

CASE NO. 696-S-11 ON REMAND

SUPPLEMENTAL MEMORANDUM

November 2, 2011

Champaign
County
Department of

PLANNING &
ZONING

Brookens
Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Petitioners: California Ridge Wind Energy LLC and the participating landowners listed in the attached legal advertisement. California Ridge Wind Energy LLC is wholly owned by Invenergy Wind North America LLC, One South Wacker Drive, Suite 1900, Chicago, IL 60606, with corporate officers as listed in the attached legal advertisement.

Request: Authorize a Wind Farm which consists of 30 Wind Farm Towers (wind turbines) in total with a total nameplate capacity of 48 megawatts (MW) of which 28 Wind Farm Towers with a total nameplate capacity of 44.8 MW are proposed in Compromise Township (Part A) and 2 Wind Farm Towers with a total nameplate capacity of 3.2 MW are proposed in Ogden Township (Part B), and including access roads, wiring, and public road improvements, and including the waivers of standard conditions in Section 6.1.4 as listed in the attached legal advertisement.

Location: In Compromise Township the following sections are included with exceptions as described in the attached legal advertisement:

- Sections 19, 20, 21, 28, 29, 30, 31, 32, and 33 of T21N, R14W of the 2nd P.M.,
- Sections 24, 25, and 36 of T21N, R10E of the 3rd P.M.,
- Fractional Sections 30 and 31 of T21N, R11E, of the 3rd P.M.

In Ogden Township the following sections are included with exceptions as described in the attached legal advertisement:

- Fractional Section 6, T20N, R11E of the 3rd P.M.,
- Fractional Sections 4, 5, 6, and 7 of T20N, R14W of the 2nd P.M.,
- Sections 8, 9, and 16 of T20N, R14W of the 2nd P.M.

Site Area: Approximately 10,193 acres

Time Schedule for Development: Fall 2011

Prepared by: John Hall
Zoning Administrator

STATUS

The Champaign County Board Committee of the Whole- Environment and Land Use Committee considered this case at their November 1, 2011, meeting and remanded this case as was suggested in the November 1, 2011, memo (see attached).

A Revised Draft Reclamation Agreement is attached with relevant changes in paragraphs (7)(a) and (7)(b). The Revised Draft Reclamation Agreement is briefly reviewed in the attached November 1, 2011, memo.

ANTICIPATED ACTION

The public hearing for Case 696-S-11 must be reopened to allow the introduction of a Revised Draft Reclamation Agreement. The Revised Draft Reclamation Agreement is briefly reviewed in the attached November 1, 2011, memo.

There may also be other new testimony or evidence introduced by the petitioner. And, because the petitioner is introducing new evidence, there must also be public participation.

Because there is very little change to the Draft Reclamation Agreement, it is hoped that the ZBA can make a new Final Determination at tomorrow night's meeting so that this case can be forwarded to the full County Board for the November 17, 2011, meeting.

ATTACHMENTS

- A As Approved (Recommend Denial) Revised Draft Summary of Evidence, Finding of Fact, and Final Determination dated October 20, 2011 (included separately)
- B Committee of the Whole Memorandum dated October 24, 2011 (without attachments)
- C Committee of the Whole Memorandum dated November 1, 2011
- D REVISED Draft Reclamation Agreement received November 2, 2011 with attachments (annotated; included separately)

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- C Committee of the Whole Memorandum dated November 12, 2011
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1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

To: **Champaign County Board Committee of the Whole**
From: **John Hall, Zoning Administrator**
Date: **October 24, 2011**

RE: **Proposed County Board Special Use Permit Case 696-S-11**
Request: **The ZBA Recommends Denial of a request for a Wind Farm Special Use Permit application which consists of 30 Wind Farm Towers (wind turbines) in total with a total nameplate capacity of 48 megawatts (MW) of which 28 Wind Farm Towers with a total nameplate capacity of 44.8 MW are proposed in Compromise Township (Part A) and 2 Wind Farm Towers with a total nameplate capacity of 3.2 MW are proposed in Ogden Township (Part B), and including access roads, wiring, and public road improvements, and including specific waivers of standard conditions.**

Petitioner: **California Ridge Wind Energy LLC and the landowners listed in the attached list of participating landowners**

STATUS

The Zoning Board of Appeals (ZBA) voted to "RECOMMEND DENIAL" of this proposed wind farm at a special meeting held October 20, 2011. Relevant maps are attached. The approved Summary of Evidence and Finding of Fact is attached. The ZBA was careful to specify the reasoning behind the recommendation and the memo reviews the Board's alternatives.

State law establishes a 30 day time limit for a county board siting decision for a wind farm. See the discussion below.

The Draft Champaign County- California Ridge Wind Roads Agreement is also attached for review and recommendation to the full Board.

BACKGROUND

This is the first wind farm to be considered for a "County Board Special Use Permit" since the Zoning Ordinance was amended by the adoption of new wind farm requirements in Ordinance No. 848 on May 21, 2009. The public hearing for Case 696-S-11 opened on August 25, 2011, and included six additional meetings ending on October 20, 2011, encompassing approximately 15 hours of public testimony. The minutes of meetings for 8/25/11, 9/1/11, 9/8/11, and 9/29/11 have been approved and are on the website. Minutes for the later meetings have been drafted but not yet approved.

The initial 700 page *California Ridge Wind Energy Project Champaign County Special Use Permit Application* received July 1, 2011, is on the website under the August 25, 2011, ZBA meeting and CDs can be provided. Seven copies of the 700 page report are also available if needed. A full analysis of compliance with the Zoning Ordinance is found in items 9.A. and 9.B. on pages 14 through 44 of the Summary of Evidence.

As originally proposed, the California Ridge Wind Farm required 11 waivers of standard conditions. Over the course of the public hearing new submittals were received and interpretations were made such that only 6 waivers of standard conditions were required for the final determination. Five of the waivers were found to meet the Ordinance requirements but waiver number 4 was found to not meet the Ordinance requirements and thus contributed to the recommendation for denial.

The ZBA also imposed 13 special conditions in total. Most of the special conditions are either related to the waivers or simply document Ordinance requirements. Special conditions that add requirements that exceed existing Ordinance requirements are conditions F, G, J7, J8, J9, K2, K3, M3, and M4 on pages 56 to 64 of the Summary of Evidence. The petitioner has agreed to all special conditions.

REASONS FOR RECOMMENDATION OF DENIAL

The Approved Finding of Fact clearly identifies the following reasons for the recommendation:

1. **The ZBA determined that Waiver #4, the waiver of the standard condition 6.1.4 I. 1. that requires the noise level of each wind farm tower and wind farm to be in compliance with the Illinois Pollution Control Board regulations at the residential property line rather than to be compliance just at the dwelling, would be injurious to the District.** The evidence regarding the noise impacts is item 9.B.(11) on pages 19- 28 of the Summary of Evidence. The specific Finding for Waiver 4 is Finding of Fact item 6.D. on p. 77. In the overall Finding of Fact, item 2.g. on p. 73 states as follows:

Noise impacts will be INJURIOUS to the District because of the difference of interpretation of the Illinois Pollution Control Board standards regarding measuring at the property line or the dwelling and in some instances there could be a violation.

2. **The ZBA did not feel that the Reclamation Agreement provides adequate assurance for the County in a worst case scenario.** The evidence regarding the Reclamation Agreement is item 9.B.(18) on pages 32- 43 of the Summary of Evidence. In the overall Finding of Fact, item 2.h. on p. 73 states as follows:

The Reclamation Agreement provides INADEQUATE assurance for decommissioning the wind farm because of the possibility that the lien holder's collateral position could result in the County having to pay out of pocket to complete the decommissioning.

STATE LAW ESTABLISHES DEADLINE FOR COUNTY BOARD DECISION

State law (55 ILCS 5/5-12020; see Attachment B) establishes the following deadline in this case:

"...There shall be at least one public hearing not more than 30 days prior to a siting decision by the county board..."

The ZBA took action on this case at a special meeting on October 20, 2011, and by law the County Board only has until November 19, 2011, (a Saturday) to make a decision. The regularly scheduled November 17, 2011, Board meeting is within the 30 day time limit.

COUNTY BOARD ALTERNATIVES

The following three alternatives are available to the County Board:

- **Motion to Uphold the ZBA Recommendation for Denial of Case 696-S-11.** The County Board may uphold the ZBA's recommendation if it agrees with the recommendation for denial. However, the Board should know that the Finding of Fact does contain internal inconsistencies that may be problematic if the decision is challenged in court. Elimination of those inconsistencies can only happen by remanding the case to the ZBA (see below) and the County Board would still have to make a decision by November 19, 2011.

- **Motion to Remand (return) Case 696-S-11 to the ZBA.** Because of the statutory time constraint on a County Board decision, remanding the case to the ZBA is only recommended for specific identified actions that can be done quickly such as **“to remove inconsistencies in the Finding of Fact”** (ie, relevant to Denial- see above).

- **Motion to Approve Case 696-S-11.** Approval of a zoning case when the ZBA has recommended denial is not normally recommended without a remand for reconsideration but this case is unusual for the following reasons:
 1. The concerns about the Reclamation Agreement are not related to any non-compliance with the Ordinance but simply a weighing of the risks associated with the use of salvage value in determining the amount of the financial assurance. The weighing of risks is best done by the County Board. Special condition I. is the condition related to the Reclamation Agreement. The Board has two alternatives regarding the Reclamation Agreement:
 - If the County Board feels that the Reclamation Agreement provides adequate assurance the motion recommending approval should clearly include the following **“...including special condition of approval I. including the Revised Draft Reclamation Agreement received on 10/20/11 and the guaranteed minimum amount of \$25,000 that shall be updated annually to reflect the known rate of inflation, and the expenses and values, including salvage value, as listed in the Base Decommissioning Cost Estimate received 10/06/11 that is Attachment A to the Draft Reclamation Agreement.”**

 - If the County Board feels that the Reclamation Agreement should be changed to provide more assurance it should request the petitioner to make whatever change is desired. The ZBA’s concerns could be addressed by reducing the reliance on salvage value to no more than 75% of the Total Salvage Value (actually suggested by the ZBA) or by increasing the minimum amount of the Financial Assurance from \$25,000 to some greater amount. Note that any change to the condition will have to be accepted by the petitioner. The form of the motion could be similar to the above but with the relevant changes as follows:
“...including the following changes to special condition of approval I. including the Revised Draft Reclamation Agreement received on 10/20/11 with the following changes...”

 2. Since the concerns about injurious noise impacts are related to compliance with the Illinois Pollution Control Board (IPCB) noise regulations and not a County ordinance, the County Board may be as qualified as the ZBA to resolve those concerns. The petitioner has maintained that the proposed wind farm will be compliant with the IPCB regulations even though there is a disagreement regarding whether those regulations apply at the property line or the dwelling. The County Board could approve the wind farm and reaffirm that Champaign County will enforce the IPCB requirements but it is not clear how to resolve the disagreement regarding the property line. The motion should include the following:
“and including the elimination of the waiver of standard condition 6.1.4 I. 1. and reaffirming that Champaign County shall enforce the Illinois Pollution Control Board noise regulations as authorized in the Champaign County Zoning Ordinance.”

ATTACHMENTS

- A Public Notice (modified legal advertisement) for Case 696-S-11 Parts A and B
- B Statutory Deadline for Wind Farm Siting Decisions by County Board (55 ILCS 5/5-12020)
- C Case maps (Location & Zoning)
- D Parcel Status Summary Map with Setbacks California Ridge Wind Energy Center, Champaign and Vermilion Counties, received July 21, 2011 (an excerpt of only the Champaign County portion)
- E Excerpts from California Ridge Wind Energy Project Champaign County Special Use Permit Application received July 1, 2011:
 - (1) pages 3-4, 3-5, 3-8, 3-9
 - (2) pages 3-11, 4-1 to 4-6 and 4-8
 - (3) pages 4-9, 4-10 and 5-1 to 5-4
 - (4) pages 5-6, 5-8 to 5-11 and 5-13, 5-14, 5-15
 - (5) Figure 3-2. Project Location and Preliminary Site Layout
 - (6) Figure 3-5 Participating Properties and Champaign County Required Setbacks
 - (7) Figure 4-3 Road Use Plan
 - (8) Figure 5-1 Shadow Effect Likely Hours per Year of Shadow Flicker
 - (9) Appendix C Figure A-2 Sound Contours
- F Champaign County Non-Participating Dwelling Separation Summary map received July 29, 2011
- G Map of Conservation Recreation Zoning District and Incorporated Municipality Setback Compliance received September 29, 2011
- H Staff Handout Illustrating the Comparison of the Maximum IPCS Noise Limit (Single Number) With the Maximum Predicted Noise at Two Receptors with the Ambient Sound
- I Table of 32 Closest Dwellings and 32 Receptors With Loudest Noise Levels
- K REVISED Draft Reclamation Agreement received October 20, 2011, including the following attachments:
 - (A) Revised Decommissioning Costs received October 6, 2011
 - (B) Appendix B California Ridge Wind Energy Project Decommissioning Report
- L As Approved (Recommend Denial) Summary of Evidence, Finding of Fact, and Final Determination for Case 696-S-11
- M Draft Champaign County- California Ridge Wind Roads Agreement received October 24, 2011

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To: **Champaign County Board Committee of the Whole**
From: **John Hall, Zoning Administrator**
Date: **November 1, 2011**

RE: **Proposed County Board Special Use Permit Case 696-S-11**
Request: **The ZBA Recommends Denial of a request for a Wind Farm Special Use Permit application which consists of 30 Wind Farm Towers (wind turbines) in total with a total nameplate capacity of 48 megawatts (MW) of which 28 Wind Farm Towers with a total nameplate capacity of 44.8 MW are proposed in Compromise Township (Part A) and 2 Wind Farm Towers with a total nameplate capacity of 3.2 MW are proposed in Ogden Township (Part B), and including access roads, wiring, and public road improvements, and including specific waivers of standard conditions.**
Petitioner: **California Ridge Wind Energy LLC and the landowners listed in the attached list of participating landowners**

STATUS

The October 24, 2011, Memorandum did not make it clear that approval of the this zoning case should include a change to Finding of Fact #2 that involves not just the overall Finding of Fact #2 but also sub-findings 2.g. and 2.h. The memo proposes changes to that Finding.

A proposed change to the Reclamation Agreement is also attached as are two recommended directives for a remand.

CHANGING FINDING OF FACT #2 TO SUPPORT APPROVAL

Four of the five required Findings of Facts in this Case support approval but Finding of Fact #2 does not. See pages 73 to 74 of the Approved Final Determination. Any motion for approval should include proposed changes to sub-Findings 2.g. and 2.h. and to overall Finding of Fact #2 that would be consistent with approval. The following is a Draft version of those changes:

In overall Finding of Fact 2, item 2.g. on p. 73 should be revised as follows:

Item 2.g. as recommended by the ZBA:

Noise impacts will be INJURIOUS to the District because of the difference of interpretation of the Illinois Pollution Control Board standards regarding measuring at the property line or the dwelling and in some instances there could be a violation.

Item 2.g. revised to eliminate the injury to the District:

Noise impacts will NOT BE INJURIOUS to the District because of the difference of interpretation of the Illinois Pollution Control Board standards regarding measuring at the property line or the dwelling BECAUSE CHAMPAIGN COUNTY SHALL ENFORCE THE ILLINOIS POLLUTION CONTROL BOARD NOISE REGULATIONS AS AUTHORIZED IN THE CHAMPAIGN COUNTY ZONING ORDINANCE INCLUDING ANY VIOLATION THAT IS FOUND TO BE CONSISTENT WITH THE NOISE STUDY INCLUDED IN THE PETITIONER'S APPLICATION.

In overall Finding of Fact 2, item 2.h. on p. 73 should be revised as follows:

Item 2.h. as recommended by the ZBA:

The Reclamation Agreement provides INADEQUATE assurance for decommissioning the wind farm because of the possibility that the lien holder's collateral position could result in the County having to pay out of pocket to complete the decommissioning.

Item 2.g. revised to document that the proposed assurance is adequate:

The Reclamation Agreement provides ADEQUATE assurance for decommissioning the wind farm because THERE IS ONLY A SLIGHT CHANCE that the lien holder's collateral position could result in the County having to pay out of pocket to complete the decommissioning AND THERE IS NO WAY TO ELIMINATE THAT POSSIBILITY AND THE AMOUNT OF FINANCIAL ASSURANCE BEING PROVIDED SHOULD BE ADEQUATE FOR ANY LIKELY CONDITION.

And finally, the overall Finding of Fact 2. should be revised to read as follows:

2. The requested Special Use Permit **SUBJECT TO THE SPECIAL CONDITIONS IMPOSED HEREIN** is so designed, located, and proposed to be operated so that it **WILL NOT** be injurious to the district in which it shall be located or otherwise detrimental to the public health, safety, and welfare because:

FIVE CHANGES REQUIRED FOR APPROVAL

A motion to approve Case 696-S-11 requires the following five changes:

1. A change to sub-finding 2.g. (see above); and
2. A change to sub-finding 2.h. (see above); and
3. A change to overall Finding of Fact 2 (see above); and
4. The elimination of the waiver of standard condition 6.1.4 I (see the 10/24/11 memo); and
5. Affirmation that the proposed Reclamation Agreement is adequate (see the 10/24/11 memo) (or a change to the Reclamation Agreement).

PROPOSED REVISION TO THE RECLAMATION AGREEMENT

The petitioner has proposed a change to the Draft Reclamation Agreement (see attached). The proposed change is an improvement to the Draft Reclamation Agreement even though it is not a cure all. The case should be remanded to the ZBA to have this new evidence entered.

RECOMMENDED DIRECTION UPON REMANDING

If the Board remands the case to the ZBA so that the Reclamation Agreement can be revised, the remand should include at least the following two directives:

1. Add the Revised Reclamation Agreement including any relevant change to sub-finding 2.h.
2. Address any inconsistencies or incongruities that the ZBA sees in the Finding of Fact.
3. Other pertinent changes that the ZBA may be inclined to make within the time available and provided that the case is returned to the County Board in time for a County Board decision on November 17, 2011.

ATTACHMENTS

- A Proposed Revision to Draft Reclamation Agreement

moving toward completion, to the satisfaction of the **Zoning Administrator**, following the **Principal's** notification to the **Zoning Administrator**. If the work is so completed, and verified on site by the **Zoning Administrator** or his designee, the **Zoning Administrator** shall draw upon the **Financial Assurance** to pay any accrued **Associated Costs**, and then release the remainder of the **Financial Assurance** to the issuer of the **Financial Assurance**, the **Principal's** obligation to provide **Financial Assurance** under this Agreement shall cease and the **Special Use Permit** shall then expire. The **Principal's** exercise of this right shall not, in any way, limit the authority of **Champaign County** under Section (9) or Paragraph 6.1.1.8 of the **Zoning Ordinance**, and may be denied to the extent it conflicts with this authority.

- (b) The **Principal** shall perform the **Reclamation Work** prior to:
 - (i) **Abandoning the Project;**
 - (ii) Ceasing production of electricity from the **Project**, after it has begun, other than in the ordinary course of business;
 - (iii) Transferring the **Project** other than in compliance with this **Reclamation Agreement**.
- (c) The **Principal** shall be responsible for paying the costs of performing the **Reclamation Work** and for paying any **Associated Costs**. The **Principal's** obligation to perform this **Reclamation Work** and to pay **Associated Costs** shall be independent of its obligation to provide **Financial Assurance**.
- (d) The liability of the **Principal** for failure to perform the **Reclamation Agreement** or any other breach of this **Reclamation Agreement** shall not be capped by the amount of the **Financial Assurance**.

(7) **Abandonment Process.** Once the **Zoning Administrator** has made a finding the **Project** has been **Abandoned**, the **Zoning Administrator** shall issue notice to the **Principal** that **Champaign County** will draw on the **Financial Assurance** within thirty (30) days unless the **Principal** appeals the **Zoning Administrator's** finding, pursuant to Paragraph 9.1.8 of the **Zoning Ordinance** or enters a written agreement with **Champaign County** to perform the **Reclamation Work** and remove the **Project** within ninety (90) days. No such notice is required if the **Zoning Administrator** determines the **Project** poses an imminent threat to the health and safety of the public or any person.

- (a) The obligation to perform the **Reclamation Work** hereunder shall constitute a covenant running with the land. Any and all financing and/or security agreements entered into by **Principal** shall be subject to said covenant.
- (b) Any and all financing and/or security agreements entered into by **Principal** shall expressly provide that they are subject to the foregoing covenant. Evidence of the same must be submitted to the **Zoning Administrator** prior to any **Zoning Use**

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Permit approval.

(8) The **Principal** shall pay any accrued **Associated Costs** upon sixty (60) days written demand from the **Zoning Administrator**.

(9) Drawing Upon the **Financial Assurance**:

(a) The **Zoning Administrator** may draw upon the **Financial Assurance** to have the **Reclamation Work** completed when any of the following occur:

- (i) The **Project** is deemed **Abandoned**, under the process set forth in Section (7), and the **Principal** has not responded to the notice from the **Zoning Administrator** within thirty (30) days of its issuance; or, having responded, has not appealed the **Zoning Administrator's** finding; or entered a written agreement to perform the **Reclamation Work** and remove the **Project**.
- (ii) The **Principal** does not enter into, or breaches any term of, a written agreement with **Champaign County** to perform the **Reclamation Work** and/or remove the **Project** and or the **Project's** supporting structures and regrade and provide soil and erosion control as provided in the approval of the **Zoning Case**.
- (iii) Any material breach or performance failure of any provision of this **Reclamation Agreement**; including, but not limited to, the failure to maintain **Financial Assurance**; the failure to replace expiring **Financial Assurance** within the deadlines set forth herein; or the removal or replacement of equipment or property from the **Project** in violation of Section (5).
- (iv) The **Principal** has filed a bankruptcy petition, or compromised **Champaign County's** interest in the **Financial Assurance** in any way not specifically allowed by this **Reclamation Agreement**.
- (v) A court of law, an arbitrator, mediator, or any state or Federal agency charged with enforcing State or Federal law has made a finding that either said **Project** or any of the facilities or structures supporting or constituting said **Project** and/or any related site grading and soil erosion controls or lack of same, constitutes a public nuisance or otherwise violates State or Federal law, or any State or Federal agency charged with enforcing State or Federal law has made a final determination imposing an administrative sanction on the **Project** or denying the **Project** a permit necessary for its lawful operation.
- (vi) **Champaign County** discovers any material misstatement of fact, or misleading omission of fact, made by the **Principal** or its