

**MINUTES OF THE
LEE COUNTY ZONING BOARD OF APPEALS**

**Special Meetings
20-P-1557**

County Board Room
Old Lee County Courthouse, Dixon, Illinois

Zoom Video- & Tele-conferencing
Meeting ID: 91539239154
Password: 209840

Tuesday, February 16, 2021, at 6:00 p.m.
https://www.youtube.com/watch?v=s4qi3Dl62_0

Wednesday, February 17, 2021, at 6:00 p.m.
https://www.youtube.com/watch?v=j74_bcCnUS8

Board Members

Bruce Forster, Chair
Craig Buhrow, Vice Chair
Mike Pratt, Member
Gene Bothe, Member
Glen Hughes, Member
Rex Meyer, Alternate Member

Staff

Dee Duffy, Zoning Administrator
Charles Boonstra, Lee County State's Attorney
Alice Henkel, Clerk

At 6:00 p.m., Judge Slavin called the meeting out of recess for continued hearing on Petition No. 20-P-1557 by Petitioner BSW DevCo, LLC.

Judge Slavin noted the following Members as present: Forster, Buhrow, Bothe, Pratt (via Zoom) and Hughes.

He also noted that Assistant State's Attorney Charley Boonstra and Zoning Administrator Dee Duffy were present, as well as Petitioner's counsel, David Streicker and court reporter Callie Bodmer.

The Board commenced the fact finding and recommendation portion of the hearing.

Glen Hughes made a motion that the Lee County Zoning Board of Appeals (hereinafter "ZBA") finds that, on November 6, 2020, BSW DevCo LLC (hereinafter the "Petitioner", the "Developer," "BSW" or, simply "Big Sky") a wholly owned subsidiary of EverPower Wind Holdings, Inc., filed a Petition with the Lee County Zoning Administration Office, which was numbered 20-P-1557, requesting a Special Use Permit to "repower" the existing Big Sky Wind Energy Conversion

System (hereinafter “WECS,” “Development,” or “Project”) by decommissioning all existing wind turbine generators (hereinafter “WTGs”)- and replacing the same with purportedly more efficient models- along with some upgraded foundations and collection systems with no more than 58 in Lee County’s East Grove and May Townships. As further background, the ZBA finds that:

1. Following the submission of the application, proper notice was published in the Amboy News on November 25, 2020 and in the Dixon Telegraph on November 28, 2020 and due diligence mailings of the notice were sent to property owners adjacent to the Project boundary.
2. Prior to the hearing, the Board, under the authority provided by its own rules, engaged the services of Tim Slavin, a retired circuit court judge, as the Facilitator for the proceedings.
3. The first stage of the public hearing regarding the Petition for the Special Use Permit was for your Lee County Zoning Board of Appeals to accept testimony, hear arguments and receive public comments.
4. Over the course of the first stage, everyone – the Petitioner and members of the public, were given a complete and fair opportunity to be heard. Each was given the chance to present evidence, including witnesses and exhibits, cross-examine the witnesses of others and to present a closing argument or statement- either orally or in writing.
5. The evidentiary portion of the hearing began on December 16, 2020, and concluded on January 27, 2021, consisting of 4 total sessions- the initial one beginning at 7:00 p.m. and those following at 6:00 p.m.- all heard in the “main courtroom” on the third floor of the Old Lee County Courthouse. The totality of these sessions of the first stage comprised, in total, approximately 7 hours of hearing time.
6. Throughout the hearing process, the proceedings adhered to the applicable State of Illinois’ COVID-19 guidelines for public gatherings:
 - a. these guidelines provided for gatherings of no more than 10 people, so
 - i. no more than that number were allowed to be in the hearing room at any given time; but
 - ii. within the building, accommodations were made for 10 Interested Parties to occupy the contiguous former jury deliberation room and 10 more in the first-floor stairwell lobby space. Those additional 20 potential attendees would have been able to participate by ZOOM from those spaces where Ms. Duffy and Lee County’s IT Department head, Mr. Mike McBride, had the equipment ready to be used. However, there were never enough spillover attendees at any one session to make use of either of those spaces; and
 - iii. under the Coronavirus mitigation protocol, within the hearing room all attendees were required to wear masks except when speaking, and social distancing was maintained by using a seating protocol that kept all Participants six feet or more apart; and
 - b. additionally, Interested Parties were also given the opportunity to remotely and virtually participate in the process-
 - i. by videoconferencing on the ZOOM platform through the use of a compatible device at a location of their choosing; or
 - ii. by teleconferencing on the ZOOM platform through the use of a cell phone at a location of their choosing;
 - c. the proceedings were also broadcast on YouTube during which viewers could see and hear the proceedings take place in real time;

- d. lastly, the entirety of the proceedings was taken down by a certified shorthand reporter and subsequently transcribed. Those transcripts of all testimony, arguments, public comments and ZBA debate were, and continue to be, available on the Zoning and Planning web pages within the Lee County web site.

We, the members of the Lee County Zoning Board of Appeals heard all of the evidence produced and examined the exhibits.

A second was discerned and debate was held. Mr. Hughes notes a correction to the publication date that is noted in paragraph 1. There was no other debate. A vote was taken, and the ayes prevail, 5-0. Motion passed.

Craig Buhrow made a motion that the Lee County ZBA finds that 6 people took the witness stand, and one individual was called to the stand twice over the 4 hearing dates. Those witnesses, in order of their appearance, with a very brief summary of what they had to say, include as follows:

1. Mr. James Kutey, of Third Planet Windpower, LLC, is a green energy consultant and the “lead developer” for BSW DevCo, LLC’s repower Project. Mr. Kutey testified at length about various subjects relevant to the proposed repower, including, but not limited to, the Petitioner’s ownership structure, an overview of the technical details and planned repower staged construction, the planned array of 97 GE’s “2.7-116” family WTGs and the intended decommissioning of at least 2 (#84 and #86) and as many as 7 WTGs, the economic benefits to the landowners and the Lee County community, the anticipated market for the generated power, expected governmental agreements, setbacks, variances, complaint resolution, property values and his view of how the proposed repower would fit into the Lee County Code Standards for Special Uses. He went on to outline what the Petitioner expected to show through expert testimony as to shadow flicker, noise, effects on off air television and other communications. He also explained the practical reasons that the Developer was seeking an extended 2-year waiver of the Lee County Code §10-2A-3 requirement that the Project be established (substantially underway) within 1 year.
2. Mr. Terry VanDeWalle, Independence, IA office manager and biologist for Stantec, offered by the Petitioner, testified about various environmental issues. He outlined the Bird and Bat Study, the Site Characterization Report and communications with IDNR. Included were the Developer’s promises to comply with IDNR’s recommendations with avian mortality monitoring, raising the WTGs “cut-in” speed during certain periods of the year, and applying for Incidental take Authorization for the Ornate Box Turtle. He said that the Developer would engage in avoidance and mitigation measures as to other listed species.
3. Mr. Chris Howell, a Project Manager for Burns/McDonnell, was offered by Petitioner. Mr. Howell testified that he oversaw an acoustical study for the proposed Project. He explained various aspects of sound theory, governmental sound level criteria, his opinion of the conservative approach used in the analysis and then the relevant results of the process.
4. Mr. Aaron Anderson, the Director of Renewable Energy for Burns/McDonnell, was offered by the Petitioner. He testified that oversaw a shadow flicker study for the proposed Project. He explained shadow theory, the absence of laws governing WECS related shadow flicker, an industry shadow flicker standard and the relevant results of the modeling results.

5. Mr. Dennis Jimeno, a telecommunications engineer for Comsearch, testified about the study prepared under his direction as to the effects the proposed “repowering” would have on microwave, AM/FM radio, land Mobile and emergency services, mobile phone, over the air and satellite television signals.

A second was discerned and debate was held. Mr. Buhrow noted a correction to the type of turbine listed in paragraph 1. There was no other debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the following exhibits were admitted into evidence by the Facilitator and considered by the Board:

1. Petitioner’s Exhibits

- Pet #1 BSW DevCo, LLC’s Application binder with a corrected map showing the Accurate location of the sub-station in Lee County.
- Pet #2 Hard copy summary of some of James Kutey’s testimony.
- Pet #3 Copy of the required mailed Notice.
- Pet #4 Certificate of Publication from the Amboy News.
- Pet #5 Certificate of Publication from the Dixon Telegraph.
- Pet #6 Letter to Zoning Officer Dee Duffy from Stantec Consulting Services, Inc. responding to IDNR comments and recommendations.
- Pet #7 United States Department of Commerce letter advising that appropriate federal agencies represented on the Interdepartment Radio Advisory Committee of the repowering plans for Big Sky had been notified and, that after a period of review, no radio frequency blockage issues had been indicated.
- Pet #8 Copy of executed 2019 AIMA.
- Pet #9 Hard copy summary of Terry VanDeWalle’s testimony.
- Pet #10 Hard copy of summary of Chris Howell’s testimony.
- Pet #11 Hard copy of Aaron Anderson’s testimony.
- Pet #12 Hard copy of Dennis Jimeno’s testimony.

A second was discerned and debate was held. Mike Pratt confirmed that a copy of the 2019 AIMA was submitted. There was no other debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that following the close of the testimonial phase, the Board heard or read what could be characterized as closing arguments or public comment, from the following:

1. Mr. David Streicker, Attorney for Petitioner, who advanced all the reasons shown during the hearing as to why the Lee County ZBA should recommend to the Lee County Board that BSW DevCo’s Petition should be approved, and a Special Use Permit be issued.
2. Mr. Adam Lusz, an Interested Party, opined about the continuing proliferation of energy production development in Lee County and its future implications.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Glen Hughes made a motion that the Lee County ZBA finds that the Petitioner

1. was previously granted a Special Use Permit after a previous “repower” hearing and County Board action for the following numbered WTGs in Lee County: 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 89, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105, 106, 107, 108, 110, 111, 114, 115, 116, 117, 118, 120, 121, 124 and 125.
2. stated that:
 - a. the two previously approved General Electric wind turbine generator (WTG) models, 2.3-116 and 2.5-116 were no longer available and that, if approved, the “repower” would be done with the General Electric family of 2.7-116 models.
 - b. Presented evidence that the proposed different WTGs would continue the Project’s generative capacity to 239.4 MW.
 - c. will be decommissioning and removing at least 2 and up to 7 of the Development’s existing WTGs in Lee County.
3. is not requesting:
 - a. any new WTG locations; or
 - b. any alterations to the existing sub-station; or
 - c. any alterations to the existing transmission line; or
 - d. a new O & M facility.
4. would be “repowering” by utilizing nothing but the current Special Use Permit parcels of real estate.
5. due to an amendment in the Lee County Code since the previous “repower” Special Use was granted, is requesting 11 setback waivers for 10 WTGS- all on lands owned by participating property owners.
6. is requesting relief from County Code §10-2A-3 which requires the “zoning administrator...(to) revoke a special use permit where said use has not been established (substantially underway) within one year from the date the special use was granted...” and asking, instead, that it be extended to 36 months.
7. will be using all of the existing towers of the maximum 56 “repowered” WTGs in Lee County’s portion of the Big Sky Development.
8. will be replacing certain components of all of the “repowered” WTGS in Bureau and Lee Counties with General Electric series #2.7-116 nacelles (a family consisting of #2.3-116, #2.5-116 and #2.7-116 models) and blades, but de-rated by software to 2.3-116 and 2.5-116 profiles:
 - a. the software reduces the power rating to 2.3 MW and 2.5 MW for the respective configurations.
 - b. each repowered WTG will have the same blade length of 116 meters as that allowed by the 2019 Special Use Permit.
 - c. would be temporarily widening access roads and foundation areas during the “repowering” construction but would be returning those access roads and foundation areas to their previously existing dimensions.
9. will be using 97% if the existing underground collection system, and up to 3% or about 4,000 feet, of it will be upgraded with new collections.
10. will be creating a temporary “laydown yard” or “staging area” of approximately 6 acres near the current O & M building.

A second was discerned and debate was held. Mr. Pratt noted a correction to the number of waivers requested in paragraph 5. There was also discussion regarding Turbine 74 and whether it is being repowered or decommissioned. There was no further debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County Zoning Board of Appeals finds that, in BSW DevCo's Application and through testimony, the Petitioner has stated that it will be bound by any and all proposals and representations in its Petition and made under oath at the Public Hearing before the Lee County ZBA.

A second was discerned and debate was held. Mr. Pratt discussed adding a language to this motion that states the Applicant agreed to honor all conditions in its 2019 special use permit. There was no other debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Pratt made a motion that the Lee County Zoning Board of Appeals finds that BSW DevCo, LLC has stated in testimony that it will honor all of the conditions of its 2019 granted Special Use Permit.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that there would not be any lighting or glare in the proposed "repowered" Big Sky Development spilling over onto operators of motor vehicles, pedestrians or lands uses in the vicinity.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that from the evidence produced that, other than during the repower construction, there would not be any vibration associated with the proposed "repowered" Big Sky Development.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the character of the land within the footprint of the Big Sky complex is agricultural.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that, from the Petitioner's Application and through testimony produced, that there would be some noise from the proposed "repower" affecting the Zoning Districts specified in this particular section of the Lee County Code.

A second was discerned and debate was held over whether this applies to operational noise or construction noise. There was no further debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that, other than, perhaps, during construction, there would not be any air pollution associated with the proposed “repowered” Big Sky Development.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

A brief recess was taken at 7:15 p.m. The hearing resumed at 7:26 p.m.

Mr. Hughes made a motion that the Lee County ZBA finds that other than, perhaps, during construction, there would not be any odor associated with the proposed “repowered” Big Sky Development.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds from the evidence that electromagnetic fields in the Project would inherently come from collection lines and transformers, but, due to being buried or having sufficient setbacks, there would be no negative health impacts from electromagnetic fields in this proposed “repower.”

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that, other than, perhaps glare during construction, there would be no heat or glare associated with this proposed “repowered” Development that would affect adjoining properties, because a WECS does not produce heat, and the Petitioner has promised in its Application that the WTGs would be painted a non-reflective and unobtrusive color (such as gray or white), which will provide a general uniformity.

A second was discerned and debate was held. Mr. Hughes reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that there would not be any particularly identifiable fire or explosion hazards associated with this “repowered” Development.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has promised to submit a copy of the site plan to local fire protection districts.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner promised to promptly remove all solid wastes related to the construction, operation and maintenance from the site of this proposed “repowered” Development.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that, based on the Application and testimony heard, the Petitioner promised, in conformity with all applicable laws, to handle, store, transport and dispose of all hazardous materials related to the construction, operation and maintenance of this proposed “repower” Project.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner’s Application complies with the required basic Application information because it:

1. shows the property lines of the proposed site of construction.
2. shows the location of the WECS.
3. shows the location of all of the structures located on the proposed WECS site property and describes those structures.
4. shows the location of all aboveground utility lines within a radius of two (2) times the height of the proposed WTGs.
5. shows the location of all underground utility lines on the proposed WECS property site.
6. contains a dimensional representation of the structural components of the tower construction including the base and footings.
7. shows a schematic of the electrical systems associated with the proposed WECS; and
8. contains the manufacturer’s specifications, installation and operation instructions (or the proposed WECS design information).
9. does not contain a certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structures defined by BOCA. However, the Petitioner promised to provide such certification before it would be issued a Building Permit.

A second was discerned and debate was held. Mr. Hughes explained his reasons for making this motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that Lee County ZBA finds that the blades on the proposed WTGs will be at least 15 feet from the ground to their lowest arc point because, in the testimony it produced the blade tips will actually be 75 feet above ground level.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA cannot find that the Petitioner has promised in its Application, but did so in the testimony heard, that access to the proposed towers would be controlled by fences and anti-climbing devices with appropriate warning signage.

A second was discerned and debate was held regarding fence heights. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the proposed WECS would be interconnected to a utility system, and the Petitioner made a showing that the proposed repowered WECS would meet the utility's interconnection requirements as it is presently being utilized.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that there is no proposed WTG construction within 350 feet of a dedicated roadway, railroad right-of-way or a right-of-way for an overhead transmission or distribution line.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that there are 10 WTGs proposed within 350 feet of participating landowner's property lines, and Petitioner has obtained 11 setback waivers for those variances.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has indicated that, during all operations, any noise and vibrations from the proposed "repower" Project would conform to the requirements of the Illinois Pollution Control Board ("IPCB").

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that of the Lee County residences within the footprint of the proposed "repower" Project, 12 participating residences would receive IPCB noise level exceedances and 3 non-participating residences would receive those exceedances.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the "repowered" WTGs could result in a decrease of noise levels from that presently existing at some property lines because of the reduction in the total number of turbines and because of technology of the new 2.7 models.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner's proposed setbacks do not totally mitigate the effect of noise to people and animals subjected to it for some proposed turbine locations.

A second was discerned and debate was held. Mr. Hughes considered amending the motion but ultimately declined to do so. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has agreed to mitigate any residential exceedances in one of the following ways:

- a. waivers; or
- b. substitution of lower noise blades; or
- c. “de-rating” the offending WTG from its peak output.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has committed to a post-construction expert noise study.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has committed to an acceptable noise complaint resolution protocol for this “repowering” Project.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has made a sufficient assurance that the proposed WECS would be installed or operated in compliance with the Federal Aviation Administration (FAA) regulations and Lee County Code §10-15-13.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that in its Application and through the testimony it produced, Petitioner has stated that all of the electrical distribution lines for this proposed “repower” would be located underground.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that:

1. the WTGs within the proposed “repowered” Development would be designed with an automatic overspeed control to render the system inoperable when winds are blowing in excess of the speeds for which the machine is designed or in the event of a loss of utility power preventing it from supplying power to a de-energized distribution system.
2. the WTGs within the proposed “repowered” Development would have a mechanically operated method to render the system inoperable.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the shadow flicker study performed for the Project used a conservative modeling approach with Project site-specific conditions. For example, the study modeled each receptor as a “greenhouse”- meaning each receptor was modeled as having windows on all sides and effectively created a model home susceptible to flicker effects in all directions. Further, the Project site was modeled as if no obstacles were present, including trees or buildings, which would significantly reduce or eliminate the duration and/or intensity of the shadow flicker at a receptor. Due to the conservative approach of the study, the actual duration and intensity of shadow flicker at each receptor may be expected to be less than those reported in the study.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County Zoning Board of Appeals finds that, based on the modeling evidence provided, there will be no shadow flicker on 20 of the 84 known occupied residences within Lee County’s portion of the Development, less than the industry standard limitation of 30 annual hours on another 48 and more than 30 yearly hours of shadow flicker on 16 known occupied residences.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner states that they will contract a third-party qualified professional to be approved by the Lee County Zoning Enforcement Officer to perform a post-construction shadow flicker analysis of the operating WTGs of the Project.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has committed to an acceptable shadow flicker complaint resolution protocol that includes:

1. obtaining a waiver from the affected residence owners; or
2. mitigating the shadow flicker.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

At 8:35 p.m., Judge Slavin called for recess until February 17, 2021, at 6:00 p.m.

At 6:00 p.m., on February 17, 2021, Judge Slavin called the meeting out of recess for continued hearing on Petition No. 20-P-1557 by Petitioner BSW DevCo, LLC.

Judge Slavin noted the following Members as present: Forster, Buhrow, Bothe, Pratt (via Zoom), and Hughes. Alternate Member Meyer was also present via Zoom but would not be voting.

He also noted that Assistant State's Attorney Charley Boonstra and Zoning Administrator Dee Duffy were present, as well as Petitioner's counsel, David Streicker and court reporter Callie Bodmer.

The Board continued the fact finding and recommendation portion of the hearing.

Glen Hughes made a motion that the Lee County ZBA finds that the Petitioner has committed to the existing Decommissioning and Site Restoration Plan for the Big Sky complex.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Craig Buhrow made a motion that the Lee County ZBA finds that the Petitioner is proposing that the decommissioning include the tilt or the component disassembling method.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the proposed Project will not impact any communication services. If there is any interference, television signals would be the most likely communication to be affected.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has committed to an acceptable communication interference complaint resolution protocol.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has promised to provide all microwave transmission providers and local emergency providers with copies of the Project summary.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the proposed Project's footprint has been the subject of an environmental "Site Characterization Study."

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has consulted with the Illinois Department of Natural Resources (IDNR) regarding the proposed Project's impact on local wildlife.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that there was sufficient evidence that the 2019 executed Agricultural Impact Mitigation Agreement (AIMA) did not need to be updated and could continue as the operative one.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the IDNR has made Project environmental recommendations to Lee County.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner's response to the IDNR Project environmental recommendations is acceptable.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that Lee County ZBA finds that the Petitioner has developed an acceptable "Bird and Bat Conservation Strategy" to avoid and minimize impacts to wildlife associated with the operation of the proposed "repowered" WECS.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds/cannot find that the Petitioner's representatives stated numerous times that, on the request of Ryan Wetlands and Sand Prairie, the Petitioner will not repower WTGs #84 and #86.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that no evidence was presented as to the impact the proposed "repowering" could have on property values within the area of the proposed Project. However, the Petition for SUP is to "repower" an existing WECS, with a reduction in the number of WTGs and the remaining WTGs maintaining their current locations.

A second was discerned and debate was held. Mr. Hughes reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner agreed to develop a health and safety plan and hold meetings in coordination with local emergency management groups.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that no evidence was presented as to any impact the “repowering” could have on air traffic within the area of the proposed Project. However, Petitioner stated a current filing with the FAA was in progress at the time of the SUP Petition.

A second was discerned and debate was held. Mr. Hughes reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has agreed in its Application and in testimony that it would comply with any and all FAA recommendations.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the proposed Project would increase area employment during the construction phase- thus helping the local economy.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that there is potential for the creation of up to 150 construction jobs if this SUP is approved.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that if this “repower” Project were approved the Petitioner has agreed to fund a community benefit program for the Ryan Wetland and Sand Prairie Conservation District.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that if this “repower” Project were approved the Petitioner has agreed to fund a community benefit program for nearby communities.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA hereby indicates that a decision to recommend or not recommend approval of the Petition is not based on an increase or decrease in revenue for taxing bodies.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that Petitioner has agreed to repair any field drain tile damage within 10 working days of notification and other drainage facilities within 6 months.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has indicated that there will be no surface or groundwater contamination as it will use little water, will haul in the water that is needed, will dispose of any potentially hazardous waste materials off-site and sanitary wastewater will be collected in portable facilities and taken away by a licensed hauler.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has agreed not to allow any advertising material or signage on any component of the proposed “repowered” WECS.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that the Petitioner has promised to maintain a broad form comprehensive insurance coverage policy insuring the Petitioner and parcel owners against loss or liability in an amount of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate and an umbrella of \$20,000,000.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has not requested any variances.

A second was discerned and debate was held. Mr. Hughes explained that the Applicant is seeking waivers, not variances. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA finds that 10 WTGs- specifically #59, #61, #63, #68, #70, #73, #98, #106, #114 and #120, would lay within 350 feet of a property line. However, all variances are relative to participating property owners, and waivers have been, or are expected to be, obtained.

A second was discerned and debate was held. Mr. Hughes reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA finds that the Petitioner has provided variance maps in its Application.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that Lee County ZBA finds that Petitioner has stated it will comply with the Lee County Code as to any other setbacks (from primary structures, residences, public roads, third party transmission lines, communication towers or non-participating property lines), and no other waivers are anticipated.

A second was discerned and debate was held. Mr. Hughes reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

A brief recess was taken at 7:00 p.m. The hearing resumed at 7:11 p.m.

Mr. Hughes made a motion that the Lee County ZBA finds, that if granted, the proposed Special Use would have the following impacts on the character of the neighborhood and the surrounding properties:

1. The character of the neighborhood would not change, but the whole neighborhood, including surrounding properties, will continue to be impacted by the visual nature of the Project.
2. There would be an impact on traffic conditions as there would be a temporary increase in traffic during decommissioning and construction periods, but there will not be any material long term impact.
3. There would be at temporary impact on public utilities with the WECS contribution to electric utilities being reduced during the “repowering” construction but would return to the same level upon completion, in that there would be no impact on sewer and water.
4. There would not be any substantially impact on local wildlife and/or threatened species.
5. There would be no new impacts on public health, public safety and/or general welfare.

A second was discerned and debate was held. Mr. Forster noted that there will be reduced power during the construction phase and that was included in this motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA recommends to the Lee County Board that BSW DevCo’s Petition for Special Use be approved.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA further recommends to the Lee County Board that, if the requested Special Use is approved, any and all other proposals and representations made under oath at the public hearing before the ZBA should be considered conditions of the Special Use Permit granted by the Lee County Board – even if not expressly specified therein.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA recommends to the Lee County Board that, if BSW DevCo’s WECS Special Use Petition under consideration is allowed, a condition of any Permit granted be that Petitioner shall agree not to commence construction activity associated with the WECS project before 7:00 a.m. or continue past 8:00 p.m. on any day of the week one-quarter

mile of any non-participating landowner's primary residence unless a waiver is obtained from such landowner.

A second was discerned and debate was held. Mr. Hughes reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that the Lee County ZBA recommends to the Lee County Board that, if BSW DevCo's WECS Special Use Petition under consideration is allowed, a condition of any Permit granted be that the Petitioner and a landowner may agree to setbacks, shadow flicker and other impacts different from those allowed in the Special Use Permit only if a written waiver has been obtained from the landowner and is on file with the Zoning Administrator.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA recommends to the Lee County Board that, if BSW DevCo's WECS Special Use Petition under consideration is allowed, a condition of any Permit granted be that any and all terms and/or conditions presented within the Petition for Special Use, #20-P-1557, that are not in conflict with any term and/or condition within the AIMA, be incorporated. The Lee County ZBA also recommends that if, indeed, a term and/or condition within the Petition for Special Use is in conflict, a contrary or repugnant to, the AIMA, the terms and/or conditions of the AIMA shall be binding.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mike Pratt made a motion that the Lee County ZBA recommends to the Lee County Board that, if BSW DevCo's WECS Special Use Petition under consideration is allowed, if Petitioner, that being EverPower Wind Holding's Inc., BSW DevCo, LLC, and/or Big Sky, LLC, any assignees and any future parent companies, choose to repower or replace WTG #74, the Petitioner shall obtain a waiver from resident owner prior to any building permit being issued to repower or replace WTG #74. However, in the absence of such waiver, the Petitioner should be allowed to continue to operate WTG #74 under Ordinance 2006-04-06-001.

A second was discerned and debate was held. Mr. Pratt reiterated his motion. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Hughes made a motion that the Lee County ZBA recommends to the Lee County Board that, if BSW DevCo's WECS Special Use Petition under consideration is allowed, it be granted a one-year waiver beyond the one year required under §10-2A-3 for the requested use to be established (substantially underway).

A second was discerned and debate was held. Mr. Hughes feels 3 years is excess but would agree to 2 years. A vote was taken, and the nays prevailed, 3-2. Motion failed.

Mr. Hughes made a motion that the Lee County ZBA recommends to the Lee County Board that, if BSW DevCo's WECS Special Use Petition under consideration is allowed, a condition of any Permit granted be that Petitioner provide a copy of the response it receives from the FAA to its recent filing for the Big Sky WECS to the Lee County Zoning Administrator.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Pratt made a motion that the Lee County ZBA finds that in the Petitioner's Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture, the execution of the AIMA must be made as a condition of the Special Use Permit Petitioner is requesting in this Petition. As used, AIMA refers to the Agricultural Impact Mitigation Agreement dated March 5th and March 6th, 2019, entered as Exhibit Pet #8 and any executed amendments to that AIMA.

A second was discerned and debate was held. Mr. Pratt feels this motion covers any amended AIMAs. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Mr. Buhrow made a motion that Lee County ZBA recommends to the Lee County Board that, if BSW DevCo's WECS Special Use Petition under consideration is allowed, it be granted a two-year waiver beyond the one year required under §10-2A-3 for the requested use to be established (substantially underway).

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 4-1. Motion passed.

Mr. Hughes made a motion that after the evidence and comments stage, your ZBA considered its findings of fact and recommendations over the course of 2 sessions, on February 16 and February 17, 2021- covering 4 ¾ hours in total.

A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

As the finding of fact and recommendation portion of the hearing concluded, Judge Slavin turned the meet back over to Chair Forster. Chair Forster announced this matter will go before the Lee County Board on March 18, 2021, at 6:00 p.m.

At 8:30 p.m., Mr. Buhrow made a motion to recess until after the County Board convenes on March 18, 2021. A second was discerned and there was no debate. A vote was taken, and the ayes prevailed, 5-0. Motion passed.

Respectfully submitted,

/s/

Alice Henkel