

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL DISTRICT  
WILL COUNTY, ILLINOIS**

KUSE SOLAR FARM, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 24 MR 100  
 )  
 COUNTY OF WILL, )  
 )  
 Defendant. )

**NOTICE OF FILING**

To: James A. Rodriguez  
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PLEASE TAKE NOTICE that on December 10, 2024, Will County's **Brief in Opposition to Complaint for Judicial Review** was electronically filed with the Clerk of the Circuit Court, Will County, Illinois, via the Clerk's e-filing system.

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/s/ Martin W. McManaman

**CERTIFICATE OF SERVICE**

The undersigned certifies pursuant to 735 ILCS 5/1-109 that a copy of this notice and attached brief was served via email upon the above-listed counsel of record on the 10th day of December, 2024, before the hour of 5:00 p.m.

/s/ Amy Bockman

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL DISTRICT  
WILL COUNTY, ILLINOIS**

KUSE SOLAR FARM, LLC, )  
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 Plaintiff, )  
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 v. ) No. 24 MR 100  
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 COUNTY OF WILL, an Illinois municipal corporation, )  
 )  
 Defendant. )

**BRIEF IN OPPOSITION TO COMPLAINT FOR JUDICIAL REVIEW**

Defendant County of Will, through its undersigned attorneys, and for its Brief in Opposition to Plaintiff’s Complaint for Judicial Review, states as follows:

**Introduction**

Plaintiff submitted an application to Will County seeking a special use permit (“SUP”) to install and operate a commercial solar energy facility (the “Solar Facility”) in an unincorporated area of the County. During the permitting process, local officials and numerous residents raised concerns that the proposed Solar Facility conflicted with pre-existing building development plans and would adversely affect the public welfare. Based on these concerns, Will County denied the Plaintiff’s SUP application.

Plaintiff now seeks judicial review, contending that Will County’s decision is prohibited by a recent amendment to the zoning provisions of the Counties Code. Plaintiff’s lawsuit presents an issue of first impression as the judiciary has yet to interpret the statutory amendment codified at 55 ILCS 5/5-12020, which only became effective in January 2023. Plaintiff incorrectly contends that the amendment should be interpreted as eliminating Will County’s discretion to deny an SUP for a solar facility so long as certain specifications are met by the applicant.

Contrary to Plaintiff's contention, both the plain language of the statute, as amended, and the legislative history of the 2023 amendment, establish that Illinois counties retain substantial discretion in deciding whether to approve SUPs for solar facilities. While Section 5-12020 now forbids counties from excluding solar facilities altogether or imposing requirements that are more restrictive than the objective measures listed in that section, nothing in the amended provision precludes counties from continuing to consider the public welfare and orderly building development in deciding whether to approve or deny a particular solar facility SUP. Indeed, the legislative history of the 2023 amendment explicitly acknowledged that the statutory ceilings on objective specifications like setbacks and fences are not intended to constrain counties from considering community-specific impacts and concerns when making solar facility SUP decisions.

Will County's ordinances comply with Section 5-12020, and those ordinances were applied to Plaintiff without imposing any restrictions greater than those listed in the statute. Will County properly exercised its discretion to deny Plaintiff's SUP application based on concerns that the proposed Solar Facility conflicted with orderly building development in the area and was adverse to the public welfare. Thus, the denial of Plaintiff's SUP application not only was statutorily authorized, but also was supported by substantial evidence, and therefore should be upheld.

### **County Proceedings**

On September 8, 2023, Plaintiff submitted its application for a SUP to the Will County Land Use Department. (R. 001-009). On November 9, 2023, the Land Use Department issued a staff report finding that Plaintiff's SUP application was complete, and that Plaintiff's proposed Solar Facility met the objective requirements listed in 55 ILCS 5/5-12020, as well as Will County's Solar Ordinance, §155-9.245(B)-(N). (R. 0317-320). In the report, Land Use staff

opined that the proposed Solar Facility would not impede the normal and orderly development in the surrounding area. (R. 202). Land Use staff scheduled Plaintiff's SUP application for hearing in accordance with the County's Special Use Permit Ordinance, §155-16.40(F). (R. 321). After the staff report was issued, officials from Green Garden Township and the Village of Frankfort submitted letters opposing Plaintiff's SUP application on the grounds that the Solar Facility conflicted with the municipalities' respective formalized development plans. (R. 322-324).

A public hearing was held on November 21, 2023, by the Will County Planning and Zoning Commission. (R. 325-428). During the hearing, Michael Schwartz, the Village of Frankfort Community Development Director, objected to the Solar Facility, stating that the proposed location fell within an area that Frankfort had already designated for residential use in its 2019 long-range comprehensive land use plan. (R. 406-407). Green Garden Township Supervisor Don Murday also objected to the proposed location of the Solar Facility, pointing out that Green Garden also has a formalized land use plan which designates areas along Route 45 for commercial projects like the Solar Facility. (R. 412). In response to those objections, Plaintiff's representative, Askar Patel, conceded that the proposed location was outside the area that the municipalities had designated for commercial projects. (R. 418). In addition, several neighbors from the area objected to the proposed location of the Solar Facility, voicing concerns about health and safety, as well as the negative impact on property use and enjoyment. (R. 383-414). Following this testimony, the Planning and Zoning Commission voted unanimously (6 to 0) to deny Plaintiff's SUP application. (R. 353).

Plaintiff's application was then heard by the Will County Land Use Development Committee on December 12, 2023. (R. 429-513). Numerous members of the public spoke in opposition to the proposed project, including Mr. Schwartz from the Village of Frankfort. (R. 500-501). He reiterated that the proposed location directly conflicted with the Village's

formalized long-range plan, which designates the area for residential development. He described the desirability of the area for residential use, referencing the nearby Five Oaks subdivision, where homes range in value from \$600,000 to \$1.2 million. Mr. Schwartz also explained that Village's comprehensive land use plan provides more suitable locations for Plaintiff's project, because the plan includes nearly 6,000 acres of industrial land that could potentially accommodate a solar facility closer to the grid. (*Id.*) Later in the meeting, Will County Board Member Balich noted the potential risks to the environment and public health by pointing out Plaintiff's failure to provide Material Safety Data Sheet (MSDS) reports despite the acknowledgment that hazardous or toxic materials would be present within the Solar Facility. (R. 483). The meeting concluded with the Will County Land Use Development Committee voting (5 to 1) to deny Plaintiff's SUP application. (R. 448).

On December 21, 2023, the Will County Board held an open meeting at which Plaintiff's SUP application was heard. (R. 514-549). Like the earlier meetings, numerous members of the public expressed concerns about the proposed location of the project. (R. 518). Following the public comment portion of the meeting, the Will County Board members discussed concerns about proposed location, recognizing the community's opposition and the potential adverse effects on farmland and nearby residents. (R. 520-523). The County Board highlighted the need to respect local voices, ensure county autonomy to regulate such projects, and address issues like water safety and inadequate community engagement, with many members advocating a "no" vote on this specific project to protect local interests and preserve farmland. (*Id.*) Ultimately, the County Board voted (16 to 4) to deny Plaintiff's SUP application. (R. 523). This complaint for judicial review followed.

## Standard for Review

Plaintiff's request for judicial review of Will County's permitting decision arises under Section 5-12012.1 of the Counties Code, which provides in relevant part:

Any decision by the county board of any county...in regard to any petition or application for a special use...shall be subject to de novo judicial review as a legislative decision, regardless of whether the process in relation thereto is considered administrative for other purposes.

55 ILCS 5/5-12012.1(a). This type of "de novo judicial review" is different than the familiar *de novo* standard that general applies to appeals of purely legal issues like grants of summary judgment. *Millenium Maintenance Mgmt., Inc. v. County of Lake*, 384 Ill.App.3d 638, 653 (2d Dist. 2008). Instead, the question on review pursuant to 5-12012.1 is whether a rational basis existed for the county's permitting decision. *Millenium Maintenance Mgmt., Inc.*, 384 Ill.App.3d at 653.

## ARGUMENT

Plaintiff's request for review rests on misinterpretation of Section 5-12020. Plaintiff incorrectly contends that Section 5-12020 *mandates* Illinois counties to approve SUPs for any proposed solar facility that meets the objective measures listed in that section of the Counties Code. This interpretation is inconsistent with the plain language and legislative history of the 2023 amendments to Section 5-12020, which expressly establish that counties retain discretion in permitting decisions for solar facility projects. While the new version of Section 5-12020 sets ceilings on certain specifications that counties can require for solar facilities, it also authorizes counties to require compliance with other pre-existing sections of the Counties Code. Accordingly, it remains entirely proper for counties to consider factors set forth in Section 5-12001, which include orderly building development and the general welfare, when deciding whether to approve an SUP for a proposed solar facility project.

In the present case, Will County did not require any feature that was greater or more restrictive than the specifications listed in Section 5-12020. Instead, the record shows that Plaintiff's proposed Solar Facility conflicted with orderly building development and general welfare. As a result, it was entirely proper and correct for Will County to deny Plaintiff's SUP application, and that decision should be upheld.

**A. The 2023 amendment to Section 5-12020 does not obligate Illinois counties to approve a solar facility project simply because the project satisfies the objective measures listed in that provision.**

Plaintiff's argument that Will County was statutorily required to approve its SUP application is based on a misinterpretation of Section 5-12020. That statutory provision is properly interpreted as authorizing Illinois counties to exercise discretion in making permitting decisions on solar facility projects, so long as that discretion is not exercised in a manner that amounts to a blanket exclusion of such projects, or in a manner that imposes restrictions greater than the measures listed in the statute. This interpretation is compelled both by the plain language of Section 5-12020 as well as the legislative history of the 2023 legislative amendment to that provision.

**1. Under the plain language of Section 5-12020, Illinois counties continue to have discretion in permitting decisions even where the proposed solar project satisfies all objective specifications.**

The most fundamental rule of statutory construction is that a court must give effect to the intent of the legislature. *King v. First Capital Financial Services Corp.*, 215 Ill.2d 1, 26 (2005). The best indicator of legislative intent is the language used in the statute itself, and where possible, that language must be given its plain and ordinary meaning. *King*, 215 Ill.2d at 26. Here, the plain language of Section 5-12020 expressly acknowledges that permitting decisions for solar facilities depend on multiple factors, only one of which is the satisfaction of the

objective measures listed in the other subsections of Section 5-12020. Specifically, Section 5-12020(g) provides in relevant part:

A request for ... a special use permit for a ... commercial solar energy facility ... shall be approved if the request is in compliance with the standards and conditions imposed in this Act, the zoning ordinance adopted consistent with this Code, and the conditions imposed under State and federal statutes and regulations.

55 ILCS 5/5-12020(g). Thus, the statute explicitly recognizes that a county's permitting decision is not solely dependent on whether a proposed solar facility satisfies the specifications listed in the other subsections of Section 5-12020, but also requires other statutory provisions to be satisfied as well.

Section 5-12001 is one such statutory provision. That section expressly vests counties with discretion when making zoning decisions, providing in relevant part:

In all ordinances or resolutions passed under the authority of this Division, *due allowance shall be made for existing conditions, the conservation of property values, the directions of building development to the best advantage of the entire county,* and the uses to which property is devoted at the time of the enactment of any such ordinance or resolution.

55 ILCS 5/5-12001, ¶1 (italics added). The stated purpose of this discretion is to promote the general welfare. *Id.* Because Section 5-12020(g) expressly authorizes counties to require compliance with other statutory provisions in addition to Section 5-12020, it is proper for Will County to exercise discretion granted under Section 5-12001 for the purpose of deciding whether Plaintiff's proposed solar facility would impede orderly building development in the area and negatively affect the general welfare.

Plaintiff's interpretation of Section 5-12020 is wrong because it fails to account for subsection (g)'s reference to other statutory provisions. Instead of accounting for that statutory language, Plaintiff focuses solely on subsection (b) of the provision, which prohibits counties from establishing requirements more restrictive than those set forth in the other subsections of

Section 5-12020. The problem with Plaintiff's view is that none of the other subsections of Section 5-12020 limits (or even purports to limit) a county's consideration of orderly building development and general welfare.

To the contrary, as demonstrated above, subsection (g) expressly allows counties to require compliance with other statutory provisions, and Section 5-12001 specifically requires consideration of both orderly building development and general welfare. Thus, the correct understanding of Section 5-12020(b) is that it only prohibits requirements which conflict with limits that are actually specified elsewhere in Section 5-12020. *See Pembroke Env. Justice Coaliton v. Ill. Commerce Comm'n*, 2023 IL App (3d) 220108, ¶18 (statutes must be construed in a way that gives effect to every provision, avoiding interpretations that render parts of the statute superfluous). Plaintiff's proposed interpretation of subsection (b) violates this rule of statutory construction because it renders meaningless the language in subsection (g) that allows counties to require compliance with statutory provisions other than Section 5-12020.

**2. The legislative history confirms the legislature intended to preserve counties' discretion in permitting decisions for solar facilities notwithstanding the limits imposed by the 2023 amendment to Section 5-12020.**

The foregoing interpretation of Section 5-12020 is further confirmed by the legislative history of the 2023 amendment. *See Land v. Bd. of Education of City of Chicago*, 202 Ill.2d 414, 426 (2002) (courts may resolve questions concerning the meaning of statutory language by looking to the statute's legislative history). The legislative debates regarding the 2023 amendment<sup>1</sup> to Section 5-12020 demonstrate that the General Assembly was trying to strike a balance by imposing certain limits on local discretion without eliminating it altogether. Indeed, one of the main goals of the 2023 amendment was to prevent a county from adopting an

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<sup>1</sup> House Bill 4412 is the legislation which amended Section 5-12020 in 2023.

ordinance that either imposed an outright ban on all solar facilities, or imposed requirements that were so onerous as to amount to a *de facto* ban. However, in setting the various ceilings to accomplish that purpose, the legislature made clear that counties were keeping their traditional discretion over broader permitting considerations like orderly building development and general welfare.

For example, in the Illinois House of Representatives, the legislation sponsor, Rep. Gabel, explained that the amendments to Section 5-12020 were “necessary because over a dozen counties have enacted zoning ordinances that effectively ban wind energy projects ... and we’ve seen ... several counties do the same for solar.” (Excerpt of State of Illinois 102nd General Assembly House of Representatives Transcription Debate, January 10, 2023, p. 73, attached as Exhibit A). During the ensuing debate, other representatives specifically questioned whether the amendments would prohibit counties from exercising local control concerning solar facility projects, and strip counties’ authority to decide whether particular locations are suited for solar facilities. (Ex. A, pp. 76-77). Rep. Gabel answered “no” by stating:

the local control in fact is that the counties do ultimately have the say on zoning and... zoning wind and solar projects. They have the ultimate say on the Bill... the project still has to go through the Zoning Board of Appeals, the full county board, they have to receive a road use agreement, receive building permits from the county, and... they still have to abide by the agriculture impact mitigation agreements. (Ex. A, p. 77).

She then clarified the purpose of the various limits and measures set forth in the amended version of Section 5-12020, stating:

These are guardrails. There is just a... they [counties] can’t go below... they can’t go above. (*Id.*).

When asked to explain how local control was preserved, Rep. Gabel stated:

these permits have to be passed by the county organizations. It has to be passed by the Zoning Board of Appeals, the full county board. It has to receive a road use agreement and building permits from the county. (Ex. A, p. 78).

The debate in the Illinois Senate was nearly identical. There, the legislation’s sponsor, Sen. Cunningham, was asked whether the amendment would eliminate county discretion. Like his House counterpart, Sen. Cunningham answered “no” by stating:

This bill still allows for local input on permitting projects... What this bill does do, however, is place guardrails in place. What we’re trying to do is put in place workable rules that allow for local input, but do not allow for local authorities to put such stringent requirements in place, as to completely shut those areas off for development.

(Excerpt of State of Illinois 102nd General Assembly Senate Transcript, January 8, 2023, p. 11, attached as Exhibit B). Sen. Cunningham then explained the general purpose of the amendment:

We see there are a number of counties that have very reasonable zoning ordinances in effect, and we’ve seen development in those counties. There are others who have passed *de facto* bans of renewable [energy] development, and that’s what this bill is attempting to address. (Ex. B, p. 13).

In his closing remarks seeking support for the amendment, Sen Cunningham summarized the amendment as follows:

First of all, it will not create statewide siting require– statewide control of siting. As I mentioned, there will still be local input. Localities can still put ordinances in effect. Localities can still have those hearings that were mentioned. In fact, there’s language in the law talking about those – those hearings. That will still happen. **So local control will remain.**

Secondly, there are many states that completely, one-hundred percent, control siting. This bill does not do that. **This bill shares the – responsibility between counties and the State.** So I just wanted to make that clear. \* \* \*

These siting issues create a lot of controversy in – in places, as I say, completely understandable. But I think **we need to balance out these concerns.** And that’s what this bill tries to do, in a couple of different ways. First of all, **by maintaining the county permitting process** and it working in junction with statewide standards, instead of turning the entire thing over to a state agency. (Ex. B, p. 23) (emphasis added).

Thus, the legislative history confirms that Illinois counties retain discretion to deny SUP applications for solar facilities even where the proposed meets the standards listed in Section 5-12020. As a result, that statutory provision cannot be interpreted as mandating county approval

for a solar facility project simply because that particular project satisfies the specifications listed in Section 5-12020.

**B. Will County's denial of Plaintiff's SUP application was neither arbitrary nor unreasonable.**

The denial of a special use permit is a presumptively valid legislative decision, and the burden is on the party challenging the decision to show by clear and convincing evidence that the denial is arbitrary and unreasonable, and bears no substantial relation to the public health, safety, morals and general welfare. *LaSalle Nat'l Bank v. County of Cook*, 12 Ill.2d 40, 46 (1957). A decision to deny a special use permit is tantamount to a legislative decision that the permitted use is not in harmony with the general zoning plan and will adversely affect the neighborhood. *City of Chicago Heights v. Living Word Outreach Full Gospel Church & Ministries, Inc.*, 196 Ill.2d 1, 17 (2001).

Our Supreme Court has set forth several factors for the purpose of evaluating whether a permitting decision satisfies substantive due process, including:

- (1) the existing uses and zoning of the nearby property;
- (2) the extent to which property values are diminished by the particular zoning restrictions;
- (3) the extent to which the destruction of property values of plaintiff promotes the health, safety, morals or general welfare of the public;
- (4) the relative gain to the public as compared to the hardship imposed upon the individual property owners;
- (5) the suitability of the subject property for the zoned purposes;
- (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property;
- (7) the community's need for the proposed use;
- (8) whether there exists a comprehensive plan; and
- (9) whether the challenged permitting decision is in harmony with the comprehensive zoning plan.

*LaSalle Nat'l Bank*, 12 Ill.2d at 46-47; *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill.2d 370, 378 (1960).

Here, the record establishes that each of these factors weighs in favor of denying Plaintiff's SUP application. Plaintiff fails to point to any clear and convincing evidence showing that its Solar Facility aligns with the existing uses and plans for the proposed location, or that the County's decision is unrelated to public health, safety and general welfare. Instead, Plaintiff argues that the County's decision should be deemed invalid because various Board Members expressed frustration over a perceived loss of discretion under the amended version of Section 5-12020. Thus, Plaintiff fails to meet its burden, and the County's decision to deny the SUP application should be upheld.

**1. The existing uses and zoning of nearby property.**

The record shows that the proposed location of the Solar Facility is zoned for agricultural use. (R. 002). These properties are actively used for farming, including livestock and crop production, with families residing nearby. (R. 404). Installing a solar facility at the proposed location is incompatible with the agricultural and residential character of the area, as it would disrupt the existing landscape by cramming a commercial structure into an otherwise rural environment. As one neighbor succinctly stated: "I did not buy agricultural farmland to be next to a power plant." (R. 504). That same neighbor also noted that the LESA score for the proposed location was 236, which exceeds the threshold of 225 for retaining land for agricultural use. (*Id.*). Another neighbor voiced concerns about soil disruption, noting that chemical leakage from the Solar Facility could render the surrounding farmland toxic. (R. 510).

Moreover, the record shows that two municipalities – the Village of Frankfort and Green Garden Township – have formalized, long-range, comprehensive plans which envision future residential uses for the proposed location of Plaintiff's project. (R. 0323-0324). While the subject property is not yet being used in that capacity, there is no question that both long-range plans existed well before Plaintiff submitted its SUP application. Thus, the record amply demonstrates

that the proposed location of Plaintiff's project is not only inconsistent with existing uses of nearby properties, but also likely harmful to the continuation of those uses in the future.

**2. Diminution of property values.**

The record contains testimony from Will County residents indicating that the Solar Facility would likely diminish the value of nearby properties. For example, one neighbor cited a study by the Lawrence Berkeley National Laboratory, which found an average 3% decrease in property values for homes near solar farms established on previously agricultural land. (R. 508-509). Additionally, another neighbor raised concerns about the long-term consequences of the facility, asking: "Who will be here in 20 years to clean up the mess when these panels break down and become obsolete, leaving behind piles of hazardous industrial scrap and contaminated groundwater?" (R. 388). That testimony demonstrates the likelihood of reduced desirability of the area for prospective buyers, which, by definition, corresponds to reduced property values.

**3. Promotion of public health, safety, morals and general welfare.**

The record establishes the Solar Facility poses significant risks of harm to the health, safety and welfare of the surrounding area. Numerous neighbors voiced concerns about the risks to health and safety, including but not limited to long-term risks to drinking water from chemicals leaching into the soil and contaminating groundwater, which would impact families and livestock reliant on well water. (R. 502-503; R. 510). The local fire department informed several residents that they would be unable to handle a fire at the Solar Facility given the scale of power plants. (R. 385). These risks directly harm the agricultural community and jeopardize public health and welfare, and thereby establish that the generally intended benefits of renewable energy are outweighed by the health and safety risks of locating such a facility at the subject property.

**4. The relative gain to the public compared to the hardship imposed upon individual property owners.**

While renewable energy facilities are presumed to provide benefits to the public at large, the record here shows that those benefits are vastly outweighed by the hardship that the Solar Facility would impose on the surrounding area. For example, one neighbor summarized the harmful effects as follows: “The negative visual impact on our landscape, toxic chemicals and heavy metals leaching into our water wells, and the fire department has informed several residents that they wouldn’t be able to handle a fire at a facility of this scale.” (R. 385). Another neighbor criticized the proposed project, calling it “immoral” to sacrifice prime farmland for something “so potentially hazardous to the community.” (R. 411).

Notably, Plaintiff fails to point to any evidence showing how the proposed location would provide a public benefit that could not be realized if the Solar Facility was sited in the Route 45 corridor, as designated in Frankfort and Green Garden’s comprehensive plans. The lack of such evidence confirms that the hardships imposed by the Solar Facility are outweighed by the presumptive benefits of renewable energy, especially given the availability of nearby alternative locations which are better suited and specifically designated for such projects.

**5. The suitability of the property for the proposed use.**

The record makes clear that the proposed location is ill-suited for Plaintiff’s project. Historically, the property has been used for agricultural purposes and as stated above, several neighbors described how the Solar Facility would be incompatible with the surrounding farmland. (*See e.g.*, R. 504). Water runoff, soil erosion, and aesthetic degradation, as highlighted by several residents, threaten not only the viability of continued agricultural operations in the area, but also health and safety of the nearby residents. These risks confirming the property is unsuitable for the proposed special use.

**6. The length of time the property has been vacant.**

The record shows the subject property is not actively farmed, but has vegetation and the soils on site are considered prime for farmland. (R. 210). Nothing in record suggests the existing zoning is currently hindering productive use of the property, or diminishing its future use as projected by the Village of Frankfort and Green Garden Township.

**7. The community's need for the proposed use.**

As set forth above, the record overwhelming establishes there is no need for the Solar Facility at the proposed location. The comprehensive plans of the local municipalities specifically provide alternative locations for commercial projects like Plaintiff's proposed use. Thus, even presuming that renewable energy facilities are needed in general, the availability of alternative nearby locations for such projects demonstrates that Plaintiff's SUP application was properly denied.

**8. Existence of a comprehensive plan exists.**

As set forth above, the record establishes that the Village of Frankfort and Green Garden Township have comprehensive plans which cover the proposed location of the Solar Facility. Both comprehensive plans envision using the location for residential purposes in the future, and both plans designate alternative locations for the type of use sought by Plaintiff. The existence of these plans confirm that Will County correctly denied Plaintiff's SUP application.

**9. Whether the permitting decision is in harmony with the comprehensive zoning plan.**

Finally, the record shows that Will County's permitting decision is consistent with the existing zoning plan. The proposed location is zoned for agricultural use, and while that zoning does not automatically prohibit the property from being used for a solar facility, it likewise does not mandate approval of that use. The denial of Plaintiff's SUP application is consistent with the

overall zoning plan because that decision preserves the agricultural and residential character of the area while recognizing that Plaintiff has nearby alternative locations where its project can be sited.

### **Conclusion**

Will County had discretion to deny Plaintiff's SUP application even though that application satisfied the specifications listed in Section 5-12020. Will County properly exercised its discretion and denied Plaintiff's SUP application because the proposed special use conflicted with the orderly building development in the area, posed serious risks to public health and safety, and otherwise adversely affected the public welfare. Accordingly, Will County's denial of Plaintiff's SUP application was proper and reasonable, and should be upheld.

WHEREFORE, for the reasons set forth above, Defendant County of Will respectfully requests that this Court uphold the County's permitting decision, and grant Will County such additional and further relief as this Court deems just and proper.

Respectfully submitted,

COUNTY OF WILL

s/ Martin W. McManaman

One of its attorneys

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# Exhibit A

STATE OF ILLINOIS  
102nd GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

112th Legislative Day

1/10/2023

Speaker Harris: "House will be in order. Members will be in their chairs. We shall be led in prayer today by Wayne Padget, the Assistant Doorkeeper. Members and guests are asked to refrain from starting their laptops, turn off all cell phones and pagers, and rise for the invocation and Pledge of Allegiance. Wayne Padget."

Wayne Padget: "Let us pray. Dear heavenly Father, thank you for the faithful servants you've brought together to fulfill your purpose in this august Body. You have given us willing hearts and desire to proclaim the name of Jesus through word indeed. We ask you to give us wisdom, patience, guidance, and peace as we plan for the future. Jesus taught us to follow you first in all things. He said, 'But seek first his kingdom and righteousness, and all these things will be given to you as well.' As we begin Session today, Lord, help us to pursue you and your will. Help us to respect one another and work together. We give you the glory for everything that is accomplished. These things we pray, Amen."

Speaker Harris: "We shall be led in the Pledge of Allegiance today by Leader Bourne."

Bourne - et al: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Speaker Harris: "Roll Call for Attendance. Leader Greenwood is recognized to report any excused absences on the Democratic side of the aisle."

Greenwood: "Thank you, Mr. Speaker. Let the record show that Representatives Tarver and Blair-Sherlock are excused today."

STATE OF ILLINOIS  
102nd GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

112th Legislative Day

1/10/2023

for oversight. Has that been cleared up in this piece of legislation?"

Kifowit: "The... we do have oversight with regards to mandatory reporting to the county. What this culminates is a lot of legislative intent in re... in addition to a lot of court cases. So, with the legislation that goes back decades, multiple decades, it states is that the VACs is... is a bit of a separate entity from the county. And that still maintains today. What this legislation does is give the county a seat on the VAC board so that they can participate and be more in line. But the legislation written back in, I believe, the 60s designated as... as a separate, not under direct oversight of the county, but kind of working together with the county."

Swanson: "Okay. Thank you."

Kifowit: "So, that doesn't change. That was..."

Swanson: "Thank you."

Kifowit: "...that's going back decades."

Swanson: "All right. Thank you."

Speaker Harris: "Representative Kifowit to close."

Kifowit: "I ask for an 'aye' vote."

Speaker Harris: "The Motion is, 'Shall the House concur with Senate Amendment #1 to House Bill 2369?' All those in favor vote 'yes'; all opposed vote 'nay'. This is final action. All voted who wish? Have all voted who wish? Barbara Hernandez. Have all voted who wish? Mr. Clerk, please take the record. With 110 voting 'yes', 0 voting 'no', 0 voting 'present', the House concurs with Senate Amendment 1 to House Bill 2369. And this Bill, having received a Constitutional Majority, is hereby declared passed. On page 3 of the Calendar, under the

STATE OF ILLINOIS  
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Order of Concurrences, is House Bill 4412, Representative Gabel."

Gabel: "Thank you. Thank you, Mr. Speaker. I move to concur with Senate Amendment 1 and 4. This Bill is a energy omnibus Bill with four parts to it. The first part is a... rebates to Ameren customers. It's the individual customers in small commercial. It sets up a mechanism to rebate up to \$200 million. The second piece is amending the climate work hub's portion of CEJA. An entity can now oversee more than one of these work hubs. The third piece is with the Illinois Power Agency, where the director now must have worked in the renewable industry. The fourth piece is the siting... siting Bill. This Bill sets up reasonable guideposts and provides consistency throughout the state on siting for solar and wind construction. It's supported by labor, by environmental groups, and even by the Farm Bureau. The Farm Bureau supports the statewide siting. This Bill is necessary because over a dozen counties have enacted zoning ordinances that effectively ban wind energy projects and seeing... and we've seen several states do the... several counties do the same for solar. This Bill, it protects individual property rights, so individuals will be able to lease their farms if they want to and if it's approved by the counties. This is important to meet CEJA's decarbonization goals to improve reliability, tackle rising energy cost downstate, and we need to increase the scale and pace of our renewable energy buildout. With the projects comes substantial economic benefits across the entire State of Illinois, new tax revenue for schools, additional revenue for Illinois landowners, thousands of union jobs, and new job

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opportunity for equity eligible communities. I urge an 'aye' vote."

Speaker Harris: "Representative Yednock."

Yednock: "Will the Sponsor yield?"

Speaker Harris: "She indicates she'll yield."

Yednock: "Great. Leader Gabel, thank you. It's my understanding that the Illinois Farm Bureau is in agreement with the statewide zoning standards, however, they are against it based on the ability of a county board to ultimately say yes or no to a wind or solar project. Is that correct?"

Gabel: "No. The Farm Bureau told me that they are against it because they have some issues with the drainage and the agricultural impact mitigation that they want to meet about."

Yednock: "Okay. I had a different story from them, but I'll take your word on that. But I'm... I believe I'm correct in saying then the Farm Bureau does not disagree with the concept of siting provisions for the Bill. However, they... they had that... the technical reasons that you just stated there. So, maybe I was just a little bit incorrect about that and I apologize. One last thing. I've been told that the Senate Sponsor and the proponents of the Bill will be committed to working together to work on those issues the Farm Bureau was against with the goal of maybe bringing it back in the spring. And so, they're asking if we would have a commitment from you to work on a couple of those issues."

Gabel: "Yes. I spoke with the Farm Bureau and I told them I'd be happy to meet with them about these issues."

Yednock: "Great. Thank you, Leader Gabel. I will be supporting this Bill."

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Gabel: "Thank you."

Speaker Harris: "Representative Bourne."

Bourne: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Harris: "She indicates she'll yield."

Bourne: "Thank you. Representative, I know that we had a long discussion on this Bill in committee twice, so I will be as brief as the three-minute timer allows me. Could you clarify for the Body how many counties in Illinois are opposed to this Bill?"

Gabel: "I believe we talked about it in committee that 78 had posted against the Bill."

Bourne: "Yes. And do you know how many... so, 78 of our counties in Illinois. Do you know how many counties in Illinois already have zoning standards that would fit within the criteria in this Bill?"

Gabel: "I don't know exactly how many, but I know that we base these guidelines on the... on a number of counties that do have these... these guideposts."

Bourne: "Okay. The testimony in committee was that a majority of counties that have zoning already comply with this Bill, which begs the question of, why pass it? To the Bill, Mr. Speaker. This Bill strips away county authority to zone wind and solar projects. Two years ago, this Body passed House Bill 2988. I would encourage you to look up your vote. And in that testimony in the Senate and in the House, the Sponsors of the Bill, Senator Cunningham and Representative Williams, reiterated over and over throughout the debate that the intention of the Bill was to leave the zoning and siting decisions to the county level. Something that your counties

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agreed with and my counties agreed with, and we had broad bipartisan support. Now, two years later, you're not seeing the policy outcomes that you wanted. Your counties aren't complying with what you wanted to have happen in CEJA, and now this Body is deciding to overrule the authority of local governments. That is wrong. I cannot express to you the frustration counties will feel knowing that their hard efforts to talk to their constituents, to negotiate local siting that's agreed upon, will be overruled. It should not be allowed that unaccountable Legislators in a lame duck Session vote on a Bill that will overtake the authority of duly-elected locally accountable county board members. I've had much more to say on this in committee, but let me tell you, this is more than just restrictive zoning. This takes away the ability of counties to decide if other economic development is better in other parts of their counties. They can't exempt land that's commercially or agriculturally zoned. Meaning, if they had plans for broad economic development, this overrides it. If they've worked with their counties and their communities to find siting rules that work for their county, like one of my counties that has a 1.25 of the maximum blade height setback and a one and a half miles from schools, overruled. I want you to come and talk to my county board members who have put in hundreds of hours on this issue and come to a resolution, who understand the importance of bringing this into our counties in a smart way. This is not the way to do it. Please vote 'no'."

Speaker Harris: "Representative Halbrook."

Halbrook: "Thank you, Mr. Speaker. A question of the Sponsor."

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Speaker Harris: "The Sponsor will yield."

Halbrook: "And, Mr. Speaker, if I would exceed my time, I would ask that one of my colleagues yield me some time in this discussion. So, Representative, on the bottom of page 23, paragraph (d), we hear a lot about local control. And I'm just curious here, in this Section, it says, 'A county with an existing zoning ordinance in conflict with this Section shall amend the zoning ordinance to be in compliance with this Section within 120 after the effective date of this amendatory Act of the 102nd General Assembly.' Can you tell me where the local control is when we have this mandate from Springfield?"

Gabel: "Well, the local control in fact is that the counties do ultimately have the say on zoning and... zoning wind and solar projects. They have the ultimate say on the Bill... the project still has to go through the Zoning Board of Appeals, the full county board, they have to receive a road use agreement, receive building permits from the county, and... and they still have to abide by the agriculture impact mitigation agreements. These are guardrails. There is just a... they can't go below... they can't go above."

Halbrook: "So, as we move along here, on page 28, paragraph (h), it says, 'A county may not adopt zoning regulations that disallow, permanently or temporarily, commercial wind facilities or commercial solar energy facilities from being developed or operated in any district zoned to allow agriculture or industrial uses.' Again, where is the local control when you mandate these type of stipulations?"

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Gabel: "I believe that is just until they change their ordinances."

Halbrook: "So, on the page... the bottom of page 33, paragraph (t), it says, 'Notwithstanding any other provision of law, a facility owner with siting approval from a county to construct a commercial wind energy facility, commercial solar energy facility is authorized to cross or impact a drainage system, including, but not limited to, drainage tiles'... and it goes on and on talking about drainage. But then it concludes here that they can fix these things whenever they want. Where is the local control? Where is the protections for property owners, for farm owners, for the community citizens? Where's the protections for road districts in all of this?"

Gabel: "As I said, these permits have to be passed by these county organizations. It has to be passed by the Zoning Board of Appeals, the full county board. It has to receive a road use agreement and building permits from the county."

Halbrook: "Thank you for that. Ladies and Gentlemen, this Bill falls extremely short on these protections for the property owners at every level. In conclusion... to the Bill, Mr. Speaker. There's a document circulating around advocating for this Bill. It says, 'Energy supply shortfalls driving electrical bills higher can be remedied when more wind and solar projects are built.' And I asked the question, why is that? It's because the Illinois General Assembly is implementing policies that affect aging coal and natural gas electrical generating facilities that drive up costs. This is a math equation and it leads to the mothball of these facilities. The state and federal governmental mandates have

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increased costs. Granted some of these facilities have been in operation for some time, but there's always a need for maintenance and upgrades. The state and federal mandates are accelerating the costs to the point of no return, thus these plans are shuttered, again, by the regulations, not because of their operations. Not all plants are old. The Prairie State Energy Campus in southwestern Illinois is an example of that. Coming on line in 2011, 2012, it's a 4 or 5 billion dollar facility built under the Obama era air standards. This was one of the cleanest coal plants in the state, in the nation, and in the world. But with the passage of CEJA, it will cause a premature closure of this state-of-the-art facility. This all becomes a self-fulfilling prophecy. Allowing local governments... another quote in this document, it says, 'Allowing local governments to determine energy policy jeopardizes grid reliability and threatens the state's economic competitiveness.' I asked, what about local policy? We have..."

Speaker Harris: "Representative, are you getting close to the end of your remarks?"

Halbrook: "...locally elected officials to make these decisions with the input of their constituency that makes the decisions that are right for themselves. CEJA contains nation-leading incentives to grow and diversify the clean energy workforce. However, these..."

Speaker Harris: "Representative. Representative."

Halbrook: "...policies are at odds with at least 15 counties."

Speaker Harris: "Representative."

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Halbrook: "You know, the situation is this. A former speaker here, Representative Bourne, talked about that there's counties that are extremely friendly to this. And because they're working it out, they're trying to figure out what best fits their needs."

Speaker Harris: "Representative, we've been very generous in allowing you to speak. Could you bring your remarks to a close?"

Halbrook: "Thank you, Mr. Speaker. My question is, what's next? Not all the counties have adopted strict standards. Some counties, with proper planning, are allowing this development. This continued one-size-fits-all approach fails us. This language may harm counties that are very friendly to alternative energy solutions. We simply do not know the true downstream effects of this alternative energy production. With that, Ladies and Gentlemen, I know the developers come to town, they make lots of promises..."

Speaker Harris: "Representative, please conclude your remarks."

Halbrook: "...they break lots of commitments. With that, I would ask for a 'no' vote. Thank you, Mr. Speaker."

Speaker Harris: "Representative West, for what reason do you seek recognition? Ladies and Gentlemen, you know, we're trying to be respectful of folks, but please stick with as close to the three minutes as you can or we will put on the auto-mic cancel. So, next up is Representative Caulkins."

Caulkins: "Mr. Speaker, will the Sponsor yield?"

Speaker Harris: "Indicates he'll yield."

Caulkins: "Thank you very much. We're going to switch gears here just a little bit, Representative. We've already talked about

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how bad this Bill is for the local zoning ordinances that our counties have. I want to go to another piece to your Bill. I heard say that this could be up to \$2 million in this Bill for Ameren customers. Is it up to 2 million? Is it 2 million? What's the number, please?"

Gabel: "The total number..."

Caulkins: "Two-hundred million. I apologize."

Gabel: "...that can be distributed... that can be distributed to all the Ameren ratepayers is 200 million."

Caulkins: "So, it's not up to 200 million. It is exactly \$200 million?"

Gabel: "I believe the... I believe the word is 'up to'."

Caulkins: "So, it could be a million?"

Gabel: "It could... you know, I was in a work group and we kind of committed to reaching the 200 million."

Caulkins: "And that \$200 million is subject to appropriation?"

Gabel: "Correct."

Caulkins: "So, if you wanted this \$200 million funding, why didn't you put it in House Bill 969? Why... why didn't you appropriate that money today so that the ratepayers for Ameren, who are suffering from extremely high power bills, would know for sure that they're going to get some rate relief?"

Gabel: "We... we need to work with the Governor's Office and figure out exactly where this 200 million's going to come from."

Caulkins: "So, there's no guarantee that this money is going to be available?"

Gabel: "I'm committed to making sure it happens."

Caulkins: "I understand committed. So am I. Do you understand that Ameren can't just decide to give this money to their

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ratepayers? They must go through an ICC approval process. How long will that take? Is it guaranteed? Will the ICC give them... are you committed to the ICC giving them the approval process?"

Gabel: "Yes."

Caulkins: "Excellent. Do you know, Ma'am, how much this will be for every Ameren customer in our district? How much money will each customer get in a rebate?"

Gabel: "Yes. Approximately \$170."

Caulkins: "That's \$30 a month times five months, that's \$150. Six months, is that about? I mean, that's if they get the full 200 million."

Gabel: "Correct."

Caulkins: "So, you know... so, we... in my office, we get phone calls, emails, text messages from customers in Ameren. People in my district have seen their electric bills go from \$120 to \$180. I had a lady on a fixed income send me a text message. Her Ameren bill for the month of December is over a thousand dollars a month."

Gabel: "That's exactly why we're... we're doing this."

Caulkins: "But this money won't be available till when? When could the customers see a rebate? What's the earliest time?"

Gabel: "You know, we're committed to working on it as quickly as we can. At the worst, it would happen during a June... in June, July, and August when it's the hottest months of the year."

Caulkins: "So, we're going to pass a budget. This money is going to be in the budget, goes into effect July 1. Ameren can't do anything until we actually give them the up to \$200 million."

Speaker Harris: "Representative, your time has expired."

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Caulkins: "They must then go to the ICC to get approval.."

Gabel: "Well, actually, they're going to have to spend it first and then we're going to reimburse them."

Caulkins: "I don't believe they're willing to do that."

Gabel: "Well, it was in the... it's in the Bill."

Speaker Harris: "Representative, your time has expired. Representative Meier. Meier."

Meier: "Several years ago, I worked with Scott Bennett on the IEMA agreement for this Bill, for a Bill like this for wind and solar. We worked two years on that Bill, Democrats and Republicans. Wind, solar, Ag, county boards, everybody working together. We worked as a... as a State Representatives and the State Senate working together. This Bill is doing away with that. Why can we not sit down in a room with all groups and try to do the same thing again for every citizen in the State of Illinois? We were able to do it. We came to an agreement. Why are we being pushed here, only a month after Scott's loss, and having this shoved down our county boards' necks? You talk about what's... what's not changed, but things have changed. Decommissioning is changed in this Bill. If you're a landowner and with decommissioning changing... and when you do tweaks, major things happen. How is this land going to be returned back to its natural site? It takes away the Department of Agriculture to have anything to say about it. Can you tell me right now how many acres of wind and solar are in Illinois?"

Gabel: "I don't know off the top of my head. I can get that information for you."

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Meier: "That would be good to know. Just for closing down Prairie State, only one power plant in the State of Illinois, takes away 122 thousand acres in the solar farms to replace that. You're taking the food away from 60 thousand people in the State of Illinois because of that plant closing. And multiply that past the other plants. So, think about that. Our county boards had zoning for many years to protect agriculture so we could feed the American public and the world. You want to take that zoning away and let it be where we can have wind and solar shoved down our throats right next to us. I hope that there's an Amendment in here that states that the windmills that are proposed for Lake Michigan, which I pushed for, for a long time, are situated within 150 feet of the shore so we can get as many on the lake as we can, right by Chicago, so you can be as close to this as our houses are, and our farms, and our constituents that are living next to it. I have faith and I put on programs helping people figure out what it's going to take for wind and solar. I'm not against wind and solar, but I'm against our rights. You know, have you ever negotiated to lease your ground out for this? Do you know they have the right to tell you where you can plant trees on your ground and where you can't plant trees on your ground? And if you buy a piece a ground attaching to this, that those rules for what you already had leased apply to the new piece of ground? You have no say on that. You have no guarantee that ground's going to be returned back to the way it was before."

Speaker Harris: "Representative, could you bring your remarks to a close?"

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Meier: "Well, I wish that you would pull this Bill, sit down with everybody, and let's work as what's best for the State of Illinois. Let's come up with a plan that everybody can do it. Because we did it before. We're able to do it. Republicans and Dems can do a Bill together if we're allowed to. What... what you're doing now..."

Speaker Harris: "Representative."

Meier: "...dropping it in, voting on it at night, it's... it's against democracy. You know, if you've got..."

Speaker Harris: "Representative, could you complete your remarks?"

Meier: "...such a great plan, I'm sure we can come up with a plan to make it work. I wish you'd work with us and hold this Bill. Thank you."

Speaker Harris: "Representative Swanson."

Swanson: "Thank you, Mr. Speaker. A few comments. I'll go right to the Bill. Some of the more scary parts of this legislation affects those of us who farm, those of us in the agricultural world, those of us who till our soil, those of us who deal with it every day, those of us who live in the country and drive on township roads, those of us who live in the country and drive on county blacktops, those of us who live outside of Chicago where we have the wind turbines and the solar farms. Let me share with you some of what this says. Some of this legislation takes the responsibility away from the wind turbine companies and puts it back on the townships. I hear in here every day... I hear in here often about property taxes. Well, guess what? When the wind turbine companies start tearing up the township roads, guess who pays for that? Me,

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the property tax owner. And here we're going to cause more of a burden in rural Illinois on our property tax... burden on our farmers, on our landowners, on those residents out in our country. Another thing that's very disturbing in here, the President just signed the Waters... Waters of the U.S., where waters in the U.S. will be a part of the Federal Government's requirements to maintain. Within here, it says if a company wants to tear up a drainage ditch to put in their turbines, or to put in their solar farms, no permission is required, and no repairs is required to repair it once they've done the damage. Whether it be a field tile on my farm or whether it be a drainage ditch going across a farm or even a stream or local river. It says that they can damage it without asking permission. Right now... previously I served on a county zoning board and that would be a no-go from the start. If something like that happened, that would not be allowed. It would be required to be fixed. But this legislation, it just gets at the gut of what our land and what us, as farmers, believe is not right when someone else can come in and tell us how to run our county business. This is far from being friendly at all to downstate Illinois. Once again, this is not fair to anyone in downstate Illinois when it comes to renewable energy, when it comes to telling me how I must use my farm or how someone else can damage my farm with their heavy equipment or with their turbines or solar panels. I urge a 'no' vote because this goes way beyond the rights of this legislation. Thank you."

Speaker Harris: "The final speaker will be Representative Keicher."

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Keicher: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Harris: "She indicates she'll yield."

Keicher: "All right. Leader, can you share with me... I was absolutely fascinated and enthralled with Leader Evans' Bill concerning wind turbines getting sited in Lake Michigan. Can you share with me why that isn't included in this comprehensive package?"

Gabel: "There was still some... it was still being worked out."

Keicher: "Okay. What areas... what areas are being worked out? Because I would think something as broad-based as this, where we are comprehensively impacting wind turbines, we wouldn't want to leave the people out on the South and West Sides of Chicago from the good opportunities of employment that these types of facilities would provide."

Gabel: "Offshore wind is... does not have the same kind of history that onshore wind does. And so, there was still questions about transferring the energy issues and some other issues."

Keicher: "I disagree, Madam. Norway, the UK, Ireland, East Coast of the United States have proven a significant benefit from offshore wind generation as well as the benefits to aquatic life and the ability to lessen the impact to our resources that are on land."

Gabel: "Well, I support that Bill, and I'm hoping we can get that Bill done in the next General Assembly."

Keicher: "Folks, in DeKalb County... to the Bill, please. In DeKalb County and Boone County and Ogle County, we have had a sad history of wind turbine organizations siting and not disclosing properly to adjacent property owners. If none of you have been to a wind turbine installation and been

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subjected to the flickering that happens when you are within the shadow of the wind turbine's long shadow crossing across the field, you have no idea of the devastating impact that this will have to adjacent land owners. They can't sell their house. They can't get rid of their property. And there are no provisions in this Bill to protect the rural property owners that this elitist Bill is seeking to subject wind turbines onto. We have a situation where, because we can't locate it in Lake Michigan, we... like Ted Kennedy did... said, it's unfeasible to put it in the water. Instead, we're going to go out west and we're going to put it in the farm fields 'cause nobody's really out there. It's wide open. It doesn't matter what happens in the farm fields. And that type of elitist arrogance regarding wind and solar has gone too far. And you are cutting out the local decision makers who know best what's available in their city, while at the same time denying residents of the South and West Side of Chicago the opportunity for readily available high-paying labor jobs in the City of Chicago, adjacent to where they reside. I urge a strong 'no' vote on this measure."

Speaker Harris: "Leader Gabel to close."

Gabel: "So, this Bill will provide reasonable guideposts based on best practices to provide consistency throughout the state on siting these solar and wind projects. I have to tell you that this Bill protects individual property rights. There are now 15 counties where farmers have come to us and said, I would like to lease my land and I am not allowed to. So, this Bill protects individual property rights. It will allow us to

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implement CEJA and meet our goals for renewable energy. Please vote 'yes'."

Speaker Harris: "The question is, 'Shall the House concur with Amendments #1 and 4... Senate Amendments #1 and 4 to House Bill 4412. All those in favor vote 'aye'; opposed vote 'nay'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. With 73 voting 'yay', 36 voting 'nay', 0 voting 'present', the House does concur in Senate Amendments #1 and 4 to House Bill 4412. And this Bill, having received the Constitutional Majority, is hereby declared passed. Representative West, for what reason do you seek recognition?"

West: "Thank you, Mr. Speaker. Point of personal privilege."

Speaker Harris: "Please state your point."

West: "I want to direct my colleagues to the Speaker's Gallery. Up there you will see my parents. And I'm glad to see brother La Shawn Ford up on the floor. That's Pastor West, Maurice West. I'm not. But I want to have my parents stand, and please help me welcome Pastor Maurice and Evangelist Sharon West. Thank you so much."

Speaker Harris: "Representative Davidsmeyer, for what reason do you seek recognition?"

Davidsmeyer: "Thank you, Mr. Speaker. I know we're on our last day of the 102nd General Assembly. We've still got a number of big Bills that are still coming through and I know that a lot of people are having trouble hearing. I know that there's a lot of excitement about the 103rd General Assembly starting tomorrow, but I hope we can bring the... the conversations down

# Exhibit B

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amendment?

SENATOR REZIN:

No.

PRESIDING OFFICER: (SENATOR KOEHLER)

All those in favor will say Aye. Opposed Nay. The Ayes have it, and the amendment is adopted. Mr. Secretary, are there any further Floor amendments approved for consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR KOEHLER)

3rd Reading. And now on the Order of 3rd Reading is House Bill 4412. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

House Bill 4412.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham, if you'll explain your bill.

SENATOR CUNNINGHAM:

Thank you, Mr. President. The bill, as amended, makes a handful of changes related to energy policy in the State of Illinois. First, its reform siting requirements for wind and solar projects by taking best practices that are currently in place in a number of counties and applying them statewide. Second, the bill creates a mechanism for financial relief for ratepayers in the MISO zone. However, that rebate is subject to appropriation. As I mentioned in describing the amendment, it makes a handful of technical changes related to the IPA and for -- and training hubs in the Carbon-Free Assessment program. This bill has wide support

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from organized labor, from environmental groups, and I think it's very important if we're going to move forward with some of the goals we have regarding the expansion of renewable energy, that we adopt these changes. Not only will it help us reach our goals for renewable energy, it will get new generation into the MISO zone, which will help staunch some of the price pressures that consumers have had to shoulder the last couple of months. Appreciate the Chamber's support and I'm certainly open to taking any questions.

PRESIDING OFFICER: (SENATOR KOEHLER)

Is there any discussion? Senator Rezin.

SENATOR REZIN:

Question for the sponsor, please. Mr...

PRESIDING OFFICER: (SENATOR KOEHLER)

Sponsor indicates he'll lead -- yield.

SENATOR REZIN:

Thank you, Senator Cunningham. So, essentially, -- this bill is going to take away all local control from every county in the entire State regarding siting for wind farms. Is that correct?

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

No, that is not correct. This bill still allows for local input on permitting projects, on holding hearings on projects. What this bill does do, however, is place guardrails in place. What we're trying to do is put in place workable rules that allow for local input, but do not allow for local authorities to put such stringent requirements in place, as to completely shut those areas off for development. We have a number of areas in the State, in the primary regions for, particularly for, wind development in

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this State, that have very reasonable siting rules. And we've seen all sorts of development. We have other counties that have much more restrictive rules in place and that has stymied development. And that's what we're trying to address in this bill by allowing for local input, but putting guardrails on how restrictive those siting requirements can be.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

Thank you. So, when you talk about -- Senator, when you talk about guardrails and reasonable siting rules, you talked about several counties that you consider have reasonable siting rules. I'm assuming that's what you mean when this bill puts into place guardrails. So, it's my understanding, and correct me if I'm wrong, that you will -- if this is passed, every county, then, will have to abide by the reasonable siting rules or guardrails and will not be able to turn away a project, a wind farm project in their county. Is that correct?

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

No, they will still be able to place restrictions on projects and those -- if those projects do not meet those restrictions, they could not permit them, but they cannot be excessive in the restrictions they put in place.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

Senator, who -- who, when you say restrictions -- let me go

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back. Again, the county is allowed to have a hearing, however, in this bill, is it correct that you can only deny a -- or that you cannot deny a project if they have what you call reasonable siting rules or guardrails that are set forth in this bill?

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

So, just to clarify, a county can put an ordinance in place with restrictions on development. They just cannot exceed the restrictions that are put forth in this bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

So, Senator, when you say that they cannot exceed the restrictions that will be in this bill, where are the restrictions coming from? Who's -- who's setting the siting standards? Who's setting the guardrails?

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

So, that -- that is actually in the bill, what those guardrails are. Those were adopted in consultation with developers and other -- and local officials, based on best practices that are in place in a number of counties. As I said, there are a number of counties. We can see it as we drive around the State. We see there are a number of counties that have very reasonable zoning ordinances in effect, and we've seen development in those counties. There are others who have passed de facto bans of renewable development, and that's what this bill is attempting to address.

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PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

So, Senator, what I -- what I understand from what you just said is, that a county will not be able to refuse a -- the developer who wants to invest in a wind project in their county, if this bill is passed. Is that correct?

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

No, the -- the county still permits the project. This bill simply puts -- puts guardrails in effect on how restrictive the zoning requirements can be.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

Thank you, Mr. President. I'm going to answer this question one more time -- or ask this question one more time, unless I am confused. It is my understanding, in this bill -- this bill is going to set forth guardrails or siting standards that are reasonable in the eyes of the developers. And then, once this bill is passed and those guardrails are in effect, the county cannot -- the county cannot deter a wind farm from coming into their county if the guardrails are in effect in this bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

I guess simply just repeat myself. So, these are guidelines that are in place in a number of counties right now, that allow

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for development. We've taken those best practices. We've put them in the statute. If a development fits within the guardrails of what's in the statute right now, then the county could not deny the -- could not deny the permit by effectively putting in more restrictive guidelines.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

Thank you, Mr. President. One more question, and then I'll go to the bill. In your siting standards, Senator Cunningham, how -- what are the setbacks in your siting standards that you refer to?

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

If you can give me just a minute to consult with counsel on that. They're a lot of detail to that answer. Okay, Senator, I can give you a -- a couple of lines of the bill that set what these standards are. For instance, setback distance is 2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure, 1.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure, 2. -- for nonparticipating residences, 2.1 times the maximum blade tip height of the wind tower to the nearest point of the outside wall structure. There are -- there is another page of similar restrictions that are in the bill on page 24, and 25, and 26 of the bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Rezin.

SENATOR REZIN:

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Thank you. We did a -- kind of a, calculation based off of what was just read, and the 2.1 times that were referred to, in our estimation, is the equivalent of two blocks or 6 to 700 feet. To the bill, Mr. President.

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Cunningham.

SENATOR CUNNINGHAM:

To the bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

To the bill.

SENATOR REZIN:

Thank you. Ladies and Gentlemen. Just so you know, this is a complete overreach by the State of Illinois. If this bill passes, Illinois will be the only state in the entire country, the only state in the entire country that has taken away local control. That will say, you know what, if you don't want the wind farms in your county, it doesn't matter. As long as the developers submit their development within the siting standards, they can put a wind farm within six to seven-hundred feet of the closest home. Illinois will become a no local-control renewable state, nor a state approved system. Just so you know, in -- according to NCSL in 2020, twenty-two states have strong local control siting rules. Twenty-one states have hybrid either local or state control. We don't -- meaning, you have to go through your local government, or you have to go to through the state commission, the equivalent of the ICC, to have your project approved. This bill says you don't have to go through any of them. Your project will automatically be approved if it falls within the siting standards that the developers have given -- given the sponsor on this bill. And four states have state

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controls for their commissions to approve the site. So again, any time we have a bill that is going to completely take away the power of our local governments to site massive projects in your backyard, and I get it, many of my colleagues from Chicago don't understand just because of where you're located, the challenges that the wind farms, and we understand why we need wind farms, but there are some people, some counties, who just do not want them in their backyard. So, because of that, I ask for a No vote. Thank you.

PRESIDING OFFICER: (SENATOR KOEHLER)

Is there further discussion? Senator Rose.

SENATOR ROSE:

Thank you, to the bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

To the bill.

SENATOR ROSE:

Leader, you'll remember in our House days, I was actually the sponsor of the bill that allowed local siting of wind. I was that sponsor, because at the time, no one was coming here because they didn't have rules to play by in local counties. So, we worked all Session long with people like the Farm Bureau and the municipalities, the IML, the counties, etc., to come up with that bill, to allow local siting, as the locally elected officials on behalf of their constituents, deem appropriate. And you know what, I represent ten counties in Illinois. I almost represent, well that's -- tens almost ten percent of the total number of counties in this -- but I almost, probably, represent ten to fourteen percent of the size of this State. I've got several wind farms, several. So I don't want this nonsense that we've discouraged wind farms. I've got several. Few have come through, done a good job.

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Most haven't. But, we have them. But the reason the local control is important, and I want to talk about things that are problems in this bill and then I want to really talk about why local control is so important. This bill would mandate 2.1 times the setback from your home, 2.1 times the blade height. On a three-hundred-foot-long blade, that's a little over a tenth of a mile, about a city block. So imagine, you're a professor at the University of Illinois, who's bought your dream home out in the country in Urbana and then one of these goes up in your backyard, professor. Let's imagine your Piatt County, that I currently represent, that Senator Turner is about to represent, it's a very compact geographic county, between Monticello and a few other communities, there's not a whole lot of space left to put this. But there will be a lot of space left if you go with the 2.1 times setback. And by the way, on the topic of Piatt County, Piatt County Board has had fourteen public hearings to listen to the citizens of Piatt County, to listen to their wishes, fourteen. This bill is going to come in and say, forget you guys, we don't care you had fourteen hearings to listen to what people really think about this. We're just going to take away your right to do anything about it. And 2.1 times the length, a city block, in your backyard. I mentioned that professor at the U of I a minute ago. Funny thing is, they don't want it either. University of Illinois was going to put up some windmills around Urbana. Those of you from Chicagoland don't know much about it, Urbana. Urbana is left of Madison. It's probably somewhere between Madison and Berkeley on the progressive leftist scale. This is the Urbana City Council from -- 2010, the U of I, University of Illinois. The brightest minds. We're going to put up windmills in Urbana. Solve that climate change. Or Ben at city council says

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uh-oh, not in our backyard. Not in our backyard. But it's okay to put them in our backyard! Now you want to talk about climate change. Let's talk about that. Let's talk the science. The science says, here's the science. The impact of wind energy on wildlife and the environment, papers from the Berlin Seminar, published by the Global Warming Policy Foundation. Here's one from a guy from Oxford. The number of birds killed directly by collision in turbines blades is not insignificant. In one study, the estimated five-hundred and seventy-three thousand birds were killed in a year at a single fifty-one-thousand-megawatt installation. Of those, eighty-three thousand were raptor birds. Why is that important? Because they're the ones that keep all the other species in check. They're the ones who eat mice and rats that prevent vermin from spreading disease. Oh, monarch butterflies. Let's screw that up too. Why is that important? Because we need to eat. Wind turbines, solar. I got Kansas, Illinois, my newest -- my new area in my district. The best farm ground, literally in the world, is now covered in solar. How much more do you guys want to pay for food? And you know what? The funny thing is. We already have a rule that has created plenty of wind energy in Illinois. Just ask me. I can take you. Macon County, multiple fields. Champaign County, multiple fields. Two years ago, we overruled what did the same thing. We overruled the township down in Douglas, put up a whole bunch of in people's backyards in Douglas County. We got plenty of this. And if you let it work, you'll get plenty more, but it will be in places where locally elected officials have said, yeah, that makes sense. That makes sense to put it there. I want to say one other thing, though, because the most interesting thing I read in this, science, there is conclusion at the end that said,

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be careful how -- how we trod upon the earth. We don't know what the impacts are going to be. Take your time. Do it right. Here's something, here's something that's real, that has actually happened. By the way, science, National Weather Service. This is from the National Weather Service, the Lincoln Radar Station. By the way, for those of you in Chicago, don't know where Lincoln is. They do the radar for Chicago too. They're the regional radar for the Midwest. 2018, the Taylorville tornado. When Senator Manar was here, we all passed a bill for Senator Manar, because Taylorville got hit by a tornado. 2018, National Weather Service, that tornado produced an EF3 tornado at -- Taylorville. It also produced several EF0 to EF2 tornadoes. For fifteen minutes, the National Weather Service lost track of the frickin tornado. As it loft -- as it left Macon County, on a trajectory, it disappeared. It disappeared in a wind farm. The radar couldn't find it for fifteen minutes. Does that mean Monticello gets hit? Does that mean Argenta-Oreana gets hit? Or does that mean Clinton gets hit? Or Sullivan? I don't know, because nobody knew where it was. And then it did reappear and they were able to track it. That was in 2018. You know what, folks. Last week in that storm, they lost a tornado again. This time for only two minutes. So, you know what? We talk about local siting. Here's what Logan County's local siting is. And by the way, I don't represent Logan County. Logan County said, you know what? We're going to work with the National Weather Service to put these in a place that won't disrupt the radar, to know where the tornadoes are and the strong storms are, so we all don't get killed in the process. I mean, folks, how much more do you want? You want to talk about the environment, ooh we're here for the environment. You guys, people's gas up there in Chicago.

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You polluted my aquifer, natural gas. Family can't drink their water. They can literally light their tap water on fire. That was five years ago. Nowhere to be found. Kwame didn't do a damn thing to get them water. The Governor, I've had two -- a bill and a handshake from him in the capital bill to fix their damn water. And to this day, there hasn't been one penny expended on their water. So don't tell me about the damn environment. People's Gas, you store all your damn natural gas to heat your homes. Right now, it's stored under my house. My house. It goes from north of Mahomet to Tuscola, Illinois. They pipe it in from the Gulf Coast all year long. And then the winter, they send it up to Chicago, so you guys can heat your homes and that's fine. But when you screw up my -- when it breaks, the pipeline breaks and screws up my water, you're nowhere to be found. So, yeah, go ahead, how much more do you want? Pollute the hell out of downstate Illinois. Pollute our agriculture. You're going to pay the price. When that storm is coming from Chicago, you won't be able to see it on your damn radar either. When your food prices go up, it's because all the farm grounds gone. Quit polluting everything down my way.

PRESIDING OFFICER: (SENATOR KOEHLER)

Is there further discussion? Senator Bryant.

SENATOR BRYANT:

Thank you, Mr. Speaker. Sponsor yield to the bill.

PRESIDING OFFICER: (SENATOR KOEHLER)

Indicates he'll yield.

SENATOR BRYANT:

Thank you. Gosh, I -- I hate to follow that because previous speakers said a lot of the things that I wanted to say. But, here's the things I notice in this bill and from committee. There is two-

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hundred million dollars here that is supposed to go to Ameren customers for some kind of rate relief. There's nothing for Nicor. There is nothing for People's. There's nothing for Ameren Gas. In committee, the statement that was made was that, we need to do something about the MISO grid. So I guess if we go back a year ago, we can look at the fact that the MISO grid is basically being destroyed, because we have some very good clean coal plants that are being shut down. So what we have in this bill is two-hundred million dollars, fake, because it's subject to appropriations, in order to pretend like we're going to give Ameren customers some kind of rate relief that we know is not going to happen. But if we're giving rate relief to folks, then why are we only giving them to some of the Ameren customers and not to all of these other customers who are being destroyed by the MISO grid being destroyed in this State, and all the way across the Midwest? So make no mistake, Members here and my friends at home, who like I, are Ameren customers, there's no relief coming for Ameren customers because if there was, this wouldn't be just subject to appropriations. We would say, that we have to fund the relief. You know as well as I do, that when we say subject to appropriation, it's a glorified way of saying, let's pretend like we're going to do something about it. This is fake, and I urge a No vote.

PRESIDING OFFICER: (SENATOR KOEHLER)

Further discussion? Seeing none, Senator Cunningham to close.  
SENATOR CUNNINGHAM:

Thank -- thank you, Mr. President. I want to start by just correcting the record. It was said earlier in debate that this bill would make Illinois the only state in the country to have statewide regulation of renewable projects. That's false on two

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counts. First of all, it will not create statewide siting require -- statewide control of siting. As I mentioned, there will still be local input. Localities can still put ordinances in effect. Localities can still have those hearings that were mentioned. In fact, there's language in the law talking about those -- those hearings. That will still happen. So local control will remain. Secondly, there are many states that completely, one-hundred percent, control siting. This bill does not do that. This bill shares the -- responsibility between counties and the State. So, I just wanted to make that clear. That was said during debate. It is not true. Secondly, I understand the passion that we've heard from the opponents of the bill. I -- I completely understand that. These siting issues create a lot of controversy in -- in places, as I say, completely understandable. But, I think we need to balance out these concerns. And that's what this bill tries to do, in a couple of different ways. First of all, by maintaining the county permitting process and it working in junction with statewide standards, instead of turning the entire thing over to a state agency, as is done in many other states. But the other thing is we -- is getting to the need for new generation in our State, in MISO zone. Coal plants are closing, as you have heard. They're closing. MISO covers a big region. They're -- they're closing outside of Illinois, and that is causing a reduction in the amount of generation that is available in the MISO zone. This bill would address that and since CEJA passed, there's been two procurements by the IPA, where they authorize and help fund renewable developments. There's been a big problem, though. Not a single wind program has been approved in either one of the last two procurements. And that's because no one development company can

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get permitted by any county to develop a project. So, we are missing out on these opportunities to get more energy into the MISO grid, which will lower the bills of customers. And we're also missing the opportunity to align policy with the goals of CEJA, which is to bring more renewable energy onto the system. This will do that. This bill strikes that balance. I urge an Aye vote.

PRESIDING OFFICER: (SENATOR KOEHLER)

Since we've had a long discussion, I want everybody to check their computer to make sure it's ready to receive your vote. Is everybody okay? The question is, shall House Bill 4412 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 33 voting Yea, 17 voting Nay, none voting Present. And House Bill 4412, having received the required constitutional majority, is declared passed. WCIA seeks leave of the Body to record. Seeing no objection, leave is granted. You've been -- you've received Supplemental Calendar No. 1 at your desks. We're going to go to the first one on Supplemental Calendar No. 1. It's a 2nd Reading. It is House Bill 2870. President Harmon, do you wish to proceed? President Harmon wishes to proceed. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

House Bill 2870.

(Secretary reads title of the bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR KOEHLER)

3rd Reading. We're going to go to Supplemental Calendar No. 1. Senator Rose, for what purpose do you seek recognition?