

STATE OF ILLINOIS)
)SS
COUNTY OF LEE)

In the Matter of the Petition

of

Shady Oaks Wind 2, LLC

Lee County, Illinois

Testimony of Witnesses
Produced, Sworn and
Examined on this 4th day
of June, A.D., 2020,
before the Lee County
Zoning Board of Appeals

Present:

Craig Buhrow
Mike Pratt
Rex Meyer
Glen Hughes
Bruce Forster, Chairman

Alice Henkel, Secretary
Dee Duffy, Zoning Enforcement Officer

Honorable Judge Tim Slavin, Facilitator

1 APPEARANCES:

2 LEE COUNTY STATE'S ATTORNEY CHARLES BOONSTRA
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4 Dixon, Illinois 61021

5 Counsel for the County.

6 ATTORNEY COURTNEY KENNEDY
7 of the firm of Ehrmann, Gehlbach, Badger &
8 Considine
215 East First Street, Suite 100
9 Dixon, Illinois 61021

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1 MR. FORSTER: Good evening, ladies and
2 gentlemen. My name is Bruce Forster, and I am
3 the Chairman of the Lee County Zoning Board of
4 Appeals.

5 I call this meeting of the Lee County
6 Zoning Board of Appeals to order.

7 Will the Clerk please call the roll.

8 MS. HENKEL: Bruce Forster?

9 MR. FORSTER: Here.

10 MS. HENKEL: Craig Buhrow?

11 MR. BUHROW: Here.

12 MS. HENKEL: Mike Pratt?

13 MR. PRATT: Here.

14 MS. HENKEL: Glen Hughes?

15 MR. HUGHES: Here.

16 MS. HENKEL: Gene Bothe, not present.

17 MR. FORSTER: Is there a motion to approve
18 the last minutes --

19 JUDGE SLAVIN: Wait a minute. You missed
20 Rex.

21 MS. HENKEL: Oh. Rex Meyer?

22 MR. HUGHES: You're on mute, Rex.

23 MR. FORSTER: He's here.

24 MS. DUFFY: His lips said he's here.

1 MR. MEYER: Here, thank you.

2 MR. FORSTER: Okay. Thank you.

3 Is there a motion to approve the last
4 meeting's minutes and a second?

5 MR. HUGHES: So moved.

6 MR. PRATT: Second.

7 MR. FORSTER: Glen has motioned; Mike
8 seconds.

9 All in favor say aye.

10 (All those simultaneously
11 responded.)

12 MR. FORSTER: All opposed.

13 (No verbal response.)

14 MR. FORSTER: Motion carries.

15 There's no old business tonight. So
16 tonight we will begin the public hearing for
17 Shady Oaks Wind 2, Petition Number 20-B-1552,
18 known as Shady Oaks Wind 2. Application for an
19 AG-1 Special Use Permit to construct wind
20 turbine generators in Lee County as part of the
21 Wind Energy Conservation System.

22 As contemplated by the Lee County
23 Ordinance and our own Rules of Procedure, I will
24 now entertain a motion to appoint Retired Judge

1 Tim Slavin as our facilitator for the duration
2 of the hearing.

3 MR. BUHROW: So moved.

4 MR. HUGHES: Second.

5 MR. FORSTER: Craig motions; Glen seconds.
6 All in favor say aye.

7 (All those simultaneously
8 responded.)

9 MR. FORSTER: I will now turn the meeting
10 -- or the hearing over to our facilitator, Tim
11 Slavin, with whom we have independently
12 contracted.

13 JUDGE SLAVIN: Well, thank you,
14 Mr. Chairman and ZBA members.

15 Welcome, everyone, and good evening. I
16 hope everyone is remaining healthy and safe.

17 My name is Tim Slavin, and I am a retired
18 judge engaged as an independent contractor to
19 what is called facilitate this hearing. I have
20 no adjudicatory responsibilities. I am not for
21 or against any particular position. I am a
22 neutral. I am here hopefully to add some
23 organization, efficiency, and flow to these
24 proceedings.

1 This is, indeed, Shady Oaks Wind 2, LLC's,
2 petition for 28 Special Use Permits as part of a
3 proposed Wind Energy Conversion System, Lee
4 County Petition Number 20 P 1552.

5 As shown by certificates of publication,
6 notice of this hearing was published in the
7 Dixon Telegraph on May 12th, 2020; the Mendota
8 Reporter on May 13th, 2020; the Ogle County Life
9 during the week beginning May 11th, 2020; and
10 the Chicago Road Shopper on May 21st, 2020.
11 Notices to adjoining property owners have been
12 provided.

13 First of all, hoping you understand,
14 tonight's Zoning Board of Appeals session is
15 organizational only as we set some general --
16 excuse me, ground rules and, quite frankly, test
17 out the technical and practical protocols
18 planned to accommodate everyone but keeping
19 everyone reasonably safe at the same time.

20 After I finish these opening remarks, we
21 will try to set out dates of the next few
22 substantive sessions.

23 Initially, because of the unique
24 circumstances visited upon us all in 2020

1 courtesy of COVID-19, I hope I can help by
2 explaining the protocol that your wonderful
3 County officials have developed to allow these
4 proceedings to even take place. They have
5 worked very, very hard to make this even
6 plausible. I know that from firsthand
7 observation over the last couple of weeks.

8 There are two groupings of attendees as
9 this Zoning Board of Appeals hearing moves
10 forward. One I will refer to as "necessaries."
11 These are people who must attend this hearing in
12 person. They consist of your hardworking,
13 practically-volunteer Zoning Board of Appeals
14 members; your marvelous Zoning Officer, Dee
15 Duffy; your expert IT staff, Mike McBride and
16 Alice Henkel; your astute State's Attorney,
17 Charlie Boonstra; employees of the Petitioner,
18 its attorney, Courtney Kennedy, and largely its
19 witnesses; and our hardworking and skilled court
20 reporter, Callie; and myself.

21 The other group I will group into -- the
22 other I will group into what we will call
23 "interested parties." These are those of you
24 folks who are with us remotely, whether it be on

1 Zoom, videoconferencing, teleconferencing, or
2 just watching on YouTube, because you simply
3 want to observe your county government at work
4 or, beyond that, you have a particular interest
5 in these proceedings.

6 First of all, if any interested parties
7 have some technical difficulty in virtually
8 joining us or the same develops along the way,
9 Ms. Duffy has very kindly provided a staff
10 member to man her office phone for assistance.
11 That phone number is 815.288.3643. I'll repeat
12 that, because I know it helps. The phone number
13 for technical assistance, not substantive
14 questions, is 815.288.3643.

15 The next process I will try to explain is
16 the methodology for interested parties to
17 participate; meaning, an opportunity to ask any
18 witness questions, to present their own
19 evidence, to testify themselves, or to make
20 their own closing statement or public comment.
21 Everyone will have that opportunity to
22 participate; however, because of the necessary
23 electronic filtering, my usual process becomes
24 even more central, and I will flesh out more of

In Totidem Verbis, LLC (ITV)
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In Totidem Verbis, LLC (ITV)

1 this further in my presentation tonight as we
2 move through our time together in the days
3 ahead.

4 All who so desire will absolutely be given
5 an opportunity to be heard. But for everyone's
6 benefit, I want to do it as orderly and as
7 efficiently as possible.

8 There are many possible reasons for
9 anyone's appearance this evening and during
10 subsequent sessions, whether in person or
11 remotely. You could be a member of the public
12 joining us simply as a citizen and spectator, or
13 an interested party. In this context, an
14 interested party does not necessarily mean
15 someone who is absolutely for or against the
16 requested Special Uses, but someone who wants to
17 be heard.

18 If you do want to be heard, you will fall
19 into any one or more of three categories:

20 Category 1, you want to give testimony.
21 This means that you desire, under oath, to
22 testify to facts relevant to the Board's
23 eventual decision. Such is not the time to
24 describe your feelings or announce your opinion,

1 but to aver facts, and you are subject to
2 cross-examination. Everyone so wishing to
3 testify will be given one opportunity to do so.

4 Category 2, you want to be able to
5 cross-examine witnesses. But, please, that is
6 just the opportunity to ask questions of a
7 particular witness, not to argue with him or
8 her. Everyone wishing to cross-examine will be
9 given one opportunity to cross-examine each and
10 every witness.

11 Third category, you want to make a closing
12 statement or a public comment. This is your
13 opportunity to tell the Board how you feel or
14 give them your opinion based on the facts
15 adduced during the whole hearing process as to
16 what their decision should be. Everyone so
17 wishing to give a closing statement will be
18 given one opportunity to do so.

19 Again, and I keep emphasizing, everyone
20 will absolutely have a chance to be heard;
21 however, in order to add some semblance of
22 organization, the Zoom platform allows an
23 interested party to indicate a desire, when the
24 time comes, to question -- to ask questions of a

1 witness, to present one's own witnesses, to
2 testify one's self, or to give a closing
3 statement or make a public comment.

4 If a person is present in the Old Lee
5 County Courthouse on the first floor, satellite
6 room, Ms. Duffy is providing a runner to take
7 stock of who wants to participate in the stage
8 when I announce the time has come and organize a
9 que outside of the hearing room.

10 If a person is videoconferencing, when I
11 announce the time has come, one clicks on the
12 icon at the bottom center of the Zoom screen
13 labeled "participants," and from the options
14 that then appear, please click "raise hand."

15 If one is teleconferencing, that means
16 you're on the phone but on the Zoom platform,
17 while remaining connected one should hit the
18 star, or asterisk, symbol, and then the numeral
19 nine on your phone. We should then in this
20 hearing room see any raised hands, and I will
21 call on each raised hand.

22 However, unlike previous such hearings, I
23 don't think we'll be able to do so on a
24 first-come, first-serve basis. So calling on

1 the raised hands will probably be more randomly
2 by referring to a name, an email address, or the
3 last four digits of a phone number that appears
4 on our display.

5 Written communications sent in advance of
6 this hearing or any written material intended as
7 something for the Board to consider is subject
8 to Board Rule Article 5, Section 12, that eight
9 copies be provided. Any communications received
10 that do not comply with this requirement cannot
11 be considered by the Board. Those
12 communications -- excuse me.

13 I will now review the chronological
14 progress of the hearing. First, the Applicant
15 or agent may make an opening remark. Second,
16 the Applicant presents evidence, one witness or
17 one document at a time. I will place each
18 witness under oath or affirmation. After each
19 witness, the State's Attorney, the Zoning
20 Officer, the members of the ZBA first, and then
21 interested parties, both onsite and remote, have
22 the opportunity to cross-examine. But, please,
23 again, I emphasize, this is only the time for
24 questions directed at the witness testifying.

1 Then interested parties may present
2 evidence, one witness or document at a time. I
3 will place each such witness under oath or
4 affirmation. After each interested party
5 witnesses, the Applicant, the State's Attorney,
6 the Zoning Officer, members of the ZBA, and
7 other interested parties have the opportunity to
8 cross-examine those witnesses.

9 Then the Applicant may offer rebuttal
10 witnesses or documents, one at a time, and I
11 will place each said witness under oath or
12 affirmation. Those may then be questioned by
13 Mr. Boonstra, Ms. Duffy, members of the ZBA, and
14 interested parties, one at a time.

15 Finally, interested parties may present
16 surrebuttal witnesses, one at a time. I will
17 place each such witness under oath or
18 affirmation. And, of course, that -- those
19 surrebuttal witnesses also may be cross-examined
20 by the Applicant, the State's Attorney, the
21 Zoning Officer, members of the ZBA, and other
22 interested parties.

23 Lastly, the Applicant is given an
24 opportunity for closing remarks, and any

1 interested parties are also given an opportunity
2 for closing remarks.

3 Some sub-rules and then I will finish
4 boring you. As you may have heard, each session
5 has a time limit under the Zoning Board Rules of
6 two and a half hours. However, we certainly
7 don't want to cut anybody off right in the
8 middle of something. So I will certainly make a
9 reasonable effort to let someone finish a
10 particular stage when the time limit has been
11 reached. Or, if there is very little time
12 remaining at the end of a stage, I may simply
13 recess the session until the next date.

14 I also have the discretion to call for
15 short recesses during an evening session.

16 Under the Zoning Board's Rules, I have the
17 duty to rule on the admissibility of evidence.
18 While strict Judicial Rules of Evidence do not
19 apply, I will exercise some equitable control of
20 what is being presented with or without an
21 objection.

22 We do have a court reporter with us taking
23 down what is said during the proceedings. I ask
24 all to please be mindful of her job. She cannot

1 take down two people talking at once. She can't
2 take down nodding heads or gestures. And while
3 I know she's very skilled, there is a limit to
4 how fast a person can talk and expect her to
5 keep up, including me.

6 I do ask for civility and decorum. This
7 is certainly a public forum, but please be
8 respectful of all who consider it important
9 enough to be here. I ask to refrain from
10 displays of approval or disapproval. And as
11 with all public gatherings, I ask you to either
12 turn your cell phones off or at least put them
13 on silent.

14 All right. That concludes some
15 organizational matters. Unless, Ms. Duffy, you
16 think something needs to be supplemented?

17 MS. DUFFY: No.

18 JUDGE SLAVIN: Okay. That leaves us,
19 gentleman, to the arduous task of trying to set
20 the next substantive hearings. I have a list of
21 everyone's name who is a necessary, as I
22 explained.

23 So I'm going to -- if you get out your
24 calendars or whatever you keep your diary on,

1 I'm going to go one day at a time through a
2 number of days and find out if you are available
3 or not. When I get to your name, if you'll say
4 yes or no to a particular date, that will help.

5 (A discussion was held off
6 the record.)

7 JUDGE SLAVIN: I think right now, unless I
8 hear a great cry from the Board, I would like to
9 set out the next one, two, three, four, five,
10 six meetings: June 8, June 9, June 10 --

11 MS. DUFFY: Slow down. Slow down.

12 JUDGE SLAVIN: I'm sorry.

13 MS. DUFFY: Start over.

14 JUDGE SLAVIN: I'll go over them again.

15 MS. DUFFY: Okay.

16 JUDGE SLAVIN: I'll start again.

17 The next six: Monday, June 8th; Tuesday,
18 June 9th; Wednesday, June 10th; Monday, June
19 15th; Wednesday, June 17th; and Thursday, June
20 18th.

21 Board members, is that okay with you
22 gentlemen that we kind of start cramming it
23 together so we're done by -- I mean, I'm not
24 going to guarantee we're going to be done by the

1 beginning of July. But I think if we cram it
2 together, we can get it done, I would think.

3 MR. PRATT: Yes.

4 MR. HUGHES: Did you say the 17th or did
5 you say the 16th or did you say both?

6 JUDGE SLAVIN: June 8, 9, 10, 15, 17, 18.

7 MR. BUHROW: So the Tuesday you're leaving
8 out then, the 16th?

9 JUDGE SLAVIN: Tuesday, the 16th, right,
10 both because Alice can't be here and -- I just
11 don't want to --

12 MR. BUHROW: I have got a Monday night,
13 but I might be able to change it to that
14 Tuesday, if I can do that. I'm off Monday
15 night.

16 JUDGE SLAVIN: So what I'm suggesting is
17 8, 9, 10, 15, 17, 18.

18 MR. BUHROW: So if we're off that Tuesday,
19 I'll try to change my 15th to 16th.

20 JUDGE SLAVIN: So that's three a week, and
21 I know that's plenty. So that's about perfect.

22 All right. Anything else for the good of
23 the order that I have missed?

24 MR. PRATT: Judge.

1 JUDGE SLAVIN: Yes.

2 MR. PRATT: You mentioned two-and-a-half-
3 hour sessions.

4 JUDGE SLAVIN: Right.

5 MR. PRATT: That's what we're going to do
6 then?

7 JUDGE SLAVIN: Well, that's your Board
8 Rules. And, remember, it's not necessarily two
9 and a half. If 9 o'clock comes and Ms. Kennedy
10 says, I don't have any more witnesses, then
11 we're done for the night. On the other hand, if
12 she's got an expert from California testifying
13 and the guy is not done yet and would have to
14 come back, we'll go to 10 o'clock if that's what
15 it takes.

16 MR. PRATT: Well, that was my suggestion,
17 is why not make three-hour sessions?

18 JUDGE SLAVIN: I don't think we can
19 take -- I think that's long enough. Believe me,
20 I have done enough of these.

21 Okay. Anything else for the good of the
22 order? If not, I will announce a recess of
23 these proceedings until this coming Monday, June
24 8th, 7 o'clock. For the necessities it's here

1 at the Old Lee County Courthouse. For those of
2 you on Zoom, Teleconferencing, YouTube -- let's
3 see, will the meeting ID still be the same, I
4 hope?

5 MS. DUFFY: I don't know that.

6 JUDGE SLAVIN: Let's find that out.

7 Chris Henkel, can you hear me? Holler at
8 him.

9 Mike McBride, if you can hear me, would
10 you come on upstairs or get on the Zoom and tell
11 me if the meeting ID will be the same? I never
12 thought of that.

13 MR. HUGHES: Yeah, Mike should be able to
14 hear you.

15 MS. DUFFY: I think he's in his office.

16 MR. FORSTER: Mike is coming here, I
17 guess.

18 JUDGE SLAVIN: Sorry, folks. We're
19 waiting for our IT expert.

20 MR. BUHROW: Judge, one question dealing
21 with this. Do you need to make any
22 announcements as far as people's conditions to
23 come as far as health or anything like that?

24 JUDGE SLAVIN: I don't think so.

1 MR. BUHROW: Okay. I assume everybody is
2 on the same page here.

3 JUDGE SLAVIN: Yeah.

4 Alice, do you know the answer to that
5 question?

6 MS. HENKEL: I don't.

7 MS. DUFFY: It does not look like it. So
8 we will be advertising a new one, but the new
9 one will be reoccurring for the rest of the
10 meetings.

11 JUDGE SLAVIN: Okay. Folks, let me try
12 and explain this. For the Monday night, June
13 8th, the meeting ID password will be different,
14 both if you're -- for Zoom.

15 How about the YouTube? Better ask him
16 about that.

17 MR. BOONSTRA: It's a new one each time.

18 JUDGE SLAVIN: Is it?

19 MR. BOONSTRA: Yup.

20 JUDGE SLAVIN: So the Zoom
21 videoconferencing, the Zoom teleconferencing,
22 and the YouTube -- well, let me start again.
23 I'm sorry.

24 The Zoom videoconferencing and the Zoom

1 teleconferencing meeting IDs that you need to
2 log on, along with the password, will be
3 different.

4 As the sessions progress after that, for
5 Zoom the meeting ID and password will be
6 continuing the same from Monday night. For
7 YouTube, apparently each session each night will
8 be a different YouTube extension -- address.

9 So Ms. Duffy is going to run notices of
10 that as we go on.

11 MS. DUFFY: On our website.

12 JUDGE SLAVIN: On the -- on her website on
13 the County -- on her pages on the County
14 website.

15 MS. KENNEDY: Judge, may I make a
16 suggestion?

17 JUDGE SLAVIN: Sure.

18 MS. KENNEDY: If we could share your email
19 address, Dee, for those who want to reach out
20 directly through email to get that information,
21 I think we should.

22 JUDGE SLAVIN: Your business email.

23 MS. KENNEDY: Correct.

24 MS. DUFFY: Right now?

1 JUDGE SLAVIN: Yeah.

2 MS. DUFFY: So it's
3 dduffy@countyoflee.org.

4 JUDGE SLAVIN: Let me repeat that. Was it
5 D-D.

6 MS. DUFFY: D-D.

7 JUDGE SLAVIN: D-D, meaning Dee Duffy.
8 dduffy@countyoflee.org.

9 MR. BOONSTRA: Judge, it looks like
10 Marilyn Shippert has her hand raised.

11 MS. HENKEL: Let me -- I have to unmute
12 her.

13 JUDGE SLAVIN: Marilyn, can you hear me?

14 MS. SHIPPERT: Yes.

15 Just one comment. I hope you don't get to
16 that, but isn't Thursday, the 18th, County Board
17 night? Because we moved from Tuesdays to
18 Thursdays.

19 MR. BOONSTRA: Correct. That's why I
20 won't be there.

21 JUDGE SLAVIN: Yeah, but we're pushing.
22 So is that okay, Dee?

23 MS. SHIPPERT: Hoping you don't run into
24 that problem, but just wanted people to be aware

1 of that.

2 JUDGE SLAVIN: Well, we can always --
3 that's not written in stone. What's written in
4 stone is the one -- when I -- but thank you,
5 first of all. What's written in stone is the
6 next night when I'm done with a session. So
7 we'll talk about that, but thank you.

8 MS. SHIPPERT: Just wanted people to be
9 aware of it.

10 JUDGE SLAVIN: Fair enough.

11 MR. BOONSTRA: Judge, if I could jump in
12 there?

13 JUDGE SLAVIN: Yeah.

14 MR. BOONSTRA: I think she might be
15 bringing that up because we're going to have to
16 use the same equipment for the County Board.

17 MS. DUFFY: And it's at 6 o'clock.

18 JUDGE SLAVIN: Okay. That takes care of
19 that.

20 MR. HUGHES: The 18th is out?

21 JUDGE SLAVIN: The 18th is out. Everyone,
22 the 18th is out. The 18th is out because it's a
23 Lee County Board meeting and the same technology
24 equipment needs to be used for that, and I guess

1 the County Board gets first-come, first-serve,
2 so. I'm just teasing.

3 So Thursday, the 18th is out.

4 So now the next sessions, at least in
5 our -- on our radar, are June 8, June 9, June
6 10, June 15, and June 17.

7 Okay. Anything else -- all good stuff.
8 Anything else?

9 All right. I will recess until Monday
10 night, June 8th, at -- I'll recess this session
11 until Monday night, June 8th, 7 o'clock, here at
12 the Old Lee County Courthouse. And I have given
13 you folks hopefully an understanding of how to
14 get on Zoom and YouTube that night. It will be
15 posted on Ms. Duffy's website, and you have got
16 her email address in case you can't find it.

17 Very good. Thank you, all. Be safe, be
18 healthy.

19 (The hearing was recessed at
20 7:45 p.m.)

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On this 4th day of June, A.D., 2020, I do signify that the foregoing testimony was given before the Lee County Zoning Board of Appeals.

Bruce Forster, Chairman

Dee Duffy,
Zoning Enforcement Officer

Callie S. Bodmer

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