

MINUTES  
LIVINGSTON COUNTY ZONING BOARD OF APPEALS  
Livingston County Historic Courthouse  
112 W. Madison St.  
Pontiac, Illinois

Recessed Meeting Continuation  
7:30 p.m.

November 6, 2017

The meeting came to order and roll call was taken.

Members Present: Michael Cornale, James Blackard, Richard Kiefer, Richard Runyon and William Flott.

Members Absent: Joan Huisman

Business:

Case ZT-3-17 - County Board of Livingston County

This is the continuation of the recess review of a zoning case that pertains to the review of an application for zoning text amendments to Chapter 56, Zoning, Code of Ordinances, Livingston County, Illinois, which focuses on the most recent considerations for amending the Livingston County wind energy regulations. Proposed text amendments are to Sec. 56.1- General Definitions to add the definition of Hearing Facilitator, are to Article VIII, Wind Energy, Code of Ordinances, Livingston County, Illinois, and to Sec 692-Procedures-9b.

Tom Blakeman began the meeting noting the absent of the Chair, and advised the zoning board that a motion for an acting chairman needed to be made. Dialogue took place between the zoning board members pertaining to who was willing to serve as acting chair. Mr. Runyon declined and Mr. Flott did not want to be considered for acting chairman. Michael Cornale was mentioned and he wanted to know what was to be discussed. Mr. Blakeman related that the minutes would be reviewed, and the proposed changes to the text would need to be discussed, moving towards a report and recommendation. Mr. Cornale agreed that he would do it to spearhead the conversation and for the sake of moving forward.

James Blackard moved, seconded by William Flott, that Michael Cornale serve as acting chair. This motion was approved by a voice vote of all ayes.

Acting Chair Cornale questioned what was to be done with the minutes this evening.

Tom Blakeman explained that he has a list of things that may be covered at this meeting. The first thing would be to review the minutes, with discussion for changes or modifications. Acting Chair Cornale moved forward with the review of the past zoning board of appeals minutes as they relate to the zoning board of appeals review of case ZT-3-17. Mr. Cornale asked if anyone had suggested changes or as to if anyone wanted to review tapes or video to see if the minutes represent the meetings as well as they should have.

Mr. Kiefer was okay with the minutes. Mr. Blackard was okay with the minutes, and he had watched the videos of the meetings of which he was not present. Acting Chair Cornale had a few comments for corrections starting with the June 8, 2017 meeting minutes. Mr. Cornale referred to page 4 of these minutes in the middle of the page, above the purporting line, Mr. Cornale wanted that to read ... Mr. Flott noted we are not getting anywhere, tell us what you want for the next meeting and I will make a motion to recess. No one had a concern with this proposed change. Moving on to the July 6, 2017 meeting minutes on page 8 the bottom paragraph half way through in the line above comprehensive plan. Mr. Cornale correctly pointed out that the word not should be added to the line ... zoning decisions should not be made on popularity. Proceeding to the August 31, 2017 meeting minutes Mr. Cornale questioned on page 3 first paragraph the third line up from the bottom, and it was agreed to have it read ... a lengthy process going through the minutes, and that in the end that may wish... Then on the bottom of this same page 3 nine lines up Mr. Cornale related that the word determent used twice should be changed to detriment in both places, of which this change was agreed upon. Proceeding to the September 11, 2017 minutes, none of the zoning board of appeals members had any suggested changes. Mr. Cornale then proceeded to the September 18, 2017 meeting minutes, with Mr. Cornale questioning on page 3 an exclusion on a comment about Mr. Redlingshafer asking Mr. Gerber who asked you to come to these meetings. Mr. Kiefer agreed someone had asked Mr. Gerber if someone had asked him to come to the meeting, and his response was that no one had asked him to come to the meeting, and he had been paying attention to it on the internet. Mr. Schopp agreed to insert those statements in an appropriate place on that page. Mr. Cornale then moved to page 4 of the September 18<sup>th</sup> meeting minutes at the bottom of the second full paragraph on this page 4 to 5 lines up from the bottom, referencing the planning commission meeting minutes. Mr. Schopp related that his intent was to follow up on a request by Chair Huisman to verify the planning commission minutes had been approved, and Mr. Schopp had given a second set of minutes to verify the planning commission had approved the minutes to the meeting at which they discussed Case ZT-3-17. Mr. Schopp agreed to clean up the intent of this language. Proceeding to the October 5, 2017 meeting minutes, Mr. Blakeman referred to the first paragraph on page 9, the third line from the bottom, pertaining to Mr. Blakeman said a second date will be needed to approve findings of fact, and that ~~findings of fact~~ should be replaced with a report and recommendation. It was agreed that the amended minutes could have highlighted changes and approved at a later meeting.

Mr. Cornale asked Mr. Blakeman what was the next order of business, of Mr. Blakeman responded it was to review the proposed changes. Mr. Blakeman remarked that the zoning board of appeals members had copies of text amendment application, of which that document was clarified for the zoning board of appeals members as being the document with the green highlights or markups, with the cover page being a report. Mr. Blakeman then provided copies of a summary of proposed changes. Mr. Cornale proposed that they go through them one at a time. Mr. Cornale clarified that the consensus is that anything that had not been proposed to be changed shall remain as it was. The zoning board agreed to this consensus statement.

Acting Chair Cornale then started with a review of the first proposed change, to section 56-1, language associated with hearing facilitators, and he noted that this discussion could lead to the path on how they proceed with this matter, in that if they do not agree on the hearing facilitator option there is no need to have it in the definitions. The zoning board agreed to come back to that proposed change, and then they agreed to come back the second proposed change that also pertains to a hearing facilitator.

Acting Chair Cornale proceeded to the third change to Section 56-692 (b) (3). Mr. Blakeman commented that pertains to a procedural clarification to have the county board make final decision on solar energy as well as wind energy conversion systems, as opposed to the ZBA. Mr. Schopp commented that this change was in the solar ordinance, but that this action had not been inserted in the procedures section. It was clarified this section is not part of the wind ordinance but part of the procedures for special uses in the zoning regulations. Mr. Cornale that then clarified that it was in the section on solar farms and it would allow the county board to make decisions regarding solar farms. Mr. Schopp agreed that was a correct statement. The zoning board of appeals members agreed with the statement, though it was not discussed during the hearings, but was highlighted as a change and was previously discussed. The placement of the language was pointed out. The zoning board of appeals agreed with this proposed change part of the process, and the procedure. The consensus is that the zoning board of appeals is okay with that change. The fourth proposed change is to Section 56-612 page 3, was highlighted by the Acting Chair Cornale, as the definition of WECS to be modified as printed. Mr. Schopp explained that it cleans up how WECS is referenced in the ordinance. The zoning board of appeals had a general consensus that they are good with this proposed change.

Moving on to the fifth proposed change, on page 7 which is the proposal to change the setback distance in the townships listed, from 3250 to 1600, the need to change the proposed 1600 feet to 1640 feet wind turbine safety manual suggested distance was discussed, as the 1600 distance was language that was part of the referendum. Mr. Kiefer made a proposal to change the 1600 feet to wind turbine safety manual suggested distance 1640, if this setback section is to be changed. Mr. Flott agreed with Mr. Kiefer's statement. Mr. Blakeman commented that another small change needed to be made to this section, with Primary Structure being proposed to be capitalized, 3 times. Mr. Kiefer related that his notes reflected that the words at least had been proposed to be added, before 6, 3250 and 1640, and this became part of the discussion recommendation. Also should add at least before 1.10. Mr. Cornale then moved the discussion as to do they feel the setback changes should be made for the seven townships, questioning as to if the evidence overwhelmed them to change the setback within those seven townships. Mr. Runyon said I don't, think the evidence was overwhelming. Mr. Flott said I do. Mr. Blackard indicated he was opposed to the change. Mr. Kiefer does not have a problem with the proposed change, believing that the referendum vote is substantial. Acting Chair Cornale expressed that he is opposed to making this change, as they get to a situation in that if they clean the language up and push it through, personally as a zoning board of appeals member, that is a sticking point for him and he would vote no on the proposed text amendment change. So that holds up the process. Mr. Blackard asked procedurally if they vote on each change separately or as a whole. Mr. Blakeman commented that they discuss each one individually, and no vote would be taken tonight, other than a straw poll as to which way they are going to guide the final recommendation document. Mr. Blakeman then had it clarified that three of the zoning board of appeals members present were opposed to this proposed change. Mr. Kiefer asked if it is procedurally correct to delete a portion of it when they are considering the whole document. Mr. Blackard asked are the changes voted on yes or no separately or as a whole. Mr. Blakeman related that they will have one document with the changes incorporated in it. Mr. Blackard again inquired as to how to vote individually or all or nothing. Mr. Blakeman said it was all or nothing. Acting Chari Cornale said that ultimately they will vote on the text amendment all or nothing, but as they go through they can modify the document to an agreeable faction of the zoning board of appeals. Mr. Kiefer reminded them they are making a recommendation to the county board. Mr. Blakeman noted that an affirmative vote of four is needed for the approval of recommendations.

Mr. Kiefer and Mr. Cornale then noted that the county board can vote as they choose, after this recommendation is given to them.

Mr. Schopp asked to clarify that the previously discussed added wording of at least be added in the appropriate places, of which it was agreed upon.

Mr. Kiefer then expressed his opinion that cannot take delete an applicant's desires in a text amendment, that they should either approve or disapprove, struggling with how they would take bits or pieces with it. Acting Chair Cornale said that is what they have done in the past, that is kind of what they did with the previous wind energy ordinance text amendment. Mr. Kiefer is looking at it a different way, and they should not tear it apart, while it is okay to change the verbiage like the proposed at least language and making it 1640 instead of 1600, but he struggles to see how the zoning board of appeals can delete proposed language. Mr. Blakeman noted that when they vote they will be voting on an entire document, all or nothing. Acting Chair Cornale then asked if they should work to create a document that will have an affirmative vote or take the whole thing at face value and vote on it as it is, and if it goes no we will let them override it. Mr. Kiefer agreed that is how he is looking at this text amendment, not looking at the same as the first wind energy text amendment when the entire document was edited. The existing ordinance is in place, with it being noted that the county board had reinserted the hearing facilitator after the zoning board of appeals recommended that a hearing facilitator not be a part of the last text amendment. Mr. Kiefer asked why it was back in, with Mr. Blakeman noting it is placed in this proposed text amendment in a different section, for internal consistency. Mr. Kiefer then noted that this makes it different then their previous all-encompassing discussion on the hearing facilitator. Mr. Blakeman stated they will be voting on one document one with changes or one without changes. Mr. Blakeman noted that they had okayed some changes up to this point. Acting Chair Cornale then related about changes of which the evidence supports the proposed changes. Mr. Kiefer asked about the criteria for deleting those townships. Mr. Cornale question if that is an application of spot zoning. Mr. Kiefer questioned if it was spot zoning in comparison to someone coming with an application asking specifically to change the zoning of a spot for them. Mr. Kiefer noted that this is a referendum that seven townships voted in favor of by simple majority. Mr. Runyon pointed out that eight townships voted that way. Mr. Cornale related that he has previously pointed out his questioning of when does popular vote determine zoning changes, and he does not feel anywhere in any comprehensive plans or in any moral or ethical stance should popular vote determine voting changes. Mr. Kiefer noted it was not their decision to put this setback question on the referendum, but somebody must have thought it was okay to do that. Mr. Cornale does not know where in the comprehensive plan or zoning regulations that it says you are able to modify zoning by having a popular vote, in that other factors should be considered such as land use, development, best interest of neighbors, health, welfare and safety considerations. Mr. Kiefer agreed with that but the referendum can also be used as part of it. Mr. Flott inquired about deadlock, in that they simply do not agree. Mr. Cornale they are already short a member and four votes are needed to make this go, and his cards are on the table, and others have their cards on the table, and at this point they could be sending a text amendment back to the county board that the zoning board has shot down. Mr. Flott agreed with that statement. Mr. Cornale related that it is different than with past practices in that they try to find common ground. Mr. Blakeman noted that they had come up with their own alternative the last time. Mr. Cornale thought that document was a blending and compilation of documents and evidence. Mr. Blackard inquired about the 3250 being arrived at after several hearings and that it was based on safety factors. Mr. Cornale said it was based on several considerations including safety, noise concern, health and safety.

Mr. Cornale also commented lesser impact on property values was also part of several factors presented over several nights from the wind energy company and the general public. Mr. Blackard does not feel the movement of 25 feet at 2500 feet can affect health and safety, let alone coming down to 1600 feet. Mr. Flott did not hear that. The sound signature exhibit was then discussed, with Mr. Flott noting that the IPCB standards need to be met. Mr. Blackard believes coming down to 1600 feet leaves enough room for error, and that is why he prefers the larger setback distances. Mr. Kiefer noted that this is a controversial area, and they need to decide if they delete something out of their application or not, and do they want to do that. Mr. Blackard questioned as to if they could try to modify it.

Mr. Blackard, Mr. Cornale and Mr. Blakeman discussed changes that can be made. Mr. Cornale commented that if they give a little bit in regard to the seven townships they are forfeiting something. Mr. Blackard said he is looking for potential compromise language. The setback distances for those turbines built in Livingston County could have been 1200 feet if noise regulations were met, so the 1600 could be considered a compromise. Mr. Runyon said two wrongs does not make it right. Mr. Cornale reminded the zoning board that the setbacks are waivable, and they did a good job making it waivable, and someone wants it closer that is the inherent risk that they take. Mr. Cornale said they can't help if a cash grab takes place, but the noise ordinance still has to be met. Mr. Cornale said that you neighbors have to be okay for the possibility of you affecting your health safety and welfare by signing off on waivers. Mr. Flott said that since no one is willing to change their vote on this issue so they should move on. The zoning board of appeals agreed to come back to this fifth proposed change Procedural wise Mr. Kiefer asked if a straw poll was to be taken ending up 3 to 2 every time, and do they need Joan there. Mr. Blakeman said that if they do that they it can be predicted how it will go across the board and he can come back with alternative reason on why to vote on it. Mr. Cornale does not think it will be 3 to 2 across the board, but since the sixth proposed change is also in regard to setbacks the zoning they should to come back to this proposed change also.

The zoning board of appeals then moved on to the seventh proposed change on page 8 regarding setbacks from transmission lines. Mr. Schopp noted that the planning commission had suggested alternative language, to have the working read better. The zoning board of appeals agreed with the change. Mr. Schopp looked for the planning commission proposed changes in language. The zoning board of appeals moved on to the eighth proposed change about moving a turbine 100 feet instead of 50 feet. Mr. Cornale is okay with it as long it still complies with the IPCB noise regulations. The zoning board of appeals was okay with that change. Proceeding to proposed change 9 regarding some capitalization of some words, everyone was okay with this change. Regarding change 10 on page 12 about waiving compliance with local setback point pertaining to IPCB regulations, so it would not need to be 150 feet from the foundation but closer. Mr. Cornale said again it would be their choice. Mr. Kiefer said he had a note about the language change. Mr. Schopp said that is a recommended planning commission change to the text amendment. They moved onto the proposed 11 change, and they were all okay with that on capitalizing some words. A break was taken to allow for copies of the planning commission's recommended changes, and minutes language. Printed copies of the Livingston County Regional Planning Commission recommended text changes were presented to the zoning board of appeals members.

The zoning board of appeals discussed the position of the hearing facilitator. They discussed that such a facilitator may not create any saving to the county, and they that have effectively functioned without a hearing facilitator in the past. Mr. Runyon commented that he does not believe a public facilitator is needed, based on his observations of past hearings. Mr. Cornale related that he wants the hearings to be conducted in a fashion that is in the best interests of the public. Mr. Kiefer agreed that it may not save on any costs, but he feels it would someone from outside and unbiased, and that this is an upside he sees to it, and he has no problem with it because of that. Mr. Kiefer believes someone from the outside would help remove the local politics from the matter. Acting Chair Cornale asked if that can be fulfilled, an unbiased issue, since the county pays them anyway. Mr. Flott noted that the county pays the zoning board of appeals members also. Mr. Flott said that the county used a hearing officer for the siting of landfills, were the hearing officer efficiently moved the meetings along and it seemed to work in that situation. This may be were county board members came up with this idea, in that it made the process efficient and he believes it cut the time down on it. Mr. Cornale noted that with Mr. Flott's experience with the landfill siting, was the community involved, of which Mr. Flott and Mr. Blakeman noted that a public hearing was held and the community was involved. Mr. Blackard thinks that answers some of their questions, and he has no problem with it. Mr. Kiefer added that with some of them being on the board for a while and he does not plan on being on the zoning board forever, and whoever in the future could be the chair or acting chair may be in uncharted territory and if a chair or acting chair has no knowledge of how to do it, having a facilitator would be beneficial. Mr. Cornale sees that point, while he respects the premise of the open meetings act and that is an important part of the process and he would not want to forfeit that by using a hearing facilitator that would be involved in the day to day interactions and dealings so it is not all presented in a public forum. Mr. Cornale related that he rolled into the public meetings in Fairbury, stone cold every night, in that Chuck nor Tom called him about what was happening that night, and the public got a firsthand view of what was happening. He was not involved outside of the meetings. Mr. Kiefer questioned as to if a hearing facilitator is involved would the dynamics of more involvement be added. Mr. Cornale questioned if that would happen if they are trying to shorten the meeting(s). Mr. Flott said that he thought a hearing facilitator would be professional and careful on that. Mr. Flott noted a different chair could do the same thing, though Mr. Cornale handled it differently. Mr. Runyon commented that he went to all but two of the hearings that ran a year ago, the Pleasant Ridge hearings. and he thought that they went well. Mr. Runyon wanted to know if a hearing facilitator would have complete control or will they work with the chair person, noting that the money is no question in that fee is to be paid by the applicant. Mr. Runyon is not hung up on this issue, but he noted that counsel has been present in the past. Mr. Kiefer pointed out that the zoning board and their chair has the ultimate vote and decision making. Mr. Cornale confirmed that the hearing facilitator would be just running the meeting. Mr. Blackard read from the hearing facilitator definition. And, Mr. Blakeman noted that the findings or report and recommendation would be made by the zoning board of appeals, with the ZBA deciding what goes in the report and recommendation. Mr. Cornale asked if they were adverse to adding to this that the zoning board of appeals also consents to the appointment of a hearing facilitator or is that too far of a stretch to be involved in the selection process. A discussion on how is it decided on who gets hired, with Mr. Blackard reading from the definition that the state's attorney works on the selection of a hearing facilitator, so you have an outside lawyer picking an outside lawyer for this process. Mr. Kiefer noted the county board hires the zoning board, so it is the same principal. Mr. Cornale looking at how involved is the state's attorney with the county board. Mr. Blakeman commented that the state's attorney is the county board's attorney, unless he farms it to someone like Mr. Blakeman. Mr. Cornale confirmed that the State's attorney is elected. Mr. Blakeman asked if the straw poll was 3 to 2 for the facilitator or 4 to 1 or what.

Mr. Cornale said he could be swayed on the hearing facilitator, with it being important that they work with this person is what he feels is appropriate. Mr. Flott suggested the possible consideration of adding the consent of the zoning board in the process. Mr. Blackard read the ordinance process for appointing a hearing facilitator, so if you want put something in there, he is not sure how it would work. Acting Chair Cornale mentioned the states attorney being involved, with it being noted that his legal knowledge would be of assistance in engaging a hearing facilitator. Mr. Blackard noted that wind farm hearings would be outside the expertise of a state's attorney. Mr. Blakeman explained that the states attorney is the attorney for the county on all matters, unless it is delegated to someone else, so it is written to provide his consent. Mr. Blakeman commented about how the state's attorney would search for an appropriate person to be a hearing facilitator. Mr. Cornale is okay with it if the state's attorney can take out the biases. Mr. Cornale does not want to be forfeiting their abilities. Mr. Blakeman said that the zoning board will still ask questions and make the final recommendation to the count board, so the question of why a hearing facilitator came up again. All of the zoning board of appeals members ended up being okay with the hearing facilitator. Mr. Schopp then went to the August 31<sup>st</sup>, 2017 meeting minutes page 4 15 lines up from the bottom with the UCLC attorney about how the language needed to reflect the change. Acting Chair Cornale reviewed this area with the zoning board of appeals. They discussed the second page of green pages of the proposed changes. The word to be used except was clarified. Mr. Blakeman clarified that a hearing facilitator would only be used for wind energy not for solar farms with the county board making both decisions. They agreed to have it read – for special use applications pertaining to wind energy conversion systems a hearing facilitator may preside over hearings over the siting approval application.

Moving back to proposed change number 5, regarding setbacks for the seven townships, Acting Chair Cornale said this is a hard one and his personnel opinion is that he is stuck on it, and he thinks others are stuck on it, and they gave in a little on the hearing facilitator and he does not expect them to give in on this one. Mr. Kiefer noted that it is 3 to 2 on this matter, and Mr. Cornale agreed, and he feels that any change in this area would be special zoning to that area of which he does not agree. He personally does not feel that the county has compelled him to vote for this. The population density was discussed, along with less productive farm land of which details were not made. Mr. Cornale feels some safety issues are involved and there could be a detrimental effect to surrounding property owners that may not have a decision in a siting, like a small 5 acre land owner, who could have decrease property values. Mr. Cornale said that is his logic behind it, and the zoning board members are welcome to interject, while noting that the 3 to 2 consensus says no. Mr. Kiefer then wanted it to be clarified that this area be deleted. Mr. Runyon questioned as to why the quality of life is more important in one part of the county versus another part of the county, why are health issues more important, and if it is all about money then it is wrong. The reasons given for the proposed text amendment are not considered as suitable reasons to Mr. Runyon. That waivers to the setbacks are still allowed, was discussed. Mr. Runyon noted that the popular vote was not overwhelming, so he questioned as to why that Reading Township is not being included even though they voted yes. Mr. Runyon does not agree with this propose setback amendment. Mr. Kiefer believes in process and it is 3 to 2 so delete this proposed setback language and send it on. The wording at least can be appropriately added. Likewise, change 6 would be treated the same in deleting the setback amendments. Mr. Schopp noted that the new draft will have cross outs etc.

As to when to recess the meeting was then discussed. The regularly scheduled December meeting was then discussed.

Motion to recess this meeting to December 7, 2017 at 7:00 pm was made by William Flott, seconded by James Blackard.

This motion was approved by a unanimous voice vote.

This meeting was recessed at 9:15 p.m.

Material regarding these proceedings is on file in the Livingston County Regional Planning Commission Office, in the Livingston County Historic Courthouse, 112 W. Madison St., Pontiac, Illinois.

Respectfully submitted,

Charles T. Schopp, Secretary  
Livingston County Regional  
Planning Commission