

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

Recessed Meeting
6:00 p.m.

April 10, 2023

The meeting came to order at 6:06 pm

Members Present: Joe Stock, Richard Kiefer, Neil Turner, Joan Huisman, William Flott, Dave Randolph, and Richard Runyon

Others Present: Zoning Administrator Jesse King, Assistant Zoning Administrator Trish Merlino, Attorney Andy Keyt, Attorney Kyle Barry, Attorney Phil Luetkehans, and Rebekah Fehr

Members Absent: None

Approval of the Agenda:

Huisman noted the agenda for this meeting. Stock moved, seconded by Randolph that the agenda for this recessed April 10, 2023 meeting be approved as presented. **Motion carried by roll call vote of all ayes.**

Approval of Minutes:

Huisman noted the minutes of the April 6, 2023 meeting and stated that it would be a good idea for the ZBA to have time to review the minutes before approving them.

Business to be reviewed:

Case ZT-4-23 – Livingston County Board

This zoning case pertained to the review of a proposed text amendment to update the county's wind energy ordinance to be in compliance with the new state law standards.

King gave an overview of the case and explained the need for the ordinance update.

Keyt then walked the board through the changes and additions that were made by himself and the Ag & Zoning committee of the county board. During Keyt's presentation there was a question by a board member as to whether a specific type of document should be required by the ordinance to prove a company's financial ability to fund the construction of the project. Keyt suggested that it should be left open so that the board would have the ability to request any information they needed in order to satisfy the requirement to prove that element of the ordinance. There was also discussion

on whether or not the definition of a “wind tower” should be updated to be more detailed. There was also discussion about the new setbacks that are required with the new law. In the natural resources section of the proposed ordinance, there was discussion about an issue with the wording of the proposed section stated that an applicant “must” comply with IDNR recommendations. There was some discussion if “must” should be “shall” or “may”. There was then discussion about the proposed decommissioning section of the ordinance.

Fehr then spoke as a county board member. Fehr asked Keyt if section 56-629 of the proposed wind ordinance was from the new state statute regarding wind & solar regulation. Keyt answered that it is not from the statute. Fehr then mentioned that there is still a trailer bill on the wind & solar siting bill and asked Keyt if the Agriculture Impact Mitigation Agreement can change at any time. Keyt responded that it can change at any time.

Luetkehans then presented testimony on behalf of the United Citizens of Livingston County. Luetkehans began by introducing himself and his background with legal work regarding zoning matters. Luetkehans then provided testimony with proposed changes in the following areas of the proposed ordinance:

- Adding language to the lighting section to eliminate substation lighting from extending beyond the property line. Additionally, adding that applicant be required to utilize the Automatic Detection Lighting System and show proof of filing with the FAA.
- Adding an ice throw section that requires the applicant to provide proof of an ice throw impact risk assessment being completed to not exceed a certain threshold.
- Adding an inspections section requiring inspections every 3 years to ensure compliance with the county ordinance.
- Adding a subsection to interference that considers a project in default if it is causing interference.
- Adding a definition and landscaping requirements to the mitigation of shadow flicker section.
- Adding language and additional testing requirements to the noise levels section.
- Adding additional testing to the natural resources section of the ordinance.
- Adding language to the decommissioning plan/deconstruction plan section of the ordinance to include reevaluation of the decommissioning value as well as remedies for costs that may exceed the decommissioning financial assurance.
- Adding a drain tiles section requiring applicants to identify all drain tiles within the project footprint and provide the information to the county.
- Adding language to the remedies section.
- Adding a complaints section requiring applicants to maintain a log of all complaints and submit them to the county on a monthly basis.
- Adding a special use expiration date for building permits to be obtained.

Huisman then announced a break at 7:15 p.m.

The board reconvened at 7:28 p.m.

The board then spoke with Luetkehans regarding his proposals clarifying some of the language and determining if his proposals were part of the Agricultural Impact Mitigation Agreement. A board member then asked Luetkehans if he was aware of any decommissioned wind farms in Illinois. Luetkehans stated that he was not, but was aware of some problems that exist in California regarding the older wind turbines there that have not been decommissioned and are not working.

The board then compared Luetkehans's proposals to the existing ordinance.

Barry, an attorney representing Tri-Global Energy then spoke on behalf of his client. Barry introduced himself and his experience with zoning law. Barry argued that many of the proposals that were suggested by Luetkehans were either not necessary or were potentially in violation of the new state law for being more restrictive than the state law. Barry also argued that some of the proposals that were made by Luetkehans were not necessary additions to the ordinance because they are already required by other agencies as part of the development process. Barry also argued that many of the proposals Luetkehans do not offer a right to cure which could be problematic for the county's ordinance. During Barry's testimony, there was discussion about the Pollution Control Board's regulations and how noise levels are measured as it relates to residential properties in the country. Barry argued that the measurement should be taken from the area of the property where it is used residentially such as a residence.

Luetkehans rebutted Barry's arguments by stating that the addition of a severability clause in the ordinance would help the county if any part of the ordinance crosses the line of being too restrictive. During Barry's testimony, he argued that the applicants must first get approval by the FAA for the Automatic Detection Lighting System and that requiring it could be problematic. Luetkehans agreed that the language should be adjusted to accommodate that concern. Regarding the Pollution Control Board measurements, Luetkehans argued that the measurement should be taken from the property line of a property that is primarily used for residential purposes.

Barry then rebutted Luetkehans's rebuttal by disagreeing with Luetkehans's assertion that the measurement should be taken from the property line.

Huisman then called for a break at 8:42 p.m.

Huisman then called the meeting back to order at 8:55 p.m.

Fehr then spoke as a county board member and asked Barry about his statement on IDNR and Fish and Game having to do post construction monitoring. Barry clarified that they yes, they do sometimes depending on certain factors. Fehr also asked about Barry's disagreement with the ice throw ordinance requirement. Barry explained that turbines do not operate efficiently if ice attaches itself to them, therefore, the blades are designed not to harbor ice buildup. In conclusion, Fehr

asked Barry if any of the companies he represents were in favor of Illinois HB 4412. Barry responded that he is not sure if they were or not.

Keyt then discussed with the board his concerns with the proposed changes to the draft wind ordinance. Keyt stated that the 0 candle lighting could be problematic and hard to enforce. Keyt recommended requiring down-lighting or shielded lighting instead. Keyt also recommended amending the Automatic Detection Lighting System to include a provision about FAA approval. Further, Keyt suggested that it may be difficult to find an expert that could evaluate ice throw and that the proposed section regarding the LaSalle- Sinclair factors could address ice throw if it were to be a concern. Regarding Luetkehans's proposed landscaping provision relating to shadow flicker, Keyt stated that if a turbine is projected to cause more than 30 hours of shadow flicker on a property each year, the board could just not permit that turbine site to be constructed. Keyt then commented on Luetkehans's proposed noise section by stating that he would suggest requiring the problem turbines to be shut down rather than the entire project as proposed by Luetkehans. Further, Keyt added that the provision suggested by Luetkehans to revoke the special use permit if left unmitigated could be a due process issue. Similarly, in the natural resources section of Luetkehans's proposed changes, Keyt suggested that the problematic turbines be shut down rather than the entire project. Regarding decommissioning and Luetkehans's proposal to place the financial burden of decommissioning on the property owner if the decommissioning assurance doesn't cover the cost to deconstruct the project, Keyt stated that it would be difficult to enforce that measure. Luetkehans's proposed change to limit the special use to 2 years after initial approval to obtain building permits is a common requirement that counties impose in their ordinance.

There was then a question from the board about whether or not the proposed drain tile section should be left in. Keyt stated that it has typically been a condition of approval in the past.

The board then walked through the proposed changes presented by Luetkehans and decided which regulations to implement and which parts of the proposed ordinance should be amended or removed.

Randolph moved, seconded by Turner that this case be recommended for approval with the amendments they made.

The motion carried by a roll call vote.

Kiefer –	Yes	Runyon –	Yes
Flott –	Yes	Stock –	Yes
Randolph-	Yes	Turner –	Yes
Huisman -	Yes		

Flott then made a motion, seconded by Runyon that this meeting be recessed until Thursday, April 27th at 6 p.m. **Motion carried by a unanimous roll call vote of all ayes.**

This meeting was recessed at 10:48 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,

Jesse J. King, Administrator
Livingston County Regional
Planning Commission