

STATE OF ILLINOIS)
)SS
COUNTY OF LEE)

In the Matter of the Petition

of

Eldena Solar, LLC

Lee County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 17th day
of August, A.D., 2020,
before the Lee County
Zoning Board of Appeals

Present:

Mike Pratt
Craig Buhrow
Gene Bothe
Glen Hughes
Rex Meyer
Bruce Forster, Chairman

Alice Henkel, Secretary
Dee Duffy, Zoning Enforcement Officer

Honorable Judge Timothy Slavin, Facilitator

1 APPEARANCES:

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1 JUDGE SLAVIN: All right. Good evening,
2 everyone. It's 7 o'clock. Welcome back to the
3 Old Lee County Courthouse.

4 As far as the attendees go, this is --
5 well, this is Session Number 4 of Eldena Solar,
6 LLC's, application for a Special Use, more
7 particularly an SES, solar energy system, under
8 the Lee County Ordinance.

9 Tonight present are all six members of the
10 august Lee County Zoning Board of Appeals.
11 Their boss, Zoning Officer Dee Duffy, is
12 present. Mr. Boonstra, State's Attorney, is
13 present. The Petitioner, Eldena Solar, LLC, is
14 present by some of its employees and its
15 attorney, Courtney Kennedy. Some members of the
16 Lee County support staff are present. Of
17 course, our court reporter is here, and a number
18 of interested parties.

19 All of the attendees are wearing masks and
20 trying their very best to maintain a social
21 distancing of 6 feet.

22 Just in case, this meeting is accessible
23 by Zoom. Folks can join the meeting -- can join
24 the session by Zoom and participate; meaning,

1 it's an active platform. They can ask questions
2 when the time comes, they can testify when the
3 time comes, they can make a closing argument,
4 public comment.

5 That meeting ID, Zoom meeting ID, is
6 91539239154. The password is 209840. I'll
7 repeat that, because I know it's hard to write
8 that fast if you are writing it down. ID,
9 91539239154. Password, 209840.

10 You can also view the meeting by going to
11 YouTube, www.youtube.com. In the search bar,
12 type "Lee County Illinois Zoning Board of
13 Appeals." All spelled out, except the Illinois
14 is not. So type in "Lee County IL Zoning Board
15 of Appeals." That should bring up a list of the
16 YouTubes, and you select the date.

17 All right. When last we left off about a
18 week ago, six days ago, last Tuesday.

19 Ms. Kennedy had indicated she had no more
20 witnesses. Is that still your posture, Ms.
21 Kennedy?

22 MS. KENNEDY: That is correct, Your Honor.

23 JUDGE SLAVIN: Okay. And I indicated to
24 everybody that interested parties would be next;

1 however, I overlooked the fine Zoning Officer,
2 Ms. Duffy's, opportunity to present witnesses.
3 She has indicated she has none, but she does
4 have a report that she'd like to submit into
5 evidence, which I'm going to mark ZO Number 1.

6 (ZO Exhibit Number 1 marked for
7 identification.)

8 JUDGE SLAVIN: And it appears to be -- the
9 first page is an email to Ms. Duffy from a
10 person by the name of Brenda Merriman. Attached
11 to the email are two pages of what appears to be
12 more or less facts regarding Lee County Soil.

13 Ms. Duffy, does Ms. Merriman hold some
14 position that gives her the expertise to present
15 that? And if so, what?

16 MS. DUFFY: She works for the Soil and
17 Water Conservation District in Amboy.

18 JUDGE SLAVIN: Okay. That's admitted.

19 Ms. Duffy, any other witnesses?

20 MS. DUFFY: No.

21 JUDGE SLAVIN: Okay. All right. Now
22 we're at the interested parties. I have been,
23 in the background, debating how to -- I'm sure
24 some folks want to testify. I will preface this

1 by again emphasizing that now is the time, what
2 I call interested parties, somebody called them
3 civilians, whatever name you attach it, it's
4 people other than the Petitioner, and any of Ms.
5 Duffy's witnesses. So all the rest of you
6 folks, it's your opportunity to give testimony.

7 And I'm going to try and again flesh it
8 all out. When you give testimony, you testify
9 about facts. The testimonial phase is not the
10 time for you to give your opinion, it's not the
11 time to tell the Zoning Board of Appeals how you
12 feel. That time will be coming; I'll call it
13 phase three. It's everybody's chance to wrap it
14 up with a speech.

15 The important difference is, when you
16 testify today, you're subject to
17 cross-examination and it's about facts. Grass
18 is green. The moon is not made of green cheese.
19 Those are facts. Your opinion about what the
20 County -- what the Zoning Board ought to do or
21 not do is saved for another day down the road.
22 Of course, we can't guess exactly how long
23 that's going to be because we don't know how
24 long this testimonial phase will take.

1 With that having been said, who would like
2 to be the first interested party who indicates
3 they, if anybody, would like to testify? The
4 way things have been going, there have been very
5 little participation on Zoom. So I'm going to
6 start with the folks here in person. So who
7 would like to testify?

8 MR. LUSZ: I would.

9 JUDGE SLAVIN: Mr. Lusz.

10 MR. LUSZ: Yup, I'll do my best.

11 JUDGE SLAVIN: I'm sure you will.

12 MR. LUSZ: Can I get a little bit of
13 clarification possibly as to what was just
14 submitted as evidence?

15 JUDGE SLAVIN: Sure, absolutely.

16 MR. LUSZ: Was it the Lee County Soil and
17 Water Conservation District Informational
18 Report, the full report?

19 JUDGE SLAVIN: Well, I don't know what the
20 full report is. I'll tell you in detail what it
21 was.

22 The first page is an email apparently from
23 Brenda Merriman to Dee Duffy. The body of the
24 email says, "These are the two things I sent to

1 Adam." Then the two things, one is a list --
2 well, you're asking me, so I'm trying to explain
3 what it is -- a list of soil symbols with
4 columns: soil symbol, name, farmland
5 importance, relative value, PI, acres, hydric,
6 and percentage of acres.

7 The next page is a page that appears to be
8 titled, "Lee County Farmland Facts." At the top
9 it's got an underlined section, it says, "Land
10 in farms, 392.102 acres in 2017," and then it's
11 got some acreage, pastureland and cropland.

12 Average size of farm, 471 acres.

13 Then it's got those soil types, probably
14 eight -- ten soil types listed and how many
15 acres are in each soil type.

16 Then it indicates prime soils, 86 percent.

17 Then it's got a definition of prime
18 farmland.

19 That pretty well summarizes it.

20 Folks, I forgot to say, if you have got
21 cell phones with you, certainly I understand,
22 but please at this point either turn them on
23 silent or off.

24 So does that answer your question,

1 Mr. Lusz? That pretty well outlines what was
2 submitted.

3 MR. LUSZ: Okay. Very good.

4 So I have got a presentation actually that
5 I put together. I have got eight copies.

6 JUDGE SLAVIN: Give those to me first.

7 MR. LUSZ: Yes.

8 JUDGE SLAVIN: Because I don't think
9 they're marked probably.

10 I will mark each of them, I will call them
11 P, which stands for interested parties, IP
12 Number 1.

13 (IP Exhibit Number 1 marked for
14 identification.)

15 JUDGE SLAVIN: Ms. Recorder, did you get a
16 copy of what I marked as ZO Number 1?

17 COURT REPORTER: No.

18 JUDGE SLAVIN: Dee, Callie needs a ZO 1,
19 since she is responsible for the record.

20 MR. LUSZ: Would you like me to pass those
21 out, Your Honor?

22 JUDGE SLAVIN: Yeah, when I get there,
23 sure.

24 MR. LUSZ: Oh, okay.

1 JUDGE SLAVIN: Board Rules require eight,
2 and you have got that. You're in trouble now,
3 one of the staples.

4 MS. LUSZ: Uh-oh. It was Mrs. Duffy's, I
5 believe. One of Mrs. Duffy's staples.

6 JUDGE SLAVIN: Okay. I'm keeping a copy,
7 and hand a copy over to the court reporter, and
8 the rest -- each Zoning Member gets one,
9 Ms. Duffy gets one, Ms. Kennedy gets one, and
10 after that it's up to you.

11 MR. LUSZ: I guess there's extras for the
12 audience.

13 JUDGE SLAVIN: And I take it, now that I
14 have marked it and I sort of looked at it, this
15 is a hard copy of a PowerPoint?

16 MR. LUSZ: Yes, sir. We have got the
17 PowerPoint.

18 JUDGE SLAVIN: Okay. That's fine. I just
19 want to make sure I know what it is.

20 MR. LUSZ: Is it okay if I sit down?

21 JUDGE SLAVIN: Absolutely. Can you run it
22 from there?

23 MR. LUSZ: She's going to run it, so.

24 JUDGE SLAVIN: Can you see it from there?

1 MR. LUSZ: No, but I have got it printed.

2 JUDGE SLAVIN: Why don't you do that then.

3 MS. HENKEL: Hold on one moment, because
4 we're trying to get it to come up here.

5 JUDGE SLAVIN: Why don't you have a seat.
6 I'll put you under oath or affirmation.

7 ADAM LUSZ,
8 being first duly sworn, testified as follows:

9 JUDGE SLAVIN: Have a seat. I'll help you
10 get started, but once she gives us a cue.

11 MR. LUSZ: Thank you.

12 JUDGE SLAVIN: Off the record, Callie.

13 (A discussion was held off the
14 record.)

15 JUDGE SLAVIN: Will you need a cue when he
16 wants to change pages?

17 MS. HENKEL: He'll need to tell me, yes.

18 JUDGE SLAVIN: Did you hear that?

19 MR. LUSZ: Yeah, we'll do the best we can.
20 Thank you.

21 JUDGE SLAVIN: Do you feel safe taking off
22 your mask at the mic?

23 MR. LUSZ: I'd rather -- can you hear me
24 well if I lean right into it?

1 JUDGE SLAVIN: If you get in real close.

2 MR. LUSZ: Yup. Are we ready?

3 JUDGE SLAVIN: Yup. And I'll help you get
4 started.

5 State your name.

6 MR. LUSZ: So my name is Adam Lusz. I
7 live in Amboy, Illinois.

8 JUDGE SLAVIN: And for those uninitiated,
9 would you spell your last name, please?

10 MR. LUSZ: Yup. My last name is spelled
11 L-U-S, as in Sam, Z, as in zebra. Lusz.

12 JUDGE SLAVIN: And you live in, I'm sorry,
13 what community?

14 MR. LUSZ: Amboy.

15 JUDGE SLAVIN: And can you describe your
16 residence in relation to where the proposed
17 solar development, Eldena Solar, is?

18 MR. LUSZ: Yeah. On the south end of the
19 development is Killmer Road. The road curves to
20 the east, and our house is on the south side of
21 that road about a thousand feet probably from
22 that last south parcel, actually. So our
23 farm -- our farmland actually butts up just
24 about a hundred yards of the south end of where

1 the substation would be placed potentially on
2 this parcel, is where my residence is at.

3 JUDGE SLAVIN: Do you have any possible
4 connection to the development other than your
5 residence? In other words, a business at your
6 home or any other connection?

7 MR. LUSZ: No, sir.

8 JUDGE SLAVIN: Okay. You say you have
9 farmland. How big is your farm?

10 MR. LUSZ: We -- our family has about 160
11 acres of tillable farm ground around the
12 farmette there.

13 JUDGE SLAVIN: Okay, very good.

14 Why don't you take it from there, and I'll
15 interject and hopefully help you if you start to
16 get off course or are floundering.

17 I understand you have a PowerPoint
18 presentation?

19 MR. LUSZ: I do, yes, sir. We put one
20 together.

21 JUDGE SLAVIN: In the words that
22 Ms. Kennedy often uses for the witnesses, why
23 don't you go ahead.

24 MR. LUSZ: So I tried to base a little bit

1 of this PowerPoint, when we look at the Zoning
2 regulations of the Lee County Code Book, Title
3 10, Zoning Regulations, is where you would look
4 to as a guide to this procedure or this
5 gathering.

6 So the purpose of this Title is to
7 regulate and control the classification of land
8 uses, and the use of land and buildings within
9 the county in order to promote the public
10 health, safety, and welfare of its citizens and
11 to minimize conflict between farming and other
12 land uses.

13 Our Lee -- the next slide here is going to
14 show, our Lee County Code outlines a list of
15 proposals for our zoning regulations. I'd like
16 to go over a few of these purposes actually as
17 they apply to the proposed Eldena Solar Project.

18 So the next slide gets into this Lee
19 County Code Book, 10-1-3, the Purpose. There's
20 a bullet point on there that talks about,
21 conserve the value of the land or buildings
22 throughout the county. Conserve the value of
23 the land and buildings throughout the county.

24 The next slide is in reference to the

1 CohnReznick impact study that was done. It was
2 said that there would be no impact. And while
3 I'm not a highly-compensated consultant paid by
4 the solar company for their research or impact
5 study, I wanted to take a little closer look at
6 the solar plants referenced on that value impact
7 study that was done that we all were a part of
8 witnessing.

9 If you look at the next slide, if we were
10 to get into this, the Grand Ridge Streator Solar
11 Project was referenced on their presentation,
12 and it was this property that was highlighted
13 that was at the corner, it was 479 feet away
14 from the solar panels, and it did show 7.4
15 percent difference in value.

16 I believe it was referenced there was
17 some -- perhaps some other comps that could have
18 been offered perhaps, or there was a question
19 of, Was there anything else that could be
20 offered? When we go to the next slide, when we
21 look at other properties in relation to this
22 Grand Ridge solar project, we can see that
23 there's a house here that just is offset a
24 little bit from that example that was given by

1 them that was put up for sale in 2016 for \$225-,
2 and it didn't sell until 2000- -- toward the end
3 of 2016, and they had to reduce the price by
4 \$39,000, or 17.3 percent of a loss to get out
5 from that property and move away from the
6 facility.

7 So this was one -- this is one example of
8 something where there was concessions that had
9 to be made in proximity to the solar farm. So
10 that's one example.

11 The next example is on the next page,
12 actually. There's a property that's a little
13 bit further away, actually. If you look at this
14 trend, it's a house that sat on the market a
15 little over a year. Its initial listing was
16 308-. They, in order to ~~get that property~~
17 moved, had to reduce the price by \$54,000. It's
18 a 17.5 percent decrease, versus where they went
19 in and listed it at, to get it moved.

20 So this is a trend that started to happen
21 around this facility. When we go to the next
22 slide, we can see that this property sat on the
23 market here for three years, setting a
24 precedence. Again, there may be buyers there to

1 buy these homes, but, again, several buyers may
2 pass on these properties and cause it to sit
3 longer, is what the trend seems to be here.

4 So this property sat on the market for
5 three years. They had to go down \$86,000, or a
6 30 percent decrease from the initial offering
7 before they did finally get it sold, you know,
8 three years later.

9 We've got -- on the next slide, yet again,
10 an example of a property that sold near this
11 facility. It seems to be a trend here where, in
12 2014, the house was listed and it did not sell
13 until 2017. So there's a substantial amount of
14 time that this house had sat on the market,
15 unfortunately, with no perspective buyers
16 interested.

17 In this case, you know, it's a \$210,000
18 decrease from where they had initially offered,
19 where the realtor had advised them, to where
20 they ended up getting this house sold. That's
21 three years on the market to take a decrease of
22 \$210,000.

23 These are some dramatic impacts of several
24 properties that are near the Streator facility

1 that were not referenced in the previous
2 example.

3 So it seems to be a pretty substantial
4 trend there for the properties and the residents
5 that are trying to move those locations.

6 The next slide is actually going to move
7 to a different area. This is an Indy solar
8 plant. There was a little bit of legwork that
9 was done here to do some research, but, you
10 know, the individual here -- again, it's written
11 out there, and I don't know how well you can see
12 it with the type. I apologize. It's pretty
13 small here.

14 But the Berkshire Hathaway agent that I
15 spoke with had been selling homes for 33 years
16 in the Indianapolis market and stated to me
17 that, Immediately 75 to 85 percent of anyone who
18 will look at your home down the road will say
19 that, "I don't want to live next to that."
20 He -- it could be obtrusive. It would be deemed
21 or viewed by him as something that would be near
22 power lines, don't buy near railroad or don't
23 buy near solar panels, would be in a similar
24 bracket. I also heard someone reference, as

1 well, near a landfill might be an impact similar
2 perhaps. That was in reference from that
3 individual.

4 Now, if you were to look at this
5 particular Indy plant, if we go to the next
6 slide here, there's a property on here that
7 sold, and what's really striking about this is
8 if we look at the decrease in assessed value of
9 this property. So the county assessed value was
10 dramatically impacted on this property in very
11 close proximity to this solar plant. 46 percent
12 decrease in assessed value. This is concerning.
13 That's over, you know, from a span of '13 to
14 2017. So this property sold in November of '15
15 for only 87,000. There's a dramatic difference
16 here. You know, obviously that's concerning.
17 Very relevant to what we're going through here,
18 potentially right here today.

19 The next slide is just a summary.

20 JUDGE SLAVIN: I'm going to ask Alice to
21 skip this slide. That's argument. That's
22 something you can stand up and say.

23 MR. LUSZ: Very good.

24 JUDGE SLAVIN: There will come a time for

1 that.

2 MR. LUSZ: Yes, sir.

3 If we go to the next slide then, I moved
4 on in the booklet that I was using as my guide,
5 and there's a Bullet Point 2 in that Lee County
6 Code Book, and it says, Provide a comfortable
7 and moral environment for the benefit of the
8 residents of the county and maintain and enhance
9 rural community values. So maintain and enhance
10 their values, and then a moral environment is
11 what we speak to here, why we're sitting here
12 today and are things to think about.

13 When you look at the next slide, there's a
14 drawing here of a chain link fence with barbed
15 wire across the top of it. It's a 6-foot chain
16 link fence with three strands of barbed wire
17 along the entire perimeter of this project.
18 It's said to be monitored from video
19 surveillance along the fence line. This fence
20 will be on people's lot lines in the
21 agricultural community, on their farmettes.

22 Is that a comfortable and moral
23 environment to benefit the residents of Lee
24 County?

1 JUDGE SLAVIN: Again, I know it's a fine
2 distinction, but that's an argument too.

3 MR. LUSZ: Yes, sir.

4 JUDGE SLAVIN: Which there will be time, I
5 keep emphasizing.

6 MR. LUSZ: Next slide, so Bullet Point 4
7 when we look at the Code Book, we're supposed to
8 be lessening -- or lessen or avoid the hazards
9 to persons or damage to property resulting from
10 accumulation of runoff of storms or flood
11 waters. All these bullet points reside in that
12 Code Book.

13 This ties into this project as well. When
14 we flip to the next slide, this wasn't a very
15 good -- I apologize, it's -- I wish I had better
16 pictures that I could put up, but when we look
17 at that Code bullet point and we look at this
18 slide, we can see the waterways that angle
19 towards the Carlson family residence that's in
20 the corner next to Threemile Branch. This whole
21 parcel of land that's involved in this request
22 all drains -- if you have driven out there, it's
23 a beautiful property -- it all drains right down
24 to their location.

1 You really have to be thinking what about
2 we're doing here for this piece of property and
3 for this parcel in particular and the topography
4 that it is. And, again, the Code Book spells
5 out to us as to what we're supposed to be
6 considering here, the hazards, the damage of
7 personal property that could come of this.

8 I'm going to forward on to the next slide
9 as well that addresses -- there's a Lee County
10 Soil and Water Conservation Natural Resources
11 Informational Report that's done. It's actually
12 a -- I believe about a 750-page document that I
13 believe was required as part of the application
14 process for this SES. In that report, it does
15 talk about hydric soils. Hydric soils are the
16 same types of soils that you might find in
17 wetland areas. They have characteristics where
18 they don't dry out very well on warm days and
19 sunny days.

20 This site has 199.5 acres, or 15.55
21 percent, of the parcel that contains hydric
22 soils that don't dry out well. It also
23 identifies, you know, 423 acres, that are
24 somewhat poorly drained, and so on and so forth.

1 The water table is also close to the
2 surface. So, again, these all tie back to soil
3 and water runoff of a facility this large.

4 The next slide is -- I don't know whether
5 it needed to be in here. I'm hopeful that
6 Mr. Heiniger can join us here later this
7 evening, if it works out.

8 We would love to have someone present, and
9 I am hopeful he can talk about soil and water
10 runoff in more length than what I'm able to do
11 as a citizen here. He's highly respected in the
12 industry.

13 JUDGE SLAVIN: Okay. Let's --

14 MR. LUSZ: I'll move on.

15 JUDGE SLAVIN: Yeah.

16 MR. LUSZ: Thank you.

17 Soil limitations, this evaluates the
18 parcel from the surface down to approximately
19 5 feet. This is another piece of this report.
20 It actually states, you know, a ground-based
21 soil array anchoring system. The soil types
22 that's on this parcel when you look at the
23 soil's penetrating anchoring system is what I
24 believe is being recommended here for the

1 project. There's 876 acres, or 68 percent, that
2 has a very limited rating of this being the type
3 of land that would be conducive for that type of
4 structure. It should be -- speaks for itself, I
5 guess. There's 407 acres then, or 31 percent,
6 that are somewhat limited rating as well.

7 So, again, I appreciate that these are a
8 part of the record and that we're all looking at
9 this collectively together.

10 If I go to the next slide, Lee County
11 Code, Bullet Point 5 there, limit
12 nonagricultural development of areas of prime
13 farmland. If we were to look at that, under the
14 Lee County Soil and Water Conservation District
15 Natural Information Report, that should be a
16 part of this, 1,182.4 acres, or 92 percent, of
17 the parcel is comprised of prime farmland soils.
18 Prime farmland soils include prime soils and
19 prime when drained soils minus wetland areas
20 identified on inventories.

21 I believe there's even a little bit of
22 wetlands area identified on the report as well.

23 I'm sorry, can you move the slide forward?
24 Are we off? Can you move the slide forward?

1 Maybe we missed something.

2 I'll move on, because that's -- yup. I'm
3 going to match up with what's on the screen.

4 So on this slide -- actually, it's
5 difficult to see. I apologize for the people in
6 the room, and perhaps even what's printed there
7 in front of you is difficult to see. But on
8 this slide is actually the top soils in Lee
9 County. So these are the best soils that we
10 have. One, two, three -- it's the top 11 soils
11 that we have to offer in this county. The best
12 of the best.

13 This project will eat up 102.5 of the
14 acres. The list is up in the blue box to the
15 top right. There's 22 acres of -- 22 and a half
16 acres of one particular topsoil in the county;
17 there's 4.2 acres of a different soil type;
18 there's 50.9 acres of another soil; there's 24.9
19 acres of another soil type of the best soil that
20 this county has to offer.

21 There's also a description here of what
22 prime farmland is defined as by the U.S.
23 Department of Agriculture. This references, and
24 I may not need to read the whole thing, but it

1 may be cropland, pasture, woodland, or other
2 land, but not urban, built-up land, or water
3 areas. It's used for food or fiber or is
4 available for those uses.

5 A recent trend in land use in some parts
6 of the county has been the loss of some prime
7 farmland to industrial and urban uses. The loss
8 of prime farmland to other uses puts pressure on
9 marginal lands, which generally are more
10 erodible, droughty, less productive, and cannot
11 easily be cultivated. This is the trend that
12 we're headed to here with these types of
13 properties.

14 If we go to the next slide, there was a
15 Farmland Protection Policy Act. So Congress
16 enacted the Farmland Protection -- I'm sorry,
17 the Farmland Protection Policy Act as a subtitle
18 of the Farm Bill in -- 1981 Farm Bill. The
19 purpose of this law is to minimize the extent to
20 which Federal programs contribute to the
21 unnecessary conversion of farmland to
22 nonagricultural uses.

23 That's relevant with this case as well, as
24 to how things like this are funded or have been

1 communicated within this hearing to be funded.

2 If we go to the next slide, I know
3 Mr. Quick took the stand and spoke pretty
4 dramatically about the Illinois Farm Bureau
5 policy on solar energy. He said a lot of things
6 in his testimony. I actually reached out to a
7 gentleman, Bill Bodine. He's the director of
8 business and regulatory affairs for the Illinois
9 Farm Bureau. He sent me what the current policy
10 is that they support. He sent this in an email,
11 and this is right out of the bylaws.

12 So it's Number 14 there on solar energy.
13 If you look at Number 3, they support the
14 establishment of statewide standards for
15 commercial solar energy conversion systems that
16 provide adequate protection of public health and
17 safety, protect private property rights, and
18 allow for reasonable development of commercial
19 solar energy conversion system projects. Such
20 standards should include, but are not limited
21 to, farmland preservation, protection of natural
22 resources, and ensuring adequate funds are in
23 place for decommissioning.

24 I'm going to go to Bullet Point Number 7,

1 and that's what's also stated below. Efforts to
2 locate solar energy projects on marginal or
3 underused lands, including brownfield sites,
4 highway right-of-ways, exit ramps, rest areas,
5 welcome centers, embankments, and on IDNR
6 non-tillable properties rather than highly
7 productive tillable farmland. That is what they
8 support. That's what the Illinois Farm Bureau
9 currently supports, as well as all the other
10 bullet points that are on here to review as well
11 when it comes to this.

12 One of the other bullet points, quite
13 frankly, that's on here, is the County Farm
14 Bureau efforts -- they would like to see the
15 County Farm Bureau efforts to work with their
16 county officials to develop appropriate solar
17 land use regulations for their county.

18 Put a hallelujah on that one.

19 The next slide.

20 JUDGE SLAVIN: All right.

21 MR. LUSZ: Sorry, I apologize.

22 JUDGE SLAVIN: The hallelujah time is
23 coming.

24 MR. LUSZ: Thank you. We're almost over

1 there.

2 So when we go back to the Lee County Code,
3 Number 9, preserve, encourage, and enhance
4 aesthetic considerations in connection with
5 development of any areas of the county.

6 So, again, when we think of aesthetic
7 considerations in the rural community when we're
8 driving around these roads, if we flip to the
9 next page, this is what we're demonstrating.
10 This is the aesthetics that we are -- we have in
11 front of us now.

12 JUDGE SLAVIN: Why don't you describe what
13 that is. Just don't --

14 MR. LUSZ: So -- correct. So when you
15 look at this, you have got the chain link fence
16 with barbed wire across the top of it along a
17 ditch line, you have got a gravel roadway behind
18 it, you have low-growing grass and some solar
19 panels behind it.

20 Down at the bottom right is a picture,
21 actually there's a set of battery banks.
22 There's a battery bank that is on this plan, and
23 this was a picture of a battery bank. Again, I
24 don't know how many of these have been created

1 in the world, quite frankly, but this was a
2 picture that describes what the substation and
3 what the battery bank might look like.

4 I just don't -- in connecting back to this
5 bullet point, I mean, we're to preserve,
6 encourage, and enhance the aesthetic
7 considerations in connection with development of
8 any areas in the county.

9 So I just -- this is where we're headed.

10 JUDGE SLAVIN: That's kind of a speech
11 too. Okay. Any other facts?

12 MR. LUSZ: Yes, sir.

13 The last --

14 JUDGE SLAVIN: I read the last one.

15 That's not a -- skip. We'll skip that one. You
16 get --

17 MR. LUSZ: Perfect. Thank you for your
18 time.

19 JUDGE SLAVIN: All right. Questions of
20 this witness.

21 Ms. Kennedy, it's appropriate you go
22 first, if you have any.

23 MS. KENNEDY: Thank you, Judge.

24 EXAMINATION

1 BY MS. KENNEDY:

2 Q. Mr. Lusz, what degrees or other certifications
3 do you have?

4 A. So I went to Sauk Valley Community College in
5 industrial maintenance electrician. Is that
6 what --

7 JUDGE SLAVIN: Just answer the question.

8 Q. (By Ms. Kennedy:) Do you have any background
9 in residential or commercial real estate
10 appraisals?

11 A. Nope.

12 Q. And are you aware that in Illinois the value of
13 property is not determined by what it is listed
14 at online?

15 A. Yup.

16 Q. Did you speak with the county assessors in the
17 project areas when you conducted your
18 investigation?

19 A. No.

20 Q. Are you aware of what a paired sales analysis
21 is?

22 A. Nope.

23 Q. Are you aware that the National Electric Code
24 requires a 7-foot fence or a 6-foot fence plus

1 1 foot of barbed wire around the perimeter of
2 any solar energy project?

3 A. I'm not aware.

4 Q. And are you aware that the Petitioner is not
5 requesting to place panels on the entire ground
6 located within the project area?

7 A. Am I -- I'm sorry, can you repeat?

8 Q. Sure.

9 Are you aware that the Petitioner is not
10 requesting to place panels on every square foot
11 inch of the project area?

12 A. I'm aware.

13 Q. Are you aware that the project as proposed only
14 has cameras at the entrance of the solar farm
15 and at the substation entrance?

16 A. No one was aware of that.

17 Q. Are you familiar with what's known as the
18 productivity index?

19 A. Yes.

20 Q. And can you explain how soils are rated
21 according to that productivity index?

22 A. I'd love to have the proper person talk about
23 the soils. I'd love to. Love to have him here.

24 Q. Are you aware that the average PI of this

1 ground is 118.5?

2 A. I saw that.

3 Q. And are you aware that this falls within 1.5
4 points within Class B soils?

5 A. Yup.

6 Q. In your presentation you cited the general Lee
7 County Code requirements, but are you aware that
8 the County has an ordinance allowing the
9 construction and operation of solar energy
10 systems?

11 A. Yup.

12 Q. And are you aware that in that Solar Energy
13 Ordinance it states that the purpose is to
14 facilitate the construction and operation of
15 solar energy systems within Lee County that
16 promote economic development and avoid adverse
17 impacts to important areas such as agricultural
18 lands, endangered species habitats, conservation
19 lands, and other sensitive lands?

20 A. I don't know the answer to that question.

21 Q. Do you agree that this project as proposed has
22 certain advantages for economic development?

23 A. Do I agree? What was that? Say that again.

24 Q. Would you agree that the project promotes

1 economic development within Lee County?

2 A. No.

3 Q. And why do you disagree with that?

4 A. I don't -- I don't see what economic gains -- I
5 don't see jobs coming here. I mean, I don't.

6 Q. You have heard testimony that local
7 construction jobs would be brought to the area;
8 is that correct?

9 A. So I -- what I have also researched is that a
10 lot of these jobs are people that come in for
11 about --

12 JUDGE SLAVIN: Just answer the question.
13 I'll give you a chance to respond, but just
14 answer the question.

15 A. Yeah, I don't have an answer to that.

16 Q. (By Ms. Kennedy:) Are you familiar with what's
17 known as the EcoCAT consultation?

18 A. Yeah, I'm familiar with that.

19 Q. And are you aware that there were not any
20 endangered species noted in that consultation?

21 A. That's what the report said.

22 Q. Are you aware that a likely highly-compensated
23 but independent engineer must certify the
24 foundation and design of the panels to make sure

1 that they're within professional standards given
2 the local soil and climate conditions?

3 A. That's good.

4 Q. Are you aware that's a requirement in the Solar
5 Energy Ordinance?

6 A. When does that -- is that part of the record?
7 Has that been done?

8 JUDGE SLAVIN: Just answer the question.
9 All she said is, are you aware?

10 A. No, I'm not. I wasn't aware.

11 JUDGE SLAVIN: Just listen to the question
12 and answer the question.

13 MR. LUSZ: Yeah.

14 Q. (By Ms. Kennedy:) Are you familiar with what a
15 LESA score is?

16 A. Yes.

17 Q. And can you tell us what that is?

18 A. It's a land evaluation site assessment.

19 Q. And are you aware that the Solar Energy
20 Ordinance in Lee County does not require the
21 LESA score to be binding?

22 A. Yeah, I am familiar with the ordinance,
23 unfortunately.

24 Q. Do you have a background in ag, Mr. Lusz?

1 A. I farm.

2 Q. And how long have you farmed?

3 A. Since I was a kid, with my family in one
4 capacity or another.

5 Q. And how would you characterize the current ag
6 economy?

7 A. Booming.

8 Q. But would you agree that the current economy or
9 commodity prices is somewhat brutal?

10 A. For me, the way that we're capitalized at our
11 farm, I mean, we're doing okay.

12 Q. But our corn prices, let's say, are they
13 generally low right now as compared to recent
14 years?

15 A. Compared to recent years, yeah. We're at
16 economy woes with China, I believe, and has
17 impacted that a little bit, yup.

18 Q. And is it fair that with the current ag economy
19 it forces farmers and landowners to get more
20 creative about how they make a living?

21 A. I guess to each is their own. Sometimes --

22 Q. Are you aware that the siting of a solar energy
23 system wouldn't take the ground out of ag use?

24 A. I disagree with that statement completely. It

1 has nothing to do with ag. Solar generation,
2 you compare yourself to a nuclear power plant,
3 to a natural gas plant, to a solar plant. It's
4 energy generation. It has nothing to do with
5 ag.

6 Q. When you stated "each their own," would it be
7 fair that a landowner who wants to have a solar
8 energy project on their site would be acceptable
9 then?

10 A. It -- yeah.

11 MS. KENNEDY: I have nothing further, Your
12 Honor.

13 JUDGE SLAVIN: All right. Other questions
14 of this witness? We'll start with the ZBA.

15 Mr. Forster?

16 MR. FORSTER: No questions.

17 JUDGE SLAVIN: Mr. Buhrow?

18 MR. BUHROW: No questions.

19 JUDGE SLAVIN: Mr. Pratt?

20 MR. PRATT: No.

21 JUDGE SLAVIN: Mr. Bothe?

22 MR. BOTHE: No.

23 JUDGE SLAVIN: Mr. Hughes?

24 MR. HUGHES: No.

1 JUDGE SLAVIN: Mr. Meyer?

2 MR. MEYER: No questions.

3 JUDGE SLAVIN: Mr. Boonstra?

4 MR. BOONSTRA: No questions. Thank you,
5 Judge.

6 JUDGE SLAVIN: Ms. Duffy?

7 MS. DUFFY: I have one.

8 JUDGE SLAVIN: Sure.

9 EXAMINATION

10 BY MS. DUFFY:

11 Q. Adam, you referred to the property northwest of
12 the site as far as runoff.

13 A. Yes, ma'am. North -- it would be the
14 northwest, the Carlson family residence there.

15 Q. The farmland around there, is that all in row
16 crop right now?

17 A. It is right now in row crop, yes.

18 MS. DUFFY: Okay. That's all I have.

19 JUDGE SLAVIN: All right. Now we turn to
20 interested parties. And, again, I'll start in
21 the room. You folks have a chance to ask
22 Mr. Lusz any questions you have, and we'll do it
23 by raise of the hand. I'll do my best to
24 recognize whoever raises their hand first, but I

1 won't do it perfect.

2 Questions of Mr. Lusz? I keep saying it
3 wrong. Lusz.

4 MR. LUSZ: Yeah, thank you.

5 JUDGE SLAVIN: Back right -- back left, I
6 mean.

7 EXAMINATION

8 BY MR. FIELDS:

9 Q. Adam, you talked about the LESA score.

10 JUDGE SLAVIN: Wait a minute. I think
11 we're going to have to carry around a mic for
12 you. It's not the folks just in here, it's the
13 folks on Zoom.

14 MR. FIELDS: Brian Fields, Eldena.

15 Q. (By Mr. Fields:) Adam, you talked about the
16 LESA score. If we divided that up into each
17 parcel, what do you believe the LESA score would
18 be per parcel? Do you think it would be -- I
19 believe she said it was 1- -- 180-something, or
20 would you think it would be higher if we divided
21 it up in parcels?

22 JUDGE SLAVIN: That's so many questions
23 that I wouldn't know where to start answering
24 it.

1 Q. (By Mr. Fields:) If you divide them up into
2 parcels for the LESA score, do you think they
3 would all come out at the average of 180 that
4 she's talking about?

5 A. In looking at the soil samples, or the soil
6 maps, I believe the parcel that's to the north
7 would have a much higher LESA score or PI index,
8 and I believe the parcel that's all the way to
9 the south -- again, these are individual
10 requests that are coming through for each
11 individual parcel.

12 So, yes, the parcel that's to the north I
13 believe would have a higher PI index and have a
14 higher LESA score, and I believe the parcels to
15 the south would have a higher PI index and a
16 higher parcel score.

17 Q. So where they want to put the substation at,
18 would that probably be in A farmland?

19 A. It seems to be that one of the better soil
20 types on the whole project would be the south
21 end, yes.

22 MR. FIELDS: No further questions at this
23 time.

24 JUDGE SLAVIN: Okay. Thank you.

1 Next? Raise their hand. I want to give
2 everybody a chance, but you have got to give me
3 a hint that you want to ask a question.

4 All right. You can think about it while I
5 ask Alice to survey our Zoomers. Are they
6 unmuted?

7 MS. HENKEL: No hands are raised.

8 JUDGE SLAVIN: Okay. Folks on Zoom,
9 again, if you want to ask a question, you go to
10 the bottom of the screen -- you run your mouse
11 cursor over the bottom of the screen, and it
12 should pop up an icon "raise hand," or make some
13 noise, do something that indicates you want to
14 ask a question. And I'll give you a few seconds
15 to get that done.

16 If you're on your cell, you hit star nine
17 and it will raise a hand on the screen.

18 Okay. Seeing no action, I'll go back to
19 the room. Anybody think of a question in that
20 little short interval?

21 All right. The record does also not
22 reflect, and I want it to, that Mr. Lusz's
23 presentation -- PowerPoint presentation was
24 displayed by screen-sharing on the Zoom, there

1 were some panels that did not completely show
2 and there were other panels that were small
3 because of the type, the font; however, Mr. Lusz
4 had the good sense to produce enough copies so
5 that a number were passed around the room here
6 in person and people had the chance to view
7 them.

8 So, okay. I thank you, Mr. Lusz. You may
9 step down.

10 MR. LUSZ: Thank you.

11 JUDGE SLAVIN: Okay. Next person who
12 wants to testify, and we're dealing with
13 in-person folks in here.

14 You want to come on up, raise your right
15 hand. You had your hand raised here in the
16 front row, checkered.

17 MR. LUSZ: He was just waving at me.

18 JUDGE SLAVIN: Okay. I misinterpreted
19 that. I saw him raise his hand.

20 Anybody else in here?

21 Okay. Folks on Zoom.

22 MR. LUSZ: So Mr. Heiniger is on --

23 JUDGE SLAVIN: Is he shown on the screen?

24 MR. LUSZ: He is, yeah, on the bottom

1 there.

2 JUDGE SLAVIN: Let me first ask Alice if
3 there's any other hands raised besides
4 Mr. Heiniger.

5 MS. HENKEL: No.

6 JUDGE SLAVIN: Mr. Heiniger, Alice is
7 going to unmute you.

8 Mr. Heiniger, are you by audio only or
9 have you got a video on?

10 MR. HEINIGER: I have got a camera. There
11 I am.

12 JUDGE SLAVIN: There you are. Never mind.
13 You answered the question.

14 Mr. Heiniger, I'm going to help Mr. Lusz a
15 little bit.

16 This is your witness though, right,
17 Mr. Lusz?

18 MR. LUSZ: Yeah.

19 JUDGE SLAVIN: Mr. Heiniger, do you want
20 to raise your right hand, please.

21 (Ron Heiniger was duly sworn.)

22 JUDGE SLAVIN: Okay. Mr. Heiniger, I am
23 going to ask you some questions so we can move
24 it along and help Mr. Lusz a little bit.

1 Q. State your name.

2 A. I'm Dr. Ronnie Heiniger.

3 Q. And, Mr. Heiniger, what is your business or
4 occupation?

5 A. I'm a professor at North Carolina State
6 University. I'm a cropping systems specialist.
7 I specialize in corn precision agriculture.

8 Q. You have got that accent that we're all not
9 used to, and that's not a criticism, but would
10 you say that a little more slowly, please.

11 A. Okay. I'm a professor of agriculture at North
12 Carolina State University. I'm a cropping
13 systems specialist, and I am the corn specialist
14 for the state of North Carolina, and a precision
15 ag specialist.

16 Q. Okay. When you say a corn specialist for the
17 State of North Carolina, for a government body,
18 bureaucracy, agency?

19 A. Yes, for the Extension, North Carolina
20 Cooperative Extension Service.

21 Q. Okay. And would you please give me your
22 educational background after high school? Where
23 did you --

24 A. Yes.

1 Q. Sure.

2 A. I have a bachelor's, a master's, and a PhD in
3 agronomy all from Kansas State University.

4 Q. All right. How long have you been a professor
5 at -- well, let me put it this way: how long
6 have you been a professor at North Carolina
7 State?

8 A. 27 years.

9 Q. Which campus?

10 A. I'm on campus in Raleigh.

11 Q. Okay. And before North Carolina State, were
12 you a professor at any other university or
13 facility of higher learning?

14 A. I was a graduate assistant at Kansas State
15 University, but no, North Carolina State has
16 been my employer in my career.

17 Q. All right. Are you familiar with the proposed
18 Eldena Solar, LLC, Project that's being proposed
19 to the Lee County, Illinois, Zoning Board of
20 Appeals?

21 A. I got a document describing the project and the
22 soils of the site here today. I first found out
23 about it at 9 o'clock Eastern Time today.

24 Q. Would you describe, please, the document you

1 said you received?

2 A. It's a document that details the soils, it's
3 got the LESA scores, it's got information on the
4 sites, the proposed sites, the size. It did not
5 show the panel configurations on the site, nor
6 did it have the topography -- topographical map
7 of the site, but it did describe the classes of
8 soils that were there. I think it was prepared
9 by the soil and water conservation service there
10 in Lee County.

11 Q. Without counting exactly, how many pages would
12 you say that document was?

13 A. Gee, 40 -- 30, 40, something like that.

14 Q. Okay.

15 A. It was --

16 Q. What was the title of the document?

17 A. Oh, boy. I do not remember right off the top
18 of my head what the title of the document was.

19 Q. Do you know who prepared it?

20 A. Well, the soil and water conservation service
21 in Lee County prepared it.

22 Q. All right.

23 A. I can probably find it here if I search for it.

24 Q. Please.

1 A. Let me take a look here.

2 All right. It's entitled, The Lee County
3 Soil and Water -- just a second. I have got to
4 get that up here.

5 Q. I'm sorry, that answer didn't come across.

6 A. Oh, I'm trying to --

7 Q. Just don't talk. It helps us -- I mean, we're
8 in a big room, and it helps us if you don't talk
9 to yourself. When you're ready, just tell me
10 the title of that document.

11 A. Okay. Just a second.

12 Okay. It's entitled, The Lee County Soil
13 and Water Conservation District Natural
14 Resources Information Report, 20-P-1554,
15 prepared July 27th, 2020. Report was prepared
16 for Geronimo Energy. The contact person is
17 Amber Miller.

18 Q. Okay. Thank you.

19 Now, you reviewed that document?

20 A. I have had a chance to glance over it here
21 today. I have not been able to review it in
22 detail as of this meeting.

23 Q. And for -- what was the -- what was the stated
24 purpose you were asked to testify?

1 A. I was asked to testify as to the issues
2 surrounding the installation of a solar
3 facility, particularly solar panels, on
4 agricultural land as it relates to this project
5 here.

6 Q. All right. Have you -- you have reviewed that
7 document. Have you formed an opinion about this
8 proposed development as it relates to the impact
9 on agricultural land?

10 A. Yes.

11 Q. And what is that opinion?

12 A. That opinion is, they need to do some more work
13 here. It says right in the document, there are
14 additional concerns, that although the maps
15 indicate no wetlands there's been no -- there's
16 hydric soils here, and there's been no
17 observational assessment of wetlands at this
18 site. That's a serious oversight that needs to
19 be corrected before this project goes forward.

20 North Carolina has dealt with this ad
21 infinitum, and these are issues that need to be
22 dealt with before these projects are approved
23 and started.

24 Q. And would you describe, what particular issues

1 are you referencing?

2 A. What I'm referencing, the presence of wetlands
3 at these sites that have not been assessed.

4 Q. Any others?

5 A. Well, there's a number of other issues I can
6 raise that have been problems with solar
7 facilities of this type in North Carolina.

8 Q. Well, no, I'm talking about as to what you
9 reviewed as to this proposed development.

10 A. Well --

11 Q. You said wetlands haven't been assessed?

12 A. Wetlands. Wetlands. There's going to be
13 obviously more runoff from this site due to the
14 installation of these panels. Clearly there's
15 no weed control plan that details how they're
16 going to prevent off-site impacts of herbicides
17 and stuff in these facilities. There's a number
18 of missing pieces here that need to be put in
19 place.

20 Q. All right. Anything else? I'm going to turn
21 you over to Mr. Lusz in a minute.

22 A. Well, there was a question earlier about the
23 economic impact. I might speak to that. There
24 was just a report released just recently from an

1 economics professor at Michigan State University
2 that said over a 30-year lifespan a similar
3 project in Madison County, Indiana, will
4 actually cost the taxpayers of Madison County
5 \$83 million. So there's those things to
6 consider as well.

7 JUDGE SLAVIN: All right. Mr. Lusz,
8 any -- it's your witness. I didn't mean to take
9 over, but I thought that might help.

10 DIRECT EXAMINATION

11 BY MR. LUSZ:

12 Q. Thank you, Dr. Heiniger, for joining us.

13 Can you talk in more length about the
14 possibility of stormwater runoff of a facility
15 that's 1,288 acres like this, what impact the
16 solar panels have on the stormwater runoff?

17 A. Right. The similar facility to North
18 Carolina -- and, again, I don't have a
19 topography map. Of course, runoff is determined
20 by the length of the slope and percent of slope
21 at the site.

22 But what we found in sites all across
23 North Carolina, the coastal plant is the
24 Piedmont, is that these sites, the nature of the

1 panels -- in fact, we have done research on
2 these using rain simulators -- these panels
3 concentrate water in the streams.

4 So regardless of whether they're put over
5 grass or whatever the substrate underneath these
6 panels is, it increases the velocity of the
7 water moving across, resulting in higher
8 velocity of the runoff. In many cases -- I can
9 cite several here in North Carolina -- that
10 runoff has doubled from the sites there.

11 So those are things that can be assessed
12 at these sites as we think about what impact
13 these panels will have on the wetlands, the
14 downstream impacts, increased runoff, and
15 erosion from these sites.

16 Q. Can you talk about, is there different inherent
17 risks under construction phases of these sites
18 in relation to stormwater runoff as well?

19 A. Well, you always have construction issues.
20 Most of the time companies are required to
21 create barriers for runoff or buffers around
22 construction sites to mitigate the erosion and
23 runoff during construction, because you have got
24 compaction of the soils and reduced water

1 permeation into the soils and those things. So
2 I'm assuming in many of these cases that they
3 are going to be required to do likewise here.

4 But the concern that I really have is
5 long-term impact after the panels are
6 constructed of this concentration of water on
7 these lands. We have got a number of facilities
8 in North Carolina that have caused extensive
9 damage to neighboring properties, and there's a
10 pending lawsuits in a couple of cases here in
11 North Carolina, so.

12 Q. How is it advised to handle stormwater runoff
13 of these sites in the project plans?

14 A. Well, I don't see any -- you know, here in
15 North Carolina they're not required to have a
16 50-foot buffer from any wetland or navigable
17 stream. I don't see extra buffers in any of the
18 plans that I have reviewed so far. So, I mean,
19 that -- I'd really need to see more
20 documentation, what they're proposal is, where
21 the panels would be, to assess their setbacks
22 that are adequate for controlling runoff.

23 There's also mitigation factors. In North
24 Carolina they're required to put in structures

1 or other things to deviate --

2 JUDGE SLAVIN: Excuse me, Dr. Heiniger.

3 Folks, I have asked cell phones off or on
4 silent, please. Everybody check your cell
5 phones, please.

6 I'm sorry to interrupt. Go ahead.

7 A. Yeah, that -- so there's some mitigation
8 strategies that are required in these projects
9 depending, again, on the nature of the landscape
10 and the hydrological characteristics of the
11 soils.

12 Q. (By Mr. Lusz:) I know this was extremely short
13 order and you didn't have much time to review
14 the soil types that this site offers, and I
15 asked if you were able to look at anything. Can
16 you speak to the quality of the soil that you
17 see on this site and as it compares to what the
18 U.S. has to offer for soils?

19 A. Oh, these are some of the best soils in the
20 world, quite frankly. These are prime farmland,
21 as noted in the document there. I'm surprised
22 the LESA scores -- I would like to review those
23 with those who made those assessments, because
24 I'm surprised the LESA scores were not higher

1 than they are. I think they would average -- in
2 my estimation, they probably average around 192
3 to 194, but it should be over a 200 in most
4 cases here.

5 So, yeah, these are prime -- this is prime
6 farmland. There's none better in the world
7 here. You're trading -- trading food production
8 for energy production here. It's got to be
9 clear about that.

10 Q. Have you any experience with large battery
11 banks on sites like this?

12 A. Come again.

13 Q. Do you have any experience with large lithium
14 battery banks that might be stored on solar
15 sites like this?

16 A. No, I do not have -- there are no such sites in
17 North Carolina. The danger of contamination of
18 broke-down lithium batteries is enough that they
19 have not been allowed here, but -- so I don't
20 really know what the impact with doing such a
21 battery facility would be. It's -- even the EPA
22 I doubt knows right now.

23 MR. LUSZ: Thank you. I don't believe I
24 have any further questions right now.

1 JUDGE SLAVIN: All right. Now it's other
2 folks' chance to ask questions of Dr. Heiniger.

3 Ms. Kennedy?

4 MS. KENNEDY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. KENNEDY:

7 Q. Dr. Heiniger, can you hear me all right?

8 A. Yes, I can.

9 Q. Thank you.

10 Have you had the opportunity to study the
11 long-term effects of solar energy systems?

12 A. Yes, actually -- well, define long-term, I
13 guess. What are you talking about? 5 years?
14 10, 15 years? What kind of long-term are you
15 talking about?

16 Q. Let's say 20 years.

17 A. 20 years, no, I have not. There have not been
18 any facilities here in North Carolina installed
19 for that length of time.

20 Q. And given that you just learned about the
21 project sometime this morning, is it safe to
22 assume that you have not personally visited the
23 proposed project area?

24 A. Right. Yeah, that would be an impossibility.

1 Q. Have you reviewed the application submitted on
2 behalf of the Petitioner?

3 A. No, I have not. I have not seen that document
4 yet.

5 Q. So then it's true that you haven't reviewed the
6 actual placement of the panels within the
7 proposed project area?

8 A. That's correct, I have not, as I stated
9 earlier.

10 Q. Are you aware that the Petitioner has submitted
11 a vegetation management plan?

12 A. No, I am not. That's why I mentioned that it
13 needs to be reviewed.

14 Q. And it was your testimony earlier that you
15 reviewed the Lee County Soil and Water
16 Conservation District Natural Resources Report;
17 is that correct?

18 A. That's correct. In the time that I have had to
19 look over it, I have reviewed it as best I could
20 at the time.

21 Q. And you approximate that report to be somewhere
22 between 40 and 50 pages; is that correct?

23 A. Yes, I think that's right. And, again, if
24 you're asking me to -- I'm 66 years old. I

1 don't remember every page of this document.

2 Q. Are you aware that the entire Soil and Water
3 Conservation District Report is actually 691
4 pages in length?

5 A. No, I'm not aware of that. I have not seen all
6 691 pages of that.

7 Q. So is it a fair statement then that you have
8 not reviewed the entire Soil and Water Report?

9 A. Right, it probably is. The report though, a
10 lot of them though just are listings of soils,
11 the classifications. Those listings go on page
12 after page after page. Those -- once you have
13 looked at each of these soil situations, you
14 don't have to review every page of the soil
15 characteristics to know what kind of soils
16 you're dealing with here, so. You understand
17 that as well, I'm sure.

18 Q. But would you agree that it's important to
19 review everything to put out a professional
20 opinion?

21 A. Well, that's exactly right, and that's why I
22 say I would need more time to do that in a
23 detailed fashion.

24 Q. And it was your testimony earlier that there is

1 the presence of wetlands at the site areas; is
2 that correct?

3 A. My testimony is, we don't know. You don't know
4 and I don't know. We need an assessment.

5 Q. Are you aware that the Petitioner had licensed
6 professionals delineate the wetlands according
7 to the United States Army Corps standards?

8 A. I'm aware that they have done the same here and
9 have missed wetlands. We're dealing with a
10 project right now where they didn't properly
11 assess wetlands. So I'm a little leery of hired
12 guns, so to speak, in assessing wetlands.

13 Q. But surely you agree that, you know, any
14 delineation by the United States Army Corps of
15 Engineers is consistent with industry standards?

16 A. Well, if you have got an Army Corps engineer
17 and he assesses it, yes, he would assess it by
18 industry standards.

19 Q. Are you familiar with the land located within
20 Lee County, Illinois?

21 A. I have not been to Lee County. I have been to
22 an area close to Lee County in Illinois, but I
23 have not been to Lee County.

24 Q. And did that area close in Illinois have a

1 solar farm or solar energy system located upon
2 it?

3 A. No. Nope, I did not see such.

4 Q. Do you base your professional opinions on the
5 land located in North Carolina?

6 A. Yes. We have a wide range of soil types and
7 situations here. In fact, probably one of the
8 most diverse states in the U.S. Some of the
9 best lands, as well as some of the most rocky
10 and different types of soils here.

11 Yes, I do assess this situation based on
12 my experiences on what I consider similar soils
13 in North Carolina.

14 Q. Mr. Heiniger, are you familiar with what's
15 known as the AIMA?

16 A. The what now again? What's that word?

17 Q. Sure.

18 Are you familiar with what's known as the
19 AIMA, or the Agricultural Impact Mitigation
20 Agreement?

21 A. No, I do not know what that is.

22 MS. KENNEDY: I have nothing further, Your
23 Honor.

24 JUDGE SLAVIN: All right. Turning to the

1 Zoning Board of Appeals.
2 Chairman Forster, questions?
3 MR. FORSTER: No questions.
4 JUDGE SLAVIN: Mr. Buhrow?
5 MR. BUHROW: No questions.
6 JUDGE SLAVIN: Okay. Mr. Pratt?
7 MR. PRATT: No questions.
8 JUDGE SLAVIN: Mr. Bothe?
9 MR. BOTHE: No questions.
10 JUDGE SLAVIN: Mr. Hughes?
11 MR. HUGHES: Yes, one question -- well,
12 maybe a couple.
13 JUDGE SLAVIN: Never promise one question.
14 MR. HUGHES: Yeah.
15 JUDGE SLAVIN: Wait a minute. Wait a
16 minute.
17 MR. HUGHES: I'm sorry. Is this on?
18 MS. DUFFY: What number is that? Turn it
19 to yellow.
20 MR. HUGHES: It's on yellow.
21 MS. DUFFY: And what number is it?
22 MR. HUGHES: 27.
23 Is that working now? Am I getting any --
24 JUDGE SLAVIN: No.

1 MR. HUGHES: Test, test.

2 JUDGE SLAVIN: Why don't you take that
3 one.

4 MS. DUFFY: It's stationary.

5 JUDGE SLAVIN: Oh, sorry.

6 MR. HUGHES: The light on the base is
7 flashing, says it's on, but. . .

8 JUDGE SLAVIN: Just a minute, Doctor.
9 We're having a technical problem.

10 THE WITNESS: No problem.

11 JUDGE SLAVIN: If I knew what to do, I'd
12 help you.

13 MS. DUFFY: Try it now.

14 MR. HUGHES: One, two.

15 MS. DUFFY: I'll run back and forth.

16 MR. HUGHES: It's yellow now. Well, but
17 at least it's working.

18 EXAMINATION

19 BY MR. HUGHES:

20 Q. Doctor, were you familiar with Mr. Lusz's
21 PowerPoint presentation that he gave tonight?

22 A. I just got in on the last few slides of it,
23 really. The only slide I really saw well was
24 the picture that he had of the battery housing.

1 Q. Okay. Were -- if I told you that of the
2 acreage within the site of 1,288 acres, even
3 Mr. Lusz's presentation indicates that only
4 102.5 acres is actually class- -- in this
5 project is actually classified as prime, would
6 that change your opinion of the quality or the
7 impact on the -- the impact of the SES in an
8 agricultural standpoint?

9 A. Yes, it would to some degree. There are --
10 there are areas where solar panels are
11 appropriate, I would be the first to say that.
12 I'd recommend it in some cases here in North
13 Carolina, that they should move forward in some
14 areas, and then there's areas, of course, that
15 they are totally inappropriate. So it would be
16 important to know how much of this area is
17 suitable for solar and how much is not.

18 And, again, I apologize, I just got this
19 information today. I had a graduate committee
20 meeting this afternoon, my son-in-law got sworn
21 in as deputy sheriff here this evening. So I
22 have had a number of things that I'm trying to
23 attend to today.

24 MR. LUSZ: It 's the best I could do.

1 A. So I would be happy to attest to how much of
2 this land is suitable for solar panels and how
3 much is not in this case.

4 MR. HUGHES: Thank you. That's all I
5 have.

6 JUDGE SLAVIN: All right. Let's see.
7 Mr. Meyer?

8 MR. MEYER: No questions.

9 JUDGE SLAVIN: Okay. Ms. Duffy?

10 MS. DUFFY: No questions.

11 JUDGE SLAVIN: Mr. Boonstra?

12 MR. BOONSTRA: No questions. Thank you.

13 JUDGE SLAVIN: All right. Interested
14 parties other than Mr. Lusz, by raise of hands.
15 Back left.

16 EXAMINATION

17 BY MR. FIELDS:

18 Q. Hi. Ms. Kennedy said -- she asked you a
19 question about if you had any experience 20-plus
20 years with solar panels. My question is, do you
21 have any experience between five and ten years?

22 A. Yes, we do have experience from five to ten
23 years. It's not been very good on the whole.
24 Like I said, we have a couple of situations now

1 where there's potential lawsuits over erosion.
2 That runoff, we saw a minority community
3 devastated by runoff that almost made it
4 untenable for their houses to continue where
5 they were. We see weed control issues with
6 solar facilities, and a couple facilities that
7 are now basically abandoned, either because they
8 were unprofitable or the weed issue was too
9 difficult for them to tackle.

10 So there are -- I mean, there are
11 successful facilities here that I see, but we
12 have got facilities that are not managed and
13 were placed in places that should have had
14 further assessment.

15 So that's -- when he called me to talk
16 this morning, that --

17 JUDGE SLAVIN: Let's just stick to the
18 question.

19 THE WITNESS: All right. Well, there's
20 the question.

21 Q. (By Mr. Fields:) What's the biggest impact you
22 guys have seen in North Carolina with these?

23 A. The biggest impact has been -- well, actually
24 both the erosion impact and the weed control

1 impacts are both having offsite consequences.

2 Q. You discussed the weed control. Can you
3 elaborate on the weed control?

4 A. Yeah. I -- the -- a lot of these facilities
5 have difficulty under our humid, wet climate,
6 mowing underneath these panels. So therefore,
7 they have to turn to other forms of vegetation
8 control. Oftentimes they turn to growth
9 regulators or sterilants, which lead to offsite
10 runoff of these materials which causes dead
11 vegetation off the target area, and of course
12 some of these could be contaminants in water as
13 well. Those led to complaints and some of those
14 things.

15 Sites that aren't well maintained are
16 sites where we get herbicide-resistive weed
17 pressure that can indeed spread seeds to
18 surrounding farmland.

19 So those are the kind of things that we
20 have seen in the five to ten years that we have
21 had these.

22 Q. Okay. In that five to ten years -- and you're
23 talking about the weed control. So there is not
24 that much green vegetation grass underneath of

1 these?

2 A. No, actually the large facility just north of
3 me, in the wintertime they burn that completely
4 down -- it's brown from one end to the other --
5 in order to control that vegetation before they
6 can get in, in a drier season to mow. So, yeah,
7 several of these facilities, they'll be brown
8 during the wintertime, not because of cold
9 weather here, because they have used a herbicide
10 to burn that vegetation.

11 MR. FIELDS: All right. No other
12 questions.

13 THE WITNESS: Thank you.

14 JUDGE SLAVIN: Thank you.

15 Raise of hand.

16 Seeing none, I'll turn to -- oh, sorry.
17 Absolutely sorry. Didn't turn my head far
18 enough.

19 MR. CARLSON: Randy Carlson, from Dixon
20 here.

21 EXAMINATION

22 BY MR. CARLSON:

23 Q. So in your opinion and what you have seen, the
24 most prevalent concerns are high-slope type of

1 maybe your erosion concerns and weed control?
2 Those are -- not to kind of repeat here, but
3 those seem to be kind of the big ones you have
4 seen?

5 JUDGE SLAVIN: Is that a question? I
6 don't hear a question.

7 Q. (By Mr. Carlson:) Is that -- do you confirm
8 that high erosion on high-slope land is kind of
9 the biggest issue you have seen?

10 A. Yes, that's right. High erosion on high-slope,
11 long-slope areas are the biggest problem.

12 Q. Has there been any issues you have heard of
13 with these types of runoffs from maybe
14 sterilization or even need to control weeds for,
15 like, well contamination down for people close
16 by?

17 A. I have not heard of any conditions where we
18 have seen well contamination close by. So, no,
19 I can't confirm that we have seen that.

20 MR. CARLSON: Okay. Thank you.

21 JUDGE SLAVIN: Thank you. Okay. Sorry
22 about that, I didn't mean to miss you.

23 Other hands raised?

24 All right. Alice, I'll turn to Zoom,

1 Zoomers.

2 MS. HENKEL: No hands raised.

3 JUDGE SLAVIN: Okay. You have unmuted
4 them?

5 MS. HENKEL: Unmuted, yes.

6 JUDGE SLAVIN: Dr. Heiniger, I like to
7 give the other people on Zoom about 10, 15
8 seconds to indicate they have a question. So
9 the silence is deafening.

10 Alice?

11 MS. HENKEL: No.

12 JUDGE SLAVIN: Okay. Just saw an
13 in-person in the middle, second row.

14 EXAMINATION

15 BY MR. GUSSE:

16 Q. Doctor, would that --

17 MR. GUSSE: Oh, I'm Matt Gusse, from
18 Dixon.

19 Q. (By Mr. Gusse:) With the projects that you
20 have dealt with, what type of setbacks do those
21 projects have? And the fencing, what type of
22 fencing do they use?

23 A. The setbacks, the mandatory 50-foot setback.

24 And as far as -- what was your second question

1 there?

2 Q. The type of fencing around these type of
3 projects?

4 A. The type of what again? I didn't get the word.

5 Q. The type of fencing used around the projects.

6 A. Oh, fencing. Fencing.

7 Yeah, they -- most of these projects are
8 chain-linked fence with barbed wire, similar to
9 what I heard somebody mention in a question
10 earlier. Most of these projects are now having
11 to put tree -- trees or some kind of vegetative
12 screen around them as well as a fence, depending
13 on what area they face, if they face people's
14 residential houses or they are facing --
15 downhill, they try to plant trees in that
16 buffered area.

17 MR. GUSSE: Okay. Thank you.

18 JUDGE SLAVIN: Thank you.

19 Okay. Ms. Duffy, behind him to his left,
20 your right, lady in the red blouse.

21 EXAMINATION

22 BY MS. RIDDICK:

23 Q. Doctor --

24 MS. RIDDICK: Geri Riddick. I'm a

1 neighboring landowner.

2 Q. (By Ms. Riddick:) -- did you state earlier
3 that you do not have the battery storage or not
4 specifically the lithium battery storage on the
5 solar farms that you're familiar with in your
6 area?

7 A. We do not have any solar farms with battery
8 storage of any type of batteries here, yeah.

9 Q. So does that mean all of your solar stays local
10 or --

11 A. Yes.

12 Q. -- or do they have some other kind of storage
13 or transfer?

14 A. No, it's periodic and local, which means that
15 it transmits -- the generators, like Duke Energy
16 or whoever is generating electricity, has to
17 adjust their current down the line to absorb the
18 solar during the day and then increase that
19 current at night to take up the slack.

20 So there's no -- solar here is total
21 periodic. It's in the daytime only. If it's
22 rainy or cloudy, we're not getting any of that.
23 They have to adjust the load on those
24 transmission lines in order to even out the

1 current.

2 MS. RIDDICK: Thank you.

3 JUDGE SLAVIN: Thank you.

4 Okay. Anybody else think of a question?

5 Counting down.

6 Anybody on Zoom, Alice?

7 MS. HENKEL: No.

8 JUDGE SLAVIN: Thank you, Doctor.

9 THE WITNESS: Thank you.

10 JUDGE SLAVIN: Yup, thank you.

11 THE WITNESS: Good luck.

12 JUDGE SLAVIN: I think maybe we'll -- it's
13 a little late, but I think we'll still take a
14 break. Ten minutes.

15 I encourage everybody to maintain their
16 social distancing.

17 Let's give the court reporter and
18 everybody else a chance to relax.

19 (A recess was taken at 8:29 p.m.
20 and proceedings resumed at
21 8:37 p.m.)

22 JUDGE SLAVIN: All right. Ladies and
23 gentlemen, can you start to think about
24 gathering.

1 All right. Last chance for testimony.
2 Again, I'll emphasize you'll have a chance to
3 make your public comments or closing arguments
4 when the time comes. Testimony, anyone?
5 Looking around the room, I see no raised hands.

6 Last chance for the Zoomers, Alice?

7 MS. HENKEL: No one.

8 JUDGE SLAVIN: Well, that concludes the
9 testimonial phase.

10 Frankly, very honestly, I didn't expect it
11 to end that quickly. So I think, in fairness to
12 everyone, so you can think about any public
13 comments you want to make, rather than force it
14 to tomorrow night, I think I'm going to suggest
15 we skip tomorrow night and I think the next
16 night was Wednesday anyway. So it would be the
17 19th.

18 So I'm going to recess this session until
19 7 o'clock, Wednesday night, the 19th, here at
20 the Old Lee County Courthouse. At that time
21 we'll pick up closing arguments, public
22 comments, whatever you want to call it.
23 Ms. Kennedy will have a chance to go first, and
24 then any members -- interested parties, members

1 of the public have their opportunity to stand up
2 and tell the Board what they ought to do and
3 based on the evidence why they ought to do it.

4 And I remind everyone, at that point
5 you're not under oath and you can't be cross-
6 examined. So that's the point at which I'm a
7 little pickier about you bringing up new things.
8 I can, you can argue and comment about all the
9 evidence that's been heard and why the Board,
10 based on this fact or that fact that we have
11 heard and people have had a chance to
12 cross-examine people about, why they ought to do
13 something, but that's not the time for you to
14 stand up and say, Well, we all know solar farms,
15 that time is gone. So you can argue from the
16 evidence produced.

17 Wednesday night, 7 o'clock, here at the
18 Old Lee County Courthouse. Have a good one.

19 I understand COVID is spiking a little bit
20 in Lee County. Everybody, please be safe,
21 please be careful.

22 (The hearing was recessed at
23 8:39 p.m.)
24

1 On this 17th day of August, A.D., 2020, I do
2 signify that the foregoing testimony was given
3 before the Lee County Zoning Board of Appeals.
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6
7

8 Bruce Forster, Chairman
9

10
11
12 Dee Duffy,
13 Zoning Enforcement Officer
14

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