

MINUTES OF REGULAR MEETING

CHAMPAIGN COUNTY ZONING BOARD OF APPEALS

**1776 E. Washington Street
Urbana, IL 61802**

DATE:	May 25, 2023	PLACE:	Shields-Carter Meeting Room 1776 East Washington Street Urbana, IL 61802
TIME:	6:30 p.m.		

MEMBERS PRESENT: Ryan Elwell, Lee Roberts, Nolan Herbert, Thaddeus Bates

MEMBERS ABSENT: Jim Randol, Larry Wood, Tom Anderson

STAFF PRESENT: John Hall, Susan Burgstrom, Stephanie Berry

OTHERS PRESENT: Roger Henning, Darrel Rice, Josh Kamerer, Justin Leerkamp, Aaron Esry, Jan Carter-Niccum

1. Call to Order

The meeting was called to order at 6:30 p.m.

2. Roll Call and Declaration of Quorum

The roll was called, and a quorum declared present.

Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the Witness Register.

3. Correspondence - None

4. Minutes – None

5. Audience participation with respect to matters other than cases pending before the Board - None

6. Continued Public Hearings

Case 086-AT-23

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance as follows in order to ensure compliance with Public Act 102-1123:

- 1. Add the following definitions to Section 3.0 Definitions: FACILITY OWNER, NON-PARTICIPATING PROPERTY, OCCUPIED COMMUNITY BUILDING, PARTICIPATING PROPERTY.**
- 2. Revise the following definitions in Section 3.0 Definitions: PARTICIPATING DWELLING, NON-PARTICIPATING DWELLING, COMMUNITY PV SOLAR FARM**

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- 3. **Revise Section 6.1.4 WIND FARM SPECIAL USE PERMIT to establish an effective date for regulating previously authorized WIND FARMS.**

- 4. **Add new Section 6.1.5 PROPOSED WIND FARM SPECIAL USE PERMIT to establish regulations applicable after an effective date for proposed WIND FARMS, including but not limited to:**
 - a. **Establish a separation from each WIND FARM TOWER of 1.1 times the maximum blade tip height to the nearest PARTICIPATING DWELLING, to the center point of a public street right-of-way, to the nearest non-participating property line, and to third-party transmission lines.**
 - b. **Establish a separation from each WIND FARM TOWER of 2.1 times the maximum blade tip height to the nearest NON-PARTICIPATING DWELLING or OCCUPIED COMMUNITY BUILDING, and to the nearest point on the property line of fish and wildlife areas and Illinois Nature Preserve Commission protected lands.**
 - c. **Establish that the total WIND FARM TOWER HEIGHT (measured to the tip of the highest rotor blade) must receive a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR Part 77.**
 - d. **Establish that the financial assurance for WIND FARMS will be based on the requirements in the Agricultural Impact Mitigation Agreement but will be required to be an Escrow Account.**
 - e. **Add other new standard conditions consistent with Public Act 102-1123.**

- 5. **Renumber existing Section 6.1.5 to new Section 6.1.6 PHOTOVOLTAIC (PV) SOLAR FARM and establish an effective date for regulating previously authorized PHOTOVOLTAIC (PV) SOLAR FARMS.**

- 6. **Add new Section 6.1.7 PROPOSED PHOTOVOLTAIC (PV) SOLAR FARM to establish regulations applicable after an effective date for proposed PHOTOVOLTAIC (PV) SOLAR FARMS, including but not limited to:**
 - a. **Establish a separation of 50 feet between the PV SOLAR FARM fencing and the street centerline.**
 - b. **Establish a separation of 50 feet between the nearest edge of any component of the PV SOLAR FARM and the nearest point on the property line of the non-participating property.**
 - c. **Establish a separation of 150 feet from the nearest edge of any component of the PV SOLAR FARM and the nearest point on the outside wall of an OCCUPIED COMMUNITY BUILDING or NON-PARTICIPATING DWELLING.**

- d. **Establish that the financial assurance for PV SOLAR FARMS will be based on the requirements in the Agricultural Impact Mitigation Agreement.**
- e. **Add other new standard conditions consistent with Public Act 102-1123.**

Mr. Elwell informed the audience that anyone wishing to testify for any public hearing tonight must sign the witness register for that public hearing. He reminded the audience that when they sign the witness register, they are signing an oath.

Mr. Hall said there is a new memo tonight that he would go over briefly, and there is a new handout that is not listed in the memo. He said the memo first proposes new text to be added at the end of new sections 6.1.5 and new 6.1.7. He said first of all he wanted to say that the memo has three emails that we have received from Ted Hartke. He said one of those emails included the Ford County text amendment for Public Act 102-1123. He said the new text added at the end of each section is actually modelled on what was in the Ford County amendment, and he would read that paragraph right now, and this would be at the end of both the wind farm and solar farm sections: “Should the Illinois Supreme Court find P.A. 102-1123 invalid or should an Illinois Appellate Court find P.A. 102-1123 invalid, and that declaration is not appealed to the Illinois Supreme Court or the Illinois Supreme Court declines to hear an appeal of the Appellate Court’s finding and no public hearing for a proposed WIND FARM has begun, the text of this amendment shall be stricken and the text adopted by the Champaign County Board on August 18, 2022 shall be reinstated and shall govern WIND FARMS in Champaign County.” He said what that basically says is before there is a public hearing opening for a proposed wind farm or solar farm, if the Public Act is found to be invalid and that invalid holds, then our current ordinance will become effective again. He said he thinks that’s important because we all know how long it takes to run a new text amendment and we could get an application in the meantime, and at that point it’s not clear what the rules would be, so this makes it very clear. He thanked Mr. Hartke and Ford County.

Mr. Hall said also from the Ford County amendment, they had specific text regarding ice throw, and when he started researching that, he realized that our current ordinance maintains the minimum separation to a non-participating property line as 1.5 times the height. He said the Public Act reduces that to 1.1 times the height. He said one of the references that Mr. Hartke provided is a very technical reference that doesn’t actually start to specify the distance needed to be out of the radius for ice throw from a wind turbine. He said we did find other references, and in fact he found a GE document that he thinks was a document we had in our California Ridge wind farm, which recommends a safe distance as being 1.5 times the wind farm tower height. He said so right away, with the new State standards, it looks like there’s a distance over that non-participating property line where ice throw could be a problem. He said number one, he thinks that means wind farms probably won’t use the 1.1 times the wind farm tower height as a setback because they don’t want problems. He said be that as it may, that said to him that we need to control for that overlap, which is 0.4 times the wind farm tower height, which if it’s a 600-foot tower that’s 240 feet. He said so we have new text on page three of this new memo that talks about needing an ice throw analysis that is comparable to the ice throw analysis that the International Energy Agency has analyzed. He said number two, it identifies a risk level at which if that ice throw analysis identifies a risk level of that much, then risk reduction measures need to be taken such as relocating or changing turbine specs or temporarily shutting down the turbine. He said one thing he wanted to point out is that with a setback of 1.1 times the wind farm tower height from roads, any road within that distance is going to be subject to an ice throw. He said that tells him that in the future, if these Public Act requirements hold, we’re probably going to have to require signs along roads that are within that ice throw distance cautioning drivers to be aware of ice throw. He said he wonders if a wind farm is really going to put a wind tower that close to a public

1 road. He said more importantly around the perimeter of a wind farm, and even inside the wind farm,
2 because we don't prohibit new homes being constructed literally within a wind farm, he suspects that the
3 leases prohibit the landowners from selling residential lots, but we all know that not all the land that is
4 essentially inside a wind farm is going to be participating. He said what we are recommending is this
5 paragraph putting a requirement on the wind farm, reading in verbatim: "If a non-participating structure
6 is built within a distance from a wind farm tower of 1.5 times the height of the wind farm tower after the
7 Special Use permit approval, the wind farm developer shall mitigate ice fall and/or ice throw that could
8 potentially impact the structure and the immediate surrounding area within 100 feet of the structure." He
9 said so what that really puts on the wind farm developer is the same kinds of mitigation they're doing to
10 begin with for structures that we know of, you have to do later if new structures are built within that 1.5
11 times the height of the wind farm tower.

12
13 Mr. Hall said we are also proposing adding a new Footnote 16 to Section 5.3, which would essentially
14 require the P&Z Department to give notice to anyone getting a permit for a structure that's within 1.5
15 times the height of the wind farm tower, putting them on notice about this risk for ice throw, and at that
16 point they can choose to go through with the permit or not. He said again, theoretically, within that distance
17 the wind farm developer has to control for ice throw just like he would on any other property. He said it
18 seems reasonable to make a proposed new homeowner aware of that. He said secondly, again if you're
19 thinking around the perimeter of the wind farm, an even greater distance, more than 1.1 times the wind
20 farm tower height and up to 2.1 times the wind farm tower height, that's a distance where new homes
21 could be built; we're not prohibiting that, but it seems reasonable to make applicants for Zoning Use
22 Permits within that area aware that there is a risk of incompatibilities with the wind farm towers. He said
23 again, in the past he knows the ZBA thinking was that at that point people see the wind farm towers and
24 if they want to build there that's their prerogative. He said his point here is that yes, it is their prerogative,
25 but we should make them aware that we would ordinarily require the wind farm towers to be further away
26 from a dwelling or a principal structure. He said this is a way to at least make people aware of that, and
27 the incompatibilities that he's thinking about are just the fact that there's not going to be a noise violation,
28 there's not even going to be an ice throw problem, but they need to think about if they want to be that
29 close to a wind farm. He said we did find references for this 1.5 times the height of the tower being a
30 recommended safe distance from ice throw, so we documented that.

31
32 Mr. Hall said there are several other documents that are on the website, and you probably haven't had a
33 chance to look at them yet, and if the Board doesn't want to take action tonight, that's fine. He said we
34 can continue the hearing to give the Board a chance to look at those documents. He said there was one
35 thing that we handed out tonight that was not attached with the memorandum. He said you may recall that
36 in previous meetings, Mr. Darrel Rice had made a request for considering requirements that would help
37 drainage districts protect their tile. He said late this afternoon he took a hand at writing that and realized
38 that when we added back for this so-called less restrictive version, we didn't add a lot of the things under
39 protecting agriculture that are in our existing ordinance, and he thinks the things we had in there for
40 protecting drainage tile were actually pretty important. He said he apologized for overlooking that. He
41 said in this simple handout tonight the things in yellow are existing text in our existing ordinance that we
42 would recommend adding back to the less restrictive version, and we're making some minor edits in those
43 yellow areas correcting things like the name of our storm water policy and some citations to some parts
44 of the storm water policy. He said the things in gray are the new things that he would recommend adding
45 in response to Mr. Rice's concern about making sure that drainage districts can protect their facilities
46 adequately. He said one thing in particular is requiring the wind farm developer to coordinate with the
47 drainage district and allow 48 hours for the drainage district to inspect all trenches and/or excavations that
48 are in the vicinity of suspected drainage district tile so that the drainage district can verify any damage or
49 disturbance to drainage district tile. He said another important thing is our current ordinance doesn't

1 actually deal with overland crane crossings and the risk they pose to drainage district tile, so we've added
2 that. He said overland crane crossings shall avoid crossing over drainage district tile as much as possible.
3 He said he doesn't think we can just blanket prohibit that, but we can minimize it as much as possible. He
4 said any tile located under construction staging areas, access lanes, overland crane crossings, driveways,
5 any common switching stations and substations shall be replaced as required in Section 6.3 of the
6 Champaign County Storm Water Management and Erosion Control Ordinance. He said that means the tile
7 in those areas needs to be replaced with ductal iron pipe or something similar that would stand up to the
8 crossing, or essentially be replaced with something like that. He said this is literally new as of 4:30 tonight,
9 and again, if this means that you want to continue the case, that's fine, we can continue it and give you
10 plenty of time to think about that. He said that's everything in the new memo and the new handout, and
11 that's all he has right now.

12

13 Mr. Elwell thanked Mr. Hall and asked if there were any questions from the Board.

14

15 Mr. Herbert referred to part b. on the new handout and asked why not just notify the drainage district of
16 any tile disturbance as opposed to only drainage district tile, why not just leave that as drainage tile, period.
17 He said he could understand a 4-inch tile being trouble, but what about an 8-inch or 10-inch tile.

18

19 Mr. Hall said the thinking here is that the drainage district presumably knows in general where their tiles
20 are. He said once they know they have a drainage district tile in the area of the wind farm, the wind farm
21 developer has to contact the drainage district; that gives the drainage district a chance to let them know
22 where their tiles likely are located. He said he is assuming that drainage district commissioners don't want
23 to be responsible for identifying where all 8-inch tiles are. He said that's really up to the individual
24 landowners, even though he knows that the fear is that a non-resident landowner may not even bother to
25 do that. He said he hopes they take it seriously, but we have no way to force it on them.

26

27 Mr. Herbert referred to part d., the overland crane crossing shall be avoided as much as possible. He asked
28 if we needed to put a definition for what as much as possible means. He said deconstructing the crane is
29 going to be pretty pricy, and they're going to say it's just too much of a financial burden for them, so they
30 just want to cross over. He asked what that would mean.

31

32 Mr. Hall said to him it would mean we would have to know where the drainage district tiles are likely
33 located, but if they're toward the top of a drainage district tile catchment, quarter of a mile, can they not
34 drive a quarter of a mile and then another quarter of a mile out of the way. He said he knows they don't
35 want to.

36

37 Mr. Herbert said he doesn't disagree, but he's just curious, does that need to be more defined. He said
38 when you just say as much as possible, your definition of out of the way and his definition of out of the
39 way are probably two different definitions.

40

41 Mr. Hall said that if Mr. Herbert could identify a distance that he's comfortable with, he is happy to put it
42 in there.

43

44 Mr. Herbert said he doesn't know what that is right now.

45

46 Mr. Hall said he thinks that expecting them to drive a mile out of the way and a mile back is not going to
47 fly, so maybe we're talking about something less than a mile, but he thinks it probably also depends on
48 the specifics of the location.

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1 Mr. Herbert said the depth and everything else can come into play too.
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3 Mr. Hall said he thinks importantly this gives a flag to them that they need to simply minimize that if
4 possible, and if not, they are going to end up replacing that tile right off the bat or after they drive over it.
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6 Mr. Elwell said that is a good point.
7
8 Mr. Herbert referred to the ice throw and adding 6.1.5. N. He said Mr. Hall referred to putting signs on
9 the road; how do you watch for ice throw on a road.
10
11 Mr. Hall said maybe you don't go down that road, maybe the highway commissioner closes the road when
12 there's a chance of ice throw. He said he doesn't know, but he does know that if we don't put signs,
13 someone is going to say why didn't you put a sign up warning people of ice throw.
14
15 Mr. Herbert said he doesn't disagree with that, but he is saying avoid that anyway and just increase that
16 setback from any road to start with to protect anybody from any inconvenience or public undue.
17
18 Mr. Hall said that's why he thinks that's what a wind farm developer will do, and if the County Board
19 wants to run afoul of the statute, that's what they can do. He said he is not going to propose something
20 that clearly runs afoul of the Public Act.
21
22 Mr. Elwell asked if this is running less afoul of the Public Act.
23
24 Mr. Hall said given the traditional way that it's understood that the State gives local jurisdictions power,
25 the less restrictive version, and that approach is called Dillon's Rule, it's not set in the constitution but it's
26 a Supreme Court finding, the less restrictive version is not consistent with Dillon's Rule. He said we would
27 not normally recommend the less restrictive version, but in this instance where it seems like the State
28 decision was so badly made, he thinks it's worth kicking Dillon's Rule to the side and doing what seems
29 to be better, perhaps not the best, but better than what the State rules seem to indicate.
30
31 Mr. Herbert said he thinks the State left way too much out, and he thinks it's all right that we need to have
32 this and more in there. He said he doesn't think you can just leave that up to a wind farm developer or
33 anyone else other than our county to decide that.
34
35 Mr. Elwell said he appreciates including into the text amendment that if there is a court ruling that strikes
36 down this law, that it reverts back to what we're comfortable with.
37
38 Mr. Hall said he supposes he should add, Mr. Herbert, that based on the last meeting there may not be a
39 recommendation to adopt so whether you require a greater separation from streets that contradicts the
40 Public Act, that is up to the ZBA. He said if the ZBA is not going to recommend this, if the ZBA is
41 adamant that 1.1 times setback from a street clearly doesn't make sense based on what we know about ice
42 throw, go ahead and increase that setback and we'll just flag that for the County Board when this gets to
43 ELUC. He said this is your amendment, and even though you're thinking about not recommending
44 adoption, he doesn't want to discourage the Board from doing what the Board thinks is right, because it
45 is the Board's amendment once they make a recommendation, whatever that is.
46
47 Mr. Herbert said he is still kind of on the fence about property lines. He said he doesn't know what to do
48 about that, we talked about adding language to protect future homeowners and everything else, but if we
49 go from property lines, that protects everyone within their right, even if the setback is less than what it

1 should be. He said you buy a piece of land, even if it's five acres, you own that and that is your piece of
2 property that he feels should be protected just as much in that corner as it is in his bedroom. He said that's
3 a little bit of a hang-up on that regardless, but that is afoul. He said in his opinion the setbacks should be
4 taken from the property lines, not participating, non-participating, not dwellings – from the property lines
5 or the closest dwelling. He said if there's a 40-acre field, the back of that 40 acres should be just as
6 protected as the front 40 acres.

7
8 Mr. Hall asked protected from what.

9
10 Mr. Herbert said setbacks.

11
12 Mr. Hall said setbacks that protect it from what.

13
14 Mr. Herbert said setting back the towers from the property lines, not from a dwelling.

15
16 Mr. Hall said right, but he's trying to understand the concern, what you're protecting the property from.

17
18 Mr. Herbert said he's not sure today, but ten years from now when something is constructed, that alters
19 what your thought is, that is what he is trying to protect. He said the whole piece of property is just as
20 important as the dwelling in his eyes.

21
22 Mr. Hall said you understand that Champaign County limits the amount of development that can occur by
23 right to no more than three times in general.

24
25 Mr. Herbert said right, but he has a few pieces of property that don't have anything whatsoever on them.
26 He said constructing a tower 500 feet from that because there's nothing there today limits him in 15 years.
27 He said if he decides he wants to fence off 80 acres and run cows on that, because of his neighbor's
28 decision he is affected on his side of the property line – that is what his hold up is.

29
30 Mr. Elwell said he agrees with the ice throw, he thinks there is solid evidence, physics, on how far ice can
31 be thrown. He said he would anticipate that not happening every day in the wintertime, but there's still
32 that opportunity. He said there is solid evidence that it's 1.4 or 1.5; with the State saying it's 1.1, the State
33 can't alter physics. He said he's sure they would try to legislate physics, but they can't. He said whatever
34 we do, he would like to be able to have that communicated to the Board that we do want to have some
35 sort of reasoning – instead of 1.1 we want 1.5 because of this, even if this is not recommended to the
36 Board. He said he thinks that's important.

37
38 Mr. Hall said he would recommend adding, and he hates to suggest this, if we could just add some
39 statements to the end of the Finding of Fact that's formatted for denial. He said for example, a statement
40 regarding the fact that a separation distance of 1.1 from roads and non-participating property lines does
41 not adequately consider ice throw from turbine blades because the recommended safe distance is 1.5 times
42 the wind farm tower height. He said a statement like that would be more helpful to the County Board,
43 even though he doesn't know what they'll do with it, at least it's another reason why you're recommending
44 denial. He said he thinks we already have in here the fact that the ZBA has gone on record as wanting
45 lower noise levels and a separation of 3,250 feet to property lines, so that's already in there. He said but
46 that 3,250 feet doesn't really get to the ice throw problem although ice throw clearly isn't an issue at 3,250
47 feet.

48
49 Mr. Herbert asked Mr. Hall if in his reading was it 1.5 or 1.4.

1 Mr. Hall said it was 1.5.

2

3 Mr. Herbert said that is the tower height, not the tip height, correct.

4

5 Mr. Hall said it is the total to the tip of the highest blade.

6

7 Mr. Herbert said so total tip height is 1.5; he doesn't think that's out of line to ask for 1.5 if the State is
8 already at 1.1. He said is it enough, probably not. He said that should be from property lines.

9

10 Mr. Hall asked Mr. Herbert if he wanted to add a statement like that.

11

12 Mr. Herbert said he thinks we can come up with something to add. He asked if the Board could call anyone
13 up to ask some questions or does that need to be in the public testimony time.

14

15 Mr. Elwell said it needed to be during public testimony time.

16

17 Mr. Hall said he has a statement drafted that he would like to see on the screen so the Board can actually
18 evaluate it whenever that time is appropriate.

19

20 Mr. Elwell asked if there were any further questions. Seeing none, he asked if anyone would like to testify
21 in this case.

22

23 Mr. Darrel Rice, 726 CR 1800E, Philo, said he really appreciates that language about drainage tile has
24 been put in the amendment. He said when you get a document like this, you don't want to assume things
25 because obviously that can lead to problems because a wind farm definitely wouldn't assume the same
26 things that a drainage district commissioner would. He referred to part g., he likes that everything has a
27 chance to be inspected, but if the wire is being knifed in instead of trenched in, which is what they would
28 rather do because it's much cheaper, you're not mandating that open trenches must be used because that's
29 the only way inspection would be allowed. He said he would rather see that verbiage in the amendment –
30 that trenching must be used rather than knifing wiring in because that's the only way you can look before
31 things are covered up to see if there's a problem.

32

33 Mr. Hall asked Mr. Rice how deep he would expect the drainage district tile to be.

34

35 Mr. Rice said they can be anywhere from a foot to four and five foot deep. He said it depends on how
36 much erosion has occurred in that part of the field and what the depth was when they originally put it in.
37 He said the way these things were originally put in is that you have a gully running down a field and they
38 just put a tile at the bottom of that and covered it up. He said a lot of times it's just a factor of how deep
39 the gully was when this whole thing started many, many years ago. He said there's no way of knowing,
40 but we do know where a lot of the tile mains are, but he doesn't think we have a way of knowing how
41 deep they are. He said that one of the contracts that he read from a wind farm said they were going to put
42 wiring in 48 inches deep he believes, so that's going to get a lot of mains.

43

44 Mr. Hall said he thinks that the AIMA says that if it's not five feet deep then it needs to be removed. He
45 said he assumes they would just prefer to leave them in the ground rather than remove them. He said that
46 would require a statement to the effect that any wire being placed in an area of likely drainage district tile
47 should be trenched rather than knifed in, is that the literal term they use.

48

49 Mr. Rice said knifing is the term he uses, but he doesn't know if that's language. He's also heard the term

1 plowed in rather than trenched in. He said they're for the trenching because that's the only way you get a
2 chance to look at it. He said he does like the 48 hours and that kind of verbiage in there, he appreciates
3 that.

4
5 Mr. Hall said that should be added as its own separate item, probably between the current f. and g.

6
7 Mr. Rice said perfect, so near any main would be trenched rather than plowed in.

8
9 Mr. Herbert said plus it would give you an opportunity to know the elevation, whether that line that they're
10 knifing in or trenching in may be at the same plane as the middle of a tile; that gives you an opportunity
11 to go above it or below it.

12
13 Mr. Rice said that's true.

14
15 Mr. Herbert said as opposed to knifing it in, open trenching would reveal if it's 48 inches deep all the way
16 through, that would give you the option to change elevation.

17
18 Mr. Hall said okay, we can add that.

19
20 Mr. Rice said thank you.

21
22 Mr. Elwell asked if there were further questions for Mr. Rice. Seeing none, he asked if anyone else would
23 like to testify. Seeing no one, he asked for a motion to close the Witness Register.

24
25 **Mr. Roberts moved, seconded by Mr. Bates, to close the Witness Register. The motion passed by**
26 **voice vote.**

27
28 Mr. Elwell asked if there were any further thoughts. He said personally he thinks there have been some
29 positive steps that were taken today which is greatly appreciated. He said he is still thinking if you're over
30 the line, you're over the line and if we are over the line, then why don't we stick with what we have. He
31 said he understands what Mr. Hall was referring to earlier and he can be sold on that, but he still thinks if
32 we're going to oppose, if we take one step over, should we just stay with where we are.

33
34 Mr. Herbert said he would back that, he is fine with staying where we are, but the only thing that he's a
35 little bit concerned of is when this leaves our desk and heads to the next one, with not much added, he's a
36 little nervous that they're going to say they didn't like it the first time, they don't like it this time, so
37 they're staying with the State ruling without a little bit of backing with it. He said he's not opposed to
38 sticking where we were, he likes that better obviously, but it didn't work the first time is a downfall without
39 adding some other information with that this time.

40
41 Mr. Elwell said he's totally on board with providing supplemental information like evidence shows 1.5
42 for ice throw. He said he doesn't think it's in the best interest of our community to have, he doesn't even
43 know what icing looks like, but he could only imagine a huge 60-foot slab of ice shaped like a prop being
44 thrown off and hitting someone, but he thinks it's important to have the reason why we're declining this.
45 He said he thinks that putting a lot of thought into it and not just immediately saying no, is it black and
46 white, is it an up vote down vote kind of thing, that he doesn't know. He said if we oppose the Public Act,
47 is there any wiggle room on that; it kind of appears that there is a little bit of wiggle room.

48
49 Mr. Herbert said he's still upset that the first mess didn't get finished up before we started the next one,

1 because when this reverts back to the old standards that everyone was on the same boat that they needed
2 to be updated to begin with, now we're reverting right back to something that should have been updated
3 the first time as opposed to finishing that task before we even started the next one. He said he thinks that
4 is how that should have been handled.

5
6 Mr. Elwell said that's a really good point.

7
8 Mr. Hall said to him that indicates we'll probably have another text amendment as soon as this Public Act
9 is deemed to be invalid.

10
11 Mr. Herbert said it was already started once and then we opened the door back up.

12
13 Mr. Hall said getting this amendment this far, we have been working on this flat out, if we had tried to do
14 another text amendment at the same time, that wouldn't have worked very well – it's the reality.

15
16 Mr. Elwell asked Mr. Hall with the Public Act is there any guidance on fees.

17
18 Mr. Hall said there is a global requirement that it has to be in a sense consistent with what we charge for
19 other permits. He said we couldn't for example charge many millions of dollars for say a wind farm permit
20 if that's completely inconsistent with what we charge for other permits.

21
22 Mr. Elwell said okay, so we couldn't have a multiplier for wind farms, we couldn't specifically have a fee
23 just for wind farms that's different from solar and stuff like that.

24
25 Mr. Hall said our fees for wind farms and solar farms are identical on a megawatt basis, and that was
26 intentional. He said we've never done an analysis to see, for example, how the wind farm and solar farm
27 fees on a per dollar assessed value or per dollar of construction cost equates to the cost of say, for example,
28 a detached shed. He said we've never done that analysis and he doesn't intend to do that analysis. He said
29 he guesses some counties have done that because when you look in their ordinances, they have this
30 extensive table that says for every dollar of value they get this much in fees. He said he doesn't know how
31 they developed that table, generally those tables have been around for at least a decade. He said we've
32 never done that and he hopes we don't have to do that.

33
34 Mr. Herbert asked if that fee is per tower or is it for a whole wind farm.

35
36 Mr. Hall said that the fee for the farm both in terms of the Special Use Permit and the Zoning Use Permit
37 is on a per tower basis, although for the Special Use Permit there is a minimum that applies in case it's a
38 small wind farm then we have a minimum that applies.

39
40 Mr. Herbert said the only thing he could see is a permit on a tower-by-tower basis, does that give us the
41 ability to reject or pass a per tower basis as to what it's by. He said one thing he is thinking is Unity East
42 grade school is one mile outside of Philo; if they wanted to put in a tower 1.1 from that, which would still
43 be within the one and one-half miles of Philo, but if that was a single permit for that single tower near that
44 grade school, could we reject that permit.

45
46 Mr. Hall said you could if there's a very strong reason why. He said the rule of thumb he has been taught
47 is that when you're dealing with approvals from other public jurisdictions, you can deny if it clearly should
48 be denied but it has to really clearly not meet your ordinance, which makes him wonder why they would
49 propose something that doesn't meet our ordinance in the first place. He said there's a risk or a fear that

1 just because you have something against the school district or the highway district or whatever, but you
2 could deny it so long as there's a good reason for denial.

3
4 Mr. Herbert said he guesses he's saying denying the tower due to its location in an area. He said if someone
5 came in with a wind farm and they said here's where we're putting all of our turbines, can you look
6 through those and deny a permit for a tower or is that denying the whole farm.

7
8 Mr. Hall said yes, you can review the wind farm and say we've found three, two or one towers that doesn't
9 meet these requirements. He said in the future, if the Public Act remains valid, the minimum separations
10 are what the Public Act establishes and the Public Act is specific, you can't require a greater separation.
11 He said you can deny the wind farm, but you can't require greater separations. He said let me correct that,
12 according to the Public Act, if it meets the separations and your ordinance, it shall be approved.

13
14 Mr. Elwell asked what the Board feels is the best thing to move forward. He said he's not a huge fan of
15 kicking the can down the road, but he thinks this needs to be digested by the entire Board if possible.

16
17 Mr. Bates agreed. He said there were some late additions, and he thinks we have one more statement we
18 want to look at on the screen. He said he thinks there's a lot of information that we all need to digest, and
19 we have other members who have invested time in this who should probably have a say.

20
21 Mr. Elwell asked Mr. Roberts if he's in agreement.

22
23 Mr. Roberts said yes.

24
25 Mr. Elwell asked Mr. Hall when the hearing could be continued to.

26
27 Mr. Hall said we would tell anyone else that the next open meeting to add a new agenda item would be
28 August 17th. He said if the Board wanted to suspend the bylaws, you could move everything down and
29 the next available meeting date that would be open, meaning we haven't advertised for, would be June
30 29th.

31
32 Ms. Burgstrom said correct.

33
34 Mr. Hall said to do that you'd have to suspend the bylaws and then move all of those cases on the docket
35 down one more meeting.

36
37 Mr. Elwell asked if it would benefit us any at all for continuing to July 27th, which seems to be a somewhat
38 light meeting.

39
40 Mr. Hall asked if he meant to add this case to the three cases that are already docketed.

41
42 Mr. Elwell said yes – it has a variance for a side yard, a variance for height of a fence, and a variance for
43 setback of a garage.

44
45 Ms. Burgstrom said you can assume that each variance case is going to take 30 to 45 minutes, even an
46 easy one, so that's taking up a couple of hours all by itself on July 27th.

47
48 Mr. Elwell said if we suspend the bylaws and do June 29th, then everything just moves down one meeting.

49

1 Ms. Burgstrom said on June 29th, the Evergreen Cremation Services case, for what it's worth to the Board,
2 they are hoping to stay on that date because they have a closing that is contingent upon these cases.

3
4 Mr. Elwell said so do we just do August 17th then.

5
6 Mr. Bates said he was going to say there is a high probability of absences on June 29th being that's the
7 fourth of July weekend coming. He said he would hate to make any changes and then have absences.

8
9 Mr. Elwell said right, and especially if we prolong a closing or something like that, that's a very good
10 point.

11
12 Mr. Elwell said he thinks it's important to have all of us here, but he doesn't think it's more important
13 than potentially this closing or something to that effect.

14
15 Mr. Herbert said he's not sure everybody else deserves to be pushed on down; we scheduled five meetings
16 for this and he guessed we didn't get it done in five meetings and now it kind of falls to the open slot.

17
18 Mr. Bates asked Mr. Hall if there is something that happens at the court level, are we just in limbo until
19 we make a decision, meaning if there's a stay or something put on, what will we revert to.

20
21 Mr. Hall said as of tomorrow morning, we're out of compliance with the Public Act, and he would say
22 that would be our status until there's a decision about the Public Act. He said he's not aware of any pending
23 case at this time, so we'll just be out of compliance. He said we probably won't be the only county out of
24 compliance, but we will be.

25
26 **Mr. Bates moved, seconded by Mr. Herbert, to continue Case 086-AT-23 to August 17, 2023. The**
27 **motion carried by voice vote.**

28
29 **7. New Public Hearings - None**

30
31 **8. Staff Report - None**

32
33 **9. Other Business**

34
35 Mr. Elwell asked the Board if any absences were coming up, and there were none.

36
37 **10. Adjournment**

38
39 Mr. Elwell entertained a motion to adjourn the meeting.

40
41 **Mr. Roberts moved, seconded by Mr. Herbert, to adjourn the meeting. The motion carried by voice**
42 **vote.**

43
44 The meeting adjourned at 7:34 p.m.

45
46 Respectfully Submitted,

47
48
49 Secretary of the Zoning Board of Appeals