

DeKalb County Government
Sycamore, Illinois

Planning and Zoning Committee Meeting
(February 22, 2023)

The Planning and Zoning Committee of the DeKalb County Board met on February 22, 2023 at 6:30 pm in the DeKalb County Legislative Center, Gathertorium, in Sycamore, Illinois. In attendance were: Committee Members: John Frieders, Rhonda Henke, Jim Luebke, Terri Mann-Lamb, Jerry Osland, Roy Plote, and Suzanne Willis; Community Development Department staff: Derek Hiland and Marcellus Anderson; and, Brian Gregory, DeKalb County Administrator. Also, in attendance were: Attorney Courtney Kennedy and Benjamin Sych, representing New Leaf Energy, LLC; James Hutcheson; John Lyon; and Mike Cody.

Call to Order / Roll Call

Ms. Mann-Lamb, Planning and Zoning Committee Chair, called the meeting to order. Ms. Willis and Mr. Luebke arrived after Roll Call.

Approval of Agenda

Committee Action: Mr. Frieders moved to approve the agenda, seconded by Mr. Plote.

Mr. Hiland recommend that the discussion regarding the Battery Storage Systems and Sustainable Energy System Text Amendments under Old Business be moved to after the New Business items.

Committee Action: Mr. Frieders then moved to amend the agenda per Mr. Hiland's recommendation, seconded by Mr. Plote, and the motion to amend carried unanimously.

Ms. Willis arrived and joined the meeting.

Committee Action: Motion to approve the amended agenda was carried unanimously.

Approval of the Minutes of the January 25, 2023 Planning, Zoning, & Development Meeting

Ms. Henke noted an error on page 4 of the Committee Packet, under item B, where it referred to the 29.7-acre solar facility as a solar garden instead of a solar farm. Staff explained that the 20-acre limit on solar gardens in the County Code had been removed in the October 2022 update to the solar regulations. Ms. Henke then noted that on page 10, it was incorrectly noted that Craig Roman had seconded the motion to adjoin the meeting. Staff responded that they would make that correction.

Committee Action: The Committee moved to approve the minutes, as noted, of the January 25, 2023 meeting, and the motion carried unanimously.

Public Comments

Mike Cody read a statement commenting on his issues with the haphazard development of solar and loss of quality farm lands, and asked that the proposed New Leaf solar garden special use be denied.

John Lyon read a statement and distributed copies regarding Illinois House Bill 4412, in which he called for a media campaign to fight the newly adopted bill. He warned that the Bill would allow for battery storage, and called for better standards for battery energy storage systems. He then noted his feelings that the DeKalb County Farm Bureau does not seem care about any of the DeKalb County citizens but for some few farmers, and cited a report from the McHenry Farm Bureau talking about the greatness of Illinois farmland.

Old Business

Heliofidem Renewable Energy – Plote Somonauk 2 Special Use Request (SO-22-19)

Mr. Hiland informed the Committee that Cenergy Power, representing Heliofidem Renewable Energy, was seeking a Special Use permit for a 5-megawatt, 29.7-acre solar garden on a portion of a 157.19-acre property located on the southwest corner of Pine Road and Governor Beveridge Highway to be known as Plote Somonauk 2. He noted that the Committee had previously forwarded a recommendation of approval to the County Board at its previous meeting. Mr. Hiland reported that he was in error with his determination as to who was able to vote on the matter in Committee and out of an abundance of caution the County Board remanded the matter back to the Committee. He also noted that a copy of the proposed ordinance for the Special Use was included in the Committee Packet.

Committee Action: Ms. Willis moved to recommend approval of the proposed Special Use Permit, seconded by Mr. Frieders.

Mr. Osland noted that he had warned that this might happen at the previous meeting.

Ms. Willis noted that in the sense of conflicts of interests, the County Board wants to avoid not only actual conflicts of interest, but also the appearance of a conflict of interest, and that they need to err on the side of caution if there is any doubt about whether something is a conflict or not.

Committee Action: A roll call vote was called on the motion to recommend approval, and the motion failed: two yes (2: JF, SW); two no (2: RH, JO); and two abstain (2: TML, RP).

The Committee had a discussion with Mr. Gregory and Mr. Hiland regarding what happens next for the matter. The Committee then moved on to the next agenda item. After subsequent review of the County Code, Mr. Hiland noted later in the meeting that the matter would still be forwarded to the County Board, but that he would have to consult with the States Attorney for further clarification. Mr. Gregory then reached out via text to the States Attorney Office, who subsequently advised that the matter would be forwarded with an unfavorable recommendation since it did not receive support.

New Business

New Leaf Energy, Inc. – Solar Garden Special Use Request (CL-23-01)

Mr. Hiland informed the Committee that New Leaf Energy, Inc. had submitted a Special Use Permit application to establish and operate a 5-megawatt, 35-acre solar garden on a 77.5-acre property located on the northwest corner of the intersection of Crego and Bastian Roads. He informed the Committee that the Hearing Officer recommended approval of the petition, with conditions, and asked that they consider the petition and forward a recommendation to the full County Board for action.

Committee Action: Ms. Willis moved to recommend approval, with conditions, seconded by Mr. Frieders.

Mr. Frieders inquired whether the representative from New Leaf Energy had anything to say regarding the petition. Benjamin Sych, of New Leaf Energy, identified himself and noted that he was available to answer any questions. The Committee then briefly discussed the project with him, and had him talk about his experience in the public hearing. Mr. Sych was also asked about who would be the developer of the project, and he explained that New Leaf would develop the facility, but then it would be sold to another entity that would own and operate it. He noted that he did not know who that entity would be yet.

Mr. Luebke arrived and joined the meeting.

Committee Action: A roll call vote was called on the motion to recommend approval, with conditions, and the motion carried: four yes (4: JF, JL, TML, SW); two no (2: RH, JO); and one abstain (1: RP).

New Business

New Leaf Energy, Inc. – Solar Garden Special Use Request (CL-23-02)

Mr. Hiland informed the Committee that New Leaf Energy, Inc. had submitted a Special Use Permit application to establish and operate a 5-megawatt, 35-acre solar garden on a 100.95-acre property located on the southwest corner of the intersection of Kane and Preserve Roads. He informed the Committee that the Hearing Officer recommended approval of the petition, with conditions, and asked that they consider the petition and forward a recommendation to the full County Board for action.

Committee Action: Mr. Luebke moved to recommend approval, with conditions, seconded by Ms. Willis.

The Committee discussed the proposed screening with Mr. Sych and Mr. Hiland.

Mr. Plote inquired as to how the recently adopted State legislation would affect this project. Mr. Hiland explained that any items submitted to the County prior to its adoption of revised rules in

May would be subject to the current regulations, and any submitted afterwards would be subject to the new standards adopted by the State.

Committee Action: A roll call vote was called on the motion to recommend approval, with conditions, and the motion carried: four yes (4: JF, JL, TML, SW); two no (2: RH, JO); and one abstain (1: RP).

Old Business Continued.

Zoning Text Amendments for Battery Storage Systems (DC-22-15) and Text Amendments based on House Bill 4412

Mr. Hiland informed the Committee that State House Bill 4412 (HB4412), which contained language that would remove much of the local siting control and regulation of commercial wind and solar facilities, had passed and been signed by the Governor. He then talked about staff's efforts to draft new language that would bring County Code into compliance with the State regulations. He also informed the Committee about discussions he had had with Brad Belanger regarding the National Fire Protection Associations standards (which were included in the Committee packet). Mr. Hiland noted that battery energy storage systems were not mentioned in the State language, and did not think that they were identified as accessory uses to wind or solar. He then reported on discussions he had with other counties regarding how the newly adopted bill affected them.

Mr. Gregory elaborated on the impacts of HB4412 on the County. He talked about the amount of time and work put in by the County to develop its regulations, in particular, all of the effort to gather community input on the issue. He pointed out that HB4412 essentially threw all of that work out the window, now required that all counties bring their codes into conformance with the new regulations. He elaborated on the issues the County had with HB4412, but noted that the County had no choice but to comply. In particular, he highlighted that the State had taken away local control from the County.

Mr. Hiland noted that although most of the discussion had been about commercial solar facilities, HB4412 also applied to commercial wind facilities, and would significantly change those regulations as well.

Mr. Frieders commented that there should be some discussion on what would happen if the County were to turn down a project which met the standards of HB4412. Mr. Gregory responded that if a project came forward which met the standards of HB4412, but was rejected by the County, the County could be sued and that it would lose. He then elaborated more on what HB4412 allowed counties to do. Mr. Frieders noted that even under the current regulations, if the County does not follow its own rules, it could be sued and would lose in court.

Mr. Gregory then responded to some comments from audience members.

Ms. Willis noted that if the County does not bring its rules into compliance, then the State will treat it as having no rules what-so-ever and will be unable to impose any requirements.

Mr. Osland voiced his opinion that the discussion was on the wrong track, that the County was being stuck with HB4412 as the result of promoting by pro-solar elements, and that this is going to be more of a mess.

Mr. Luebke inquired whether any pressure was being applied to change HB4412 or fix it. Mr. Gregory responded that trailer bills had been introduced, and elaborated on some of the issues they were addressing. He noted however, that none of the trailer bills would eliminate HB4412. Mr. Luebke noted that more political pressure was needed. Mr. Hiland noted that directors around the state have been talking about HB4412, its effects, and how they are dealing with it. Mr. Hiland noted that a senator from downstate was pushing a trailer bill. He also noted that some counties were planning on doing nothing and will just allow these projects by right.

Mr. Plote inquired whether there had been any solar farm applications that had not been moved out of Committee. Mr. Hiland responded that he did not believe so.

Ms. Willis inquired whether the battery energy storage system text assumed a particular type of technology to be used for those systems, and elaborated on changes and alternatives in the technology she had come across. Mr. Hiland noted that he had spoken with Mr. Belanger about this, and that Mr. Belanger had noted that they would likely be chasing it forever as the technology develops. Mr. Hiland noted that the proposed language proved a starting point, understanding that as the technology continues to develop, the language would likely have to be updated to keep up with it. He then elaborated more on the National Fire Protection Association standards that he and Mr. Belanger talked about.

The Committee talked with Mr. Hiland and Mr. Gregory about the steps taken to help rural fire departments in regarding concerns related to battery storage systems, what other counties were doing in this regard, and which standards should be required. It was determined that language referencing facilities being in compliance with the current National Fire Protection Association standards would be added into the proposed text amendment updates.

Mr. Frieders inquired as to what staff had done in response to HB4412. Mr. Hiland described staff's efforts to revise the current County code to be compliant with HB4412.

Mr. Frieders asked staff about the idea of a law suit being brought by the County Board against HB4412. Mr. Gregory responded that if the County Board wished, it would have to direct the States Attorney Office to do so. He then talked about the zoning process and noted that even with the code changes, some developers would be willing to work on a compromise with the County.

Committee Action: Mr. Luebke moved to amend the Battery Energy Storage Systems Text Amendment proposal to include a requirement that they must meet the National Fire Protection Association standards and to forward a recommendation of approval for the amended proposal to the County Board, seconded by Ms. Willis. A roll call vote was held and the motion passed unanimously.

Other Business

none

Adjournment

Mr. Plote moved to adjourn the meeting, seconded by Mr. Frieders, and the motion carried unanimously.

Respectfully submitted,

Terri Mann-Lamb
Chairman, Planning and Zoning Committee

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