

KENDALL COUNTY
ZONING AND PLATTING ADVISORY COMMITTEE
111 West Fox Street • Rooms 209 and 210 • Yorkville, IL • 60560
(630) 553-4141 Fax (630) 553-4179

AGENDA

October 3, 2017 - 9:00 a.m.

CALL TO ORDER

ROLL CALL: **County Board:** Robert Davidson, PBZ Committee Chair; **County Highway Department:** Fran Klaas, County Engineer; **Wills Burke Kelsey:** Greg Chismark, Stormwater Consultant; **County Health Department:** Aaron Rybski, Director Environmental Health; **Forest Preserve District:** David Guritz, Director; **SWCD:** Megan Andrews, Resource Conservationist; **Sheriff's Office:** Commander Jason Langston; **GIS:** Don Clayton; **PBZ:** Brian Holdiman, Code Official; Matt Asselmeier, Senior Planner

APPROVAL OF AGENDA

APPROVAL OF MINUTES: Approval of the August 1, 2017 ZPAC Meeting Minutes (Pages 3-5)

PETITIONS:

1. **17-28 – Kendall County Planning, Building and Zoning Committee** (Pages 6-10)
Request: Text Amendments to Sections 7.01.D.32 (Specials Uses in A-1 Agricultural District), 7.01.D.33 (Special Uses in A-1 Agricultural District) and 10.03.B.4 (Special Uses in M-3 Aggregate Materials Extraction, Processing and Site Reclamation District) of the Kendall County Zoning Ordinance Pertaining to Regulations of Outdoor Target Practice or Shooting Ranges (Not Including Private Shooting in Your Own Yard)
Purpose: Amendments to Regulations of Outdoor Target Practice or Shooting Ranges for Non-Profit and For-Profit Shooting Ranges
2. **17-29 – Kendall County Planning, Building and Zoning Committee** (Pages 11-12)
Request: Text Amendment to Section 13.08.H of the Kendall County Zoning Ordinance by Increasing the Notification Requirements for Applications for Special Use Permits on A-1 Agricultural Zoned Property and Clarifying Notification Requirements for Special Use Permits on Properties not Zoned A-1 Agricultural
Purpose: Text Amendment Increases Notification Requirement from Five Hundred Feet (500') to Two Thousand Six Hundred Feet (2,600') for Applications for Special Use Permits on Properties Zoned A-1 and Clarifying that Only Adjoining Properties must be Notified on Special Use Permit Applications for Properties not Zoned A-1
3. **17-30 – Kendall County Planning, Building and Zoning Committee** (Pages 13-20)
Request: Text Amendments to Section 3.02 (Definitions), Section 10.01.C.10 and Section 10.01.C.11 (Special Uses in the M-1 Limited Manufacturing District and M-2 Heavy Industrial District) of the Kendall County Zoning Ordinance By Extending the Expiration Deadline from January 1, 2018 to July 1, 2020 for the County's Medical Cannabis Related Regulations
Purpose: Text Amendment Changes the Expiration Deadline For the County's Medical Cannabis Related Regulations from January 1, 2018 to July 1, 2020 to Corresponds to the Expiration Date of the Compassionate Use of Medical Cannabis Pilot Program Act ("Act") (410 ILCS 130/1 et seq.)

REVIEW OF PETITIONS THAT WENT TO COUNTY BOARD

- 17-16 – Kendall County Zoning Board of Appeals
- 17-19 – Pulte Group Representing Dave Hamman
- 17-21 – Tom McNelis
- 17-22 – Stor Mor, Inc.

OLD BUSINESS/ NEW BUSINESS

1. Correspondence-August 16, 2017 Letter from Anna R. Kuperstein to Matthew Asselmeier RE: Sandwich Compressor (ANR Pipeline and Special Use Permit at 6650 Sandy Bluff Road (Ordinance 2002-06)) (Page 21-25)
2. Approval of Fiscal Year 2017-2018 Meeting Calendar (Page 26)

PUBLIC COMMENT

ADJOURNMENT- Next meeting on November 7, 2017

If special accommodations or arrangements are needed to attend this County meeting, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time.

**ZONING, PLATTING & ADVISORY COMMITTEE (ZPAC)
August 1, 2017 – Unapproved Meeting Minutes**

Senior Planner Matt Asselmeier called the meeting to order at 9:01 a.m.

Present:

Megan Andrews – Soil and Water Conservation District
Jason Langston – Sheriff's Office
Aaron Rybski – Health Department
David Guritz – Forest Preserve
Greg Chismark – WBK Engineering, LLC
Don Clayton – GIS
Brian Holdiman – PBZ Department
Matt Asselmeier – PBZ Department

Absent:

Fran Klaas – Highway Department
Greg Chismark – WBK Engineering, LLC
Robert Davidson – PBZ Committee Chair

Audience: Tom McNelis and Robert Schneider

AGENDA

Mr. Asselmeier asked that Petition 17-21 be moved up to after the approval of the minutes.

Ms. Andrews made a motion, seconded by Mr. Langston, to approve the agenda as proposed. With a voice vote of all ayes the motion carried.

MINUTES

Ms. Andrews made a motion, seconded by Mr. Langston, to approve the July 11, 2017 meeting minutes. With a voice vote of all ayes the motion carried.

PETITIONS

17-21 Tom McNelis – Map Amendment Rezoning Property Identified by PIN 04-15-200-003 from A-1 to R-1, 14000 Block of Budd Road Approximately 0.98 Miles from Millbrook Road on the North Side of Budd Road in Fox Township

Mr. Asselmeier provided a summary of this proposed map amendment. The petitioner desires the rezoning in order to construct a house on the property at some point in the future. The property does not have a housing allocation. The properties to the north, east and west have houses. Any new structures would have to obtain the necessary building permits; permits for well and septic would also have to be secured before a house is constructed. The Village of Millbrook expressed no concerns regarding this proposal; Fox Township has not submitted any comments.

The home allowed on the property could only be for one (1) single-family home.

Mr. Holdiman stated the setbacks are fifty feet (50') from the side property lines, fifty feet (50') from the rear property line and one hundred fifty feet (150') from the centerline of Budd Road.

Ms. Andrews said the NRI Report was approved previously.

Mr. McNelis noted that residential uses were located on the west, east and north of the property.

There were no questions from the Committee to the applicant.

Mr. Rybski made a motion, seconded by Mr. Guritz, to forward the petition onto the Plan Commission with a favorable recommendation.

By a voice vote, the motion passed unanimously.

This matter will go before the Kendall County Regional Planning Commission on August 23rd.

Mr. Asselmeier asked that Petition 17-22 be moved ahead of Petition 17-19. Without objection, the agenda was amended.

17-22 Stor-Mor, Inc. – Major Amendment to Special Use Permit Granted by Ordinance 2016-15 Allowing an Enclosed Self Storage Facility and an Outdoor Storage Facility at 1317 Route 31 (PINs: 03-07-278-011, 03-07-278-010 and 03-07-278-009) in Oswego Township

Mr. Asselmeier provided a summary of this proposed amendment to the special use permit. The petitioner would like to construct one (1) one thousand, six hundred fifty (1,650) square foot building, construct one (1) four thousand, three hundred (4,300) square foot building, reduce the number of vehicles stored onsite from twenty-nine (29) to sixteen (16) and amend the landscaping plan by removing the proposed vegetation south of the proposed four thousand, three hundred (4,300) square foot building. Oswego Township expressed no opposition to this proposal; the Village of Montgomery has not submitted any comments.

The proposed new buildings would be used for the same purpose as the existing storage buildings.

Mr. Holdiman stated that the intent of the screening was for outdoor storage therefore he had no objections to the petitioner's screening proposal.

Mr. Holdiman asked if the Oswego Fire Protection District approved not having sprinklers in the buildings, similar to the other buildings. Mr. Schneider said he has not asked about these specific buildings, but no problems existed in the past. Mr. Holdiman advised Mr. Schneider to confirm this information with the Oswego Fire Protection District.

Mr. Rybski asked if the buildings were served by public utilities. Mr. Asselmeier said yes. Mr. Schneider added that the office was the only building that had plumbing.

The petitioner currently has stormwater information under review. Mr. Schneider said that he was not increasing impervious surface. The detention pond shown on the site plan already exists.

Mr. Schneider asked, if he did an expansion in the future, would he need to go through the same process. Mr. Asselmeier said that he would need a major amendment to the special use permit because the site plan is approved as part of the special use permit.

Mr. Holdiman made a motion, seconded by Mr. Rybski, to forward the petition onto the Plan Commission with a favorable recommendation.

By a voice vote, the motion passed unanimously.

This matter will go before the Kendall County Regional Planning Commission on August 23rd.

17-19 Pulte Group Representing Dave Hamman – Renew Special Use Permit Granted by Ordinance 2004-43 Allowing the Placement of a Commercial Off-Premise Advertising Structure (Billboard) on the Parcel Identified by PIN 03-01-127-006 and Revoking the Special Use Permit for the Placement of a Commercial Off-Premise Advertising Structure (Billboard) on the Parcel Identified by PIN 03-01-127-004, Northeast Corner of U.S. 34 and Hafenrichter (Farnsworth) in Oswego Township

Mr. Asselmeier provided a summary of this proposed special use permit. He stated that the special use permit required the sign to be renewed every three (3) years; the sign was approved in 2004. Oswego Township expressed no opposition to this request. The City of Aurora has not submitted any comments. The location of the sign in relation to the property line must be determined; it needs to be ten feet (10') off of the property line. A building permit would be required because the sign was moved from its original location.

Mr. Rybski made a motion, seconded by Mr. Langston, to forward the petition onto the Plan Commission with a favorable recommendation.

By a voice vote, the motion passed unanimously.

This matter will go before the Kendall County Regional Planning Commission on August 23rd.

REVIEW OF PETITIONS THAT WENT TO COUNTY BOARD

None

UPDATES OF PETITIONS

None

OLD BUSINESS

None

NEW BUSINESS

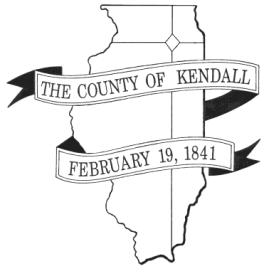
None

PUBLIC COMMENT

None

ADJOURNMENT

Mr. Guritz made a motion, seconded by Mr. Langston, to adjourn. With a voice vote of all ayes, the motion carried. The ZPAC, at 9:30 a.m., adjourned.



DEPARTMENT OF PLANNING, BUILDING & ZONING

111 West Fox Street • Room 204

Yorkville, IL • 60560

(630) 553-4141

Fax (630) 553-4179

MEMORANDUM

To: Kendall County Zoning and Platting Advisory Committee

From: Matthew H. Asselmeier, AICP, Senior Planner

Date: September 20, 2017

Re: 17-28 Proposed Text Amendments to Sections 7.01.D.32, 7.01.D.33 and 10.03.B.4 of the Kendall County Zoning Ordinance Pertaining to Regulations of Outdoor Target Practice or Shooting Ranges (Not Including Private Shooting in Your Own Yard)

The Kendall County Planning, Building and Zoning Committee has been researching outdoor target practice and shooting range regulations for the last several months. Using the regulations of several neighboring and nearby counties, the Planning, Building and Zoning Committee has drafted the enclosed proposed regulations. The Committee approved initiating this proposal at their meeting on September 11th. Proposed changes are shown in red and are bolded.

These changes do not apply to the Sheriff's Office Range or any gun range or gun club currently lawfully operating.

If you have any questions prior to the October 3rd meeting on this topic, please let me know.

Thanks,

MHA

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Amendment to 7.01.D.32 (Special Uses in A-1)

Outdoor Commercial Sporting Activities including but not limited to swimming facilities and motocross sports. Appropriate regulations for lighting noise and hours of operation shall be included in the conditions. Outdoor commercial sporting activities shall exclude outdoor target practice (**such exclusion extends to shooting ranges not located on property owned by the Kendall County Forest Preserve District or the State of Illinois used for State parks**), athletic fields with lights, paintball facilities and riding stables; including but not limited to polo clubs, and similar uses.

Amendment to 7.01.D.33 (Special Uses in A-1) and 10.03.B.4 (Special Uses in M-3)

Outdoor Target Practice or Shooting (**but** not including private shooting in your own yard **or shooting ranges located on property owned by the Kendall County Forest Preserve District or the State of Illinois used for State parks**) with the following conditions:

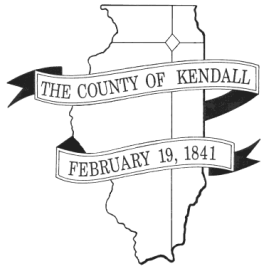
- a. **Range layout** ~~Rr~~ requires conformity with **National Rifle Association** standards with regard to layout and dimensions. ~~;~~ ~~provide appropriate berming based on surrounding land use and type(s) of firearms to be used. Such as berming shall generally be consistent with standards established in the NRA Source Book.~~ The petitioner shall submit a site capacity a calculation and a detailed site plan showing the layout and design of the proposed shooting range, including all required setbacks and landscaping and the existing and proposed structures, their floor areas and impervious surfaces. The scale of the site plan shall be no greater than one inch equals one hundred feet (1"=100').
- b. **Ranges designed for the use of handguns and rifles shall provide berms at least twenty feet (20') high and six feet (6') thick at the top, made of soft earth or other material that is unlikely to cause ricochets, and containing no large rocks. Berms shall be located as follows:**
 1. **Shotgun ranges – No berming required.**
 2. **Ranges for handguns and rifles with the same or less power than .22 long rifle**
 - a. **Backstop at least one hundred fifty feet (150') from the firing line.**
 - b. **Lateral not closer than thirty feet (30') from the firing line.**
 3. **Ranges for rifles with more power than a .22 long rifle**
 - a. **Backstop at least three hundred feet (300') from the firing line.**
 - b. **Lateral not closer than thirty feet (30') from the firing line.**
 4. **All required berms shall be constructed prior to the commencement of operations and shall be maintained for the duration of the special use permit.**
 5. **In addition to berms, appropriate baffling shall be installed over the targets to prevent projectiles from overshooting the berm for hand gun and rifle ranges.**
- c. **Ranges shall be located on a site where an uninhabited downrange safety area is available. The required length of the safety area shall be as follows:**
 1. **Shotgun ranges – one thousand five hundred feet (1500'), provided that shot size is limited to #4 or smaller.**
 2. **Ranges for handguns and rifles not more powerful than .22 long rifle – seven thousand feet (7,000').**
 3. **Ranges for rifles more or equal power than a .22 long rifle – thirteen thousand five hundred feet (13,500').**

4. **The downrange safety area requirement for handgun, rifle and archery ranges may be waived by the County Board if the firing line is provided with overhead baffling meeting the standards of the National Rifle Association.**
 5. **The safety area shall conform to National Rifle Association standards for the shape and width. The safety area shall have signs posted at intervals stated in the special use permit warning of the potential danger from stray bullets.**
 6. **For the purposes of this regulation, the term “downrange safety area” shall mean the area away from the launching site towards the target.. In cases of shooting ranges where targets are not stationary, appropriate baffling shall be provided.**
- d. Requires minimum parcel size of **5 forty (40) acres for firearms.**
 - e. **The range, including the safety area, must be under the control of the operator of the range, by ownership or lease.**
 - f. **The petitioner shall submit a detailed written narrative describing the proposed use. This narrative shall, at minimum, describe the type of range (i.e. public, private, or government), the type(s) of firearms and targets expected to be used and the proposed days and hours of operation.**
 - g. Must have a sign that lists allowed firearm types, rules of operation; hearing and vision protection required.
 - h. **At least one (1) State recognized, nationally recognized or National Rifle Association Certified range supervisor must be present at all times when firing is taking place. The supervisor shall be certified for the type of shooting being supervised and shall know and enforce all range rules.**
 - i. **At least one (1) Range flag flown, a sign or red light lit at all times that firing is taking place. If a range flag is used, the flagpole shall be at least eighteen feet (18’) high and the flag shall be bright red forty inches (40”) long and twenty inches (20”) inches wide at the pole and six inches (6”) wide at the free end.**
 - j. Hours and days of operation ~~as specified in the Special Use Permit to be determined by the County Board~~ shall be as follows: **No range shall open prior to 9:00 am any day of the week. No range shall remain open after 5:00 6:00 pm Mondays through Fridays, 3:00 5:00 pm on Saturdays and ranges shall be closed 3:00 pm on Sundays.**
 - k. Access must be controlled by a lockable gate. **The range proper shall be fenced in a manner so to prohibit entrance on the property by members of the public and shall have signs posted at one hundred foot (100’) intervals warning members of the public of the danger.**
 - l. Hazardous waste plan addressing lead management required **at the time of application for a special use permit. Any changes to the hazardous waste plan addressing lead management shall be promptly forwarded to the Kendall County Planning, Building and Zoning Department.**
 - m. No discharge of lead shot into wetland.

- n. Must be at least **one thousand five hundred feet (1,500')** from the firing line to the ~~existing dwellings and~~ property lines of ~~schools, daycares, places of worship and airstrips adjoining properties.~~ **The required distance is both parallel and perpendicular to the firing line.**
- o. No alcohol allowed.
- p. No projectiles shall leave the boundaries of the site.
- q. The range shall provide restroom facilities to employees and patrons.**
- r. Everyone on the firing line is required to wear hearing protection and safety glasses.**
- s. The outdoor target practice or shooting range allowed by this special use permit shall provide the Kendall County Planning, Building and Zoning Department proof of accident and liability insurance prior to the commencement of operations; sufficient accident and liability insurance in the amount of Ten Million Dollars (\$10,000,000) for outdoor target practice or shooting ranges must be maintained during the duration of the special use permit.**
- t. All applicable Federal, State and County rules and regulations shall be adhered to.
- u. Must meet all requirements of the Kendall County Health Department.
- v. Water and drainage plans must be approved by the Kendall County Planning, Building and Zoning Office.
- w. Signage is permitted but must meet the Sign Ordinance regulations of Section 12 of the Zoning Ordinance.
- x. Lighting shall meet the standards of Section 11.02.F.12.d of the Zoning Ordinance. (Where non-residential sites are adjacent to residential sites (existing or future residential areas as shown on the officially adopted version of the Land Resource Management Plan (LRMP)), the light level at the property line produced by the non-residential lighting shall not exceed 0.2 foot-candles. The lighting shall be designed to avoid casting direct light or glare onto the adjacent residential property. Acceptable means to prevent glare or direct light onto the residential property include pole/luminary-mounted shields and dense vegetation. On abutting nonresidential properties (existing or future nonresidential as shown on the officially adopted version of on the Land Resource Management Plan (LRMP)), or public streets the maximum illumination at the property line shall be five (5.0) foot-candles. Where residential is across a street, the maximum illumination at the use's boundary shall be two (2.0) foot-candles.

Higher maintained foot-candle levels may be appropriate for certain uses such as illuminated ball fields, auto dealerships, or gas stations. In such instances, information will be reviewed during Site Plan review. The Zoning Administrator may approve higher light levels for specific uses during the review process without the need for a variation. The Zoning Administrator may refer such instances to the Planning, Building, and Zoning Committee of the County Board. Such decisions made by the Zoning Administrator may be appealed to the Planning, Building, and Zoning Committee of the County Board. (Amended 7/19/2011)

- y. Must adhere to the Performance standards of Section 10.01.F of the Zoning Ordinance (Not more than sixty percent (60%) of the area of the lot may be covered by buildings or structures, including accessory buildings).
- z. Ranges must have direct access to a public road. For the purposes of this restriction “direct access” shall mean frontage; “direct access” shall not mean access via easement across property not owned by the range owner.**
- aa. Noise generated by the business allowed by this special use shall comply with the following:**
 - 1. Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty-five (65) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the residential property line of the complainant.**
 - 2. Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty-five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the residential property line of the complainant.**
 - 3. EXEMPTION: Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.**
- bb. Outdoor target practice and shooting ranges in existence prior to the date of the adoption of this ordinance shall follow the restrictions on their respective special use permits.**



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MEMORANDUM

To: Kendall County Zoning and Platting Advisory Committee

From: Matthew H. Asselmeier, AICP, Senior Planner

Date: September 20, 2017

Re: 17-29 Proposed Text Amendments to Section 13.08 Pertaining to Notification Requirements
for Special Use Permit Applications

At their meeting on September 11, 2017, the Kendall County Planning, Building and Zoning Committee approved initiating a text amendment to the Kendall County Zoning Ordinance requiring additional notification of neighbors for applications for special use permits on A-1 Agricultural District zoned properties. A copy of the proposed language is enclosed. Proposed changes are shown in red and are bolded.

If you have any questions prior to the October 3rd meeting on this topic, please let me know.

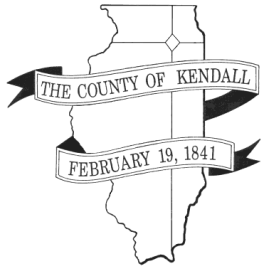
Thanks,

MHA

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Section 13.08

H. HEARING ON APPLICATION. Upon receipt in proper form of the application and statement referred to in paragraph 13.07-2 of this Section, the Hearing Officer shall hold at least one public hearing in the township in which the property is located, or in the County Office Building. Provided, that if the owner of any property affected by such proposed special use so requests in writing, such hearing shall be held in the township affected by the terms of such proposed amendment. At least fifteen (15) days in advance of each hearing notice of the time and place of such hearing shall be published in a newspaper of general circulation in Kendall County. **In addition to the publication requirement, if the property is zoned A-1, the applicant shall provide notice of the public hearing at least fifteen (15) days prior to the hearing date by certified mail return receipt requested to the property owner of record for all parcels within two thousand six hundred feet (2600'), excluding road right-of-way, of the parcel subject to the special use permit application. For all other zoning categories, only adjacent properties must be notified via certified mail return receipt requested.**



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MEMORANDUM

To: Kendall County Zoning and Platting Advisory Committee

From: Matthew H. Asselmeier, AICP, Senior Planner

Date: September 20, 2017

Re: 17-30 Proposed Text Amendments to Sections 3.02 (Definitions), Section 10.01.C.10 (Special Uses in M-1 Limited Manufacturing District and M-2 Heavy Industrial District) and Section 10.01.C.11 (Special Uses in M-1 Limited Manufacturing District and M-2 Heavy Industrial District) Pertaining to Extending the Expiration Deadline of Kendall County's Medical Cannabis Regulations from January 1, 2018 to July 1, 2020

At their meeting on September 11, 2017, the Kendall County Planning, Building and Zoning Committee approved initiating a text amendment to the Kendall County Zoning Ordinance extending the expiration deadline for the County's medical cannabis regulations. When the County adopted medical cannabis regulations in 2014 (by Ordinances 2014-28 and 2014-31) the expiration date was set at January 1, 2018. The Compassionate Use of Medical Cannabis Pilot Program Act ("Act") (410 ILCS 130/1 et seq.) expires on July 1, 2020.

This proposed amendment does not change any language, other than the expiration date, contained within the Zoning Ordinance on this topic.

A copy of the proposed language is enclosed. Proposed changes are shown in red and are bolded.

If you have any questions prior to the October 3rd meeting on this topic, please let me know.

Thanks,

MHA

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Amendments to Section 3.02 Definitions

MEDICAL CANNABIS CULTIVATION CENTER or CULTIVATION CENTER. A facility operated by an organization or business that is registered by the Illinois Department of Agriculture to perform necessary activities to provide only registered medical cannabis dispensing organizations with usable medical cannabis. This definition is intended to remain consistent with the definition provided in 410 ILCS 130/10, as amended. In the event of a conflict between this definition and the statute, the statutory definition shall govern. (To be repealed on ~~4-1-18~~ 7.1.20)

ENCLOSED, LOCKED FACILITY. A room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access only by a Cultivation Center's agents or a Dispensing Organization's agent working for the registered Cultivation Center or the registered Dispensing Organization to cultivate, store, and distribute cannabis for registered qualifying patients. This definition is intended to remain consistent with the definition provided in 410 ILCS 130/10, as amended. In the event of a conflict between this definition and the statute, the statutory definition shall govern. (To be repealed on ~~4-1-18~~ 7.1.20)

MEDICAL CANNABIS DISPENSING ORGANIZATION or DISPENSING ORGANIZATION or DISPENSARY. A facility operated by an organization or business that is registered by the Illinois Department of Financial and Professional Regulation to acquire medical cannabis from a registered Cultivation Center for the purpose of dispensing cannabis, paraphernalia, or related supplies and educational materials to registered qualifying patients. This definition is intended to remain consistent with the definition provided in 410 ILCS 130/10, as amended. In the event of a conflict between this definition and the statute, the statutory definition shall govern. (To be repealed on ~~4-1-18~~ 7.1.20)

MEDICAL CANNABIS INFUSED PRODUCT. Food, oils, ointments, or other products containing usable cannabis that are not smoked. This definition is intended to remain consistent with the definition provided in 410 ILCS 130/10, as amended. In the event of a conflict between this definition and the statute, the statutory definition shall govern. (To be repealed on ~~4-1-18~~ 7.1.20)

Amendment to Section 10.01.C.10

10. Medical Cannabis Cultivation Centers- Temporary (will be automatically repealed on ~~January 1, 2018~~ July 1, 2020)

a. **Definitions:** All terms not defined in section 3.02 of this Zoning Ordinance shall carry the meaning set forth in the Compassionate Use of Medical Cannabis Pilot Program Act ("Act") (410 ILCS 130/1 et seq.), as amended

b. **Preliminary Requirements.** All Medical Cannabis Cultivation Center special use permit applicants shall comply with the following requirements before applying for a special use permit and shall maintain compliance at all times thereafter.

i. *State laws.* Applicants must comply with the Compassionate Use of Medical Cannabis Pilot Program Act ("Act") (410 ILCS 130/1 et seq.) and all rules and regulations adopted in accordance thereto including the following sections of the Illinois Administrative Code: 8 Ill. Admin. Code 1000, 68 Ill. Admin. Code 1290, 77 Ill. Admin. Code 946 and 86 Ill. Admin. Code 130, and as amended.

ii. *Registration.* Applicants must be registered with the Illinois Department of Agriculture

iii. *Location.* A Cultivation Center must be located more than 2,500 feet from the

property line of any pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day child care facility, or an area zoned for residential use, as required pursuant to 410 ILCS 130/105.

iv. *Security Measures.* Applicants must establish and maintain all required security measures, in accordance with the Act and all applicable regulations, to deter and prevent the theft of cannabis and unauthorized entrance into areas containing cannabis.

v. *Code Compliance.* Cultivation Centers must meet all federal, State and local building, zoning and fire codes and all local ordinance requirements.

vi. *Other Requirements:* Applicants, their agents and employees must comply with all other requirements identified in 410 ILCS 130/105, as amended.

c. Required Permit Information. Upon applying for a Cultivation Center special use permit, the applicant must provide the following information:

i. A Security Plan that has been reviewed and approved by the Illinois State Police and is compliant with 410 ILCS 130/105, as amended, in addition to the rules set forth by the Illinois Department of Agriculture at 8 Ill. Admin. Code 1000 et seq.

ii. Evidence demonstrating the location of the enclosed, secure area or loading/unloading dock is or will be out of public sight for the loading/unloading of medical cannabis in the transport motor vehicle.

iii. A scale drawing of the front, rear, or side of the building or structure showing dimensions and architectural details (Building Elevations); and

iv. A location map demonstrating the property meets location conditions identified in 410 ILCS 130/105, as amended, and

v. Proof that applicant is registered with the Illinois Department of Agriculture.

d. Operational and Facility Requirements:

i. *Enclosed, Locked Facility.* All cultivation of cannabis for distribution to a registered Dispensing Organization shall take place in an Enclosed, Locked Facility.

ii. *Storage.* No outdoor storage of any kind will be permitted at Cultivation Centers.

iii. *Edibles.* Any area within the Cultivation Center where cannabis will be manufactured into an edible form shall comply with the Illinois Food, Drug and Cosmetic Act, 410 ILCS 620 et. seq., the Illinois Sanitary Food Preparation Act, 410 ILCS 650 et. seq., the Illinois Food Handling Regulation Enforcement Act, 410 ILCS 650 et. seq., and section 80 of the Act, 410 ILCS 130/80.

iv. *Waste.* Cannabis waste shall be stored, secured, locked and managed in accordance with State regulations for the disposal of medical cannabis with the requirements set forth in 410 ILCS 130/180 and 8 Ill. Admin. Code. 1000.460, as amended respectively.

- v. *Signs.* All signage shall comply with Section 12 of the Kendall County Zoning Ordinance. Signs shall not contain cannabis imagery such as cannabis leaves, plants, smoke, paraphernalia, or cartoonish imagery oriented towards youth or language referencing cannabis. Electronic message boards and temporary signs are not permitted in connection with a Cultivation Center.
- vi. *Other Products.* It shall be prohibited to cultivate, manufacture, process or package any product, other than medical cannabis and cannabis infused products at a Cultivation Center.
- vii. *Fence.* All Cultivation Centers must be surrounded by a fence a minimum of eight (8) feet tall with barbed wire on top.
- viii. *Registration:* The owner or operator of a Cultivation Center must submit annual documentation of registration with the Illinois Department of Agriculture within thirty days of becoming registered or renewing its registration.

e. Legal Protections.

- i. *Limitation of Liability.* Kendall County Shall not be liable to the permitted Cultivation Center, the Cultivation Center's owners, employees, board members, producer backers, vendors, visitors, heirs, assigns, agents, family members or guests for any damage, injury, accident, loss, compensation or claim, based on, arising out of, or resulting from the permitted, Cultivation Center's participation in the Compassionate Use of Medical Cannabis Pilot Program, including, but not limited to, the following: arrest, seizure of persons or property, prosecution pursuant to State or federal laws by State or federal prosecutors, any fire, robbery, theft, mysterious disappearance or any other casualty; or the action of any other permittees, registrants, or persons. This Limitation of Liability provision shall survive expiration or the early termination of the permit.
- ii. *Indemnification.* The permitted Cultivation Center, its owners, employees, board members, producer backers, vendors, visitors, heirs, assigns, agents, family members or guests shall hold harmless and indemnify Kendall County, its officials, officers and employees, including past, present, and future board members, elected officials and agents against any civil action or criminal penalty commenced against Kendall County and/or its officials, officers and employees, including past, present, and future board members, elected officials and agents, through counsel of their own choosing, based upon illness or death as a result of the possession, cultivation, transportation or other use of medical cannabis ingested in any way authorized under the provision of the Act. Pursuant to Illinois law 55 ILCS 5/3-9005, any attorney representing Kendall County, shall be approved by the Kendall County State's Attorney and shall be appointed a Special Assistant State's Attorney.
- iii. *Violations of the Law.* The Act and any mandated zoning does not authorize any permittee to violate federal or state laws.

f. Revocation: Any special use permit granted under this Zoning Ordinance may be revoked for failure to comply with the terms of this Zoning Ordinance. The decision to revoke a special use permit is subject to the review procedure identified in section 13 of the Zoning Ordinance.

Amendment to Section 10.01.C.11

11. Medical Cannabis Cultivation Centers- Temporary (will be automatically repealed on **January 1, 2018 July 1, 2020**)

a. **Definitions:** All terms not defined in section 3.02 of this Ordinance shall carry the meaning set forth in the Compassionate Use of Medical Cannabis Pilot Program Act (“Act”) (410 ILCS 130/1 et seq.), as amended.

b. **Preliminary Requirements.** All Medical Cannabis Dispensing Organization special use permit applicants shall comply with the following requirements before applying for a special use permit and shall maintain compliance at all times thereafter.

i. *State laws.* Applicants must comply with the Compassionate Use of Medical Cannabis Pilot Program Act (“Act”) (410 ILCS 130/1 et seq.) and all rules and regulations adopted in accordance thereto including the following sections of the Illinois Administrative Code: 8 Ill. Admin. Code 1000, 68 Ill. Admin. Code 1290, 77 Ill. Admin. Code 946 and 86 Ill. Admin. Code 130, and as amended.

ii. *Location.* A Dispensing Organization may not be located within 1,000 feet of the property line of any pre-existing public or private preschool or elementary or secondary school or day care center, day care home, group day care home, part day child care facility. A registered dispensing organization may not be located in a house, apartment, condominium, or an area zoned for residential use, as required pursuant to 410 ILCS 130/130 and Section 1290.50 of the Department of Financial and Professional Regulation rules.

iii. *Images.* No dispensary shall be maintained or operated in a manner that causes, creates or allows the public viewing of medical cannabis, medical cannabis infused products or cannabis paraphernalia or similar products from any sidewalk, public or private right-of-way or any property other than the lot on which the dispensary is located. No portion of the exterior of the dispensary shall utilize or contain any flashing lights, search lights or spot lights of any similar lighting system.

iv. *Security Measures.* Applicants must establish and maintain all required security measures, in accordance with the Act and all applicable regulations, to deter and prevent the theft of cannabis and unauthorized entrance into areas containing cannabis.

v. *Code Compliance.* Dispensing Organizations must meet all federal, State and local building, zoning and fire codes and all local ordinance requirements.

vi. *Other Requirements:* Applicants, their agents and employees must comply with all other requirements identified in 410 ILCS 130/130, as amended.

c. **Required Permit Information.** Upon applying for a Dispensing Organization special use permit, the applicant must provide the following information:

i. A scale drawing of the front, rear, or side of the building or structure showing dimensions and architectural details (Building Elevations); and

ii. A location map demonstrating the property meets location conditions identified in 410

d. Operational and Facility Requirements:

i. *Enclosed, Loading/unloading bay.* All medical cannabis deliveries shall take place in an Enclosed, Locked Facility.

ii. *Storage.* No outdoor storage of any kind will be permitted at Dispensing Organizations.

iii. *Advertisement/Signs.*

1) All signage shall comply with Section 12 of the Kendall County Zoning Ordinance.

2) Signs shall not contain cannabis imagery such as cannabis leaves, plants, smoke, paraphernalia, or cartoonish imagery oriented towards youth or language referencing cannabis.

3) Electronic message boards and temporary signs are not permitted in connection with a Dispensing Organization.

4) Any additional merchandise packaging provided by a dispensary, such as bags, sacks, totes or boxes, shall be opaque and identify the name of the dispensing organization.

5) No Advertisements shall be placed or maintained within 1,000 feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park or library, or any game arcade admission to which is not restricted to persons age 21 or older.

6) No advertisement shall be posted on publicly-owned or -operated property.

7) If the dispensing organization sells edible cannabis infused products, it must display a placard that states the following:

“Edible cannabis infused products were produced in a kitchen not subject to public health inspections that may also process common food allergens.” The placard shall be no smaller than 24” tall by 36” wide, with typed letters no smaller than 2”. The placard shall be clearly visible and readable by customers and shall be written in English.

iv. *Other Prohibitions.* A dispensing organization shall not:

1) produce or manufacture cannabis;

2) allow consumption of cannabis at the dispensary;

3) sell cannabis unless it is pre-packaged and labeled in accordance with Part, 8 Ill. Adm. Code 1000 and 77 Ill. Adm. Code 946;

- 4) sell cannabis or cannabis-infused products to consumer unless the consumer presents an active registered qualifying patient or designated caregiver card issued by DPH;
- 5) enter into an exclusive agreement with any cultivation center;
- 6) operate drive through windows;
- 7) transport cannabis to residences of registered qualifying patients or designated caregivers;
- 8) operate if video surveillance equipment is inoperative;
- 9) operate if the point of sale equipment is inoperative;
- 10) operate if the State's medical cannabis electronic verification system is inoperative; or,
- 11) have fewer than two people working at any time while the dispensary is open.

v. *Landscaping.* All dispensing organizations shall ensure that trees, bushes and other foliage outside of the dispensary premises do not allow for a person or persons to conceal themselves from sight.

vi. *Lighting.* All dispensing organizations shall ensure the outside perimeter of the dispensary premises is sufficiently lit to facilitate surveillance.

vii. *Hours of operation:* A dispensary may operate between 6 a.m. and 8 p.m. local time.

e. Legal Protections.

i. *Limitation of Liability.* Kendall County Shall not be liable to the permitted Dispensing Organization, the Dispensing Organization's owners, employees, board members, producer backers, vendors, visitors, heirs, assigns, agents, family members or guests for any damage, injury, accident, loss, compensation or claim, based on, arising out of, or resulting from the permitted, Dispensing Organization's participation in the Compassionate Use of Medical Cannabis Pilot Program, including, but not limited to, the following: arrest, seizure of persons or property, prosecution pursuant to State or federal laws by State or federal prosecutors, any fire, robbery, theft, mysterious disappearance or any other casualty; or the action of any other permittees, registrants, or persons. This Limitation of Liability provision shall survive expiration or the early termination of the permit.

ii. *Indemnification.* The permitted Dispensing Organization, its owners, employees, board members, producer backers, vendors, visitors, heirs, assigns, agents, family members or guests shall hold harmless and indemnify Kendall County, its officials, officers and employees, including past, present, and future board members, elected officials and agents against any civil action or criminal penalty commenced against Kendall County and/or its officials, officers and employees, including past, present, and

September 20, 2017

future board members, elected officials and agents, through counsel of the County's own choosing, due in whole or in part to the Dispensing Organization's acts or omissions and/or for any illness or death as a result of the possession, cultivation, transportation or other use of medical cannabis ingested in any way authorized under the provision of the Act. Pursuant to Illinois law 55 ILCS 5/3-9005, any attorney representing Kendall County, shall be approved by the Kendall County State's Attorney and shall be appointed a Special Assistant State's Attorney.

iii. *Violations of the Law.* The Act and any mandated zoning does not authorize any permittee to violate federal or state laws.

f. Revocation:

i. Any special use permit granted under this ordinance may be revoked for failure to comply with the terms of this ordinance. The decision to revoke a special use permit is subject to the review procedure identified in section 13 of the Kendall County Zoning Ordinance.

ii. Applicants must be registered with the Illinois Department of Financial and Professional Regulation prior to commencing operations and shall remain registered at all times of operation. The Dispensing Organization must notify Kendall County within ten (10) days of its registration being suspended or revoked. Failure to register or timely notify Kendall County of the suspension or revocation will result in immediate revocation of the special use.

g. Repeal. This amendment to the Zoning Ordinance is automatically repealed, in its entirety, on ~~January 1, 2018~~ **July 1, 2020**.



Anna R. Kuperstein, Legal Counsel
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August 16, 2017

Via Electronic Delivery

Mr. Matthew Asselmeier
Kendall County Planning, Building and Zoning Department
111 W Fox Street, Room 203
Yorkville, Illinois 60560

Dear Mr. Asselmeier:

On behalf of ANR Pipeline Company (ANR), I am writing in response to your request for additional information about the modifications planned for the Sandwich Compressor Station in Kendall County, and the comprehensive regulation of this activity by the Federal Energy Regulatory Commission (FERC). We appreciate the opportunity to discuss this work with your Department, and we hope that this letter provides sufficient detail to address your questions.

Background

ANR has been operating the Sandwich Compressor Station for approximately 68 years as part of its interstate pipeline system. In the upcoming months, ANR plans to make certain modifications at the Station. This work will be one of several integrated components of ANR's Wisconsin South Expansion Project.¹ The purpose of the Project is to deliver an additional 230,950 dekatherms per day from the Sandwich Compressor Station area, into the northern Illinois and Wisconsin markets. The Project will provide efficient, reliable, clean-burning, economic firm capacity from ANR facilities to its power and distribution gas customers to supply the growing market demand for natural gas in the two states. At the Sandwich Compressor Station, ANR will install a new compressor building containing a new turbine compressor unit and associated facilities, as well as a control building with mechanical, electrical, and storage areas. Although ANR will modify the Station's site plan to reflect these new facilities, they will be located entirely within the existing fenced area of the Station.

¹ Specifically, the Wisconsin South Expansion Project consists of modifying the infrastructure at ANR's existing Sandwich Compressor Station, Hampshire Meter Station, Tiffany East Meter Station, Kewaskum Compressor Station and replacement of an approximate 0.54 mile associated lateral, and related facilities.

Federal Regulatory Status

Like all interstate natural gas pipelines, ANR's pipeline system (including associated facilities like compressor stations) is regulated by numerous federal agencies, including FERC. FERC exercises primary jurisdiction over the construction of interstate pipelines and associated facilities (such as the work comprising the Wisconsin South Expansion Project) in accordance with the Natural Gas Act² (NGA) and Part 157 of the Commission's regulations. As required by the NGA, ANR obtained approval from FERC's predecessor agency³ for the original construction of the Sandwich Compressor Station in 1949. On November 3, 2016, ANR requested authorization from FERC to implement the Wisconsin South Expansion Project, including the planned work at the Sandwich Compressor Station. Specifically, ANR submitted to FERC an application for a certificate of public convenience and necessity and abandonment authority, pursuant to section 7(c) and 7(b) of the NGA.⁴

As required by FERC regulations, ANR's application provided detailed information on a variety of issues related to the Project, including the following. The project summary includes a description of the facilities associated with the Project, plot plans and schematics, construction timetables, and an overview of planned testing of newly constructed pipe to verify its integrity and ensure its ability to withstand the designed maximum operating pressures, in compliance with regulations of the Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA). (In addition to applicable FERC regulations, all components of the Project, including work at the Sandwich Compressor Station, will be constructed and installed in compliance with PHMSA regulations. These federal regulations set forth mandatory and detailed standards for construction and operation of interstate pipelines and associated facilities, including the design, the construction process itself, and post-construction obligations to ensure safe operation.) The application also includes an assessment of impacts, if any, on regional fisheries, wildlife, unique and sensitive wildlife habitat, wetlands, migratory birds, vegetation resources, as well as threatened, endangered, and rare species. A cultural resource assessment addresses potential effects of the Project on cultural resources, historic properties, archaeological sites, and historic-era cemeteries. (On April 27, 2017, FERC staff issued an Environmental Assessment, concluding that the Commission's approval of the Project would not constitute a major federal action significantly affecting the quality of the human environment, and recommending that the expected Commission Order approving the Project contain a finding of no significant impact.)

In compliance with FERC requirements, ANR has undertaken public outreach to notify landowners in the vicinity of the Sandwich Compressor Station of the planned work. ANR held an open house in the area on October 27, 2016. Within two weeks of submitting its application to FERC, ANR published a notice about the planned work in two issues of the *Kendall County NOW*, and placed a copy of the application at the Sandwich Public Library for public review. ANR also mailed an information packet about the Project to landowners located within a specific

² 15 U.S.C. § 717 *et seq.*

³ The Federal Power Commission was reorganized as FERC in 1977.

⁴ ANR Pipeline Company, Abbreviated Application for a Certificate of Public Convenience and Necessity and Abandonment Authority, filed November 3, 2016 in Docket No. CP17-9-000.

radius of the Project site, consisting of FERC's Notice of Application for the Project and FERC's informational pamphlet for landowners explaining the application process.

ANR has also coordinated closely with FERC throughout the application process. Before filing its application, ANR met with FERC staff in person to discuss the Project, on October 6, 2016. Since the initial filing and meeting, ANR has been working closely with FERC staff, including responding to the Commission's supplemental data requests based on information provided in the filing. Once FERC issues the requested certificate, ANR will undertake all Project work, including all work on the Sandwich Compressor Station, in accordance with the certificate and the Commission's regulations. ANR has requested that the Commission issue a certificate order approving the Project by September 1, 2017, to allow adequate time for ANR to meet an in-service date of November 1, 2018.

Legal Analysis

As noted above, FERC exercises primary jurisdiction over the construction of interstate pipelines and associated facilities (such as the work comprising the Wisconsin South Expansion Project) in accordance with the NGA and the Commission's regulations. The NGA occupies the field of interstate pipeline regulation with respect to siting, construction, and operation—with only a few exceptions.⁵ Other than these limited exceptions, the NGA has been recognized by the U.S. Supreme Court as a “comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce.”⁶ The Court has identified FERC as having “exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale.”⁷ The Court has specified that where state or local regulation affects FERC's ability to comprehensively regulate transportation and sale of natural gas under the NGA, or presents the “prospect of interference with the federal regulatory power,” state law may be preempted even though “collision between the state and federal regulation may not be an inevitable consequence.”⁸ As a result, the NGA confers on FERC the power of field preemption, which exists where a federal regulatory scheme has occupied the field in that area to such a pervasive extent that it can reasonably be inferred that Congress left no room for supplementing state law.⁹

The U.S. Court of Appeals for the Seventh Circuit has expressly reiterated the U.S. Supreme Court's interpretation of the NGA's preemption of state regulation, stating, “The Natural Gas Act grants the Federal Energy Regulatory Commission jurisdiction to regulate the interstate transportation of natural gas, 15 U.S.C. § 717(b), and the Supreme Court has held that the Commission's jurisdiction is exclusive; state regulation is preempted.”¹⁰ Other courts in the Seventh Circuit similarly recognize that “Congress has conferred exclusive jurisdiction on the

⁵ 15 U.S.C. § 717b(d). Specifically, the NGA does not affect the rights of states under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), or the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*).

⁶ *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01 (1988).

⁷ *Id.*

⁸ *Id.* at 310.

⁹ *Id.* at 300-01; *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

¹⁰ *Midwestern Gas Transmission Co. v. McCarty*, 270 F.3d 536, 538 (7th Cir. 2001).

FERC to regulate the sale and interstate transportation of natural gas,”¹¹ that the NGA constitutes “a comprehensive scheme that preempt[s] state law when that law [is] an obstacle to fulfillment of the NGA purposes,”¹² and that “preemption . . . extends to bar the enforcement of state law when that law forms an obstacle to realization of congressional purpose.”¹³

Moreover, U.S. federal courts have consistently concluded that the NGA preempts state or local permitting or zoning regulations purporting to impose requirements on the siting, construction, or operation of interstate natural gas pipelines and associated facilities.¹⁴ In a more recent case, a court in the Seventh Circuit held specifically that the NGA preempts state regulation of the construction and location of FERC-regulated pipelines and associated facilities.¹⁵ The court recognized that the NGA would not necessarily preempt all state and local regulations that have a merely tangential effect on FERC-regulated pipelines. However, the court specified that revocation of a construction permit for a FERC-regulated pipeline is not the type of indirect effect that could escape preemption under the NGA. The court concluded that FERC has “ultimate authority over the construction of the pipeline” and “ultimate authority to determine the route of any gas pipeline regardless of state objections.”¹⁶ The court added that “nothing in the [NGA] suggests that FERC approval of pipeline construction and location is contingent upon consultation with the states.”¹⁷

Among the factors that influenced the court’s decision was the comprehensive application process to obtain FERC authorization for construction—the same process that ANR has undertaken to obtain FERC authorization for modifications at the Sandwich Compressor Station. The court observed that, to obtain a certificate, “an applicant must survive public hearings on the application and otherwise make its way through a forest of requirements designed to show, among other things, that it has addressed acquisition and environmental concerns.”¹⁸

¹¹ *Rockies Exp. Pipeline LLC v. Indiana State Nat. Res. Comm’n*, No. 1:08-CV-1651-RLY-DML, 2010 WL 3882513, at *4 (S.D. Ind. Sept. 28, 2010).

¹² *Guardian Pipeline, L.L.C. v. 529.42 Acres of Land*, 210 F. Supp. 2d 971, 975 (N.D. Ill. 2002).

¹³ *Id.*

¹⁴ *See, e.g., Weaver’s Cover Energy, LLC v. Rhode Island Coast Resources Mgmt. Council*, 589 F.3d 458 (1st Cir. 2009) (concluding that state agency’s use of state licensing program to block NGA permit applicant’s project was preempted); *Dominion Transmission, Inc. v. Town of Myersville Town Council*, 982 F.Supp.2d 570 (D. Md. 2013) (ruling that provisions of town zoning code directly affecting the siting, construction, or operation of a natural gas compressor station were preempted by the NGA); *Islander East Pipeline Co. v. Blumenthal*, 478 F.Supp.2d 289 (D. Conn. 2007) (determining that imposition of permit requirement to carry out construction of interstate natural gas pipeline facility was preempted by the NGA); *Northern Natural Gas Co. v. Mums*, 254 F.Supp.2d 1103 (S.D. Iowa 2003) (holding that state regulation applied to construction of interstate natural gas pipeline was preempted by the NGA), *aff’d sub nom. Northern Natural Gas Co. v. Iowa Utilities Bd.*, 377 F.3d 817 (8th Cir. 2004); *Algonquin LNG v. Loqa*, 79 F.Supp.2d 49 (D.R.I. 2000) (granting injunction to natural gas facility owner prohibiting enforcement of city ordinance requiring modifications to facility to comply with local building code and finding zoning ordinance was preempted); *Northern Border Pipeline Co. v. Jackson Co.*, 512 F.Supp.1261 (D. Minn. 1981) (enjoining enforcement of county’s conditional use permit based on state statute exempting interstate pipeline for county’s zoning powers).

¹⁵ *Rockies Exp. Pipeline LLC v. Indiana State Nat. Res. Comm’n*, No. 1:08-CV-1651-RLY-DML, 2010 WL 3882513 (S.D. Ind. Sept. 28, 2010).

¹⁶ *Id.* at *4-5.

¹⁷ *Id.* at *5.

¹⁸ *Id.* at *3.

Mr. Matthew Asselmeier
August 16, 2017
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Regulation of Planned Modifications at Sandwich Compressor Station

ANR's planned modifications at the Sandwich Compressor Station are subject to FERC regulation under the NGA, and ANR has complied with all applicable regulations and requirements set forth by FERC as well as PHMSA. Under these circumstances, we believe that the planned modifications to the Station are exempt from the Department's Special Use amendment process, and we respectfully request the Department's concurrence—in particular, given that the Seventh Circuit has expressly applied the NGA's preemption power to state and local regulation of the location and construction of FERC-regulated pipelines and associated facilities.¹⁹ As a result, we believe that the current case law supports exemption of the planned modifications at the Station from the Department's Special Use amendment process.

We understand that ANR did participate in the amendment process in 2002, when constructing an office building at the site. However, construction of that office building was not subject to a FERC permitting process, because the office building was not a FERC-regulated facility under the NGA. In contrast, ANR is required to obtain FERC authorization for the planned modifications at the Station. The company has devoted significant time and resources to complying with the comprehensive application requirements outlined above, which overlap substantially with your Department's requirements. Significant federal oversight exists for this project, which was not the case for the company's construction of the office building.

While we believe that the planned modifications are exempt from the Department's amendment process, ANR is invested in maintaining a cooperative relationship with your Department. To that end, ANR will provide an updated plat for the site and proposed site plan changes for the Department's records, per your request. Finally, the modifications to the Station will not extend beyond the existing fenced area of the Station, and will not alter the use of the property as described in Ordinance 2002-06: operation of a commercial natural gas distribution facility—the same use since the original installation of the Sandwich Compressor Station in 1949.

We appreciate your time and assistance as ANR continues its work on the Wisconsin South Expansion Project, as well as the productive working relationship with your Department. Following the meetings with your Department on June 12 and July 13, ANR has endeavored to provide all the information requested by your Department, and we hope that the additional information provided through this letter is useful. Should any more questions arise, please do not hesitate to contact me.

Regards,



Anna R. Kuperstein
Legal Counsel
TransCanada U.S. Pipelines

¹⁹ See, generally, *Rockies Exp. Pipeline LLC v. Indiana State Nat. Res. Comm'n*, No. 1:08-CV-1651-RLY-DML, 2010 WL 3882513 (S.D. Ind. Sept. 28, 2010).

**PUBLIC NOTICE
KENDALL COUNTY
**KENDALL COUNTY ZONING, PLATTING,
ADVISORY COMMITTEE (ZPAC) ****

Notice is hereby given that the Kendall County Zoning, Platting Advisory Committee (ZPAC) shall hold their regularly scheduled meetings for Fiscal Year 2017-2018 on the first Tuesday of each month at 9:00 a.m. at the Kendall County Office Building, Room 209 & 210 at 111 West Fox Street, Yorkville, IL.

The specific dates of these meetings are as follows:

December 5, 2017	January 2, 2018	February 6, 2018	March 6, 2018
April 3, 2018	May 1, 2018	June 5, 2018	July 3, 2018
August 7, 2018	September 4, 2018	October 2, 2018	November 6, 2018

Questions can be directed to the same department, telephone (630) 553-4139. Fax (630) 553-4179. All interested persons may attend and be heard. Written comments should be directed to the Department but shall only be entered as part of the record at the discretion of the Kendall County Zoning, Platting Advisory Committee (ZPAC).

If special accommodations or arrangements are needed to attend these County meetings, please contact the Administration Office at 630-553-4171, a minimum of 24-hours prior to the meeting time.

**ROBERT DAVIDSON, CHAIRMAN
KENDALL COUNTY ZONING, PLATTING ADVISORY COMMITTEE (ZPAC)**