

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

LIVINGSTON COUNTY ZONING BOARD OF APPEALS

HERITAGE PRAIRIE WIND PROJECT

FINDINGS OF FACT AND RECOMMENDATIONS HEARING

AUGUST 12, 2024

APPEARANCES: MR. SETH UPHOFF
Attorney at Law
On behalf of the Applicant

MR. TOM DLUSKI
Attorney at Law
On behalf of the Zoning Board of Appeals

MR. ANDREW KEYT & ALEX RIVES
Attorneys at Law
On behalf of Livingston County

1 MS. HUISMAN: Good evening. We're at
2 6:15 and we'll call the meeting to order. Tonight is
3 the sixth continuation night of the Livingston County
4 Zoning Board of Appeals hearing for Heritage Prairie
5 Wind. With that we'll start with roll call.

6 MS. MILLER: Stock.

7 MR. STOCK: Here.

8 MS. MILLER: FLOTT.

9 MR. FLOTT: Here.

10 MS. MILLER: Kiefer.

11 MR. KIEFER: Here.

12 MS. MILLER: Runyon.

13 MR. RUNYON: Here.

14 MS. MILLER: Randolph.

15 MR. RANDOLPH: Here.

16 MS. MILLER: Turner. Huisman.

17 MS. HUISMAN: Here. With that I will
18 turn it over to our hearing facilitator Mr. Scott
19 Kains.

20 MR. KAINS: All right. Thank you, madam
21 chair. All right. Folks, as the chair said this is
22 the sixth night of this public hearing and at the
23 conclusion of the fifth night I closed the evidence
24 with the exception of a written statement from Mr. Joe

1 Smothers. I have asked the Zoning Administrator if
2 Mr. Smothers had submitted a written statement and she
3 said that he had not.

4 So we have one other item of business before
5 we begin the Zoning Board's deliberations. I was
6 approached on the way in to the building this evening
7 by Attorney Bob Lenz. Mr. Lenz represents several
8 road districts in and around the County. And,
9 Mr. Lenz, if you could come forward with your public
10 comments with respect to the road use agreements that
11 you are working on.

12 MR. LENZ: Thanks for doing that.

13 MR. KAINS: And, Mr. Lenz, if you could
14 just state your name spelling your last name for the
15 record.

16 MR. LENZ: Okay. My name is Robert
17 Lenz, L-E-N-Z. My address is 201 East Grove Street in
18 Bloomington, Illinois, 61701. I'm an attorney with
19 the Bloomington Office of the Meyer Capel Law Firm,
20 and for a number of years I've been engaged by the
21 County of Livingston to represent the County in
22 working with the County Highway Department to
23 negotiate a road use agreement. If and when the
24 County approves this project we want to be ready to go

1 as far as upgrading and maintaining and facing the
2 roads that are concerned with this project. I also
3 represent all of the township road commissioners in
4 this project and the road commissioners and the county
5 office are working together as a -- as a team. The
6 negotiations have been going on vigorously, nothing
7 like this goes entirely smoothly, but a mutual respect
8 and we expect to reach an agreement sometime hopefully
9 by the end of the year, and I just want to make this
10 report to you so -- because it's a requirement and
11 that you know that we're actively engaged in doing it.

12 That's all -- that's my sole report. I
13 promised I'd be less than two minutes. I hope I made
14 it. Unless you have any questions.

15 MR. KAINS: All right. Thank you,
16 Mr. Lenz. Anybody on the Zoning Board have questions
17 for counsel?

18 Okay. Very good. Mr. Lenz, thank you.

19 MR. LENZ: Thank you, very much.

20 MR. KAINS: Thank you. And you did stay
21 under two minutes. As an attorney I appreciate that.
22 I've never been able to keep anything under two
23 minutes. Ask my family. And the dad jokes even take
24 too long.

1 All right. With that the evidence is now
2 closed and it's now time for the Zoning Board to
3 deliberate and vote on the applications. There are
4 two pending cases, one a variance, one a special use
5 permit application, and I will turn it over now,
6 Mr. Keyt, or, Mr. Dluski, who wants to go first?

7 MR. KEYT: I'll go first, Mr. Kains.

8 MR. KAINS: All right. Very good.

9 Thank you, Mr. Keyt.

10 MR. KEYT: For the record, Andy Keyt on
11 behalf of the County Board. There are two items
12 really for the Zoning Board to address tonight in
13 relation to the special use permit application and the
14 variance. Within the special use permit application
15 the County -- or, I'm sorry, the Zoning Board of
16 Appeal's role is to set findings of fact which
17 Mr. Dluski will go through and then make a
18 recommendation to the County Board on whether to
19 approve, deny, approve subject to conditions the
20 special use permit application.

21 Secondly to that is also the review and
22 recommendation on any proposed conditions to the
23 County Board. Ultimately the special use decision is
24 within the purview of the County Board itself whether

1 to approve, approve subject to conditions or deny the
2 permit request, and also the conditions are also
3 within the purview of the County Board, but this
4 Board's role is to make recommendations on both of
5 those.

6 Also up tonight is the variance request. The
7 Zoning Board of Appeals has the final say on the
8 variance request. In terms of ordering this, my
9 suggestion would be we take up the proposed -- or
10 draft conditions for the Zoning Board to consider
11 first. I believe the Zoning Board has had distributed
12 to them a draft set of conditions in front of them and
13 then we would take up the special use findings of fact
14 and then a recommendation on the special use itself,
15 and then we would move to the variance if it was still
16 needed. But that ordering is up to the Zoning Board.
17 So if you want to take the conditions first we can
18 start with those.

19 MS. HUISMAN: Any objection from the
20 Zoning Board Members to that order? Okay.

21 MR. KEYT: Okay. Everyone -- the Zoning
22 Board should have in front of them a copy of the draft
23 conditions, again, these are draft conditions, these
24 would be whatever comes from the Zoning Board would be

1 a recommendation to the County Board on the
2 conditions. The County Board then has the final say
3 on the conditions themselves or whether to adopt the
4 conditions.

5 I'm going to start with page number 1. I'm
6 going to go through each condition and just the
7 substance of that condition, and if there's any
8 questions we can address them as we go along. In
9 total there are 33 draft conditions as part of the
10 document sitting in front of you.

11 In terms of the intro, the intro there is
12 sitting in with your draft conditions is relatively
13 boilerplate. There's a description of the project and
14 then some definition of what is defined as Applicant,
15 Owner, or Company, or Operator within the conditions
16 themselves. And the third paragraph there deals with
17 when we're referring to the ordinance defining what
18 we're talking about in terms of the ordinance. And
19 then the final paragraph just reads that the building
20 permit and improvement location shall apply and have
21 the same meaning throughout this document.

22 Any questions as to that intro? Okay.

23 Condition number 1. Commencement of the
24 Special Use. Our ordinance already defines what the

1 time period is for a developer to come back for -- to
2 apply for what is the County terms improvement
3 location permit which is also known in the industry as
4 a business permit. They would have to come back to
5 the County for that building permit by December 31st
6 of 2027. Our ordinance already allows for the three
7 years. Once they obtain that building permit they
8 would have 30 months from the time they commence that
9 construction to complete the project. If there's any
10 litigation that's filed it would toll that period of
11 time until the litigation is resolved. If the project
12 is not substantially completed by the applicable dates
13 above the permit shall expire, become null and void
14 unless there is prior to the expiration, an extension
15 of time granted by the County Board.

16 Is there any questions as to the substance of
17 paragraph -- or, I'm sorry, condition number 1? Okay.
18 Hopefully that's better.

19 Okay. So in terms of paragraph number 1, any
20 changes to the substance of paragraph number 1,
21 condition number 1? Okay. Hearing none.

22 Moving on to condition number 2. Special use
23 shall be granted for a term of 30 years. This would
24 allow the developer a 30 year period for the special

1 use and would allow a one time extension not to exceed
2 10 years from the County Board. So the County could
3 apply to the County to obtain an extension of that
4 period of time not to exceed 10 years. After that
5 period if they wanted to extend it further they would
6 have to go through the public hearing part just like
7 we're going through now for any extensions beyond that
8 time period.

9 Any changes to the language or substance to
10 paragraph number -- or condition number 2? Okay.
11 Seeing none.

12 Going on to compliance. This is a relatively
13 standard provision that requires compliance to the
14 project. With all of our state and local regulations
15 there is a fine provision that has been included in
16 addition to any other remedy provided by law or equity
17 which could be in our ordinance. A violation of the
18 ordinance, conditions, state or federal law shall
19 subject the company to a \$1,000 per day fine, per
20 violation until such time as the violation is secured.

21 Any changes or discussion with paragraph
22 condition number 3? Okay. Hearing none.

23 Paragraph number 4 deals with -- paragraph 4
24 deals with construction and maintenance hours. This

1 provision has time limits as to the period of time of
2 which they can perform construction between the dates
3 of September 1st and May 31st such as a school year
4 period, but the period would be no earlier than 7:00
5 a.m. and have to cease by 8:00 p.m. From June 1st to
6 August 31st, of course, there's longer hours, they can
7 go from 7:00 a.m. to 9:00 p.m., and then on Saturday's
8 it's 7:00 a.m. to 4:00 p.m., and then no work on
9 Sundays. They can apply or ask for the Zoning
10 Administrator to grant extensions or permit time for
11 construction outside those time periods if they need
12 to, so that's built in and if they do need additional
13 time for certain activities they can do so by asking
14 the Zoning Commissioner.

15 Any changes, discussions as to condition
16 number 4? Okay.

17 Going on to road agreements. This is another
18 fairly standard provision that is within ours. The --
19 it is required that they have all of their road usage
20 agreements with the County Board, applicable township
21 road districts and any other public body with
22 jurisdiction over public roads to be utilized by the
23 company. And before there is an issuance of the
24 building permit they would have to have those in hand

1 along with the posting of any financial assurances.

2 Any changes or discussion as to paragraph
3 number 5? Okay. Hearing none.

4 Paragraph number 6 deals with school buses
5 and vehicular traffic. Essentially what this requires
6 is they shall comply with restrictions, requirements
7 imposed by the County Board or Zoning Administrator
8 upon project construction and maintenance traffic in
9 order to avoid conflicts with school bus traffic, farm
10 or other vehicular traffic for the project area. They
11 would also have to have a website that would post
12 their planned traffic pattern at least 72 hours in
13 advance. Any changes to the planned activity may
14 occur up to 48 hours and have to be posted to the
15 website and social media page that they utilize.

16 Any discussions or changes to condition
17 number 6? Okay. Seeing none.

18 Condition number 7 deals with a couple
19 things. One is restriction on the turbines to be
20 used. As you recall our shadow flicker noise
21 monitoring only had two models that were utilized for
22 shadow flicker and noise modeling purposes, this would
23 restrict them to utilize those two models of turbines.
24 If there are changes within that project including

1 replacing the turbines or significant components that
2 will change the height, noise output, increase the
3 nameplate capacity or materially affect other
4 conditions or standards set forth in the ordinance
5 then the company has to apply for amendments to such
6 use and go through this public hearing process again.
7 If there is movement of the turbines from where they
8 propose them within the application they have to
9 provide an updated sound or shadow flicker study prior
10 to applying for the improvement location to the Zoning
11 Administrator to review, for the county to review.

12 Any changes as to paragraph number 7
13 regarding the turbines?

14 Turbine location. The turbines are
15 restricted to those properties and in those locations
16 set forth in the project application. They can adjust
17 the wind turbine within 100 feet in any direction set
18 forth in the project application, keeping in mind that
19 there is a restriction that would have to apply and
20 give us the noise -- updated noise and shadow flicker
21 for those moved turbines. There is no other substance
22 to the paragraph number 8.

23 Any changes to condition number 8?

24 MS. HUISMAN: I've got one question.

1 Why does the last sentence specifically address
2 microwave communications but no other interference?

3 MR. KEYT: Setback noise, shadow flicker
4 requirements set forth in the Ordinance, including
5 Section 56-618(h), and shall satisfy all other
6 Ordinance requirements and applicable state or federal
7 requirements, and shall not adversely affect any
8 microwave communications. I think that's from our
9 past conditions that we've utilized has that same
10 language. We could probably end it as shall satisfy
11 all other ordinance requirements and applicable state
12 or federal requirement.

13 MS. HUISMAN: Unless you think there's
14 other things that could end a clear way, not just
15 microwave communications. So we either have to
16 include all of them or take that off, but it just has
17 to apply with the Ordinance.

18 MR. KEYT: Yeah, we could take that
19 clause off, that last -- and it shall not adversely
20 affect any microwave communications. Yeah. Okay.
21 I'll take that out. If there's any objection to
22 removing it let me know. It sounds like there isn't.
23 Okay. That clause will be amended.

24 Then we go on to condition number 9 deals

1 with environmental conditions. This is largely U.S.
2 Fish and Wildlife Service and IDNR requirements. I
3 think you recall from the EcoCAT there's a number of
4 conditions that were -- that were requested from IDNR
5 or recommended from IDNR which initially were
6 appropriately close to the conditions of approval,
7 that's what this paragraph deals with.

8 One issue to keep in mind is that there is a
9 new bald eagle raptor and that survey identifies a
10 eagle's nest they would have to consult U.S. Fish and
11 Wildlife Service. If that occurs then they have to
12 consult IDNR and the Fish and Wildlife Service and
13 they have to advise the County Zoning Administrator of
14 any actions that IDNR and the U.S. Fish and Wildlife
15 Service requests.

16 The rest of -- the remainder of that
17 paragraph 9 are all requests or recommendations that
18 came from the U.S. Fish and Wildlife Service or IDNR.

19 Any changes or discussion as to condition
20 number 9? Okay. Hearing none.

21 Condition number 10 deals with soil erosion,
22 conservation drainage. Essentially, the company shall
23 provide soil erosion prevention and remediation
24 measures as reasonably required by the County Board

1 Zoning Administrator. No construction may begin until
2 implementation of the soil erosion measures required
3 by the County Board Zoning Administrator. Company
4 shall obtain all other necessary state and federal
5 permits. There also is a requirement that the company
6 utilize local contractors unless one's not available
7 within the time period that they can get it done as
8 there are time period requirements for drain tile
9 repairs, but they would have to utilize local
10 contractors to make those maintenance and repair
11 activities.

12 Any changes or discussion as to paragraph
13 number 10? Okay. Hearing none.

14 Transmission interference. This provision
15 deals with any interference. Our Ordinance already
16 has some interference requirements within the
17 Ordinance. So if there's interference that then takes
18 place there's certain actions that the company has to
19 take. We're adding into this the company shall also
20 respond to any complaints related to interference with
21 emergency service communications and/or weather radar
22 within 24 hours and shall take steps necessary to
23 remedy such interference within 7 days. If the
24 interference persists, company shall cooperate with

1 all reasonable requests of the County to identify the
2 cause of the interference and remedy of the same.

3 Any questions or discussions as to
4 paragraph -- condition number 11? Okay. Hearing
5 none.

6 Paragraph -- or condition number 12 deals
7 with complaints and resolution. Essentially this
8 requires them to maintain a common hotline to
9 receiving complaints related to the project. There
10 also would have to be manned 24 hour emergency contact
11 phone number if an emergency say arises at the
12 project.

13 Any questions or discussion or changes as to
14 paragraph number 12, condition number 12? Okay.
15 Hearing none.

16 Number 13 deals with decommissioning and
17 security. Prior to the issuance of a building permit
18 the company shall negotiate the terms of and enter
19 into an agreed upon decommissioning agreement plan and
20 financial assurance with the County. Anything goes
21 through the instances that basic framework for what
22 that might be included is the decommissioning
23 financial assurances are subject to yearly increases
24 of at least 3 percent to account for inflation and a

1 10 percent contingency for administrative costs.

2 Any questions or changes as to paragraph,
3 condition number 13? Okay. Hearing none.

4 Paragraph 14 deals with liability insurance.
5 Just requires that they increase their liability
6 insurance if the state or federal law increases the
7 liability insurance amounts. Before they get a
8 building permit they have to provide proof of the
9 insurance to the Zoning Administrator.

10 Any changes, questions as to paragraph 14?
11 Okay.

12 Condition number 15 deals with assignment.
13 So the County does have an assignment clause within
14 its -- within its conditions proposed. If they were
15 going to assign special use permit they have to come
16 to the County, the County Board can approve that
17 assignment of the special use permit to another
18 entity, cannot reasonably delay or deny it but they
19 can have a say, but they do have to come to the County
20 Board for whoever might be acquiring that special use
21 permit. If they end up assigning the company
22 interest, paragraph -- that deals with paragraph b,
23 they can do so within the company. So they can assign
24 an interest that's a related or affiliated company.

1 One of the aspects that's included here is that
2 they're going to transfer or assign an interest in the
3 company itself. That they're going to -- they'll vest
4 themselves with the company. They have to do so to
5 the qualified assignee which would mean whoever is
6 buying that company has to be somebody that has
7 experience operating a project this size and has
8 sufficient assets to do so.

9 Any questions, changes as to condition number
10 15? Okay. Hearing none.

11 Condition 16 deals with dust mitigation.
12 This provision requires them to provide dust
13 mitigation plans to the Zoning Office for their review
14 and approval prior to them getting their building
15 permit.

16 Any questions or changes to paragraph 16?
17 Okay.

18 Paragraph 17 I'll probably spend a little bit
19 more time on. As you recall during the special use
20 application and there's also a variance request as to
21 the shadow flicker. The shadow flicker variance
22 request is a request to allow for their modeling that
23 is required in our application requirement to be
24 modeled in the real world weather conditions. Our

1 Ordinance requires it to be modeled under the
2 consideration of the sun is always shining. Setting
3 all of that aside, what this condition would require
4 of the Applicant is that they provide monitoring data
5 to the County for those residences that were modeled
6 over, there were 19 of them, modeled under real world
7 conditions and then also the next 10 highest modeled
8 receptor sites which is the next 10 residences that
9 were over that 30 hour limit in their modeling, they
10 would have to provide that data to the County every 6
11 months, they would have to do that for a five year
12 period. If at year 5 they are compliant they only
13 have to provide the data upon request of the County.
14 If they have any residences that are over the 30 hours
15 they would have to continue providing that data every
16 6 months for the next 5 years. So this would provide
17 a monitoring mechanism for the County to make sure
18 that they are compliant, if they're not compliant the
19 County can impose whatever remedy provision is
20 available to them in either their Ordinance or
21 condition itself. Prior to obtaining a building
22 permit from the County they would have to give us all
23 of the residential addresses that are going to be
24 monitored pursuant to those receptor sites for the 29,

1 19 that were modeled to be over the real world
2 conditions, plus the next highest 10. And then the
3 County would receive that data for the next 5 years
4 every 6 months.

5 Any questions or discussions about that
6 paragraph number 17?

7 MR. FLOTT: I've got a question. What
8 does monitoring mean? What -- is that actual
9 monitoring? They're going to put a machine there and
10 actually monitor the results?

11 MR. KEYT: What typically that involves
12 is -- my understanding is that those two models can
13 monitor certain locations off of the actual turbine
14 itself. What I would suggest that question is
15 probably something the developer probably can answer
16 for us. And so what I would request is that there's
17 an answer to that question you can provide it. Keep
18 in mind this is not evidence, this is just a response
19 to your question.

20 MR. FLOTT: Sure.

21 MR. UPHOFF: So when Aaron Anderson was
22 testifying he was the expert who testified about this,
23 and if you may recall, part of his testimony, maybe
24 not, and I'll try to -- I'll try to make it

1 understandable but overly simplify it. When they
2 create these what he referred to as calendars that
3 were in the reports that he generated, there were
4 these calendars that showed very specific periods of
5 time during the year where each day it could tell you
6 even a certain number of minutes or whether it's a
7 little over an hour of when there would be potential
8 shadow flicker at a particular receptor site. And so
9 when he was talking about monitoring that or tracking
10 that data he indicated that it would be, you know, it
11 would be -- you would have to look at essentially two
12 things. One is the turbine spinning so as to create
13 the flicker. So if the wind speed is above a certain
14 threshold, I think he said it was around 10 to 12
15 miles an hour then the -- and turbine's spinning which
16 they're not, their operating system would show whether
17 or not the turbine's spinning during that time period,
18 that's one element being that. Then the second
19 element is then whether or not the sun is shining. So
20 if the turbine is turning during that period of time
21 and if it's a sunny day that period of time then you
22 would take the maximum amount if shadow flicker
23 potential for that day and you track it, so that you
24 would mark it down for that day, there's, you know,

1 there's 30 minutes, 40 minutes, 20 minutes, whatever
2 it is, you would mark that for that day, and you would
3 continue to track that data every day and now we're
4 talking about having reports that would come every 6
5 months. So at the 6 month mark you would have an idea
6 of how much shadow flicker had accrued to that point
7 in time. And then as he talked about typically those
8 calendars are mirrors. So whatever happens in the
9 first 6 months you can be able to count on
10 approximately the same thing happening in the next 6
11 months. So you could use that to then anticipate
12 whether you're going to be close to the shadow flicker
13 limit by the end of the year or not, and if it appears
14 that you're going to be close to that shadow flicker
15 limit by the end of the year then when you get to the
16 next window of time on that calendar when there's a
17 shadow flicker potential then you would take
18 curtailment measures, so essentially shutting down the
19 turbines during those periods of time when shadow
20 flicker is a potential for that receptor site such
21 that you could then curtail during that second half of
22 the year to ensure that you're going to be below the
23 30 hours for the cumulative year.

24 MR. FLOTT: I -- I recall all that. I

1 also read all his disclaimers that really doesn't hold
2 into that. Is it actually going to be measured on
3 site or is this all computerized stuff?

4 MR. UPHOFF: When you say onsite what do
5 you mean onsite?

6 MR. FLOTT: Right there at somebody's
7 house.

8 MR. UPHOFF: No.

9 MR. FLOTT: Okay. I --

10 MR. UPHOFF: Specifically -- and I can
11 discuss why that's not really feasible. Number one,
12 he indicated that those types of monitor -- that type
13 of monitoring, his testimony was those are inaccurate,
14 because there's all sorts of interference that can
15 occur, you got birds interfering with it when they get
16 too close to the monitor, you can have tree leaves
17 that are waiving that can get too close to it, you can
18 have people tinkering with it because it's on private
19 property, so he was talking about how those are
20 inaccurate ways to measure this. But more
21 importantly, you then have the issues that come up
22 with trying to go onto somebody else's property. So
23 the County can't mandate that these receptors have
24 monitoring equipment on the property. They can't

1 mandate that the company be able to come onto the
2 property to access that equipment and just download
3 from that equipment and do all those things. So
4 logistically you can't force these people to have this
5 monitoring equipment. So the monitoring has to occur
6 from the operation side for the company.

7 MR. FLOTT: May I have permission to
8 read a statement that I wrote myself just thinking
9 about this.

10 MR. KEYT: You don't have to ask me for
11 permission.

12 MR. FLOTT: Okay. I'm a former County
13 Board Member. In 2007, I think, well, a year close to
14 that, I visited a wind farm project near Mendota
15 along -- along with a lot of other County Board
16 Members. This is when we were first writing the
17 Ordinance. I visited with a farmer who had a tower, a
18 wind farm tower on his property and he also had some
19 shadow flicker at his house. We sat in his yard and
20 talked about a lot of things. His solution to shadow
21 flicker is he took the newspaper and he went to the
22 bathroom and it was in the morning and the flicker
23 lasted about 10 or 15 minutes. That was just a mere
24 inconvenience for him, not a big deal and he was a

1 happy camper about the whole thing.

2 Today a non-participant, receiver number 131
3 in rural Dwight, I don't know who he is or even
4 exactly where that property is or what the house looks
5 like or anything, but that -- the flicker potential
6 from about 5:30 to 7:30 -- 5:30 p.m. to 7:30 p.m. for
7 about -- from about April 10th through August 25th,
8 130 days using your pro example, even if you take 60
9 percent of those days is good weather days, that would
10 leave 78 days of shadow flicker. If their daughter,
11 and I wouldn't know that the guy has a daughter or if
12 he has a pool, if their daughter wants to have a pool
13 party in the yard without flicker what the heck is the
14 procedure. That's a question for somebody.

15 MR. KEYT: Mr. Flott, I would direct a
16 couple things.

17 MR. FLOTT: Okay.

18 MR. KEYT: Since that time period, I
19 think it was 2007 you mentioned it's actually changed
20 very significantly for the County in that essentially
21 the State mandated what we can require in relation to
22 shadow flicker. That requirement is essentially that
23 they cannot have more than 30 hours of shadow flicker
24 on a non-participating residence. The State statute

1 also requires that if they are able to obtain a waiver
2 from the homeowners they can exceed that amount within
3 the waiver amount. So one thing -- one thing, number
4 one, our Ordinance restricts shadow flicker to 30
5 hours unless they have a waiver. They can't go over
6 and we reiterate that in our condition number 17 here,
7 they can't exceed 30 hours of shadow flicker
8 regardless unless they go get a waiver. So if they
9 don't have a waiver from someone they cannot exceed
10 that. If they did exceed that, the waiver limit, we
11 the County could go enforce whatever remedy provision
12 we would want to pick from our -- either our Ordinance
13 or the condition itself, either with a fine, there's a
14 number of other remedies that we could also take. So
15 those are -- I appreciate that fact story too to this,
16 that issue though is largely confined to the State
17 statute requires us to do and then what our ordinance
18 already has been.

19 MR. FLOTT: And I'm familiar with all
20 the State statutes. I just want to know what this guy
21 has got to do. His daughter wants to have a pool
22 party and this is for four or five months, 130 some
23 days he's got flicker from 5:30 to 7:30 at night. Is
24 he suppose to call Brittany? Is that -- who does he

1 call?

2 MR. KEYT: In terms if they were
3 exceeding the limit?

4 MR. FLOTT: Yeah.

5 MR. KEYT: Yeah. So if somebody had a
6 complaint, I feel like the shadow flicker is too high
7 beyond what's written here in this monitoring data
8 that they have to give to the County, number one, we
9 may see it with this monitoring that they give us;
10 number two, if somebody provided a complaint to the
11 County, the County has a remedy's provision within its
12 Ordinance that we could implement and that Ordinance,
13 that remedy's provision includes going out and
14 modeling it or -- not modeling it, but monitoring it
15 ourselves and then imposing whatever remedy's
16 provision we want to do which could include you have
17 to curtail the use of this turbine during that time
18 period to limit the shadow flicker issue in compliance
19 with the Ordinance requirements or it could include a
20 fine. So there's a number of remedies the County
21 could give them. If somebody made that complaint
22 like, hey, our shadow flicker I think is too high, we
23 the County could take action on that issue. They
24 would be in violation of our Ordinance.

1 MR. FLOTT: Okay. That sounds like a
2 lot of rigamarole. I just hope that there is some
3 easy way that this guy could handle that problem
4 without a lawyer, without the County having to take
5 lots of actions and so forth.

6 MR. KEYT: Yeah. They could also call
7 the developer, cause they're going to have to post a
8 number to the public to address that issue. So
9 somebody could call the developer directly and say,
10 hey, this is the issue I got going on, can you fix
11 this without even the county being involved, without a
12 lawyer being involved, they could call that developer
13 and say hey, here's my problem, I want you to fix it.

14 MR. FLOTT: I might give them Seth's
15 number.

16 MR. KEYT: I have his cell phone. I
17 should put it on the record. I'm just kidding. Okay.

18 MR. UPHOFF: I just wanted to double
19 check, did you say it was receptor 136?

20 MR. FLOTT: 131.

21 MR. UPHOFF: 131.

22 MR. FLOTT: Receiver I guess that is,
23 131.

24 MR. UPHOFF: So the projection -- the

1 projection for that -- from the report indicates that
2 over the course of the year it would be at 87 --
3 little over 87 hours.

4 MR. FLOTT: 87 hours.

5 MR. UPHOFF: So obviously we can't do
6 that with the law and so there would have to be one of
7 two things occur, reason number one, that owner would
8 waive, reach an agreement to waive that or; number
9 two, there would be curtailment so that it wouldn't
10 exceed 30 hours. So that person wouldn't be treated
11 any differently than any of the others.

12 MR. RANDOLPH: So, Seth, you guys would
13 shut that tower down completely for that period of
14 time that it would exceed, correct?

15 MR. UPHOFF: We'd have to, yeah, cause
16 otherwise we'd incur all the modifications and what
17 Andy was referring to.

18 MR. RANDOLPH: Thank you.

19 MR. KEYT: Okay. Any other questions on
20 paragraph 17?

21 MS. HUISMAN: Just one other thought.
22 This boils out, the testing and that this has -- the
23 tower has to be submitted to the County, but it
24 doesn't say anywhere what is required then for -- in

1 order to obtain like a curtailment. So if there is a
2 problem nowhere in here does it say then the County
3 can go to its remedy section or go to the fine or the
4 Applicant needs to be -- the company needs to go into
5 curtailment, whatever the terms would be. It's just
6 not in this paragraph.

7 MR. KEYT: It's not in that paragraph
8 largely, A, it's addressed elsewhere in our Ordinance
9 and; B, there is a compliance paragraph, number 3. So
10 construction and operation of the project shall be in
11 compliance with all federal, state and local
12 regulations. The construction and operation of the
13 project shall conform to all representations made by
14 the company in its application and all public
15 hearings, and these conditions. And then it goes on
16 to talk about the fine provision. If we could relay
17 that within that condition itself, but I -- it's
18 subsumed within that paragraph.

19 MS. HUISMAN: If you just take this
20 paragraph all by itself all that's required is that
21 they have to monitor or model and then report it. So
22 if you took this -- I know you're taking it as a
23 whole. I think other paragraphs that would end up
24 resulting in the company you need to take some other

1 kind of remedial measures, at least reference to -- at
2 least a reference to the remedy section or paragraph 3
3 where the fines be taken in or something. But this
4 condition in and of itself just requires testing.

5 MR. KEYT: So if we -- let me check
6 this. If we did a paragraph that just read in
7 addition to all other remedies provided by statute,
8 ordinance or these conditions, applicant shall
9 mitigate or provide mitigation for any shadow flicker
10 that may exceed the 30 hour.

11 MS. HUISMAN: Yeah. And maybe it makes
12 sense like the first sentence is very clear that
13 they're not going to be able to be in excess of 30
14 hours of shadow flicker and maybe right after that
15 what happens if it's -- whatever that sentence you
16 just said was.

17 MR. KEYT: Yeah. We could put that
18 after the first sentence --

19 MS. HUISMAN: Okay.

20 MR. KEYT: -- I read. In addition to
21 all the remedies provided by the statute, ordinance or
22 these conditions.

23 MS. HUISMAN: Yeah. And I know
24 curtailment is mentioned somewhere else, but including

1 curtailment.

2 MR. KEYT: So in addition to all the
3 remedies provided by statute or ordinance of these
4 conditions, Applicant shall utilize curtailment or
5 other mitigation techniques to comply with the
6 ordinance requirements.

7 MS. HUISMAN: I think that's fair.

8 MR. KEYT: Okay. Everyone in agreement
9 with that or opposed to that? Okay. Hearing none.

10 Any other changes or discussions as to
11 paragraph 17? Okay.

12 Number 18 deals with water use. As you
13 recall there is a batch plant, concrete plant for the
14 project within the County. If there's any water --
15 causing any water issues with a neighbor, for example,
16 having some issues with low water to their household
17 needs this would require them to provide some
18 remediation for that, anybody who is negatively
19 impacted.

20 Any questions as to -- or changes as to
21 paragraph 18? Okay. Hearing none.

22 Paragraph 19 deals with fire protection and
23 emergency response. Such as requires them to work
24 with our local fire protection districts and emergency

1 agencies to come up with an emergency response plan,
2 training and then also any equipment that might be
3 necessary for those agencies to respond to an
4 emergency on site. It also requires that they
5 reimburse emergency response agencies for their
6 reasonable cost to respond to an emergency that's
7 directly related to the project.

8 Any questions, changes as to paragraph 19?
9 Okay. Hearing none.

10 Paragraph -- condition number 20 deals with
11 existing underground utilities. Company shall work
12 with pipeline and other underground utilities to
13 insure the integrity of those pipelines or other
14 utilities.

15 Any questions or changes to paragraph number
16 20? Okay.

17 Paragraph 21 deals with the FAA and lighting
18 compliance. So before they get a building permit the
19 company has to demonstrate that the turbine locations
20 have been approved by the FAA, that they have height
21 requirements, they have to review and make a
22 determination of no hazard to each turbine. So before
23 they get a building permit they have to have the
24 determination of no hazard for each turbine. In

1 addition to that they have a confirmed utilization of
2 ADLS system, that's the aircraft detection lighting
3 system. So prior to the addition of any building
4 permit the company has to provide proof of the
5 application of the FAA for the aircraft detection
6 lighting system. That's prior -- I'm sorry, prior to
7 the issuance of any improvement location permits. And
8 then within one year of their commercial operation
9 date, when they start selling power on the grid they
10 have to have the ADLS approval in hand and start
11 operating in accordance.

12 Any questions, discussion, changes as to
13 condition number 21?

14 MS. HUISMAN: I've got one question.

15 MR. KEYT: Okay.

16 MS. HUISMAN: Is this where we
17 determined that IDOT was actually the proper
18 regulatory agency?

19 MR. KEYT: That's the airport issue.

20 MS. HUISMAN: Okay. So these are just
21 the exterior of the whole project and lighting and
22 that sensory system that detects?

23 MR. KEYT: Correct, yes.

24 MS. HUISMAN: Okay.

1 MR. KEYT: And that's entirely within
2 the purview of the FAA, but we can require that they
3 have the ADLS system.

4 MS. HUISMAN: Okay.

5 MR. KEYT: Number 22 deals with
6 reimbursement for County Expenses. So if the County
7 has to retain engineers, consultants or attorneys they
8 have to reimburse the County for those expenses.

9 As to paragraph 22, any changes or questions
10 as to paragraph 22? Okay.

11 Number 23, if they apply for a building
12 permit the company shall be deemed to have waived any
13 and all claims concerning the lawfulness, authority or
14 reasonableness of any of the conditions set forth
15 herein.

16 Any question or changes as to paragraph 23?
17 Okay.

18 Number 24 deals with defensive claims. So
19 projects get -- if the County ends up in a litigation
20 somehow relating to the project the developer has to
21 reimburse the County for its legal fees and expenses
22 and then indemnify the County for all claims,
23 settlements and judgments against said parties.

24 Any questions or changes as to paragraph 24?

1 Hearing none.

2 Paragraph number 25 deals with turbines on
3 adjacent property. Whenever a project like this gets
4 approved, years later maybe another project comes in
5 to the same area and makes the same similar
6 application for a wind farm. What feasibly could
7 happen, although it's very rare, there could be
8 interference from one turbine interfering with the
9 wind of another adjacent turbine. For example, this
10 project may have turbines that then are interfered by
11 a new project 20 years from now. This essentially
12 waives a complaint they may have in relation to
13 approval of the new project in the same area. So
14 company shall be deemed to waive any claims against
15 the County relating to the approval of wind turbines
16 for adjacent property for reasons which include but
17 are not limited to wake loss or other claims relating
18 to the production of energy by the company's turbines.

19 Any questions, changes to paragraph 25?

20 Okay. Hearing none.

21 26 deals with financial assurance. Company
22 shall provide to the satisfaction of the County a
23 surety bond or other financial assurance as defined in
24 the Ordinance to cover the cost of the construction of

1 the project; or reasonable evidence as to financing,
2 as approved by the County Board demonstrating the
3 financial ability of the company to complete
4 construction of the project.

5 Any questions related to paragraph condition
6 number 26? Okay. Hearing none.

7 27 deals with aerial application. They have
8 to work with farmers and aerial applicators within one
9 half mile of the project footprint and within the
10 project footprint itself. And is to create a best
11 management practices and protocols. If there are
12 increased costs related to the aerial application, the
13 company has to reimburse those farmers for the
14 reasonable increased costs related to the existence of
15 the project.

16 Any questions or changes as to paragraph 27?
17 Hearing none.

18 Paragraph 28 deals with JULIE. They just
19 have to become a member of state-wide on-call
20 notifications and updates its records accordingly.

21 Any changes or questions to paragraph 28?
22 Okay. Hearing none.

23 Paragraph 29 is the site control for the
24 substation, laydown, operations and maintenance,

1 meteorological towers, ADLS towers and batch plant.
2 So prior to obtaining their building permit they have
3 to provide proof of ownership of those parcels or
4 demonstrate ownership over the parcels or other
5 interest necessary for construction of the supporting
6 facility equipment. They have to have a survey of
7 those parcels. Any road use approval such as entrance
8 permits would have to be provided, and any FAA
9 approvals that may be necessary. We'll get to those
10 items.

11 Any questions or changes as to paragraph 29?
12 Okay. Hearing none.

13 Paragraph 30 deals with site surveys. They
14 have to provide site surveys for each turbine, tower,
15 substation location before applying for the approval
16 location permit after construction demonstrating
17 compliance with the Code requirements, largely the
18 setback issues, for the County to ensure that the
19 setbacks are properly met.

20 Any changes to paragraph number 30? All
21 right. Hearing none.

22 Paragraph 31 deals compliance with the
23 Ordinance. This states the requirements of these
24 conditions are in addition to and not in lieu of

1 requirements of the Ordinance. Any changes to
2 paragraph 31?

3 Okay. Paragraph 32 requires the company and
4 its owners shall register with the Illinois Secretary
5 of State as a domestic or corporation with a
6 registered agent within the State of Illinois. All
7 contractors and subcontractors shall also register
8 with the State of Illinois as a domestic or foreign
9 corporation with a registered agent in the State.

10 Questions or changes as to paragraph 32?

11 Paragraph 33 deals with venue. The company
12 and its owner agree that the sole venue and forum for
13 the resolution of any disputes shall be in the state
14 of Livingston County, Illinois and the Appellate
15 Courts of Illinois.

16 Any questions or changes as to paragraph 33?
17 Okay. Hearing none. That completes the conditions.

18 It would now be an appropriate time for
19 someone to make a motion to recommend those conditions
20 to the County Board as drafted and revised during our
21 hearing here tonight. Before someone makes that
22 motion I just want to make it clear that this is a
23 recommendation to the County Board, number one.
24 Number two, your recommendation on the conditions

1 should not impact whether or not you approve the
2 special use or not. So whether or not you make the
3 recommendation on conditions does not impact whether
4 or not you're approving the special use. Of course,
5 there are conditions that relate to it but ultimately
6 the conditions are within the County Board's purview.

7 So with that, any questions that I can
8 answer?

9 MS. HUISMAN: So how is this motion
10 going to be made? This is -- the zoning requires a
11 special use 5-24 and so we should state it that way
12 would be with conditions for this case and recommend
13 approval of the conditions as provided as amended
14 tonight?

15 MR. KEYT: Yeah. I think -- I think
16 we're only within that case right now. So I think if
17 somebody just made the motion to recommend approval of
18 those conditions by the County Board, I think that
19 would suffice.

20 MS. HUISMAN: Okay.

21 MR. RANDOLPH: I'll make the motion.

22 MR. STOCK: Second by Joe.

23 MR. HUISMAN: So we've got a motion by
24 Dave. A second by Joe. Okay. Any discussion?

1 MR. RANDOLPH: Call for question.

2 MS. HUISMAN: Did you have discussion,
3 Bill.

4 MR. FLOTT: I wanted to go back to that
5 waiver for just a second, back in 17 act. Might be
6 out of order here a little bit. Could that waiver
7 be -- the language in the waiver be either approved by
8 the County or reviewed by the County to make sure that
9 they didn't have to give away their life to sign that
10 waiver.

11 MR. KEYT: No. I mean, I can elaborate
12 on that if you want. But essentially that's an
13 agreement between two private entities, the company
14 and the landowner. The County should not impose
15 whatever the terms are to that waiver, nor get
16 involved in whether or not to approve the substance of
17 the waiver or not. That's ultimately between the
18 company and whoever the landowner is. Also I would
19 not recommend interfering in that relationship.

20 MR. FLOTT: Okay.

21 MS. HUISMAN: Okay. So we have a
22 motion, we have a second. Any other discussion?

23 MR. RANDOLPH: Call for question.

24 MS. MILLER: Stock.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. STOCK: Yes.
MS. MILLER: Flott.
MR. FLOTT: Yes.
MS. MILLER: Kiefer.
MR. KIEFER: Yes.
MS. MILLER: Runyon.
MR. RUNYON: Yes.
MS. MILLER: Randolph.
MR. RANDOLPH: Yes.
MS. MILLER: Turner. Huisman.
MS. HUISMAN: Yes.

MR. KEYT: Okay. Those conditions as amended will be recommended to the -- or are recommended to the County Board.

Next up to address is the findings of fact. Mr. Dluski represents the Zoning Board, he'll address those findings of fact and then after that will be whether to recommend approval or denial of the special use to the County Board.

MR. DLUSKI: Okay. So Tom Dluski, Zoning Board counsel. So the next section is going to be the findings of fact and recommendation. Everyone received a copy of the findings of fact and recommendation.

1 I think the first part -- or the first four
2 pages that we're dealing with are basically a layout
3 of the project, the project information, Applicant
4 information, identification of exhibits and witnesses.

5 With regards to the first 4 pages of the
6 findings of fact does anyone have any changes or
7 additions? Okay. Hearing none.

8 Page 4 through page 7 includes the siting
9 approval requirements which includes a general
10 description of the project, it includes the location
11 of the project, a description of the Applicant,
12 facility owners, includes the respected business
13 structures, names of the Applicants, facility owners,
14 all the required studies. Pages 4 through 7, does
15 anyone have any additions or changes?

16 MR. FLOTT: Why don't you back that down
17 a little bit. Number 7, why isn't that applicable at
18 this time?

19 MR. DLUSKI: Cause there is no good
20 neighbor plan offered at this time.

21 Any other changes or additions to that, pages
22 4 through 7?

23 MS. HUISMAN: Well, hang on a second.
24 We just got this tonight.

1 MR. DLUSKI: Okay. Take your time.

2 MS. HUISMAN: Give us just a minute.

3 MR. DLUSKI: Absolutely.

4 MR. KAINS: At this time, folks, members
5 of the Zoning Board of Appeals, would it be helpful
6 for you if we were to take a break and you were to be
7 able to go through these findings of fact either
8 that's been prepared?

9 MS. HUISMAN: Well, either that or just
10 go through them individually. I mean, if -- you could
11 probably get through them pretty fast, I mean --

12 MR. DLUSKI: Let's take a short break
13 and then we can discuss further.

14 MS. HUISMAN: Okay.

15 MR. KAINS: All right. Let's take a 10
16 minute break. I have 7:15. The Board will be in
17 recess until 7:25. Thank you.

18 (A recess was taken at 7:15 p.m.)

19 (Resume at 7:28 p.m.)

20 MR. KAINS: All right. Let's go back on
21 the record.

22 All right. Mr. Dluski, you are at present
23 going through findings of facts. For the information
24 of the general public, this is an essential part of

1 any hearing. The findings of fact are essentially a
2 summary of all of testimony that was presented. And
3 Mr. Dluski has informed me that there are 19 pages of
4 this summary, and I guess it's hard to summarize five
5 nights of testimony into a condensed version, but 19
6 pages, and so that's one of the reasons they were
7 going through the pages kind of in groupings, but
8 because the Board has requested that they go through
9 things a little bit closer, I would ask, Mr. Dluski,
10 if you could -- let's see, I think we were on page 7,
11 I believe.

12 MR. DLUSKI: That's correct.

13 MR. KAINS: Okay. Then beginning --
14 and, again, the first 7 pages were basically summaries
15 as Mr. Dluski said of who the Applicant is, what the
16 application's for, what the project entails, basic
17 things like that that are common ordinary in findings
18 of fact for zoning boards to look at and ultimately
19 approve subject to change, of course, but now we're
20 kind of getting into the meat of this, so, Mr. Dluski,
21 if you could resume your presentation to the Board
22 with respect to the findings of fact, and so I don't
23 know if you have them arranged in paragraph form or if
24 you just have separate sections or headings, but you

1 may proceed.

2 MR. DLUSKI: Thank you, very much. So
3 the next section is at the bottom page of 7 which is
4 Section 56-618, identified as design and installation,
5 and these are the design and installation
6 requirements. Subsection (a) is -- basically provides
7 that the commercial wind energy facilities will
8 conform to applicable standards, including those of
9 the American National Standards Institute, and the
10 Applicant has provided evidence that they will conform
11 with all those requirements.

12 Section (b) under that -- subsection (b)
13 under that section is with regards to control brakes.
14 And the Applicant provided evidence demonstrating that
15 all the wind towers will be equipped with redundant
16 braking systems as required under this section.

17 Next section is subsection (c) which is with
18 regards to electrical components. The evidence
19 presented via testimony as well as via the application
20 was that the Applicant will conform with all the --
21 the evidence presented by the Applicant is that all
22 the electrical components of the project shall conform
23 to the applicable state, local and national codes, and
24 relevant national and international standards

1 including ANSI.

2 Next section is Section (d) which is color.
3 And the towers and the blades should be painted to a
4 nonreflective unobstructive color that mitigates the
5 visual impact of the structure. Once again, that is
6 the evidence presented by the Applicant provided that
7 the wind turbine towers and blades will be uniformly
8 painted and nonreflective, a unobstructive mutual grey
9 or white color in compliance with FAA requirements.

10 Next section under the -- next subsection
11 under that section is compliance with Federal Aviation
12 Administration. The Applicant provided determination
13 of no hazard from the Federal Aviation Administration,
14 for many of the wind turbines. Prior to the receipt
15 of that improvement location permit, the Applicant
16 will provide all DNH documents to the County.

17 Furthermore, the evidence presented that they
18 will consult with the FAA to review and approve the
19 lighting plan which will be delivered to the
20 Livingston County Zoning Administration.

21 Next section under (f) with regards to the
22 warnings. The Applicant offered evidence that it will
23 use temporary and permanent warning signs during the
24 construction and operation of the project.

1 Subsection (g) climb prevention. The
2 Applicant noted in the project narrative that the wind
3 towers and substations -- and that should just be
4 substation will be fenced with at least 6-foot high
5 fencing. So that's one change that needs to be made.
6 Wind towers and substations, the substation should be
7 fenced with at least 6-foot high fencing.

8 With regards to the setbacks, the Applicant
9 provided the maps which -- and as well as a table
10 which identified all the setbacks as required.

11 With regards to additional regulations
12 severability clauses, if the project complies per the
13 act, if the project with all state and federal laws
14 and regulations.

15 Subsection (j) use of public roads. The
16 Applicant provided a preliminary map of the public
17 roads that will likely be used to construct the
18 project.

19 Height. Which is subsection (k) which
20 provided the maximum height.

21 The Applicant provided that it will --
22 although it will exceed the 500 foot limit of the
23 County, the Applicant will provide all DNH documents
24 prior to receipt of any improvement location permits.

1 And lighting. The Applicant testified and
2 provided written evidence the FAA has a specific
3 evaluation process for each wind farm and wind turbine
4 location. This evaluation will result in a customized
5 lighting plan for the project in accordance with all
6 FAA requirements.

7 And finally compliance. The Applicant
8 received a fully executed AIMA on March 26, 2024. And
9 the Applicant will be in compliance except where it is
10 modified by private landowner agreements.

11 With regards to that section are there any
12 additions or changes? Okay. Seeing none.

13 The next section is Section 56-619 and this
14 is with regards to operation requirements, and that's
15 at the bottom of page 11. The first subsection there
16 deals with maintenance.

17 The Applicant indicated that an operations
18 and maintenance reports will be provided annually to
19 the County.

20 Interference. The evidence presented was
21 there was testimony under oath that the National
22 Telecommunication and Information Administration
23 reviewed the project turbine sites and determined that
24 there was no concerns regarding radio frequency

1 blockage or impacts of the NEXRAD radar.

2 Coordination with the local fire departments.
3 The Applicant has indicated a final copy of the
4 emergency preparedness and response plan and a site
5 plan will be provided to the local fire department
6 prior to construction.

7 Materials handling and storage section,
8 subsection (d). The Applicant provided that all solid
9 waste would be properly disposed of at a licensed
10 facility or be used in accordance of applicable local,
11 state and federal laws.

12 Mitigation of shadow flicker which is
13 subsection (e). Although with regards to the shadow
14 flicker that was where we use the -- with regards to
15 the modeling that was on compliance whether we use the
16 100 percent sun or the actual reasonable findings of
17 sun. The Applicant did provide via testimony that
18 they will mitigate to make sure that they are in
19 compliance with the shadow flicker.

20 Any additions or changes to that section?
21 Okay. Seeing none.

22 Let's go on to the next section which is on
23 page 14. And page 14, that section is section 56-620
24 which identifies the following minimum requirements

1 regarding noise level:

2 First of all with regards to noise level, the
3 Applicant indicates that the sound pressure levels are
4 modeled for the wind turbines and substations which
5 provide that sound levels are predicted to be in
6 compliance with the ordinance.

7 Any questions about that or any changes to
8 that section? Seeing none.

9 Let's go to the next section, section 56-621
10 which provides the following minimum requirements
11 regarding natural resources. With regards to the
12 natural resources the Applicant has provided a
13 detailed EcoCAT and IPaC for review, Appendix -- which
14 is Appendix K. And the Applicant has also provided a
15 detailed Natural Resource Information Report.

16 Any changes or additions to that section?

17 MS. HUISMAN: I just have a question.
18 With regard to the Natural Resource Information Report
19 and this is taking us back to page 3 also Becky
20 Taylor's evidence that she presented, is that
21 referenced anywhere prior to this section on natural
22 resources?

23 MR. DLUSKI: I don't believe it is.

24 MS. HUISMAN: Could we get a reference

1 in there to the document that she provided.

2 MR. DLUSKI: Absolutely.

3 MS. HUISMAN: And her testimony. She
4 gave some pretty detailed testimony that I think the
5 County Board should have at their disposal and they
6 would decide.

7 MR. DLUSKI: I'm sorry. I thought that
8 was in it, but if it's not then we will add that
9 section to it.

10 MS. HUISMAN: Okay.

11 MR. DLUSKI: We will add that report.
12 Anything else, any other changes or additions? Seeing
13 none.

14 Let's go to section 56-623 which is liability
15 insurance requirements.

16 The Applicant offered testimony that it will
17 maintain a current general liability policy with the
18 County being added as an additional insured and will
19 send an annual certificate of insurance in compliance
20 with this provision.

21 Any additions or changes to that section?
22 Okay. Seeing none.

23 We'll move to the next section which is
24 section 56-624 which identifies the minimum

1 requirements addressing decommissioning plan and
2 construction plan.

3 The Applicant provided testimony with regards
4 to the total cost of the decommissioning plan. A full
5 decommissioning plan has been added into evidence as
6 well as was admitted into evidence.

7 Any questions with regards to that or any
8 changes or additions? None. Seeing none.

9 Let's go to the next section and that's
10 section 56-624.1 which provides the minimum
11 requirements addressing drain tiles.

12 With regards to that section the testimony
13 was presented that the Applicant's currently working
14 with vendors to begin detailed drain tile
15 investigation and mapping. The project will have a
16 dedicated drain tile contractor on call during
17 construction to properly repair drain tiles that may
18 be damaged during the construction.

19 Any additions or changes to that section?
20 Seeing none.

21 The next section is factors for
22 consideration. Just one second. Subsection (a) under
23 these factors is the establishment, maintenance or
24 operation of the commercial wind energy facility will

1 not be detrimental to or endanger the public health,
2 safety, morals, comfort or general welfare.

3 The project has been sited in areas zoned
4 appropriate for the use. The project does not -- does
5 provide significant economic impact to the community
6 with an increase in capital investment of
7 approximately \$620 million in the County. The project
8 will also create approximately 168 direct construction
9 jobs.

10 The project complies -- largely complies with
11 the technical requirements of the County except for
12 the shadow flicker modeling which we already have
13 discussed in the past. And as we have also discussed
14 if approved we'll have conditions attaching, including
15 conditions requiring mitigation of shadow flicker, or
16 further mitigation with those nearby non-participating
17 parcels.

18 Any additions or changes to subsection (a)
19 the factors for consideration? Seeing none, we'll go
20 to (b).

21 The commercial wind facility will be -- will
22 not be injurious to the uses and enjoyment of property
23 in the immediate vicinity for the purposes already
24 permitted, nor substantially diminished and impair

1 property values of surrounding properties:

2 Per the Applicant's expert the project will
3 not have a negative impact on the property values.
4 The project will be visible from neighboring parcels
5 and will be a change to existing land use in the area.
6 However, the project siting is in accordance with the
7 setback requirements of the Livingston County
8 Ordinance.

9 Furthermore, there is no evidence that the
10 project will have any negative impact with other --
11 will negatively impact other uses in the community.

12 With respect to subsection (b) does anyone
13 have any additions or changes?

14 MS. HUISMAN: I think it would just be
15 fair to add that the shadow flicker issue would also
16 be considered in this area -- this section as well.

17 MR. DLUSKI: Does anybody object to
18 adding that to that section?

19 MR. RANDOLPH: It's already covered, why
20 would we add it to another section?

21 MS. HUISMAN: Well, if we're talking
22 injurious to the uses and enjoyment of other property
23 in the immediate vicinity, that's -- I mean, that's --
24 that it's right on what shadow flicker would be. I

1 would have maybe said take it out of paragraph (a) and
2 put it in paragraph (b) if you want to do that.

3 MR. DLUSKI: Does anybody have any
4 objection to adding that shadow flicker section to
5 paragraph (b)? Okay. Seeing none, we will add that
6 to paragraph (b).

7 Any other changes or additions to paragraph
8 (b)? Okay. Seeing none.

9 Let's go to section -- subsection (c) the
10 establishment of the commercial wind energy facility
11 will not impede the normal and orderly development and
12 improvement of the surrounding properties:

13 And permitting the use in the surrounding
14 area will not be restricted by the existence of the
15 project that has been presented via the evidence.

16 Anyone have any changes or additions to
17 subsection (c)? Okay. Seeing none.

18 We'll move to subsection -- move to
19 subsection (d). Adequate public utilities, access
20 roads, drainage and/or necessary facilities have been
21 or will be provided. The project site entrances will
22 comply with County or township standards. The AIMA
23 requires the identification and treatment of drainage
24 tiles to avoid, minimize or mitigate impacts of

1 drainage. Any permanent drain tiles damaged during
2 construction will be repaired within 14 days of
3 notification. That was the testimony and evidence
4 presented.

5 Any additions or changes to subsection (d)?
6 Seeing none.

7 Let's move to subsection (e). Adequate
8 measures have been or will be taken to provide ingress
9 and egress so designed as to minimize the traffic
10 congestion to the public streets:

11 During operations, there will be no
12 anticipated impact to the traffic patterns or increase
13 in congestion construction. The construction period
14 will have impacts to traffic in the community.
15 Appropriate utilization and enforcement of the road
16 use agreement and notifications to the community
17 should adequately handle this issue.

18 Any questions or additions to paragraph (e)?
19 Okay. Seeing none.

20 Let's go to the next paragraph which is
21 paragraph (f). Paragraph (f) provides the proposed
22 commercial wind energy facility is not contrary to the
23 objectives of the current comprehensive plan of the
24 County and if any;

1 The project has a large footprint in the
2 County with approximately 12,000 acres of mostly
3 agriculture land of that -- of that -- with 135
4 participating parcels. Despite the large footprint,
5 the project will only occupy approximately 238 acres
6 of land and accordingly have a minimal impact on the
7 reduction of agricultural land in the County.
8 Obviously the project will still have to comply with
9 any AIMA requirements.

10 Anyone have any changes or additions to
11 subsection (f)? Seeing none.

12 We will move to subsection (g). The
13 commercial wind energy facility shall, in all other
14 respects, conform to the applicable regulations of
15 this Ordinance and the Zoning District in which it is
16 located except as such regulations may, in each
17 instance, be modified pursuant to the recommendations
18 of or approved by the County Board.

19 The project will be required to conform to
20 all applicable construction and operational
21 requirements of the Livingston County Ordinance.

22 Anyone have any additions or changes to
23 subsection (g)? Okay. Seeing none.

24 Anyone have any other additions or changes to

1 any of the findings of fact?

2 MS. HUISMAN: So are we taking these in
3 conjunction with the conditions that we just went
4 over?

5 MR. DLUSKI: Yes.

6 MS. HUISMAN: And will this document
7 reference that as discussed that are further inclusive
8 of?

9 MR. DLUSKI: Correct. Anything further?
10 Okay. Now I think it's time for the Board to make a
11 motion to approve application for a special use permit
12 with conditions.

13 MR. RANDOLPH: Motion to close the
14 SU-524 with changes.

15 MS. HUISMAN: With the conditions you
16 mean?

17 MR. RANDOLPH: With the conditions,
18 sorry.

19 MS. HUISMAN: Okay. And in the
20 affirmative?

21 MR. RANDOLPH: Yes.

22 MS. HUISMAN: So I've got a motion by
23 Dave. Can I get a second.

24 MR. STOCK: I'll second.

1 MS. HUISMAN: Second by Joe. Any
2 discussion?

3 MR. RANDOLPH: Call for a question.

4 MS. MILLER: Stock.

5 MR. STOCK: Yes.

6 MS. MILLER: Flott.

7 MR. FLOTT: Yes.

8 MS. MILLER: Kiefer.

9 MR. KIEFER: Yes.

10 MS. MILLER: Runyon.

11 MR. RUNYON: Abstain.

12 MS. MILLER: Randolph.

13 MR. RANDOLPH: Yes.

14 MS. MILLER: Turner. Huisman.

15 MS. HUISMAN: Yes.

16 Okay. So with that we've got that
17 recommendation completed. Now shall we find out what
18 the status of the variance is going to be.

19 MR. KEYT: Yeah. So I think next up
20 would be the variance itself. It would be to the
21 Board to make findings and a decision on the variance.
22 However, I believe that in discussion with counsel for
23 the developer that they'll withdraw that variance
24 request. I'll ask him do so on the record.

1 MR. UPHOFF: Yes. Yes. Given the
2 special conditions that are already sufficiently
3 address the issue, the Applicant will withdraw the
4 request for a variance.

5 MS. HUISMAN: Okay. Thank you.

6 MR. FLOTT: Thank you.

7 MR. KAINS: Anything further?

8 MR. KEYT: Nothing further from the
9 County Board.

10 MR. KAINS: Anything further from you,
11 Mr. Dluski?

12 MR. DLUSKI: Nothing further.

13 MR. KAINS: Mr. Uphoff, anything further
14 from you?

15 MR. UPHOFF: No, sir.

16 MR. KAINS: All right.

17 MS. HUISMAN: So typically we have a
18 motion to approve the findings of fact. Do we want to
19 wait until we get the final version to make that
20 motion?

21 MR. KEYT: I think we can do so now. I
22 think with the -- what you have in front of you with
23 the changes pretty minimal, I don't -- if you want to
24 wait, you could, but I think you could probably do it

1 tonight.

2 MR. KAINS: You could have a motion to
3 approve the findings of facts subject to the
4 amendments that were made on the record that
5 Mr. Dluski will then prepare in final form.

6 MS. HUISMAN: Okay. So I won't sign
7 tonight but we have a motion.

8 Okay. So with that can I get a motion to
9 approve the revised findings of facts and decisions
10 that were presented this evening.

11 MR. RANDOLPH: Motion to approve.

12 Ms HUISMAN: Okay. I have a motion by
13 Dave. Can I get a second.

14 MR. STOCK: I'll second.

15 MS. HUISMAN: Second by Joe. Any
16 discussion?

17 MR. KIEFER: Call for question.

18 MS. MILLER: Stock.

19 MR. STOCK: Yes.

20 MS. MILLER: Flott.

21 MR. FLOTT: Yes.

22 MS. MILLER: Kiefer.

23 MR. KIEFER: Yes.

24 MS. MILLER: Runyon.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. RUNYON: Yes.

MS. MILLER: Randolph.

MR. RANDOLPH: Yes.

MS. MILLER: Turner. Huisman.

MS. HUISMAN: Yes. Okay. Well, that concludes our Heritage Prairie Wind hearings. Thank you everyone that participated, all the attorneys, court reporter, all the applicant -- the applicant and the interested parties and objectors for being here and the County Board Members are here as well. Thank you, very much.

MR. KAINS: And, madam chair, this is a recommendation from the Zoning Board of Appeals to the full Livingston County Board, and do you know when the Livingston County Board will address this issue?

MS. HUISMAN: I believe it's this Thursday, August 15th.

MR. STOCK: It goes through committee first before hearing.

MS. HUISMAN: Okay. So, like I stated, it goes to committee first. What night is that?

MR. STOCK: Same night.

MS. HUISMAN: Same night as the County Board meeting, so that is also this Thursday, August

1 15. At what time?

2 MR. STOCK: 5:45.

3 MS. HUISMAN: 5:45. Did everyone hear
4 that? And then the County Board meeting is at 6:00.
5 Okay. So that's when they will receive our
6 recommendations.

7 MR. KAINS: At this time we will have a
8 public comment on any issue unrelated to this. We've
9 already had public comment on these agenda items.

10 Is there any public comment on anything else
11 other than this particular project?

12 Thank you. Seeing none.

13 MS. HUISMAN: Okay. We need a motion to
14 adjourn.

15 MR. STOCK: I'll make the motion.

16 MS. HUISMAN: Joe -- motion by Joe. Can
17 we get a second.

18 MR. KIEFER: I'll second.

19 MS. HUISMAN: Second by Richard Kiefer.
20 Any discussion?

21 MR. RANDOLPH: Call for question.

22 MS. MILLER: Stock.

23 MR. STOCK: Yes.

24 MS. MILLER: Flott.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. FLOTT: Yes.
MS. MILLER: Kiefer.
MR. KIEFER: Yes.
MS. MILLER: Runyon.
MR. RUNYON: Yes.
MS. MILLER: Randolph.
MR. RANDOLPH: Yes.
MS. MILLER: Turner. Huisman.
MS. HUISMAN: Yes. Thank you, very

much.

(Cause adjourned.)

WHICH WERE ALL THE PROCEEDINGS MADE OF RECORD IN THIS
CAUSE ON SAID DAY.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

C E R T I F I C A T E

I, Jamie S. Atkinson, Official Court Reporter
in and for the County of Vermilion, State of Illinois,
do hereby certify that the foregoing to be a true and
accurate transcript of the proceedings had in the
before-entitled cause on said day.

Dated this 29th day of August, 2024.

Jamie S. Atkinson

Jamie S. Atkinson, CSR
Official Court Reporter
License No. 084-004156