

1 APPEARANCES:

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1 MR. FORSTER: Okay. The next petition is
2 Petition 21 P 1563, the Petitioner, BSW DevCo,
3 LLC. Permanent parcel found on file. Located
4 in East Grove and May Townships.

5 The Petitioner is requesting a Special Use
6 zoning for the repower of a wind farm.

7 At this time I would like to have a motion
8 to turn the meeting over to our Facilitator,
9 Judge Slavin.

10 MR. BOTHE: So moved.

11 MR. HUGHES: Second.

12 MR. FORSTER: Gene made the motion; then
13 Glen seconded.

14 No discussion. All in favor say aye.

15 (All those simultaneously
16 responded.)

17 MR. FORSTER: Motion carries.

18 It's all yours.

19 JUDGE SLAVIN: Thank you, Mr. Chairman,
20 members of the Lee County ZBA.

21 First of all, I will note that under the
22 current mitigation protocols of the Illinois
23 Department of Public Health, we are allowed to
24 have 50 members in the meeting room. I will

1 note that at the moment there are six Board
2 members: Mr. Forster, Mr. Buhrow, Mr. Bothe,
3 Mr. Pratt, Mr. Meyer, and Mr. Hughes; our fine
4 Zoning Officer, Ms. Duffy; the astute State's
5 Attorney, Charley Boonstra; the new right-hand
6 Assistant Zoning Officer, Alice; the court
7 reporter; and himself. Making one, two, three,
8 four, five, six -- nine -- oop, Dave Streicker,
9 representing the Petitioner. Six, nine -- 12.
10 12 people.

11 And, Alice, one on Zoom?

12 MS. HENKEL: We have three on Zoom.

13 JUDGE SLAVIN: Okay. I only see one.

14 MS. HENKEL: We have -- I know one for
15 sure is with the project, Michael
16 Speerschneider, and --

17 JUDGE SLAVIN: Andrew de Pass.

18 MS. HENKEL: Okay.

19 JUDGE SLAVIN: Three folks appearing on
20 Zoom.

21 All right. I hope everyone's healthy,
22 remaining safe.

23 As you probably know, but I will say
24 again, my name is Tim Slavin. I'm a retired

1 circuit judge engaged as an independent
2 contractor to what is called facilitate this
3 hearing. I have no adjudicatory
4 responsibilities. I am not for or against any
5 particular position. I am a neutral. I am
6 here, hopefully, however, to add some
7 organization, efficiency and flow to these
8 proceedings.

9 This is BSW DevCo, LLC's, latest petition,
10 Lee County 21 P 1563, for a Special Use Permit
11 to what is called, in the vernacular, repower a
12 proposed wind energy conversion system in East
13 Grove and May Townships here in Lee County.

14 As shown by the certificate of
15 publication, notice of this hearing was
16 published in the Dixon Telegraph and the Amboy
17 News, both on April 21st of this year. Due
18 diligence notices to property owners adjacent to
19 the boundary of the existing project footprint
20 have also been provided.

21 First of all, hoping you understand, I
22 suspect that what is left of tonight's opening
23 session will be taken up by this presentation,
24 some organizational matters as we set some

1 ground -- and ground rules.

2 Initially, because of the unique
3 circumstances visited upon us courtesy of
4 COVID-19, Region 1, which includes Lee County,
5 has moved into Phase 4 of the Department of
6 Public Health's Restore Illinois Resurgence
7 Plan. Accordingly, this hearing room's capacity
8 has now been raised to 50 total people, but all
9 should continue to wear masks except when
10 speaking.

11 In addition to this former courtroom,
12 there are spaces in the rear former jury room
13 which can accommodate another 13 people who can
14 watch, listen and participate on the Zoom set up
15 in there. I hope this all helps everyone feel
16 medically comfortable. And, importantly, the
17 meaningful upshot of all this is that 63 people
18 can still be in this building and comply with
19 the present restrictions.

20 Then, of course, an unlimited number of
21 folks will be able to participate on the Zoom
22 platform or watch and listen on YouTube from
23 more remote locations like their homes or
24 businesses.

1 Dee Duffy has gone to extraordinary
2 lengths to advertise and post the Zoom entry and
3 YouTube viewing information, but it never hurts
4 to repeat those things. The Zoom meeting ID is
5 915-3923-9154, and the password is 209840. That
6 meeting ID and password will continue to remain
7 the same throughout the course of this hearing.

8 Accordingly, if you're not with us in the
9 building tonight, you can always join us during
10 future sessions on either the -- you can
11 participate on Zoom or view the proceedings on
12 YouTube. The Zoom platform is interactive. One
13 may not only see and hear what is taking place,
14 but, when appropriate stages come, one may ask a
15 witness questions, one may call a witness him or
16 herself, one may testify, and one may give a
17 closing comment.

18 As to YouTube, on your computer or cell
19 phone, use your browser, go to www.youtube.com.
20 In the search bar, type "Lee County IL," I-L,
21 short for Illinois, "Zoning Board of Appeals."
22 No need to be concerned with upper- or lowercase
23 letters. That should bring up a list of Lee
24 County ZBA YouTubes. You can input and select

1 the date and, whala, you should be seeing us
2 here in the hearing room. However, please be
3 advised that the YouTube feed will, because of
4 those ubiquitous cyberspace thingies, have a
5 short realtime delay.

6 In case you're not a techno geek, for
7 assistance with any of these things, you may
8 call 815.973.3449, Ms. Duffy's technical
9 assistance line.

10 I'm sure we all appreciate the protocols
11 developed by this incredibly hardworking
12 Dee Duffy and the expertise of Lee County's IT
13 department to allow these proceedings to even
14 take place, particularly with so much
15 accommodation given to the circumstances.

16 Okay. Now, for a bit more substance. As
17 I have eluded, there are two groups of attendees
18 at this Zoning Board of Appeals hearing as it
19 moves forward. One, I have already eluded to,
20 is necessaries. These are people who must
21 attend this hearing in person. They consist of
22 your hardworking, practically-volunteer Zoning
23 Board of Appeals members; your Zoning Officer,
24 Dee Duffy; our expert Assistant Zoning Officer

1 and IT tech, Alice Henkel; your astute State's
2 Attorney, Charley Boonstra; Petitioner's
3 attorney, Dave Streicker; a few of his client's
4 representatives; a witness; himself; and hardly,
5 but not least, our hardworking and skilled court
6 reporter, Callie.

7 The other group I will call Interested
8 Parties. These are those of you folks who are
9 with us either in building or more remotely on
10 the Zoom video or teleconferencing platform or
11 viewing and listening to the proceedings on
12 YouTube because you simply want to observe your
13 county government at work or, beyond that, you
14 have a particular interest in these proceedings.

15 The next process I will try to explain is
16 the methodology for --

17 MR. BOTHE: Power went off.

18 JUDGE SLAVIN: Turning on the mic.

19 MR. BOTHE: They all went down.

20 MR. FORSTER: They all went bye-bye at the
21 same time.

22 MS. HENKEL: What is your number?

23 JUDGE SLAVIN: 25.

24 MS. HENKEL: Try it again.

1 JUDGE SLAVIN: How about now?

2 The next process I will try to explain is
3 the methodology for these Interested Parties to
4 participate. I emphasize, please, please know
5 that everyone will have that opportunity, and I
6 want to provide the opportunity to participate
7 in a manner that is as orderly and as efficient
8 as possible. However, because of the necessary
9 electronic filtering, my usual process becomes
10 even more central, and I will flush out more of
11 this further in my presentation.

12 There are many possible reasons for an
13 Interested Party's appearance in this session or
14 further sessions, whether in person or remotely:

15 You could be a member of the public who is
16 joining us simply as a citizen and spectator;

17 You could be a member of the public who
18 wants to be heard. This does not necessarily
19 mean someone who is absolutely for or absolutely
20 against the requested Special Use, but someone
21 who wants to participate. If you are such a
22 person, you will fall into any one or more three
23 subcategories:

24 One, you want to give testimony. This

1 means you desire, under oath, to have you or a
2 witness of your calling testify to facts
3 relevant to the Board's eventual decision. Such
4 is not the time to describe your feelings or
5 announce your opinion, but to aver facts, and
6 you are subject to cross-examination. Everyone
7 who so wishes to testify will be given one
8 opportunity to do so.

9 Two, you could -- you may want to be able
10 to cross-examine witnesses. But, please, this
11 is just the time to ask questions of a
12 particular witness, not to argue with him or
13 her. Everyone wishing to cross-examine will be
14 given one opportunity to cross-examine each and
15 every witness.

16 Or you may be here just because you want
17 to make a closing statement or a public comment.
18 This is your opportunity to give a speech, to
19 tell the Board how you feel or give them your
20 opinion based on the facts adduced during the
21 whole hearing process as to what their decisions
22 should be.

23 During this closing statement or speech
24 stage, one cannot allege new facts because, when

1 one thinks about it, the reason for this is
2 simple, the two most important parts of adducing
3 the truth of matters at a hearing are missing
4 during a speech or public comment. The speaker
5 is not under oath, nor is he or she subject to
6 cross-examination. Everyone so wishing to give
7 a closing statement will be given one
8 opportunity to do so.

9 For those of you joining us on the Zoom
10 platform this evening or in the future, that
11 interactive software allows an Interested Party
12 to indicate the desire when the time comes to
13 ask questions of a witness, to present one's own
14 evidence, to testify oneself, or to give a
15 closing statement or public comment.

16 So when I indicate the time has come to
17 begin one of those Interested Parties stages, I
18 will ask for participation from the Zoomers,
19 whether here in the Old Courthouse, in the back
20 jury room, at home, or in another remote
21 location. If one is videoconferencing, simply
22 click on the icon at the bottom center of the
23 Zoom screen labeled "Participants," and from
24 that option, the options that then appear, click

1 "Raise Hand." We will see a hand raised on the
2 screen here in the courtroom.

3 If one is remotely teleconferencing while
4 remaining connected, one hits the star -- that
5 means you're videoconferencing but you're just
6 on your cell phone -- one hits the star, or the
7 asterisk symbol, and then the Arabic numeral
8 number nine on your phone; so star nine. Either
9 way, we should then see any raised hands and I
10 will call on each raised hand.

11 However, I don't think we will be able to
12 do so on a first-raised, first-come basis. So
13 calling on the raised hands will probably be
14 done more randomly, referring by name, email
15 address or the last four digits of a phone
16 number that appear on our display.

17 Written communications sent in advance of
18 this hearing or any written material intended as
19 something for the Board to consider is subject
20 to Board Rule Article 5, Section 12, that eight
21 copies be provided. Any communications received
22 that do not comply with this requirement may not
23 be considered by the Board.

24 I will now review the chronological

1 progress of the hearing. I know that the
2 narration that follows is boring and tedious.
3 But, please, reciting is for everyone's benefit,
4 to help you feel comfortable and not worry that
5 you will not have a fair and complete
6 opportunity to participate, but, at the same
7 time, to alert you when three distinct
8 opportunity forms of participation will present.

9 The Applicant has the burden of initially
10 going forward. Accordingly, its agent or
11 attorney, probably Mr. Streicker, may first make
12 opening remarks. Then the Applicant presents
13 evidence, one witness or a document at a time.
14 I will place each witness under oath or
15 affirmation. After each Applicant witness, the
16 State's Attorney, the Zoning Officer, members of
17 the ZBA, and then Interested Parties, both on
18 site and remotely, have the opportunity to
19 cross-examine each one of these witness. And,
20 please, once again, this is just the time for
21 questions directed to the witness testifying.

22 After the Applicant's evidence, the Zoning
23 Officer has the opportunity to present any
24 witnesses or documents she chooses. After each

1 Zoning Officer witness, the State's Attorney,
2 the Zoning Officer, members of the ZBA first and
3 then Interested Parties, both on site and
4 remote, have the opportunity to cross-examine
5 her witnesses. And, again, this is just the
6 time for questions.

7 After the Applicant and Zoning Officer
8 have presented their evidence, then Interested
9 Parties may present their evidence, one witness,
10 including themselves, or document at a time. I
11 will place each such witness under oath or
12 affirmation. After each Interested Party
13 witness, the Applicant, the State's Attorney,
14 the Zoning Officer, members of the ZBA and other
15 Interested Parties have the opportunity to
16 cross-examine each of those Interested Party
17 witnesses.

18 The Applicant may again offer rebuttal
19 witnesses or documents, one at a time. If they
20 are witnesses, they can be then cross-examined
21 in similar fashion.

22 If the Applicant does present rebuttal
23 witnesses, then the Interested Parties may
24 present surrebuttal witnesses, one at a time,

1 and they will be cross-examined in the same
2 manner I have described.

3 Finally, first the Applicant is given an
4 opportunity for closing remarks, and then any
5 Interested Parties will be given an opportunity
6 for closing statements, public comments, or
7 speeches, whichever term you prefer. They are
8 all the same thing.

9 There are some sub rules, after which I
10 promise I will be finished boring you further.
11 As you may have heard, each session, except
12 obviously tonight, has a time limit under the
13 Board's Rules of two and a half hours. However,
14 we certainly don't want to cut anybody off right
15 in the middle of something. So I will certainly
16 make a reasonable effort to let someone finish a
17 particular stage when the time limit has been
18 reached; or if there is very little time
19 remaining at the end of a stage, I may simply
20 continue the session rather than starting on
21 another stage.

22 I also have, for everyone's benefit, the
23 discretion to call for short recesses during an
24 evening.

1 Under the Zoning Board's Rules, I have the
2 duty to rule on the admissibility of evidence.
3 While the strict judicial rules of evidence do
4 not apply, I will exercise some equitable
5 control of what is being presented with or
6 without an objection.

7 We do, and we will continue to have, a
8 court reporter taking down what is said during
9 these proceedings. I ask all to be mindful of
10 her job. She cannot take down two people
11 talking at once, she cannot take down nodding
12 heads or gestures. And while I happen to know
13 she's very skilled, there is a limit to how fast
14 a person can talk, including me, and expect her
15 to keep up.

16 I do ask, please, for civility and
17 decorum. This is certainly a public forum, but
18 please be respectful of all who consider it
19 important enough to be here. I ask all to
20 refrain from displays of approval or
21 disapproval. And, as now with all public
22 gatherings, I request that during the
23 proceedings you either turn your cell phones off
24 or put them on silent.

1 Lastly, your Zoning Board of Appeals,
2 these fine, hardworking and practically-
3 volunteer gentlemen, act as finders of fact,
4 much akin to a jury in their role. Their
5 decisions during the last stage of the
6 proceedings, findings of fact, recommendations,
7 are based on the sworn testimony, admitted
8 exhibits, and closing statements they receive
9 during the hearing process.

10 They are your friends, your neighbors, and
11 fellow citizens of Lee County. So please
12 appreciate and respect their role as we move
13 through the days and weeks ahead. I ask you not
14 to put them in a compromised position by
15 lobbying them or having extra-hearing
16 conversations or correspondence until the entire
17 hearing, including their decisions, have been
18 completed. In fact, they have been instructed
19 to avoid these appearances of impropriety by
20 politely telling an Interested Party something
21 like, I'm sorry, I'm not allowed to discuss the
22 matter until the ZBA's work of finding of facts
23 and recommendations is complete.

24 Thank you for your understanding in all

1 these regards.

2 All right. That is over, let's,
3 gentlemen, talk about the next hearing nights.

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

6 JUDGE SLAVIN: So that leaves three
7 available: May 11, May 17, and June 10. We'll
8 leave it at that for now and we'll see how
9 things progress.

10 The -- there's not as much pressure on
11 these because the similar hearing for the same
12 project is going on in Bureau County, and that
13 hearing in Bureau is not starting until July
14 15th. Although I prefer not to have them both
15 going at the same time, at least there's no
16 pressure to have it -- because Bureau won't be
17 over until probably the first part of August.
18 So we have got some time.

19 All right. Mr. Streicker, did you plan on
20 giving an opening statement tonight or not?

21 MR. STREICKER: Judge, I would leave that
22 discretion to the ZBA. I am prepared to give
23 approximately --

24 MR. HUGHES: They're all dead.

1 JUDGE SLAVIN: Except mine. Well, go
2 ahead. She can hear you.

3 MR. STREICKER: I said, I am ready to give
4 an opening statement of approximately five
5 minutes. I am happy to -- we are going to
6 continue the hearing, I could give the opening
7 statement in advance of presenting a witness at
8 the next night.

9 JUDGE SLAVIN: Let's do that. You guys
10 have had enough.

11 Okay. So we'll recess until Tuesday, the
12 11th, at 6 -- gentlemen, do you like that time?

13 MR. PRATT: No.

14 MR. HUGHES: No. We're getting into ag,
15 planting season.

16 JUDGE SLAVIN: Ah, okay. So no?

17 MR. PRATT: Start at 9.

18 JUDGE SLAVIN: Is 7 okay with everybody?

19 (All answered simultaneously in
20 the affirmative.)

21 JUDGE SLAVIN: Will you just do me the
22 favor of letting me know when you feel like we
23 can go back to the 6, depending on how planting
24 goes for everybody?

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MR. PRATT: November.

MR. BOTHE: Yeah, November.

JUDGE SLAVIN: Or never, okay.

7 o'clock on the 11th.

(The hearing was recessed at
9:58 p.m.)

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On this 6th day of May, A.D., 2021, I do
signify that the foregoing testimony was given
before the Lee County Zoning Board of Appeals.

Bruce Forster, Chairman

Dee Duffy,
Zoning Enforcement Officer

Callie S. Bodmer

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