

## MINUTES

### **Members Present**

Mr. Olthoff, Mr. Fetherling, Mr. Carrico, Ms. Dunbar, Mr. Fairfield, Mr. Payton, Ms. Polk, Mr. Smith, and Mr. Swanson,

### **Members Absent**

Mr. Tripp, Mr. Tholen, Ms. Peters, Mr. Kinzinger, and Ms. Zucollo

### **In Attendance**

- **Board Members**

Mr. Wheeler and Mr. Sirois

- **Department Heads**

Delbert Skimerhorn

- **Media**

Present

### **1. Call to Order/Roll Call**

The meeting was called to order by the Committee Chairman, Mr. Olthoff, at 8:59 a.m. Quorum present.

### **2. Public Comment**

None

### **3. Approval of Minutes: September 19, 2018, October 17, 2018, and November 21, 2018**

**Mr. Payton made a motion to approve all sets of minutes, and Mr. Fairfield seconded it. Motion carried with a voice vote.**

### **4. Building**

- **Building Report: October 2018**

Mr. Skimmerhorn reviewed and discussed the report with the committee.

**Ms. Polk made a motion to approve the report, and Mr. Fetherling seconded it. Motion carried with a voice vote.**

- **Stormwater /MS4 Program Discussion**

Mr. Skimmerhorn asked the committee if there are any issues that they would like to discuss. There were no issues or concerns voiced.

- **Agreement for Electrical Inspections with Gary Phillips**

Mr. Skimmerhorn advised that this agreement was prompted by the increase in industrial and commercial permits that were seen this year and anticipating next year. This contractor would only be doing inspections on industrial and commercial permits and only when our existing staff cannot perform the inspection.

Mr. Skimmerhorn reviews the contract with the committee.

**Mr. Fetherling made a motion to approve the agreement, and Ms. Polk seconded it. Motion carried with a roll call vote of 10-0. Voting aye was: Mr. Olthoff, Mr. Fetherling, Mr. Carrico, Ms. Dunbar, Mr. Fairfield, Mr. Payton, Ms. Polk, Mr. Smith, Mr. Swanson, and Mr. Wheeler.**

Mr. Wheeler wanted to request that Mr. Skimmerhorn contacts Anita Speckman to inquire if Mr. Gary Phillips would need to be added to our liability insurance.

Mr. Skimmerhorn stated that this has been done before and will not need to be added, however they will double check that.

## **5. Planning**

- **Overview of the Planning Department**

Mr. Skimmerhorn gave an overview of the planning department for the new county board members.

Mr. Olthoff asked if there were any questions regarding the overview, there were not.

## **6. Zoning**

- **Ex Parte Communications to Committee**

Mr. Skimmerhorn asked the board members if they have had any communications with anyone regarding zoning cases that they need to disclose.

Mr. Wheeler asked Mr. Skimmerhorn to give an explanation of what this is for the new board members, just so they are clear as to the meaning and reasoning.

Mr. Skimmerhorn advised that zoning cases must follow the public hearing process. The process must be transparent. Communications between board members, citizens, applicants, or anyone else outside of the public hearing process is not transparent. This can open up the county to liability as well as get cases overturned in the courts. So it is best to not discuss.

Mr. Skimmerhorn advised that there may be a time that you receive a letter in the mail and you open it and read it. At that time, you would bring that letter to the committee, into the public realm. With this, the ex parte communications has been removed.

This is meant to be a very transparent and public process, so we want to keep it that way.

Mr. Olthoff asked the committee if any of them have had any ex parte communication.

There were none.

- ZBA Case#18-44; request for a Special Use Permit #121-99.c.34 (Solar Farm) in the A1-Agricultural District on a parcel generally situated in Section 02 of Aroma Township. The petitioners are Carol E. Cyrier Trust, property owner and Sunrise Development LLC, applicant.

Mr. SKimmerhorn stated this application was for a solar farm on the Northwest corner of the property. The Zoning Board of Appeals heard the case on December 17, 2018 and recommended the approval with conditions 6-1. The applicant has agreed to all the conditions.

Mr. Fetherling asked what the reasoning for the 1 vote not recommending the approval.

Mr. Skimmerhorn advised that Mr. Hemm noted the higher LESA score and felt it was too high, right at the borderline.

**Ms. Dunbar made a motion to approve ZBA Case#18-44 and Mr. Fetherling Seconded it. Motion carried with a voice vote.**

- ZBA Case#18-48; request for a Special Use Permit #121-99.c.34 (Solar Farm) in the A1-Agricultural District on a parcel generally situated in Section 17 of Momence Township. The petitioners are The Estate of Gary Thyfault c/o Ray Simpson, Independent Executor, property owner and SV CSG Momence 2 LLC, applicant.

Mr. Skimmerhorn advised that this application is for a solar farm 2MW. The Zoning Board of Appeals heard the case on December 10, 2018 and recommended approval with conditions with a vote of 7-0. The applicant has agreed to all conditions.

**Mr. Payton made a motion to approve ZBA Case#18-48 and Mr. Fetherling Seconded it. Motion carried with a voice vote.**

- ZBA Case#18-49; request for a Special Use Permit #121-99.c.34 (Solar Farm) in the A1-Agricultural District on a parcel generally situated in Section 34 of St. Anne Township. The petitioners are Larry & Linda Kleinert, property owners and SV CSG St. Anne 2, LLC, applicant.

Mr. Skimmerhorn advised this is in addition to the already approved 2MW solar farm on this property. For a total of 4MW that will be immediately East of the already approved solar farm. There was no public comment at the Zoning Board of Appeals hearing and the case was recommended for approval 7-0 with conditions. The applicant agreed to conditions.

Mr. Sirois asked how big the solar farms can get.

Mr. Skimmerhorn advised that you cannot have more than 4MW on any given parcel.

Mr. Sirois asked why the applicants went through the process twice.

Mr. Skimmerhorn advised that the rule had changed from when they first applied. That rule was added in the past 2-3 months.

Mr. Wheeler stated that one half could get it and the other half may not. That it has to be approved by the State.

**Ms. Dunbar made a motion to approve ZBA Case#18-49 and Mr. Fairfield Seconded it. Motion carried with a voice vote.**

- ZBA Case#18-50; request for a Special Use Permit #121-99.c.34 (Solar Farm) in the A1-Agricultural District on a parcel generally situated in Section 12 of Pilot Township. The petitioners are O'Connor Family Farms, Inc., property owner and USS Lehigh Solar LLC, applicant.

Mr. Skimmerhorn stated this was a request for a special use permit for a solar garden. There are two separate solar gardens, one on the North and one on the East side of the property. Zoning Board heard this on December 17, 2018 and voted 6-0 to recommend the denial of this proposal. One member abstained from voting because a relative lives across the street.

Mr. Skimmerhorn advised that there were lots of public comment at the hearing. Christina Mitsdarffer, Chad Scanlon, Kelly Stilts, Diana Carlson Webb, and the others are listed within the documents in front of the committee to review.

Mr. SKimmerhorn stated there were discussions about conditions which Mr. Skimmerhorn reviewed with the committee, should it get approved or the ZBA ruling is overturned, for whatever reason.

Mr. SKimmerhorn also advised the committee that the reason for the denial from ZBA was due to #2. The board finds that given the unique characteristics of the proposal coupled with the proximity of residences that the proposal would be injurious to the enjoyment of other property. Further, the Board finds that the property has a LESA score that is in the moderate category for protection but that it is very close to being in the high category.

Mr. Fetherling stated that this application doesn't seem any different from the ones that were approved in the past. He asked for clarification in the reasoning.

Mr. Skimmerhorn repeated that the main reason was the proposal would be injurious to the enjoyment of other property.

Mr. Fetherling stated that with the Landscaping and fencing, it's been repeatedly found that it would not be injurious or detrimental to the adjacent properties. Mr. Fetherling wanted to clarify that this applicant was not asking for a change in zoning.

Mr. Skimmerhorn stated that he was correct. The zoning is and has been A-1 Agricultural.

Mr. Fetherling asked if he bought the property, could he inquire about what could be built there.

Mr. Skimmerhorn stated that he could provide a list of permitted uses that would be allowed.

Mr. Fetherling stated that a lot more of them would be more detrimental than a solar farm would be.

Mr. SKimmerhorn stated that while that is subjective, with the zoning, the property owner could have a hog farm, cattle farm, and various forms of agriculture.

Mr. Fetherling stated the property owner could have farming equipment, equipment repair, silos, dryers.

Mr. Skimmerhorn confirmed that yes, those are all allowed items and you would just walk in the door to get your permit and it's done.

Mr. Olthoff stated that the main concern seems to be a view and his thought was that you are not guaranteed a view when you buy a 5 acre parcel in an agricultural community.

Mr. Skimmerhorn stated that one of the citizens; he believes it to be Mr., Scanlon submitted photos and he showed them to the committee. Mr. Skimmerhorn reviewed and explained the photos with the committee. One photo was his property view with the solar farm and without a solar farm. Mr. Skimmerhorn confirmed that there was not landscaping depicted in the photo and the scaling seemed to be off.

Mr. Fetherling stated that the photos seem to be scaled incorrectly. Mr. Fetherling stated that he was on ZBA for many years and he doesn't see where this application falls into a different category.

Mr. Wheeler added that he agrees with Mr. Fetherling's assessment. While it sounds strange, you don't have a right to a view. That is not a protected right, that land owner could put up a ten foot fence, or 8 foot without any type of public hearing and that would be just as detrimental in reality. I apologize to the people, but you purchased that property knowing that it was in an agriculture area. We have to protect the property owner's rights too.

Mr. Olthoff stated that there are Private Property owner's rights.

Mr. Wheeler confirmed and said that he will be voting to approve the application, because it is no different than any other application that has come before them.

Mr. Olthoff stated that if an individual wants to maintain the view, then they would need to buy acreage. Buy 40 acres.

Mr. Skimmerhorn showed the map to the committee again, stating that Mr. Scanlon house is on the left and the Mitsdarffer's house is in the middle. Mr. Scanlon stated that the fence would make it look like a prison at the hearing. The fence could be put up at any time, it just needs a building permit.

Mr. Wheeler stated the last thing he would say is that they have heard multiple times the testimony of an independent third party appraiser that is licensed on a multi-state and maybe even a federal level, that there is no evidence of property devaluation in these situations. Obviously, these aren't built yet, but they studied other areas and there has not been any negative effect. Until there is evidence, there is nothing to consider.

Mr. Olthoff stated that there was a passionate and emotional plea at the ZBA that influenced the board, is what he is feeling.

Mr. Skimmerhorn confirmed that there was no evidence submitted to refute that.

Mr. Olthoff states that he agrees, this application should go forward.

Mr. Skimmerhorn cautioned the board that if they do choose to overturn the Zoning Board of Appeals recommendation, that the committee develops their own finding for #2. A reason as to why you are overturning the recommendation.

Ms. Dunbar asked if the cases always come to the PZA committee after the board of appeals.

Mr. Skimmerhorn stated that ZBA only gives the recommendation, the power of approval lies within the County Board.

Mr. Smith stated that he lives within this general area, knowing 90% of the people and questioned if he was allowed to vote.

Mr. Skimmerhorn stated yes, he can vote as long as he didn't have financial interest in that property or adjacent property.

Mr. Olthoff had a request for public comment. While that is done in the beginning of the meeting, Mr. Olthoff stated that he would allow the public comment due to there not being an announcement.

Mr. Olthoff clarified that a form is to be filled out in the beginning and submitted for public comment.

Public Comment was made by Larry Sirene.

Public Comment was made by Christina Mitsdarffer.

Public Comment was made by Nathan Wozniak.

Mr. Wheeler requested Mr. Skimmerhorn confirms that there are delivery receipts of when notification was sent to adjacent property owners.

Mr. Skimmerhorn stated that they do have the delivery receipts, which must be mailed 15 days prior to the hearing. Mr. Skimmerhorn advised that they send it out twice, at the 15 day requirement and also at 7 days prior to the hearing date.

Mr. Wheeler stated that it would be very concerning if proper notice was not given. Mr. Wheeler asked to Mr. Skimmerhorn to confirm that the county has those delivery receipts.

Mr. Skimmerhorn confirmed that the receipts are in the file.

Mr. Fetherling also asked if the notice was published in the paper at the 15 day mark.

Mr. Skimmerhorn confirmed.

Mr. Olthoff asked the committee if there was a motion.

Mr. Fetherling stated he would make a motion to approve; that there is no way that her house could be surrounded. There is no room with the setback requirements. Being on the zoning board for so many years, it wouldn't make sense to deny this application. There must be consistency in the approvals and denials.

Mr. Fetherling asked if it is a chain link fence required.

Mr. Skimmerhorn advised it is an 8 foot woven fence rather than a chain link.

**Mr. Fetherling made a motion to approve ZBA Case#18-50 with conditions 1 through 4 included, and Mr. Wheeler Seconded it with the amendment to include an answer to #2, that the board finds that there are no unique characteristics of the proposal that would be injurious to the enjoyment of other property. Mr. Fetherling accepted the amendment by Mr. Wheeler.**

Ms. Dunbar asked that in the past there had to be a reason. She wanted to confirm that reason.

Mr. Skimmerhorn confirmed that reason to be #2 or B depending on which report you read.

**Motion carried with a roll call vote of 9 ayes and 1 nay. Voting aye were: Mr. Olthoff, Mr. Fetherling, Ms. Polk, Mr. Payton, Mr. Fairfield, Mr. Carrico, Mr. Smith, Mr. Swanson, and Mr. Wheeler. Voting nay was: Ms. Dunbar**

- ZBA Case#18-51; request for Variances to Sections 121-286.c.1 (Driveway Spacing) and 121.99.34.e (Lot Width) and a Special Use Permit #121-99.c.34 (Solar Farm) in the A1-Agricultural District on a parcel generally situated in Section 03 of Pilot Township. The petitioners are O'Connor Family Farms, Inc., property owner and USS Goodrich Solar, LLC, applicant.

Mr. Skimmerhorn stated that this one is a little different because they are asking for the special use permit, but also a lot width variance and driveway interval variance. Mr. Skimmerhorn reviewed the application with the committee.

The solar farm would be a total of 4MW and Zoning Board of Appeals heard the case on December 3<sup>rd</sup>, 2018. The board recommended approval of the variances 6-0 and the special use permit recommendation of 4-2

Mr. Wozniak was allowed to make a public comment.

Mr. Wheeler advised that any public comment would be inappropriate and not allowed to be considered.

**Mr. Fetherling made a motion to approve ZBA Case#18-51 and Mr. Fairfield Seconded it.**

Mr. Fetherling asked for clarification on the reason for the 2 nay's at ZBA.  
Mr. Skimmerhorn stated there was no reason given.

**Motion carried with a voice vote.**

- ZBA Case#18-52; request for a Rezoning from R1-Single Family Residential District to A1-Agricultural District and a Special Use Permit #121-99.c.34 (Solar Farm) in the A1-Agricultural District on a parcel generally situated in Section 27 of St. Anne Township. The petitioners are Miedema Farms, LLC and Kenneth W. & Shirley A. Miedema, property owners and USS St. Anne Solar, LLC, applicant.

Mr. Skimmerhorn reviewed the request with the committee. Stating that on December 3<sup>rd</sup>, 2018 Zoning board of appeals recommended the approval 6-0 with no public comment.

**Ms. Dunbar made a motion to approve ZBA Case#18-52 and Mr. Payton Seconded it. Motion carried with a voice vote.**

- ZBA Case#18-53; request for a Special Use Permit #121-99.c.34 (Solar Farm), in the A1-Agricultural District on a parcel generally situated in Section 17 of Yellowhead Township. The petitioners are Ruth Buikema, property owner, contact Paul Buikema and USS Campbell Solar, LLC, applicant.

Mr. Skimmerhorn reviewed the request with the committee and advised that the Zoning Board of Appeals heard the case on December 17, 2018 and recommended approval with conditions 7-0. There were 5 conditions placed on this solar farm request, which included a buffer.

**Mr. Carrico made a motion to approve ZBA Case#18-53 and Mr. Fairfield Seconded it. Motion carried with a voice vote.**

- ZBA Case#18-54; request for a Rezoning from I1-General Industrial District to A1-Agricultural District and a Special Use Permit #121-99.c.34 (Solar Farm), in the A1-Agricultural District on a parcel generally situated in Section 34 of Kankakee Township. The petitioners are Vincent Benoit and Christine Benoit, property owners and USS Bloom Solar, LLC.

Mr. SKimmerhorn reviewed the request with the committee, advising the board of appeals heard the case on December 17<sup>th</sup>, 2018. The board recommended approval with conditions, 7-0.

**Mr. Payton made a motion to approve ZBA Case#18-54 and Mr. Fetherling Seconded it. Motion carried with a voice vote.**

## **7. Old Business**

Mr. Wheeler stated that he had a question, and if it was best to wait for Mr. Quinn, he will. In his experience, who has the burden of proof on being injured or an injurious situation?

Mr. Skimmerhorn advised that the burden of proof on all zoning cases is with the applicant to prove their case. However, if there is an objector, or they claim to be injured, then that burden of proof is on them to show how they were injured.

Mr. Wheeler states that up until there is a point of perceived injury, or real injury, there is no situation. If we are considering things, then we have to have absolute evidence of injury, or potential injury.

Mr. Skimmerhorn advised that zoning decisions should be made on facts, not opinion, hearsay, rumors, but facts.

Mr. Wheeler commented that his concern is that everybody has a fair hearing and an opportunity to have their interest represented. Then what the board decides is what the board decides. In his opinion, that would be an injury if an individual didn't have that opportunity. That goes for both sides.

Mr. Sirois asked how many solar farm cases Kankakee County has approved so far.

Mr. Skimmerhorn stated there is a total of 48. Two have been withdrawn and two have been denied.

Mr. Sirois asked how many in adjacent counties have been applied for or approved. Are they doing the same thing in Iroquois in Will Counties?

Mr. Skimmerhorn advised that there were not many in Will County, a few around the Crete area. Mr. Skimmerhorn said we were the largest for number of applicants. The closest was up by Rockford with about 35 cases.

Mr. Sirois asked how many of these will the State possibly approve.

Mr. SKimmerhorn stated possibly 1 in 7 or maybe 1 in 10 with the increase of applicants.

Mr. Sirois commented that with the new administration, what if they approve them all and tax them.

Mr. Skimmerhorn said this is set forth in legislation, under Future Energy Jobs Act. The number of credits they will be giving away and he thinks it is 3 lettings, 52 MW in the first, 52 MW in the second, and 21 MW in the third.

Mr. Wheeler stated that the process is very preliminary.

Mr. Skimmerhorn advised that the process is that these applicants have to win the lottery, and then submit construction plans, road use agreement; all of those are reviewed for drainage, construction, etc. There are many reasons why these will not be approved.

## **8. New Business**

None

## **9. Adjournment**

**Ms. Dunbar made a motion to adjourn the meeting at 10:09 a.m., and Ms. Polk seconded it. Motion carried with a voice vote.**

William Olthoff, Committee Chairman  
Kelly Bylak, Executive Coordinator