

**PLANNING AND ZONING COMMITTEE  
MEETING MINUTES  
May 27, 2009**

The Planning and Zoning Committee of the DeKalb County Board met on May 27, 2009 at 7:00 p.m. in the Jenkins Auditorium at Kishwaukee College located in Malta, IL. In attendance were Committee Members Ken Andersen, Ruth Anne Tobias, John Hulseberg, Marlene Allen, Pat Vary, Michael Haines, Larry Anderson, Stephen Walt and staff members Paul Miller and Rebecca Von Drasek. Also in attendance were representatives from FPL Wind Energy Illinois, LLC and approximately 120 members of the public.

Mr. Andersen, Planning and Zoning Committee Chair, called the meeting to order, and noted that all members were present.

**APPROVAL OF AGENDA**

*Mr. Anderson moved to approve the agenda, seconded by Mr. Walt, and the motion carried unanimously.*

**APPROVAL OF MINUTES**

*Mr. Haines moved to approve the minutes of the April 1, 2009 meeting of the Planning and Zoning Committee, seconded by Mr. Hulseberg and the motion carried unanimously.*

**SPECIAL USE PERMIT**

Mr. Andersen briefly explained the responsibility of the Planning and Zoning Committee to make a recommendation to the County Board on planning and zoning matters and the procedural nature of the Committee meeting, emphasizing the fact that it is a public meeting where the public is invited to attend and listen, but it is not a public hearing where persons are given an opportunity to make comments or ask questions. He then introduced the application by FPL Wind Energy Illinois, LLC to build 119 wind turbines in Milan, Afton, Shabbona, and Clinton Townships.

Mr. Miller explained that the application was submitted to the Planning and Zoning Department in January of 2009. He outlined for the Committee the requirement of the petitioner to convincingly argue that the proposed use was consistent with the category of Special Use in the A-1, Agricultural District that allows the possibility of "essential service structures," and that the onus was on the petitioner to show that the proposed wind farm is substantially similar to the kinds of uses allowed by that category. He also highlighted the Special Use criteria in Section 9.02.B.3 of the DeKalb County Zoning Ordinance that the applicant must satisfy for approval. Mr. Miller noted that public hearings were held March 21-22, 2009 and May 11-12, 2009. He explained that the Hearing Officer initially recommended denial of the project, however, after additional submissions by the applicant and the re-opening of the public hearing to consider the new information, the Hearing Officer revised the recommendation to approval with conditions (see Findings of Facts and Supplemental Findings of Facts). Mr. Miller concluded by outlining

the range of options for the Committee with respect to this petition: it may recommend approval, approval with conditions, or denial of the request, or may table action or refer the matter back to the Hearing Officer for further consideration.

Mr. Andersen asked the Committee if the general consensus of the Committee was to take action on the matter. The Committee members individually and unanimously agreed. Mr. Andersen then asked for a motion on the project.

*Ms. Vary moved to recommend approval of the Special Use Permit application by FPL Energy Illinois Wind with conditions, seconded by Ms. Tobias.*

Mr. Andersen asked for discussion on the motion. Mr. Miller then presented a list of 34 possible conditions of approval to be included with the Special Use Permit. *Committee member comments are in bold and italics:*

1. FPL Energy Illinois Wind, LLC (“FPL Energy Wind”) shall locate all wind towers so as to maintain a setback distance from the right of way line of all existing public roads of not less than 429 feet, and from above-ground utility easements and property lines equal to or greater than the height, plus ten percent, of the blade tip at its highest point, unless written approval is received in advance from the property owner allowing for a smaller setback from their property line. Distance will be measured from the foundation at the base of the tower. The minimum distance between the ground and any protruding blade(s) utilized on a wind tower shall be one hundred twenty (120) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel. The height of the mounted turbine shall not exceed two hundred sixty-three (263) feet measured from the foundation at the base of the tower to the center line of the hub of the rotor.

2. Except as provided herein, the setback distance for wind towers shall be 1,400 feet or more from any residence, and from the boundary of any lot in an existing, platted and recorded residential subdivision, which was occupied or existed as of December 31, 2008. Distance shall be measured at the time of application for building permit from the foundation at the base of the tower to the closest foundation wall of any existing or occupied residence or to the closest recorded developable lot line for a platted subdivision, provided further that no wind tower shall be closer than 429 feet from any point on a property line of a non-participating property containing an existing residence. A tower may be placed as near as 600 feet from any occupied residence with the prior written approval of the owner, which shall be submitted as part of the Building Permit application.

3. This Special Use Permit is intended to provide conditions to allow wind turbines, towers and related communications and electrical facilities. All wind power facility equipment and construction of the Wind Energy Center shall be in compliance with generally accepted engineering standards and all applicable County, State and federal regulatory standards including, but not limited to, the Uniform Building Code as adopted by the State of Illinois, the National Electrical Code as adopted by the State of Illinois, FAA requirements, EPA regulations (hazardous waste, construction, storm water; etc) and any other statutory or regulatory

requirements, subject to these conditions. Facility equipment shall conform to applicable industry standards including the American Wind Energy Association standards for wind turbine design and related standards adopted by the American Standards Institute (ANSI). FPL Energy Wind shall submit certificates from equipment manufacturers that the equipment is manufactured in compliance with industry standards.

4. FPL Energy Wind shall obtain all required permits from other governmental agencies (such as the Federal Aviation Administration) prior to commencing construction or as otherwise required by the applicable laws and regulations. Copies or evidence of such permits shall be submitted to the County on or before issuance of the first Building Permit for an individual wind tower. Building Permits shall be obtained from DeKalb County for the wind towers.

5. FPL Energy Wind shall work with local rescue authorities to provide training (at FPL Energy Wind's expense) to personnel who can assist with a rescue from a wind turbine or tower.

6. Should shadow flicker in excess of 40 hours per year affect any adjoining property owner with a view of a wind turbine who is not a participant in the project, FPL Energy Wind shall use commercially reasonable efforts to remedy the problem on a case-by case basis by undertaking measures such as trees or vegetation plantings or awning installation.

***Ms. Vary proposed reducing the number of hours to 30 hours per year, to reduce the amount of time shadow flicker can effect an adjoining property owner. The Committee indicated unanimous agreement on this change.***

7. If any television, cell phone, internet, or broadcast radio frequency interference is shown to be created by the Wind Energy Center, FPL Energy Wind shall use commercially reasonable efforts to mitigate any problems on a case-by-case basis.

8. Construction within DeKalb County shall commence within 12 months of the date of this Special Use Ordinance, with operations to commence within 12 months after issuance of the first Building Permit. The County Zoning Administrator may grant an extension of the foregoing time periods upon FPL Energy Wind showing reasonable justification for such a request. After construction is complete, FPL Energy Wind shall provide certified "as built" drawings to the County Zoning Administrator showing the locations of the wind towers, roads, transmission lines and all other improvements related to the wind towers (collectively, the "Improvements") and a legal description of the land utilized for the Improvements. This Special Use Permit shall thereafter automatically be modified to limit the legal description of the area of the Special Use to the land utilized for the Improvements.

9. FPL Energy Wind shall provide the following as part of its application for Building Permits for wind towers for approval by the County Planning, Zoning Department to confirm satisfaction of the conditions of this Special Use approval:

- a. The property lines of the proposed site of construction.

- b. Proposed location of the wind tower, including distances from property lines and any existing or occupied residence within 2,000 feet of the foundation of the tower, as verified by a registered surveyor.
- c. Location and description of all structures located on the property where the wind tower site is proposed.
- d. Location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed wind tower.
- e. Location of all underground utility lines on the wind tower site.
- f. Dimensional representation of the structural components of the tower construction including the base and footings.
- g. Schematic of electrical systems associated with the wind tower including all existing and proposed electrical connections.
- h. Manufacturer's specifications and installation and operation instructions or specific wind tower design information.
- i. Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structure as defined by BOCA
- j. Location of all access roads required for the wind tower including necessary approvals from the County Engineer for county roadways and Township Road Commissioner for township roadways.
- k. A topographical map of the proposed site of construction.
  - l. Proposed location of all easements necessary for the operation of the wind tower (executed copies of which shall be submitted prior to issuance of Certificate of Occupancy).
- m. Other information as reasonably required by the County Zoning Administrator.

10. Each application for a Building Permit for a wind tower shall be accompanied by an application for Site Development Permit addressing stormwater management, drainage, soils, drain tiles, wetlands, waterways, ditches, etc., in accordance with the requirements of the DeKalb County Stormwater Management Ordinance.

11. Construction activity associated with wind towers shall not commence before 6:00 a.m. nor continue past 9:00 p.m. on any day of the week.

***Mr. Miller highlighted that the applicant requested a change from this condition, noting a memo submitted by FPL Energy Illinois Wind, LLC dated May 18, 2009, in which the applicant outlines their request to permit 24 hour operations for lifting of the turbines.***

***Ms. Vary asked why the condition had a start time of 6 am versus 7 am for construction activity. Mr. Miller responded that this was considered a standard start time for construction activity. Ms. Vary asked for clarification if it was only one night per turbine, staff agreed that the activity per turbine location was proposed to be limited to one night.***

***Mr. Haines asked if the noise associated with lifting the turbine would be greater than a combine working at night. Staff indicated that this was unknown.***

*Mr. Miller also noted that residents may not wish to see floodlights shining in the middle of the night, but also pointed out the applicant's concern that disallowing lifting of the turbines at night would add to the overall length of construction for the project.*

*Mr. Hulseberg noted that with 119 turbines that it could be months of night time activity.*

*Ms. Tobias asked how late the applicant was proposing to work, Mr. Miller noted that the proposal was to operate without restriction.*

*Mr. Hulseberg suggested that the Committee complete the review of the conditions and return to number 11 after the review.*

12. FPL Energy Wind shall provide dust control measures as may be commercially and reasonably required by the County during construction and shall repair any roads or other infrastructure damaged by Wind Energy Center construction or maintenance in accordance with the County Roads Agreement attached hereto as Exhibit "E". Any road or bridge damage or repairs caused by the transport of the facility's equipment, as determined by the County Engineer or Township Road Commissioner, the installation, maintenance or removal of same, must be completed to the satisfaction of the Township Road Commissioner and the County Engineer. Further, a letter of credit in an amount to be fixed by the Township Road Commissioner or the County Engineer may be required by the Township Road Commissioner or the County Engineer to insure the Township or the County that future repairs are completed to the commercially reasonable satisfaction of the unit of local government.

13. FPL Energy Wind shall ensure that the facilities are properly decommissioned upon the end of the project life or facility abandonment. FPL Energy Wind's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements, and repair or replacement of any damage to public roads and bridges that may occur as a result of traffic associated with decommissioning. Prior to issuance of any Building Permit for any wind tower, FPL Energy Wind shall provide a letter of credit or other security acceptable to the County in the amount of \$3,523,179 payable to DeKalb County, for a term of not less than 15 years, to provide assurance that decommissioning will take place. FPL Energy Wind shall also provide a description of the conditions under which operation of a tower shall be considered terminated and schedule of when subsequent and consequent decommissioning shall occur, such condition and schedule subject to review and approval by staff and which approval shall not unreasonably be withheld. Any wind tower which does not operate for a period of one year or more shall be decommissioned in accordance with the schedule afore mentioned unless an extension of the one-year period is granted by action of the Planning and Zoning Committee of the DeKalb County Board.

*Mr. Hulseberg noted that Exhibit R of the Applicant's submission, which sets forth anticipated costs of decommissioning wind towers, includes removing the concrete base to a depth of 60 inches. He then proposed the condition be amended to 60 inches rather than 48 inches. Committee members indicated agreement with this change.*

***Ms. Vary also inquired why some of the original text was stricken, Mr. Miller responded that the verbiage was no longer necessary with the revised agreement.***

14. FPL Energy Wind has provided evidence from assessors in areas with existing wind farm projects, as well as other independent economic analysis, showing no adverse impact on property values. Nevertheless, FPL Energy Wind shall abide by the Property Value Guarantee Agreement (“Agreement”) attached hereto as Exhibit D.

***Mr. Miller asked the Committee if the nine month period that a given residence should be on the market was appropriate. Ms. Vary suggested that the Agreement be amended to six months. Committee members agreed to this change.***

***Additionally, Mr. Miller noted that another possible revision would be to allow either party, FPL or a property owner, to call for a fourth appraisal, rather than the current agreement which only permits FPL to make such a request. Committee members agreed with this change. Similarly, Mr. Miller suggested a change whereby the property owner could retain an appraiser to determine that an accepted offer to purchase that is below the asking price is the consequence of the wind farm, rather than only FPL being able to make this challenge. Committee members agreed to this change.***

***Mr. Miller also highlighted a suggested revision that requires FPL to purchase the property if the property owner is able to determine that the wind farm was responsible for the lack of offers at the asking price during the six-month period the house is on the market. Ms. Vary agreed that this would provide a better balance to the agreement. Committee members agreed with this change.***

15. With respect to sound emissions from wind turbines, FPL Energy Wind shall comply with all applicable federal and State regulations including the Illinois Pollution Control Board rules and regulations.

16. All turbines shall be new equipment commercially available; no used, experimental or proto -type equipment still in testing shall be approved by the County Zoning Administrator.

17. All solid waste, whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the Wind Energy Center, including old parts and equipment, shall be removed from the site in a timely manner consistent with industry standards.

18. All hazardous waste generated by the operation and maintenance of the Wind Energy Center, including but not limited to lubricating materials, shall be handled in a manner consistent with all local ordinances, and State and federal laws, rules and regulations.

19. Coatings and colorings of wind towers shall be a non-reflective, unobtrusive color.

20. To the extent feasible, the project shall consist of wind towers of similar design and size, including tower height. Further, all turbines shall rotate in the same direction.

21. The project shall utilize minimal lighting. No tower lighting other than normal security lighting shall be permitted except as may be required by the FAA.
22. If approved by the FAA, FPL Energy Wind shall install aviation light deflectors on the medium to high intensity FAA red and white strobe lights and large red flashing lights to be used on the Wind Energy Center.
23. FPL Energy Wind shall reimburse non-participating landowners for the additional cost of aerial application due to the presence of wind turbines for all land within one-half mile of any turbine. To accomplish this, FPL Energy Wind shall either:
  - a. Pay the difference between the cost of acreage sprayed outside the one-half mile distance and acreage within the one-half mile distance. Where a landowner intends to make a claim to FPL Energy Wind for such reimbursement, that landowner shall contact FPL Energy Wind prior to executing a contract for aerial spraying which contains terms more costly than for land not containing turbines, in order to allow FPL Energy Wind the right to seek alternate competitive bids for the work; or
  - b. FPL Energy Wind shall sponsor a program of annual spraying requiring non-participating landowners to opt in to the program by November 1st of each year. By opting in, non-participating landowners elect to have their property included in one general competitive bid for all land included in the spraying program.

***Mr. Anderson asked how timeliness is guaranteed through this agreement, noting that a cheaper bid for aerial spraying may not happen when the farmer needs it. He noted that he often needs his fields treated within a 24-36 hour window. Mr. Miller agreed to work with the applicant to address this concern in the final language of the condition.***

24. All new power lines used to collect power from individual turbines and all communication lines shall be trenched-in and located underground at a depth consistent with local utility and telecommunication underground lines standards unless located on public or utility rights of way with approval of the County Zoning Administrator. Prior to construction of any wind tower, access drives, surrounding gravel area, and access routes across farmland for construction vehicles and equipment, FPL Energy Wind shall investigate and identify existing drainage systems and drain tiles, and shall retain a qualified third-party drainage expert to be on site during construction of wind towers, access roads, electric power or communication systems and all related work. It shall be the responsibility of FPL Energy Wind to correct any and all drainage problems that occur as a consequence of this project. FPL Energy Wind will repair field tiles damaged by Wind Energy Center construction and maintenance activities within two weeks of the date of receipt of notification, and will repair damage to other drainage facilities, including but not limited to waterways and drainage ditches, as soon as reasonably possible, but in any event within six (6) months of the date of receipt by FPL Energy Wind of notification.
25. FPL Energy Wind shall reimburse non-participating landowners with property abutting any turbine the monetary value of the loss of agricultural production that is demonstrably the

consequence of changes in drainage attributable to the construction and presence of any wind tower.

26. An engineer's certificate shall be completed by an engineer registered in the State of Illinois and shall certify that the tower and foundation are compatible with and appropriate for the turbine to be installed and that the specific soils at the site can support the apparatus and such certificate shall accompany each Building Permit application. All commercially installed wind turbines must utilize self-supporting, tubular towers with an internal ladder and locked door and a sign shall be placed on each tower stating "Warning Electrical Shock Hazard. No unauthorized person on tower. No Trespassing".

27. FPL Energy Wind shall provide information on underground utilities it constructs as part of the Wind Farm to the "One-Call System" operated by the Joint Utility Locating Information for Excavators company, commonly known as JULIE.

28. FPL Energy Wind shall catalogue and annually report to the County Planning, Zoning and Building Department all birds that are discovered to have been injured or killed by the wind towers. The annual report of avian injuries and deaths shall include species, number, and dates when the injured or killed bird was discovered.

29. Prior to issuance of a Certificate of Occupancy, FPL Energy Wind shall submit a certificate to the County Planning, Zoning and Building Department verifying that any power purchase contracts, power transmission contracts and other legal rights are in place.

30. FPL Energy Wind shall construct the project and the wind towers in substantial accordance with the following documents submitted as part of the public hearing, subject to modification so long as such modifications comply with the above conditions:

- a. GE Wind Energy Megawatt Series 1.5 Wind Turbines GEXle or GESle and the Wind Turbine Drawing drawing, both included in FPL Energy Wind' Application submittals to the County (provided that these are prototypical schematics and may be modified based on change in manufacturer or engineering and technical modifications); and
- b. The Conceptual Project Overview Map with a latest revision date of December 23, 2008 (provided that location of the towers is conceptual and subject to relocation based on satisfaction of the above conditions, negotiations with individual property owners, and other project requirements).

31. FPL Energy Wind shall annually provide property taxes as required by applicable State law, provided, however, that in the event that property tax laws applicable to wind energy generation devices change such that the total property tax amount in any given year would be less than that which would have been required under the tax laws effective as of the date of this Ordinance, then FPL Energy Wind will provide additional funds to bring the total property tax up to the amount that would have been required if the property tax formula in place at the date of this Ordinance were in place; unless any future change in property tax laws applicable to wind



energy generation devices result in a formula that would generate more tax revenue than would be generated under the property tax laws in place as of the date of this Ordinance, in which case FPL Energy Wind shall pay property tax in accordance with the tax laws then in force.

32. FPL Energy Wind shall establish a 24-hour “complaint hot line” telephone number and response service prior to and throughout construction and the operating life of the wind energy center and make such available to property owners and the general public for the receipt and redressing of complaints associated with the wind energy center. Disputes as to complaints and resolution of complaints shall be resolved per Condition #33 below.

33. In the event a dispute arises as to satisfaction of the Conditions to this Special Use Permit Ordinance, such dispute may, at the request of FPL Energy Wind, DeKalb County, or a third aggrieved party provided such third party grievance is sponsored by the County or FPL Energy Wind, be resolved pursuant to binding arbitration in accordance with the procedures of the American Arbitration Association by an independent arbitrator acceptable to FPL Energy Wind and the County, as applicable. If FPL Energy Wind and the County are unable to agree on an arbitrator, then each such party shall choose an independent arbitrator and their respective choices shall then choose an arbitrator. This condition shall not bind an aggrieved party, other than the County or FPL Energy Wind, to submit to arbitration.

***Ms. Vary noted that she agreed with binding arbitration. Mr. Miller noted that similar to all Special Use Permits if a resident has a complaint the Planning, Zoning and Building Department would follow-up with the applicant to assist in resolving the issue.***

34. This Special Use Permit may be transferred by FPL Energy Wind only upon the transferee’s execution and delivery to the County Zoning Administrator of a letter agreeing to be bound by the foregoing conditions.

The Committee resumed general discussion of the Conditions.

***Mr. Haines asked that Condition 28 include bats. Committee members agreed with this change.***

The Committee returned to their discussion of Condition 11.

Mr. Miller acknowledged the restriction proposed by the applicant that the operations after 9 pm would be limited to lifting turbines and would only require one night per turbine. He noted that the applicant based the request on their intention to complete the project in a timely and safe manner. He suggested, however, that staff suggestion on restricting construction activity after 9:00 p.m. is intended to assure nearby residences need not see floodlights on tall towers at all hours of the night.

Mr. Hulseberg suggested limiting the hours of operation by the day of the week.

Ms. Vary noted that the interruption would be greater to area residents if the project were required to draw out the timeline. She asked Mr. Miller how long the applicant was requesting

to operate in the evening. Mr. Miller noted that they were requesting no limitation in the lifting of the turbines.

Mr. Walt supported the applicant's request, noting that they were the only individuals with experience in constructing the turbines.

Ms. Tobias noted that the applicant's concern for safety was important.

Mr. Miller also noted that enforcement of a variety of hours would be difficult to enforce and would depend on area residents.

Mr. Walt suggested that the County defer to the experts and get the project built sooner. Ms. Vary agreed that minimizing construction time and stressing safety was important.

Mr. Haines clarified that the applicant could begin raising a turbine at 3 am, Mr. Miller responded with the Committee suggestion that the applicant could lift a turbine at any time.

Mr. Hulseberg dissented, noting that late-night construction could be a nuisance.

***Following a show of hands, six Committee members supported the revised Condition 11 allowing the lifting of turbines 24 hours a day and all other construction from 6 am to 9 pm.***

Mr. Walt noted that Condition 16 prohibited the applicant from installing any experimental or proto-type turbines. He suggested that this would not encourage continued improvement of the technology and suggested that the Condition be amended to permit one experimental or proto-type turbine provided it was placed furthest from any residence. Mr. Vary agreed with this suggestion.

Mr. Hulseberg noted that he agree with the current language of Condition 16.

***Following further discussion, Committee members agreed that the applicant should be allowed, if it chooses, to have one proto-type turbine as part of the project.***

Mr. Miller informed the Committee of a revision that the applicant and adjoining property owners had agreed to, shifting the proposed substation further east than is depicted on the Site Plan. Mr. Miller noted the change was shown in the handout given to the Committee at the beginning of the meeting, which also shows the resultant setbacks from the nearest residences. He stated that the change is being made to respond to concerns from two properties to the west of the sub-station, but noted that any change to the location of the sub-station to move it away from some properties would put it closer to some other properties.

Mr. Anderson asked if soundproofing could be required for the substation. Mr. Miller agreed to create a requirement that sound dampening methods be employed subject to review and approval by staff.

Ms. Vary noted that the distances were more equitable and that 3,200 feet is still a good distance from the substation.

*Following further discussion, Committee members agreed that the sub-station could be relocated to the east as proposed by the applicant.*

Mr. Walt asked why indemnification is not part of the agreement. Mr. Miller explained that the State's Attorney Office had indicated that the County was responsible to defend its decisions.

*On the motion by Ms. Vary to recommend approval of the Special Use Permit application by FPL Energy Illinois Wind with conditions as discussed and seconded by Ms. Tobias, following a roll call vote the motion carried unanimously.*

The Planning and Zoning Committee is next scheduled to meet June 24, 2009 at 7:00pm in the Conference Room East.

#### **ADJOURNMENT**

*Mr. Anderson moved to adjourn, seconded by Ms. Allen, and the motion carried unanimously.*

**Respectfully submitted,**

**Kenneth Andersen**  
**Planning and Zoning Committee Chairman**

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