

LEE COUNTY ZONING BOARD OF APPEALS

Ron Conderman, Chairperson
Craig Buhrow, Vice Chairperson
Mike Pratt, Member
Gene Bothe, Member
Tom Fassler, Member
Bruce Forester, Alternate Member

Chris Henkel, Zoning Officer
Alice Henkel, Clerk

The Lee County Zoning Board of Appeals met on Thursday, January 5, 2012, at 7:00 p.m. in the Old Lee County Courthouse, Dixon, Illinois. Chairman Ron Conderman called the meeting to order and Clerk Alice Henkel called the roll. The following members were present: Craig Buhrow, Mike Pratt, Gene Bothe and Tom Fassler.

The first order of business was the approval of the minutes for the December 29, 2011 meeting. Chairman Conderman asked if there were any additions and/or corrections to the minutes. There were none.

Gene Bothe made a motion to approve the minutes, and Mike Pratt seconded it. All were in favor, resulting in a 5 – 0 vote.

The first order of old business was discussion regarding noise standards.

Chairman Conderman reminded the members of the public that comments made by any visitor present would be limited to 5 minutes per person.

Chairman Conderman asked Chris Henkel to read a proposed noise ordinance that was revised following the December 29, 2011, meeting.

Tom Fassler said that he thinks it is missing the 5 decibel factor that was discussed during the December 29, 2011, meeting as he feels it provides a basis. He said the proposal “reads good” but that it needs to be limited to 5 decibels over ambient noise, day and night. He also said the complaint resolution section is fine.

Richard Porter, attorney for Petitioners Larry Gerdes and Friesland Farms, LLC, said that he objects to the revised proposal because it was not made available to the public.

Chairman Conderman said he was in favor of the revised proposal, as it was written.

With regards to the complaint resolution section of the revised proposal, Mike Pratt explained that Section XII (Remedies) has already been approved for the proposed ordinance and that it provides, in detail, how any violation of the ordinance will be handled. It also will bring the complaint before the Zoning Board of Appeals for review.

Mr. Fassler asked Craig Buhrow how he felt about the 5 decibel factor. Mr. Buhrow agreed that 5 decibels above ambient is a “great deal of sound disturbance.” He took a

moment to make sure the 3 noise studies that were proposed at the December 29, 2012, meet were included in the revised proposal. Mr. Pratt said they were included in the revised proposal.

Mr. Pratt said that not much was changed in the first paragraph. The specific Illinois Pollution Control Board (“IPCB”) regulation was stated.

Mr. Fassler said that if a person lives in a quieter area, they will be penalized even more than someone who resides in an area with more noise because the noise is going to be more noticeable.

Mr. Pratt feels that if a limit is established in the ordinance, it may restrict what this Board can do when a complaint comes before it for review.

Mr. Fassler feels that if no limit is set, there is nothing “legal to stand on.”

Mr. Pratt said that if a complainant comes to the Board with a complaint, the Board will have some flexibility when reviewing the complaint. Chairman Conderman agreed.

Mr. Buhrow asked Mr. Pratt that if a complaint came before the Board, how the Board would decide if the noise is too loud. Mr. Pratt said that the 3 sound studies that are required would be referred to.

Mr. Pratt feels that instead of trying to get every possible issue resolved in the ordinance that a more general approach should be taken to allow the Board some flexibility to resolve any issue that may come up. Mr. Pratt said he would at least like to try this type of approach.

Gene Bothe said that the ordinance can always be changed at a later time if need be. He said if this approach doesn’t work, then the Board can change it. Chairman Conderman agreed.

There were no further questions and/or comments from the Board at that time.

Mr. Porter again stated that the revised proposal had not been provided to the public, and it was his opinion that this is improper.

Mr. Porter had prepared a proposal following the last meeting and had forwarded a copy of the same to Chairman Conderman and Mr. Henkel.

Mr. Porter also said that the language that states sound measurements shall be taken from the property line was also omitted from the revised proposal.

Mr. Porter wanted to know if a complainant would have to pay, as part of filing a noise complaint, as was proposed at the December 29, 2011, meeting.

Roy Roger, 40-year member of the Operating Engineers Local 150, said that he has spoken with 4 farmers in the Ohio area. Two of the farmers each have 3 turbines located on their property; the remaining 2 farmers each have 1 turbine on their property.

Mr. Rogers asked each farmer if they had any complaints regarding the construction of the turbines, with the wind or with the shadow flicker. One reported shadow flicker for a couple of hour in the morning, when the sun is shining, which was mitigated with Venetian blinds. Other than that, there were no complaints.

Mr. Rogers was told that the contractor, as well as company representatives, came to their properties to speak with them and let them know they want to work with the residents. The farmers found the rock driveways that had been installed during construction to be “handy” when farming.

Regarding noise, he was told that the sound from the turbines was barely noticeable outdoors and could not be heard indoors. It was reported to him that there was more noise from the traffic from Route 26 over the turbines. When Mr. Rogers asked if the turbines noise fluctuated, a farmer told him it did not.

Mr. Rogers did not know what size the turbines are.

After hearing so many people complaining about wind farms, he wanted to let the Board know that not everyone is complaining.

Mr. Fassler asked Mr. Rogers how away from the turbines these farmers are. Mr. Roger said they each are about 1,400 feet away.

Mr. Fassler feels that there are few complaints from the people who are receiving money from them.

Bob Logan from Franklin Grove thinks the ordinance should include the 5 decibel so there is something to measure from. He did not understand how this Board would be able to make a decision on a noise complaint if it did not have anything to measure by.

If a complaint necessitates a sound test, Mr. Logan wanted to know why the wind company would be notified of the test. Mr. Pratt explained they would be notified because they may be required to pay for it. Mr. Logan disagreed.

Mr. Pratt stated that the standards that would be used are the IPCB standards. He feels the IPCB knows more about this subject than this Board and asked why this Board would want to “reinvent the wheel.”

Mr. Pratt said the IPCB standards tell exactly how to take the sound test, what time to take the test, what the reading have to be, and it deals with all different type of octave levels. He feels that by including the 5 decibel factor into the ordinance, it would diminish the latitude this Board would have with the IPCB standards.

John Martin with Mainstream Renewable Power (“Mainstream”) agreed with Mr. Pratt. He referred to the IPCB standards and said there are 8 octave-band numbers for Class A property that wind farms will have to be in compliance with.

Mr. Porter questioned whether Mr. Martin had a copy of the revised proposal.

Mr. Pratt asked State’s Attorney Henry Dixon if the Board could make a motion on a proposal that had not been made available to the public prior to the motion. State’s Attorney Dixon said he believed it could.

Mr. Fassler wanted to know what would be the point of doing a pre-study and finding the ambient noise if the County is going to go strictly off of the “EPA levels.” Mr. Pratt said that the studies will show what homes will be impacted.

Mr. Fassler had concerns about not having a “hard number” in the ordinance. Mr. Pratt said it would have numbers, as defined in Title 35: Environmental Protection, Subtitle H: Noise, Chapter I: Pollution Control Board, Parts 900, 902, and 910 of the IPCB regulations.

Mr. Pratt said in Section 900-102, it says, “No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, so as to violate any provision of this chapter.” Mr. Pratt feels this gives this Board even more power.

Mr. Fassler asked if the term “noise pollution” would need to be defined in the ordinance. Mr. Pratt again stated, “the emission of sound beyond the boundaries of his property.”

Mr. Pratt feels this gives the Board the ability to make determinations on a case-by-case basis.

Jim Griffin, attorney for Mainstream, provided the Board with his Appearance Form. Mr. Griffin explained that he has been involved with siting and ordinance matters concerning a number of wind energy projects, including Bureau County, Stephenson County, and the ongoing efforts in Ogle County, both by assisting local government in enacting wind energy ordinances and by assisting wind energy companies in processing their projects. He said he has also acted as special counsel for Livingston County and the wind energy projects that have been considered and approved there.

With regards to the issue of making a motion on a proposal that has not been made available to the public, Mr. Griffin said that he does not know of any Illinois law that requires a motion made at a zoning board meeting to be published prior to that meeting. He doesn’t believe this Board will have any issue with that.

With regards to 5 decibel factor, it is Mr. Griffin’s opinion that this board should not adopt that standard because that standard doesn’t occur for any other use in the Agricultural Zoning district in Lee County; therefore, he feels it would be a

discriminatory standard that would violate the wind energy companies' and the participating property owners' right to equal protection under the law. He said it would be "unfair" to regulate one type of sound in one way and another type of sound source in another way. He said that this standard would then not be "legally permissible" if it were adopted by the County.

He said it also "erodes agricultural property rights," or the ability to use and maintain agricultural property within the County's zoning ordinance and within Illinois state law.

Mr. Griffin said the IPCB standards were enacted in 1972. He said if there is a violation of IPCB standards, there is a process by which local government or a complainant can go through. This provides people with a complaint a means to resolve that complaint.

Regarding the point of measurement issue that was mentioned earlier, Mr. Griffin said that under the IPCB, and controlling cases/decisions issued by the IPCB, the measure is made at the receptor. Mr. Griffin said a measurement would be measured at the residence, not the back end of a field.

Mr. Griffin said that no other county has adopted the 5 "decibel above ambient" standard. He said there is no way to determine what that affect will have on ability to site wind turbines and projects. It is his opinion that there is not scientific basis for this factor. Further, he said if that factor prevents any wind turbines from being erected in this County, he feels that would be another reason why this be considered an "unlawful standard."

Mr. Buhrow asked if Mr. Griffin was aware of any cases concerning noise and these types of issues. Mr. Griffin said he is not aware of any, nor is he aware of any finding by any board or local community, that a wind turbine has violated the IPCB standards. He feels this is because the companies are familiar with the standard so they are conservative and they design their projects to make sure they do not violate those standards.

Mr. Fassler asked Mr. Griffin about his use of the term "illegal," and whether or not that was his opinion or the law. Mr. Griffin said that it is illegal "to create one set of standards for one type of use and another standard for a different type of use" and that is the law.

Steve Robery from the Franklin Grove said he disagrees with Mr. Griffin's "opinion of the law." He referred to the County's ordinance where it states that this Board "can impose additional regulations on specific special uses."

Mr. Robery feels this Board is not looking at these projects as special uses. He said that this Board has been consistently talking about the property rights of participating land owners and measuring that against the rights of adjacent property owners. He said "they do not have an inherent right to put up a wind turbine," and they only have that right if the County deems it through special use petition.

Mr. Robery does not think that special uses for wind turbines are not compatible with the existing land uses.

Tom Fassler made a motion to approve the revised proposal with the 5 decibel limitation being added to it; and Craig Buhrow seconded it. Chairman Conderman asked if there was any discussion.

Richard Boris from Willow Creek asked Mr. Martin if he had a copy of the revised proposal that was read earlier in the meeting, and did Mainstream provide that document to the Board. Mr. Martin said that he did have a copy. He said he had arrived early to meeting, had stopped into the zoning office and that he did have a copy.

Mr. Martin said that there are parts of the revised proposal that he has discussed with Mr. Henkel and Mr. Pratt in an effort to come to a resolution. He said that “as a responsible developer,” Mainstream has been ready and willing to compromise on a variety of issues in the proposed text amendment. He believes that their efforts, and anything involved with that, have been appropriate.

Mr. Boris also said that, earlier in the meeting, he heard a union representative talk about “what a farmer could hear.” Mr. Boris said he knows “a number of farmers” and has noted that “a number of them, including the former Village president, have a hearing loss.” He said that “if anyone is giving testimony of what a farmer can hear,” it should be asked whether any audiology tests have been done in the last year because that would be “questionable information.”

In response to a question Mr. Boris had asked Mr. Martin, Mr. Pratt told Mr. Boris that he was the one who compiled the revised proposal. He said he “robbed” from everyone, including Mr. Porter, Bob Logan, and John Martin. Mr. Pratt said he is trying to determine what the County would want and to bring it all together.

Kendall Geuther from Walnut, Illinois (Bureau County) said a sound study had been done last spring, and the residents in that area felt turbines were as noisy as they were on other days. The study did find that the company was out of compliance with IPCB standards.

Mr. Geuther feels the County should have very specific standards for companies to go by.

Mr. Fassler asked if “they” had done anything with the complaint. Mr. Geuther said nothing had been done yet.

Jim Ortgiesen would like the County to require that a study be done, or find a study that has already been done, concerning the effect of wind turbine noise on apiaries and honeybees. Mr. Ortgiesen said honeybees are “endangered,” and without bees, we have no food as pollination will not occur. He said noise can disrupt a honeybee’s navigation, causing them to become lost and die because they could not find their way back to their hive.

Mr. Buhrow asked Mr. Ortgiesen if he knew any beekeepers in the Sublette and/or Paw Paw area that has had problems with their bees following the construction of the wind projects. Mr. Ortgiesen did not.

Mr. Pratt asked if the locations of apiaries are recorded anywhere. Mr. Bothe thought the “extension office” used to know where apiaries were located and that for detasseling, he would have to find out where they were located so the bees were not sprayed.

Mr. Ortgiesen said people are supposed to find this information out but they don’t. When spraying took place in the field across from Mr. Ortgiesen’s home, he contacted the State’s apiary association to see if they could “step in.” He was basically told that they could not do anything unless his bees were killed.

With regards to the revised proposal, Mr. Porter wanted to know if the language states that the County is going to wait a year before addressing complaints and asked for clarification.

Mr. Fassler didn’t think the language read that way.

Mr. Martin said there are 4 studies that will be completed up to and within the first year of operation of a wind farm, including a model, an ambient nighttime sound pressure study prior to construction, a sound pressure analysis of the existing conditions, and specifically compiling information, if any, requested by the County Board. This means that the County Board can direct a wind company to complete additional studies of specific areas, in addition to model, pre-construction test and post-construction analyses.

Mr. Martin also said that within that first year, an additional study may be required, addressing all the complaints, regardless of the finding of the board. There is also a process for complaint resolution within that first year, and beyond.

Mr. Porter disagreed with Mr. Griffin’s earlier statement that sound measurement shall be taken at the residence. Mr. Porter’s interpretation of the regulations is that the measurement can be done within any point of a receiving Class A land; and therefore, feels the measurement should be taken at the property line. Further, he feels that a measurement taken at a foundation would require trespassing.

Mr. Pratt said that the requirement is that a sound measurement be taken at a property line because the revised proposal refers to the IPCB regulations which states how and where sound measurements will be taken.

Mr. Porter also feels that by requiring a sound measurement to be taken at a foundation, it will limit a person’s enjoyment of their property to only their home and not to the entire property.

Mr. Pratt feels Section XII (Remedies) applies to any violation of any part of the ordinance, not just noise. Mr. Pratt read various parts of Section XII (Remedies) and said

that he feels that this section clearly states how any violation shall be handled. He also believes it will effectively resolve a violation because it is flexible.

Mr. Logan had concerns about whether or not the County would be able to effectively handle violations. He said the authority to regulate wind projects has been given to the counties and municipalities; therefore, they should be coming up with their own rules and regulations instead of relying the on the State's regulations.

Mr. Boris feels it is important that testing be done by an independent, third party.

Mr. Griffin said that under an IPCB finding where there is a large parcel of land with a single residence, the measurement from the Class C (wind turbine) to the Class A (residence) is done at or near the residence, and he cited the case from which this was taken. He said that the majority of the parcel was classified as Class C because it was agricultural and only the residence was classified as Class A.

Mr. Griffin said that the IPCB provisions do not segregate by particular use; they are a uniform standard that apply to all noise-emitting sources. He feels this is a consistent and fair policy that this Board should adopt and that this Board should reject the current motion that is on the table that includes the 5 decibel limit.

Mr. Pratt asked Mr. Griffin how someone was able to go on the property to take the measurement. Mr. Griffin said that when a complaint is made before the IPCB, it would be permissible, through a motion or request, to take measurements on the person's property.

Mr. Buhrow asked Mr. Griffin if the case he cited is an Illinois case and, if so, what county. Mr. Griffin said it was in Sangamon County, Illinois.

Mr. Fassler asked if it was a complaint with a coal mine, and not a wind farm. Mr. Griffin said that is correct. Mr. Griffin said that it doesn't matter what the source of the noise is; however, Mr. Fassler strongly disagreed. Mr. Fassler said that wind turbine noise is different and that the County has the right to change the zoning.

Mr. Porter again stated that taking a sound measurement at a foundation will limit a person's enjoyment of their property to only their home and not to the entire property; and that he feels the measurement should be taken at the property line.

Jack Kelly from Franklin Grove feels the simple solution would be to add the 5 decibel limit, with the sound measurement taken at the property line. He believes this will take away "almost all the problems" the County will have.

Mr. Porter said the County does not have to worry about Class C or Class A property if the ordinance states that the measurement be taken at the property line.

Mr. Fassler wanted to change his motion so that it included the requirement that the sound measurement be taken at the property line.

It was asked that Mr. Fassler read his motion. He read the following:

“Noise level: The applicant shall have a third party, qualified professional approved by the County Engineer or County Zoning Administrator (after submission of resume and relevant work experience) conduct an appropriate analysis of the noise impact to nearby properties. The sound pressure level generated by a WECS shall comply with all Illinois Pollution Control Board noise regulations and in no event shall a WECS exceed 5 decibels above the night time background levels before the turbines were in place as measured at the boarder of a nonparticipating property. A modeling analysis of the proposed site shall be included in the application predicting the sound pressure in accordance with the best available practices. To demonstrate compliance with the IPCB regulatory limits the modeling must perform its analysis from the noise emitting property to the property line of a neighboring property. A night time baseline sound pressure study must be done at all non-participating property lines before construction commences. After the WECS is completed and operational, a third party shall complete a sound pressure analysis of the existing conditions. This analysis shall be completed and returned to Lee County Zoning Administrator’s office within sixty (60) days. The applicant must immediately cease any violation of the IPCB regulations unless said violation is excused and waived in writing by the affected Landowners and occupants. All analyses and studies are subject to the approval of the County Engineer or County zoning Administrator.”

Chairman Conderman said Mr. Fassler’s initial motion would need to be rescinded. Tom Fassler made a motion to rescind his motion, and Craig Buhrow seconded. All were in favor, resulting in a 5 – 0 vote.

Tom Fassler made a motion to accept the noise proposal he just read. There was no second to the motion. Motion failed.

Chairman Conderman asked if anyone wanted to make a different motion.

Mr. Buhrow asked Mr. Pratt about IPCB’s rules for taking a sound measure, and Mr. Pratt read the following:

“Except as elsewhere provided in this part, no person shall cause or allow the emission of sound during daytime hours from any property line noise source located on any Class A, B or C land to any receiving Class A land which exceeds any allowable octave-band sound pressure levels specified in the following table...when measured at any point within such receiving Class A land provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property line noise source.”

With regards to turbine noise, Mr. Geuther said that everyone hears it differently, especially if the person has hearing aids. He also believes that the confidentiality agreements signed by participating landowners prevent them from having complaints about the project.

Since the motion failed, Mr. Porter suggested removing the requirement that the measurement be taken at the property line but to leave in the 5 decibel limit.

Mr. Logan feels that this Board has heard a lot of testimony but that it is ignoring what it has heard. He feels that noise is the “most significant impact factor on human life” and that protection is needed.

Mr. Pratt asked Mr. Logan for proof that 5 decibels over ambient is going to protect everybody to the level they want to be protected. Mr. Pratt said he doesn't have any proof that 5 decibels is going to work.

Mr. Porter said that if the 5 decibel limit was included, a complaint over the 5 decibel would be an automatic violation; however, one could still file a complaint even if it is not over 5 decibels but this would require a greater level of proof by the complainant that the sound is a problem.

Mr. Fassler asked if they removed the requirement that the sound measurement be taken at the property line, would it pass. Chairman Conderman feels the 5 decibel limit is more an issue than the property line requirement.

Marilyn Henry from Hamilton Township supports the 5 decibel limit. Mr. Pratt feels that putting that limit into the ordinance would hinder the Board when time to make a decision. He said that a wind company could contend that they are in compliance if a sound measure shows that the sound is only 4 decibels over ambient. Not having a limit in the ordinance allows the Board to decide whether that 4 decibels over ambient is too much.

Mrs. Henry suggested that the County start with the 5 decibel limit and then amend later if needed. She also feels the sound measurement should be taken at the property line instead of the foundation.

Mr. Porter said that Mr. Thunder and Mr. James have told him the 5 decibels limit is protective and that is why he is advocating for it.

Mr. Griffin said the standards of the IPCB do protect the public health and safety; and that is the purpose of those standards and that is what they are designed to do. He feels that if Lee County implements these standards, it will be protecting the public health and safety.

He again stated that no other noise in the Agricultural District currently requires this 5 decibels above ambient.

Mr. Logan disagreed with Mr. Griffin's last comment because he feels that a wind farm is not an "agricultural operation." He said that it may be an agricultural area, but it is not an agricultural operation. He feels the wind turbines are special uses, not agricultural uses. Mr. Logan said grain dryers are not regulated because they are used in agriculture but wind turbines are not agricultural.

Earl Gors from Deer Grove said he disagrees with Mr. Logan and that it is agricultural and it would be covered under that.

Mr. Logan feels this noise ordinance shouldn't apply to agricultural operations/equipment.

Mr. Gors said that it is a noise ordinance, and it is about noise.

Mr. Logan said wind turbines create a different type of noise.

Mr. Porter said the noise ordinance would only apply to WECS and not agricultural operations.

Mr. Bothe wanted to know why a sound measurement would not be taken from a residence if the complaint is coming from inside that residence. He feels it would make more sense to take the measure at the foundation if the residents are complaining about noise that they are hearing inside the home.

Mr. Boris has concerns about residents losing sleep and causing automobile accidents. Mr. Pratt responded to Mr. Boris that there is no proof that 5 decibels above ambient will prevent residents from losing sleep. Mr. Boris said there needs to be some control standard and that the IPCB doesn't enforce because he heard they have no staff.

Mr. Porter feels that the reports by Rick James and Tom Thunder that he provided to the Board at the previous meeting, are the proof that Mr. Pratt is looking for.

Mr. Robery feels that if a sound measure is within the IPCB's limits but is 9 decibels above ambient, then he feels this would still be a violation based on the belief that this constitutes as noise pollution which is prohibited by the IPCB.

David Raegs, a business representative for Labors' Local Union #393, in Marseilles, Illinois. He stated that he fully supports wind energy projects and the jobs they create.

Keith Bolen with Mainstream reiterated that under the proposed ordinance, wind companies will be required to complete 4 studies at the expense of the wind companies. He feels that by requiring these studies, the County will be able to prevent annoyance to it citizens near wind projects and the costs go to the wind company.

Mr. Bolen said that the goal of these meetings should not be to go beyond accountability of the developer and to "regulate" wind companies out of the County.

Mr. Bolen asked Mr. Porter in how many counties had he filed lawsuits; and were they only noise complaints. Mr. Porter said he has a suit in Bureau County concerning a zoning ordinance in which the extension of a zoning ordinance was done improperly; and in DeKalb County which has been resolved.

Mr. Bolen asked Mr. Porter if his lawsuits included counts concerning increased traffic, dust, etc. Mr. Porter said that most of the lawsuits revolve around improper zoning and improper zoning procedures. Further, Mr. Porter said that the allegations primarily revolve around an improper extension of a conditional use permit.

Mark Bressen from Compton disagreed with the comment that these wind projects create jobs for local people. He also said that the County needs to protect non-participating residents.

Mr. Griffin read testimony that had been given by Tom Thunder in Ogle County in which Mr. Thunder testified that a noise code should not apply only to wind turbines; that he has not studied the impacts of the standards if they were applied to other uses in the agricultural zoning district; he has not studied the impact of the 5 decibels above the ambient level on wind farm siting; and he does not know what the effect of instituting that provision on the ability to develop and site wind farms.

Mark Zula, business agent with the International Union of Operating Engineers Local #150, said he is the business agent for the Compton wind farm. He explained that while supervisors are often not local people, the workers are from surrounding counties.

Roseann Para from Willow Creek Township agrees that a sound measurement should be taken from the property so that a person is able to enjoy their entire property.

Mr. Ortgiesen wanted to know if this Board was going to look into his concern about the effects of WECS on apiaries and honeybees. Mr. Fassler said he wanted to talk further with Mr. Ortgiesen after the meeting but he didn't see why a study couldn't be required in the section that deals with aviary studies, etc. Mr. Pratt agreed but said that this Board needs some direction as to what is needed.

Mr. Logan again stated that he feels a 5 decibel above ambient should be included in the ordinance.

Tom Fassler made a motion to accept the following:

“Noise level: The applicant shall have a third party, qualified professional approved by the County Engineer or County Zoning Administrator (after submission of resume and relevant work experience) conduct an appropriate analysis of the noise impact to nearby properties. The sound pressure level generated by a WECS shall comply with all Illinois Pollution Control Board noise regulations and in no event shall a WECS exceed 5 decibels above the night time background levels before the turbines were in place as measured at the boarder of a nonparticipating

property. A modeling analysis of the proposed site shall be included in the application predicting the sound pressure in accordance with the best available practices. To demonstrate compliance with the IPCB regulatory limits the modeling must perform its analysis from the noise emitting property to the foundation of any non-participating residence structure occupied a majority of the time. A night time baseline sound pressure study must be done at all non-participating property lines before construction commences. After the WECS is completed and operational, a third party shall complete a sound pressure analysis of the existing conditions. This analysis shall be completed and returned to Lee County Zoning Administrator's office within sixty (60) days. The applicant must immediately cease any violation of the IPCB regulations unless said violation is excused and waived in writing by the affected Landowners and occupants. All analyses and studies are subject to the approval of the County Engineer or County zoning Administrator.”

Chairman Conderman asked if there was a second to the motion. There was no second, resulting in motion failed.

Mr. Porter said that he was comfortable with the revised proposal so long as it has the 5 decibel limit.

Mr. Pratt made a motion to accept the following:

“Noise level: The applicant shall have a third party, qualified professional, approved by the Lee County Engineer or Zoning Administrator, (after submission of resume and relevant work experience) conduct an appropriate analysis of the noise impact to nearby properties. The sound pressure level generated by a WECS shall comply with all Illinois Pollution Control Board Noise regulations as outlined in Title 35: Environmental Protection, Subtitle H: Noise, Chapter I: Pollution Control Board, Parts 900, 901, and 910, which outline limitations and measurement procedures, and specifically address the prohibition of noise pollution in the State of Illinois. A modeling analysis of the proposed site shall be included in the application predicting the sound pressure in accordance with the best available practices. An additional appropriate night time ambient sound pressure study must be done before construction commences. After the WECS is completed and operational, a third party shall complete a sound pressure analysis of the existing conditions and specifically compiling information, if any, requested by the County Board. Prior to the first anniversary of the commercial operations date, a third party approved by the Lee County Engineer and Zoning Administrator shall complete a sound pressure analysis to address any complaints, if any, received by the Lee County Zoning Administrator within the first year of operation. These analyses shall be completed and returned to the Lee County Zoning Office within sixty (60) days. The applicant must immediately cease any violation of the IPCB regulations unless said

violation is excused and waived in writing by the affected Landowners and occupants. All analyses and studies are subject to the approval of the Lee County Engineer or Zoning Administrator.

Complaint Resolutions:

The owner/operator of the WECS Project shall respond to the complainant property owner(s) and the County of Lee within five (5) business days of being notified in writing of a sound/noise complaint by any property owner(s) within the project boundary and a one-mile radius beyond any WECS location. If the written complaint is not resolved to the satisfaction of the complainant within twenty (20) business days of the complaint being filed through reasonable efforts to mitigate the complaint, then Section XII, VIOLATIONS AND PENALTIES; COMPLAINTS AND MODIFICATION, SUSPENSION OR REVOCATION OF WECS PERMIT shall be enforced.”

Gene Bothe seconded Mr. Pratt’s motion. Chairman Conderman asked if there was any further discussion.

Mr. Logan suggested that a countywide vote be taken to determine if the citizens are in favor of or against wind energy development.

Mr. Robery asked the Board to reconsider adding the 5 decibel limit to the ordinance as it will act as a “tape measure” when determining how great or how minimal a noise is.

Mr. Porter feels that by not including the 5 decibel limit, there is a disconnect between the evidence presented and the motion made. He reiterated what he had stated earlier in the meeting in support of and with regards to the 5 decibel above ambient limit.

Chairman Conderman called for a vote and roll was called.

Mr. Pratt asked for a moment to explain his vote. He stated that he is not an expert and he does not know if his proposal will work. He said he is not comfortable “putting a number out there that can be worked around.” Mr. Pratt said he likes the studies and in the one petition in which a study was provided, he felt “the study was excellent.” Mr. Pratt said he wanted to “give this a try,” and if it fails, then it will be changed.

The results of the vote were 4 -1 in favor of accepting Mr. Pratt’s motion. Tom Fassler dissented.

Mr. Buhrow agreed with Mr. Pratt’s opinion as to the usefulness of the studies.

Chairman Conderman announced that it was 9:00 p.m. On the motion of Mike Pratt, seconded by Gene Bothe, the meeting was adjourned at 9:00 p.m.

The next meeting is scheduled for Friday, January 20, 2012, at 7:00 p.m.

Respectfully submitted,

Alice Henkel

By: _____