

AGRICULTURE, ZONING AND EMERGENCY SERVICES COMMITTEE

MINUTES OF THE MAY 5, 2015 MEETING

The committee chair called the meeting to order at 6:00 pm at the Livingston County Historic Courthouse, 112 W. Madison St., Pontiac, Illinois and roll call was taken.

Present: Bill Flott, Bob Young, James Carley, Justin Goembel, Daryl Holt, Paul Ritter and Bill Peterson.

Absent: None.

Other County

Board Members Marty Fannin, Vicki Allen, Kathy Arbogast, Carolyn Gerwin and Mike Ingles.

Present: And, County Administrative Resource Specialist Alina Hartley.

Committee Chair Flott noted the agenda, Daryl Holt then moved, seconded by Paul Ritter, that the agenda for this meeting be approved as outlined by the committee chair. This motion was approved by a voice vote of all ayes.

Minutes of the April 7, 2015 committee meeting were referred to the committee. Justin Goembel moved, seconded by Bill Peterson, that these meeting minutes be approved as presented. This motion was approved by a voice vote of all ayes.

ETSB Report:

ETSB chair Mike Ingles reported to the committee that upcoming appointments to the ETSB. Mr. Ingles then commented on the installation of the new phone system, and about the status of the Starcom radio project. Mr. Ingles then commented about the status of the CAD project, and he commented about the ongoing evaluation of the existing communications towers and pager system.

Other considerations pertaining to the review of the proposed Pleasant Ridge Wind Energy Project Special Use:

After tonight the continuation of the Pleasant Ridge Wind Energy project hearings is to be on May 7th at 7 pm in this Historic Courthouse building. Additional dates will be scheduled at that meeting.

The committee members were provided a copy of a letter from county consulting attorney James Griffin. This letter addresses: Decommissioning – Letters of Credit and Cash Escrow Account. Committee Chair Flott reviewed this letter with the committee members. A copy of Mr. Griffin's letter is attached for your reference regarding decommissioning letters of credit.

Solid Waste Report:

A copy of a planning commission monthly synopsis of landfill information and correspondence was presented to the committee members, along with a copy of Deigan and Associates Submittal Reviews.

The monthly information synopsis and submittal reviews relating to Livingston Landfill focused on report copies pertaining to CAAPP and NPDES monitoring and reports. The extended review time requests for the IEPA to take action on some of their landfill permits was mentioned, along with methane gas surface monitoring results that reflected that wells X311 and X 323 had high methane results.

The need to replace decommissioned landfill gas collectors was mentioned, along with the status of a potential subsurface oxidation event. Livingston Landfill information also related to monitoring well testing.

Information on the Streator Area Landfill related to the continuation of gas well X-309 having measured high methane levels was part of this report, along some groundwater monitoring results.

The committee was also informed of a planned split sampling of water at both landfills, of which this process was explained to the committee members. Host agreement information was also presented to the committee.

The committee members were also provided with a copy of a letter from Republic Services pertaining to extending the current adjusted host agreement. In part this letter states that these adjusted host fees allows for the landfill to provide competitive pricing, and without this current host fee structure the amount of revenue from the landfill would decrease significantly based on current pricing in the area. The committee members discussed the current host fee structure. This letter from Republic Services also mentioned the cell construction and Livingston Landfill work schedule through 2018. The committee will further discuss the host fee agreement extension at their meeting next month. A copy of Republic Services letter is attached for your reference regarding this host fee matter.

Continuing the Process of Reviewing of the County's Wind Energy Ordinance:

The Continuation of the Process of Reviewing the County's Wind Energy Ordinance will take place once all the evidence is on record pertaining to the Pleasant Ridge Wind Energy Project.

The committee then discussed starting the process to extend the wind energy moratorium on processing any special use applications for the construction of WECS. The committee members were presented a copy of a letter from county consulting attorney James Griffin that is in regard to: Moratorium and Agricultural Impact Mitigation Agreement Legislation. In regard to the moratorium extension Mr. Griffin recommends limiting the extension of the moratorium to three months. The timing of the extension process was discussed, and Carolyn Gerwin remarked about extending the moratorium for six months. Mr. Holt then moved, seconded by Bob Young, that this Agriculture, Zoning and Emergency Services Committee recommend to the Livingston County Board that the extension of the six month moratorium on wind energy project special use applications be extended for three months. This motion was approved by roll call vote. Flott-yes, Young-yes, Carley-yes, Goembel-yes, Holt-yes, Ritter-yes and Peterson-yes.

In regard to the agricultural impact mitigation agreement legislation pending before the State of Illinois General Assembly, Mr. Griffin in his letter outlined the bill. Mr. Griffin also noted in his letter that the county could still adopt decommissioning regulations that would supplement state requirements. The committee along with Carolyn Gerwin discussed the status of this bill along with the continuing need to monitor this legislation to look for changes in the legislation language, that could create more concerns about this legislation. A copy of Mr. Griffin's letter is attached to these minutes, so that his comments on the moratorium and agricultural impact mitigation agreement legislation can be reviewed.

Review of the Final Plat for Livingston County Zoning Case SF-2-15 – Stone Lake Estates Subdivision:

A report relating to the proposed Stone Lake Estates Subdivision was presented to the committee by the zoning administrator. The committee was informed that the Livingston County Regional Planning Commission has recommended the approval of this final plat of subdivision. The committee briefly discussed this proposed subdivision, including the depth of existing water wells in the area, being 50 to 100 feet. Bob Young moved, seconded by, Bill Peterson, that this Agriculture, Zoning and Emergency Services Committee recommend to the Livingston County Board that the final plat for Stone Lake Estates Subdivision be approved. This motion was approved unanimously by voice vote.

Other Issues to Come Before the Committee: None

Public Comment:

John Slagel expressed his agreement with the proposed extension of the WECS moratorium for three months. Mr. Slagel commented that the timeline on this issue may work as incentive to move forward with this project in a timelier manner.

Carolyn Gerwin commented about wind energy decommissioning issues and a need to look into details of such agreements, especially how the county can trigger access to letters of credit.

Judy Campbell presented a chart titled: Agriculture, Zoning and Emergency Services Committee – WIND HISTORY. Judy Campbell commented on the information provided on this chart, and she related that she believes this committee has had opportunities to address wind energy regulations. Judy Campbell then opined that some may have trust issues with this committee as to how they address wind energy regulations. A relatively brief discussion then took place regarding Judy Campbell's chart and comments.

Review and Approval of Bills:

An invoice in the amount of \$6,401 from Deigan and Associates, LLC for Professional Services for the period of February to April 2015 relating to landfill monitoring and technical reviews of Republic/Allied Waste's Livingston and Streator area Landfills, for environmental/solid waste landfill consulting service to Livingston County was submitted to the committee. Daryl Holt moved, seconded by Bill Peterson, that this statement be approved for payment. This motion was approved by a unanimous voice vote.

Adjournment:

Then Bob Young moved, seconded by Daryl Holt, that this meeting be adjourned. This motion was approved unanimously.

This meeting was adjourned at 7:00 p.m.

Charles T. Schopp, Administrator
Livingston County Regional
Planning Commission

March 23, 2015

mfannin@livingstoncountyil.gov

Mr. Marty Fannin
Livingston County Board Chairman
112 W. Madison St.
Pontiac, IL 61764

RE: Decommissioning – Letters of Credit and Cash Escrow Account

Dear Chairman Fannin,

At your request, I have prepared this analysis of decommissioning security for wind energy projects in the form of a letter of credit or cash escrow account, and the affect upon such security in the event of a bankruptcy or insolvency of a wind energy company.

Letters of Credit

A letter of credit is a promise by the issuer to pay the beneficiary under certain circumstances. A bankruptcy does not affect the issuing bank's obligation to pay, and the letter of credit funds are not part of the bankruptcy estate. In re Keene Corp., 162 B.R. 935 (1994).

A letter of credit is a commercial instrument that obligates the issuer to pay the beneficiary upon presentation of certain documents. Andy Marine, Inc., v. Zidell, 812 F.2d 534,526 (9th Cir. 1987). The issuer's obligation under the letter of credit is independent of the underlying contract. Hamada v. Far East Nat'l Bank, 291 F.3d 645, 650 (9th Cir. 2002). Thus, the issuer's obligation "does not depend on the fact of default, but upon the presentation of documents as evidence of default." Andy Marine, 812 F.2d at 536. As a result of the independence of letters of credit from their underlying contracts, neither the letter of credit nor its proceeds are property of the debtor's bankruptcy estate. In re Mayan Networks Corporation, 306 B.R. 295 (2004).

Since a letter of credit and its proceeds are not property of the bankruptcy estate, the beneficiary may draw upon the letter of credit regardless of a bankruptcy. North Shore & Central Illinois Freight Company v. American National Bank and Trust Company of Chicago, 30 B.R. 377 (1983). Indeed, the beneficiary may draw upon the letter even after a bankruptcy is filed. In re M.J. Sales & Distributing Co, Inc., 25 B.R. 608 (1982).

If the wind energy company becomes insolvent, but does not file bankruptcy, the letter of credit remains an obligation of the financial institution and can be enforced regardless of the insolvency.

Cash Escrow Accounts

The treatment of a cash escrow account for decommissioning security in a bankruptcy is less certain under the law than a letter of credit.

If the cash escrow account is deemed to be the equivalent of a security deposit, a security deposit may be part of the bankruptcy estate under Section 541 of the Bankruptcy Code, and thus subject to other creditor claims. See Muntz TV Inc. v. Allen, 229 F.2d 228 (7th Cir. 1956). A bankruptcy court has summary jurisdiction over money or property in the hands of a third party and deposited by the debtor for purpose of security. Id.

However, if at the time of the bankruptcy, the wind energy company does not possess any right of possession to the escrow funds, then the escrow funds should not become part of the bankruptcy estate. See In re Shelbyville Road Shoppes, Inc., 775 F.3d 789 (6th Cir. 2015). Accordingly, if a bankruptcy is filed after the events triggering the decommissioning obligation occurred, the wind energy company should have no claim upon the escrow funds, and therefore the funds would be excluded from the bankruptcy estate. If the bankruptcy was filed while the project was in operation, then the escrow funds could be part of the bankruptcy estate. Resolution of this issue will depend greatly upon the particular circumstances and timing of the default and bankruptcy.

If the wind energy company becomes insolvent, but does not file bankruptcy, then the County will be able to maintain control of the cash escrow account.

Conclusion

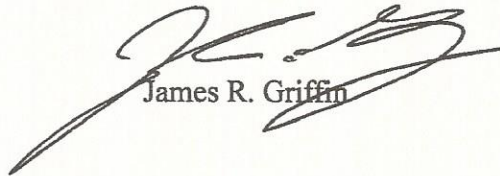
Letters of credit are not rendered unenforceable by the bankruptcy or insolvency of the wind energy company. A letter of credit is an agreement between the County and the financial institution. If the conditions for drawing upon the letter of credit are met (such as the abandonment of the project) then the letter may be drawn upon regardless of the financial status of the wind energy company.

Cash escrow accounts may be protected in the event of a bankruptcy, if the wind energy company no longer has any right to the funds in the escrow account. However, if there has not been a default in the decommissioning obligation at the time of the bankruptcy, then the escrow account may become part of the bankruptcy estate. Determination of this issue is dependent upon the particular facts surrounding the decommissioning and bankruptcy.

Mr. Marty Fannin
March 23, 2015
Page 3

I hope this addresses your questions. I am available to further review this matter with you.

Sincerely,



James R. Griffin

JRG:pfw

May 5, 2015

Mr. Bill Flott
Livingston County Board
Chairman of the Agriculture, Zoning and
Emergency Services Committee
112 W. Madison St.
Pontiac, IL 61764

RE: Moratorium and Agricultural Impact Mitigation Agreement Legislation

Dear Chairman Flott,

At your request, I have prepared this letter concerning 1) the possible extension of the County moratorium in place on wind energy project applications, and 2) House Bill 3523 concerning agricultural impact mitigation agreements for wind energy projects.

Moratorium Extension

Livingston County is considering an extension of its six-month moratorium on wind energy project special use applications. The County is considering either a three or six month extension of the moratorium.

There are no specific State statutes that govern the length of time a county may declare a moratorium on applications for certain uses under its zoning ordinance. In addition, Illinois case law has not established any specific time frames that are acceptable for a moratorium. However, as a moratorium suspends the application for a lawful use under the zoning ordinance, the moratorium must only be for a limited time period.

Prior cases that have concerned six-month moratoriums have not suggested there was anything defective with a six-month moratorium. In Napleton v. Village of Hinsdale, 229 Ill. 2d 296 (2008), the Illinois Supreme Court considered a matter in which the Village of Hinsdale enacted a temporary moratorium for approximately nine months. Although the Supreme Court was not asked to determine the legality of the nine month moratorium, the court did not identify any legal issues associated with a nine month moratorium.

Presently, Livingston County has in place a six-month moratorium on accepting wind energy project special use applications. Extending the moratorium another three months, for a total of a nine months, would be consistent with the Village of Hinsdale's action in the Napleton case.

Accordingly, I recommend that the County limit the extension of the moratorium for only three additional months. A six-month extension may also be legally acceptable; however that is not as clear under the law. Due to the uncertainty of the maximum length of a moratorium, I recommended limiting the extension of the moratorium to three months.

Agricultural Impact Mitigation Agreement Legislation

House Bill 3523 concerns agricultural impact mitigation agreements for wind energy projects. The bill was approved by the Illinois House and is now under consideration by the Illinois Senate.

The agricultural impact mitigation agreement (AIMA) proposed in HB 3523 is an agreement between the wind energy project owner and the Illinois Department of Agriculture.

Under the AIMA Act, the Act does not apply to wind energy projects i) for which a permit application has been filed and for which the public hearing has commenced, and ii) wind energy projects that were previously constructed. Accordingly, Pleasant Ridge will not be subject to the requirements of this legislation, nor will the other wind energy projects in operation in Livingston County. However, any future applications for wind energy permits will be subject to the legislation.

The legislation requires that the owner of the wind energy project enter into an AIMA with the Department of Agriculture *prior to commencement of local public hearings* required for siting decisions by the county.

Under the proposed bill, the AIMA must include "financial assurance for deconstruction." The term "deconstruction" in the legislation has the same general meaning as "decommissioning" in the Livingston County zoning ordinance. Accordingly, the bill covers much of the same ground as the County's ordinance provisions on decommissioning and security for decommissioning. The legislation appears to be aimed at formulating a statewide, consistent decommissioning requirement.

However, the bill does not contain any terms expressly precluding counties from creating their own separate decommissioning requirements, and therefore the bill does not pre-empt county regulation of wind energy project decommissioning. Nonetheless, a non-home rule county, such as Livingston County, cannot adopt regulations that are inconsistent with State law or the future regulations to be adopted by the Department of Agriculture.

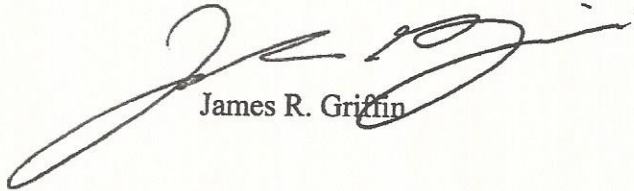
Since the wind energy company is required under HB 3523 to provide the Department of Agriculture with financial assurance for decommissioning, I do not believe a county could require the company to provide duplicative financial assurance to the county. If the county

Mr. Bill Flott
May 5, 2015
Page 3

required financial assurance for some aspect of decommissioning not regulated by the AIMA, the county should be able to require such assurance. Likewise, if the county adopted decommissioning regulations that supplemented, but were not inconsistent with, the State requirements, the county should possess the authority to enforce such regulations.

Please let me know if I may be of further assistance in these matters.

Sincerely,



James R. Griffin



American Disposal Services of Illinois, Inc.
Livingston Landfill
14206 E 2100 N Road
Pontiac, IL 61764

May 4, 2015

Mr. Chuck Schopp
Livingston County
Regional Planning Commission
112 W. Madison St.
Pontiac, IL 61764

Re: American Disposal Services of Illinois Inc. - Livingston Landfill (ADSI)
Request for Amended Host Agreement

Dear Mr. Schopp:

ADSI respectfully submits this request to extend the Amendment Agreement of October 14, 2010 to Host County Agreement. This amendment was essentially an extension of the May 14, 2009 amendment to adjust the host benefit fees. The current amendment currently expires on December 31, 2015. We propose to extend the adjusted host benefit fees for an additional 3 years or until December 31, 2018.

This adjustment to the host benefit fees has allowed the landfill to provide competitive pricing for both internal and for third party tonnage. Without this adjustment it is likely that the amount of revenue from the landfill would decrease significantly based on current pricing in the area.

Republic is currently budgeted and anticipated to accept approximately 1.2 million tons in 2015. The landfill is currently constructing approximately 5 acres in the southwest portion of Cell D8. At current tonnage we are anticipating constructing the remaining 8 acres in the north of Cell D8 in 2016. At current tonnage and density we anticipate no construction in 2017 and constructing approximately 10 acres of Cell D9 in 2018. Additionally, we anticipate doing a 25 acre final cover cap on the side slopes of Parcel C in 2017 and then completing the final cover in Parcel C three or four years later. Any changes with incoming tonnage or density could impact the construction schedule which will be conveyed to the County.

American Disposal Services of Illinois, Inc.
Livingston Landfill
Page 2 of 2

If you have any questions, please contact me at (630) 894-0001 or Bob Kalebich at (815) 774-3951.

Sincerely,

Eric J. Dippon
Environmental Manager

cc: Bill Janes - Livingston Landfill
Gary Deigan - Deigan and Associates, LL