

LIVINGSTON COUNTY REGIONAL PLANNING COMMISSION
LIVINGSTON COUNTY HISTORIC COURTHOUSE
112 W. Madison St., Pontiac, Illinois 61764

APPLICATION FOR VARIATION - LIVINGSTON COUNTY ZONING ORDINANCE

For Office Use Only

Applicant

Name Livingston Wind Project, LLC

Filed Date _____

Address 15445 Innovation Drive

Fee _____

Case V.

San Diego, CA 92128

Receipt No. _____

Phone 612-486-4523

Publication
Cost _____

Owner(s)

Name Howard J Miller Trust

Receipt No. _____

Address _____

Hearing Date _____

DATE FILED

Decision Date

Phone 815-210-1955 or 803-897-4912
(attach list if necessary)

Approved _____ Denied _____

For Office Use Only

Legal description of property: 06-31-300-004 S31 T30 R8 15 ACRES W950 OF N687.79 OF FOLL: W80 ACS
LYG S OF THE N300 ACS OF SEC 31

Street address: There is no street address. The property is located to the northeast of the intersection of E
2700 Rd N and N 3000 Rd E.

Property interest of applicant: Applicant has an option to purchase the property in fee simple.

Present Use: Crops

Zoning District: Ag

A variation: in Property line setback pursuant to § 56-618(h)(6) to allow for the construction of a substation
closer than 1600 feet to an adjacent property with a primary residence on it.

Specific distances (if applicable): See Attachment 1. The ComEd Substation will be located approximately 10'
from the property line of APN 06-31-100-003; however, the ComEd Substation will be located over 2,500'
from the primary residence on APN 06-31-100-003

Attachment No. 1 — Submit a map drawn to scale (as required by the Zoning Administrator) of the area included in the application and the abutting area within 200 feet (additional area may be required by the Zoning Administrator) showing the zoning classification; dimensions and use of all buildings and/or structures (existing and proposed); driveways; parking areas; right-of-way lines for streets and roads; easements; provision for surface drainage; proposals for sewage disposal systems; distance of building(s) and/or structure(s) from front, side and rear property lines; and distance of building(s) and/or structure(s) from center of public access road(s).

Additional Attachments — Submit additional attachments as required by the Zoning Administrator.

I (we) certify that all of the information presented above is true to the best of my (our) knowledge and belief.

Kathryn d. O'Hair _____ 7/8/22 _____
Applicant (s) Signature (s) Date

STATEMENT OF APPLICANT - OWNER STATUS

Indicate correct status by signifying with an X

APPLICANT**

OWNER

Individual (s)

Alter ego or representative of individual (s)
(List the name (s) and address (es) of the actual and true principal)

Corporation
(List the names and addresses of all officers and directors and identify by title; also list the names and addresses of all stockholders and shareholders owning an interest in excess of 20% of all outstanding stock)

Business or entity doing business under an assumed name
(List the names and addresses of all true and actual owners)

Partnership
(List the names and addresses of all partners)

Joint Venture
(List the names and addresses of all joint venturers)

Syndicate
(List the names and addresses of all syndicate members)

Unincorporated Voluntary Association
(List the names and addresses of all members)

**Applicant is the holder of an option to purchase the property in fee simple and will exercise that option prior to constructing the ComEd Substation on this property subject to the variance requested herein.

LIST OF NAMES AND ADDRESSES REQUIRED ABOVE

LWP has been organized to own and operate the Project. LWP is a Delaware limited liability company approved by and in good standing with the Office of the Secretary of State of Illinois. The officers of LWP are Cliff Graham, President; Kate O'Hair, Vice President; Dan Summa, Chief Operating Officer; Luis Silva, Treasurer; and Benoit Rigal, Secretary. LWP's address is 15445 Innovation Drive, San Diego, CA 92128.

LWP is owned by EDFR-Dev., which is LWP's sole member and sole manager, and currently holds the entire 100% membership and ownership interest in LWP.

APPLICATION EXPLANATION

Project Name:

Livingston Wind Project

Requested Zoning:

Not applicable. The property is zoned as an A1 Agricultural District. LWP is requesting a property line setback variance as described in more detail below.

Explanation and description of request or project:

A. Project Overview

Applicant Livingston Wind Project, LLC ("LWP") is a wholly owned subsidiary of EDF Renewables Development, Inc. ("EDFR-Dev."), which in turn is wholly owned by EDF Renewables, Inc. ("EDFR")—a leading wind energy company with expertise in the development, finance, construction, and operation of wind power projects throughout the United States.

LWP is concurrently filing an application for an approval of a special use permit for a Wind Energy Conversion System ("WECS") and for siting approval of the WECS ("SUP Application") in accordance with the provisions of the Livingston County Zoning Ordinance (the "Zoning Ordinance") and, in particular, Article VIII of Chapter 56 governing Wind Energy Conversion Systems (the "WECS Article"). The WECS that LWP seeks to construct in Livingston County (the "Project") is the result of more than four years of collaborating with Livingston County landowners, farmers, other residents, and governmental staff and officials.

The Project will be located primarily in Broughton and Sullivan Townships. The Project may also locate up to three turbines in the northeast quarter of Union Township, all located within a half mile of the Township's border. The Project may additionally locate up to four turbines and a substation in Round Grove Township, all within a mile of the Township's southern border.

The Project will consist primarily of the following facilities and the infrastructure and equipment that support them: wind turbines, the electrical system including underground collection wires and overhead transmission lines, meteorological towers, access roads, and an operations and maintenance building. Planned locations of these facilities are shown on the preliminary Concept Plan attached as TAB 5 to the SUP Application. The Project will consist of a maximum of 88 wind turbines. The aggregate net generating capacity will be approximately 255 megawatts ("MW") of electricity, based on a generating capacity of the individual wind turbines of approximately 3-5.5 MW each. The maximum height of the wind turbines (from the wind turbine foundation to the tip of the rotor blade at its highest point) will be no higher than 500 feet and the maximum rotor diameter will be a maximum of approximately 476 feet (based on a maximum rotor blade length of approximately 233 feet).

LWP and its affiliates will invest approximately \$378 million in the community to develop this Project and substantial economic benefits will follow, including an estimated 414 new local jobs during the construction period, and approximately 10 to 15 skilled local permanent operations and maintenance jobs, a new source of property tax revenue averaging \$2.6 million per year for the 40-year anticipated life of the Project, and over \$150 million in payments to landowners over the anticipated life of the Project. LWP, or its affiliates, have entered into agreements with more than 230 landowners in Livingston County and each of these landowners has voluntarily agreed to have a portion of the Project developed on their property consistent with the SUP Application. Note that LWP and its affiliates cannot compel landowners to enter into agreements, nor does LWP or its affiliates have a right to condemn land. The Project truly is a cooperative effort between LWP and these landowners. In addition to the local economic benefits, the Project will generate enough electricity for approximately 113,000 homes, and will do this without polluting the air or water or depleting reserves of non-renewable fossil fuels.

B. Description of Substations and Need for Property Line Setback Variance pursuant to Section 56-986(a)(2)(a).

A necessary component of the Project is the construction of two substations, for which LWP is seeking permission to construct in its application for a special use. The WECS Article, § 56-618(h)(6), requires that WECS substations shall be set back 1,600 feet from the property line of any property containing a primary structure.

The first substation (the "Project Substation") is expected to be located in Broughton Township and will collect electricity from all of the Project turbines and step up the electricity to 345 kV for transmittal to the second substation. LWP does not need a variance to construct the Project Substation.

The second substation (the "ComEd Substation") will be constructed on the northern half of parcel 06-06-31-300-002 in Round Grove Township (the "ComEd Substation Parcel") as depicted on the map enclosed as Attachment 1. The ComEd Substation Parcel is adjacent to an existing Commonwealth Edison ("ComEd") transmission line and the ComEd Substation will connect into the ComEd transmission line to transmit energy generated by the Project into the PJM grid. For this reason, the ComEd Substation must be sited at this location.

Applicant is the holder of an option to purchase the ComEd Substation Parcel in fee simple from the parcel's current owner and will exercise that option prior to constructing the ComEd Substation on the ComEd Substation Parcel subject to the variance requested herein. Accordingly, during construction, LWP will own the ComEd Substation Parcel and the ComEd Substation. After constructing the ComEd Substation, and prior to full commercial operation of the Project, LWP will convey the ComEd Substation and the ComEd Substation Parcel—including all rights in the special use permit and improvement location permits as they pertain to the ComEd Substation—to ComEd. Once transferred to ComEd, the applicable setback in the WECS Article to substations will no longer apply to the ComEd Substation because the ComEd

Substation and ComEd Substation Parcel will be owned by a public utility under the Illinois Public Utilities Act.

Nevertheless, at the time of construction of the ComEd Substation, and while LWP still owns the ComEd Substation Parcel, the ComEd Substation will be fewer than 1,600 feet from the property line of parcel 6-31-100-003, which is a property containing a primary structure.

LWP requests that the ZBA grant it a variance of the setback requirement in § 56-618(h)(6) as it pertains to the ComEd Substation's setback from parcel 6-31-100-003. LWP requests that the ZBA grant the variation such that the ComEd Substation can be constructed approximately 9.5 feet from the property line of parcel 6-31-100-003. Notably, the ComEd Substation will still be located over 2,500 feet from the primary structure on the parcel 6-31-100-003. Further, the affected property owner (Tom Fox—the owner of parcel 06-31-100-003 and the resident of the primary residence on parcel 06-31-100-003) has provided a letter supporting the Project and the variance requested herein. That letter of support is attached as Attachment 2.

LWP will accept a condition on the variance requiring confirmation that LWP will convey the ComEd Substation and ComEd Substation Parcel to ComEd.

EXAMPLES OF FEES FOR VARIATIONS

Application Filing Fee: \$ 125.00

Publication Fee: Usually between \$40 and \$70. (The exact amount varies according to the length of the notice.)

Location Improvement Permit Fee: \$20.00 - \$100.00+ (The exact amount varies according to the type and size of the improvement.)

Other fees *may* be applicable, such as fees to the Livingston County Health Department.

STANDARDS FOR VARIATIONS

Members of the Zoning Board of Appeals shall require evidence that the proposed variation will not:

LWP's request for a variance satisfies each of the applicable standards that follow. Evidence supporting LWP's satisfaction of the applicable standards is found below, included with LWP's Application for a Special Use Permit (the Application Binder) filed concurrently with this Application for Variance, and will be further supplemented during our presentation and documentation in connection with the public hearings for the Special Use Permit and this Variation, all of which LWP adopts and incorporates herein.

1) Conflict in any respect with the Livingston County Comprehensive Plan.

Comments:

The variance requested is not in conflict with the Livingston County Comprehensive Plan. The 2020 Livingston County Comprehensive Plan states the County's goal is to strive to preserve the most productive and suitable land areas for agriculture, while remaining open to enhancing the agricultural economic base by considering property development that may be related to the processing of agricultural products, which can add value to farm products and possibly create jobs and income for Livingston County residents. "This job creation and income," the Comprehensive Plan notes, "can enhance the economy with added value by having money circulate through the county business and financial institutions adding to the economic wellbeing of the county as a whole."¹ Economic well-being supports the goal of preserving the rural character of the County without excessive development and supports the preservation and expansion of agricultural and natural resource business.

The Project accomplishes all of these goals. It is a natural resource business. It fortifies the agricultural use and way of life in Livingston County and ensures a diverse revenue stream to supplement the income of local farmers who can reinvest that revenue into agricultural land use and the community. The Project will inject hundreds of millions of dollars into the local economy and create hundreds of jobs during the construction phase. Approximately 10-15 permanent onsite jobs will endure after the Project is commissioned. These benefits require fewer than 140 total acres of agricultural land (including the wind turbines, access roads, and related facilities). Outside of the land used by the Project, the remainder of participating farms and neighboring farms are unaffected and can continue to farm or ranch without needing to consider additional, more intrusive development. Further, the cultivation of energy from wind—a natural resource—on agricultural land is "farming," and the "wind farm" is consistent with the County's goal of preserving agricultural land for agricultural use. The Project is entirely consistent with the Livingston County Comprehensive Plan and ensures that Livingston County's

¹ 2020 Livingston County Comprehensive Development Plan at 1, 35, available at <https://www.livingstoncounty-il.org/wordpress/wp-content/uploads/2014/12/UCLC-13.pdf>.

rural character and agricultural heritage will persist.

Specifically, the variance requested does not impair the goals of the Comprehensive Plan. The variance is a necessary element to developing the Project, and so it is conducive to achieving the goals of the Comprehensive Plan alongside the Project as a whole. The variance allows the ComEd Substation to be located in close proximity to an existing ComEd transmission line, thus reducing the costs to interconnect with the PJM grid, consolidating these two like uses on adjacent ground and potentially reducing the number of additional overhead transmission lines required in the County. There are no other parcels that allow for this type of access to the ComEd transmission line and that also satisfy the setbacks required by the WECS Article for a substation from the boundary of a property with a primary structure.

2) Impair an adequate supply of light and air to adjacent property.

Comments:

Granting the requested property line setback variance will not impact the supply of light and air to the adjacent property. Although the ComEd Substation will be fewer than 1,600 feet from an adjacent property with a primary structure, the primary structure affected is approximately 2,500 feet from the anticipated ComEd Substation. The ComEd Substation will be approximately 50 feet tall; the final substation design and specifications will be determined by ComEd. The ComEd Substation will not have any particulate emissions into the air and will not pollute the air. It will also be next to an existing ComEd transmission line thus consolidating the uses to limit areas adjacent to a substation. The ComEd Substation will not impact the supply of light and air to the adjacent property or any other property.

3) Increase the hazard from fire and other dangers to said property.

Comments:

The ComEd Substation will not materially increase the risk of fire or danger to the ComEd Substation Parcel or any adjacent property. The ComEd Substation will comply with all applicable local, state, and national codes, and relevant national and international standards, such as ANSI and the International Electrical Commission. The ComEd Substation will be graveled and fenced, with reasonably visible warning signs posted in compliance with section 56-618(f) of the WECS Article.

4) Diminish the taxable value of land and buildings in the vicinity and throughout the Jurisdictional Area.

Comments:

As demonstrated in the market analysis attached as TAB 29 to the SUP Application, the data indicates that wind energy facilities do not have a negative impact on adjacent property values. Granting this variance will not impact the taxable value of land or buildings in the vicinity and throughout the jurisdictional area. Instead, as demonstrated in TAB 13 of the SUP Application, once the Project is constructed, the Project will generate additional taxes to the taxing bodies,

supporting the community, averaging \$2.6 million per year over the approximately 40-year life of the Project. The support of the property owner for this improvement is evidence that the owner does not see this substation location as determinantal to his property.

5) Increase or cause congestion in the public streets.

Comments:

Granting the requested variance will not increase or cause congestion in the public streets. The Project will generate limited traffic in connection with its ongoing maintenance and operation, which will have minimal, if any, impact on public streets, including at the ComEd Substation. The variance will not impact this limited volume of traffic.

The construction period is relatively short thereby helping to minimize the impact on roadways even during this period. Prior to the start of construction, LWP will obtain the approval of County and Township road officials for all applicable routes proposed for construction and maintenance purposes. LWP will enter into a road transportation agreement with each applicable road jurisdiction. As a part of the road transportation agreement, LWP will identify public roads that will be used for construction purposes and will establish a transportation plan in consultation with the Township Road Commissioners and the County Engineer. LWP is committed to repairing road damage caused by the construction, operations, maintenance, or removal of the Project, and will provide financial assurance to ensure that this obligation is met.

6) Otherwise impair the public health, safety, comfort, morals and welfare of the inhabitants of the Jurisdictional Area.

Comments:

The Project is specifically designed to promote the public health, safety, comfort, morals and welfare. It provides a domestic source of renewable electric generation that does not pollute the air or water, is not subject to the price volatility of fossil fuels, and is not subject to the potential volatility inherent in reliance on foreign-controlled energy sources. Electricity is essential to all American life and the wind farm will help assure that electricity is readily available at a reasonable cost while protecting the environment. Cultivating electricity from the wind produces no carbon, sulfur, nitrogen, or mercury emissions and generates no radioactive waste. In addition, no water resources are required for wind-generated electricity.

The locations of wind turbines and related facilities, including the ComEd Substation, have been carefully chosen to ensure compatibility with the environment and existing land uses in the area. LWP and its affiliates have engaged noted experts in the fields of mechanical and electrical engineering, environmental preservation, wildlife, noise, wetlands, real estate, and microwave broadcast/telecommunications, among others, to ensure that the Project will comply with all applicable federal, state, and local laws and will provide benefits to the community and the environment. LWP has commissioned dozens of studies to ensure that the Project is compatible with this location and will not risk the local community, land, or wildlife. At the same time, the Project provides significant direct economic benefits to property owners,

job holders and to the governmental entities that support the public health, safety, comfort, morals and welfare including without limitation the Counties, Townships, Schools, and police and fire departments. As indicated in the SUP Application, the Project, including the ComEd Substation, from design to construction to operation and maintenance and even decommissioning has been extensively planned to ensure the benefits to the community without being detrimental to or endangering the public health, safety, morals, comfort or general welfare.

7) The plight of the owner is due to unique circumstances.

Comments:

There are unique circumstances requiring the need for the requested property line variance. The Project will need to interconnect to the ComEd transmission line that traverses Livingston County to connect into the PJM grid. The ComEd Substation Parcel is the best location to construct the ComEd Substation for that interconnection. There are no other parcels that allow for this type of access to the ComEd transmission line and that also satisfy the setbacks required by the WECS Article for a substation from the boundary of a property with a primary structure. Access to the ComEd transmission line is a unique consideration for this Project and the ComEd Substation Parcel.

8) The variation, if granted, will not alter the essential character of the locality.

Comments:

The property line setback variation will not alter the essential character of the locality. The Project will preserve the rural character and agricultural heritage of the community without excessive development. It will supplement the income of local farmers who can reinvest that revenue into the agricultural land use and the community. The ComEd Substation is a necessary component of the Project.

9) Give the owner or occupant of the property in question privileges not generally held by other property owners or occupants in the same vicinity or district.

Comments:

The property line setback variation does not extend special privileges to LWP. Notably, the ComEd Substation will still be located over 2,500 feet from the primary structure on parcel 6-31-100-003. Further, the affected property owner (Tom Fox—the owner of parcel 6-31-100-003 and the resident of the primary structure on parcel 6-31-100-003) has submitted a letter supporting the Project and the variance requested herein.

The Board of Appeals will also consider the following criteria in reviewing the proposed variation.

10) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the district in which it is located.

Comments:

LWP requires the requested property line setback variation to build the ComEd Substation on the ComEd Substation Parcel. Without the variation, LWP cannot build the ComEd Substation on the ComEd Substation Parcel. Construction of the ComEd Substation is a material component to the Project as a whole because the Project will connect to the ComEd transmission line at the ComEd Substation and will then connect into the PJM grid. The Project cannot yield a reasonable rate of return without access to the ComEd transmission line, and the only way to access the ComEd transmission line in an economically feasible way is to construct the ComEd Substation on the ComEd Substation Parcel.

11) The particular physical surroundings shape or topographical condition of the specific property involved would result in a particular hardship, as distinguished from a mere inconvenience, if the strict letter of the restrictions were carried out.

Comments:

The existence of the ComEd transmission line in close proximity to the ComEd Substation Parcel distinguishes the ComEd Substation Parcel from other parcels. That physical surrounding requires that LWP construct the ComEd Substation on the ComEd Substation Parcel. The requested property line setback variance is necessary to construct the ComEd Substation on the ComEd Substation Parcel. Without the variance, LWP and the entire Project will suffer a severe hardship because there is no other place to site the ComEd Substation with direct access to the ComEd transmission line.

12) The purpose of the variation is not based exclusively on a desire to increase the value of the property.

Comments:

The purpose of the variation is not based exclusively on a desire to increase the value of the property. The purpose of the variation is to allow the construction of the ComEd Substation at a location that allows the Project to interconnect with the ComEd transmission line at an economically feasible location so that the Project can connect to the PJM grid.

13) The alleged difficulty or hardship has not been created by any person presently having an interest in the property.

Comments:

The difficulty and hardship requiring the variance were not created by any person presently having an interest in the property. The difficulty and hardship are the consequences of the siting

of the ComEd transmission line and the need to interconnect to the ComEd transmission line. The ComEd Substation Parcel is the best place to site the ComEd Substation for that purpose, and the current property line setback in the WECS Article as it applies to LWP makes constructing the ComEd Substation on the ComEd Substation Parcel impossible. This creates a significant difficulty and hardship for the Project to interconnect with the ComEd transmission line and, ultimately, the PJM grid.