hove asked if approval of this will set a precedent. Thierolf said that outlot uses are viewed differently from buildings. They usually have minor structures. This is a unique use. If anyone were proposing some other type of business, it would be easy to argue that they should be on a lot. That is not necessary here because this is a unique type of commercial use.

Washington said she understood the point made by Beckius. She loves the idea of alternative energy and this is a great use for an outlot. She does believe this will set a precedent in that other outlots could be used this same way. The question is whether this is so beneficial to the community that it will not be taxed, or will it eventually if the use becomes more common.

Henrichsen pointed out this particular item is not under debate, in terms of the taxation. As with other special permits, this is a unique set of circumstances for this residential area. The Assessor may decide it makes sense to tax in the future, but in terms of the planning principles, there is no benefit to changing this to a lot because we don't want to give the impression that it is buildable. You could say the panels are a structure, but there is no floor area. Staff did discuss the taxation issue.

Harris asked if there is a staff position on striking the exclusion of the decommissioning plan.

Thierolf said staff is not wildly opposed to that, but it was looked at in terms of low cost of removal and salvage value, which is worth more. If a plan is necessary, we would be fine with that. In other cases, we have required a cost estimate for removal and an estimate for salvage value and required a bond or assurity to cover that gap. In this case, the materials would cover the cost.

COUNTY TEXT AMENDMENT NO. 17009

ACTION BY PLANNING COMMISSION:

May 24, 2017

Corr moved Approval, seconded by Edgerton.

Core said it is smart as a community to promote renewable energy. It is also smart to separate out the large operations from the small. The one problem might be the Planning Commission allowing additional uses of outlots in a way that does not benefit the greater community when it comes to equitable treatment on land use. In this case, we are saying this is a private entity that can use the outlot for private gain. It is a great use, but the improvement won't be received well if we are allowing a use that is not equitable.

Edgerton said that the role of Commissioners is to look at projects within the per view of what the Planning Commission is asked to do. It is exciting that the neighborhood has come together and worked with Planning to increase opportunities for sustainable energy.

Hove said he will support this great project but does agree that it may need to be reevaluated by the Assessor to decide the best course of action.

Motion carried, 7-2: Corr, Edgerton, Finnegan, Harris, Scheer, Washington and Hove voting 'yes'; Beckius and Weber voting 'no'.

1940 Surfside
Lincoln, NE 68528

April 24, 2017

David Cary, Planning Director
Lincoln-Lancaster County Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508

Re: Solar Panel Text Amendment

Dear Mr. Cary:

This letter is submitted in support of a request for a text amendment to the Lincoln zoning code which would permit the installation of free standing solar panels in residential areas on lots or outlots that do not contain a residence. It is my understanding that installation of solar panels on houses is currently allowed as an ancillary use of the house. However there is no specific zoning provision that addresses the installation of free standing solar panels which are not attached directly to homes.

I am one of a group of residents who live at Capitol Beach. We have secured the permission of our homeowners association to install free standing solar panels on a portion of the association's commons area in conjunction with a Lincoln Electric System renewable energy program. We are requesting that the Lincoln zoning code be amended to allow the installation of solar panels pursuant to a special permit in residential areas.

Thank you for your attention to this matter.

Sincerely yours,

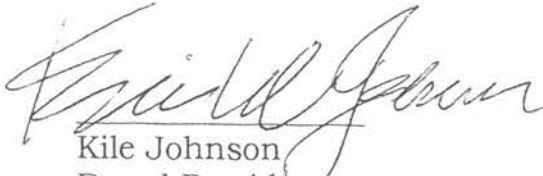


Terry R. Wittler

RESOLUTION

The Board of Directors of Capitol Beach Community Association, owner of Capitol Beach West Addition, Outlots B & C, hereby authorizes Terry R. Wittler, as one of the managers of Beach Solar LLC to sign an application for a special permit to install solar panels on Outlots B & C and any related text amendments to the zoning code on its behalf as owner.

Dated this 17th day of April, 2017


Kile Johnson
Board President

4832-3055-0087, v. 1