

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

KUSE SOLAR FARM, LLC,)
)
Plaintiff,)
)
vs.) CASE NO.: 2024 MR 100
)
COUNTY OF WILL, an Illinois municipal corporation)
and KATIE DEANE-SCHLOTTMAN, JOE)
VANDUYNE, JUDY OGALLA, FRANKIE PRETZEL,)
DANIEL J. BUTLER, SHERRY NEWQUIST, STEVE)
BALICH, JIM RICHMOND, ANNETTE PARKER,)
SHERRY WILLIAMS, JANET DIAZ, DENISE)
WINFREY, NATALIE COLEMAN, VINCE LOGAN,)
MICA FREEMAN, MARK V. REVIS, RAQUEL)
MITCHELL, DESTINEE ORTIZ, JULIE)
BERKOWICZ, META MUELLER, ELNALYN)
COSTA, JAQCQUELINE TRAYNERE, all in their)
representative capacity as County Board Members,)
)
Defendants.)

BRIEF IN SUPPORT OF COMPLAINT

NOW COMES Plaintiff, KUSE SOLAR FARM, LLC, and for its Brief in Support of Complaint, states as follows:

I. SUMMARY

Plaintiff is an Illinois limited liability company that seeks to develop a 5-megawatt commercial solar energy facility on approximately 40 acres of agricultural land totaling 71.64 acres in unincorporated Will County (“Project”). In October 2023, Plaintiff completed an application to the County of Will (“County”) for a special use permit. The County Board voted to deny the application in violation of the Illinois Statewide Siting Act, 55 ILCS 5/5-12020 and the Will County Solar Ordinance. The Statewide Siting Act was enacted in January 2023 to streamline the approval of solar (and wind) projects in furtherance of the State’s clean energy goals. Under the Statewide Siting Act, counties: (1) must allow solar projects in agricultural

zoned areas; (2) cannot impose solar project standards that are more restrictive than the standards established in the Statewide Siting Act; and (3) **must approve** solar projects that meet the requirements of the Statewide Siting Act as well as a county's regulations imposed in accordance with the Statewide Siting Act. The County violated the Statewide Siting Act by denying the Project, even though the testimony showed that the conditions for approval were met.

II. STANDARD OF REVIEW

The Court has jurisdiction to review the decision of the County in regard to any special use application. *See, 55 ILCS 5/5-12012.1*. The review shall be subject to de novo judicial review as a legislative decision. *Id.* When reviewing the validity of a zoning ordinance, a trial court has to determine whether the ordinance is unreasonable or arbitrary and whether it bears a relation to public well being. *LaSalle National Bank v. County of Cook*, 12 Ill. 2d 40, 46-47 (1957). The parties have agreed to submit the record of the administrative process as the evidence in this case and forego the introduction of new testimony.

III. RELEVANT STATUTORY BACKGROUND

1. Illinois Enacted the Climate and Equitable Jobs Act

On September 15, 2021, Illinois enacted the Climate and Equitable Jobs Act ("CEJA") (P.A. 102-0662). CEJA is an energy law that made it the policy of Illinois to transition to 100% clean energy by 2050. *See 20 ILCS 3855/1-5(1.5)*.

2. Illinois Enacted the Statewide Siting Act

On January 27, 2023, Illinois enacted the Statewide Siting Act (P.A. 102-113), which amended Section 5-12020 of the Counties Code. The Statewide Siting Act established uniform objective standards for Counties to regulate the development of commercial solar energy facilities in Illinois. The requirements for the counties are summarized as follows:

(a) §5-12020(b) – Counties Cannot be More Restrictive Than the Statewide Siting Act.

Counties cannot “include requirements for . . . commercial solar energy facilities that are more restrictive than specified in the Act.”

(b) §5-12020(d) – Counties Must Amend Existing Ordinances.

“A county with an existing zoning ordinance in conflict with the Act[the Statewide Siting Act] shall amend that zoning ordinance to be in compliance with [the Statewide Siting Act] within 120 days after January 27, 2023.”

(c) §5-12020(g) – Counties Must Approve Compliant Solar Projects.

Commercial solar energy facilities “shall be approved if the request is in compliance with the standards and conditions imposed in [the Statewide Siting Act], the zoning ordinance adopted consistent with [the Counties Code], and the conditions imposed under State and federal statutes and regulations.”

(d) §5-12020(h) – Counties Must Allow Solar Projects in Agricultural Areas.

Counties cannot prohibit solar (and wind) energy projects within the county’s jurisdiction. If the county has a zoning ordinance, the county must allow solar energy projects (as permitted or special uses) within the agricultural and industrial zoning districts of the county.

(e) Counties Must Follow Objective Criteria.

(1) Counties cannot exceed the following setbacks for solar projects: 150 feet from non-participating residences and occupied community buildings; 50 feet from roads and non-participating property lines; and 0 feet (no setback) from internal participating property lines. (§5-12020(e)).

(2) Counties cannot require solar energy facilities to be less than 20 feet in height. (§5-12020(e)).

(3) Counties cannot require solar energy facilities to require noise less than the existing Illinois Pollution Control Board standards for noise. (§5-12020(f)).

(f) Counties May Adopt Other Specific Regulations.

Counties are expressly permitted to adopt regulations concerning these subjects: Vegetative screening (§5-12020(l)); Consultation with the Illinois Department of Natural Resources (“IDNR”) and US Fish and Wildlife Service recommendations (§5-12020(n)); Compliance with IDNR recommendations (§5-12020(o)); Consultation with State Historic Preservation Agency (§5-12020(q)); Vegetative management plans (§5-12020(r)); Pollinator friendly ground cover (§5-12020(r)).

3. Will County Adopts Solar Ordinance

On March 16, 2023, the County Board adopted Ordinance 23-70 to regulate solar (and wind) energy facilities in the County (“Solar Zoning Ordinance”) known as §155-9.245 of the Will County Zoning Ordinance. *See Exhibit “A”*. The Solar Zoning Ordinance allowed commercial solar energy facilities by special use. The Solar Zoning Ordinance sets forth objective criteria for solar projects in accordance with the Statewide Siting Act. *See Exhibit “A”*. Ordinance 23-70 also amended Section 155-16.40 of Will County Zoning Ordinance applicable to Special Use Permits. Section 155-16.40 was amended to add Section (H)(1)(a) creating a different process for the County Board to decide Special Use Permits for commercial solar facilities than for other Special Use Permits. Section (H)(1)(a) requires approval if the standards and conditions of the solar zoning ordinance and the conditions imposed under the State and Federal regulations are met. *See Exhibit “B”*.

4. Plaintiff Files an Application for a Special Use Permit

On October 25, 2023, the Will County Zoning staff determined that Plaintiff filed a complete application for a special use permit to develop the Project (“Application”). (R., pg. 199). County staff confirmed that the Application contained all required information under the

Statewide Siting Act and the Solar Ordinance and scheduled the application for hearing with the Will County Planning and Zoning Committee. (R., 199).

5. Hearing Process

A public hearing was held on November 21, 2023, by the Will County Planning and Zoning Committee. On December 12, 2023, the Will County Land Use Committee held a public meeting. On December 21, 2023, the County Board denied the Application. (R., Pg. 523).

6. Filing of the Complaint for Review

Plaintiff filed this action on March 14, 2024 seeking review of the County Board's decision and an order from the Court directing the County to approve the Application because it conforms to the requirements of the Statewide Siting Act.

IV. THE COUNTY'S DECISION VIOLATES STATE LAW AND COUNTY ORDINANCES, WAS ARBITRARY AND CAPRICIOUS AND SHOULD BE OVERTURNED.

1. The Application Satisfies the Requirements for Approval Under the Statewide Siting Act and Will County Ordinance.

The record consists of Plaintiff's application submittal, County Zoning Staff Report, the PZC hearing transcript and meeting minutes, the LUD Committee hearing transcript and meeting minutes and meeting minutes from the County Board meeting. The record shows that Plaintiff has demonstrated the projects meets the objective standards set forth in the Statewide Siting Act and the Solar Ordinance adopted by Will County. The Application contains a site plan demonstrating compliance with the setback standards and height requirements contained in Statewide Siting Act and the Will County Solar Ordinance, which was confirmed by staff in the Will County Staff Report. (R., pg. 199). The Staff Report confirms that the Application shows compliance with the height fence standard, noise standard, glare standard, FAA consultation clearance, security requirements, maintenance standard, Illinois Historical Preservation

clearance, IDNR consultation clearance, all of which are requirements of either the Statewide Siting Act or the County Solar Ordinance. (R, pg. 199-200, 210-211).

Will County Staff member Marguerite Kenny testified during the PZC hearing that Plaintiff submitted a complete application by County standards and the state statute. (R., pg. 366). Ms. Kenny further testified that this request does not appear to differ from any other request in terms of the criteria analysis and other approvals will be required from other agencies when developing the project. (R., pg. 369). The Staff Report states that if a solar project meets the requirements of the state act and County regulations, state law requires the county to grant approval of the project. (R., pg. 199). Ms. Kenny then testified that Staff was recommending approval of this special use with four conditions. (R., 371). Plaintiff's lawyer and representative testified during the PZC hearing and explained how the project met the standards contained in the Statewide Siting Act and the County Solar Ordinance as set forth in the Application. (R., 374-382). There was not testimony during the PZC hearing that the Application did not meet the standards set forth in the Statewide Siting Act or the County Solar Ordinance.

2. The County's Reasoning for Denial.

The record consists of the transcript and the meeting minutes from the Land Use & Development Committee of the County Board and the meeting minutes of the County Board meeting on December 21, 2023, at which time the County Board denied the project. (R., pg. 523). Unfortunately, there is no transcript of the County Board meeting. The County Board meeting minutes summarizes the discussion by the Board when it denied the special use permit. (R., pg. 520-523). The discussion focused on the individual Board Member's frustrations with the State Legislature in passing the Statewide Siting Act and the objections from area residents. Summary of the Board's discussion follows:

- (1) Board Member Balich stated **“Secondly, the state can make whatever law they want. The state can be challenged. It is our duty to protect our county and the municipalities. They can get the same problem. It’s really important that we say no to this garbage. We should be subservient to the state. If the State doesn’t like it, tell them to sue. (Record, pg. 523).**
- (2) Board Member Deane-Schlottman: **“I think as County Board members, it is our job to question the legislation that comes out of Springfield. If this is wrong for our citizens, then it is our job to push back regardless of what the state says. (R., pg. 523).**
- (3) Board Member Ogalla: **“If some legislation is passed during the lame duck session, that legislation is something that you should always be cautious of. They’re shoving it through at the last second, getting the support of members who are no longer (inaudible) a state legislator.” (R., pg. 523).**
- (4) Board Member Pretzel: **“...With all due respect to our Assistant State’s Attorney, and you know I hate to ever disagree with you, but when I hear you say the law requires you to vote yes on these, I am going to disagree. I think what you mean to say is you are supposed to vote yes and if you don’t there may be consequences. I am encouraging you all to vote no today on this one, because I don’t know how you can vote yes when you have people standing in front of us today saying they’re legitimately concerned about the water they give to their children, and bathe with and feed their pets with. I tend to side with the people that are saying they live 600 feet away from this 13,000-panel project and I’m worried about my well water. I am going to vote no, and I encourage you all to vote no. (R., pg. 522).**

(5) Board Member Butler: **“...If the people don’t want it, we should listen to them.”**

(R., pg. 520).

(6) Board Member Revis: **“I actually have supported these projects in the past, but out of respect for the Green Garden Township residents that have come here today. I’m going to do two things: the first one is our Legislative Committee; we all know that’s our committee that we produce a Legislative Agenda and try and make changes to state law. I’m going to try and find a way to return some autonomy to the county to decline these solar farms, especially when there are variables at play, such as the ones with this project. The second thing I am going to do, until we can get to that, is I am going to vote no today and I encourage everyone to do the same.**

The County Board made no attempt to discuss whether the application met the objective standards set forth by the Statewide Siting Act or the County Solar Zoning Ordinance that the County Board passed in March 2023. There is no testimony or evidence in the record showing that the project fails to meet any of the required standards.

Based on the quotes from the Board Members included above, it is clear that the denial was a protest vote by some of the County Board members that disagreed with the State Legislature passing a law that mandated passage of solar farms. Other Board Members based their decision on the fact that area residents did not want the project to be built, which is not one of the objective standards that the Statewide Siting Act or the County Solar Ordinance allows the Board to consider. The Board failed to even consider the merits of Plaintiff’s application and denied the project despite it meeting all the standards. The Board was even advised by Assistant State’s Attorney Tatroe that the Board was required to approve the special use permit if it met the standards in the statute. (R., 521). The Board disregarded that advise. By doing so, the

County Board has violated the Statewide Siting Act and the County Solar Ordinance by ignoring the mandate to approve the special use permit when it met the standards set forth in the Act and the County's own ordinance.

The Board has acted in an unreasonable and arbitrary and capricious manner. As a result, Plaintiff respectfully requests the Court find that the application met the standards of the Statewide Siting Act and the County Solar Ordinance and enter an order reversing the County Board's decision and directing the Board to pass an ordinance granting the special use permit for the project as required by the Statewide Siting Act and the County Solar Ordinance.

KUSE SOLAR FARM, LLC, Plaintiff,

By: _____


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§ 155-9.245 COMMERCIAL SOLAR ENERGY FACILITIES.

Commercial solar energy facilities may be approved as a special use (see § 155-16.40) in the A-1 zoning district and I-1, I-2, and I-3 Industrial zoning districts and are subject to compliance with the following regulations. (See § 155-10.10(F), Accessory solar energy systems for any solar energy system not applicable to commercial solar energy facilities.)

(A) *Definitions.*

(1) The terms **SUBJECT PROPERTY** and/or **SUBJECT PARCEL** as used herein shall mean and include all parcels. Whether contiguous or noncontiguous, which are identified on the preliminary site plan for the use of the commercial solar energy facility.

(2) **SOLAR ENERGY SYSTEMS** shall mean solar arrays or solar panels including mounting structures and inverters.

(B) *Height.* Buildings are subject to the height limits of the subject zoning district. Ground-mounted solar energy systems may not exceed 20 feet in height when oriented at maximum tilt unless waived by written consent by each affected non-participating property owner in accordance with 55 ILCS 5/5-12020 Counties Code Section (e).

(C) *Setbacks.*

(1) Buildings are subject to the setback regulations of the subject zoning district.

(2) Solar energy systems, excluding fences, are subject to the following setbacks:

(a) At least 50 feet from the nearest edge of public right-of-way unless waived by written consent by each affected non-participating property owner in accordance with 55 ILCS 5/5-12020 Counties Code Section (e);

(b) At least 50 feet from adjacent properties not included in the subject property as depicted in the site plan unless waived by written consent by each affected non-participating property owner in accordance with 55 ILCS 5/5-12020 Counties Code Section (e);

(c) At least 150 feet from the nearest point of the outside wall of a dwelling unit or occupied community building on any property not part of the subject property unless waived by written consent by each affected property owner in accordance with 55 ILCS 5/5-12020 Counties Code Section (e);

(d) District requirements apply to existing structures of the subject property, including homes, barns, sheds, or outbuildings;

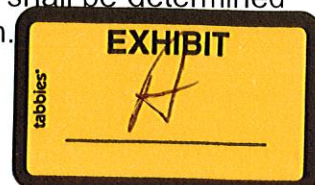
(e) Zero feet for side and rear yards on all properties that are adjacent and within the subject property.

(D) *Glare.* Solar energy systems must be designed, constructed and sited to minimize glare or reflections on adjacent properties and roadways and to not interfere with traffic, including air traffic, or otherwise create a safety hazard.

(E) *Soil and ground cover.*

(1) Topsoils shall not be removed from the site during development unless the removal is expressly approved as part of the special use permit.

(2) Perennial vegetative ground cover must be maintained or established in all areas of the solar energy systems. The seed mix selections for both temporary and long-term mixes shall be determined at the time of the pre-construction meeting as detailed in division (J) of this section.



(3) Perennial vegetative ground cover or farm crops must be maintained or established in required setbacks to prevent erosion and manage run-off.

(4) Stormwater calculations showing a net watershed benefit from the project shall be accepted in lieu of a stormwater management plan. To determine applicability of § 164.020(c)(4), new impervious surfaces shall be analyzed on a parcel-by-parcel basis.

(5) A Preliminary Maintenance Plan shall be approved by the County Board at the time of special use permit approval and shall be implemented during the term of the Special Use Permit. Any revisions to said plan may be approved in writing by the Zoning Administrator or the County Board.

(6) The use of earthen berms may be used by the applicant but are explicitly not required by the county as a condition of any Special Use Permit.

(F) *Security barrier.* Solar energy systems that are part of a commercial solar energy facility must be enclosed by perimeter security fencing or other county-approved barrier with a minimum height of at least six feet and no more than 25 feet unless waived by written consent by each affected non-participating property owner in accordance with 55 ILCS 5/5-12020 Counties Code Section (e). The use of barbed wire or razor wire that runs along the top of chain linked fences is permitted.

(G) *Approved solar components.* Electric system components must have a UL (Underwriters Laboratories Inc.), or similar nationally recognized testing laboratory listing.

(H) *Lighting.* Solar energy systems may not be permanently illuminated, unless required by the FAA or other applicable government agency or authority.

(I) *On-site utilities.* On-site power lines and utility connections must be placed underground unless otherwise expressly approved as part of the special use permit.

(J) *Pre-construction meeting.* Prior to submission of a site development and/or building permit application by the facility owner, a pre-construction meeting shall be held. The agencies/individuals invited to attend shall include Will County staff, elected officials, Will County Farm Bureau staff, Will/South Cook Soil & Water Conservation District, and other interested parties as determined by Land Use staff and/or the facility owner.

(K) *Conservation Plan.* The facility owner shall submit a conservation plan reviewed by the Will/South Cook Soil & Water Conservation District to the County of Will at the time of the site development and/or building permit application. The conservation plan shall address conformance with the Agricultural Impact Mitigation Agreement (AIMA), inspection schedule, soils, plantings/vegetation, drainage, and maintenance, Will/South Cook Soil & Water Conservation District reserves the right to request access to the site to conduct visual inspections and assess the condition of the native planting areas and soil erosion and sediment controls.

(L) *Agricultural Impact Mitigation Agreement (AIMA).* The facility owner shall execute an Agricultural Impact Mitigation Agreement (AIMA) with the Illinois Department of Agriculture. The facility owner shall file a copy of the signed AIMA to the County of Will at the time of the site development and/or building permit application. Financial assurance shall be provided to the county in accordance with the AIMA. Public Act (SB 2591).

(M) *Monitoring and maintenance.* The owner/operator of the commercial solar energy facility is responsible for keeping the facility in safe, sound and well-maintained condition, including painting, grounds keeping, structural repairs, internal access drives and the integrity of security measures.

(1) The owner/operator shall maintain the areas located within the lease area, not excluding the areas located outside the perimeter fence lines unless excluded in the lease agreement.

(2) Maintenance of grounds keeping shall include mowing, reseeding, and weed management practices. Mowing shall occur a minimum of five times, or once ground cover exceeds 13 inches in

height, starting the month of May and ending the month of October.

(N) *Avoidance and mitigation of damages to public infrastructure.*

(1) *Roads.* If a facility owner enters into a road use agreement with the Illinois Department of Transportation, a road district, or other unit of local government relating to a commercial solar energy facility, the road use agreement shall require the facility owner to be responsible for:

(a) The reasonable cost of improving roads used by the facility owner to construct the commercial solar energy facility, and

(b) The reasonable cost of repairing roads used by the facility owner during construction of the commercial solar energy facility so that those roads are in a condition that is safe for the driving public after the completion of the facility's construction.

Roadways improved in preparation for and during the construction of the commercial solar energy facility shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities.

The road use agreement shall not require the facility owner to pay costs, fees, or charges for road work that is not specifically and uniquely attributable to the construction of the commercial solar energy facility. Road-related fees, permit fees, or other charges imposed by the Illinois Department of Transportation, a road district, or other unit of local government under a road use agreement with the facility owner shall be reasonably related to the cost of administration of the road use agreement.

(2) Temporary access drives shall not require dedication of any additional right-of-way for the County Highway and this provision shall expressly control over Section 56.081(C)(1)(d) of the Will County Division of Transportation Permit and Access Control Regulations Ordinance ("Access Control Regulation"). Access drives for any permanent improvement associated with the special use shall meet the requirements of the Access Control Regulations.

(3) *Existing road conditions.* Prior to construction, the owner/operator must conduct a pre-construction survey, in coordination with the applicable highway authority to determine existing road conditions. The owner/operator is responsible for on-going road maintenance and dust-control measures resulting from the construction and installation of the commercial solar energy facility as identified by the applicable road authority during all phases of construction and installation.

(4) *Drainage system.* Prior to construction, the owner/operator is responsible for identifying the location of all subsurface drainage systems. The owner/operator is responsible for promptly repairing damage to drain tiles and other drainage systems that result from construction, operation, or maintenance of the commercial solar energy facility that negatively impact properties outside the subject property. Repair of subsurface drainage systems shall, at a minimum, be in compliance with the Agricultural Impact Mitigation Agreement (AIMA) as identified in division (Q) of this section.

(Q) *Submittal requirements.* All applications for special use permit approval must include the following information. The customary submittal requirements for special use permit applications are also detailed below. A commercial solar energy facility may submit one application for the entire subject property. This provision shall expressly control over the application filing requirements contained in § 155-16.40.

(1) Customary submittal requirements.

(a) Completed zoning case application.

(b) Copy of recorded deed(s).

(c) Electronic copy of legal description that is editable.

(d) Plat of survey (to scale) from a professional land surveyor. Survey must include a scale, north arrow and dimensions of the subject parcel.

(e) Affidavit of owner's consent (if applicable).

(f) Disclosure of beneficiaries (if applicable).

(g) Application fee.

(h) Completed Natural Resource Information Report by the Will-South Cook Soil & Water Conservation District.

(i) The results and recommendations from consultation with the Illinois Department of Natural Resources obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool.

(j) FAA Notice of No Flight Hazard and/or application to the FAA for Notice of Criteria Tool.

(k) The results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool.

(l) Evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts if any state-registered historic sites under the Illinois State Agency Historic Resources Preservation Act are present on-site or in the vicinity.

(m) Proof of compliance with noise regulations of the Illinois Pollution Control Board.

(2) Preliminary site plan identifying the following:

(a) Subject property including the property lines, setback lines, and right-of-way lines.

(b) Physical features including but not limited to roads, floodplain(s) (if applicable), wetland(s) (if applicable), existing and proposed building(s), solar panels and equipment (number, location, and spacing of solar panels/arrays), proposed locations of underground or overhead electric lines and utility poles, landscaping, and fencing.

(3) Identification of proposed construction and ongoing maintenance routes from the nearest arterial road as detailed on a map.

(4) Letter of Intent with the applicable road authority that acknowledges the proposed project and a preliminary agreement with the road district's requirements. Or certified letter with return receipt requested evidencing a good faith effort to contact the applicable road authority.

(5) Proposed product cut-sheets.

(6) Glare study report, if required.

(7) Visual screening report that includes the following:

(a) A map of homes within 300 feet of the facility,

(b) Locations and type of existing vegetation that provides screening of views of the facility,

(c) Locations of homes within the subject property and residential properties that have waived visual screening, and

(d) Topographic features that provide screening of the facility.

(8) Interconnection service agreement or evidence of filing required interconnection service applications with the electric utility.

(9) Preliminary operation and maintenance plan of the commercial solar energy facility, including measures for maintaining safe access to the installation, stormwater controls, landscaping maintenance, as well as general procedures for operation and maintenance of the installation.

(10) Proof of liability insurance.

(11) Preliminary emergency services plan, including but not limited to the project summary, electrical schematic and means of shutting down energy systems throughout the life of the installation.

(12) Redacted copies of all leases for the subject property.

(13) Notice of development letters. The owner/operator must mail letters to Will County Board representatives for the district in which the solar farm is to be built as well as to the respective township, Will/South Cook Soil & Water Conservation District, and to all municipalities located within 1.5 miles of the solar farm.

(14) Agricultural Impact Mitigation Agreement (AIMA). The facility owner shall execute an Agricultural Impact Mitigation Agreement (AIMA) with the Illinois Department of Agriculture. The facility owner shall file a copy of the signed AIMA to the County of Will prior to the public hearing. Financial assurance shall be provided to the county in accordance with the AIMA.

(P) *Prohibited systems.* Concentrated solar power systems are prohibited.

(Q) *Test solar energy systems.*

(1) For the purpose of gathering information, test solar energy systems may be erected without obtaining a special use permit.

(2) Test solar energy systems may not exceed a building footprint of greater than one acre (43,560 square feet) on a parcel of at least five acres.

(3) Test solar energy systems must be dismantled within three years of installation.

(4) Test solar energy systems must be set back from all property lines and road rights-of-way according to the current zoning district.

(5) Building permit applications for test solar energy systems must be accompanied by standard drawings of the structure. An engineering analysis of the test solar energy systems showing compliance with the adopted county building codes and certified by an Illinois licensed professional structural engineer must be submitted.

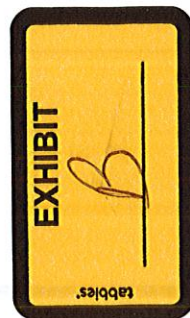
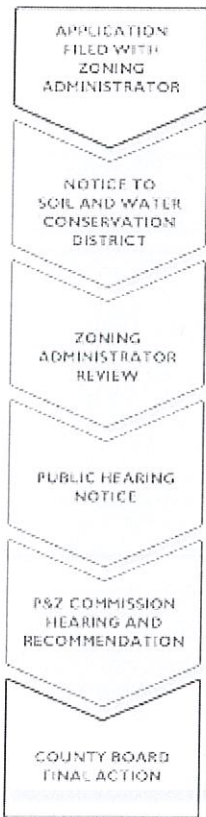
(Ord. 18-1, passed 1-18-2018; Ord. 22-226, passed 9-15-2022; Ord. 23-70, passed 3-16-2023)

§ 155-16.40 SPECIAL USE PERMITS.

(A) *Intent.* The special use permit approval procedure of this section is intended to provide a transparent, public review process for land uses that, because of their widely varying design and operational characteristics, require case-by-case review in order to determine whether they will be compatible with surrounding uses and development patterns.

(B) *Authority to file.* Special use permit applications may be filed by any person, firm, or corporation having a freehold interest, a possessory interest entitled to exclusive possession, or any exclusive possessory interest that is specifically enforceable on the property that is the subject of the proposed special use permit. Applications may be filed by the property owner (described above) or by the owner's authorized agent.

(C) *Application filing.* Complete applications for special use permits must be filed with the Zoning Administrator. A separate application must be made for each noncontiguous parcel of land.



(D) *Notice to Soil and Water Conservation District.* Applicants requesting approval of a special use permit must furnish a copy of the application to the Will/South Cook Soil and Water Conservation District. No hearing may proceed on the special use permit application until the Soil and Water Conservation District has submitted a written opinion on the application to the Planning and Zoning Commission or until at least 30 days have passed from the date of receipt of the application by the Soil and Water Conservation District, whichever occurs first.

(E) *Review and report—Zoning Administrator.* The Zoning Administrator must prepare a report and recommendation that evaluates the proposed special use in light of the standards of division (I) of this section. The report must be transmitted to the Planning and Zoning Commission before their public hearing on the proposed special use permit.

(F) *Notice of hearing.*

(1) *Newspaper notice.* Notice of the Planning and Zoning Commission's required public hearing on a special use permit application must be published in the newspaper in accordance with § 155-

16.10(D)(3).

(2) *Delivered notice.* Notice of the Planning and Zoning Commission's required public hearing on a special use permit application must be delivered to the subject property owner and all owners of property abutting the subject parcel, in accordance with § 155-16.10(D)(3). Notice must also be delivered to the clerk of each municipality whose corporate limits are within one and one-half miles of the land that is the subject of the special use permit application.

(3) *Posted notice.* Notice of the Planning and Zoning Commission's required public hearing on a special use permit application must be posted on the subject property in accordance with § 155-16.10(D)(3).

(G) *Hearing and recommendation—Planning and Zoning Commission.*

(1) The Planning and Zoning Commission must hold a public hearing on the special use permit application.

(2) Following the close of the hearing, the Planning and Zoning Commission must act by simple majority vote to recommend that the proposed special use permit be approved, approved with modifications and/or conditions, or denied and transmit its findings and recommendations to the County Board.

(H) *Final action—County Board.*

(1) County Board decision process.

(a) For special use zoning applications for commercial solar energy facilities (see § 155-9.245) and commercial wind energy facilities (see § 155-9.260), the County Board shall, within 30 days after the completion of the Public Hearing, approve the request if the standards and conditions of the zoning ordinance and the conditions imposed under state and federal statutes and regulations are met.

(b) For all other special use zoning applications.

1. Upon receipt of the Planning and Zoning Commission's findings and recommendation, the County Board may act to approve the proposed special use permit application, approve the special use permit with conditions and/or modifications or deny the special use permit.

2. The County Board may also return the application to the Planning and Zoning Commission for further consideration, together with a written explanation of the reasons for doing so.

(2) The County Board is authorized to impose such conditions and restrictions upon the premises benefitted by a special use permit as the Board determines to be necessary to ensure compliance with the standards of division (I) of this section, to reduce or minimize the effect of the special use upon other properties in the area, and to better carry out the general public and intent of this zoning ordinance.

(3) The County Board may act by a simple majority vote of the entire County Board.

~~(4) If no action is taken by the County Board within six months after receipt of the report of the Planning and Zoning Commission, the application is deemed to have been denied.~~

(I) *Review criteria and standards.* No special use permit may be recommended for approval or approved unless:

(1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public's health, safety, morals, comfort, or general welfare.

(2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property

values within the neighborhood.

(3) Establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

(4) Adequate utilities, access roads, drainage, and/or other necessary facilities have been or will be provided to serve the proposed use.

(5) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

(6) The special use in all other respects conforms to the applicable regulation of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Planning and Zoning Commission.

(J) *Lapse of approval.*

(1) An approved special use permit will lapse and have no further effect two years after it is approved by the County Board, unless:

- (a) A building permit or site development permit has been issued (if required);
- (b) A certificate of occupancy has been issued; or
- (c) The special use has been lawfully established.

(2) The County Board is authorized to extend the expiration period for good cause on up to four separate occasions, by up to 180 days each. Requests for extensions must be submitted to the Zoning Administrator before the special use permit expires. No hearings, notices or fees are required for extensions.

(3) A special use permit also lapses upon revocation of a building permit for violations of conditions of approval or upon expiration of a building permit to carry out the work authorized by the special use permit.

(4) If any special use is abandoned, or is discontinued for a continuous period of one year or more, the special use permit for such use is void, and such use may not be reestablished unless and until a new special use permit is obtained in accordance with the procedures of this section.

(K) *Successive applications.* In the event that a special use permit application is denied, no application may be approved for substantially the same use on substantially the same site for 12 months from the date of denial by the County Board, unless the County Board determines that conditions in the area have substantially changed.

(Ord. effective 10-1-2012; Ord. 18-1, passed 1-18-2018; Ord. 19-89, passed 4-18-2019; Ord. 22-226, passed 9-15-2022; Ord. 23-70, passed 3-16-2023)