

AGRICULTURE, ZONING AND EMERGENCY SERVICES COMMITTEE

MINUTES OF THE JANUARY 28, 2016 MEETING

The committee chair called the meeting to order at 4:00 pm at the Livingston County Historic Courthouse, 112 W. Madison St., Pontiac, Illinois and roll call was taken.

Present: Bill Flott, Bob Young, Justin Goembel, James Carley and Bill Peterson.

Absent: Daryl Holt and Paul Ritter.

Additional Wind

Energy Regulations

Review Members: Rebekah Fehr, Jeff Reinkemeyer, Mark Runyon and John Slagel.

Additional County Reps: State's Attorney Seth Uphoff

Committee Chair Flott noted the agenda. James Carley then moved, seconded by Justin Goembel, 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.

Discuss Options for Extending the Moratorium Delaying the Processing or Acting Upon Special Use Applications for Wind Energy Conversion Systems:

The timeline for considering the extension of the moratorium was reviewed. This review reflected that the existing moratorium extension is to expire on April 15th of this year, and that with moratorium's and extension of moratorium's being text amendments, the text amendment process should begin with the February cycle of county board committee meetings and at the February 2016 Livingston County Board meeting.

Then options on how long to extend this moratorium were presented and discussed. Options to extend the moratorium included 3 months- to July 15th (an issue is that the day does not coincide with regular county board meeting), 6 months to October 15th, 7 months to November 15th (an issue is that the day does not coincide with the regular county board meeting) and 230 day, with the 230 day period representing that November 30th, is the final day that this current committee and county board can take official action as it currently assembled. An assumption is being made that additional text amendments will be needed as part of the wind regulations review, and that the process to start the formal review of proposed text amendments should begin in August.

An inquiry was made to State's Attorney Seth Uphoff as to if the Attorney General had given an opinion on the wind energy related question that he had posed to that office. Mr. Uphoff related that he has not heard from the attorney general's office, and he does not know when they will issue an opinion. A need to allow for more time for this opinion to be issued and for the potential of the previously discussed referendum to take place were noted as factors to consider a 230 day extension to this moratorium.

Then a discussion took place on the scenario of this moratorium not being extended, which may allow for the wind energy regulations in place to be the current regulations, and to create a need to expedite any ordinance changes. It was questioned as to if a shorter moratorium extension would be more palatable.

The potential timing of an attorney general's response was further discussed, in part in relation to options to address amendments as a result of that response. In further discussion on the moratorium extension, Jeff Reinkemeyer indicated that Iberdorla is not planning on filing any wind energy related applications this year. Mr. Reinkemeyer then explained how the production tax credits(PTC) for wind energy have been extended for five years, with declining percentages of credit as the PTC moves forward. The committee members then conversed about yes they would like to extend the moratorium, with a discussion on how long to extend the moratorium following. The 230 day extension option was discussed. State's Attorney Seth remarked that with the county waiting on an attorney general's opinion related to this area, and with the county continuing to work to move forward in addressing these issues, the county has established rationales to extend the moratorium. In waiting on the attorney general's opinion, the committee indicated that it may be best to extend the moratorium 230 days to November 30th. The potential timing or plans of other developments that were considered at one time was mentioned. The overall lack of certainty of future wind energy development was discussed. This committee will make a formal recommendation, on extending the moratorium, to the county board next week at their regularly scheduled February committee meeting.

Continuation of the Process of Reviewing the County's Wind Energy Regulations:

In beginning a review of language previously discussed pertaining to considered wind energy regulation text amendments, copies of documents pertaining to the review of wind energy regulations were provided to the committee and ad hoc committee members, so for the purposes of this meeting we are all referring to the same document.

State's Attorney Seth Uphoff commented on items requiring preliminary legal review, starting with comments on property value guarantees. Mr. Uphoff related that it is highly unlikely that the county could require property value guarantees in that they are similar to contracts and that duress to go into a contractual agreement cannot be imposed. A discussion then took place on considerations of property value guarantees without a contract or other options that may be similar to property value guarantee plans. These discussions in part related to appraisals, the time of appraisals, escrow accounts and what such agreement factors may be. Mr. Uphoff will further investigate options to property value guarantees.

In regard to rights for denial, Mr. Uphoff related that a project should not be denied without a basis for the decision. A discussion on rights for denial took place with comments about adding specific language to further relate to reasons for denial, such as environmental concerns. This is a subject area that can be further investigated.

Rights of refusal or to deny application amendments was then discussed. It was concluded that the wording and intent of this area will be further investigated, including an exception clause that would allow more information submitted upon the request of the county. Then an area inquiring as to if the county could adopt a policy that states that contract between landowner and the company are between those individuals and the county will not get involved in those contracts was talked about. Mr. Uphoff remarked that the county has not legal grounds to become involved in such contracts.

The creation of a hearing officer vs hearing facilitator position was discussed. It was established that the hearing facilitator is the preferred position to be created. Mr. Uphoff commented that such a position is legal and that language similar to language used in Lee County will be used in consideration of creating language for this position. The use of an attorney or retired judge in this position was discussed, along with this position be appointed by the county board chair, with counsel of the county board. Mr. Uphoff is willing to assist in providing the wording for creation of this position. The definition of financial assurance was discussed with it being concluded it may be appropriate to amend this definition to just reflect decommissioning issues.

Then a previously proposed Financial Capability definition was discussed. Mr. Uphoff suggested that this be amended to reflect capability of the applicant, with some specific history of a company's capabilities. This will be further reviewed to see if the determination of capability can be better defined.

Another matter discussed was in regard to the previously discussed 90 day pre-application filing requirement for applicants to make specific efforts to notify area landowners and residents of the intent to file a WECS application. This may be done through mailers and meetings etc. This was in part discussed in that WECS projects may take years in developing and as to what is an appropriate time for the public to be informed of the potential of a WECS development in their area. This will be further reviewed for options to address this area. The 90 day period should be okay, as a reasonable time frame.

Potential ordinance amendments to setback distances, with a discussion of the various proposals previously proposed, including measuring points that in part would be linked to noise levels in section 56-620. The viewpoints on setback distances remain similar as discussed in the past. Two main proposals previously discussed reflect measurements of 3.75 times the height of a tower or 1500 feet or 1600 feet whichever is greater becoming 1650 to 1750 feet when measured 150 feet from the center of a primary structure (such as a residence), and measurements of 4000 feet from a primary structure, with the option to negotiate waivers or variances.

The previously discussed and still considered non-binding advisory referendum which would reflect option in WECS setback distances was then conversed about. Then the dialogue continued centered around setback distance options, including discussion on IPCB regulation and how they are interpreted, and what may be an applicant's greatest acceptable distance in moving forward with a WECS project. A conclusion of this conversation is that the viewpoints on setback distances remain the same, and further discussion will take place in the future.

Other Issues to Come Before the Committee: None

Public Comment:

Adjournment:

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

This meeting was adjourned at 6:10 p.m.

Charles T. Schopp, Administrator
Livingston County Regional
Planning Commission