

Piatt County
Zoning Board of Appeals

March 24, 2022
Minutes

The Piatt County Zoning Board of Appeals met at 1:00 p.m. on Thursday, March 24, 2022 in Room 104 of the Courthouse. Chairman Loyd Wax called the meeting to order. The roll was read. Attending were: Wax, William Chambers, Kyle Lovin, Dan Larson, Jim Harrington and Keri Nusbaum, and States Attorney Sarah Perry.

County Board members in attendance: Ray Spencer, Shannon Carroll, Jerry Edwards, Todd Henricks and Randy Shumard.

MOTION: Lovin made motion, seconded by Harrington to approve the minutes from December 2, 2021 as written. On voice vote, all in favor and the minutes were approved.

Public Comments: None

New Business:

The applicant for the first item on the agenda, a setback variation has withdrawn their application.

The County board received a request for a text amendment from local attorney Amy Rupiper at their meeting March 9, 2022. The board referred it to the ZBA for review and recommendation. The ZBA reviewed the proposed text amendments.

The proposed text amendment includes an addition to Section V. Section B.

Proposed #10.

B. The special use permit application shall contain or be accompanied by the following information:

10. A written determination accompanied by any necessary maps or surveys as to whether any of the land indicated for the installation of WEC(s) in the Special Use Permit Application is located in a drainage district, and if so, then the Applicant shall forward a certified copy of the full Special Permit Application to the drainage commissioners of said drainage district within three (3) days of filing such application.

The proposed text amendment includes an addition to Section VII.

Proposed Item R. Use of drainage district facilities

1. An Applicant, Owner or Operator prior to issuance of a construction permit shall:
 - a. Identify all drainage district facilities which includes, but not limited to, surface drains, underground drainage tiles, open drainage ditches, culverts, and water gathering vaults that are impacted, or potentially impacted by the installation, construction, maintenance, transportation, decommissioning, upgrading, or operating of WECS or Substations and/or WECs components, or Substation components by reason of any crossing or use of any drainage facilities, or use or crossing of any drainage district easements along, above or

under drainage district facilities. The Applicant, Owner or Operator shall identify impacted, or potentially impacted facilities by a pre-construction baseline survey prepared and sealed by a State of Illinois Licensed Professional Engineer.

b. Provide the County Zoning Officer prior to the issuance of a building permit with:

- 1) A written work agreement between the Applicant, Owner or Operator, and the commissioners of the impacted or potentially impacted drainage district in accordance with all the provisions of the Illinois Drainage Code.
- 2) Provide to the drainage district commissioners the results of the preconstruction baseline survey within three (3) days of completion.

The attorney for the drainage districts, Amy Rupiper was sworn in and spoke to the ZBA about the need for a text amendment as illustrated by problems with the ongoing wind farm construction in DeWitt County. The issue was brought to light at a state drainage conference. She would like to have protection for the drainage facilities in the WECS ordinance. She would like to have the same protections for drainage districts as for the road districts, including proper notice.

Alan Moore of Apex Green Energy was sworn in. He believes drainage is critically important but opposes the text amendment because he said it would give the drainage districts veto power over a wind project. He said Apex's policy is to work with drainage. He also said the amendment is not necessary because these items are covered in the Illinois Drainage Act, and the wind company intends to work with the drainage districts. Audience member Claudia Coil questioned why Apex had not addressed the problem in the last years of hearings if they intend to take of the drainage? Audience member and engineer Don Wauthier asked if Apex was aware they are required to obtain permission already per state statute, and there would be no veto power given by this amendment. Rupiper questioned if road districts do not have veto power given by a road agreement, why would an agreement give drainage districts veto power?

Attorney for Apex, Mark Gershon said there is a difference between the requirements for a road agreement. The word 'potential' in the proposed text amendment is a problem. He said it should not be Apex' responsibility to locate drainage improvements. Mr. Hostettler suggested having a project engineer on site. He asked if APEX would reimburse the drainage district. Gershon asked if an engineer was required onsite to put in a house foundation. Bruce Stoddard asked how much concrete was required for a turbine foundation, and what the impacts of the large cranes and trucks would have. Moore declined to answer without the information at hand.

Gershon said the ZBA and the drainage districts authority should be kept separate, and any agreement with the drainage district should be separate from the zoning/permit process.

James Reed was sworn in. He is a drainage commissioner. He said no contact with the commissioners has been attempted. He is concerned about cranes rolling over neighboring lands. He said the language proposed by Apex is saying they can do what they want. The drainage districts believe it is necessary to have these agreements in place prior to any construction. He referenced times that wind companies have crossed land not even in the footprint of the project and damaged tiles and ditches.

Jon White asked if the individual farms would be protected by this amendment? He is not in a drainage district, but water flow affects his farm. Gershon responded that the AIMA agreement protects the individual farm. Reed said that the drainage code gives some protection to individual landowners.

Don Wauthier was sworn in. He has worked as an engineer on 4 wind projects and recommends that the ZBA keeps the word "potential". He said he is a supporter of wind farms. He said many problems come with subcontractors of subcontractors, so having a written agreement is important.

Derek Trimble was sworn in. He is a drainage commissioner. This is not a witch hunt, but they want to get the language right.

Cory Getz of DIGS Associates. He is in the land advisory business. They are a consulting firm working with APEX. They have software that will help identify drainage facilities and issues, and water flow. They will be the liaison between landowners, drainage districts and APEX.

Will Timmons asked if they are able to identify all the drainage facilities. He said there is no way to find all drainage facilities.

Jon White asked if they offer onsite services. He answered yes.

Jeff Hogan was sworn in. He supports the amendment as written.

Ralph King was sworn in. He is a commissioner on Trenkle Slough district. He supports the amendment as written to protect the improvements made. He believes both the districts and individual landowners should be protected.

The ZBA members considered the zoning factors.

ZONING FACTORS FOR TEXT AMENDMENTS

1. Does the proposed text amendment promote the health, safety, morals, or general welfare of the public?
The ZBA voted unanimously (5-0) that the amendment does promote the health, safety, morals or general welfare of the public.
2. Will the proposed text amendment be injurious to the use and enjoyment of other property within the immediate vicinity?
The ZBA agreed unanimously (5-0) that there is no evidence that the text amendment would be injurious to the use and enjoyment of property within the immediate vicinity.
3. Will the proposed text amendment diminish property values of other property within the immediate vicinity?
The ZBA agreed unanimously (5-0) that there is no evidence the text amendment would diminish property values in the immediate vicinity.
4. Does the proposed text amendment take into consideration whether there is adequate infrastructure (i.e. roads, utilities, drainage)?
Yes. The ZBA agreed unanimously (5-0) that the text amendment does take into consideration whether there is adequate infrastructure.

5. Is the proposed text amendment in harmony with the overall comprehensive plan of the county?
Yes. The ZBA agreed unanimously (5-0) that there is no evidence otherwise and the text amendment is in harmony with the overall comprehensive plan.
6. Would the proposed text amendment compete with or impede the existing zoned uses of other property within the zone
No. The ZBA agreed unanimously (5-0) that the text amendment would not compete with or impede the existing zoned uses of other property.
7. Would the proposed text amendment create a hardship on landowners within the zone?
No. The ZBA agreed unanimously (5-0) that the text amendment would not create a hardship on landowners within the zone.
8. Would it create a hardship on landowners within the zone if the text amendment were not made?
Possibly. The ZBA agreed unanimously (5-0) that based on testimony if the text amendment were not made a hardship or inconvenience could be created upon the landowners within the zone.
9. Would the proposed text amendment have a harmful impact upon the soil?
No, The ZBA agreed unanimously (5-0) that the text amendment would not have a harmful impact on the soil.

MOTION: Chambers made motion, seconded by Kyle Lovin to recommend approval of the amendment as written to the County Board. Roll was called. Larson – Yes, Harrington – Yes, Lovin – Yes, Chambers – Yes, Wax – Yes. All in favor and the motion carried.

This will be considered by the County Board at their regular meeting on April 13, 2022.

MOTION: Harrington made motion, seconded by Lovin to adjourn. On voice vote, all in favor and the meeting adjourned at 2:22 p.m.

Respectfully submitted,

Keri Nusbaum
Piatt County Zoning Officer