



1 APPEARANCES:

2 LEE COUNTY STATE'S ATTORNEY MATTHEW KLAHN  
3 of the Lee County State's Attorney's Office  
309 South Galena Avenue, Suite 300  
4 Dixon, Illinois 61021

5 Counsel for the County.  
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In Totidem Verbis, LLC (ITV)  
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In Totidem Verbis, LLC (ITV)

1           CHAIRMAN FORSTER: Good evening. I would  
2 like to reconvene Petition Number 19-F-15423 as  
3 continuing from the previous meeting.

4           JUDGE SLAVIN: Assuming -- I'm sorry.  
5 Turn the session over to me?

6           CHAIRMAN FORSTER: I will.

7           JUDGE SLAVIN: Okay.

8           CHAIRMAN FORSTER: I would like to.

9           JUDGE SLAVIN: Thank you.  
10 I would like to phrase it as coming out of  
11 recess.

12 I'll note for the record that, let's see,  
13 all the Honorable Zoning Board of Appeal members  
14 are present, including the alternate, Mr. Meyer.  
15 The Honorable Ms. Duffy is here, as Zoning  
16 Officer. Mr. Klahn, on behalf of the County and  
17 its various officers. And no representatives  
18 from the Applicant.

19 We are coming out of recess to consider  
20 further findings of fact. We caught, as we were  
21 going through a draft report to the County  
22 Board, that perhaps, perhaps, the Zoning Board  
23 would like to consider some Variance language.  
24 Nothing -- nobody is telling you you have to,

1 but thought maybe you would want to.

2 So the floor is open for motions.

3 MR. HUGHES: I am prepared to make a  
4 motion. I would motion --

5 JUDGE SLAVIN: Mr. Hughes.

6 MR. HUGHES: I would motion that the Lee  
7 County -- and this would be, if you were in  
8 receipt of my email from this afternoon --

9 JUDGE SLAVIN: I was.

10 MR. HUGHES: -- this would be referring to  
11 the one that came as GH 1. Yeah.

12 JUDGE SLAVIN: I think -- well, you go  
13 ahead. There's two of them here, and I'm not  
14 sure which I have got numbered correctly, but I  
15 think that's right.

16 MR. HUGHES: Yes.

17 JUDGE SLAVIN: Go ahead.

18 MR. HUGHES: That would be the case.

19 The motion would be the Lee County ZBA  
20 finds that, the Applicant's requested Variations  
21 for the property line setbacks relative to WTGs  
22 numbered 59, 61, 63, 68, 70, 73, 98, 106, 114,  
23 and 120 are consistent with the general purpose  
24 of -- and intent of Lee County Zoning Ordinance

1 Number 2006-04-06-001, Paragraph B3a, under  
2 which Big Sky Wind, LLC, is currently operating.

3 JUDGE SLAVIN: That's the motion. It  
4 looks right on the board, doesn't it?

5 MR. HUGHES: Yes.

6 JUDGE SLAVIN: Do I hear a second?

7 MR. BOTHE: Second.

8 JUDGE SLAVIN: Hearing a second, the  
9 motion is open for debate.

10 Your motion, Mr. Hughes, so you get the  
11 first crack at any comments.

12 MR. HUGHES: My primary position here is  
13 that although Ordinance 10-15-15 has been  
14 frequently referenced and is the standard for  
15 the wind farms in the County Ordinance, the  
16 conditions under which Big Sky is currently  
17 operating are relative to the referenced Zoning  
18 Ordinance, 2006-04-01-01, and therefore I would  
19 hold them to the same standards, since they are  
20 trying to repower using the existing turbine  
21 bases in the existing locations that they have  
22 been.

23 JUDGE SLAVIN: Okay. Further debate,  
24 comment, questions from other Board members?

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(No verbal response.)

JUDGE SLAVIN: Seeing none, I will put the question. The question being put is whether the Lee County ZBA finds that the Applicant's requested Variations for property line setbacks relative to WTGs Number 59, 61, 63, 68, 70, 73, 98, 106, 114, and 120 are consistent with the general purpose and intent of Lee County Zoning Ordinance Number 2006-04-06-001, Paragraph B3a, under which Big Sky Wind, LLC, is currently operating.

Adoption of the motion requires a vote by the majority. The vote will be by voice. All those in favor indicate by saying aye.

(All those simultaneously responded.)

JUDGE SLAVIN: All those opposed, nay.

(No verbal response.)

JUDGE SLAVIN: Hearing none, the motion is adopted.

Give me just a minute to clean this up.

Okay. Floor is open. Mr. Pratt?

MR. PRATT: I would like to make a motion, your Number 1.

1 JUDGE SLAVIN: Okay.

2 MR. PRATT: Make a motion that the Lee  
3 County ZBA finds that, the Applicant has not  
4 shown that a strict application of setback  
5 regulations would impose upon it practical  
6 difficulties and a particular hardship.

7 JUDGE SLAVIN: Okay. So take a look, make  
8 sure that's what you meant it to say.

9 MR. PRATT: That's my motion.

10 JUDGE SLAVIN: Okay. Do I hear a second?

11 MR. MEYER: Second.

12 JUDGE SLAVIN: Okay. Second. Debate on  
13 the motion?

14 MR. PRATT: I don't think they, under  
15 testimony, laid out the fact that it would cause  
16 hardship to move them. I mean, they said they  
17 would like to leave them, but they never showed  
18 us numbers that it was going to cost -- the  
19 financial cost to move them. So to say the  
20 opposite, that it has shown that a strict  
21 application would impose -- well, that's my  
22 motion.

23 JUDGE SLAVIN: Okay. Any other comments,  
24 Board members?

1 MR. BUHROW: I've got a question. When it  
2 talks about strict regulations, is that  
3 referring to our previous Ordinance,  
4 2006-04-06-01?

5 MR. KLAHN: I think it's the 350 feet, to  
6 grant a Variance from the Ordinance.

7 MR. BUHROW: Okay.

8 MR. KLAHN: You have got to show a  
9 hardship. I think the -- what the petition was,  
10 the purpose was, that they wanted to use the  
11 same foundations.

12 Now, the question would become, under our  
13 Comprehensive Plan, is that keeping the same  
14 foundations and not doing new ones, is that good  
15 for the preservation of prime farmland?

16 JUDGE SLAVIN: To answer your question,  
17 Mr. Buhrow, when I just drafted these  
18 suggestions -- and that's all they are, is  
19 suggestions -- the only material I had  
20 available, reference material, was what was on  
21 the website for the Ordinances. So that's all I  
22 can --

23 MR. PRATT: To your point, Matt --

24 MR. KLAHN: Uh-huh.

1 MR. PRATT: -- the hardship to me was  
2 financial, and I don't think they presented any  
3 evidence one way or the other on the financial  
4 hardship of it.

5 JUDGE SLAVIN: Any other comment?

6 (No verbal response.)

7 JUDGE SLAVIN: Seeing none, I will --

8 MR. HUGHES: No, I --

9 JUDGE SLAVIN: Okay.

10 MR. HUGHES: I am of the belief that  
11 earlier, when they were going through that  
12 request for the Variance, they did refer to the  
13 fact that one of the reasons that they were  
14 looking to use the same bases was as an  
15 accommodation to both the time and the cost of  
16 moving or reallocating those turbines, those  
17 wind turbines.

18 So I -- although they didn't get into  
19 specific dollars, I do believe they referenced  
20 the cost and the concern for having to move or  
21 reallocate those, and that's why they were  
22 shutting -- they were picking and choosing what  
23 they were going to decommission.

24 But I would concur, they didn't get into

1 specific dollars, but I think they did -- in  
2 terms of their general discussion of their  
3 reason for asking for the Variance, did  
4 reference the cost and the time that it would  
5 take to move those.

6 MR. KLAHN: I guess my only thought is, is  
7 that ultimately with this finding is it  
8 potentially going then that the recommendation  
9 would be that a Var- -- or a Variation is not  
10 given, even with the waivers?

11 MR. PRATT: Say that again.

12 MR. KLAHN: Okay. So let me grab here  
13 case law.

14 The granting of a Variance has to take  
15 into consideration some type of arbitrary or  
16 unreasonable hardship as to not -- to allow them  
17 not to have to follow the strict letter of the  
18 Ordinance.

19 Now, the granting of the Variance does  
20 also run with the land, as opposed to the  
21 Special Use running with the petition.

22 MR. PRATT: I didn't hear what their  
23 reason for the first time getting the Variance  
24 was.

1 MR. KLAHN: I don't --

2 MR. PRATT: Didn't hear testimony. So for  
3 me to say they provided proof that it would  
4 provide a hardship, I didn't hear that.

5 CHAIRMAN FORSTER: Well, I think they  
6 alluded to it when they talked about not having  
7 to replace all of the wiring under them. If  
8 they had moved them, they would have to redo all  
9 of the wiring, and they had a couple spots they  
10 were going to do that because something was  
11 going to be eliminated.

12 MR. HUGHES: Uh-huh.

13 CHAIRMAN FORSTER: But I do know that it's  
14 extremely costly.

15 MR. PRATT: Well, I don't doubt that. But  
16 based on testimony, I never heard anything that  
17 I could evaluate what -- how much of a hardship  
18 it was to them.

19 MR. KLAHN: You can --

20 MR. BUHROW: That gets back to what I  
21 asked several times.

22 JUDGE SLAVIN: Just one at a time, guys.

23 MR. BUHROW: You know, what's the whole  
24 purpose of repowering? They never even really

1       threw any general figures out there as to, you  
2       know, financially how does it work or not.

3               MR. HUGHES: I think one of the references  
4       to your question on that was the tax credits.

5               MR. BUHROW: Yeah.

6               MR. HUGHES: That was one of the  
7       responses.

8               JUDGE SLAVIN: Any other comment? debate?

9               MR. HUGHES: The other point that I would  
10       make is that I find it difficult, if it were  
11       going to continue, to even allow the wind farm  
12       if they have placed those relative to the  
13       existing Ordinance under which they're  
14       operating.

15               And, again, going to 2006-04-06-01, if  
16       they have placed those relative to that  
17       operating Ordinance, how, when they have already  
18       got them up, can we reasonably -- you know, if  
19       that's the criteria, whether it was what we  
20       recommended or what the County Board decided on,  
21       how can we require them to change that position  
22       with the current repowering? I mean, they have  
23       offered to try and not disturb things, not  
24       create an issue by using the same -- by using

1 the same foundations, and those foundations are  
2 in place based on the current Ordinance. How  
3 can we -- how can we not consider the hardship  
4 to create -- to have them move it?

5 MR. KLAHN: There's no question in the law  
6 that the Petitioner has the burden, they have to  
7 establish that the hardship resulting from the  
8 denial of the Variance would outweigh the injury  
9 to the public from a granting of the petition.

10 I guess, I -- one thing -- and I think  
11 you're right, Mike, is there wasn't tons of  
12 testimony presented on the specifics of the  
13 hardship. I think, though, in their petition,  
14 though, they do say that any Variance would be  
15 contingent upon a waiver from a participating  
16 landowner. So in that respect, I would say they  
17 would -- the injury to the public is probably  
18 smaller.

19 MR. PRATT: To me that's a different  
20 decision than this motion. I think this  
21 motion -- I want this to be on file, that they  
22 didn't do this. Now, that doesn't mean that it  
23 stops the Variance. I think it ought to be  
24 there, that they did not do that.

1           And they didn't do it the first time  
2           because we didn't allow this the first time.  
3           The Zoning Board did not allow this the first  
4           time.

5           MR. HUGHES:   But the County Board did, and  
6           they made the final decision.

7           MR. PRATT:   But they didn't hear whether  
8           there was imposed hardships or whatever --

9           MR. HUGHES:   I --

10          MR. PRATT:   -- so.

11          This doesn't influence my next decision.  
12          This just means I just want it on the record  
13          that I don't think we heard it.

14          MR. HUGHES:   I understand.

15          JUDGE SLAVIN:  Further debate?  Anybody  
16          else?

17                           (No verbal response.)

18          JUDGE SLAVIN:  All right.  Hearing none,  
19          I'm going to put the question.  The question  
20          being put is whether the Lee County ZBA finds  
21          that, the Applicant has not shown that a strict  
22          application of setback regulations would impose  
23          upon it practical difficulties and particular  
24          hardship.

1           Adoption of the motion requires a vote by  
2           the majority. The vote will be by roll. Those  
3           in favor, yes; against, no.

4           Mr. Forster?

5           CHAIRMAN FORSTER: No.

6           JUDGE SLAVIN: Mr. Buhrow?

7           MR. BUHROW: Yes.

8           JUDGE SLAVIN: Mr. Pratt?

9           MR. PRATT: Yes.

10          JUDGE SLAVIN: Mr. Bothe?

11          MR. BOTHE: Yes.

12          JUDGE SLAVIN: Mr. Hughes?

13          MR. HUGHES: No.

14                            (By voice vote three ayes, two  
15                            nays.)

16          JUDGE SLAVIN: Motion is adopted.

17          Okay. Floor is open for motions.

18          MR. HUGHES: I will make the motion, the  
19          Lee County ZBA -- and this would be relative to  
20          what I had sent you as GH 2.

21                 The motion is, the Lee County ZBA finds,  
22                 based on the evidence heard during the hearing,  
23                 that the requested Variances for property line  
24                 setbacks relative to WTGs numbered 59, 61, 63,

1 68, 70, 73, 98, 106, 114, and 120 will not  
2 merely serve as a convenience to the Applicant,  
3 but are necessary to alleviate a demonstrable  
4 hardship so great as to warrant continued  
5 operations under terms consistent with Lee  
6 County Zoning Ordinance Number 2006-04-06-001,  
7 Paragraph B3a.

8 JUDGE SLAVIN: I went along with -- I  
9 mean, I read along with your motion, and that's  
10 exactly what appears on the board.

11 Do I hear a second?

12 MR. BOTHE: Second it.

13 JUDGE SLAVIN: Hearing a second, the  
14 motion is -- floor is open for debate.

15 Your motion, Mr. Hughes.

16 MR. HUGHES: No further comment.

17 JUDGE SLAVIN: Any other comment, Board  
18 members?

19 (No verbal response.)

20 JUDGE SLAVIN: Seeing no indication to do  
21 so, I'll put the question. The question being  
22 put is whether the Lee County ZBA finds, based  
23 on the evidence heard during the hearing, that  
24 the requested Variations for property line

1 setbacks relative to WTGs numbered 59, 61, 63,  
2 68, 70, 73, 98, 106, 114, and 120 will not  
3 merely serve as a convenience to the Applicant  
4 but are necessary to alleviate a demonstrable  
5 hardship so great as to warrant continued  
6 operation under terms consistent with Lee County  
7 Zoning Ordinance Number 2006-04-06-001,  
8 Paragraph B3a.

9 Adoption of this motion requires a vote by  
10 the majority. The vote will be by voice. All  
11 those in favor indicate by saying aye.

12 (All those simultaneously  
13 responded.)

14 JUDGE SLAVIN: All those opposed, nay.

15 (No verbal response.)

16 JUDGE SLAVIN: Motion is adopted.

17 Okay. Gentlemen, floor is open for  
18 debate -- or for motions. I'm sorry.

19 MR. PRATT: Mr. Facilitator -- so are you  
20 guys ready for Number 5? I don't know if you  
21 have it on --

22 JUDGE SLAVIN: I have got it on my list.  
23 See what happens is, when I take the number off,  
24 they all get renumbered, just because it's on an

1 outline form. So it's probably Number 4, but  
2 I'm not sure about that.

3 MR. PRATT: I'd like to make a motion that  
4 the Lee County ZBA finds, after considering its  
5 findings regarding difficulties, hardships, and  
6 harmonious purpose and intent, the Lee County  
7 ZBA recommended to the Lee County Board that it  
8 grant the 10 requested Setback Variances to less  
9 than 350 feet for WTGs numbered 59, 61, 63, 68,  
10 70, 73, 98, 106, 114, and 120.

11 Then I wanted to see if I can add  
12 something.

13 JUDGE SLAVIN: You can add anything you  
14 want. You have got the floor.

15 MR. PRATT: I may need help here. I'm not  
16 a lawyer. So take the period away.

17 JUDGE SLAVIN: Okay.

18 MR. PRATT: After proof of the required  
19 waiver from the affected landowner is on file  
20 with the Zoning Office.

21 Clean that up, Matt.

22 MR. KLAHN: Can you go back up, Judge?

23 JUDGE SLAVIN: Huh?

24 MR. KLAHN: When you're done. I'm sorry.

1 JUDGE SLAVIN: Yeah, I'll get it back up.

2 What do you call your office, Ms. Duffy?

3 Zoning --

4 MS. DUFFY: Administrator.

5 MR. KLAHN: Lee County Zoning

6 Administrator.

7 JUDGE SLAVIN: On file with the Lee County  
8 Zoning Office?

9 MS. DUFFY: Zoning Administrator.

10 MR. KLAHN: Would be filed with the County  
11 Clerk, wouldn't it?

12 JUDGE SLAVIN: Okay. Got it.

13 I think I'm going to have to make it  
14 smaller to get it all there, and then get it on  
15 one page so everybody can see it.

16 Is that big enough to see, gentlemen?

17 First take a read through, Mr. Pratt.

18 MR. PRATT: That's the way I said it.

19 JUDGE SLAVIN: Do you want to clean it up  
20 in any way?

21 MR. HUGHES: I think he wanted Matt to  
22 clean it up.

23 MR. KLAHN: I get what you're saying with  
24 the -- starting after "proof." Would that,

1           though, be more consistent with something like,  
2           But require proof of the required waiver from  
3           the affected landowner prior to the issuance of  
4           any building permit?

5                     Because the County Board will grant the  
6           Variance, but a building permit is not issued  
7           until --

8                     MR. PRATT: That's fine. That's the  
9           intent.

10                    JUDGE SLAVIN: So friendly -- you'll  
11           accept a friendly amendment that says -- I don't  
12           think you need the word "proof," guys.

13                    MR. KLAHN: Just waiver?

14                    JUDGE SLAVIN: After the required  
15           waiver -- but -- oh, wait a minute.

16                    But no building permit shall be issued  
17           until.

18                    Take a gander at that.

19                    MR. PRATT: That's fine.

20                    JUDGE SLAVIN: Is that acceptable to you,  
21           Mr. Pratt?

22                    MR. PRATT: That will be my motion.

23                    JUDGE SLAVIN: Okay. Do I hear a second?

24                    MR. BUHROW: Second.

1 JUDGE SLAVIN: Okay. Having heard a  
2 second, your motion, Mr. Pratt. Any comments  
3 you want to make?

4 MR. PRATT: No.

5 JUDGE SLAVIN: Okay. Any other Board  
6 member want a question? comment?

7 (No verbal response.)

8 JUDGE SLAVIN: Seeing none, I will put the  
9 question. The question being put is, the  
10 adoption of a recommendation that, quote, After  
11 considering its finding regarding difficulties,  
12 hardships, and harmonious purpose and intent,  
13 the Lee County ZBA recommends to the Lee County  
14 Board that it grant the ten requested setback  
15 Variances to less than 350 feet for WTGs  
16 numbered 59, 61, 63, 68, 70, 73, 98, 106, 114,  
17 and 120, but no building permit shall be issued  
18 until the -- until the required waiver from the  
19 affected landowner is on file with the Lee  
20 County Zoning Administrator.

21 Adoption of the motion requires a vote by  
22 the majority. The vote will be by voice. All  
23 those in favor indicate by saying aye.

24 (All those simultaneously

1                                    responded.)

2                    JUDGE SLAVIN: All those opposed, nay.

3                                    (No verbal response.)

4                    JUDGE SLAVIN: Hearing none, the motion is  
5 unanimously adopted.

6                    Okay. Any other motions, gentlemen? The  
7 floor is again open.

8                    MR. HUGHES: I don't think so. I think  
9 that covers the bases.

10                   JUDGE SLAVIN: Not for you, but how  
11 about -- anybody? Now or forever hold your  
12 peace.

13                                    (No verbal response.)

14                    JUDGE SLAVIN: Okay. I will turn the  
15 Chair back to you, Mr. Forster.

16                    CHAIRMAN FORSTER: I would -- no other  
17 business, we'll call the recess of the meeting  
18 until after the County Board hears it on the  
19 16th.

20                    MR. HUGHES: So move.

21                    MR. BUHROW: Second.

22                    MR. BOTHE: Second.

23                    CHAIRMAN FORSTER: All in favor.

24                                    (All those simultaneously

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responded.)  
(The hearing was concluded at  
7:30 p.m.)

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Now on this 14th day of March, A.D., 2019, I do signify that the foregoing testimony was given before the Lee County Zoning Board of Appeals.

Bruce Forster, Chairman

Dee Duffy,  
Zoning Administrator

-----  
*Callie S. Bodmer*

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