

LIVINGSTON COUNTY BOARD
MINUTES OF August 21, 2014 MEETING OF THE COUNTY BOARD

OPENING

Vice-Chairman Borngasser (in the absence of Chairman Fannin) called the meeting to order at 6:00p.m., in the County Board Room of the Historic Courthouse, 112 W. Madison, Pontiac, Illinois.

John Yoder led the Pledge of Allegiance.

The clerk called roll with the following **present:** John “Jack” Vietti, Joan Bullard, Tim Shafer, Kathy Arbogast, Paul A. Ritter, Kelly Cochran Cohlman, Joseph D. Steichen, Carl Borngasser, Daryl N. Holt, Stanley R. Weber, Earl A. Rients, Judy Campbell, Vicki Allen, William Mays, Bob Young, John L. Yoder, Carolyn Gerwin, William G. Flott, Mark Runyon and William H. Peterson **Absent:** Robert F. Weller, G. Michael Ingles, Marty Fannin and Ronald L. Kestner

Also Present: County Clerk Kristy Masching, Alina Hartley-Administrative Resource Specialist, Attorney Tom Blakeman and State’s Attorney Seth Uphoff

Vice-chair Borngasser read information received from the State’s Attorney, with legal advice on proceedings to follow for tonight’s meeting. The two documents, “Memorandum Synopsis” and “Public Comment and Contact Announcement” follow.

Memorandum Synopsis - On August 18, 2014, State’s Attorney Seth Uphoff authored a memorandum to the Livingston County Board on the legalities of a “90-Day Moratorium on Acceptance of Wind Energy Permit Applications”. That memorandum has been made available to the county board members. The following is a synopsis of that memorandum:

The State’s Attorney’s opinion is that the County Board does not have the lawful authority to impose a “90-Day Moratorium on Acceptance of Wind Energy Permit Applications”. The opinion is based upon a review of the Counties Code of Illinois, which is a series of statutes giving the County authority to enact ordinances such as the zoning ordinance in question, and review of applicable case law.

The statutes that provide the County the authority to create zoning ordinances, also specifically outline how the County may change or amend those ordinances. In order to change or amend the ordinances, there are a strict set of due process procedures that must be followed. They include procedures such as: a mandatory hearing in front of the zoning board of appeals, a 15 day notice of hearing published in the local papers, the required location of such a hearing, and the percentage of votes required for approval of any proposed amendments.

In this scenario, a moratorium would operate to prevent an entity, such as a wind energy company, from being able to utilize the current ordinance. In doing so, the County would be acting to suspend the operation of the ordinance. Such a suspension is not authorized by the statutes of the Illinois Counties Code.

Furthermore, case law analysis demonstrates that such a moratorium would have no legal standing and would be invalid. Courts have held that municipalities have no authority to adopt, by motion or resolution, a moratorium on the application of their ordinances without first following the statutory requirements for amending the ordinance.

It is the position of the State’s Attorney, based on not only his own research, but also in consultation with other attorneys and state’s attorneys that the legal analysis applied to municipalities would also be applicable to county

boards. Both municipalities and county boards are given specific zoning authority by statute, and each must strictly adhere to those governing statutes.

Furthermore, it is the opinion of the State's Attorney, that should the County Board vote to impose a moratorium as suggested and then refuse to accept an application based on that moratorium, that the entity filing the application would have grounds to file a lawsuit to compel the County to accept the application. In the course of that litigation, the County could be subject to paying the attorney's fees of the entity or other court costs or sanctions.

Public Comment and Contact Announcement – On August 20, 2014, an application was submitted to Livingston County for a wind energy conversion system (WECS) pursuant to Livingston County's Wind Ordinance. It is anticipated that a hearing will be held by the Livingston County Zoning Board of Appeals, who will make a report to the County Board that will include findings of fact and a recommendation as to whether the County Board should deny or grant the application, or grant them subject to conditions. All members of the public interested in the issue are encouraged to attend the Zoning Board of Appeals hearings and present evidence concerning their position.

County Board members will ultimately make a legislative decision concerning the WECS application after the Zoning Board of Appeals process concludes. Therefore, County Board members were advised by counsel that they should not make any public comments which explicitly endorse or reject any WECS application pending before the Zoning Board of Appeals.

The advice given to County Board members regarding discussing the pending application also extends to members of the Zoning Board of Appeals.

AGENDA

Vice-Chair Borngasser asked for approval of the agenda. *Motion by Steichen, second by Bullard to remove items "II. Public Comment on Agenda Items" and item III.A. 90-Day Moratorium on Acceptance of Wind Energy Permit Applications" and approve the agenda as amended.* Discussion followed. Gerwin felt that the memorandum indicated that the board is legally authorized to have a moratorium and that the text amendment process could be followed simultaneously (ex: Sangamon County resolution handout), which would mean it was still relevant for discussion. Steichen felt the moratorium was outside the due process outlined by the State's Attorney's memo, putting the county at risk to be sued. *Steichen stated that the motion had been made and called for the question* (which would end discussion). Gerwin responded that the second motion (calling for the question) would need a second and a two-thirds vote of the board. Discussion followed as to whether there needed to be a second to the motion calling for the question and a roll call vote before the original motion to amend the agenda could take place. *Arbogast responded to second the motion calling for the question.* (It was noted that a "yes" vote was in favor of closing discussion.) **MOTION CARRIED ON ROLL CALL VOTE.**
Ayes: Vietti, Bullard, Arbogast, Ritter, Steichen, Borngasser, Holt, Allen, Mays, Young, Yoder, Flott and Peterson **Nays:** Shafer, Cohlman, Weber, Rients, Campbell, Gerwin and Runyon **Absent:** Weller, Ingles, Fannin and Kestner

Additional discussion, utilizing Robert's Rules of Order, took place as to whether the "call for the question motion" needed a two-thirds vote or a simple majority vote to end discussion, before voting upon the agenda revisions could take place. After a brief delay, Vice-Chairman Borngasser stated that Attorney Blakeman had been consulted and had confirmed that a majority vote was needed to end discussion. *Steichen repeated his motion as follows, "Motion to approve an amended agenda by removing sections II. Public Comment on Agenda Items" and item III.A. 90-Day Moratorium on Acceptance of Wind Energy Permit Applications".* **MOTION CARRIED ON ROLL CALL VOTE.** **Ayes:** Vietti, Bullard, Arbogast, Ritter, Steichen, Borngasser, Holt, Weber, Allen, Young, Yoder, Flott and Peterson **Nays:** Shafer, Cohlman, Rients, Campbell, Mays, Gerwin and Runyon **Absent:** Weller, Ingles, Fannin and Kestner

Motion by Flott; second by Bullard that the Ag & Zoning Committee be charged with creating a process for reviewing our WECS Ordinance. The process to include public input, Board of Appeals approval, and County Board approval and will follow the due process recommended by the State's Attorney. Discussion followed. Gerwin commented that the A&Z Committee hadn't reviewed the ordinance anytime during the last eight years; didn't allow for discussion at their most recent meeting and didn't make any recommendation at the County Board meeting for discussion. She believes there should be an ad-hoc committee which involves all sectors of the public for a balanced review of the ordinance. Campbell felt that having the A&Z Committee review the ordinance would unfairly burden the members at their meetings. Steichen had the utmost confidence in the current A&Z members to do what's right and be open minded. In defense of the A&Z Committee, Chairman Young commented that no one had contacted him about reviewing the ordinances. Had there been contact, they would have been prepared to discuss the subject at the last A&Z meeting. He felt that the committee process the county works under was being circumvented. He explained that the motion doesn't mean that A&Z will be reviewing the ordinances but they could ask for help from other board members as well as community members and Zoning Administrator Chuck Schopp. The referral back to A&Z is the first step to getting the process started. They have been advised by the State's Attorney on the action items tonight and have to follow his opinion, with a moratorium being out of the question. The application filed on Wednesday falls under the jurisdiction of the current wind ordinances. Vice-Chair Borngasser thought that most everyone would not want to violate state statute, but follow procedure advised by attorney to start process with the referral back to committee. Bullard commented that the board follows the advice given to them by their legal representation; she may not always agree but follows the advice. She wondered why there were issues now, since she was told by a constituent that they had signed up seven years ago for wind towers. She noted that some townships in her district had put questions on the ballot in order to find out how residents felt about wind farms. Gerwin asked if questions could be asked of Attorney Blakeman so that they were clear on what they were voting on since not all members were present at the meeting held the day before with the State's Attorney. Alina Hartley responded that Attorney Blakeman was in attendance on behalf of the State's Attorney to advise the Board on parliamentary procedure only. He could not comment on the memorandum issued by the State's Attorney.

Debate ensued as to whether there was a need to make a separate motion to refer this back to the committee since that was part of the normal committee process. Flott repeated his motion as follows, "That the Ag & Zoning Committee be charged with creating a process for reviewing our WECS Ordinance. The process to include public input, Board of Appeals approval, and County Board approval and will follow the due process recommended by the State's Attorney."

Gerwin and Campbell commented on the fact that there were failed attempts in the past to change text amendments relating to the wind ordinance. They would like discussion and some updating of the ordinance in light of new information.

Flott repeated his motion one more time as follows, "That the Ag & Zoning Committee be charged with creating a process for reviewing our WECS Ordinance. The process to include public input, Board of Appeals approval, and County Board approval and will follow the due process recommended by the State's Attorney." Vice-Chair Borngasser stated that he would like to go for a vote and move forward with public comment. **MOTION CARRIED ON ROLL CALL VOTE. Ayes:** Vietti, Bullard, Shafer, Arbogast, Ritter, Cohlman, Steichen, Borngasser, Holt, Weber, Campbell, Allen, Mays, Young, Yoder, Gerwin, Flott, Runyon and Peterson **Nays:** Rients **Absent:** Weller, Ingles, Fannin and Kestner

Gerwin asked State's Attorney Uphoff if the advice he was giving the board was that the board could do a moratorium and a text amendment, if the text amendment process was followed, with his response being "correct". Gerwin stated that the process for a moratorium is not impossible it's just a little different than a simple vote.

PUBLIC COMMENT

Vice-Chairman Borngasser requested that those wishing to speak, stated their name and provide a copy of their presentation to the clerk.

Comments were heard from many attendees voicing their opinions for and against the Invenergy wind energy development in District #3.

Those **against it** voiced the following reasons: need to amend set back requirements for public safety and well being of residents; health issues; shadow flicker; appealed for support of a 90-day moratorium to allow time to address new research and update ordinance to keep up with turbine changes; decline in property value; large number of land owners who signed leases do not live near turbines; noise frequency levels; the need to include setback requirements for electrical sub-stations; some who had signed up years ago, regret their action now due to new information that has come out on issues with new larger towers; and the large number and size of towers in this footprint.

Those **in favor** voiced the following reasons: property taxes increase year after year, money generated from towers helps to improve schools, communities and roads within county; they help decrease our dependence on other countries; clean, renewable energy; helps create jobs and closer to home; and wind farms will continue to grow since the President is endorsing 25% of the country's energy to come from wind power by 2025. A farmer from Ellsworth, who lives 1300 feet from a wind tower and has farmed around 9 towers for seven years, commented that his family has had no health problems and has seen many benefits to their area from the wind farm.

An Iroquois County Board member spoke on the steps they took to enact one of the most protective zoning ordinances in the state, for their citizens.

A&Z Chair Young acknowledged the large group and thanked them for coming. He stated that a hearing process would begin sometime in the next sixty days and remarked that it was imperative that all those who spoke whether for or against come and speak at the hearings before the Zoning Board of Appeals. He hoped that all the board members would take an impartial look, listen to all the testimony and weigh that testimony. Zoning Administrator Chuck Schopp said that hearings would start around first of November; notices would be printed in the paper and notification letters sent to all land owners within the footprint of the proposed wind farm.

ADJOURNMENT

The meeting adjourned at 8:15p.m., on motion by Steichen, second by Yoder. **MOTION CARRIED WITH ALL AYES ON VOICE VOTE.**

The next meeting is scheduled for Thursday, September 11, 2014 at 6:00 p.m., at the Historic Courthouse Board Room.

Carl Borngasser, Vice-Chairman
(In the absence of Chairman Marty Fannin)

Attest:

Kristy A. Masching
County Clerk

September 11, 2014
Approved