

SITING, RULES & ORDINANCE SUB-COMMITTEE MEETING
March 6, 2014
5:30 P.M.

MEMBERS PRESENT

Jerry Potts
Susanna Zimmerman

Tim Dudley
Bill Oliver

COUNTY PERSONNEL PRESENT

Mike Baggett, State's Attorney's Office
(left at 6 p.m.)

Lt. Jon Butts, Sheriff's Dept
Jennifer Hoffman, Director of P&Z
Jeannie Durham, County Board Office

MEMBERS NOT PRESENT

Meeting was called to order by Chair Jerry Potts at the Macon County Office Building.

MINUTES

Motion to approve the minutes of prior meeting (2-6-14) made by Bill Oliver, seconded by Susanna Zimmerman, and motion carried 4-0.

CITIZEN'S REMARKS

None

OLD BUSINESS

Macon County Board Ordinance Approving Changes to the Macon County Wind Energy Conversion System Ordinance

Jennifer Hoffman explained that the ordinance has been totally redone. The sub-committee meeting with E.ON resulted in incorporating some of their suggested changes, but not all of them.

They do have two issues in setbacks. See 7.2 on page 7. They wanted it to say, "the public right of way lines 1.1 times the total tower height measured from the center of the base of the tower to the edge of the public private right of way line." That is pretty much what it says in the ordinance already. Jennifer said she has discussed it with Mike Baggett and they have decided to keep the language the same way since it does not change anything substantively. Mike Baggett added that Jennifer has consulted with Bruce Bird regarding right of way setbacks and he agreed that, based on his expertise with right of ways, it does not change the substantive meaning of what the ordinance already said. Since the final draft had already been sent out to the committee, Mike's recommendation to Jennifer was that if there is not a substantive change in the law, there is no reason to adopt their preferred language. Bill Oliver asked if it was plain enough so there isn't any "assumed". Mike said they just wanted to change the wording from what was already there, but they didn't want to change it in such a way that it would change the meaning. So, we decided to go with our wording since that is what was already sent out to the committee. Bill asked what this was meant to do to the public right of way. Mike said it means that the tower has to be its own height and then a little bit more away from the roadway so that if it were to fall over, it would not fall across the road and block the road. Jerry Potts said that somewhere in the ordinance, there is

something about 1,000 feet. Tim Dudley said that was in reference to other property lines, not roadways, but from other non-conforming property lines. Mike said the roadways have always been 1.1 times.

The second part they wanted to add was some decommissioning language. They wanted to pinpoint down how we are going to calculate that. See page 9, paragraph 2. Jennifer said that this is an ordinance that would be intact for a long time and she didn't feel that the board would want to tie their hands and say this is how it is going to be done that many years down the road. The calculation can be put in a special use permit because when the wind farms come in, they will have to be under a special use permit and we can always put special stipulations in that. Jennifer said that she and Mike Baggett did not feel that it should be put into the ordinance. Mike added that they did not want to make it a blanket rule tying hands in all future cases when it can be done on a case by case basis as appropriate depending on the exact parameters of the wind farms that are applied for. It is also a situation where we agree that we should work with this industry with respect to getting this ordinance made better, but at the same time, it is not going to be their ordinance. While we are happy to take in their suggestions and make certain things agreeable to them, we are not going to bend over backwards to make everything to their liking. Jennifer is on the right track in wanting to take this on a case by case as far as the decommissioning is concerned.

Jerry Potts asked if these are changes that E.ON requested after the sub-sub-committee had met and those changes were made. Jennifer said she made the changes after the last SRO meeting when they went through line by line. Also, the changes that were made after the sub-sub-committee met. Mike said that after the sub-committee's sub-committee met, Jennifer prepared the final draft pursuant to everybody's agreement. E.ON had sent a number of suggestions / amendments. Most of them were just typos that we were able to correct. They were not substantive changes. These two things addressed here tonight were the substantive changes that Mike advised that the committee had not discussed and he did not feel comfortable putting it in at that point. The final draft was sent out. Then E.ON again contacted the office regarding these two changes after the final draft had been sent to you. These are the only two changes that are substantive from the meeting that was held after the last sub-committee's meeting.

Bill Oliver asked about the 2nd proof where it talks about proof of the owner's financial ability to deconstruct. He asked what says that they will be able to do this. Jennifer said they have to put up a bond with the county. That was in the beginning at #6. Bill asked if the bond they put up at the start probably wouldn't be enough several years down the road. Jennifer said that was the calculation they want to put into the special use permit rather than tying hands. Mike said the decommissioning costs would be reviewed at set intervals and if it would cost more to decommission the project at that point, the county could require them to post a higher bond. Bill said that was his concern that if the project started out at \$1,000 and then in 12 years, it could be \$12,000. Mike said they were actually thinking millions per tower so they want to be very sure that they don't put something up that we can't later get down without significant cost to the county.

Tim Dudley thanked Jennifer and Mike for all the hard work on the ordinance as well as the sub-committee and the sub-committee's sub-committee. A lot of time has been spent on this. It is a good ordinance for both sides. The work that has been done has not been done in haste.

Motion to pass this ordinance made by Tim Dudley, seconded by Susanna Zimmerman.

Bill Oliver asked how E.ON felt in regard to this ordinance compared to ordinances in other counties where they have projects. Jennifer explained that the only other project that E.ON has that she knows of is in Ford & Iroquois County.

Jerry Potts asked what had been decided on the flicker issue. Jennifer said they had looked at other county ordinances. They had done some suggestions on the shadow flicker and Mike and Jennifer agreed to use theirs (E.ON's). Mike added that he thought it was also part of the sub-committee's sub-committee's discussion and they all agreed that E.ON's language was best.

The motion carried 4-0. Mike reminded Chair Potts that he was responsible for notifying the EEHW chair. Mike addressed Tim Dudley, EEHW Chair that he was so notifying him.

Macon County Board Resolution Approving Macon County Code

Mike Baggett reported that the printed version of the Macon County Code had been received. He said he only has a couple of complaints - one being that they misnamed it. It should be the Macon County Code and not the Macon County, Illinois Code of Ordinances. Statute requires it to be named a particular thing.

He reported that he had reviewed the contract which was entered into in February, 2012. It is a five year contract. During that 5 year period, part of their obligations have been fulfilled. That was to take the original ordinances, codify it, print it and put it up on the internet. That has all occurred. The process now is for the board to adopt the code as its Code of Ordinances, basically meaning that any ordinance which is contained within the Code would be replaced and superseded by what appears in the Code. If there happens to be an ordinance out there somewhere that has been passed and has not superseded or overruled, that will still be in full force effect, pursuant to the law. The law has a savings provision that is referenced in the resolution. If we happen to come across something that is not included in the Codification, we can include it later by sending it to American Legal. During the next 4 years, until February, 2017, any time the board adopts a new ordinance, we would send that ordinance to American Legal and they would put it into their format. If it is a new one, for example, if the Noise Ordinance is ultimately passed, it would be a new part of the Code. They will give it a new Chapter number, put it in its own place, send it to us and post it online. If an old ordinance is amended in any way, like the wind ordinance, we tear out the current version and replace it. They have to get us back the newly formatted version within 45 days and it will be distributed, but the ordinance would be in full force and affect from the night it is passed. There are various fees that are involved and in the contract that is in effect until 2017. At that time, we would need to reconsider whether to continue in the contractual obligation or to terminate the contract and either find a different way of doing it ourselves or with a different company. This process has been a very long time coming. It has been cumbersome and difficult to get all together, but it has resulted in a good working code. There is some cleanup that needs to

be addressed as the years progress. There are ordinances that are not necessarily worthy of being in the Code. There are some one shot ordinances that only affect a very particular point in time and some of them are 20 years old. They don't necessarily still need to be present in our codification.

Tim Dudley stated that it has been a long time coming. There was discussion on how long they had been working on it, but Mike said the relationship with American Legal started 2 years ago in February, 2012. He said that American Legal did their work expeditiously. A lot of it was getting everything compiled together from the various departments and the legal review took a long time.

Jerry Potts asked about the antiquated ordinances and what the process should be to look at getting rid of them. Mike said that it should be done on an "as needed" basis. An example, under the Table of Special Ordinances, is a traffic ordinance, that according to Bruce Bird, are no longer under County control. Since adoption, someone else has taken control and there is no need for the County to have speed restrictions on a road that we don't have the legal authority to set speed restrictions on. It is something that can be cleaned out in the future when we have time to address that.

Bill Oliver said that he would like to see the County Ordinances be made compatible with the City's ordinances so that builders and people who want to do things in both places will be working under the same rules. For example, R1 in the County is not the same as R1 in the County and it is confusing to some people because they have to deal with two sets of restrictions as to what the codes say. Mike said that people who are building or own property are not under two different zoning laws. If they are in the city, they are under the city's zoning laws and if they are in the County, they are under the county's zoning laws. They are never bound by both. Bill asked if the BOCA Code is used. Jennifer said the County uses the Illinois Code Council. Bill said he thought the city was using BOCA and explained that if a major franchise like McDonalds, who have a set pattern for their buildings, get into a lot of problems when they try to build in areas that don't all go by the same national code. He said he has seen it happen here and would like to not see it happen again. Mike said that it is within the County Board's realm as far as how it wants to enact its ordinances. Bill said that this is something he would like to see happen because it makes it much easier for businesses to come to the area if everybody is on the same plane.

Jerry Potts made a motion to forward to the full board, seconded by Bill Oliver, and motion carried 4-0.

NEW BUSINESS

Discussion of possible Macon County Noise Ordinance

Mike Baggett stated that this is on the agenda as something the committee can discuss. There is no expectation of any action to be taken tonight. There is no resolution or ordinance before the committee. For purposes of the Open Meetings Act, this is simply a discussion amongst the committee about a possible draft.

Jennifer Hoffman said she had been approached by the Sheriff's Department about the possibility of creating a noise ordinance. She said the purpose was to assist the deputies and give them a tool to use in the noise complaints calls they receive.

Lt. Butts said that on numerous occasions calls come in and they feel they are not able to perform their job based on not having an ordinance. He said they could deal with it criminally, but a better alternative to a criminal arrest versus the ability to arbitrate or mitigate a situation between neighbors would be much better. There are unincorporated areas in the county that have subdivisions or neighbors that are in close proximity to each other. People should be entitled to peace and tranquility in their own house. One person trying to have dinner at their dining room table and having to listen to a neighbor revving a race car can be an issue. This should not be handled as a criminal case that goes to the State's Attorney's Office for prosecution.

At first, it was thought that because the county is not a home rule county, this could not be done, but an ordinance was located from a county that does have one and we realized that the Illinois State Statute allows the counties to do this. We've taken into consideration things like equipment, loud motorcycles, and entertainment. If someone buys a 4 wheeler or off road motorcycle and they don't have a place on their own property to ride it, take it someplace else to ride it or buy a bigger piece of property. This is just another tool for the deputy's toolbox to help them when they handle these calls on a routine basis. We could go criminally with a disorderly conduct and get the State's Attorney to prosecute it. We've tried to do this objectively, fairly and this noise ordinance would give the deputies more of a sense of direction when handling calls like this. There are lots of times we go out and end up feeling like there just isn't much we can do. We are just trying to get something that could be very useful to the deputies in the street in providing resolution to the property owners. Mike Baggett added that it provides a protective mechanism for people who are out in the county who are making this noise or whatever is bothering these people. If the Sheriff goes out there without an ordinance like this, the option he has is to arrest a person for disorderly conduct which is a Class C misdemeanor. It is punishable by up to 30 days in the county jail and a fine of up to \$1,500. It is a criminal charge which will go on the person's record. It is going to clog up the court system with a relatively minor case. Because there is a potential of jail time, the Public Defender's Office becomes involved. So, now you've got the State's Attorney's Office and the Public Defender's Office representing both sides of this as far as expenses to the county. If this person is convicted, they've got a criminal record for making a lot of noise. With an ordinance violation, the burden is less, but if the person is found in violation of the noise ordinance, they will not walk away with a criminal record. That protects the violator as much as it benefits the county in other ways. Jerry Potts asked how it would be used in a situation. Lt. Butts said there are people who go to bed at 10 p.m. while there are other people who work on a race car, play loud music, or ride motorcycles at 10 p.m. With warmer weather and open windows, conflicts arise. With this we can have something that can be enforced on a local level. Jerry asked that by not arresting them, how the ordinance would be used. Mike said they would be cited into court and subject to fines, but not jail time. That is enough deterrent for most people, but violation of the noise ordinance does not leave them with a criminal record, but they are still held accountable. Lt. Butts compared it to a parking ticket or nuisance violation. It's a way to hold people accountable. The fines are progressive. It's enough to get people's attention. It is reasonable to think that people have a right to talk to people across the dinner table without having to listen to extreme noise from the neighbor. Bill Oliver reminded those present about an incident some time ago at the County Fairgrounds. Lt. Butts said they covered that under a section that reads, "community events shall include such things as parades, festivals, drum corps shows, sporting events, 4th of July celebrations which are sanctioned or sponsored in whole or part by

local government, schools, charitable or service organizations”. We take things like that into consideration. This is for the unreasonable person. Bill said that the thing at that time was that it was summertime and they were having something every week. He asked if it had anything in it about decibels and how loud the noise is going to be, the distance to be used, time of day and night. Susanna Zimmerman added agricultural too. Lt Butts said yes, it’s covered and read, “the provisions and ordinance noise generated by agricultural equipment or land zoned and / or used for agricultural purposes”. Jennifer explained that they were just not ready to present the whole ordinance to the committee yet because they were still going to do some testing on the decibels with the decibel meter to make sure that everything that is in the ordinance correlates with the distance and that kind of thing. She said they currently have a base ordinance that they want to fine tune before it goes out to any committee members. The purpose of the discussion tonight was to let the committee know that this is going to come up and the reasons why it is being looked at. Bill Oliver said that the reason he mentioned those things is because he had not seen the rough draft and wanted to be sure special considerations were included. Lt. Butts said that there are approximately 8 exclusions that are included in the ordinance. He said that since he had worked midnights for 8 ½ years and he understands being home mid-morning trying to sleep while the neighbors were mowing lawns, but that is something that, understandably, has to be dealt with and that is understood. Those are not the people or things this is aimed at. The unreasonable is what is being looked at. Bill asked if the special things would be handled by a permit that would allow the noise only during the event like the alcohol permit process. Lt. Butts said that they have also considered hunting in the ordinance for people who are not a nuisance, but are hunting. Jerry Potts asked Jennifer to get a copy of the City’s noise ordinance so the committee could take a look at that too. Jennifer said she has that and has done a lot of research. A meeting has already been held with the Sheriff, Lt. Butts, the State’s Attorney’s Office, Jay Dunn, and herself. A lot of the regulations that are in theirs are there because they are home ruled. They can make their own rules. We didn’t think we could do this noise ordinance at first. Kendall County has one so we looked at theirs and the saw the State Statutes they included. Jennifer said she then took it back to Mike Baggett for review and said the county cannot go as strict because we are not a home ruled county. Jennifer said she could give the committee the copies requested, but we cannot do the same restrictions they do. Jerry explained that there were just some things he would want to look at. Bill Oliver agreed. Jerry asked if there were no ordinances at all within the county – for curfew or anything like that. Lt. Butts said he was also surprised that there was nothing, but that they had put something in to cover that as well. He said the two words that come to mind are reasonable and pleasure. He explained that if someone is working on their house, that is constructive and reasonable. If someone is pleasure riding a loud motorcycle at 10 p.m., that is different and we don’t want to put them in the same bucket. We just want to make sure that the people that live in the unincorporated parts of the county have fair and objective laws to cover them that make it so we have something we can do about it besides a criminal arrest. Jerry asked how many subdivisions / neighborhoods there are in the county. Lt. Butts said a lot. Jennifer asked for clarification. Jerry said that if there’s a farmhouse with nobody else around for a quarter or half mile, he didn’t want to tie them up, but if there is a group of houses together, this ordinance becomes more important. Lt. Butts explained that if there isn’t anyone close by, it won’t be an issue, but they are trying to help those people that live closer together. Jerry said that many times people move into the county for a reason, one reason being to enjoy their four wheelers and other recreational activities and he said he did not want to . . . Lt. Butts said he agreed because he lives out in the county, but he also did not want to disturb his neighbors just because he lives out there.

People should have the right to peace and tranquility in their own house. Jennifer said they would be looking at bringing a draft to the committee within the next month or so. Jerry asked the committee if they saw importance in it. Tim Dudley said he was absolutely supportive and would be happy to look at an ordinance when it is ready.

Greg Elko with E.ON asked if the final language of the noise ordinance would have any impact on wind farms or if wind farms would be subject to the wind ordinance. Jennifer said wind farms will not go under the noise ordinance, but would be an exempt entity. The wind ordinance has noise standards for the wind farms included in it.

CLOSED SESSION

None

ADJOURNMENT

Motion to adjourn made by Bill Oliver, seconded by Susanna Zimmerman and motion carried 4-0, and meeting adjourned at 6:10 p.m.

Minutes submitted by Jeannie Durham
Macon County Board Office