



"Dedicated to Progressive Agriculture"

2242 Westgate Drive Bloomington, Illinois 61705 Phone (309) 663-6497 Fax (309) 820-1790 www.mcfb.org

RE: Withdrawal of ZA-16-01 Proposed McLean County WECS Zoning Ordinance Amendment

McLean County Building & Zoning:

McLean County Farm Bureau is withdrawing our proposed wind energy text amendment to the McLean County Zoning Ordinance. At this time, we do not anticipate the McLean County Board will follow County Board rules, the County Zoning Ordinance and Illinois State Law with regards to the handling of this text amendment.

Neither Illinois law, the County Zoning Ordinance nor County Board Rules allow County Board Members to propose text amendments at the County Board level. All text amendments must be subject to the due process of a public hearing before the Zoning Board of Appeals (ZBA).

On August 4, 2016, we requested confirmation from the county's legal counsel that any amendments to our proposed text amendment would be subject to public hearing by the ZBA as outlined by law. (See attached correspondence.) Our withdrawal is based upon your counsel's opinion that the County Board may modify the text of an amendment on the floor of a County Board meeting. We disagree with this interpretation.

Chapter 350-21(g) of the County's Zoning Ordinance provides that the County, after receiving a written report and recommendation from the ZBA may, grant or deny any proposed amendment or refer it back to the ZBA for further consideration. The County's Ordinance does not allow Board members to amend a zoning text amendment on the floor of the County Board meeting.

In addition, Illinois law states that a text amendment to an ordinance can only be considered after a public hearing by the ZBA. 55 ILCS 5/5-12014. Text amendments proposed by County Board members are not exempt from this law. Although County Board Members engage in legislative acts, Illinois law requires that text amendments are subject to a public hearing. A public hearing "means the right to appear and give evidence and also the right to hear and examine the witnesses whose testimony is presented by opposing parties. It is also well settled that in absence of a proper hearing an amendment to zoning is void". E&E Hauling, Inc. v. DuPage County, 77 Ill.App.3d 1017, at 1021 (2nd District 1979). After E&E Hauling, the Legislature amended the Counties Code to define a zoning hearing as including a right of cross examination. Illinois law requires substantive and procedural due process at all stages of the decision-making and review of all zoning decisions including a text amendment to a zoning ordinance. 55 ILCS 5/5-12012.1.

At the July 19th McLean County Board meeting, the motion made by a county board member to amend the text amendment would have violated the rules and statutes outlined above because it

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was outside of the ZBA hearing process. The member in question attended the June 7th ZBA hearing on our text amendment, but did not testify, propose changes or present evidence at that time. Fortunately, the County Board did follow the County Zoning Ordinance and Illinois law when it voted to refer the matter back to the ZBA for further hearing instead of taking action on the newly introduced amendment.

If a County Board Member is allowed to circumvent the hearing process before the ZBA, the outcome is legally disputable. Those who participated in the hearing process have no way to respond to or offer testimony upon substantive changes to the zoning ordinance which are not presented and heard by the ZBA. The County Board meeting would not meet the definition of a public hearing as there was and is no opportunity for cross examination or the ability to offer rebuttal testimony. See People ex rel. Klaeren v Village of Lisle, 316 Ill.App.3d 770 (2000) and Balmoral Racing Club v. Illinois Racing Bd., 151 Ill.2d 367 (1992).

County Board members should participate in the ZBA process and properly submit proposed changes along with evidence for those changes to the ZBA in accordance with Illinois law and the County Zoning Ordinance. McLean County Farm Bureau submitted the text amendment and paid the filing, publication and court reporter fees as required in the County Zoning Ordinance and by the Building & Zoning Department. As the applicant in case ZA-16-01, we are exercising our right to withdraw the text amendment.

We implore the County Board to conduct its deliberation of any future zoning text amendments according to Illinois law and Chapter 350-21(g) of the County's Ordinance.

Sincerely,

McLean County Farm Bureau Board of Directors

cc: McLean County Board
McLean County Zoning Board of Appeals Chair
McLean County Zoning Board of Appeals
McLean County Administrator
McLean County State's Attorney

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August 4, 2016

Don Knapp
First Assistant State's Attorney
McLean County State's Attorney's Office
115 E. Washington St., Room 401
Bloomington, IL 61701

RE: ZA-16-01 Proposed McLean County WECS Zoning Ordinance Amendment

Dear Don:

The Mclean County Farm Bureau ("Farm Bureau") has a question regarding the McLean County Board's process for considering text amendments to the Farm Bureau's proposed amendments to the McLean County Zoning Ordinance regarding Wind Energy Conversion Systems ("WECS"). In your position as legal counsel to the County Board, we request confirmation that any text amendment to Mclean County's Zoning Ordinance must be heard by the Zoning Board of Appeals ("ZBA") in accordance with Chapter 350-21 of McLean County's Zoning Ordinance and Illinois law.

The Farm Bureau's members are impacted by wind farms and many landowners are currently considering wind farm lease agreements from wind developers. As part of our effort to educate and provide information to our members on this issue, the Farm Bureau reviewed the current McLean County WECS zoning provisions. The Farm Bureau prepared a text amendment to the WECS provisions of the zoning ordinance to remedy the vagueness of those provisions, codify the procedures and standards the County has followed in granting prior special use permits for wind farms, and include landowner protections provided for in the Illinois Wind Energy Facilities Construction and Deconstruction Act.

On June 7th, the ZBA held a public hearing on the Farm Bureau's proposal. County Board member Catherine Metsker was present but did not participate in the hearing which lasted over two hours. The ZBA recommended that the County amend the zoning ordinance as proposed by the Farm Bureau's text amendment ZA-16-01. On July 19th, during the County Board meeting,

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Office of the General Counsel

ILLINOIS AGRICULTURAL ASSOCIATION® and AFFILIATED COMPANIES

To: Don Knapp

Date: August 4, 2016

Re: Proposed McLean County WECS Zoning Ordinance Amendment Page: 2

Board member Metsker proposed a text amendment to the Farm Bureau's text amendment ZA-16-01. After a lengthy discussion, Board member Metsker agreed to withdraw her text amendment, after the County Board agreed to vote on and approved the motion to refer the Farm Bureau's text amendment back the ZBA for additional hearing.

Chapter 350-21(g) of the McLean County Zoning Ordinance states that the County Board, upon receiving the written report and recommendation of the ZBA may, by majority vote, grant or deny any proposed amendment or may refer it back to the ZBA for further consideration. The County's ordinance does not allow any member of the County Board to submit a text amendment outside of the ZBA hearing process. Illinois law requires substantive and procedural due process at all stages of the decision-making and review of all zoning decisions including a text amendment to a zoning ordinance. 55 ILCS 5/5-12012.1. In addition, under Illinois law, a text amendment to an ordinance can only be considered after a public hearing by the ZBA. 55 ILCS 5/5-12014. Illinois law does not allow a County Board member to circumvent this process by making amendments to the ordinance proposal after the ZBA conducts its public hearings and submits its report to the County Board.

The ZBA will conduct another hearing on the Farm Bureau's proposed text amendment, and issue a recommendation to the County Board. We request that you confirm that the McLean County Board will not consider text amendments which were not submitted and heard by the ZBA as required by the McLean County Zoning Ordinance, Chapter 350-21(g) and Illinois law.

The McLean County Farm Bureau appreciates your time and your careful attention to this important matter.

Sincerely,

OFFICE OF THE GENERAL COUNSEL



Laura A. Harmon
Senior Counsel