

**KENDALL COUNTY
REGIONAL PLANNING COMMISSION**

*Kendall County Office Building
Rooms 209 and 210
111 W. Fox Street, Yorkville, Illinois*

Meeting Minutes of March 22, 2023 - 7:00 p.m.

Chairman Bill Ashton called the meeting to order at 7:00 p.m.

ROLL CALL

Members Present: Bill Ashton, Eric Bernacki, Tom Casey, Dave Hamman (Arrived at 7:04 p.m.), Karin McCarthy-Lange, Larry Nelson, Ruben Rodriguez, and Seth Wormley

Members Absent: Bob Stewart and Claire Wilson

Staff Present: Matthew H. Asselmeier, Senior Planner

Others Present: Dan Nagel and Greg Vander Kamp

APPROVAL OF AGENDA

Member Rodriguez made a motion, seconded by Member Wormley, to approve the agenda. With a voice vote of seven (7) ayes, the motion carried.

APPROVAL OF MINUTES

Member Wormley made a motion, seconded by Member Nelson, to approve the minutes of the of the February 22, 2023, meeting. With a voice vote of seven (7) ayes, the motion carried.

PETITIONS

Petitions 23-05 Through 23-11 Kendall County Planning, Building and Zoning Committee

Mr. Asselmeier summarized the requests.

For the past several months, Staff has been working with the codifiers to get all of the Kendall County's regulations into one (1) code. The codifiers recommended several changes to the Kendal County Zoning Ordinance and Subdivision Control Ordinance. During the review, Staff also identified several changes to these regulations.

Member Rodriguez asked what the codification process entailed. Mr. Asselmeier explained that Kendall County's various ordinances were presently stand-alone documents. The codifiers would take all of the ordinances and place them in one (1) document. The codifiers were a private company hired by the County.

Member Hamman arrived at this time (7:04 p.m.).

The codifiers recommended that these changes occur prior to adoption of the new code. Below please find the proposed changes:

1. Petition 23-05 Subdivision Control Ordinance-Appendix 7
Several phone numbers are listed in the Appendix. The accuracy of these phone numbers is unknown. Staff would like to list the organization only and not the phone numbers.
2. Petition 23-06 Subdivision Control Ordinance-Appendix 7

Greg Chismark and WBK Engineering are listed by name. Staff would like to have a general statement regarding stormwater engineering contact information.

3. Petition 23-07 Subdivision Control Ordinance-Appendix 9 A
In the Performance Criteria Section, there is a dead link to information about invasive species. Staff would like a general statement instead of a website link.

Subdivision Control Ordinance-Appendix 9 B

In the Native Plan Resources Section, there are several dead links. Staff would like general references instead of website links.

4. Petition 23-08 Zoning Ordinance Section 3:02
The definitions of Brew Pub and Microbrewery should be amended to correspond to State law.
5. Petition 23-09 Zoning Ordinance Section 3:02
The definition of Tent should be expanded to include tents outside of campgrounds.
6. Petition 23-10 Zoning Ordinance Section 11:05.D.2
This section references a State law that does not exist.
7. Petition 23-11 Ordinance 1998-10
This Ordinance established procedures for closing inactive petitions. This Ordinance is outdated and now only applies to the Zoning Ordinance and Stormwater Management Ordinance. Staff is working with the State to incorporate the language in the Stormwater Ordinance; the Zoning Ordinance should be changed prior to adoption of the new code.

Redlined versions of the proposed changes were provided.

At their meeting on February 9, 2023, the Kendall County Planning, Building and Zoning Committee voted to initiate these amendments.

The proposals were emailed to the townships on February 23, 2023.

ZPAC met on the proposals on February 28, 2023, and recommended approval of the proposal by a vote of nine (9) in favor and zero (0) in opposition with one (1) member absent. The minutes of the meeting were provided.

Member Nelson asked if the phone numbers referenced in Petitions 23-05 and 23-06 would be kept updated on the website. Mr. Asselmeier responded yes. Member Nelson noted the difficulty of getting phone numbers for certain township officials.

Member Rodriguez asked who received notices for the Petitions. Mr. Asselmeier responded that no one received notices for Petitions 23-05 and 23-07. Greg Chismark and WBK Engineering were notified of Petition 23-06. Those entities that had special use permits for microbreweries and related brewery uses were notified of Petition 23-08. The entities that had special use permits for campgrounds and banquet facilities were notified of Petition 23-09. The entities that had special use permits for campgrounds were notified of Petition 23-10. The parties that had open special use permit applications from 2018 and 2022 were notified of Petition 23-11.

Member Rodriguez made a motion, seconded by Member Nelson, to recommend approval of the text amendments.

Member Nelson asked if the definition of tent changed any permitting requirements for tents. Mr. Asselmeier said the proposal does not change the permitting requirements related to tents.

The votes were as follows:

Ayes (8): Ashton, Bernacki, Casey, Hamman, McCarthy-Lange, Nelson, Rodriguez, and Wormley
Nays (0): None
Absent (2): Stewart and Wilson
Abstain (0): None

The motion carried. The proposal will go to the Kendall County Zoning Board of Appeals on March 27, 2023.

Petition 23-12 Kendall County Planning, Building and Zoning Committee

Mr. Asselmeier summarized the request.

In January 2023, the Illinois General Assembly approved and the Governor signed House Bill 4412 pertaining to commercial wind and solar energy systems. The new law requires that the County update its solar and wind regulations by May 27, 2023, in order to be able to have regulations governing commercial solar energy facilities and commercial wind energy facilities.

The proposed amendments were provided.

General proposed changes were as follows:

1. Various definitions related to solar and wind energy facilities are proposed to be amended, added, and deleted. Many terms are defined in State law and were referenced as such. The definitions of solar farm and solar gardens were removed. The definitions of solar energy system, private and wind energy system, small were adjusted to reflect State law. Onsite consumption would include energy generated within a subdivision, planned development, or business park and consumed within the development.
2. Small wind energy systems would become permitted accessory uses. They would be added to the list of uses in the R-3 in addition to their existing allowance in the A-1, R-1, R-2, RPD, Business, and Manufacturing Districts. Solar energy system, private would become permitted uses in all zoning districts.
3. Commercial solar energy facilities, test solar energy systems, commercial energy wind facilities and test wind towers would become special uses in the A-1, R-1, RPD Districts, and Manufacturing Districts.
4. Adding a statement that the regulations do not apply to commercial wind energy facilities within one point five (1.5) miles of a municipality, unless the County has an Intergovernmental Agreement with the municipality to provide zoning services to the municipality. Staff added a requirement that solar and wind energy facilities within one point five (1.5) miles of a municipality must either annex to the municipality or enter into a pre-annexation agreement with the municipality using the Chatham annexation rules.
5. Add a requirement that the County Board shall make its decision on the application not more than thirty (30) days after the conclusion of the public hearing.
6. As proposed, the new setbacks would follow State law.
7. As proposed changes in setbacks, certain height requirements for solar, and fencing requirements would be allowed if nonparticipating property owners consent to these requirements. As proposed, the changes would be allowed to occur if documentation was provided at the time of application submittal.

8. As proposed, sound regulations would follow State law.
9. As proposed, agricultural impact mitigation agreements have to be submitted with the application instead of prior to the hearing.
10. The County's landscaping requirements were adjusted to reflect the law.
11. Statements requiring compliance with EcoCat reports, Fish and Wildlife Service reports, and Illinois State Historic Preservation consultations were added to the Zoning Ordinance.
12. Statements regarding road use agreements were adjusted to reflect the law.
13. Language was added related to the enforcement of damaged drain systems.

The new law was also provided.

A map showing the one point five mile (1.5) planning boundaries was also provided.

At their meeting on February 9, 2023, the Kendall County Planning, Building and Zoning Committee voted to initiate these amendments.

The proposal was emailed to the townships on February 15, 2023.

ZPAC met on the proposals on February 28, 2023. Discussion occurred regarding wind and solar projects on Forest Preserve property; uses within the confines of the Downstate Forest Preserve Act are exempt from zoning. Discussion occurred regarding requiring properties to be annexed to municipalities; municipalities could choose to enter into annexation agreements without annexing the property. If a property owner was not agreeable to an annexation or annexation agreement, litigation could arise. Discussion occurred regarding some counties choosing not to regulate these uses or to have the uses as permitted uses because the county may not want to have zoning hearings that cannot alter a project. Discussion occurred regarding the precedence of the State taking away a county's zoning authority. The State's Attorney's Office has not reviewed the proposal. ZPAC voted to issue a neutral recommendation by a vote of nine (9) in favor and zero (0) in opposition with one (1) member absent. The minutes of the meeting were provided.

Member Nelson noted that the proposal covers all of the bases regarding proposals to work with municipalities on annexation to retain a certain level of local control.

Member Wormley was disappointed that the State took away the County's authority to review these types of applications.

Chairman Ashton noted that the Illinois Farm Bureau was working on a proposal to restore some authority to counties.

Greg Vander Kamp, Savion Energy, said that he did not oppose or support the new State law. He commended Mr. Asselmeier for his professionalism during the process. He suggested that the vegetative screening requirement be amended to not require vegetative screening around the entire project regardless of what the neighboring land uses are in the area. He recommended requiring a vegetative management plan with a vegetative screening component. It was noted that land uses change over time and housing could be constructed on fields adjacent to the solar project at some point. It was also noted that "vegetative screening" was not defined, either in the Kendall County proposal or in State law. The landscaping plan would be evaluated as part

of the special use permit application. Mr. Vander Kamp also recommended that the one point five (1.5) mile annexation and pre-annexation agreement requirement be changed because some municipalities do not want to annex these properties. He felt that annexation should be recommended and not mandated. He felt that properties between a solar project and a municipality might have issues with this type of arrangement. It was noted that municipalities did not want to be physically blocked from growing during the duration of a solar project. The property owners between a project and the municipality would not be impacted by an annexation agreement. It was also noted that the Mayor of Plano spoke in favor of the annexation requirement during the Kendall County Regional Planning Commission Annual Meeting.

Chairman Ashton asked about regulations regarding ground cover to address erosion. Mr. Asselmeier read the portion of the law requiring the Illinois Department of Natural Resources to develop vegetative management plan guidelines. Discussion occurred regarding panels channelizing water. Mr. Vander Kamp explained the vegetative management work that Savion Energy does in their projects.

Member Bernacki asked about the timing of road use agreements. Mr. Vander Kamp favored that road use agreements be formalized closer to the construction instead of earlier in the process. Mr. Asselmeier said that the proposal did not specify when the road use agreement had to be finalized.

Dan Nagel asked about how township highway commissioners are notified of proposals. Mr. Asselmeier responded that State law requires townships be notified of special use hearings.

Mr. Nagel asked about bonding requirements. Discussion occurred regarding prescriptive road rights-of-way. Mr. Asselmeier read the agricultural impact mitigation agreement language in the proposal.

Member Nelson made a motion, seconded by Member Rodriguez, to recommend approval of the text amendments.

The votes were as follows:

Ayes (8): Ashton, Bernacki, Casey, Hamman, McCarthy-Lange, Nelson, Rodriguez, and Wormley
Nays (0): None
Absent (2): Stewart and Wilson
Abstain (0): None

The motion carried. The proposal will go to the Kendall County Zoning Board of Appeals on March 27, 2023.

Petition 23-13 Kendall County Planning, Building and Zoning Committee

Mr. Asselmeier summarized the request.

In response to the special use permit amendments for the kennel at the northeast corner of Ridge and Bell Roads, Staff prepared the following proposed amendments to kennel regulations.

In summary, the proposed changes are as follows:

1. Allow pets outdoors until 10:00 p.m. for the purposes of allowing owners to pick-up and drop-off pets and to allow for normal bathroom breaks.
2. Establish uniform kennel regulations throughout the County.
3. Minor text alterations.

As of the date of this meeting, there were six (6) active special use permits for kennels in the unincorporated area.

At their meeting on February 9, 2023, the Kendall County Planning, Building and Zoning Committee voted to initiate these amendments.

The proposals were emailed to the townships on February 23, 2023.

ZPAC met on the proposals on February 28, 2023. ZPAC recommended approval of the proposal by a vote of nine (9) in favor and zero (0) in opposition with one (1) member absent. The minutes of meeting were provided.

Member Wormley made a motion, seconded by Member McCarthy-Lange, to recommend approval of the text amendments.

The votes were as follows:

Ayes (8): Ashton, Bernacki, Casey, Hamman, McCarthy-Lange, Nelson, Rodriguez, and Wormley

Nays (0): None

Absent (2): Stewart and Wilson

Abstain (0): None

The motion carried. The proposal will go to the Kendall County Zoning Board of Appeals on March 27, 2023.

CITIZENS TO BE HEARD/PUBLIC COMMENT

None

NEW BUSINESS

None

OLD BUSINESS

None

REVIEW OF PETITIONS THAT WENT TO COUNTY BOARD

None

OTHER BUSINESS/ANNOUNCEMENTS

Mr. Asselmeier reported that the proposed text amendment related to chickens on residentially zoned and used properties will be on the agenda for the April meeting. There will also be a petition for a special use permit for a landscaping business and related variances at the property located at the southwest corner of Route 126 and Grove Road.

ADJOURNMENT

Member Rodriguez made a motion, seconded by Member McCarthy-Lange, to adjourn. With a voice vote of eight (8) ayes, the motion carried.

The Kendall County Regional Planning Commission meeting adjourned at 7:49 p.m.

Respectfully submitted by,
Matthew H. Asselmeier, AICP, CFM
Senior Planner

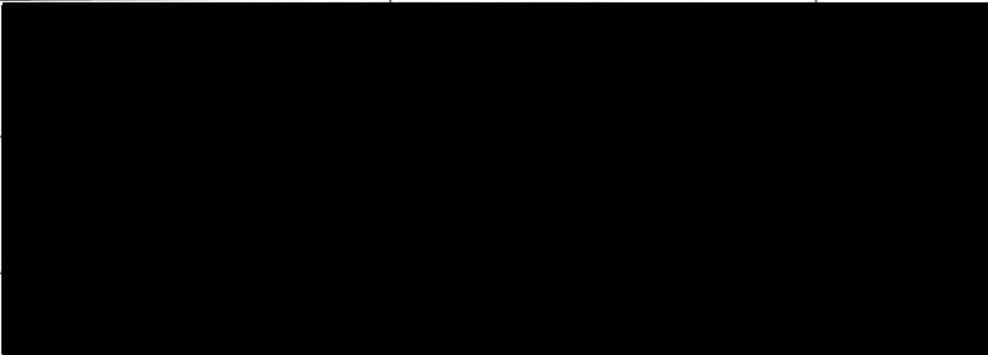
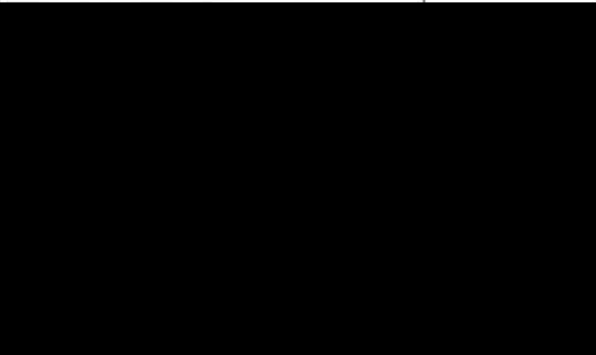
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KCRPC Meeting Minutes 3.22.23



**KENDALL COUNTY
REGIONAL PLANNING COMMISSION
MARCH 22, 2023**

IF YOU WOULD LIKE TO BE CONTACTED ON FUTURE MEETINGS REGARDING THIS TOPIC, PLEASE PROVIDE YOUR ADDRESS OR EMAIL ADDRESS

NAME	ADDRESS (OPTIONAL)	EMAIL ADDRESS (OPTIONAL)
<i>Don Nagel</i>		
<i>Greg Vander Kamp</i>		

Comments on 2023 Kendall County Draft Text Amendment – Solar Energy Facilities

Commercial Solar Energy Facility Regulations

Section 7:01.D.a: The provision concerning commercial solar energy facilities located within 1.5 miles of a municipality should be deleted. The provision requires that solar facilities within 1.5 miles of a municipality shall either annex to the municipality or obtain an annexation agreement, and be developed and operated under municipal jurisdiction.

This proposed regulation is in conflict with the requirements of the new statewide siting law, 55 ILCS 5/5-12020. 55 ILCS 5/5-12020(h) provides that: “A county may not adopt zoning regulations that disallow, permanently or temporarily, commercial wind energy facilities or commercial solar energy facilities from being developed or operated in any district zoned to allow agricultural or industrial uses.”

Kendall County’s proposed mandatory annexation requirement has the effect of prohibiting commercial solar energy facilities in agricultural or industrial zoned areas of Kendall County that are located within 1.5 miles of the municipality. Under the statewide siting law, Kendall County must allow commercial solar energy facilities in all areas of its agricultural or industrial zoning districts, including areas located within 1.5 miles of a municipality.

It should also be noted that 55 ILCS 5/5-12020 does not grant municipalities 1.5 mile extra-territorial zoning jurisdiction over solar energy facilities in counties with a zoning ordinance. Although 55 ILCS 5/5-12020(b) grants such extra-territorial zoning for wind energy facilities, it does not apply to solar energy facilities. Accordingly, municipalities in Kendall County are not permitted to enforce solar energy zoning regulations outside of their corporate limits.

Although municipalities may exercise zoning jurisdiction over areas outside of their corporate limits through annexation agreements, municipalities are not obligated to enter into such agreements, nor obligated to annex territory. Groenings v. City of St. Charles, 215 Ill.App.3d 295, 307 (1991) (“St. Charles is under no obligation to annex plaintiffs’ property”). Moreover, a zoned county may not transfer its zoning authority to a municipality. 1976 Ill. Att’y Gen Op. No. S-1029 (opining that the City of Crystal Lake may not, by agreement with McHenry County, obtain zoning jurisdiction over unincorporated areas within 1.5 miles of Crystal Lake). Kendall County’s proposal to transfer some of its zoning authority to municipalities is an unlawful delegation of power.

Section 7:01.D.e: The reference to “non-participating structure” should be changed to “non-participating property.” Non-participating structure is not a defined term under the statewide siting act.

Section 7:01.D.g: Add an affirmative statement: “A facility owner shall provide the County decommissioning security in accordance with the requirements of the agricultural impact mitigation agreement.” The current section prohibits the County from requiring standards more restrictive than the AIMA, but does not affirmatively set any standards.

Section 7:01.D.g: Revise last sentence to state that the AIMA shall be submitted “prior to the public hearing on the special use application.” This change is consistent with the state siting law, 55 ILCS 5/5-12020, which requires the AIMA by the time of the public hearing, but not at time of filing the special use application.

Section 7:01.D.h: Revise to specify that vegetative screening is only required for areas “adjacent to nonparticipating residences.” Vegetative screening should not be required for areas adjacent to roadways or other agricultural uses.

Section 7:01.D.j: Delete reference to USFWS “Land-Based Wind Energy Guidelines” as such guidance is not applicable to solar energy projects.

Section 7:01.D.n: Clarify that road use agreements only are required “Prior to construction of a commercial solar energy facility”