

Piatt County  
Zoning Board of Appeals

February 25, 2021  
Minutes

The Piatt County Zoning Board of Appeals met at 1:00 p.m. on Thursday, February 25, 2021 in Courtroom #2 of the Courthouse and via Zoom. Chairman Loyd Wax called the meeting to order. The roll was read. There was a quorum. Attending were: Wax, Jim Harrington, Kyle Lovin, Dan Larson, William Chambers and Keri Nusbaum.

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

**MOTION:** Larson made motion, seconded by Harrington to approve the minutes from December 17, 2020 as written. Roll was called. Harrington – Yes; Lovin – Yes; Larson – Yes; Chambers – Yes; Wax – Yes. Motion carried.

**New Business: Application for Extension of SUP**

Borrego solar applied for an extension of the special use permit granted January 9, 2019 for a Solar Farm. Mel Samaroo of Borrego Solar was sworn in on Zoom. There have been no changes to the plan for the solar project. Larson asked why the project had not been started. Borrego did not receive the permit in the state lottery. Jim Reed, a resident of Deland, said that the company should be asked to join the Joint Utility Group, to create a map of the underground infrastructure. Wax asked the ZBA members to review the Findings of Fact from the previous hearing. Kip Smith noted that the AIMA agreement requires that nothing is left underground when the installation is removed. They have continued to have planning conversations with the drainage district and the neighboring landowners.

**Factors – 329 Frontier Piatt LLC December 20, 2018**

1. Does the current special use restriction promote the health, safety, morals, or general welfare of the public?  
The zoning board voted 4-0 that it does. Wax said he believes most of the time it does, but not always.
2. Will granting the special use be injurious to the use and enjoyment of other property within the immediate vicinity?  
The Zoning board discussed. Edwards – it's a possibility; Wax- it's possible it could be injurious, but as proposed, not likely. Larson and Harrington – yes it could be injurious. There is concern from the neighbors and drainage concerns.
3. Will granting the special use diminish property values of other property within the immediate vicinity?  
Edwards and Wax – No; Harrington and Larson-Yes, values could be impacted. (2-2)
4. Is there adequate infrastructure to accommodate the special use, if granted (i.e. roads, utilities, drainage)?  
The ZBA agreed 4-0 there are no access issues, but 2 members believe there is a drainage issue which would need to be addressed.

5. Would the special use, if granted, be in harmony with the overall comprehensive plan of the county?  
The ZBA agreed (4-0) that the special use would be in harmony with the comprehensive plan.
6. Would the special use, if granted, compete with or impede the existing zoned uses of other property within the zone?  
The ZBA voted (3-1) that it would not impede. Harrington said it would compete with the current use of the ground but would not impede.
7. Would the special use, if granted, create a hardship on other landowners within the zone?  
The ZBA agreed (4-0) that it would not be a hardship.
8. Would denying the special use create a hardship on the applicant?  
The ZBA agreed (4-0) it would not create a hardship.
9. Is the subject land suitable for the special use and is the subject land suitable for the current zoned use?  
The ZBA voted (2-2) the land is not suitable. The ZBA agreed (4-0) that the land is suitable for the current zoned use.
10. Would the special use, if granted, have a harmful impact upon the soil?  
The ZBA agreed (4-0) that it would not be harmful.
11. What is the Land Evaluation and Site Assessment (LESA) rating for the subject land?  
The LESA score is 218.6. The ZBA agreed (4-0) that the land would not be permanently out of production.

The ZBA considered and voted upon the factors.

**Factors – 329 Frontier Piatt LLC February 25, 2021**

1. Does the current special use restriction promote the health, safety, morals, or general welfare of the public?  
The zoning board voted 5-0 that it does.
2. Will granting the special use extension be injurious to the use and enjoyment of other property within the immediate vicinity?  
The Zoning board discussed. There are drainage concerns. The ZBA voted 3-2 that it could be injurious.
3. Will granting the special use extension diminish property values of other property within the Immediate vicinity?  
Chambers and Wax – No; Harrington, Lovin, Larson-Yes, values could be impacted if there are drainage problems. (2-3)

4. Is there adequate infrastructure to accommodate the special use, if granted (i.e. roads, utilities, drainage)?  
The ZBA agreed 5-0 that it is adequate.
5. Would the special use, if granted, be in harmony with the overall comprehensive plan of the county?  
The ZBA agreed (5-0) that the special use would be in harmony with the comprehensive plan.
6. Would the special use, if granted, compete with or impede the existing zoned uses of other property within the zone?  
The ZBA voted (5-0) that it would not impede.
7. Would the special use extension, if granted, create a hardship on other landowners within the zone?  
The ZBA agreed (5-0) that it would not be a hardship if the drainage is addressed satisfactorily.
8. Would denying the special use extension create a hardship on the applicant?  
The ZBA voted (4-1) it would not create a hardship.
9. Is the subject land suitable for the special use and is the subject land suitable for the current zoned use?  
The ZBA voted (4-1) the land is not suitable. The ZBA agreed (5-0) that the land is suitable for the current zoned use.
10. Would the special use, if granted, have a harmful impact upon the soil?  
The ZBA agreed (5-0) that it would not be harmful.
11. What is the Land Evaluation and Site Assessment (LESA) rating for the subject land?  
The LESA score is 218.6. The ZBA agreed (5-0) that the land would not be permanently out of production.

**Motion:** Harrington made motion, seconded by Chambers to recommend approval of the extension of one year extension of the SUP to the county board with confirmation that the drainage district is satisfied.

Roll was called. Harrington – Yes; Chambers – Yes; Lovin- Yes; Larson-Yes; Wax – Yes. The motion carried.

The County Board will consider the matter at their next regular meeting on March 10, 2021 at 9 a.m.

### **Review and recommendation of text amendments. Shadow flicker**

On January 13, 2021 the County Board met at their regularly scheduled meeting and voted 6-0 to accept the recommendation of the ZBA regarding tip height and to ask the ZBA to reconsider the matter of shadow flicker. Legal notice was published in the Journal Republican on February 3, 2021.

Jim Reed was sworn in: His brother in law suffers from flicker induced seizures. He said the county should not take away the right of an individual property owner to negotiate. He asks the shadow flicker to be set at zero.

Alan Moore of Apex was sworn in. He said there is no evidence that shadow flicker is a health hazard. He said that 30 hours per year would equal less than 1% of the year, assuming it was never cloudy. He said that farming impacts adjoining neighbors, and right to farm protects that. He said that neighbors don't have a right to tell a farmer how to use his property and regulating shadow flicker does that. A zero hour limit would effectively ban wind energy in Piatt County. He cited several counties which do not regulate shadow flicker at all. Dewitt county recently changed their ordinance to a zero hour limit. He recommends a 30 hour limit. Reed asked if agriculture and wind energy is a fair comparison. Dylan Gallagher asked if a neighbor's tower should be allowed to affect his livestock. Dave Oliger cited a study which said that wind increases risk of suicide. He asked if zero hours of shadow flicker would make it impossible to build the wind farm. Harrington asked if they could adjust and make 15 hours work. Moore answered that adjustments can be made. Lynn Grammer asked if Moore knew why Dewitt changed their recommendations. He cannot speak to their reasoning. Reed said all models are wrong, the future cannot be predicted.

Dr. Jeff Ellenbogan was sworn in on Zoom. He is a neurologist. He said shadow flicker does not pose health risks. Chris Stillabower asked on chat via Zoom if shadow flicker affects people who are sensitive to the bhuna affect and do you think flicker would be annoying? Dr. Ellenbogan does not have a medical opinion about annoyance and said there is no modern scientific support of the bhuna effect. Stillabower asked if he was being paid to be on Zoom. The answer was yes.

Mark Gershon, attorney for Apex made a statement that they have had multiple experts testify and there are other public health experts including the Epilepsy foundation and who agree that shadow flicker does not have negative effects. He said zero shadow flicker would take away a legal use of property. No other use is regulated by the neighbors. He asked that the regulations not be used to block wind development. He was asked if there is a government agency that regulates shadow flicker and there is not. Shreffler asked if the burden was on the adjoining property owners to complain and file suit.

Dwayne Moore was sworn in on Zoom. He lives in the Hoopeston wind farm. He said they have very little flicker and has had no issues with the flicker.

Dylan Gallagher was sworn in and asked the ZBA to recommend 0 hours of shadow flicker. He said there is research which shows that shadow flicker affects livestock breeding. He cannot site the study but will email the information to Chairman Wax. Alan Moore asked what number of hours was studied. Gershon asked if it was a peer reviewed study.

Amanda Pankau was sworn in. She shared a fact sheet form the Center for Rural Affairs. She asks the ZBA to recommend 30 hours.

Robert Scott was sworn in. He is an expert for Apex. He recommends no limit or a 30 hour limit on shadow flicker. He said no wind farms have been built in areas where the standard is less than 30 hours.

John Jordan from Mansfield was sworn in. He said we need to think about the taxes in this county, and the windmills will make this county right again. He believes there's only one thing to do and that's approve all this and move on.

David Oliger was sworn in. He passed out a study. His study said that wind turbines increase suicide rates.

Steve Shreffler was sworn in on Zoom. He would like to see the shadow flicker set to zero.

Barbara Lamont was sworn in. She lives in Macon Co but owns ground in the project area for Piatt County. She is in favor of the wind project.

The following emails were read into the record: (attached)

Louis Wozniak – in favor of wind project. Wants 30 hour shadow flicker allowed.

Dustin and Jenny Bateman – opposing wind projects. Asks for zero hours shadow flicker.

Claudia Coil – asks that shadow flicker be zero.

Chris Stillabower – asks for zero shadow flicker.

Buford Clark – in favor of wind projects

Christian Barnes – Union Ironworkers in favor of wind farms.

Dan Smith – landowner in the footprint. Asks for zero shadow flicker.

Jessica Bartley – asks for no shadow flicker

Wax reviewed the previous recommendation of the ZBA to the County Board.

**MOTION:** Harrington made motion, seconded by Lovin to recommend the same amendment to the County Board. And ADD E. 3. Applicant shall provide an updated Shadow Flicker analysis at the time of Building Permit applications for wind turbines. The ZBA discussed the motion. Chambers said it is an issue of property rights for nonparticipating landowners. He said most of the participating landowners do not live on their property. Wax said he feels the great preponderance of credible evidence shows no ill effects of shadow flicker of 30 hours or less. Larson is concerned about affects on livestock. The motion was amended for the text amendment to read:

#### **E. Shadow Flicker**

1. The applicant shall conduct an analysis on the potential shadow flicker onto adjacent properties as part of the approval process. The analysis shall identify the locations of the shadow flicker and the expected duration of the flicker over the course of a calendar year.
2. Shadow flicker shall not affect a primary structure or pasture with livestock in excess of 15 hours per calendar year. This limitation may be waived in writing by the owner(s) of the impacted primary structure or pasture.
3. Applicant shall provide an updated Shadow Flicker analysis at the time of Building Permit applications for wind turbines.

The ZBA 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  
Yes. The ZBA agreed (5-0) that it does.
2. Will the proposed text amendment be injurious to the use and enjoyment of other property within the immediate vicinity  
The ZBA agreed (5-0) that it is possible
3. Will the proposed text amendment diminish property values of other property within the immediate vicinity  
The ZBA said that there is evidence that it is possible (5-0)

4. Does the proposed text amendment take into consideration whether there is adequate infrastructure (i.e. roads, utilities, drainage)  
N/A
5. Is the proposed text amendment in harmony with the overall comprehensive plan of the county  
Yes. The ZBA agreed (5-0) that it is.
6. Would the proposed text amendment compete with or impede the existing zoned uses of other property within the zone  
It could. The ZBA said it will help some and hurt some. It could impede aerial application. (5-0)
7. Would the proposed text amendment create a hardship on landowners within the zone  
The ZBA agreed it could create an inconvenience. (5-0)
8. Would it create a hardship on landowners within the zone if the text amendment were not made  
The ZBA agreed (5-0) it would be an inconvenience.
9. Would the proposed text amendment have a harmful impact upon the soil  
No. The ZBA agreed (5-0) it would not.

Roll was called: Larson – Yes; Harrington – Yes; Lovin – Yes; Wax – No; Chambers – Yes. The motion carries with a vote of 4-1.

The County Board will consider it March 10, 2021 at 9 a.m.

**Public Comments:** Jordan said that turbines will have no effect on livestock and that Wm Chambers needs to know who he is representing.

A question on Zoom was – Where will the power go? Moore said it will go onto the grid, so it can go anywhere. There is no clear answer.

Moore thanked the ZBA members.

Steve Schreffler said the matter should be placed on a ballot and let the people decide.

**MOTION:** Harrington made motion, seconded by Lovin to adjourn. Roll was called, all in favor and the meeting adjourned at 4:09 p.m.

Respectfully submitted,

Keri Nusbaum  
Piatt County Zoning Officer