

ORDINANCE NO 2024 - 19

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, INDIANA, AMENDING THE SHELBY COUNTY UNIFIED DEVELOPMENT ORDINANCE - SPECIFICALLY AMENDING ARTICLE 2: ZONING DISTRICTS, REPEALING ARTICLE 5, SECTION SES-01 – COMMERCIAL SOLAR ENERGY FACILITIES, AND ADDING ARTICLE 3, SECTIONS 3.12-3.16 COMMERCIAL SOLAR ENERGY FACILITIES (CSES) OVERLAY DISTRICT

WHEREAS, the Board of Commissioners of Shelby County, Indiana recognize the need for orderly growth and development within Shelby County and those areas within its planning jurisdiction;

WHEREAS, Shelby County has an existing Unified Development Ordinance that regulates development within its jurisdictional areas;

WHEREAS, Shelby County desires to update its development regulations to meet current economic conditions, current trends, and to promote quality growth;

WHEREAS, Public Notice was given for at least one public hearing as required by Indiana Code 36-7-4-604; and

WHEREAS, the Shelby County Plan Commission has recommended approval of the amendment to the Unified Development Ordinance as required by Indiana Code 36-7-4-605.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of Shelby County, Indiana as follows:

SECTION 1: Amendment of Article 2, Sections 2.03 A1 District Intent, 2.05 A2 District Intent, 2.07 A3 District Intent, and 2.09 A4 District Intent to repeal the following language from each section: Allow a Special Exception when potential impacts to prime agricultural land on adjacent property and rural residential home-sites sites can be reasonably avoided.

SECTION 2: Repeal Article 5, Section SES-01 Commercial Solar Energy Systems of the Unified Development Ordinance of Shelby County,

SECTION 3: Add Sections 3.12, 3.13, 3.14, and 3.15 of the Unified Development Ordinance of Shelby County: **see attached**

SECTION 3: Effective Date. This ordinance shall be in full force and effect from and after its adoption by the Board of Commissioners of Shelby County, Indiana.

SECTION 4: Repealable Provisions. All ordinances and parts of ordinances in conflict with the specific amendment herein are hereby repealed.

ADOPTED this 4th day of November 2024 by a vote of 2 ayes and 1 nays of members of the Board of Commissioners of Shelby County, Indiana.

Don Parker

Don Parker, President

Kevin Nigh, Member

J. R. Abel

Jason Abel, Member

ATTEST:

Amy Glackman
Amy Glackman, Auditor
Shelby County, Indiana

Commercial Solar Energy Systems (CSES) Overlay District

3.12 CSES District Intent, Effect on Uses, and Effect on Standards

District Intent

The Commercial Solar Energy System (CSES) Overlay District is intended to enable Shelby County to regulate the permitting of commercial solar energy systems; be informed of the placement of commercial solar energy systems; preserve and protect public health and safety; allow for the orderly development of land; and protect property values in Shelby County. This district should be used to allow for CSES facilities in sparsely populated rural areas and in industrial areas along the I-74 corridor. Prime farmland within CSES districts should be maintained for agricultural purposes and all agricultural land within CSES districts should be protected from harm and destruction.

Effect on Uses

All permitted uses in the base zoning district are permitted in the CSES District. All special exception uses permitted by special exception in the base zoning district are permitted by special exception in the CSES District.

Effect on Standards

The procedural standards indicated in U.D.O. Article 9 and development standards from the base zoning district shall apply to the CSES District in addition to the procedural and development standards described in Section 3.15: CSES Procedural and Development Standards.

3.13 CSES District Applicability

The procedural requirements and development standards indicated in Section 3.15: CSES District and Procedural Standards apply to all land within the CSES District as defined in Section 3.14: CSES Boundaries. Under no circumstances shall a planned development or rezoning of property change the applicability of the CSES District's land use restrictions and additional development standards.

3.14 CSES District Boundaries

The CSES District shall apply to all properties as indicated on the Official Zoning Map.

3.15 CSES District Procedural and Development Standards

A. Application Procedure and Land Use Approvals Required: Applications for CSES land use approvals and permits shall be filed on forms provided by the Zoning Administrator. The order of the approval process is as follows (1) Rezoning to CSES Overlay District, (2) If required, Development Standards Variance(s), (3) TAC Site Plan approval, (4) Improvement Location Permit. The following standards apply:

1. Rezoning to CSES Overlay District: Refer to Shelby County U.D.O Section 9.18 Zoning Map Amendment (Rezoning). Additionally, the applicant shall submit the *Application and Supporting Information*, as listed in *Section 9.18*, to the governmental agencies listed below. Any written response from each agency received within thirty (30) days of submittal of the *Application and Supporting Information* shall be submitted with the Application for Rezoning. Approval of the project by each agency is not required, however the Plan Commission and County Commissioners may place conditions on approval of an application or deny an

application based on the submitted written responses.

- a. The following Divisions of the Indiana Department of Environmental Management (IDEM)
 - Office of Land Quality
 - Office of Water Quality
 - All other applicable Divisions as requested in writing by the Zoning Administrator
 - b. The following Divisions of the Indiana Department of Natural Resources (IDNR)
 - Division of Forestry (if over one acre of forested land is disturbed)
 - Division of Historic Preservation & Archaeology
 - Division of Oil & Gas
 - Division of Water
 - All other applicable Divisions as requested in writing by the Zoning Administrator
 - c. Local Indiana Department of Transportation District (if the perimeter boundary of the CSES is adjacent to a State Road, U.S. Road, or Interstate)
 - d. Shelbyville Municipal Airport (if the perimeter boundary of the CSES is within 660 feet of the airport)
 - e. Telecommunications Infrastructure Owners & Operators within 2 miles of the CSES perimeter boundary
 - f. Fire Department(s) having jurisdiction over the CSES
 - g. Shelby County Sheriff's Department
 - h. Shelby County Highway Department
 - i. Office of the Shelby County Commissioners
 - j. Shelby County Surveyor and Shelby County Drainage Board
 - k. Building Department of any Shelby County incorporated municipality within 2 miles of the CSES perimeter boundary
 - l. Shelby County Emergency Management Service
 - m. Shelby County Soil & Water Conservation District
 - n. Shelby County Purdue Extension Office
 - o. If any portion of the CSES is located in a Wellhead Protection Area(s), the water utility(s) that maintains the wellhead(s).
 - p. Any other applicable governmental agency as requested in writing by the Zoning Administrator.
2. Development Standards Variance: For any CSES requiring a Development Standards Variance(s): Refer to Shelby County U.D.O *Section 9.17 Variance*.

3. TAC Site Plan Approval: The applicant shall be required to submit a commercial site plan to the Shelby County Storm Drainage, Erosion and Sediment Control Ordinance Technical Advisory Committee (TAC) for review. The plan should be submitted in accordance with the Class 1 Site Plan requirements as listed in Table A of the Shelby County Storm Drainage, Erosion and Sediment Control Ordinance. In addition to the Class 1 Site Plan, the following supplementary documentation shall be required:
 - a. The building envelope (i.e. the resulting developable area after applying setbacks).
 - b. A calculation of the existing lot coverage expressed as a percentage.
 - c. A calculation of the lot coverage as it would be upon completing the project, expressed as a percentage.
 - d. Denotation of any existing structure on an adjacent parcel if within 660 feet of the subject parcel's property line.
 - e. Denotation of adjacent zoning districts if different than the subject parcel.
 - f. Denotation of wildlife corridors to allow wildlife to navigate through the CSES.
 - g. Landscape Plan in accordance with U.D.O. *Section 3.15 F* drawn and certified by a Registered Engineer or Landscape Architect.
 - h. Acoustic Assessment in accordance with U.D.O. *Section 3.15 H*.
 - i. Groundcover Plan in accordance with U.D.O. *Section 3.15 Q*. The Groundcover Plan may be incorporated into the Landscape Plan.
 - j. Road Use Agreement in accordance with U.D.O. *Section 3.15 R 1*.
 - k. Bond to cover costs associated with repair to County roads and roadway infrastructure in accordance with U.D.O. *Section 3.15 R 2*.
 - l. Decommissioning Plan in accordance with U.D.O. *Section 3.15 T*.
 - m. Any written consent filed by a non-participating property owner in accordance with U.D.O. *Section 3.15 C 2 and Section 3.15 F 2*.
 - n. Any other information necessary to support a thorough review of the project as requested in writing by the Zoning Administrator, including any additional information from any agencies listed in U.D.O. *Section 3.15 A 1*.
4. Improvement Location Permit: The applicant shall be required to submit an application for an Improvement Location Permit (ILP) in accordance with Shelby County U.D.O. *Section 9.05 Improvement Location Permit*. In addition to the ILP Application, the following supplementary documentation shall be required:
 - a. Solar system specifications, including manufacturer and model. The manufacturer specifications for the key components of the solar energy system shall be submitted with the application.
 - b. Array/module design shall be submitted with the application.
 - c. Certification that layout, design, and installation conform to and comply with all applicable industry standards, such as:

- National Electrical Code (NEC)(NFPA-70)
- American National Standards Institute (ANSI)
- Underwriter's Laboratories (UL)
- American Society for Testing & Materials (ASTM)
- Institute of Electric & Electronic Engineers (IEEE)
- Solar Rating & Certification Corporation (SRCC)
- Electrical Testing Laboratory (ETL), and other similar certifying organizations
- Federal Aviation Administration (FAA)
- Indiana Building Code (IBC)

d. The CSES applicant shall certify that they will comply with the utility notification requirements contained in Indiana law and accompanying regulations through the Indiana Public Utility Commission, unless the applicant intends, and so states on the application, that the system will not be connected to the electricity grid.

e. Documented approval of any other permits as required by Shelby County.

B. Application Fees: The following fees shall accompany any CSES application:

1. Rezoning Application Fee: \$9,250
2. Variance Fee: \$4,750
3. TAC Site Plan Fee: \$120 per hour of review
4. Improvement Location Permit Fee: 0.1% of the value of all property improvements.
5. Third-Party Review Fees: The applicant shall pay all attorney fees, costs associated with third-party review, and any other costs in the enforcement of the terms of this ordinance.

C. Setbacks: Any CSES ground mounted equipment and buildings, excluding any security fencing, poles, and wires necessary to connect to facilities of the electric utility, shall be located:

1. A minimum of 500 feet from the centerline of any public road.
2. A minimum of 660-feet from the property line of any non-participating property, including the property line of properties not adjacent to the CSES. Any non-participating property owner may reduce the setback requirement from their property lines by filing written consent with the Shelby County Recorder. Such consent, when recorded, shall run with the property for the life of the CSES zoning overlay district. At a minimum, the written consent shall include:
 - a. The setback requirement agreed upon by the non-participating property owner and the applicant. The agreed upon setback shall not be less than the required minimum setback for a primary structure in the base zoning district.
 - b. A legal description of the non-participating property and parcel number(s).
 - c. A property map showing all property lines and agreed upon setback lines.

D. Lot Coverage: Any CSES shall be exempt from the maximum lot coverage requirement of each

zoning district.

- E. Height: The height of any CSES ground mounted solar equipment is limited to 20 feet, as measured from the highest natural grade below each solar panel.
- F. Landscape Buffer: Any CSES shall be required to install a landscape buffer along the side and rear property lines adjacent to the CSES of any adjacent non-participating property which includes a dwelling unit. The landscape buffer shall be installed in accordance with the following requirements:
 - 1. Evergreen Trees: One (1) evergreen tree shall be planted for every five (5) feet of contiguous boundary with the adjacent lot. Each tree shall be planted within fifteen (15) feet of the property line. All required evergreen trees shall be at least five (5) feet in height at the time of planting. Any tree designated by the Zoning Administrator as an invasive species or with poor characteristics for a location shall not be permitted
 - 2. Any non-participating property owner may reduce or waive the landscaping requirement along their property lines by filing written consent with the Shelby County Recorder. Such consent, when recorded, shall run with the property for the life of the CSES zoning overlay district. At a minimum, the consent shall include:
 - a. The landscaping requirement agreed upon by the non-participating property owner and the applicant.
 - b. A legal description of the non-participating property and parcel number(s).
 - c. If landscaping is not entirely waived, a landscaping plan showing number, location, and species of plantings. Any planting designated by the Zoning Administrator as an invasive species or with poor characteristics for a location shall not be permitted.
- G. Fencing: Security fencing surrounding any CSES shall be agricultural fencing which is of woven wire composition and wood posts. Fencing shall be a minimum height of six (6) feet and shall not exceed a height of eight (8) feet. Razor wire shall be prohibited. If Federal or State requirements conflict with County fencing standards, the Federal or State requirements shall supersede.
- H. Noise: Sound attributable of any CSES shall not exceed an hourly average sound level of forty (40) A-weighted decibels, as modeled at the perimeter boundary line of the CSES.
- I. Wireless Communication Signal Disturbance: Any CSES shall be installed so as not to cause any wire or wireless communication signal disturbance.
- J. Glare: Any CSES shall be situated to eliminate concentrated glare onto abutting structures and roadways.
- K. Electrical Wires & Utility Connections: To the greatest practical extent, all electrical wires and utility connections for any CSES shall be installed underground, except for transformers, inverters, substations and controls. The Zoning Administrator shall take into consideration prohibitive costs and site limitations in making his/her determination.
- L. Lighting: Exterior lighting for any CSES shall be limited to that required for safety and operational purposes.
- M. Signage: All signs, other than the facility maintenance contact information, manufacturer's or installer's identification, appropriate warning signs, or owner identification on a solar panel array and/or modules, building, or other structure associated with any CSES shall be prohibited.

- N. Storage: Outdoor storage of equipment, machinery, and waste or scrap materials, other than materials used during construction of any CSES or actively engaged in routine maintenance of any CSES, shall be prohibited. On-site storage structures shall comply with all standards for accessory structures identified in the U.D.O. and have a concrete floor and perimeter foundation.
- O. Proximity to Airport: For any CSES located within 660 feet of an airport or within approach zones of an airport, the applicant must complete and provide the results of a glare analysis through a qualitative analysis of potential impact, field test demonstration, or geometric analysis of ocular impact in consultation with the Federal Aviation Administration (FAA) Office of Airports, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or most recent version adopted by the FAA.
- P. Security: All ground-mounted electrical and control equipment for CSES shall be fenced and labeled or secured to prevent unauthorized access. The solar array and/or modules shall be designed and installed to prevent access by the public with fencing in accordance with *Section 3.15 G*, and access to same shall be through a locked gate.
- Q. Groundcover: Groundcover within any CSES shall comply with the following standards:
1. Groundcover within any CSES shall be planted and maintained to be free of all invasive species prohibited by Indiana law.
 2. No insecticide use is permitted. This provision does not apply to insecticide use in on-site buildings, in and around electrical boxes, or as otherwise may be deemed necessary to protect public health and safety.
 3. Legally applied herbicides by a licensed applicator for the control of weeds is permitted.
 4. Prime Farmland:
 - a. Within any CSES project area, management of groundcover located on land classified as *All Areas Are Prime Farmland* by the *National Cooperative Soil Survey*, is required to adhere to guidance set forth by the Purdue University Extension, or an Indiana state government agency, on pollinator-friendly management practices, except as permitted in U.D.O *Section 3.15 Q 4 b*. If no such guidance is established, such sites shall meet the following best management practices for creating pollinator habitat:
 - i. Ground around and under solar panels and in project site buffer areas shall be planted, established, and maintained for the life of the solar project in perennial vegetated ground cover to the maximum extent feasible and economical.
 - ii. To the maximum extent feasible and economical, perennial vegetation ground cover shall be based on a diverse seed mix of native species, or in the alternative, based on guidance specific to the local area provided by the National Resources Conservation Service, Soil and Water Conservation District, or Conservation District.
 - iii. The site shall be planted and maintained to be free of all invasive species prohibited by Indiana law.
 - b. Within any CSES project area, other agronomic practices may be permitted on land classified as *All Areas Are Prime Farmland* by the *National Cooperative Soil Survey* in lieu of pollinator-friendly management practices as described in U.D.O *Section 3.15 Q 4 a* at the discretion of the Zoning Administrator. The Zoning Administrator shall take into consideration prohibitive costs and site limitations in making his/her determination.

5. **Groundcover Plan:** The applicant for any CSES shall submit a groundcover plan approved by a DNR wildlife biologist, local Soil and Water Conservation District professional, or other qualified professional as determined by the Zoning Administrator.

R. County Roads:

1. The applicant for any CSES and the Shelby County Commissioners shall enter into a Road Use Agreement for the use, repair, and improvement of County roads for the duration of the development, construction, operation, and maintenance of the CSES. The Road Use Agreement shall comply with any standards for Road Use Agreements adopted by the County Commissioners and applicable laws.
2. The applicant for any CSES shall provide a financial assurance to cover any costs associated with repair to County roads and roadway infrastructure due to construction activity related to the CSES:
 - a. The applicant shall provide financial assurance in an amount determined by a State licensed professional engineer chosen by the County.
 - b. The financial assurance shall be in the form of a performance bond or a surety bond issued by an AM Best Company having an A or A+ rating.
 - c. The bond shall name the Shelby County Commissioners as the beneficiary, and default to the applicable municipality should the CSES become annexed.

S. Maintenance: The applicant for any CSES or its successor shall be responsible for regular maintenance of the CSES. Failure to maintain the CSES is a violation of the Unified Development Ordinance. At a minimum, regular maintenance includes:

1. Physical improvements, including but not limited to electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, and pilings, shall be maintained in good working order at the cost of the applicant.
2. Panels shall be repaired or replaced when either nonfunctional or in visible disrepair.
3. Weed control, mowing, and removal of invasive species shall be performed routinely.
4. Growth of vegetation, other than trees, shrubs, ornamental plants, agricultural crops, and vegetation that is part of an approved Groundcover Plan in accordance with U.D.O *Section SES-01 Q*, shall not exceed ten (10) inches.
5. All fences shall be maintained in accordance with U.D.O *Section 5.23 D*
6. All landscaping shall be maintained in accordance with U.D.O *Section 5.43 D*

T. Decommissioning: Any CSES which has discontinued commercial operation or has ceased electrical power generation or transmission for at least six (6) consecutive months shall be removed at the expense of the applicant or its successor in compliance with a decommissioning plan approved by the County. The following standards apply:

1. **Decommissioning Plan:** The applicant shall submit a decommissioning plan to the County for approval in conjunction with application for TAC Site Plan approval. At a minimum, the decommissioning plan shall include:
 - a. Description of Implementation, including but not limited to:

- f. Removal of all surface and subsurface physical improvements including but not limited to electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and fences. At the discretion of the Zoning Administrator, the plan may incorporate agreements between the applicant and owners of leased property with the CSES to allow access roads and/or fencing to remain in place.
 - g. Restoration of surface grade, soil, surface and subsurface drainage infrastructure, and vegetation to pre-construction conditions.
 - h. Disposal of all CSES equipment and materials in compliance with Federal, State, and Local laws at the time of decommissioning.
 - i. Decommissioning Cost Estimate in accordance with *U.D.O Section 3.15 T 2*
 - j. Financial Assurance for Decommissioning in accordance with *U.D.O Section 3.15 T 3*
2. Decommissioning Cost Estimate:
- a. The applicant shall submit a decommissioning cost estimate for the gross estimated cost to decommission the CSES in accordance with the decommissioning plan.
 - b. The cost estimate shall be prepared by a State licensed professional engineer chosen by the County.
 - c. The cost estimate shall be submitted in conjunction with the TAC Site Plan application and updated every three years by a State licensed professional engineer chosen by the County.
 - d. The applicant or its successor shall reimburse the County for any analysis by the State licensed engineer and any other third party of the initial and updated decommissioning cost estimates.
 - e. The decommissioning cost estimate shall not include any estimates or offsets for the resale or salvage values of the CSES equipment and materials.
3. Financial Assurance for Decommissioning:
- a. The applicant shall provide financial assurance for the total estimated cost of decommissioning, in accordance with *U.D.O Section 3.15 T 2*
 - b. The financial assurance shall be in the form of a performance bond or a surety bond issued by an AM Best Company having an A or A+ rating reviewed and approved by County Plan Commission legal counsel.
 - c. The bond shall name the Shelby County Commissioners as the beneficiary, and default to the applicable municipality should the CSES become annexed.
 - d. The bond shall be in place prior to issuance of an ILP and the applicant or its successor shall submit an updated bond to the County every three years.
4. Partial Decommissioning: If decommissioning is triggered for a portion, but not the entire CSES, then the applicant or its successor will commence and complete decommissioning, in accordance with the decommissioning plan, for the applicable portion of the CSES; the remaining portion of the CSES would continue to be subject to the decommissioning plan. Decommissioning Plan shall define the circumstances which would trigger partial decommissioning.
5. Amendments to the Decommissioning Plan: Any amendment to an approved decommissioning

plan shall comply with all standards of this ordinance and shall be approved at the discretion of the Zoning Administrator.

3.16 CSES District Size

The cumulative area of all land within the CSES Overlay District shall be limited to one percent (1%) of the total acres of cropland in Shelby County, Indiana as determined by the latest available data provided by the Census of Agriculture, which is conducted by law under the "Census of Agriculture Act of 1997," Public Law 105- 113 (Title 7, United States Code, Section 2204g). Additionally, only one (1) individual CSES projects shall be permitted within a ten (10) year period, beginning at the date of final CSES Overlay District approval of the first project.

Definitions:

Commercial Solar Energy Systems (CSES): An area of land or other area used by a property owner and/or corporate entity for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for off-site utility grid use, and consisting of one or more free-standing, ground-mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce offsite consumption of utility power and/or fuels. CSES are a minimum of ¼ acre in total area.

Private Residential Solar Energy Systems (PRSES): An area of land or other area used for a solar collection system principally used to capture solar energy, convert it to electrical energy or thermal power, and supply electrical or thermal power, primarily or solely for on-site residential use, and consisting of one or more free-standing, ground or roof mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of utility power and/or fuels. PRSES shall be permitted in all zoning districts and shall be treated as accessory structures in each zoning district they are erected in. The maximum size of a PRSES is limited to the maximum size allowed for an accessory structure in each zoning district (other accessory structures shall not be included in maximum size calculations).

Non-participating Property: A lot or parcel of real property that is not owned by a project owner:

1. On which the project owner does not seek to:
 - a. install or locate one (1) or more CSES systems or other facilities related to a CSES system project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure); or
 - b. otherwise enter into a lease or any other agreement with the owner of the property for use of all or part of the property in connection with a CSES system project.
2. On which the owner of the property does not:
 - a. consent to having one or more CSES systems or other facilities related to a CSES system project (including power lines, temporary or permanent access roads, or other temporary or permanent infrastructure) installed or located; or
 - b. otherwise enter into a lease or any other agreement with the project owner for use of all or part of the property in connection with a CSES system project.

The term does not include a lot or parcel of real property if the owner of the lot or parcel consents to participate in a CSES system project through a neighbor agreement, a participation agreement, or another similar arrangement or agreement with a project owner.