

# LEE COUNTY AD HOC COMMITTEE

## Special Meeting

Friday, January 22, 2021, at 9:00AM

County Board Room  
Old Lee County Courthouse, Dixon, Illinois

### Zoom Video- & Tele-conferencing

Meeting ID: 978 3467 2133

Password: 664673

### YouTube

<https://www.youtube.com/watch?v=eBslYuESYO4>  
or search, “Public Ad Hoc Meeting 1-22-21” in YouTube

#### Appointed Ad Hoc Committee Members

Dave Bowers – Chair

Mike Koppien

Chris Norberg

John Nicholson

Tom Kitson

Bruce Forster, ZBA member

The meeting was scheduled to begin at 9:00 a.m.; however, due to technical issues, Chair Dave Bowers called the meeting to order at 9:25 a.m.

Chair Bowers called for roll call of members of the committee and county staff.

Members present:	Bowers, Koppien, Norberg, Nicholson, Kitson, Forster
Members absent:	None
County Staff:	Charley Boonstra – State’s Attorney Dee Duffy – Zoning Administrator Alice Henkel – Zoom operator

Chair Bowers noted that while Jim Schielein is present via Zoom, he is present as a member of the public and not in a voting capacity.

He further noted that he would like to address the issues of setbacks and screening, as he feels those are the primary areas of concern.

The committee reviewed the minutes from the January 5, 2021 meeting. There were no changes and/or corrections. The minutes were approved as submitted.

Chair Bowers recognized the following visitors as present:

Adam Lusz, Interested Party  
Jamie Lawson, Interested Party  
Jennifer Lawson, Interested Party  
Courtney Kennedy, Attorney  
Jenny Munson Miller, National Grid Renewables, via Zoom  
Amber Miller, National Grid Renewables  
Keith Bolin, National Grid Renewables  
Chris Henkel, Interested Party  
Robert Scott, Interested Party, via Zoom  
Jim Schielein, Interested Party, via Zoom

Chair Bowers started the meeting with a review of the proposed setbacks this committee had previously discussed, those being: 600 feet from any foundation of a primary dwelling with a 1200-foot by 1200-foot square “exclusion zone,” that would be centered over the dwelling; a minimum of 15 feet from any property line; 60 feet from any township road, 75 feet from any county highway or 50 feet from any state highway; no setback for any adjacent, participating parcels; 600 feet from any platted subdivision and 600 feet for any inverters or transformers.

Chris Norberg feels the issue of fence placement needs to be addressed as well. Chair Bowers feels that that issue will be resolved as part of the screening section. He also noted including the option for non-participants of requesting an 8-foot woven wire fence at their residence, within the 1200-foot exclusion zone, instead of the National Electric Code’s required 6-foot chain link fence with 3 strands of barbwire around the top.

Adam Lusz stated his position that the setbacks for an SES should include the fence. He feels that if the fence is place at the property line, farms will run the risk of hooking or snagging the fence with their farming implements. He further stated that farmers will lose access to their own land due to the closeness of the fence to the property line.

Mr. Lusz went on state that he feels the visual screen should be place on the outside of the fence. He had concerns about planting two rows of shrubbery within the 15-foot setback without it growing across the neighbor’s property and if the site owner would be able to access the perimeter in order to maintain the fence.

As there was no further discussion related to setbacks, Chair Bowers proceeded to the review of the screening section.

Mr. Norberg feels that everyone is in agreement regarding the use of an 8-foot tall, woven wire fence so he suggested changing the screen height requirement from 7 feet tall within 3 years to 8 feet tall within 4 years.

Discussion was held between Mr. Norberg and Mr. Bowers as to whether the screening should be placed near the non-participants property or near the solar array. Mr. Bowers feels the screen would be more effective if it is placed near or even on the non-participant’s property. Additionally, he noted that one of the most common complaints the zoning office deals with is property line disputes. One way to avoid these disputes is to keep the fencing near the property line. This would also prevent adverse possession claims.

Chair Bowers feels it would be best to place the fence at the property line to avoid boundary disputes, and the most effective screening would be to place the vegetative screen near that fence. He reviewed various options for fence and screen placement.

He feels the simplest option would be for the developer to place the screen on the land it is leasing. It would be clear who’s land it is, as well as who should be maintaining the screen. The screen would be removed

as part of decommission of the project. Non-participating property owners would have the option of a woven-wire fence, with the screen placed immediately behind the screen on the developer's land.

Alternatively, the fence could be setback thirty (30) feet from the property line and the vegetative screen could be placed in front of the fence, on the non-participating landowners' property, and would be maintained by the developer.

Attorney Kennedy noted that developers prefer the fence be placed at the property line with the vegetative screen being placed on the non-participating property, for those who opt to have the visual. By placing it on the non-participant's land, he or she would have the option to keep the vegetation at the end of the project.

She also proposed giving non-participants the option of having a 600-foot setback or a vegetative screen to be placed on the non-participant's land.

Jennifer Lawson stated that when they built their home in the country in 2006, they did so look at the natural vegetation, not fences. As a non-participating landowner, she would rather have the vegetative screen placed on her property.

Mr. Lusz disagrees with placing the fence at the property line. He feels it should be setback enough for the developer to be able to access it from the outside of the fence.

Jamie Lawson suggested the idea of property line agreements as a way of avoiding property line disputes. He also feels there should be standard setbacks for solar projects. He suggested creating setback tiers based on project acreage as he feels the size of the project will dictate how far a person will want to be setback from it.

Mr. Lawson also disagrees with the fence being placed at the property and the argument that his neighbor could build a fence at the property line tomorrow under the current ordinance. He said his neighbor is not the one building the fence, it is a Fortune 500 company, and that fence is a part of its project. He feels it should not be considered a fence, but a part of the project.

Attorney Kennedy noted that for adverse possession in Illinois, the possession of the property has to be continuous, hostile or adverse, actual, open notorious, and exclusive. A property line agreement proves the element of open notorious by defining where the property line is and that the neighbor continues to go across that line. Therefore, a property line agreement would assist adverse possession claims, not prevent them.

Chair Bowers proposed the option of non-participating landowners receiving a payment equal to the cost of design, installation, maintenance in perpetuity, and removal of a visual screen in lieu of the actual visual screen. This would allow non-participants the option to install a visual screen on their property or not. This option alleviates the developer of the responsibility of maintaining the screen for the life of the project and it gives the non-participant the ability to install a visual screen to their liking, that will add value to their property; or to use the money for some in some other way.

Mr. Lawson argued that neither the Byron nuclear plant nor the Dixon Correctional Center are required to have fencing at the property line, just the areas of the parcel the facilities are using. He wants to know why they do not have issues with adverse possession or why they are different than a solar farm. Attorney Kennedy replied to this question by noting that the National Electric Code ("NEC") requires a fence around the perimeter of the solar energy system ("SES").

Mr. Lusz noted that in studying ordinances, he has seen where counties are handling major and minor SES project different.

Mr. Norberg noted that the term, “homeowner,” in the draft of the proposed ordinance needs to be changed to non-participating landowners.

Attorney Kennedy noted in Paragraph “iv” of the draft should state, “At the conclusion of construction, the applicant shall provide proof of installation of the Buffer to the Zoning Administrator.” It currently states, “At the time of the building permit application...;” however, the vegetative screen would not be installed prior to getting a building permit.

Several members feel this payment-in-lieu-of-screen option has several advantages for non-participants.

Mr. Lusz feels that setting the project back 600 feet from a residences and properly managed visual screening is placed within 1000 feet of the residence, those residents would be looking at the visual screen and not the fence.

Attorney Kennedy feels that non-participants should have the option to have the fence setback 600 feet or to receive payment for a visual screen. She does not feel a visual screen would be necessary if the array and fence at setback a distance greater than the length of a football field.

Mr. Norberg feels non-participants should receive visual screening even if the array is setback.

Attorney Kennedy requested reducing the 1000 feet referenced in Paragraph “j” in the draft of the proposed ordinance if the committee plans to include the fence in the setback and provide visual screening for non-participants.

Mr. Lusz feels the entire perimeter of the SES should have visual screening. He feels the non-participants have made enough concessions at this point.

Mr. Norberg disagrees with Mr. Lusz as requiring visual screening around the entire perimeter causes unreasonable financial burden to the developer.

Mr. Schielein feels screening placed at a non-participants residence is going to be more effective than placing a screen 1000 feet from a residence. Mr. Lusz feels screening 1000 feet from his residence would benefit him as a non-participating landowner.

Chair Bowers said it was his assumption that fencing would be placed near the property and the discussion is whether to place the vegetative screen on the developer’s property or the non-participant’s property. He feels that moving the fence 600 or 1000 feet from dwelling is not all that effective for screening, nor does he feel it is reasonable to ask the participating landowner to give up use of that property.

Mr. Norberg requested a vote on the issue of whether to include the fence in the setback.

Chair Bowers asked Attorney Kennedy to restate a proposal she made earlier in the meeting. Attorney Kennedy suggested offering adjacent, non-participating landowners the option to receive the vegetative screen, with the fence being placed at the property line; or to have the fence included in the 600-foot setback. She acknowledged that there will instances where a non-participating landowner may not want to work with the developer so there needs to be a default put in the ordinance as to where the screen, if any, and fence are to be placed.

Chair Bowers introduced Mrs. Duffy’s proposal of adding a community meeting requirement to the ordinance. This section would require SES developers to host a community meeting prior to the filing of its petition for special use. The meeting would include a detailed explanation of the project, the site plan for the proposed project, anticipated construction schedule, the landscaping and screening plan, and

decommissioning plan. Mrs. Duffy feels this would address the complaints she has received that 15-days' notice of the petition hearing is not sufficient.

Mr. Lusz, Mr. Norberg and Attorney Kennedy supported this proposal.

It was agreed upon that reducing the 1000 feet referenced in Paragraph "j" to 600 feet would be reasonable for both the non-participants and the developers.

Mr. Norberg expressed his frustration that this committee has not decided if the fence will be included in the setback. Chair Bowers feels by giving the non-participants the option to either have the fence setback 600 feet or place the fence at the property line and receive payment for a vegetative screen. For those who do not wish to select an option, the fence will be placed at the property line, with the vegetative screen immediately behind the fence, on the developer's property.

Mr. Norberg departed the meeting at 10:53 a.m.

Chair Bowers explained that this committee is trying to create an ordinance that is a win for the non-participating landowners and a win for the developer. He feels both sides should walk away from this feeling like they gained and lost something.

Mr. Schielein added that this ordinance cannot be specific to one project and that it needs to cover a range of situations to protect the citizens and the County in future projects.

The committee agreed to meet on Wednesday, February 3, 2021, at 9:00 a.m.

At 11:00 a.m., Mike Koppien motioned for a recess to the later date. Motion passed.

*Live feed can be viewed on **YouTube** at [Public Ad Hoc Meeting – 1-22-21](#).*

Respectfully submitted,  
Alice Henkel