

Madison County Zoning Board of Appeals Meeting Minutes
Tuesday, April 27, 2023 at 12:00 p.m.
County Board Room

Members Present: Don Metzler, Thomas Ambrose, Nicholas Cohan, George Ellis, Mary Goode, Cedric Irby, Sharon Sherrill

Members Absent: None

A. Call to Order

Don Metzler, Chairman, called the meeting to order at 12:00 p.m. and conducted roll call.

B. Explanation of Zoning Hearing Procedures and Swearing in of All Parties

Chairman Metzler explained hearing procedures to meeting attendees and swore in staff members and all parties wishing to address the Board.

C. Zoning Hearings

The Zoning Board of Appeals conducted the zoning hearing on the agenda item.

Please see the attached Findings of Facts for a summary of the zoning hearing and public comment.

D. Citizens Wishing to Address the Zoning Board of Appeals

Please see the attached Findings of Facts for a summary of the zoning hearing and public comment.

E. Unfinished Business

None

F. New Business

1. Petition of Madison County Building and Zoning Administrator requesting text amendments to Chapter 93 of the Madison County Code of Ordinances related to updated State of Illinois commercial solar/wind energy facilities regulations. A copy of the proposed zoning text amendment will be available for reasonable inspection to the public 48 hours prior to the meeting in the Building and Zoning Department. A **motion** was made by Cedric Irby and **seconded** by George Ellis that the petition of Madison County Building and Zoning Administrator be **Approved**. Roll-call vote. All ayes. **Motion passes**.

G. Adjournment

George Ellis made a motion to adjourn the meeting. Seconded by Thomas Ambrose. Voice-vote. All ayes. Motion passes. Meeting adjourned.

Finding of Fact and Recommendations

Text Amendment

Petition of Madison County Building and Zoning Administrator requesting text amendments to Chapter 93 of the Madison County Code of Ordinances related to updated State of Illinois commercial solar/wind energy facilities regulations. A copy of the proposed zoning text amendment will be available for reasonable inspection to the public 48 hours prior to the meeting in the Building and Zoning Department.

Members Present: Don Metzler, Thomas Ambrose, Nicholas Cohan, George Ellis, Mary Goode, Cedric Irby, Sharon Sherrill

Members Absent: None

A **motion** was made by Cedric Irby and **seconded** by George Ellis that the petition of Madison County Building and Zoning Administrator requesting text amendments to Chapter 93 of the Madison County Code of Ordinances related to updated State of Illinois commercial solar/wind energy facilities regulations be as follows: **Approved with Attachment "A"**

The Finding of Fact of the Board of Appeals: **I.** The legal notice appeared in the newspaper and meets the requirements of the ordinance for publication; **II.** Jen Hurley, Zoning Coordinator, stated that there is a new Public Act, 102-1123, Statewide Citing of Wind and Solar Facilities, giving new regulations. She said that counties have 120 days from January 27, 2023 to amend any conflicting ordinances, so that is what will be discussed today. Ms. Hurley said the Act provides some new and updated definitions of terms, and also does not allow a county to establish standards for wind and solar that are more restrictive than the Act. She said the Act addresses setbacks, fencing, height, and other requirements; **III.** Mary Goode, ZBA Member, asked if the state is limiting the amount of regulations that the county can impose. She asked if there's been anything that we have allowed in the past but now we can no longer do. Ms. Goode asked if requirements for berms and fencing will all remain the same. Chris Doucleff, Building and Zoning Administrator, said there are some differences from what we have done in the past. Ms. Goode asked if we have to do this, and Mr. Doucleff said it is state-mandated; **IV.** Thomas Ambrose, ZBA Member, said there are 60-70 counties that have problems with this. He said the Farm Bureau is looking at it very closely; **V.** Cedric Irby, ZBA Member, said this is basically just us acknowledging that there are some new regulations; **VI.** Sharon Sherrill, ZBA Member, said the mandate of the power has nothing to do with this. She said we as a county are trying to determine if the state regulations are what we want to see, because they won't let us do anything more restrictive; **VII.** Nicholas Cohan, ZBA Member, asked if the state can override the county's denial. Mr. Doucleff said there will still be an application and approval process for Special Use Permits; **VIII.** David Livingstone, with the State's Attorney's office, said that if the Zoning Board of Appeals and the County Board say no to a Special Use Permit application, the applicant's recourse would be litigation. He said a court could review it, but there's no case law on this yet. Mr. Livingstone said there is a lot of controversy surrounding this and there may be amendments in the future. He said if we don't adopt this within the 120 days, and someone comes in and wants to apply for a solar farm or wind farm, we wouldn't have any regulations to enforce. He said there is nothing that says these must be approved. He said the applications will come before the Zoning Board of Appeals, and they have the option to vote no.

Roll-call vote.

Ayes to the motion: Thomas Ambrose, Nicholas Cohan, George Ellis, Mary Goode, Cedric Irby, Sharon Sherrill

Nays to the motion: None

Whereupon the Chairman declared the motion duly adopted.

Chairman, Madison County Zoning Board of Appeals

Secretary, Zoning Administrator

ATTACHMENT “A”

The following section details the proposed amendments to the Madison County Zoning Ordinance: (Note: Text with an underscore reflects additions. Text with a ~~strikethrough~~ reflects deletions.)

Zoning Ordinance Text Amendments Related to Updated State of Illinois Commercial Solar/Wind Energy Facilities Regulations

TABLE OF CONTENTS

SUPPLEMENTARY LAND USE REGULATIONS

§ 93.106 ~~COMMUNITY SOLAR~~ COMMERCIAL SOLAR ENERGY FACILITY

§ 93.107 COMMERCIAL WIND ENERGY FACILITY

§ 93.108 PUBLIC HEARING ON SPECIAL USE APPLICATION FOR COMMERCIAL SOLAR OR WIND ENERGY FACILITIES

§ 93.007 RULES AND DEFINITIONS

COMMERCIAL SOLAR ENERGY FACILITY. Any device or assembly of devices that is (i) ground installed and (ii) uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices are located.

COMMERCIAL WIND ENERGY FACILITY. A wind energy conversion facility of equal or greater than 500 kilowatts in total nameplate generating capacity. The facility includes devices, such as WIND TOWERS, that convert kinetic energy from the wind to generate electric power for commercial sale.

NONPARTICIPATING PROPERTY. Real property that is not a participating property.

NONPARTICIPATING RESIDENCE. A residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the commercial wind energy facility or the commercial solar energy facility is filed with the county.

OCCUPIED COMMUNITY BUILDING. Any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop a COMMERCIAL SOLAR ENERGY FACILITY or COMMERCIAL WIND ENERGY FACILITY is filed with the county: schools, places of worship, day care facilities, public libraries, or community centers.

PARTICIPATING PROPERTY. Real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a commercial wind energy facility, a commercial solar energy facility, or supporting facilities. “Participating property” also includes real property that is owned by a facility owner for the purpose of constructing a commercial wind energy facility, a commercial solar energy facility, or supporting facilities.

PROTECTED LANDS. A property that is: (1) Subject to a permanent conservation right consistent with the Real Property Conservation Rights Act, or (2) Registered or designated a nature preserve, buffer, or land or water reserve under the Illinois Natural Areas Preservation Act.

SUPPORTING FACILITIES. Transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the generation and storage of electricity by a **COMMERCIAL SOLAR ENERGY FACILITY** or **COMMERCIAL WIND ENERGY FACILITY**.

WIND TOWER. A wind tower includes the wind turbine tower, nacelle, and blades.

§ 93.023 "A" AGRICULTURAL DISTRICT

(D) "A" Special Uses.

(41) ~~Community solar~~ **Commercial solar energy facility** (see §93.106).

(42) **Commercial wind energy facility (see §93.107).**

§ 93.024 "C" CONSERVATION DISTRICT

(D) "C" Special uses.

(22) **Commercial solar energy facility (see §93.106).**

(23) **Commercial wind energy facility (see §93.107).**

§ 93.025 "R-1" THROUGH "R-4" SINGLE-FAMILY RESIDENTIAL DISTRICTS

(G) "R-1", "R-2", "R-3", and "R-4" Special uses.

(21) ~~Community solar ("R-1" only)~~ **Commercial solar energy facility** (see §93.106).

(22) **Commercial wind energy facility (see §93.107).**

§ 93.026 "R-5" MULTIPLE-FAMILY RESIDENTIAL DISTRICT.

(D) "R-5" Special uses.

(22) **Commercial solar energy facility (see §93.106).**

(23) **Commercial wind energy facility (see §93.107).**

§ 93.027 "R-6" MOBILE HOME PARK DISTRICT

(D) "R-6" Special uses.

(19) **Commercial solar energy facility (see §93.106).**

(20) **Commercial wind energy facility (see §93.107).**

§ 93.029 “B-1” LIMITED BUSINESS DISTRICT.

(D) “B-1” Special uses.

(22) Commercial solar energy facility (see §93.106).

(23) Commercial wind energy facility (see §93.107).

§ 93.030 “B-2” GENERAL BUSINESS DISTRICT.

(D) “B-2” Special uses.

(20) Commercial solar energy facility (see §93.106).

(21) Commercial wind energy facility (see §93.107).

§ 93.031 “B-3” HIGHWAY BUSINESS DISTRICT.

(D) “B-3” Special uses.

(22) Commercial solar energy facility (see §93.106).

(23) Commercial wind energy facility (see §93.107).

§ 93.032 “B-4” WHOLESALE BUSINESS DISTRICT.

(D) “B-4” Special uses.

(16) Commercial solar energy facility (see §93.106).

(17) Commercial wind energy facility (see §93.107).

§ 93.034 “M-1” LIMITED MANUFACTURING DISTRICT.

(D) “M-1” Special uses.

(29) Commercial solar energy facility (see §93.106).

(30) Commercial wind energy facility (see §93.107).

§ 93.035 “M-2” GENERAL MANUFACTURING DISTRICT.

(D) “M-2” Special uses.

(14) Commercial solar energy facility (see §93.106).

(15) Commercial wind energy facility (see §93.107).

§ 93.036 “M-3” HEAVY MANUFACTURING DISTRICT.

(D) “M-3” Special uses.

(14) Commercial solar energy facility (see §93.106).

(15) Commercial wind energy facility (see §93.107).

§93.106 COMMUNITY SOLAR COMMERCIAL SOLAR ENERGY FACILITY

The purpose of this section is to provide supplemental regulations for ~~Community Solar~~ **Commercial Solar Energy Facility** operations in Madison County. A Special Use Permit shall be required for all ~~Community Solar~~ **Commercial Solar Energy Facility** operations and shall adhere to the following regulations:

~~(A) Minimum Lot Standards.~~ The minimum lot size for community solar ~~commercial solar energy facilities~~ in "A" Agricultural and "R-1" Single-Family Residential Districts shall be at least ten (10) acres in size.

~~(B)~~**(A) Setbacks.** Community solar must be at least fifty feet (50') from all property lines. Setback distances must be measured from the nearest edge of any component of the commercial solar energy facility and as follows:

- 1) At least one-hundred fifty (150) feet from the nearest point on the outside wall of the structure of any occupied community buildings and dwellings on nonparticipating properties.
- 2) At least fifty (50) feet from the nearest edge of any public road rights-of-way.
- 3) At least fifty (50) feet to the nearest point on the property boundary line of any nonparticipating property.

~~(C)~~ **(B) Fencing.** A commercial solar energy facility perimeter and its equipment and structures shall be enclosed and secured by a fence with a minimum height of six (6) feet and a maximum height of twenty-five (25) feet.

(C) Panel Height. No component of a solar panel in a commercial solar energy facility shall have a height of more than twenty (20) feet above ground when the facility's arrays are at full tilt.

(D) The requirements set forth in this §93.106(A), (B), (C), and/or (D) may be waived subject to the written consent of the owner(s) of each adjacent property.

(E) Noise. Noise levels from the facility shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations.

(F) Special Use Permit Application Requirements. The applicant/facility owner shall provide the following with the Special Use Permit application:

- (1) Results and recommendations from the Illinois Department of Natural Resources obtained through the Ecological Compliance Assessment Tool (EcoCAT) or comparable successor tool.
- (2) Results of any United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable Fish and Wildlife Service's solar wildlife guidelines.
- (3) Pursuant to 505 ILCS 147/15(a), an Agricultural Impact Mitigation Agreement with

the Illinois Department of Agriculture. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must be remediated by the applicant/facility owner pursuant to the terms of the Agricultural Impact Mitigation Agreement.

(G) Decommissioning/Deconstruction and Site Reclamation Plan. The applicant/facility owner shall submit a Decommissioning/Deconstruction Plan with cost estimation prior to receiving any building or site development permit for the facility. The Decommissioning/Deconstruction Agreement and Financial Assurances shall comply with 55 ILCS 5/5-12020 and, more particularly, the standards for decommissioning/deconstruction of a commercial solar energy facility set forth in the Department of Agriculture's standard solar agricultural impact mitigation agreement, version 8.19.19. Periodically, and as required by the Agricultural Impact Mitigation Agreement, the applicant/facility owner must update the Decommissioning Plan, cost estimations, and updated Financial Assurances to the benefit of the county.

(H) The County retains discretion to require of any applicant for a commercial solar energy facility to provide or comply with one or more of the following based upon the characteristics of the property, the size or location of the facility, or any other legitimate reason or necessity as determined by the County:

- (1) certain vegetative screening surrounding a commercial solar energy facility but may not require earthen berms or similar structures;
- (2) adherence to the recommendations provided by the Illinois Department of Natural Resources in an EcoCAT natural resource review report under 17 Ill. Admin. Code Part 1075.
- (3) demonstrate avoidance of protected lands as identified by the Illinois Department of Natural Resources and the Illinois Nature Preserve Commission; or consider the recommendations of the Illinois Department of Natural Resources for setbacks from protected lands, including areas identified by the Illinois Nature Preserve Commission;
- (4) evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.
- (5) to maximize community benefits, including, but not limited to, reduced stormwater runoff, flooding, and erosion at the ground mounted solar energy system, improved soil health, and increased foraging habitat for game birds, songbirds, and pollinators, county may (1) require a commercial solar energy facility owner to plant, establish, and maintain for the life of the facility vegetative ground cover, consistent with the goals of the Pollinator-Friendly Solar Site Act and (2) require the submittal of a vegetation management plan in the application to construct and operate a commercial solar energy facility in the county.

§93.107 COMMERCIAL WIND ENERGY FACILITY

The purpose of this section is to provide supplemental regulations for Commercial Wind Energy Facility operations in Madison County. A Special Use Permit shall be required for all Commercial Wind Energy Facility operations and shall adhere to the following regulations:

(A) Setbacks. Setbacks for commercial wind energy facilities are to be no less than the following:

- (1) From the nearest nonparticipating residence or occupied community building: 2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure.
- (2) From the nearest participating residence: 1.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure.
- (3) From the nearest property line of nonparticipating property or public road rights-of-way: 1.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the nonparticipating property or to the center point of the public road right-of-way, respectively.
- (4) From overhead communication and electric transmission and distribution facilities (not including overhead utility service lines to individual houses or outbuildings): 1.1 times the maximum blade tip height of the wind tower to the nearest edge of the property line, easement, or right-of-way containing the overhead line.
- (5) From Fish and Wildlife Areas and Illinois Nature Preserve Commission Protected Lands: 2.1 times the maximum blade tip height of the wind tower to the nearest property line of the fish and wildlife area or protected land.

(B) A wind tower of a commercial wind energy facility shall be sited so that industry standard computer modeling indicates that any nonparticipating residence or occupied community building on an adjacent property will not experience more than 30 hours per year of shadow flicker under planned operating conditions.

(C) The above requirements set forth in this §93.107(A), (B), and/or (C) may be waived subject to the written consent of the owner(s) of each adjacent property.

(D) Noise. Noise levels from the facility shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations.

(E) Turbine Consistency. To the extent feasible, the commercial wind energy facility shall consist of turbines of similar design and size, including tower height and turbine rotation direction.

(F) Special Use Permit Application Requirements. The applicant/facility owner shall provide the following with the Special Use Permit application:

- (1) A model study on potential shadow flicker.

- (2) Results and recommendations from the Illinois Department of Natural Resources obtained through the Ecological Compliance Assessment Tool (EcoCAT) or comparable successor tool.
 - (3) Results of any United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with any applicable Fish and Wildlife Service's land-based wind energy guidelines.
 - (4) Pursuant to 505 ILCS 147/15(a), an Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must be remediated by the applicant/facility owner pursuant to the terms of the Agricultural Impact Mitigation Agreement.
- (G) Decommissioning and Site Reclamation Plan. The applicant/facility owner shall submit a Decommissioning Plan with cost estimation prior to receiving any building or site development permit for the facility. The Decommissioning Agreement and Financial Assurances shall comply with 55 ILCS 5/5-12020. Periodically, and as required by the Agricultural Impact Mitigation Agreement, the applicant/facility owner must update the Decommissioning Plan, cost estimations, and updated Financial Assurances to the benefit of the county.
- (H) The County retains discretion to require of any applicant for a commercial wind energy facility to provide or comply with one or more of the following based upon the characteristics of the property, the size or location of the facility, or any other legitimate reason or necessity as determined by the County:
- (1) certain vegetative screening surrounding a commercial wind energy facility but may not require earthen berms or similar structures;
 - (2) certain blade tip height limitations for wind towers in commercial wind energy facilities but may not set a blade tip height limitation that is more restrictive than the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR Part 77.
 - (3) adherence to the recommendations provided by the Illinois Department of Natural Resources in an EcoCAT natural resource review report under 17 Ill. Admin. Code Part 1075.
 - (4) demonstrate avoidance of protected lands as identified by the Illinois Department of Natural Resources and the Illinois Nature Preserve Commission; or consider the recommendations of the Illinois Department of Natural Resources for setbacks from protected lands, including areas identified by the Illinois Nature Preserve Commission;
 - (5) evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.

§93.108 PUBLIC HEARING ON SPECIAL USE APPLICATION FOR COMMERCIAL SOLAR OR WIND ENERGY FACILITIES

- (A) **Public Hearing.** Before the county grants siting approval or a special use permit for a commercial wind energy facility or a commercial solar energy facility, or modification of an approved siting or special use permit, the county board of the county in which the facility is to be sited or the zoning board of appeals for the county shall hold at least one public hearing. The public hearing shall be conducted in accordance with the Open Meetings Act and shall be held not more than forty-five (45) days after the filing of the application for the facility. The county shall allow interested parties to a special use permit an opportunity to present evidence and to cross-examine witnesses at the hearing, but the county may impose reasonable restrictions on the public hearing, including reasonable time limitations on the presentation of evidence and the cross-examination of witnesses. The county shall also allow public comment at the public hearing in accordance with the Open Meetings Act. The county shall make its siting and permitting decisions not more than thirty (30) days after the conclusion of the public hearing. Notice of the hearing shall be published in a newspaper of general circulation in the county. A facility owner must enter into an agricultural impact mitigation agreement with the Department of Agriculture prior to the date of the required public hearing. A commercial wind energy facility owner seeking an extension of a permit granted by a county prior to July 24, 2015 (the effective date of Public Act 99-132) must enter into an agricultural impact mitigation agreement with the Department of Agriculture prior to a decision by the county to grant the permit extension. Counties may allow test wind towers or test solar energy systems to be sited without formal approval by the county board.
- (B) **Other Requirements.** Other requirements applicable to special use applications or siting approval requests shall apply to these types of hearing, provided however that the requirements in this §93.108 shall control over any conflicting requirements, but only to the extent the application or request is applicable to a commercial solar or wind energy facility.