

STATE OF ILLINOIS)
)SS
COUNTY OF LEE)

In the Matter of the Petition
 of

BSW DevCo, LLC, Big Sky Repower
Lee County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 17th day
of February, A.D., 2021,
before the Lee County
Zoning Board of Appeals

Present:

Mike Pratt (via Zoom)
Rex Meyer (via Zoom)
Craig Buhrow
Gene Bothe
Glen Hughes
Bruce Forster, Chairman

Alice Henkel, Secretary
Dee Duffy, Zoning Enforcement Officer

Honorable Judge Timothy Slavin, Facilitator

1 APPEARANCES:

2 LEE COUNTY STATE'S ATTORNEY CHARLES BOONSTRA
3 of the Lee County State's Attorney's Office
309 South Galena Avenue, Suite 300
4 Dixon, Illinois 61021

5 Counsel for the County.

6 ATTORNEY DAVID D. STREICKER
7 of the firm of Polsinelli
150 North Riverside Plaza, Suite 3000
8 Chicago, Illinois 60606

9 Counsel for the Applicant.

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1 JUDGE SLAVIN: Good evening, everyone. I
2 call out of recess Lee County Zoning Board of
3 Appeals hearing on Petition Number 15-P-1557,
4 BSW DevCo, LLC's, petition for a Special Use
5 Permit to construct -- to repower a wind energy
6 system in portions of May and East Grove
7 Townships here in Lee County.

8 For those of you joining us on Zoom, you
9 already know this, but in case you're listening
10 on teleconferencing or watching on YouTube, if
11 you want to join us on Zoom and have lost the
12 particulars, the meeting ID is 915-3923-9154,
13 and the passcode is 209840.

14 If you want to view us on YouTube, you can
15 go to -- on your computer or cell phone, go to
16 your browser, type in www.youtube.com. In the
17 search bar, type "Lee County IL Zoning Board of
18 Appeals." Find the session date, which is
19 presumably today, February 17th, from the
20 drop-down menu, and whala, you should be
21 watching us.

22 If you need any help, technical help, you
23 can call Ms. Duffy's technical assistance line,
24 815.973.3449.

In Totidem Verbis, LLC (ITV)
815.453.2260

In Totidem Verbis, LLC (ITV)

1 Attendance tonight. I see the Honorable
2 Zoning Board of Appeals, its Chair, Mr. Forster;
3 its Vice Chair, Mr. Buhrow; Mr. Bothe is
4 present; Mr. Pratt joins us on Zoom; Mr. Hughes
5 is present personally; Mr. Meyer, the alternate,
6 is present with us on Zoom, or he was the last
7 time I looked.

8 MR. MEYER: I am.

9 JUDGE SLAVIN: Mr. Streicker is here
10 representing the Petitioner. He does not have
11 any client's representatives with him. No
12 witnesses appear, obviously. Our IT expert,
13 Alice, is present. Callie, our court reporter,
14 is present. And himself is present. Ms. Duffy
15 is present. Mr. Boonstra, the State's Attorney,
16 is present. And there are no Interested Parties
17 either in the hearing room, in the rear jury
18 deliberation room, or in the lobby.

19 That makes, according to my count, ten
20 people present in the hearing room.

21 And we are all set. When we left off last
22 night, the Zoning Board was in the midst of
23 finding facts, making recommendations. So we'll
24 pick that up where we left off, which is, the

1 floor is open.

2 MR. HUGHES: Let's continue at Draft
3 Number 41.

4 JUDGE SLAVIN: Got it.

5 MR. HUGHES: The Lee County ZBA finds that
6 the Petitioner has committed to the existing
7 decommissioning and site restoration plan for
8 the Big Sky complex.

9 JUDGE SLAVIN: Do I hear a second?

10 MR. BOTHE: Second.

11 JUDGE SLAVIN: Hearing a second, floor is
12 open for debate.

13 Anything you want to say about your own
14 motion, Mr. Hughes?

15 MR. HUGHES: No, I'm fine.

16 JUDGE SLAVIN: Any other Board member want
17 to address it?

18 (No verbal response.)

19 JUDGE SLAVIN: Seeing no indication, I
20 will put the question. The question being put
21 is whether the Lee County ZBA finds that the
22 Petitioner has committed to the existing
23 decommissioning and site restoration plan for
24 the Big Sky complex.

1 Adoption of the motion requires a vote by
2 the majority. The vote will be by voice. All
3 those in favor indicate by saying aye.

4 (All those simultaneously
5 responded.)

6 JUDGE SLAVIN: Opposed by nay.

7 (No verbal response.)

8 JUDGE SLAVIN: Start out the evening with
9 a motion that carries.

10 Okay. Go ahead.

11 MR. BUHROW: Mr. Chairman.

12 JUDGE SLAVIN: Mr. Buhrow.

13 MR. BUHROW: Number 42 on our list. The
14 Lee County ZBA finds that the Petitioner is
15 proposing that the decommissioning include the
16 tilt and -- the tilt or a component
17 disassembling method. Petitioner is proposing
18 that the decommissioning include the tilt or
19 component disassembling method.

20 JUDGE SLAVIN: See if what I just typed up
21 meets your approval.

22 MR. HUGHES: I think you need to eliminate
23 "and fall method."

24 MR. BUHROW: Yeah.

1 JUDGE SLAVIN: Well, one time he said it
2 and the other time he didn't.

3 MR. BUHROW: Yeah, after "tilt," we'll go
4 with "or component disassembling method."

5 JUDGE SLAVIN: You don't want the word
6 "fall"?

7 MR. BUHROW: No.

8 JUDGE SLAVIN: Okay.

9 Okay. Take a look now.

10 MR. BUHROW: Yes, okay.

11 JUDGE SLAVIN: All right. Do I hear a
12 second?

13 MR. BOTHE: Second.

14 JUDGE SLAVIN: Hearing a second, debate.

15 Anything you want to say, Mr. Buhrow?

16 MR. BUHROW: No. I think that just
17 describes the situation a little better as far
18 as the two methods.

19 JUDGE SLAVIN: Any other Board member want
20 to address it?

21 (No verbal response.)

22 JUDGE SLAVIN: Seeing no indication, I
23 will put the question. The question being put
24 is whether the Lee County ZBA finds that the

1 Petitioner is proposing that the decommissioning
2 include the tilt or component disassembling
3 method.

4 Adoption of the motion requires a vote by
5 the majority. The vote will be by voice. All
6 those in favor indicate by saying aye.

7 (All those simultaneously
8 responded.)

9 JUDGE SLAVIN: Opposed by nay.

10 (No verbal response.)

11 JUDGE SLAVIN: That motion is adopted as
12 well.

13 Back at you.

14 MR. HUGHES: Moving on to 43. The
15 proposed motion would be, The Lee County ZBA
16 finds that the proposed project will not likely
17 impact any communication services. If there is
18 any interference, signal -- television signals
19 would be the most likely communication to be
20 affected.

21 JUDGE SLAVIN: All right. Do I hear a
22 second?

23 MR. BOTHE: Second.

24 JUDGE SLAVIN: Hearing a second, anything

1 you want to say about your own motion,
2 Mr. Hughes?

3 MR. HUGHES: No, sir.

4 JUDGE SLAVIN: Did you say likely? Did I
5 leave out the word?

6 MR. HUGHES: Let me just double-check my
7 notes. The most likely, yes, communication to
8 be affected.

9 JUDGE SLAVIN: Oh, there it is. Okay.
10 Never mind.

11 Any other Board member want to address it?

12 (No verbal response.)

13 JUDGE SLAVIN: Seeing none, I will put the
14 question. The question being put is whether the
15 Lee County ZBA finds that the proposed project
16 will not impact any communication services. If
17 there is any interference, television signals
18 would be the most likely communication to be
19 affected.

20 Adoption of the motion requires a vote by
21 the majority. The vote will be by voice. All
22 those in favor indicate by saying aye.

23 (All those simultaneously
24 responded.)

1 JUDGE SLAVIN: Opposed by nay.

2 (No verbal response.)

3 JUDGE SLAVIN: Another one bites the dust.
4 Okay.

5 MR. BUHROW: Mr. Facilitator, on Number
6 44. The Lee County ZBA finds that the
7 Petitioner has committed to an acceptable
8 communication interference complaint resolution
9 protocol.

10 JUDGE SLAVIN: Okay. Do I hear a second?

11 MR. BOTHE: Second.

12 JUDGE SLAVIN: Hearing a second, courtesy
13 to you for debate first, Mr. Buhrow.

14 MR. BUHROW: Nothing, sir.

15 JUDGE SLAVIN: Any other Board member?

16 (No verbal response.)

17 JUDGE SLAVIN: Seeing no indication, I
18 will put the question. The question being put
19 is whether the Lee County ZBA finds that the
20 Petitioner has committed to an acceptable
21 communication interference complaint resolution
22 protocol.

23 Adoption of the motion requires a vote by
24 the majority. The vote will be by voice. All

1 those in favor indicate by saying aye.

2 (All those simultaneously
3 responded.)

4 JUDGE SLAVIN: Opposed by nay.

5 (No verbal response.)

6 JUDGE SLAVIN: Motion carries -- is
7 adopted.

8 Moving on up.

9 MR. HUGHES: Your Honor, moving to Draft
10 Number 45. The Lee County ZBA finds that the
11 Petitioner has promised to provide all microwave
12 transmission providers and local emergency
13 providers with copies of the project summary.

14 JUDGE SLAVIN: Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Hearing a second, anything
17 you want to say about your own motion,
18 Mr. Hughes?

19 MR. HUGHES: I think it's sufficient.

20 JUDGE SLAVIN: Okay. Any other Board
21 member want to address it?

22 (No verbal response.)

23 JUDGE SLAVIN: Seeing no indication, I
24 will put the question. The question being put

1 is whether the Lee County ZBA finds that the
2 Petitioner has promised to provide all microwave
3 transmission providers and local emergency
4 providers with copies of the project summary.

5 Adoption of the motion requires a vote by
6 the majority. The vote will be by voice. All
7 those in favor indicate by saying aye.

8 (All those simultaneously
9 responded.)

10 JUDGE SLAVIN: Opposed by nay.

11 (No verbal response.)

12 JUDGE SLAVIN: Okay. Please feel free.

13 MR. BUHROW: Mr. Chairman, on 46, the Lee
14 County ZBA finds that the proposed project's
15 footprint has been the subject of an
16 environmental site characterization study.

17 JUDGE SLAVIN: All right. Do I hear a
18 second?

19 MR. BOTHE: Second.

20 JUDGE SLAVIN: Hearing a second, anything
21 you want to say, out of courtesy, for your own
22 motion, Mr. Buhrow?

23 MR. BUHROW: Nothing.

24 JUDGE SLAVIN: Any other Board member?

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(No verbal response.)

JUDGE SLAVIN: Hearing none, I will put the question. The question being put is whether the Lee County ZBA finds that the proposed project's footprint has been the subject of an environmental site characterization study.

Adoption of the motion requires a vote by the majority. The vote will be by voice. All those in favor indicate by saying aye.

(All those simultaneously responded.)

JUDGE SLAVIN: Opposed by nay.

(No verbal response.)

JUDGE SLAVIN: That motion is adopted as well.

Okay, gents.

MR. HUGHES: Your Honor, Number 47. The Lee County ZBA finds that the Petitioner has consulted with the Illinois Department of Natural Resources (IDNR) regarding the proposed projects impact on local wildlife.

JUDGE SLAVIN: Okay. Do I hear a second?

MR. BOTHE: Second.

JUDGE SLAVIN: Hearing a second, anything

1 you want to say about your own motion,
2 Mr. Hughes?

3 MR. HUGHES: No, sir.

4 JUDGE SLAVIN: Any other Board member?

5 (No verbal response.)

6 JUDGE SLAVIN: Seeing no indication, I'll
7 put the question. The question being put is
8 whether the ZBA -- excuse me.

9 Whether the Lee County ZBA finds that the
10 Petitioner has consulted with the Illinois
11 Department of Natural Resources (IDNR) regarding
12 the proposed project's impact on local wildlife.

13 Adoption of the motion requires a vote by
14 the majority. The vote will be by voice. All
15 those in favor indicate by saying aye.

16 (All those simultaneously
17 responded.)

18 JUDGE SLAVIN: Opposed by nay.

19 (No verbal response.)

20 JUDGE SLAVIN: That motion is adopted as
21 well. Okay.

22 MR. BUHROW: Judge, on 48. The Lee County
23 ZBA finds there was sufficient evidence that the
24 2019 executed Agricultural Impact Mitigation

1 Agreement (AIMA) did not need to be updated and
2 could continue as the operative one.

3 JUDGE SLAVIN: All right. Do I hear a
4 second?

5 MR. BOTHE: Second.

6 JUDGE SLAVIN: Hearing a second, open for
7 debate.

8 Courtesy to you, Mr. Buhrow, first.

9 MR. BUHROW: No, nothing.

10 JUDGE SLAVIN: Any other Board member?

11 (No verbal response.)

12 JUDGE SLAVIN: Seeing no indication, I'll
13 put the question. The question being put is
14 whether the Lee County ZBA finds that there was
15 sufficient evidence that the 2019 executed
16 Agricultural Impact Mitigation Agreement (AIMA)
17 did not need to be updated and could continue as
18 the operative one.

19 Adoption of the motion requires a vote by
20 the majority. The vote will be by voice. All
21 those in favor indicate by saying aye.

22 (All those simultaneously
23 responded.)

24 JUDGE SLAVIN: Opposed by nay.

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(No verbal response.)

JUDGE SLAVIN: Okay. Back to you.

MR. HUGHES: Draft Number 49. The Lee County ZBA finds that the IDNR has made project environmental recommendations to Lee County.

JUDGE SLAVIN: And do I hear a second?

MR. BOTHE: Second.

JUDGE SLAVIN: Hearing a second, open for debate.

You're first, Mr. Hughes.

MR. HUGHES: No comment.

JUDGE SLAVIN: Any other Board member?

(No verbal response.)

JUDGE SLAVIN: Hearing none, I will put the question. The question being put is whether the Lee County ZBA finds that the IDNR has made project environmental recommendations to Lee County.

Adoption of the motion requires a vote by the majority. The vote will be by voice.

All those in favor indicate by saying aye.

(All those simultaneously responded.)

JUDGE SLAVIN: And those opposed by nay.

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(No verbal response.)

JUDGE SLAVIN: Okay.

MR. BUHROW: Judge, on Number 50.

JUDGE SLAVIN: Yes, sir.

MR. BUHROW: The Lee County ZBA finds that the Petitioner's response to the IDNR project environmental recommendations is acceptable.

JUDGE SLAVIN: All right. Do I hear a second?

MR. BOTHE: Second.

JUDGE SLAVIN: Your motion, Mr. Buhrow, so you can talk first.

MR. BUHROW: It's fine the way it is.

JUDGE SLAVIN: Any other Board member want to address it?

(No verbal response.)

JUDGE SLAVIN: Hearing none, I will put the question. The question being put is whether the Lee County Zoning Board of Appeals finds that the Petitioner's response to the IDNR project environmental recommendations is acceptable.

Adoption of the motion requires a vote by the majority. The vote will be by voice. All

1 those in favor indicate by saying aye.

2 (All those simultaneously
3 responded.)

4 JUDGE SLAVIN: Opposed by nay.

5 (No verbal response.)

6 JUDGE SLAVIN: All right.

7 MR. HUGHES: Moving on to Number 51. The
8 Lee County ZBA finds that the Petitioner has
9 developed an acceptable bird and bat
10 conservation strategy to avoid and minimize
11 impacts to wildlife associated with the
12 operation of the proposed repowered WECS.

13 JUDGE SLAVIN: Okay. Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Anything you want to say
16 about your own motion, Mr. Hughes?

17 MR. HUGHES: No, sir.

18 JUDGE SLAVIN: Any other Board member want
19 to make a comment? question?

20 (No verbal response.)

21 JUDGE SLAVIN: Hearing none, I will put
22 the question. The question being put is whether
23 the Lee County ZBA finds that the Petitioner has
24 developed an acceptable bird and bat

1 conservation strategy to avoid and minimize
2 impacts to wildlife associated with the
3 operation of the proposed repowered WECS.

4 Adoption of the motion requires a vote by
5 the majority. The vote will be by voice. All
6 those in favor indicate by saying aye.

7 (All those simultaneously
8 responded.)

9 JUDGE SLAVIN: Opposed by nay.

10 (No verbal response.)

11 JUDGE SLAVIN: That motion is adopted as
12 well. Okay.

13 MR. BUHROW: Your Honor, on Number 52.
14 The Lee County ZBA finds that the Petitioner's
15 representatives stated numerous times that, on
16 the request of Ryan Wetland and Sand Prairie,
17 the Petitioner will not repower WTGs Number 84
18 and 86.

19 JUDGE SLAVIN: All right. Do I hear a
20 second?

21 MR. BOTHE: Second.

22 JUDGE SLAVIN: Anything you want to say
23 about your own motion, Mr. Buhrow?

24 MR. BUHROW: No. It's self-explanatory.

1 JUDGE SLAVIN: Any other Board member want
2 to address it?

3 (No verbal response.)

4 JUDGE SLAVIN: Hearing none, I will put
5 the question. The question being put is whether
6 the Lee County ZBA finds that the Petitioner's
7 representatives stated numerous times that, on
8 the request of Ryan Wetlands and Sand Prairie,
9 the Petitioner will not repower WTGs Numbered 84
10 and Number 86.

11 Adoption of the motion requires a vote by
12 the majority. The vote will be by voice. All
13 those in favor indicate by saying aye.

14 (All those simultaneously
15 responded.)

16 JUDGE SLAVIN: That one is successful as
17 well.

18 Back to you, gentlemen.

19 MR. HUGHES: Number 53. The Lee County
20 ZBA finds that no evidence was presented as to
21 the impact the proposed repowering would have on
22 property values within the area of the proposed
23 project; however --

24 JUDGE SLAVIN: Okay. Let me -- I knew

1 that was coming. However.

2 MR. HUGHES: The SUP application is to
3 repower an existing WECS, comma, with --

4 JUDGE SLAVIN: Existing WECS, yup.

5 MR. HUGHES: Comma, with.

6 JUDGE SLAVIN: With.

7 MR. HUGHES: A reduction in the number of
8 WTGs, and the remaining WTGs retaining current
9 locations.

10 JUDGE SLAVIN: Take a look. I think I got
11 it, but I'm never sure.

12 MR. HUGHES: You have got "application"
13 and an "I," and that should be "is".

14 JUDGE SLAVIN: Yup, sure do.

15 MR. HUGHES: Okay. I used "retaining,"
16 but "maintaining" is just fine.

17 JUDGE SLAVIN: You tell me.

18 MR. HUGHES: Nope, that's equally as good.

19 JUDGE SLAVIN: Okay. Second?

20 MR. BOTHE: Second.

21 JUDGE SLAVIN: Hearing a second, I will
22 ask for any debate.

23 Anything you want to say about your own
24 motion, Mr. Hughes?

1 MR. HUGHES: Just felt that there needed
2 to be some clarification as to the apparent need
3 or lack of need for the property value
4 disclosures, so.

5 JUDGE SLAVIN: Any other Board member wish
6 to comment?

7 (No verbal response.)

8 JUDGE SLAVIN: Hearing none, I will put
9 the question. The question being put is whether
10 the Lee County ZBA finds that no evidence was
11 presented as to the impact the proposed
12 repowering could have on property values within
13 the area of the proposed project; however, the
14 SUP application is to repower an existing WECS,
15 with a reduction in the number of WTGs, and the
16 remaining WTGs maintaining concurrent -- not
17 concurrent -- current locations.

18 Adoption of the motion requires a vote by
19 the majority. The vote is by voice. All those
20 in favor indicate by saying aye.

21 (All those simultaneously
22 responded.)

23 JUDGE SLAVIN: Opposed by nay.

24 (No verbal response.)

1 JUDGE SLAVIN: The motion is adopted.

2 MR. HUGHES: Your Honor, just to help you
3 keep with your color coding.

4 JUDGE SLAVIN: Yes, sir.

5 MR. HUGHES: The "no evidence" probably
6 ought to be --

7 JUDGE SLAVIN: Yup, thank you very much.
8 Okay. Back to you. Handoff.

9 MR. BUHROW: Judge, 54. The Lee County
10 ZBA finds that the Petitioner promised to
11 develop a health and safety plan and hold
12 meetings in coordination with local emergency
13 management groups.

14 JUDGE SLAVIN: Okay. Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Hearing a second, anything
17 you want to say about your own motion,
18 Mr. Buhrow?

19 MR. BUHROW: Not now.

20 JUDGE SLAVIN: Any other Board member?

21 MR. PRATT: Judge, this is Mike.

22 JUDGE SLAVIN: Yes, Mr. Pratt.

23 MR. PRATT: I, again, don't like the word
24 "promised." I would like to change that to

1 "agreed," if it's okay with Craig.

2 MR. BUHROW: That's fine.

3 JUDGE SLAVIN: Okay. I will take that as
4 a friendly amendment.

5 I forgot where I was. Oh, any other Board
6 member, comments?

7 (No verbal response.)

8 JUDGE SLAVIN: All right. Hearing none, I
9 will put the question. The question being put
10 is whether the Lee County ZBA finds that the
11 Petitioner agreed to develop a health and safety
12 plan, hold meetings in coordination with local
13 emergency management groups.

14 Adoption of the motion requires a vote by
15 the majority. The vote will be by voice. All
16 those in favor indicate by saying aye.

17 (All those simultaneously
18 responded.)

19 JUDGE SLAVIN: Opposed by nay.

20 (No verbal response.)

21 JUDGE SLAVIN: That motion is adopted.

22 Okay. I'm with you.

23 MR. HUGHES: Then we move on to Draft
24 Number 55. The motion being, The Lee County ZBA

1 finds that no evidence was presented as to any
2 impact the repowering could have on air traffic
3 within the area of the proposed project;
4 however, Petitioner stated a current filing with
5 the FAA was in progress at the time of the SUP
6 application.

7 JUDGE SLAVIN: Do you mind if I use the
8 word "petition"? I'm trying to be consistent
9 throughout these. The application being the
10 document they filed, the application being the
11 binder.

12 MR. HUGHES: Okay.

13 JUDGE SLAVIN: It's up to you.

14 MR. HUGHES: No, that's fine. I didn't
15 make that differentiation. So that's fine.

16 JUDGE SLAVIN: Do I hear a second?

17 MR. BOTHE: Second.

18 JUDGE SLAVIN: Hearing a second, anything
19 you want to say about your own motion as
20 modified -- your own motion, Mr. Hughes?

21 MR. HUGHES: Just that I think it needed
22 to be clarified that there was an FAA contact
23 made, and that at the time we received our
24 information that that was still in progress.

1 JUDGE SLAVIN: Okay. Any other Board
2 member?

3 (No verbal response.)

4 JUDGE SLAVIN: Hearing none, I will put
5 the question. The question being put is whether
6 the Lee County ZBA finds that no evidence was
7 presented as to any impact the repowering --
8 trying to be consistent by putting that in
9 quotes as well -- could have on air traffic
10 within the area of the proposed project;
11 however, Petitioner stated a current filing with
12 the FAA was in progress at the time of the SUP
13 petition.

14 Adoption of the motion requires a vote by
15 the majority. The vote will be by voice. All
16 those in favor indicate by saying aye.

17 (All those simultaneously
18 responded.)

19 JUDGE SLAVIN: Opposed by nay.

20 (No verbal response.)

21 JUDGE SLAVIN: This motion is also
22 adopted. Okay.

23 MR. BUHROW: Judge, on Number 56. In
24 following with the topic previously, the Lee

1 County ZBA finds that the Petitioner has agreed
2 in its application and in agreement that it
3 would comply with any and all FAA regulations.

4 Yeah, change that to "agreed," in
5 reference to our --

6 JUDGE SLAVIN: Mr. Pratt.

7 MR. PRATT: I totally agree with you,
8 Craig.

9 JUDGE SLAVIN: Surprise. Good use of the
10 word, too.

11 All right. Does that look right,
12 Mr. Buhrow?

13 MR. BUHROW: Yes.

14 JUDGE SLAVIN: Do I hear a second?

15 MR. BOTHE: Second.

16 JUDGE SLAVIN: Anything you want to say
17 about your motion, other than having Mr. Pratt's
18 favorite word in there?

19 MR. BUHROW: No, sir.

20 JUDGE SLAVIN: Any other Board member?

21 (No verbal response.)

22 JUDGE SLAVIN: All right. Seeing no
23 indication, I will put the question. The
24 question being put is whether the Lee County ZBA

1 finds that the Petitioner has agreed in its
2 application and in testimony that it would
3 comply with any and all FAA recommendations.

4 Adoption of the motion requires a vote by
5 the majority. The vote will be by voice. All
6 those in favor indicate by saying aye.

7 (All those simultaneously
8 responded.)

9 JUDGE SLAVIN: Opposed by nay.

10 (No verbal response.)

11 JUDGE SLAVIN: Okay. What do you think?

12 MR. HUGHES: Well, let's move on to 57.

13 The Lee County finds that the proposed project
14 would increase area employment during the
15 construction phase, thus helping the local
16 economy.

17 JUDGE SLAVIN: Do I hear a second?

18 MR. BOTHE: Second.

19 JUDGE SLAVIN: Hearing a second, I'll put
20 the question.

21 Anything you want to say about your own
22 motion, Mr. Hughes?

23 MR. HUGHES: No, sir.

24 JUDGE SLAVIN: Any other Board member?

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(No verbal response.)

JUDGE SLAVIN: Seeing no indication, I will put the question. The question being put is whether the Lee County ZBA finds that the proposed project would increase area employment during the construction phase, thus helping the local economy.

Adoption of the motion requires a vote by the majority. The vote will be by voice. All those in favor indicate by saying aye.

(All those simultaneously responded.)

JUDGE SLAVIN: Opposed by nay.

(No verbal response.)

JUDGE SLAVIN: Another one is on the board.

Your choice, come on down.

MR. BUHROW: Okay. Number 58. The Lee County ZBA finds that there is potential for the creation of up to 150 construction jobs if this SUP is approved.

JUDGE SLAVIN: Do I hear a second to that?

MR. BOTHE: Second.

JUDGE SLAVIN: Anything you want to say

1 about your motion, Mr. Buhrow?

2 MR. BUHROW: No, sir.

3 JUDGE SLAVIN: Any other Board member want
4 to comment?

5 (No verbal response.)

6 JUDGE SLAVIN: Seeing no indication,
7 hearing no indication, I will put the question.
8 The question being put is whether this Lee
9 County ZBA finds that there is potential for the
10 creation of up to 150 construction jobs if this
11 SUP is approved.

12 Adoption of the motion requires a vote by
13 the majority. The vote will be by voice. All
14 those in favor indicate by saying aye.

15 (All those simultaneously
16 responded.)

17 JUDGE SLAVIN: Opposed by nay.

18 (No verbal response.)

19 JUDGE SLAVIN: Motion is adopted.

20 Okie dokie. That's fancy language for --

21 MR. HUGHES: Move on.

22 JUDGE SLAVIN: -- move on.

23 MR. HUGHES: You skipped --

24 JUDGE SLAVIN: Yeah.

1 MR. HUGHES: There we go.

2 JUDGE SLAVIN: It's the mouse problem.

3 MR. HUGHES: The Lee County ZBA finds that
4 if this repower project were approved, the
5 Petitioner has agreed to fund a community
6 benefits program for the Ryan Wetland and Sand
7 Prairie Conservation District, period.

8 JUDGE SLAVIN: Note to myself.

9 MR. HUGHES: Yup.

10 JUDGE SLAVIN: Okay. Without the red,
11 does that look right?

12 MR. HUGHES: Yes.

13 JUDGE SLAVIN: Okay. Do I hear a second?

14 MR. BOTHE: Second.

15 JUDGE SLAVIN: Anything you want to say
16 about your motion, Mr. Hughes?

17 MR. HUGHES: No.

18 JUDGE SLAVIN: Any other Board member?

19 (No verbal response.)

20 JUDGE SLAVIN: Hearing and seeing no
21 indication, I'll put the question. The question
22 being put is whether the Lee County ZBA finds
23 that if this repower project were approved and
24 the Petitioner has -- were approved, comma,

1 Petitioner has agreed to fund a community
2 benefit program for the Ryan Wetland and Sand
3 Prairie Conservation District.

4 Adoption of the motion requires a vote by
5 the majority. The vote will be by voice. All
6 those in favor indicate by saying aye.

7 (All those simultaneously
8 responded.)

9 JUDGE SLAVIN: Opposed by nay.

10 (No verbal response.)

11 JUDGE SLAVIN: That motion is adopted.

12 And we can move along.

13 MR. HUGHES: Again, helping you with your
14 color coding --

15 JUDGE SLAVIN: Yup.

16 MR. HUGHES: -- "has" and "for" should
17 be --

18 JUDGE SLAVIN: Thank you very much.

19 MR. HUGHES: And the "for" before "Ryan
20 Wetland."

21 JUDGE SLAVIN: Yup. Okay.

22 MR. BUHROW: Are we ready for Number 60?

23 JUDGE SLAVIN: You are and we are.

24 MR. BUHROW: Okay. The Lee County ZBA

1 finds that if this repower project were
2 approved, the Petitioner has agreed to fund a
3 community benefits program for nearby
4 communities.

5 So I scratched the "Village of Ohio."

6 JUDGE SLAVIN: Watch this. My skills have
7 increased. Okay. Oops, I spelled agreed wrong.

8 Do I hear a second?

9 MR. BOTHE: Second.

10 JUDGE SLAVIN: Hearing a second, anything
11 you want to say about your motion, Mr. Buhrow?

12 MR. BUHROW: The main thought was, Ohio
13 was in Bureau County.

14 JUDGE SLAVIN: Oh, sure is.

15 MR. BUHROW: Not by much, but a little
16 bit.

17 JUDGE SLAVIN: Depends on where you live
18 exactly, but, yeah, you're right.

19 Any other comments?

20 (No verbal response.)

21 JUDGE SLAVIN: I will put the question.
22 The question being put is whether the Lee County
23 ZBA finds that if this repower project were
24 approved, the Petitioner has agreed to fund a

1 community benefit program for nearby
2 communities.

3 Adoption of the motion requires a vote by
4 the majority. The vote will be by voice. All
5 those in favor indicate by saying aye.

6 (All those simultaneously
7 responded.)

8 JUDGE SLAVIN: Opposed, nay.

9 (No verbal response.)

10 JUDGE SLAVIN: Motion is adopted. Okay.

11 MR. HUGHES: And, again, color code "has."

12 JUDGE SLAVIN: Thank you. I got flustered
13 by the ability to recognize where Ohio was.

14 MR. HUGHES: Okay. Moving on to Draft
15 Number 61. The motion being, The Lee County ZBA
16 hereby indicates that a decision to recommend or
17 not recommend approval of the petition is not
18 based on an increase or decrease in revenue for
19 taxing bodies.

20 JUDGE SLAVIN: And do I hear a second?

21 MR. BOTHE: Second.

22 JUDGE SLAVIN: Anything you want to say
23 about that, Mr. Hughes?

24 MR. HUGHES: No.

1 JUDGE SLAVIN: Any other Board member?

2 (No verbal response.)

3 JUDGE SLAVIN: Accordingly, I will put the
4 question. The question being put is whether the
5 Lee County ZBA hereby indicates that a decision
6 to recommend or not recommend approval of the
7 petition is not based on an increase or decrease
8 in revenue for the taxing bodies.

9 Adoption of the motion requires a vote by
10 the majority. The vote will be by voice. All
11 those in favor indicate by saying aye.

12 (All those simultaneously
13 responded.)

14 JUDGE SLAVIN: All those opposed by nay.

15 (No verbal response.)

16 JUDGE SLAVIN: Unanimous again. Alrighty.

17 MR. BUHROW: Ready for 62 now. The Lee
18 County ZBA finds that the Petitioner has agreed
19 to repair any field tile damage within ten
20 working days of notification and other drainage
21 facilities within six months.

22 JUDGE SLAVIN: Do I hear a second?

23 MR. BOTHE: Second.

24 JUDGE SLAVIN: Hearing that, anything you

1 want to say about your motion, Mr. Buhrow?

2 MR. BUHROW: No. It's good.

3 JUDGE SLAVIN: Any other Board member want
4 to address it?

5 (No verbal response.)

6 JUDGE SLAVIN: Hearing no indication,
7 seeing no indication, I will put the question.
8 The question being put is whether the Lee County
9 ZBA finds that the Petitioner has agreed to
10 repair any field drain tile damage within ten
11 working days of notification and other drainage
12 facilities within six months.

13 Adoption of the motion requires a vote by
14 the majority. The vote will be by voice. All
15 those in favor indicate by saying aye.

16 (All those simultaneously
17 responded.)

18 JUDGE SLAVIN: Opposed by nay.

19 (No verbal response.)

20 JUDGE SLAVIN: That motion is adopted.
21 Okay.

22 MR. HUGHES: The Lee County ZBA finds that
23 the Petitioner has agreed -- Petitioner has
24 indicated there will be no surface or ground

1 water contamination, as it will use little
2 water, will haul in the water that is needed,
3 will dispose of any potentially hazardous waste
4 materials off site, and sanitary wastewater will
5 be collected in portable facilities and taken
6 away by a licensed hauler.

7 JUDGE SLAVIN: Do I hear a second?

8 MR. BOTHE: Second.

9 JUDGE SLAVIN: Anything you want to say
10 about your motion, Mr. Hughes?

11 MR. HUGHES: No.

12 JUDGE SLAVIN: Any other Board member?

13 (No verbal response.)

14 JUDGE SLAVIN: Hearing no indication, I
15 will put the question. The question being put
16 is whether the Lee County ZBA finds that the
17 Petitioner has indicated there will be no
18 surface or groundwater contamination, as it will
19 use little water, will haul away -- will haul
20 away --

21 MR. HUGHES: Will haul in the water.

22 JUDGE SLAVIN: -- will haul in the water
23 that is needed, will dispose of any potential
24 hazardous materials off site, and sanitary

1 wastewater will be collected in portable
2 facilities and taken away by a licensed hauler.

3 Adoption of the motion requires a vote by
4 the majority. The vote will be by voice. All
5 those in favor indicate by saying aye.

6 (All those simultaneously
7 responded.)

8 JUDGE SLAVIN: Opposed by nay.

9 (No verbal response.)

10 JUDGE SLAVIN: This one passes as well.
11 Okay. What do you say?

12 MR. BUHROW: Number 64. The Lee County
13 ZBA finds that the Petitioner has agreed not to
14 allow any advertising material or signage on any
15 component of the proposed repowered WECS.

16 JUDGE SLAVIN: All right. Do I hear a
17 second?

18 MR. BOTHE: Second.

19 JUDGE SLAVIN: Hearing a second, anything
20 you want to say about your motion, Mr. Buhrow?

21 MR. BUHROW: No.

22 JUDGE SLAVIN: Any other Board member?

23 (No verbal response.)

24 JUDGE SLAVIN: All right. I'll put the

1 question then. The question being put is
2 whether the Lee County ZBA finds that the
3 Petitioner has agreed not to allow any
4 advertising material or signage on any component
5 of the proposed repowered WECS.

6 Adoption of the motion requires a vote by
7 the majority. The vote will be by voice. All
8 those in favor indicate by saying aye.

9 (All those simultaneously
10 responded.)

11 JUDGE SLAVIN: Opposed by nay.

12 (No verbal response.)

13 JUDGE SLAVIN: That motion is a winner as
14 well.

15 Up to you.

16 MR. HUGHES: Next. On Draft 65. The Lee
17 County ZBA finds that the Petitioner has
18 promised to maintain a broad form comprehensive
19 insurance coverage policy insuring the
20 Petitioner and parcel owners against loss or
21 liability in an amount of not less than
22 \$1 million per occurrence, \$2 million aggregate,
23 and an umbrella of 20 million.

24 JUDGE SLAVIN: Do I hear a second?

1 MR. BOTHE: Second.

2 JUDGE SLAVIN: Hearing a second, anything
3 you want to say about your motion?

4 MR. HUGHES: No, sir.

5 JUDGE SLAVIN: Any other Board member?

6 (No verbal response.)

7 JUDGE SLAVIN: All right. I'll put the
8 question. The question being put is whether the
9 Lee County ZBA finds that the Petitioner has
10 promised to maintain a broad form comprehensive
11 insurance coverage policy insuring the
12 Petitioner and parcel owners against loss or
13 liability in an amount of not less than
14 \$1 million per occurrence, \$2 million aggregate,
15 and an umbrella of \$20 million.

16 Adoption of the motion requires a vote by
17 the majority. The vote will be by voice. All
18 those in favor indicate by saying aye.

19 (All those simultaneously
20 responded.)

21 JUDGE SLAVIN: Opposed by nay.

22 (No verbal response.)

23 JUDGE SLAVIN: That motion is adopted.

24 Your court.

1 MR. BUHROW: Number 66, Judge. The Lee
2 County ZBA finds that the Petitioner has
3 requested Variances.

4 JUDGE SLAVIN: Do I hear a second?

5 MR. BOTHE: Second.

6 JUDGE SLAVIN: Anything you want to say
7 about your motion, Mr. Buhrow?

8 MR. BUHROW: No, sir.

9 JUDGE SLAVIN: Any other Board member?

10 MR. HUGHES: Yes. Actually, I would
11 disagree with that motion. They have not
12 requested any Variances. There are some WTGs
13 that are no longer in compliance with the Code,
14 but they have -- they are not requesting a
15 Variance on those. They are actually looking
16 for waivers from the participating landowners.

17 So I would say that there hasn't been a
18 Variance requested, but rather they are
19 utilizing their existing position and looking
20 for waivers.

21 JUDGE SLAVIN: Will you accept a friendly
22 amendment to that, Mr. Buhrow?

23 MR. BUHROW: Yes. I wasn't -- I assumed
24 that that was probably the same situation, but

1 apparently not. But that's all right.

2 JUDGE SLAVIN: Do I hear a second to the
3 "has not"?

4 MR. BOTHE: Second.

5 JUDGE SLAVIN: Okay. Back to any debate.
6 Mr. Buhrow, it's your motion still, so
7 courtesy back to you.

8 MR. BUHROW: No, that's fine.

9 JUDGE SLAVIN: Okay. Any other Board
10 member wish to address it?

11 (No verbal response.)

12 JUDGE SLAVIN: Hearing none, seeing none,
13 I will put the question. The question being put
14 is whether the Lee County ZBA finds that the
15 Petitioner has not requested any Variances.

16 Adoption of the motion requires a vote by
17 the majority. The vote will be by voice. All
18 those in favor indicate by saying aye.

19 (All those simultaneously
20 responded.)

21 JUDGE SLAVIN: Opposed by nay.

22 That motion is adopted.

23 Okay.

24 MR. HUGHES: Moving on to Number 67. The

1 Lee County ZBA finds that 10 WTGs --
2 specifically, Number 59, Number 61, Number 63,
3 Number 68, Number 70, Number 73, Number 98,
4 Number 106, Number 114, and Number 120 -- would
5 lay within 300 feet of a property line; however,
6 all Variances are relative to participating
7 property owners, and setback waivers have been
8 or are expected to be obtained.

9 JUDGE SLAVIN: Been obtained or expected
10 to be obtained, that's where I lost it.

11 MR. HUGHES: Yes. Have been or are
12 expected to be obtained.

13 JUDGE SLAVIN: Okay. Does that look
14 right, other than my correction there?

15 MR. HUGHES: Yes, sir.

16 JUDGE SLAVIN: Okay. Do I hear a second?

17 MR. BOTHE: Second.

18 JUDGE SLAVIN: Anything you want to say
19 about your motion, Mr. Hughes?

20 MR. HUGHES: Just a little bit. The --
21 this one is predominately a reiteration of
22 Number 26; however, relative to Motion Number 66
23 and some motions that I believe are following, I
24 thought it was appropriate to make sure that was

1 in here at that time.

2 JUDGE SLAVIN: Okay. Any other Board
3 member?

4 (No verbal response.)

5 JUDGE SLAVIN: Seeing or hearing no
6 indication, I will put the question. The
7 question being put is whether the Lee County ZBA
8 finds that 10 WTGs -- specifically Numbers 59,
9 61, 63, 68, 70, 73, 98, 106, 114, and 120 --
10 would lay within 350 feet of a property line;
11 however, all Variances are relative to
12 participating property owners, and waivers have
13 been or are -- have been or are expected to be
14 obtained.

15 Adoption of the motion requires a vote by
16 the majority. The vote will be by voice. All
17 those in favor indicate by saying aye.

18 (All those simultaneously
19 responded.)

20 JUDGE SLAVIN: Opposed by nay.

21 (No verbal response.)

22 JUDGE SLAVIN: This motion is adopted.
23 Your choice. Gentleman's choice.

24 MR. BUHROW: 68. The Lee County ZBA finds

1 that the Petitioner has provided Variance maps
2 in its application.

3 JUDGE SLAVIN: Do I hear a second?

4 MR. BOTHE: Second.

5 JUDGE SLAVIN: Hearing a second, anything
6 you want to say about your own motion,
7 Mr. Buhrow?

8 MR. BUHROW: I'll wait and see if Glen's
9 got any. Well, we started this, we may have to
10 change this one too.

11 MR. HUGHES: No, that's fine.

12 JUDGE SLAVIN: Any other Board member?

13 (No verbal response.)

14 JUDGE SLAVIN: Hearing none, I will put
15 the question. The question being put is whether
16 the Lee County ZBA finds that the Petitioner has
17 provided Variance maps in its application.

18 Adoption of the motion requires a vote by
19 the majority. The vote will be by voice. All
20 those in favor indicate by saying aye.

21 (All those simultaneously
22 responded.)

23 JUDGE SLAVIN: Opposed by nay.

24 (No verbal response.)

1 JUDGE SLAVIN: Guess what? The motion is
2 adopted.

3 Moving on up.

4 MR. HUGHES: Draft Number 69, which will
5 probably be modified.

6 The Lee County ZBA finds that Petitioner
7 has stated it will comply with the Lee County
8 Ordinance on any other setbacks, parentheses,
9 from -- and this will continue in the same --

10 JUDGE SLAVIN: Can I put "as to any other
11 setbacks"?

12 MR. HUGHES: Yes, that's fine.

13 From primary structures, residences,
14 public roads, third-party transmission lines,
15 communication towers, or nonparticipating
16 property lines, closed parentheses, and no other
17 waivers are anticipated.

18 JUDGE SLAVIN: I can't spell anticipated
19 tonight.

20 MR. HUGHES: You're misplacing one of
21 those Is.

22 JUDGE SLAVIN: Yeah. Period?

23 MR. HUGHES: Yes.

24 JUDGE SLAVIN: You better take a look.

1 I'm just going to make all this red so I --
2 okay. Tell me when it's okay.

3 MR. HUGHES: You have "any other setbacks"
4 in there twice.

5 JUDGE SLAVIN: Yup, sure do.

6 MR. HUGHES: I believe that's accurate
7 right now.

8 JUDGE SLAVIN: Okay. Do I hear a second?

9 MR. BOTHE: Second.

10 JUDGE SLAVIN: Open for debate.

11 Courtesy to you first, Mr. Hughes.

12 MR. HUGHES: Just since we were addressing
13 the Variances, and starting on 66, I needed --
14 felt it needed clarification. Specifically, as
15 it states within the application or our --
16 within our application, they would comply with
17 -- specifically stated they did not believe
18 there would be any other waivers.

19 JUDGE SLAVIN: Okay. Any other Board
20 member, comments? questions?

21 (No verbal response.)

22 JUDGE SLAVIN: Hearing or seeing no
23 indication, I will put the question. The
24 question being put is whether the Lee County ZBA

1 finds that the Petitioner has stated it will
2 comply with the Lee County Ordinance as to any
3 other setbacks from primary structures,
4 residences, public roads, third-party
5 transmission lines, and communication towers, or
6 nonparticipating property lines, and no other
7 waivers are anticipated.

8 Adoption of the motion requires a vote by
9 the majority. The vote will be by voice. All
10 those in favor indicate by saying aye.

11 (All those simultaneously
12 responded.)

13 JUDGE SLAVIN: Opposed by nay.

14 (No verbal response.)

15 MR. HUGHES: Just I wonder, from a
16 scrivener's standpoint, if there shouldn't be a
17 comma after "towers" as well.

18 JUDGE SLAVIN: Yup -- no.

19 MR. HUGHES: Okay.

20 JUDGE SLAVIN: Take it from an English
21 major. The last in a series of -- is not comma,
22 unless you comply with the Oxford thing. We
23 don't do English here.

24 MR. HUGHES: Okay.

1 JUDGE SLAVIN: Go ahead.

2 MR. HUGHES: Moving on, Your Honor. I
3 would like to jump over 70, 71, and 72. Based
4 on the testimony we received, don't know that
5 those were accurate or relevant to Lee County.

6 JUDGE SLAVIN: All right. It's 7 o'clock.
7 Let's take a break anyway. I'm getting a
8 little --

9 MR. HUGHES: Okay.

10 JUDGE SLAVIN: Ten minutes. 7:10 by the
11 telephone, not by the courtroom clock.

12 (A recess was taken at 7:00 p.m.
13 and proceedings resumed at
14 7:10 p.m.)

15 JUDGE SLAVIN: All right. We're out of
16 our short break, and the floor is again open.

17 MR. HUGHES: Let's move to Number 73. The
18 Lee County ZBA finds that, if granted, the
19 proposed Special Use would have the following
20 impacts on the character of the neighborhood and
21 the surrounding properties:

22 The character of the neighborhood would
23 not change, but the whole neighborhood,
24 including surrounding properties, will continue

1 to be impacted by the visual nature of the
2 project;

3 There would be an impact on traffic
4 conditions, as there would be a temporary
5 increase in traffic during decommissioning and
6 construction periods, but there will not be any
7 material long-term impact.

8 JUDGE SLAVIN: Did you change anything
9 other than taking out the alternatives?

10 MR. HUGHES: No. I do not believe on that
11 one I did, no.

12 JUDGE SLAVIN: Sorry. Go ahead.

13 MR. HUGHES: Okay. There would not be
14 impacts on public utilities in that the WECS
15 contributes to electric utilities -- WECS
16 contribution, excuse me -- the WECS contribution
17 to utilities would be the same and no impact on
18 sewer and water.

19 JUDGE SLAVIN: Let me catch up to you. I
20 did a bad job.

21 Before we get too far along, check me.

22 MR. HUGHES: WECS contribution.

23 JUDGE SLAVIN: Okay. Sorry about that.

24 MR. HUGHES: No, that's fine.

1 There would not be any substantial impact
2 on local wildlife and/or threatened species;

3 There would be no new impacts on public
4 health, public safety, and/or general welfare.

5 JUDGE SLAVIN: All right. While I'm
6 cleaning up a couple things here, take a look,
7 if you would, please.

8 MR. HUGHES: Yes, I was trying to. . .

9 JUDGE SLAVIN: You tell me when it meets
10 your --

11 MR. HUGHES: The -- yeah, the line above
12 "any substantially," I think I would prefer that
13 be "any substantial impact." Right there.

14 JUDGE SLAVIN: Got it. I'm going to use
15 what I learned.

16 Okay. Look -- tell me when it looks good.

17 MR. HUGHES: And that looks fine to me.

18 JUDGE SLAVIN: Do I hear a second?

19 MR. BOTHE: Second.

20 JUDGE SLAVIN: Hearing a second, I will
21 ask for any comment.

22 To you first, Mr. Hughes.

23 MR. HUGHES: No, I hope that's
24 self-explanatory.

1 JUDGE SLAVIN: Any other Board member,
2 questions or comments? Mr. Forster?

3 MR. FORSTER: I have a question. On the
4 impacts on the public utilities, wouldn't there
5 be a decrease in the amount of electricity
6 putting in during the construction period?
7 Temporary, during construction, but the WECS
8 would be the same once it's improved.

9 MR. HUGHES: Okay. You want to try and --

10 MR. FORSTER: I'm just saying that there
11 would be a decrease in the grid during
12 construction, and once the -- once the repower
13 was done, it would be the same contribution it
14 had been before. Because of the upgrade,
15 basically.

16 MR. BUHROW: Judge, this relates to a
17 question I asked and how they were going to do
18 this, and he talked about how they would take
19 one line down at a time --

20 MR. FORSTER: Yes.

21 MR. BUHROW: -- and that type of thing.

22 MR. FORSTER: Well, he talked about a
23 section at a time, put it back in. So it would
24 be a minor --

1 MR. BUHROW: Yeah.

2 MR. FORSTER: -- a minor program during
3 the construction stage, because it would be
4 staged through.

5 JUDGE SLAVIN: Mr. Buhrow addressed me,
6 but the address really goes to the Movant. He's
7 the proponent of the motion.

8 MR. FORSTER: I'm just asking a question.

9 MR. HUGHES: I would be willing to amend
10 that to clarify for Mr. Forster.

11 JUDGE SLAVIN: Okay.

12 MR. HUGHES: There would be a --

13 MR. FORSTER: Slight.

14 MR. HUGHES: -- temporary --

15 JUDGE SLAVIN: Well, don't interrupt.
16 Don't do that to the court reporter, please.

17 MR. FORSTER: Okay.

18 MR. HUGHES: There would be a temporary
19 impact on public utilities in -- with -- and
20 take -- yeah, take that out.

21 With --

22 JUDGE SLAVIN: Where does the "with" go?
23 Right after "utilities"?

24 MR. HUGHES: Yeah. The WECS -- yeah, just

1 remove -- contribution to the electric utilities
2 being reduced during the repowering stage but
3 would resume at the same level upon completion.

4 But would --

5 JUDGE SLAVIN: Return.

6 MR. HUGHES: -- return to the same level
7 upon completion. And we'll leave it at that.

8 JUDGE SLAVIN: Did you say construction
9 again?

10 MR. HUGHES: No, but that's -- I -- no,
11 but that's probably fine. Yeah, that would be.

12 JUDGE SLAVIN: Go ahead and read it.

13 MR. HUGHES: No, I'm -- no, I'm -- yeah,
14 I'll accept that.

15 JUDGE SLAVIN: Okay. I didn't go through
16 the formal motion to amend, so I -- but I would
17 like a second in case there's --

18 MR. BOTHE: Second.

19 JUDGE SLAVIN: Okay. Second. Back to
20 debate.

21 Back to you, Mr. Hughes, since you're the
22 proponent at the moment.

23 MR. HUGHES: I'm fine with the amendment,
24 and basically come to the same conclusion.

1 JUDGE SLAVIN: Any other Board member wish
2 to address it?

3 (No verbal response.)

4 JUDGE SLAVIN: Seeing or hearing no
5 indication to do so, I will put the question.
6 The question being put is whether the Lee County
7 ZBA finds that, if granted, the proposed Special
8 Use would have the following impacts on the
9 character of the neighborhood and surrounding
10 properties:

11 The character of the neighborhood would
12 not change, but the whole neighborhood,
13 including surrounding properties, will continue
14 to be impacted by the visual nature of the
15 project;

16 There would be an impact on traffic
17 conditions, as there would be a temporary
18 increase in traffic during decommissioning and
19 construction periods, but there will not be any
20 material long-term impact;

21 There would be a temporary impact on
22 public utilities with the WECS contribution to
23 electric utilities being reduced during the
24 repowering construction, but would return to the

1 same level upon completion, and there would be
2 no impact on sewer and water;

3 There would not be any substantial impact
4 on local wildlife and/or threatened species;

5 There would be no new impacts on public
6 health, public safety, or general welfare.

7 Adoption of the motion requires a vote by
8 the majority. The vote will be by voice.

9 All those in favor indicate by saying aye.

10 (All those simultaneously
11 responded.)

12 JUDGE SLAVIN: Opposed by nay.

13 (No verbal response.)

14 JUDGE SLAVIN: This motion is adopted.

15 Okay. Over that hump.

16 MR. BUHROW: Judge, at this point I think
17 we are ready for Number 74, the findings of
18 fact, which reads, The Lee County ZBA recommends
19 to the Lee County Board that BSW DevCo's
20 petition for Special Use be approved.

21 JUDGE SLAVIN: Okay. Do I hear a second?

22 MR. BOTHE: Second.

23 JUDGE SLAVIN: Hearing a second, the floor
24 is open for debate.

1 Mr. Buhrow, your motion. Do you want to
2 address it?

3 MR. BUHROW: I think it's fine the way it
4 is.

5 JUDGE SLAVIN: Okay. Any other Board
6 member want to comment?

7 (No verbal response.)

8 JUDGE SLAVIN: Seeing no indication of a
9 want to do so or hearing the same, I will put
10 the question. The question being put is whether
11 the Lee County ZBA recommends to the Lee County
12 Board that BSW DevCo's petition for Special Use
13 be approved.

14 Adoption of the motion requires a vote by
15 the majority. The vote will be by voice. All
16 those in favor indicate by saying aye.

17 (All those simultaneously
18 responded.)

19 JUDGE SLAVIN: Opposed by nay.

20 (No verbal response.)

21 JUDGE SLAVIN: The motion is adopted.
22 Okay.

23 MR. HUGHES: Moving on to 75. The Lee
24 County ZBA further recommends to the Lee County

1 Board that if the requested Special Use is
2 approved, any and all other proposals and
3 representations made under oath at the public
4 hearing before the ZBA should be considered
5 conditions of the Special Use Permit granted by
6 the Lee County Board, even if not expressly
7 specified therein.

8 JUDGE SLAVIN: Do I hear a second?

9 MR. BOTHE: Second.

10 JUDGE SLAVIN: Hearing a second, debate.
11 Courtesy to you, Mr. Hughes.

12 MR. HUGHES: Nothing additional.

13 JUDGE SLAVIN: Any other Board member?

14 (No verbal response.)

15 JUDGE SLAVIN: Seeing or hearing none, I
16 will put the question. The question being put
17 is whether the Zee County -- the Zee -- the Lee
18 County ZBA further recommends to the Lee County
19 Board that if the requested Special Use is
20 approved, any and all other proposals and
21 representations made under oath at the public
22 hearing before the ZBA should be considered
23 conditions of the Special Use Permit granted by
24 the Lee County Board, even if not expressly

1 specified therein.

2 Adoption of the motion requires a vote by
3 the majority. The vote will be by voice. All
4 those in favor indicate by aye.

5 (All those simultaneously
6 responded.)

7 JUDGE SLAVIN: Opposed by nay.

8 (No verbal response.)

9 JUDGE SLAVIN: Motion is adopted.

10 Okay, guys.

11 MR. HUGHES: At this time I'd like to move
12 past 76 and 77. Based on motions we have made
13 previously, they are redundant.

14 And moving on to Number 78. The Lee
15 County ZBA recommends to the Lee County Board
16 that, if BSW DevCo's WECS Special Use petition
17 under consideration is allowed, a condition of
18 any permit granted be that the Petitioner shall
19 agree not to commence construction activity
20 associated with the WECS project before 7 a.m.
21 or continue past 8 p.m. on any day of the week
22 within one-quarter mile of any nonparticipating
23 landowner unless a waiver is obtained from such
24 landowner.

1 JUDGE SLAVIN: You said one-quarter,
2 right?

3 MR. HUGHES: Yes.

4 JUDGE SLAVIN: Take a look, make sure I
5 got it right. I think I did.

6 MR. HUGHES: Yes.

7 JUDGE SLAVIN: Okay. Do I hear a second?

8 MR. BOTHE: Second.

9 JUDGE SLAVIN: Hearing a second, the floor
10 is open for debate.

11 Anything you want to say about your own
12 motion, Mr. Hughes?

13 MR. HUGHES: Yes. I know the Petitioner
14 has indicated a 6 a.m. and 9 p.m. limit;
15 however, with the construction -- and even a
16 quarter-mile might be a little light, but I
17 think it's reasonable -- I think this time
18 frame, which amounts to a 13-hour period, is
19 more reasonable for the general traffic of the
20 area and for the neighbors in terms of noise
21 or -- both from the road traffic, as well as the
22 actual function of the construction.

23 JUDGE SLAVIN: Any other Board member?
24 Mr. Buhrow.

1 MR. PRATT: Judge.

2 JUDGE SLAVIN: I saw Mr. Buhrow first, but
3 go ahead, Mr. Pratt, because I can't see you.

4 MR. PRATT: Glen, the only comment I would
5 make would be, when you say nonparticipating
6 landowner, I wonder if we should say either
7 primary residence, or are you talking a
8 cornfield, within a quarter mile of a cornfield
9 somewhere?

10 MR. HUGHES: Good point.

11 MR. PRATT: Primary landowners, primary --
12 or nonparticipating landowner's primary
13 residence.

14 JUDGE SLAVIN: I'm just typing to see how
15 it looks to you, that's all.

16 MR. HUGHES: I would say -- that's a good
17 point of clarification, Mike. I don't see that
18 it changes my intent any, so I'm good with that.
19 Thank you for the assistance.

20 JUDGE SLAVIN: Mr. Buhrow, you had a
21 comment?

22 MR. BUHROW: The only comment made in the
23 past, what this has done, we have seen in
24 practice, is it allows the workers of the

1 construction crew to talk to the neighbors,
2 which is always good for the area and things
3 like this in the neighborhood. So if they do
4 need to, for some reason, work longer, earlier,
5 whatever, they can still do it if they get
6 permission.

7 JUDGE SLAVIN: Any other Board member?

8 (No verbal response.)

9 JUDGE SLAVIN: All right. We changed it
10 just a little bit from the last second without a
11 motion to amend. So do I hear a second?

12 MR. BOTHE: Second.

13 JUDGE SLAVIN: Back to the debate. I know
14 I gave you a chance already, but --

15 MR. HUGHES: No, that's --

16 JUDGE SLAVIN: Any other Board member, now
17 that it's been changed this way, care to
18 comment? Questions?

19 (No verbal response.)

20 JUDGE SLAVIN: All right. Seeing no
21 indication of a want to do so, I will put the
22 question.

23 The question being put is whether the Lee
24 County ZBA recommends to the Lee County Board

1 that if BSW DevCo's WECS Special Use petition
2 under consideration is allowed, a condition of
3 any permit granted be that Petitioner shall
4 agree not to commence construction activity
5 associated with the WECS project before 7 a.m.
6 or continue past 8 p.m. on any day of the week
7 within one-quarter mile of any nonparticipating
8 landowner's primary residence unless a waiver is
9 obtained from such landowner.

10 Adoption of the motion requires a vote by
11 the majority. The vote will be by voice. All
12 those in favor indicate by saying aye.

13 (All those simultaneously
14 responded.)

15 JUDGE SLAVIN: Opposed by nay.

16 (No verbal response.)

17 JUDGE SLAVIN: It's on the books.

18 Have at it, if anything else.

19 MR. BUHROW: Judge, on 79, the Lee County
20 ZBA recommends to the Lee County Board that if
21 BSW DevCo's WECS Special Use Petition under
22 consideration is allowed, a condition of any
23 permit granted be that the Petitioner and a
24 landowner may agree to setbacks, shadow flicker,

1 and other impacts different from those allowed
2 in the Special Use Permit only if a written
3 waiver has been obtained from the landowner and
4 is on file with the Zoning Administrator.

5 JUDGE SLAVIN: Okay. Do I hear a second?

6 MR. BOTHE: Second.

7 JUDGE SLAVIN: Hearing a second, courtesy
8 to you, Mr. Buhrow, if you want to expand on
9 your motion.

10 MR. BUHROW: I think this is another good
11 neighbor situation here by doing that.

12 JUDGE SLAVIN: Any other Board member wish
13 to address it?

14 (No verbal response.)

15 JUDGE SLAVIN: Seeing no indication of a
16 want to do so, I will put the question. The
17 question being put is whether the Lee County ZBA
18 recommends to the Lee County Board that, if BSW
19 DevCo's WECS Special Use Petition under
20 consideration is allowed, a condition of any
21 permit granted be that the Petitioner and the
22 landowner may agree to setbacks, shadow flicker,
23 and other impacts different from those allowed
24 in the Special Use Permit only if a written

1 waiver has been obtained from the landowner and
2 is on file with the Zoning Administrator.

3 Adoption of the motion requires a vote by
4 the majority. The vote will be by voice. All
5 those in favor indicate by saying aye.

6 (All those simultaneously
7 responded.)

8 JUDGE SLAVIN: Opposed by nay.

9 (No verbal response.)

10 JUDGE SLAVIN: Okay. You got it. Back to
11 you.

12 MR. HUGHES: Okay. I would skip over 80
13 and 81. They are a little redundant. They are
14 things in the application that the -- the
15 Applicant has already agreed to do. So I don't
16 know that they necessarily need to be made
17 special conditions. And also pass Number 82,
18 and move on to 83.

19 The Lee County ZBA recommends to the Lee
20 County Board that, if BSW DevCo's WECS Special
21 Use Petition under consideration is allowed, a
22 condition of any permit granted be that any and
23 all terms and/or conditions presented within the
24 Special Use Permit -- within the petition for

1 Special Use, Number 20-P-1557, that there --
2 that are not in conflict with any term and/or
3 condition within the AIMA be incorporated. The
4 Lee County ZBA also recommends that if, indeed,
5 a term and/or condition within the petition for
6 Special Use is in conflict, contrary or
7 repugnant to the AIMA, the terms and/or
8 conditions of the AIMA shall be binding.

9 JUDGE SLAVIN: Okay. Do I hear a second?

10 MR. BOTHE: Second.

11 JUDGE SLAVIN: Hearing a second, I will
12 take -- the floor is open for debate.

13 First to you, Mr. Hughes.

14 MR. HUGHES: Nothing additional.

15 JUDGE SLAVIN: Okay. Any other Board
16 member?

17 (No verbal response.)

18 JUDGE SLAVIN: Hearing none, seeing none,
19 I will put the question. The question being put
20 is whether the Lee County ZBA recommends to the
21 Lee County Board that if BSW DevCo's WECS
22 Special Use Petition under consideration is
23 allowed, a condition of any permit granted be
24 that any and all terms and/or conditions

1 presented within the petition for Special Use
2 Number 20-P-1557 that are not in conflict with
3 any term and/or condition within the AIMA be
4 incorporated. The Lee County ZBA also
5 recommends that if, indeed, a term and/or
6 condition within the petition for Special Use is
7 in conflict, contrary or repugnant to the AIMA,
8 the terms and/or conditions of the AIMA shall be
9 binding.

10 Adoption of the motion requires a vote by
11 the majority. The vote will be by voice. All
12 those in favor indicate by saying aye.

13 (All those simultaneously
14 responded.)

15 JUDGE SLAVIN: Opposed by nay.

16 (No verbal response.)

17 JUDGE SLAVIN: Motion is adopted. Okay.

18 MR. HUGHES: Okay. Then --

19 MR. PRATT: Judge?

20 MR. HUGHES: Yes.

21 MR. PRATT: Glen, I would like -- I still
22 would like to address 82 before we go too far.

23 MR. HUGHES: Go ahead.

24 MR. PRATT: I'll make that motion, and

1 we'll see whether it flies or not.

2 Judge, Number 82.

3 JUDGE SLAVIN: Yes, sir.

4 MR. PRATT: The Lee County ZBA recommends
5 to the Lee County Board that, if BSW DevCo's
6 petition for Special Use under consideration is
7 allowed, if Petitioner, that being Ever Power
8 Wind Holdings, Incorporated, BSW DevCo, LLC,
9 and/or Big Sky, LLC, any assignees, and any
10 future parent companies, choose to repower or
11 replace WTG Number 74, the Petitioner shall
12 obtain a waiver from resident owner prior to any
13 building permit being issued to repower or
14 replace WTG Number 74; however, in the absence
15 of such waiver, the Petitioner shall be allowed
16 to continue to operate WTG Number 74 under
17 Ordinance 2006-04-06-001.

18 JUDGE SLAVIN: Do I hear a second?

19 MR. BOTHE: Second.

20 JUDGE SLAVIN: Heard a second. The floor
21 is open for debate.

22 Your motion, Mr. Pratt.

23 MR. PRATT: Well, this is -- this goes
24 back to where we discussed this last night too

1 on Number 74. I don't think this hurts to bring
2 this in after, as a condition, I guess, is what
3 we're doing here, and I think it's important to
4 do that.

5 JUDGE SLAVIN: All right. Any other Board
6 member want to address it?

7 MR. HUGHES: I have no problem with it. I
8 had some concerns about the logistics of getting
9 involved in the middle of that and that's why I
10 had ignored that one, but I have no problem with
11 the condition.

12 JUDGE SLAVIN: Okay. Any other Board
13 member?

14 (No verbal response.)

15 JUDGE SLAVIN: Seeing or hearing no
16 indication, I will put the question. The
17 question being put is whether the Lee County ZBA
18 recommends to the Lee County Board that if BSW
19 DevCo's petition for Special Use under
20 consideration is allowed, if Petitioner, that
21 being Ever Power Wind Holdings, Inc., BSW DevCo,
22 LLC, and/or Big Sky LLC, any assignees, and any
23 future parent companies, choose to repower or
24 replace WTG Number 74, the Petitioner shall

1 obtain a waiver from resident owner prior to any
2 building permit being issued to repower or
3 replace WTG Number 74; however, in the absence
4 of such waiver, the Petitioner should be allowed
5 to continue to operate WTG Number 74 under
6 Ordinance 2006-04-06-001.

7 Adoption of the motion requires a vote by
8 the majority. The vote will be by voice. All
9 those in favor indicate by saying aye.

10 (All those simultaneously
11 responded.)

12 JUDGE SLAVIN: Opposed by nay.

13 (No verbal response.)

14 JUDGE SLAVIN: Motion is adopted.

15 All right. Let's finish this, and remind
16 me of something. Go ahead.

17 MR. HUGHES: Okay. I'm going to move past
18 84, 85, 86, 87, and 88. The first four because
19 of redundancy, Number 88 because I have got a
20 separate motion on that, and I will go to Number
21 89.

22 The Lee County ZBA recommends to the Lee
23 County Board that, if BSW DevCo's WECS Special
24 Use Petition under consideration is allowed, it

1 be granted a one-year waiver beyond the
2 required -- beyond the one year required under
3 10-2A-3 for the requested use to be established
4 (substantially underway).

5 JUDGE SLAVIN: Okay. Do I hear a second?

6 MR. BOTHE: Second.

7 JUDGE SLAVIN: Hearing a second, the floor
8 is open for debate.

9 Your motion, Mr. Hughes.

10 MR. HUGHES: Yes. The Petitioner's
11 requested a two-year waiver beyond, for a total
12 of three years. I have mentioned this in
13 situations here before. I believe that three
14 years is excessive. The one-year was put in
15 place, my understanding, is to make sure that
16 projects and uses were developed in a timely and
17 appropriate manner. I think -- based on
18 conditions and explanation by the Petitioner, I
19 think a one-year waiver beyond the original is
20 warranted, but I'm uncomfortable with two years.
21 I would rather see them come back after the
22 total of two years with some explanation as to
23 why that project is not substantially underway.

24 Substantially underway does not mean that

1 it's completed. So if they can't be
2 substantially underway -- and I don't care
3 whether that's 30 or 50 or 70 percent -- in that
4 two years, I think they should be held
5 accountable and come back to the Zoning Board
6 for an explanation, or at least to the County
7 Board for an explanation, as to why that's not
8 substantially underway.

9 JUDGE SLAVIN: Any other Board member,
10 comment? debate? question?

11 MR. PRATT: Judge.

12 JUDGE SLAVIN: Mr. Pratt.

13 MR. PRATT: Glen, do you -- what's your
14 understanding if they don't meet your
15 recommendation there of a two-year period? Does
16 it null and void the entire Special Use?

17 MR. HUGHES: I would defer to the Zoning
18 Administrator on that.

19 MR. PRATT: That would be a concern, if
20 that's -- and I don't know the answer to that
21 either.

22 MR. HUGHES: Yeah, that's a problem, and
23 whatever the remedy on that or whatever the
24 criteria is for addressing that, I'm not sure.

1 That's -- I haven't gone into the specific
2 Ordinance. I would defer to the Zoning
3 Administrator on that or the County Board, but I
4 really believe that we can't just be extending
5 it out for three years. Two years, I believe,
6 on a project like this, or most projects, is
7 substantial time.

8 MR. PRATT: I'll agree with you, on this
9 project two years is probably enough. They are
10 far enough into it and they have purchase
11 agreements in place for the power and so forth,
12 but on other ones it may not apply, but I can
13 give you the two years on this one.

14 JUDGE SLAVIN: Any other Board member wish
15 to address it?

16 MR. FORSTER: I think it should be three
17 years, simply because the supply chain on
18 everything that we manufacture is a problem
19 today, and I just think, first of all, if I were
20 them, I wouldn't have ordered them yet. I would
21 have planned to order them, but with everything
22 that's going on, I just think -- they are
23 probably going to change out all of the wind
24 towers in Texas right now, so -- which has more

1 wind towers than anyplace else.

2 So I -- I think I would like to stay with
3 the three years just because of supply chain
4 programs.

5 JUDGE SLAVIN: Any other Board member?

6 MR. PRATT: Can I speak again, Judge?

7 JUDGE SLAVIN: Oh, yeah.

8 MR. PRATT: Bruce makes a good argument.
9 With COVID, that is -- these are kind of unusual
10 times. And this company has a good track record
11 in our county, so I don't think there's a lot of
12 risk involved in granting the three years for
13 them.

14 MR. HUGHES: I just don't like -- and I
15 know we have already set some of that in
16 precedence, but I think that after two years
17 there should be some accountability to have to
18 come back to the County to explain why it isn't
19 substantially underway. And I repeat, this is
20 not a matter of completed; it's substantially
21 underway.

22 So if they -- you know, even if it's a
23 supply chain thing, and it takes them a year
24 from now, if, once the County approves it, it

1 takes them a year to get those -- to get those
2 tower -- excuse me, those nacelles and turbines,
3 they've still got more than adequate time to be
4 substantially underway.

5 And I would -- and I think that they need
6 to be accountable to why they are not. You
7 know, I fully agree, COVID is a reasonable
8 situation and has affected supply chains, but
9 I -- I don't believe that we just stretch it out
10 that far. I just think there has to be some
11 accountability there.

12 JUDGE SLAVIN: Any other Board member?

13 (No verbal response.)

14 JUDGE SLAVIN: Seeing no indication of a
15 want to do so, I'm going to put the question.
16 The question being put is whether the Lee County
17 ZBA recommends to the Lee County Board that, if
18 BSW DevCo's WECS Special Use Petition under
19 consideration is allowed, it be granted a
20 one-year waiver beyond the one year required
21 under Section 10-2A-3 for the requested Special
22 Use to be established (substantially underway).

23 Adoption of this motion requires a vote by
24 the majority. The vote will be by voice. All

1 those in favor indicate by saying aye.
2 MR. HUGHES: Aye.
3 MR. BUHROW: Aye.
4 JUDGE SLAVIN: Those opposed by nay.
5 MR. FORSTER: Nay.
6 MR. BOTHE: Nay.
7 MR. PRATT: Nay.
8 JUDGE SLAVIN: Roll call, Ms. Clerk.
9 MS. HENKEL: Craig Buhrow?
10 MR. BUHROW: Aye.
11 MS. HENKEL: Glen Hughes?
12 MR. HUGHES: Aye.
13 MS. HENKEL: Gene Bothe?
14 MR. BOTHE: Nay.
15 MS. HENKEL: Mike Pratt?
16 MR. PRATT: If she's calling my name, I
17 can't hear her, Judge.
18 JUDGE SLAVIN: She is calling your name.
19 MR. PRATT: Nay.
20 MS. HENKEL: Bruce Forster?
21 MR. FORSTER: Nay.
22 (By voice vote two ayes, three
23 nays.)
24 JUDGE SLAVIN: Motion is defeated.

1 Okay, gentlemen, back to you.

2 MR. HUGHES: Okay. I have an additional
3 motion.

4 JUDGE SLAVIN: I'm all ears on that. Let
5 me get to the very end.

6 Yes, sir, Mr. Hughes.

7 MR. HUGHES: This is going to end up going
8 onto the next page pretty quick.

9 JUDGE SLAVIN: Oh, thanks. Yeah. Just a
10 minute. It's like it froze up.

11 All right. I have got a bit of a bold.

12 Okay.

13 MR. HUGHES: The Lee County ZBA recommends
14 to the Lee County Board that, if BSW DevCo's
15 Special Use Petition under consideration is
16 allowed, a condition of any permit granted be --

17 JUDGE SLAVIN: Let me do some copy-and-
18 pasting.

19 MR. HUGHES: Yes, I understand.

20 JUDGE SLAVIN: Okay.

21 MR. HUGHES: A condition of any permit
22 granted be that Petitioner provide a copy of the
23 response it receives from the Federal Aviation
24 Administration, parentheses FAA, closed

1 parentheses.

2 JUDGE SLAVIN: Can I just do FAA?

3 MR. HUGHES: Yeah, that's all right.

4 To its recent filing relative to the Big
5 Sky WECS to the Lee County Zoning Administrator.

6 JUDGE SLAVIN: Take a look, see if -- let
7 me get that down on the next page.

8 MR. HUGHES: I knew that would happen.

9 JUDGE SLAVIN: Yeah, you're right.

10 MR. HUGHES: Let's move -- get rid of some
11 of the "to"s.

12 JUDGE SLAVIN: Yeah.

13 MR. HUGHES: Recent filing relative for --
14 or recent filing for the Big Sky WECS. I think
15 we can get rid of the "relative" as well in
16 that. I'm trying to eliminate some of the
17 wordage.

18 JUDGE SLAVIN: Sure.

19 MR. HUGHES: Its recent filing for the Big
20 Sky WECS to the Lee County Zoning Administrator.

21 JUDGE SLAVIN: Does that look good?

22 MR. HUGHES: Yeah, it looks a little
23 better.

24 JUDGE SLAVIN: Do I hear a second?

1 MR. BOTHE: Second.

2 JUDGE SLAVIN: Hearing a second, the floor
3 is open for debate.

4 Mr. Hughes, your motion.

5 MR. HUGHES: It was indicated in the
6 application that they had filed recently with
7 the FAA what we have already noted earlier, that
8 we did not have any -- in the testimony, there
9 was no response at this time to the filing with
10 the FAA. Based on previous, I don't believe
11 that's going to be -- a previous hearing, I
12 don't necessarily believe it's going to be a
13 problem, but I do want the Zoning Administrator
14 to have a copy of the FAA's response to that
15 filing for the record, since it was not
16 available for testimony.

17 JUDGE SLAVIN: I just added "be that." Is
18 that okay?

19 MR. HUGHES: Sure.

20 JUDGE SLAVIN: Any other Board member wish
21 to address it?

22 (No verbal response.)

23 JUDGE SLAVIN: Okay. Seeing no
24 indication, I will put the question. The

1 question being put is whether the Lee County ZBA
2 recommends to the Lee County Board that, if BSW
3 DevCo's WECS Special Use Petition under
4 consideration is allowed, a condition of any
5 permit be that Petitioner provide a copy of the
6 response it receives from the FAA to its recent
7 filing for Big Sky WECS to the Lee County Zoning
8 Administrator.

9 Adoption of the motion requires a vote by
10 the majority. The vote will be by voice. All
11 those in favor indicate by saying aye.

12 (All those simultaneously
13 responded.)

14 JUDGE SLAVIN: Opposed by nay.

15 (No verbal response.)

16 JUDGE SLAVIN: Motion is adopted.

17 Next, gents.

18 MR. BUHROW: Judge.

19 MR. PRATT: Judge.

20 MR. BUHROW: Go ahead, Mike.

21 MR. PRATT: Well, I want to go back up to
22 84, Judge, before we go any further.

23 JUDGE SLAVIN: Well, okay. Fine.

24 MR. PRATT: The Lee County ZBA finds that

1 in the Petitioner's Agricultural Impact
2 Mitigation Agreement with the Illinois
3 Department of Agriculture, the execution of the
4 AIMA must be made as a condition of the Special
5 Use Permit Petitioner is requesting in this
6 petition. As used, AIMA refers to the
7 Agricultural Impact Mitigation Agreement dated
8 March 5th and 6th, 2019, entered as an exhibit,
9 Petitioner's Number 8, and any executed
10 amendments to that AIMA.

11 That's my motion.

12 JUDGE SLAVIN: Do I hear a second?

13 MR. BOTHE: Second.

14 JUDGE SLAVIN: Hearing a second, debate.

15 Anything you want to say about it,
16 Mr. Pratt?

17 MR. PRATT: Well, Glen was right, this has
18 been addressed ahead, but the key line of this
19 amendment -- motion is the last: any executed
20 amendments to that AIMA. An AIMA is only good
21 for four years. So it -- they may need to sign
22 another or extend the dates, and I just want to
23 make sure that that's stated clearly.

24 JUDGE SLAVIN: Any other Board member?

1 MR. HUGHES: Yeah, two things. One is
2 that it initially refers to the execution of the
3 AIMA, which the AIMA is already executed.

4 And secondly, is you stated, Mike, it's
5 good for four years. The time frame that we're
6 dealing with here for '19 would be until '23. I
7 guess from my standpoint -- and maybe because I
8 was looking at the fact that I was only looking
9 for an additional two years -- we would be
10 inside of that timeframe. Going out three, from
11 this point, yeah, it might put it to '24. So
12 any amendments might be appropriate in there,
13 but I think there's some changes in the wording,
14 and we might want to just focus on the executed
15 amendments, because the actual AIMA has already
16 been executed.

17 MR. PRATT: Yes, unless they go past the
18 four years, and then they will have to execute
19 an AIMA.

20 MR. HUGHES: Well, they have to execute
21 amendments, at least.

22 MR. PRATT: Yes, but in the second
23 sentence it says, they will have to have the
24 execution of an AIMA. So I'm not an attorney.

1 So either -- I'm open for suggestions, if you
2 have a suggestion.

3 MR. HUGHES: Let's see.

4 MR. PRATT: They still have to execute an
5 AIMA as a condition, and it is stated in here
6 that they have to do that. I like that fact, I
7 guess, as I read it again.

8 MR. HUGHES: Okay. I mean, I think the
9 execution point is moot. The execution of the
10 amendments is a separate thing that may not come
11 up until 2023. So, I mean, we can leave it
12 rather than trying to figure out some way of
13 rewording it.

14 But I understand your point. As I had
15 figured, it wasn't going to be relevant. But
16 would be providing for three years rather than
17 just two years on the extension, it could be
18 relevant. And so I'll accept at least the
19 executed amendments portion.

20 MR. PRATT: Okay. Very good. Thanks.

21 JUDGE SLAVIN: Any other debate?

22 (No verbal response.)

23 JUDGE SLAVIN: Seeing no indication of a
24 want or hearing any indication of a want to do

1 so, I'll put the question. The question being
2 put is whether the Lee County ZBA finds that in
3 the Petitioner's Agriculture Impact Mitigation
4 Agreement with the Illinois Department of
5 Agriculture, the execution of the AIMA must be
6 made as a condition of the Special Use Permit
7 Petitioner is requesting in this petition. As
8 used, AIMA refers to the Agricultural Impact
9 Mitigation Agreement dated March 5th and 6th,
10 2019, entered as an exhibit, Petitioner's Number
11 8, and any executed amendments to that AIMA.

12 Adoption of the motion requires a vote by
13 the majority. The vote will be by voice. All
14 those in favor indicate by saying aye.

15 (All those simultaneously
16 responded.)

17 JUDGE SLAVIN: Opposed by nay.

18 (No verbal response.)

19 JUDGE SLAVIN: Motion is adopted.

20 Okay, gentlemen, your pleasure.

21 MR. BUHROW: Judge, can we go back to 89?
22 I think we're going to have to include that one.
23 It's the one that had the --

24 MR. HUGHES: Yeah, it's right there.

1 MR. BUHROW: Okay. The Lee County ZBA
2 recommends to the Lee County Board, if BSW
3 DevCo's WECS Special Use Petition under
4 consideration is allowed, it be granted for a
5 two-year waiver beyond the one year required
6 under Section 10-25-3 for the requested use to
7 be established (substantially underway).

8 JUDGE SLAVIN: What did I do? Excuse me,
9 guys, while I solve my Word processing -- oh,
10 it's okay. Just numbered it oddly, that's all.
11 Excuse me while I'm talking to myself.

12 MR. HUGHES: Mike, what are you doing
13 there?

14 MR. PRATT: I'm in Mexico. They're
15 shooting at me.

16 JUDGE SLAVIN: All right. Mr. Pratt, I
17 think I have got it now.

18 MR. HUGHES: No, it's Mr. Buhrow.

19 JUDGE SLAVIN: Oh, Mr. Buhrow. I'm sorry.

20 MR. BUHROW: That's all right.

21 JUDGE SLAVIN: Take a look. I think I
22 have got it right now. It's 90 now.

23 MR. BUHROW: Yeah.

24 JUDGE SLAVIN: Because the other was

1 defeated.

2 MR. BUHROW: Yeah, I'm sure we're going to
3 have to get that included in the petition.

4 JUDGE SLAVIN: Take a look, make sure
5 that's what --

6 MR. BUHROW: Yeah, that's fine.

7 JUDGE SLAVIN: Do I hear a second?

8 MR. BOTHE: Second.

9 JUDGE SLAVIN: Moved and seconded. The
10 floor is open for debate.

11 Any comments you want to make, Mr. Buhrow?

12 MR. BUHROW: I think we have discussed it
13 already.

14 JUDGE SLAVIN: Any other Board member want
15 to go at it again?

16 MR. HUGHES: Already made my comment.

17 JUDGE SLAVIN: Seeing no indication of a
18 want to do so, I'll put the question. The
19 question being put is whether the Lee County ZBA
20 recommends to the Lee County Board that if BSW
21 DevCo's WECS Special Use Petition under
22 consideration is allowed, it be granted a
23 two-year waiver beyond the one year required
24 under Section 10-2A-3 for the requested Special

1 Use to be established (substantially underway).

2 Adoption of the motion requires a vote by
3 the majority. The vote will be by voice. All
4 those in favor indicate by saying aye.

5 (Buhrow, Forster, Pratt, and
6 Bothe simultaneously responded.)

7 JUDGE SLAVIN: Opposed by nay.

8 MR. HUGHES: Nay.

9 JUDGE SLAVIN: Motion carries.

10 Okay, gentlemen.

11 MR. HUGHES: Your Honor.

12 JUDGE SLAVIN: Yes, sir.

13 MR. HUGHES: Unless anybody else has got
14 any other motions, I would move to the original
15 Number 90.

16 JUDGE SLAVIN: May I point out that you
17 may have -- your Chair points out, you may have
18 a conflict now with that Number 74? And this is
19 the thing I was going to bring up when we got to
20 this point. Way back, and I'm going to have to
21 find it, but remember there was a list of
22 turbines -- well, instead of me just talking,
23 let me see if --

24 MR. HUGHES: Yes. That would have been on

1 67.

2 MR. PRATT: Are you talking about Number
3 5?

4 JUDGE SLAVIN: I think -- yeah, I think
5 it's further back than 67. It was way back.

6 MR. PRATT: Yes, Number 5.

7 MR. HUGHES: In the original what was
8 approved from the previous -- yeah, right there.
9 Because it includes Number 74.

10 JUDGE SLAVIN: Let me read it. I can't --
11 I want to make sure.

12 Take a recess quick. Let's take a recess.
13 Five minutes. Break. Quarter after, by the
14 phone.

15 Off the record, Callie.

16 (A recess was taken at 8:09 p.m.
17 and proceedings resumed at
18 8:17 p.m.)

19 JUDGE SLAVIN: All right. Any further
20 motions beyond the final one that used to be --
21 well, I guess it still is 90. It didn't get
22 renumbered, but I can handle that.

23 MR. FORSTER: You can figure it out later.

24 JUDGE SLAVIN: Any other motions?

1 MR. HUGHES: Before we get to that, I'm
2 dead, Dee.

3 MS. DUFFY: You are?

4 MR. HUGHES: Yeah.

5 (A discussion was held off the
6 record.)

7 JUDGE SLAVIN: Now we're back on the
8 record. The mics are working, the Zoom is
9 working.

10 Other than the final motion, the floor is
11 open for any other motions before we conclude
12 with the last one.

13 All right. Somebody want to finish it up?

14 MR. HUGHES: Yes, sir.

15 We'll close this out with, After the
16 evidence and comments stage, your ZBA considered
17 its findings of facts and recommendations over
18 the course of two sessions, covering a little
19 over four-and-three-quarter hours.

20 JUDGE SLAVIN: Can I put February 16th and
21 17th --

22 MR. HUGHES: Oh, yes.

23 JUDGE SLAVIN: -- 2021?

24 What did you say, four-and-a-half?

1 MR. HUGHES: Four-and-three-quarters.

2 JUDGE SLAVIN: Oh, my God. How about --

3 MR. HUGHES: No. Look at the clock. It's
4 not that much harder to put 4.75 than 4.5.

5 JUDGE SLAVIN: All right. Do I hear a
6 second?

7 MR. BOTHE: Second.

8 (A discussion was held off
9 the record.)

10 JUDGE SLAVIN: Do I hear a second?

11 MR. BOTHE: Second.

12 JUDGE SLAVIN: Any further comment? Your
13 motion, Mr. Hughes.

14 MR. HUGHES: No. I think we have had
15 enough.

16 JUDGE SLAVIN: Yeah, I think so.

17 Any other Board member?

18 (No verbal response.)

19 JUDGE SLAVIN: All right. Seeing none, I
20 will put the question. The question being put
21 is whether the Lee County Board finds that,
22 After the evidence and comments stage, your ZBA
23 considered its findings of facts and
24 recommendations over the course of two sessions,

1 February 16 and February 17, 2021, covering a
2 little over 4 hours and 46 minutes in total.

3 MR. FORSTER: And change.

4 JUDGE SLAVIN: Adoption of the motion
5 requires a vote by the majority. The vote will
6 be by voice. All those in favor indicate by
7 saying aye.

8 (All those simultaneously
9 responded.)

10 JUDGE SLAVIN: Opposed by nay.

11 (No verbal response.)

12 JUDGE SLAVIN: Motion is adopted.

13 Anything else for the good of the order?

14 (No verbal response.)

15 JUDGE SLAVIN: Chair Forster, if you would
16 like to take order and continue this whenever
17 you do.

18 MR. FORSTER: Whatever I do. We'd like
19 to --

20 MS. DUFFY: It will go before the Board
21 March 18th.

22 MR. FORSTER: It will go before the Board
23 on March 18th. And we need to --

24 MR. HUGHES: Recess.

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MR. FORSTER: -- recess our meeting until
after the County Board meeting.

MR. BUHROW: So moved.

MR. FORSTER: Make a motion.

Do we have a second?

MR. HUGHES: Second.

MR. BOTHE: Second.

MR. FORSTER: Any discussion?

(No verbal response.)

MR. FORSTER: All in favor say aye.

(All those simultaneously

responded.)

MR. FORSTER: All opposed.

(No verbal response.)

MR. FORSTER: Meeting recessed.

(The hearing was concluded at

8:21 p.m.)

1 On this 17th day of January, A.D., 2021, I
2 do signify that the foregoing testimony was given
3 before the Lee County Zoning Board of Appeals.
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8 Bruce Forster, Chairman
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12 Dee Duffy,
13 Zoning Enforcement Officer
14

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