



Zoning Wind/ Solar Projects: a new day in siting projects

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Illinois Association of County Board Members
March 27, 2023

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LEGISLATION!

What Are We Talking About?

Governor Pritzker signed an amendment to the Illinois Counties Code which drastically changes the siting criteria a County may apply to a commercial wind/ solar project. 55 ILCS 5/5-12020.

These changes are widespread and impact nearly every aspect of the siting of wind/ solar projects.

Only applies to projects applied for after January 27, 2023, or submitted their AIMA to IDNR before January 27, 2023.

What will not change?

- Do we still apply the *LaSalle/ Sinclair* factors?
 - Probably . . . the statute did not overrule the case law.
- Can a County impose their own standards not listed in the statute?
 - Maybe . . . but cannot impose stricter requirements.
- Still required to hold a public siting hearing?
 - Yes . . . if a County establishes siting standards they must hold a public hearing.

Do we have to amend the current zoning ordinance?

- If a County wants to establish standards (even those listed in the amended statute) it must amend its ordinance to do so. The statute requires Counties amend their zoning ordinance within 120 days (by Friday, May 26, 2023). *55 ILCS 5/5-12020(d)*. “A county may not place any restriction . . . unless it adopts an ordinance that complies with this Section.” *55 ILCS 5/5-12020(g)*. Also, cannot impose restrictions that zone them out. *55 ILCS 5/5-12020(g)*.
- What if a County does not have a zoning ordinance or any zoning standards established yet? Any County can establish standards regardless of whether they have current standards in place. *55 ILCS 5/5-12020(b)*. However, depending on whether you have zoning currently will impact how to enact the statutory requirements.

What if a County decides to take no action?

- If a County does not take action, it will not have any siting criteria (ie. . . no setbacks, for example) to govern potential wind or solar projects within their jurisdiction.



How do we make the required changes?

- If a County has a current zoning code which covers wind and solar siting, it should perform a text amendment pursuant to *55 ILCS 5/5-12014*.
- If a County does not have a current zoning code it can establish criteria by enacting a siting criteria by County Board resolution.

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Definitions (these are new)

- Commercial Wind Energy Facility – anything over 500 kW (.5 mW)
- Commercial Solar Energy Facility – anything primarily selling to the grid (ie . . . non-residential/ commercial)
- Participating/ Nonparticipating Property and Participating/ Nonparticipating Residence
- Occupied Community Building – school, church, day care, public library or community center

Definitions cont . . .

- Protected Lands – conservation lands/ nature or water preserves under Illinois Natural Areas Preservation Act
- Supporting Facilities – substation, transmission line, meteorological towers, storage, etc. . .
- Wind Tower – tower, nacelle, blades



Standards and Limits (what can you do?)

- Setbacks (waivers) – may set up to limits in statute
- Sound (IPCB limit) – has to follow IPCB
- Shadow Flicker (30 hours per year) – may require
- Fencing for solar (6-25 feet in height) – may require
- Solar panel heights (no more than 20 feet) – may require

NOTE: have to allow for waivers of the above by nonparticipating property owners

What can a County not do?

- No Moratoriums
- Cannot prevent development of wind/ solar in agricultural or industrial zoned properties
- No unreasonable fees. Fees must be consistent with fees for projects of similar capital value and cost.
- Cannot condition approval on property value guarantee nor pay into a neighboring property devaluation escrow account.
- Cannot require earthen berms (but can require vegetative screening).
- No height restrictions



What can a County do?

- Can still require a decommissioning plan (subject to parameters of AIMA) and subject to financial assurance as required by AIMA minus the salvage value. *55 ILCS 5/5-12020(j)*.
- Require Projects provide results and recommendations from IDNR EcoCAT; and results of USFWS planning/consulting environmental review.
- Require Projects adhere to IDNR recommendations.
- Demonstrate avoidance of protected lands.
- Consider (whatever that means) recommendations of IDNR for setbacks from protected lands.
- Provide evidence of consultation with Illinois State Historic Preservation Office

What can you do? Cont. . .

- Can require a Project to “maximize community benefits” including but not limited to . . . reduce stormwater runoff, flooding, and erosion at the ground mounted solar energy system, improved soil health, and increased foraging habitat for game birds, songbirds, and pollinators, a county may (1) require a commercial solar energy facility owner to plant, establish, and maintain for the life of the facility vegetative ground cover, consistent with the goals of the Pollinator-Friendly Solar Site Act and (2) require the submittal of a vegetation management plan in the application to construct and operate a commercial solar energy facility in the county. *55 ILCS 5/5-12020(r)*.

What can you do? Cont . . .

- Road Use Agreements (still allowed) with some limits. Fees/ costs must be “specifically and uniquely attributable to the construction of the . . . facility.” *55 ILCS 5/5-12020(s)*. Can still require road repairs.
- Facility owners may cross drainage systems without prior approval but has to repair (or pay for) any damage after damage. *55 ILCS 5/5-12020(t)*.

What you can do (maybe)!

- Institute standards not listed governed by the amended statute?
- Apply the *LaSalle/ Sinclair* factors?



What to expect . . .

- There a lot of unknowns.
- We anticipate there will be some litigation over Projects and the interpretation of this statute.



Questions

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