

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

Recessed Meeting Continuation
7:30 p.m.

September 18, 2017

The meeting came to order and roll call was taken.

Members Present: Michael Cornale, Richard Kiefer, Richard Runyon, William Flott, Gerald Earing and Joan Huisman.

Members Absent:

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.

Chair Huisman noted the presence of Will Gerber, to begin his testimony.

Zoning board member Bill Flott, asked Tom Blakeman about the status of the evidence as far as what is admissible and what is not. Mr. Blakeman mentioned that it is hard to answer that without knowing what is to be submitted, but understanding a notice of facts with the answer to that question being yes and no. Mr. Blakeman mentioned that some facts are admissible and some are not. Mr. Blakeman commented about judicial notice of the ordinance passed in 2017 regarding the previous text amendment and you could take notice of the recommendation of this case also. But if you want to take notice of opinions of the evidence at that hearing or previous hearings it may not be appropriate since witnesses are not available for cross examination. Will Gerber commented that the report and recommendation from the previous text amendment can be taken judicial of, in that witnesses were cross examined including exhibits, he believes that anything admitted for that hearing associated with that ordinance can be admitted here also. Mr. Blakeman noted that this is a different hearing and that the applicant did not have an opportunity to cross examine the witnesses from the first hearing in regard to this case, being deprived a right to confront those witnesses. Mr. Blakeman did research a case. Chair Huisman suggested Mr. Gerber be sworn in at this time. Mr. Flott asked if the answer was yes or not. Mr. Cornale asked if the strict rules of evidence apply to any zoning hearing. Mr. Blakeman said that strict rules would not apply. Mr. Cornale remarked that would leave Joan with the right to make the call of which Mr. Blakeman agreed.

County attorney Redlingshafer objected to the relevance of the prior testimony, according to Illinois Rule 201, and he disputes the complete similarity between the previous zoning case and the current zoning case, and that his objection be noted. Chair Huisman asked Mr. Gerber to be sworn in with his address being 21203 E – 650 North Rd., Fairbury. Mr. Gerber noted his exhibit Gerber Exhibit 1 the recommendation and approval documents from the previous zoning text amendment. Mr. Gerber noted that regardless of where the windmills are to be located or where you live there is no testimony provided by anybody that those windmills would have any different affect. So with the fact is not being presented that judicial notice be taken of that record along with the exhibits in that record. Chair Huisman noted that the zoning board members had copies of the document, having been presented a copy of it earlier in the hearing. Chair Huisman asked Mr. Gerber to confirm that he was previously a member of the zoning board of which Mr. Gerber confirmed and that he did help draft the recommendation, of which he did. Mr. Gerber then commented about part of the Illinois Administrative Code allowing the adoption of the documents for these proceedings, and that looking at Rule 201 is wrong.

Chair Huisman explained that she also has done some research and that she believes it can be allowed, in that we are looking at the exact same section of the ordinance, of which they looked at and made a decision on months ago. It was a text amendment then it is a text amendment now and that the rules of evidence are flexible enough to allow for this to come. Chair Huisman accepted it into evidence over Mr. Redlingshafer's objection while taking into consideration, the documents and exhibits that support those findings of fact and recommendation. Chair Huisman noted that this is had not been just being finished being reviewed earlier this year the relevance may have been diminished, but in her opinion the relevance is very high to consider the work that the zoning board did months ago to come to the conclusion they came to. Chair Huisman then opened the floor for questions of Mr. Gerber. Mr. Blakeman clarified that Chairman Huisman is admitting Gerber Exhibit 1, and taking notice of certain other things. Chairman Huisman said that as requested the exhibits referenced. Mr. Cornale asked for confirmation that at the previous hearings differing points were presented and they tried to weight both sides along with evidence to support each of those sections. Mr. Gerber agreed with that statement. Mr. Cornale as they take notice of that additional testimony can Will recall the gist of the Massie testimony. Mr. Gerber commented that Mr. Massie was there in a legal capacity representing the wind farms, and he was ultimately testifying to setbacks related to wind farms, providing the case related to the duck pond and he was cross examined. Mr. Gerber did not recall much information be presented in regard to health safety and welfare, as outline in the facts and recommendation. Mr. Cornale asked about testimony from Massie that said that the proposed setbacks would not hinder the development of wind turbines but would require them to do a little bit more work. Mr. Gerber answered that Mr. Massie's original testimony reflected that it would completely prevent them from developing wind farms in Livingston County, and he then took back his testimony on cross examination, and said it would require them sign up more land owners which would require more work. Mr. Gerber asked them to keep in mind that these are subject to waiver requirements regardless of the setbacks. Mr. Cornale asked about in regards to noise and potential property value degradation and in increasing the setbacks some of that real estate degradation would be mitigated. Mr. Gerber noted that the problem that with the reports being provided are from out of state real estate that have nothing to do with real estate around here, making it difficult to compare real estate values here in comparison to other states.

Tom Kulasik asked about what he was saying about health and safety. Mr. Gerber said that none of the testimony had addressed the impacts on health and safety, so the health impact to any citizen

would be the same regardless of where the wind mills would be located. Mr. Kulasik asked about his opinion as to why we should have different setbacks. Mr. Gerber said that is not for him to determine it is up to the county board. John Vitzthum asked if the zoning board had a significant discussion about the waiver issue. Mr. Gerber agreed, and it is a way to protect a land owner with smaller acreage, while also allowing for the windmill company to come in and negotiate waivers. Mr. Gerber continued that the whole waiver situation all of the testimony for the health and location and nothing was provided, with a compromise made in the distance, but nothing was presented from a health standpoint of setting it at 1500 feet. So how do you benefit all with the testimony, and the waiver requirement should satisfy the situation with the seven townships in question. Mr. Earing asked if this was based on the Pleasant Ridge case. Mr. Gerber said that did not base their testimony on that case, it was from the engineers that came to testify that had nothing to do with the Pleasant Ridge case. Chair Huisman confirmed they did not go back and rehash anything from Pleasant Ridge. Mr. Earing was trying to compare the Odell area the last text amendment and the current proposal. Mr. Earing wanted to know about the setbacks for the Odell development. Mr. Cornale said it came from the original ordinance, several years ago. Mr. Cornale and Mr. Kiefer agreed they adopted a boiler plate ordinance. Mr. Earing is something being asked is unusual. It was clarified that would be part of their deliberations. Mr. Cornale related that the hearing process for the original regulations did not take long, since it was a new industry with less information than there is now. Mr. Cornale then commented about a need to meet the noise levels. Mr. Blackard then asked about why 1500 was chosen from property lines, to Will. Mr. Gerber clarified it was decided in 36 hours of testimony. Chair Huisman noted they can be discussed as part of their deliberations. Mr. Cornale noted that three things have been presented by the county, one a wind map, population density information and about soil types, would any of that played into the decisions from previous hearings and how much value to put into those things. Mr. Gerber said it is hard for him to answer since he was not at the hearings. Mr. Gerber compared the soil types to economic aspects, but without crop and financial information in is hard to reach a decision on soil types alone. Mr. Gerber thinks the density aspect is irrelevant, since regardless of where people are located the health impact still needs to be considered. In regard to the wind map Mr. Gerber said it may be addressing economic impact but it hard to make a decision without specific data. Mr. Redlingshafer asked about other information he may have heard about this text amendment. Mr. Redlingshafer asked Mr. Gerber as to if anyone asked him to come to this meeting, Mr. Gerber replied that no one had asked him to come to this meeting. However, Mr. Gerber commented about following these hearings through the videos available on the internet. Mr. Gerber related to the videos on line. Mr. Redlingshafer asked if he had been to any Agriculture and Zoning Committee meetings. Mr. Gerber said he had not been to any such committee meetings. Mr. Redlingshafer asked about the waiver issue about being a fact specific issue for a special use application, of which Mr. Gerber said it may be. Mr. Cornale asked that if in any previous hearings was referendum data ever considered as a point to make a zoning amendment or change. Mr. Gerber said no.

Mayte Callegas, 27575 E – 3000 North Rd, Dwight, came forward to testify, confirming she lives in Dwight Township. Mayte did research on the internet finding two pieces of information the she thinks are good in addressing the depreciation of real estate. One of these persons was Michael McCann who testified at an earlier hearing questioning if that document is allowable. She was allowed to share it. Mayte stated that she feels the property values will drop if wind turbines are allowed to be closer. Mayte Callegas passed out her two documents, with the first document being a Pontiac Daily Leader article on Experts Offers Insight to Wind Farm Questions. The second document is a power point presentation copy taken from an internet search, titled Wind Turbines & Property Value, a presentation by Kurt C. Kielisch. Mayte expressed her opinion that she believes

that these two documents are fair. Mayte did not know the date when the second document was presented. Judy Campbell asked if she knew of wind farm development going on in Livingston County. Mayte was aware of wind farm development but she did not know it could come closer or she would not have bought the house. Mr. Earing asked if she had some power lines close to her property, and they do bother her since they are not on her property. The area transmission lines were clarified as those being questioned about. Mr. Kulasik asked about how far those transmission lines are from her house. Mayte does not know. Mr. Kulasik asked as to if she know how many volts those transmission lines carry and how tall is the tower. Mayte did not know the answers to those questions. Mr. Kulasik then asked if an aviation light was on the tower, of which Mayte said there was none.

Judy Campbell, 28816 N – 800 East Rd., Manville came forward to present testimony. Judy Campbell had three exhibits. Her second exhibit is a subset of the Livingston County Soil Survey. She had marked her exhibits and passed them out. Her first exhibit number 1 is something she downloaded regarding a township next to Nevada is a nature preserve one mile from the edge of Nevada Township, so a natural area is also close to that area. Judy Campbell noted that the IDNR has commented on habitat in relation to wind farm areas in the past. Her first exhibit had a title of Sunbury Railroad Prairie Nature Preserve Livingston County. Judy Campbell mentioned her second exhibit being a part of the soil survey book, this part of the survey made mention to prime farmland, with prime farmlands being listed in attached table 5. Judy Campbell noted that 3 soil associations in these seven townships, and she noted some of the soils in the seven township area are listed in this list of prime farmland. In her study of the book she could not find were a lower number meant lower quality, but she realizes other may know more than her, she just could not find it. Judy Campbell presented her third exhibit from 2012 where Iberdrola submitted this post construction fatality study to the AG and Zoning Committee. This exhibit had the pages just related to bats. Judy Campbell noted that within the year of the study 6.3 bat fatalities per megawatt with 300 megawatts in the windfarm that is 1890 dead bats, which would have accumulated since then. Mrs. Campbell commented on how bats are beneficial in being pollinators, mosquito eaters and other ways. So not just humans are affected by the turbines. Mr. Schopp went to ask a question and Mr. Cornale opposed, and the question was retracted.

Mr. Blakeman noted that county staff could present information. Mr. Cornale opposed Mr. Schopp of presenting any more information, as he was a witness. Mr. Blakeman and Mr. Redlingshafer discussed that he had been submitted by staff before. Chair Huisman asked about the report. Mr. Schopp said that it is about the minutes of the planning commission submitted at the start of the procedure and the zoning board requested that they be approved by the planning commission. Subsequent to that zoning board hearing the planning commission has met and approved those minutes, so he was going to provide a copy of the planning commission meeting minutes at which they approved the planning commission minutes at which this zoning text case was discussed. Chair Huisman indicated she could accept the document but questioning any testimony. Mr. Cornale related that reading the document would be mute since they were not there, that Tom could present the document, but Chuck can't since he is a witness. Chair Huisman did not want a summary of that planning commission meeting, but it is the best they can do without a recording. Mr. Cornale believes that the do process is not correct now since Mr. Schopp was a witness. Chair Huisman stated that they could take the minutes. Mr. Schopp related that this second set of planning commission minutes just proves the first set of minutes was approved. This second set of planning commission minutes were distributed to the zoning board of appeals members.

Mr. Schopp noted that on the first page of these regional planning commission minutes dated July 31st, under the approval of minutes it states that the June 5, 2017 planning commission minutes were approved.

John Slagel being present and a Livingston County Regional Planning Commission member offered his availability to comment about the minutes. The Chair agreed and the minutes were marked as Slagel exhibit 1. John Slagel, 308 Mirlynbeth Ln, Fairbury, noted that this is where they were approving minutes from a prior meeting, and they did have an opportunity to approve the minutes from their June 5, 2017 meeting. Mr. Slagel noted that at the June 5th meeting the same things had been presented as in Chuck's report. Mr. Slagel noted that they some information, he need to review it, but it was similar to what was presented to the planning commission the first night. Mr. Slagel reflected they address some comprehensive plan issues. Mr. Cornale asked about the June 5th meeting minutes and about how it would apply to just five townships. Mr. Slagel mentioned that this addresses how some townships adjoined to townships with the larger townships and as to how the larger setbacks should apply to primary structures within the larger setback distance, of which only five townships would be affected. Mr. Cornale asked then if the health and safety would then be diminished by just living in a township. Mr. Slagel did not remember having that discussion, they discussed as to if the townships would have the differing setbacks for whatever reason and if this situation occurred how would it be dealt with. Mr. Cornale asked if the comprehensive plan would get him there. Mr. Slagel said no they did not relate that to the comprehensive plan. Mr. Cornale and Mr. Slagel noted the difference was based on what township you lived in. Mr. Slagel said that if this document is to be approved then what should be addressed. The validity of separating the townships was not discussed, nor was the 1600 foot setback just if we are doing this text amendment what other issues may arise. Mr. Cornale then noted that the overall consensus was that this fit into the comprehensive plan. Mr. Slagel said they did not relate it to the comprehensive plan. Mr. Cornale asked if referendum data was used. Mr. Slagel said that within their discussions the referendum question was presented by Chuck, but he did not think it was a consideration. Their consideration was just if this language is proposed, what issues does the language have by itself. Mr. Slagel said no they did not compare the proposed changes to the comprehensive plan. Mr. Blackard asked if the referendum question actually came up. Mr. Slagel said it was not really discussed, it was just handed out by Chuck. Mr. Blackard asked if it was a county wide referendum. Mr. Slagel it was voted on county wide on a township by township basis. Mr. Slagel said they did not address the intent, noting planning commission just address as to if it should move forward. So just how to apply the regulations was discussed on the regulations. So the recommendation is yes it can be applied with suggested new wording. Chair Huisman questioned the second page where the word setback was not liked. Mr. Slagel noted that applies to the 150 foot setback around houses. Mr. Slagel said they were looking at from the intent of the text amendment and what issues would arise. Chair Huisman pondered about if the comprehensive plan would allow any language, which did not make sense. Mr. Slagel assumed that those areas wanted those setbacks. Mr. Kulasik asked about the region the planning commission represents. Mr. Slagel said it is the county. Mr. Kulasik asked about the make up of the regional planning commission, and it is appointed by the county board. Judy Campbell asked if the comprehensive plan was available on the website. Mr. Slagel said it was hard to find, but he had a copy from a previous hearing.

Mr. Blakeman than asked about how a publication exhibit would be presented. He asked if Chuck was an issue with another exhibit. Mr. Blakeman stated that proper notice needed to be given. Mr. Cornale thought someone else should do it. The Chair was okay with it since it was done before. Mr. Schopp handed out copies of certificate of publication.

The list of exhibits was then reviewed.

It was noted the next meeting would be October 5th at 7 pm for those that wanted to leave.

Mr. Blakeman started clarifying that the certificate of publication would be county exhibit 13.
Mr. Blakeman then went through the list of exhibits.

County Exhibit 1 – Zoning Administrator’s Report, on ZT-3-17, including an attached copy of the zoning text application of which the proposed changes in the attached entire text were highlighted. A map of the seven townships in question was also attached as part of this report. It was admitted.

County Exhibit 2 – A copy of a Livingston County November 8, 2016 specimen ballot of which had on it the Livingston County Advisory question, regarding setback distances from wind turbines and residences.

County Exhibit 3 – A copy of the Livingston County Clerk and Recorder’s results relating to the advisory question noted in County Exhibit 2.

County Exhibit 4 – A NREL map indicating average wind speeds in Illinois.

County Exhibit 5 – A Livingston County Major Watersheds and rivers map from the Livingston County All Hazards Mitigation Plan.

County Exhibit 6 – A Livingston Landfill Expansion, Hydro geologic report from a regional pollution control siting applicant document.

County Exhibit 7 – An excerpt of the Soil Survey of Livingston County, Illinois.

County Exhibit 8 – A document pertaining to 2010 Livingston County Population Figures, from a Livingston County Clerk document.

County Exhibit 9 – A google earth map showing the lines on which existing wind farms have been developed in relation to the gap in question in this text amendment.

County Exhibit 10 - A copy of the June 5, 2017 minutes of a Livingston County Regional Planning Commission meeting at which a recommendation on Livingston County zoning case ZT-3-17 was made.

County Exhibit 11 – A copy of Fehr Ex. No. 3 in which a Nordex safety document notes a safety zone of 500 m from a turbine, with conversion information attached to show that 500 m and 1640 feet is the same distance.

County Exhibit 12 – A document that was part of the Pleasant Ridge Wind Project application showing some spread footing details, tower base dimensions.

County Exhibit 13 – A certificate of publication , pertaining to the legal notice of the zoning boards hearing regarding this zoning case.

The documents from Pleasant Ridge were discussed exhibits 12 and 13 and if sticking from documents from prior hearings they are not coming in.

UCLC 1 – A document on minimum setbacks referencing a GE 1.5 MW Safety Manual. Along with Vestas and Nordex safety distance information.

UCLC 2 – Was a set of charts showing how decibel levels may change at residences if turbines would be moved at various distances.

Mr. Luetkehans pointed out that they brought exhibits and they were here to be questioned about them, and the county has the same issue, just because they were introduced before does not mean that they can't be used because people were present for testimony and if they start questioning their exhibits they will have a full blown discussion, since no one objected when they were submitted.

Chair said she was still on County exhibits 11 and 12, with Mr. Redlingshafer indicating they should be allow on the same basis. Mr. Cornale questioned if we are on the same basis. Mr. Redlingshafer was just asking for fairness. Mr. Blakeman commented that he thinks County exhibits 11 and 12 should be allowed along with UCLC exhibits 1 and 2. Chair Huisman questioned the exhibit be allowed with the UCLC marking reference, and Mr. Cornale questioned the soil survey being referenced with the Pleasant Ridge wind farm hearing. Mr. Blakeman noted that since Chuck was present to testify it should be admitted. Mr. Cornale said you can listen and note that Pleasant Ridge was mentioned in regard to the soil survey exhibit. The Chair is okay with the soil survey exhibit, but concerned with county exhibits 11 and 12. Mr. Blakeman noted they were submitted at this hearing with a witness that could be cross examined. The Chair was uncomfortable with it but she allowed them to be admitted.

They then went to UCLC 1 – A document on minimum setbacks referencing a GE 1.5 MW Safety Manual. Along with Vestas and Nordex safety distance information and UCLC 2 – Was a set of charts showing how decibel levels may change at residences if turbines would be moved at various distances. It was clarified that only two UCLC exhibits existed though in multiple pages.

They then went to Bryan/Tripoint Exhibit 1 – Evidence for the development of separate and distinct wind energy code ordinances for the identified townships.

Bryan/Tripoint Exhibit 2 – An Illinois Farm Bureau LINK document of which in part relates to farmland assessment.

Bryan/Tripoint Exhibit 3- and document with a title of “ Land Use Impact of Setback Differences on WECS Development”

Bryan/Tripoint Exhibit 4 – Estimated Limited Rate Fund for Tax Revenue.

Bryan/Tripoint Exhibit 5- Illinois Department of Revenue, Wind Energy Device Valuation document.

Kulasik 1 – A document providing lightning information

Kulasik 2- A copy of Grounding of Wind Power systems and Wind Power Generators

Kulasik 3- A oil refinery incident document from Chuck Goudie

Kulasik 4- A map indicating setback areas from an ExxonMobil Oil Corporation facility.

Kulasik 5- A material Safety Data Sheet on Lead

Kulasik 6- A material Safety Data Sheet on Sulfuric Acid

Kulasik 7- A material Safety Data Sheet on Castrol Gear Lubricant

Kulasik 8- A material Safety Data Sheet on mineral oil

Kulasik 9- A document, Calculating Wind Turbine Setbacks With Science Instead of Politics, by Paul Crowe.

Kulasik 10- A map indicating the distance of a wind turbine from Tri-Point Elementary

Kulasik 11- A second map indicating the distance of another wind turbine from Tri-Point Elementary

Gerber 1 – Livingston County Zoning Board of Appeals Report and Recommendation for Application ZT-3-16, 12/20/16.

Campbell 1 – A document, Sunbury Railroad Prairie Nature Preserve, Livingston County

Campbell 2 – An excerpt of the Livingston County Soil Survey that references Prime Farmland.

Campbell 3 – A document from Iberdrola Renewables on Post Construction fatality surveys of the Streator Cayuga Ridge South Wind Project. (Birds and bats) June 2012. Mr. Blakeman suggested it be excluded. Chair Huisman agreed to accept it since she was her to be questioned about it, and they can discuss the value of it if need be during the board discussions.

Slagel 1 - A copy of the July 31, 2017 minutes of a Livingston County Regional Planning Commission meeting at which the minutes of their June 5, 2017 meeting were approved pertaining to a recommendation on Livingston County zoning case ZT-3-17 was made.

Callejas 1 – A copy of a Pontiac Daily Leader article, Experts offers insight to wind farm questions.

Callejas 2 – A copy of a Power Point, Wind Turbine & Property Value, a presentation by Kurt C. Kielisch.

Mr. Blakeman said he thought they should be denied since they apply to a special use hearing.

Chair Huisman agreed to accept them as everything else has been and she was here to be questioned about them, again the weight of the documents can be given during discussions.

So all exhibits were accepted.

Mr. Flott questioned as to if Mr. Cornale had an exhibit from the first night. This exhibit had not been pursued. Further questioning was discussed

The chair noted it is time to recess the meeting, and to start the next meeting more questions can be asked and more testimony can be given if the situation warrants.

Questioning procedures were further discussed, along with closing the case and proceeding with the zoning board discussion. The length of closing statements was discussed.

Mr. Blackard moved, seconded by Mr. Kiefer, that this meeting be recessed to October 5, 2017 at 7:00 pm.

This motion was approved by a unanimous vote. .

This meeting was recessed at 9:50 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