



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Lisa Karcher, AICP, Planner II

DATE: May 13, 2010

SUBJECT: CCZBA-664-AT-10: Request by the Champaign County Zoning Administrator to amend the Champaign County Zoning Ordinance concerning shadow flicker and number of concurring votes needed for ZBA decisions

Introduction and Background

The Champaign County Zoning Administrator is proposing a two-part text amendment to the Champaign County Zoning Ordinance in CCZBA Case No. 664-AT-10. Following is a description of the text amendment proposed.

1) Delete subparagraph 6.1.4 A.1.(c)

Section 6.1.4 of the Champaign County Zoning Ordinance pertains to wind farm developments in Champaign County, exclusive of Urbana's 1.5 mile extraterritorial jurisdiction (ETJ). Illinois State Law allows municipalities to regulate wind farms and wind turbines within both its zoning jurisdiction and the 1.5 mile ETJ surrounding its zoning jurisdiction. Additionally, State Law does not grant counties zoning authority over wind farms within municipal ETJ's. Consequently, the wind farm regulations that were adopted by Champaign County in May 2009 excluded the City of Urbana's ETJ.

Wind farms, outside municipal ETJ's, may be authorized in the County AG-1 Zoning District by a special use permit. Section 6.1.4 outlines standard conditions for which wind farms are subject. Paragraph 6.1.4 M. addresses standard conditions for shadow flicker and reads as follows:

"M. Standard Conditions for Shadow Flicker

- 1. The Applicant shall submit the results of a study on potential shadow flicker. The shadow flicker study shall identify the locations of both summer and winter shadow flicker that may be caused by the project with an expected duration of 30 hours or more per year.*
- 2. Shadow flicker that exceeds the above standards shall be mitigated by any means such as landscaping, awnings, or fencing."*

The intent of paragraph 6.1.4 M. is that shadow flicker be mitigated in cases where duration of 30 hours or more per year is expected.

Subparagraph 6.1.4 A.1.(c) also mentions shadow flicker. This Section specifies general standard conditions for wind farms. A copy of this section is provided in the Champaign County Memorandum in Exhibit A. Subparagraph 6.1.4 A.1.(c) reads as follows:

“All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M. and for which other mitigation is not proposed.”

As written, this subparagraph is inconsistent with paragraph 6.1.4 M. as it could allow unmitigated shadow flicker exceeding 30 hours per year. The Zoning Administrator is therefore proposing to delete subparagraph 6.1.4 A.1.(c).

2) Revise subparagraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decision from five to four to make the Zoning Ordinance consistent with state law.

Paragraph 9.1.7 E.1. of the Champaign County Zoning Ordinance requires that “the concurring vote of five members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any variance in the application of this ordinance or to effect any special use.” This is inconsistent with State law (55 ILCS 5/5-12011) which establishes that decisions by a Board of Appeals only require the concurring vote of four board members for boards of seven members. It is the opinion of the State’s Attorney that if the state statutes only require four affirmative votes, then the County cannot require a greater number.

The By-laws for the County ZBA were amended in 2002 to require only four affirmative votes per state law. The County has been operating with the understanding that only four affirmative votes are required since this time. The Champaign County Zoning Administrator is proposing to amend paragraph 9.1.7 E.1. of the Champaign County Zoning Ordinance so that it is consistent with state law.

Champaign County staff memoranda concerning the proposed text amendment are included as Exhibits A and B. ELUC is anticipated to make a recommendation to the Champaign County Board concerning the amendment at their meeting on June 8, 2010. From there, the amendment will be considered by the Champaign County Board on June 24, 2010.

It is the Plan Commission’s responsibility to review the proposed amendment to determine what if any impact it will have on the City, and to recommend to City Council whether or not to protest the proposed text amendment. Under state law, a municipal protest of the proposed amendment would require three-fourths super majority of affirmative votes for approval of the request at the County Board; otherwise, a simple majority would be required for County Board approval.

Discussion

Typically, proposed Champaign County text amendments are of interest to the City of Urbana to the extent that they will affect zoning and land use development decisions within the City's ETJ and for their consistency with Urbana's Comprehensive Plan. The City has subdivision and land development jurisdiction within the ETJ area, while the County holds zoning jurisdiction in this area. It is therefore important that there be consistency between these two jurisdictions to the extent that certain regulations may overlap.

The proposed text amendment will not significantly impact the City of Urbana or its ETJ. The first part of the text amendment is to make revisions to wind farm regulations that were adopted by Champaign County in May 2009 in CCZBA Case No. 634-AT-08. Based on State law, the wind farm regulations exclude the City of Urbana's ETJ. Since the proposed text amendment is related to the wind farm regulations, which do not apply to Urbana's ETJ, the proposed text amendment will not directly impact the City of Urbana's planning jurisdiction. In addition, the City of Urbana did not adopt a resolution of protest concerning the establishment of regulations for wind farm developments in Champaign County.

The second part of the text amendment is to correct the number of concurrent votes needed by the County ZBA so that the County's Zoning Ordinance is consistent with State Statutes. This change relates to administrative proceedings of the County. Although it will affect how County ZBA recommendations are made concerning properties within Urbana's ETJ, it does not have a direct impact on Urbana's ETJ.

Summary of Findings

1. The Champaign County Zoning Administrator is proposing a two-part text amendment to the Champaign County Zoning Ordinance in CCZBA Case No. 664-AT-10 concerning shadow flicker and number of concurring votes needed for Zoning Board of Appeals decisions.
2. The first part of the proposed text amendment is to delete paragraph 6.1.4 A.1.(c) concerning shadow flicker applicable to wind farm developments that is inconsistent with subparagraph 6.1.4 M. of the Champaign County Zoning Ordinance.
3. Based on State law, Champaign County's regulations pertaining to wind farm developments are not applicable within City of Urbana's ETJ.
4. The second part of the text amendment is to correct the number of concurrent votes required by the County ZBA in paragraph 9.1.7 E.1. from five to four to be consistent with state statutes. This change relates to administrative proceedings of the County.
5. The proposed zoning ordinance text amendment would not adversely affect the City of Urbana or the extra-territorial jurisdiction of the City of Urbana.

Options

The Plan Commission has the following options for recommendations to the City Council regarding proposed text amendments in CCZBA Case No. 664-AT-10:

1. Recommend to defeat a resolution of protest; or
2. Recommend to defeat a resolution of protest contingent upon some specific revision(s) to the proposed text amendments; or
3. Recommend to adopt a resolution of protest.

Staff Recommendation

Based on the findings above, Staff recommends that the Plan Commission forward this case to the City Council with a recommendation to **DEFEAT a resolution of protest** for the proposed County Zoning Ordinance text amendment.

Attachments: Exhibit A: Preliminary Memorandum dated March 19, 2010
Exhibit B: Supplemental Memorandum dated March 25, 2010

cc: John Hall, Champaign County Zoning Administrator

CASE NO. 664-AT-10Champaign **PRELIMINARY MEMORANDUM**
County

March 19, 2010

Department of

Petitioner: **Zoning Administrator****PLANNING &
ZONING**Prepared by: **John Hall**
Zoning Administrator
J.R. Knight
Associate Planner**Brookens****Administrative Center** Request:1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

Amend the Champaign County Zoning Ordinance as follows:

1. **Delete subparagraph 6.1.4 A.1.(c).**
2. **Revise subparagraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.**

BACKGROUND

The need for the amendment came about as follows:

- Regarding the deletion of paragraph 6.1.4 A.1.(c) of the proposed amendment:
 - Paragraph 6.1.4 M. establishes Standard Conditions for Shadow Flicker and requires that all areas subject to more than 30 hours of shadow flicker per year are to be provided with some form of mitigation.
 - This paragraph was revised by ELUC after the public hearing for Zoning Case 634-AT-08 Part A. However, Paragraph 6.1.4 A.1.(c) was not revised by ELUC and still requires land that is subject to more shadow flicker than authorized in 6.1.4 M. which receives no other mitigation to be part of the Special Use Permit Area.
 - The two paragraphs are inconsistent and paragraph 6.1.4 A.1.(c) is unnecessary and illogical, and should be deleted.
- Regarding the change to paragraph 9.1.7 E.1:
 - The Zoning Ordinance currently requires the concurring vote of five Zoning Board of Appeals (ZBA) members to pass a decision.
 - However, state law (55 ILCS 5/5-12011) establishes that decisions by a Board of Appeals only require the concurring vote of four Board members for boards of seven members.
 - This became an issue in Zoning Case 560-S-06 for the petitioner Hindu Temple and the State's Attorney determined that the County cannot require a greater number of affirmative votes than that required by state law.

ATTACHMENTS

- A Draft Proposed Change to Paragraph 6.1.4 A. 1.(c)
- B Draft Proposed Change to Paragraph 9.1.7 E.1.
- C Draft Finding of Fact for Case 664-AT-10

I. Delete Subparagraph 6.1.4 A.1.(c) as follows:

A. General Standard Conditions

1. The area of the WIND FARM County Board SPECIAL USE Permit must include the following minimum areas:
 - (a) All land that is a distance equal to 1.10 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of that WIND FARM TOWER.
 - (b) All land that will be exposed to a noise level greater than that authorized to Class A land under paragraph 6.1.4 I.
 - ~~(e) All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M. and for which other mitigation is not proposed.~~
 - ~~(d)~~ All necessary access lanes or driveways and any required new PRIVATE ACCESSWAYS. For purposes of determining the minimum area of the special use permit, access lanes or driveways shall be provided a minimum 40 feet wide area.
 - ~~(e)~~ All necessary WIND FARM ACCESSORY STRUCTURES including electrical distribution lines, transformers, common switching stations, and substations not under the ownership of a PUBLICLY REGULATED UTILITY. For purposes of determining the minimum area of the special use permit, underground cable installations shall be provided a minimum 40 feet wide area.
 - ~~(f)~~ All land that is within 1.50 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of each WIND FARM TOWER except any such land that is more than 1,320 feet from any existing public STREET right of way.
 - ~~(g)~~ All land area within 1,320 feet of a public STREET right of way that is also within 1,000 feet from the base of each WIND FARM TOWER except that in the case of WIND FARM TOWERS in compliance with the minimum STREET separation required by paragraph 6.1.4 C. 5. in which case land on the other side of the public STREET right of way does not have to be included in the SPECIAL USE Permit.

Attachment B Draft Proposed Change to Paragraph 9.1.7 E.1.

MARCH 19, 2010

1. Revise Subparagraph 9.1.7 E.1. as follows:

(Underline and ~~strikeout~~ text indicate changes from the existing Ordinance text.)

The concurring vote of ~~five~~ four members of he BOARD shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any VARIANCE in the application of this ordinance or to effect any SPECIAL USE.

PRELIMINARY DRAFT

664-AT-10

**FINDING OF FACT
AND FINAL DETERMINATION
of
Champaign County Zoning Board of Appeals**

Final Determination: *{RECOMMEND ENACTMENT / RECOMMEND DENIAL}*

Date: March 19, 2010

Petitioner: Zoning Administrator

Request: Amend the Champaign County Zoning Ordinance as follows:

1. Delete subparagraph 6.1.4 A.1.(c).
2. Revise subparagraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.

FINDING OF FACT

From the documents of record and the testimony and exhibits received at the public hearing conducted on **March 25, 2010**, the Zoning Board of Appeals of Champaign County finds that:

1. The petitioner is the Zoning Administrator.
2. The need for the amendment came about as follows:
 - A. Regarding the deletion of paragraph 6.1.4 A.1.(c) of the proposed amendment:
 - (1) Paragraph 6.1.4 M. establishes Standard Conditions for Shadow Flicker and requires that all areas subject to more than 30 hours of shadow flicker per year are to be provided with some form of mitigation.
 - (2) This Paragraph was revised by ELUC after the public hearing for Zoning Case 634-AT-08 Part A. However, Paragraph 6.1.4 A.1.(c) was not revised by ELUC and still requires land that is subject to more shadow flicker than authorized in 6.1.4 M. which receives no other mitigation to be part of the Special Use Permit Area.
 - (3) The two paragraphs are inconsistent and paragraph 6.1.4 A.1.(c) is unnecessary and illogical, and should be deleted.
 - B. Regarding the change to paragraph 9.1.7 E.1:
 - (1) The Zoning Ordinance currently requires the concurring vote of five Zoning Board of Appeals (ZBA) members to pass a decision.

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- (2) However, state law (55 ILCS 5/5-12011) establishes that decisions by a Board of Appeals only require the concurring vote of four Board members for boards of seven members.
 - (3) This became an issue in Zoning Case 560-S-06 for the petitioner Hindu Temple and the State's Attorney determined that the County cannot require a greater number of affirmative votes than that required by state law.
3. Municipalities with zoning and townships with planning commissions have protest rights on all text amendments and they are notified of such cases. No comments have been received to date.

GENERALLY REGARDING THE EXISTING ZONING REGULATIONS

4. Existing Zoning regulations regarding the separate parts of the proposed amendment are as follows:
- A. Requirements for the development of wind farms were added to the *Zoning Ordinance* in Ordinance No. 848 (Case 634-AT-09 Part A) on May 21, 2009. The relevant portions of that amendment are as follows:
 - (1) Paragraph 6.1.4 A.1. states:

The area of the WIND FARM County Board SPECIAL USE Permit must include the following minimum areas:

...
 - (c) All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M. and for which other mitigation is not proposed.
 - (2) Paragraph 6.1.4 M. states:

Standard Conditions for Shadow flicker

 1. The Applicant shall submit the results of a study on potential shadow flicker. The shadow flicker study shall identify the locations of both summer and winter shadow flicker that may be caused by the project with an expected duration of 30 hours or more per year.
 2. Shadow flicker that exceeds the above standards shall be mitigated by any means such as landscaping, awnings, or fencing.
- B. Subparagraph 9.1.7 E.1. states:

The concurring vote of five members of the BOARD shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass

under this ordinance or to effect any VARIANCE in the application of this ordinance or to effect any SPECIAL USE.

- C. The following definitions from the *Zoning Ordinance* are especially relevant to this amendment (capitalized words are defined in the Ordinance):
- (1) "BOARD" shall mean the Zoning Board of Appeals of the COUNTY
 - (2) "GOVERNING BODY" shall mean the County Board of Champaign County, Illinois.

SUMMARY OF THE PROPOSED AMENDMENT

5. The proposed amendment is summarized here as it will appear in the Zoning Ordinance, as follows:
- A. The proposed deletion of subparagraph 6.1.4 A.1.(c) will appear as follows:
- 6.1.4 WIND FARM County Board SPECIAL USE Permit
A WIND FARM County Board SPECIAL USE Permit may only be authorized in the AG-1 Zoning District subject to the following standard conditions.
- A. General Standard Conditions
1. The area of the WIND FARM County Board SPECIAL USE Permit must include the following minimum areas:
 - (a) All land that is a distance equal to 1.10 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of that WIND FARM TOWER.
 - (b) All land that will be exposed to a noise level greater than that authorized to Class A land under paragraph 6.1.4 I.
 - (c) ~~All land that will be exposed to shadow flicker in excess of that authorized under paragraph 6.1.4M, and for which other mitigation is not proposed.~~
 - (d) All necessary access lanes or driveways and any required new PRIVATE ACCESSWAYS. For purposes of determining the minimum area of the special use permit, access lanes or driveways shall be provided a minimum 40 feet wide area.
 - (e) All necessary WIND FARM ACCESSORY STRUCTURES including electrical distribution lines, transformers, common switching stations, and substations not under the ownership of a PUBLICLY REGULATED UTILITY. For purposes of determining the minimum area of the special use permit, underground cable installations shall be provided a minimum 40 feet wide area.
 - (f) All land that is within 1.50 times the total WIND FARM TOWER height (measured to the tip of the highest rotor blade) from the base of each WIND

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FARM TOWER except any such land that is more than 1,320 feet from any existing public STREET right of way.

- (g) All land area within 1,320 feet of a public STREET right of way that is also within 1,000 feet from the base of each WIND FARM TOWER except that in the case of WIND FARM TOWERS in compliance with the minimum STREET separation required by paragraph 6.1.4 C. 5. in which case land on the other side of the public STREET right of way does not have to be included in the SPECIAL USE Permit.

B. The change to subparagraph 9.1.7 E.1 will appear, as follows:

E. Decisions

- 1. The concurring vote of ~~five~~ four members of the BOARD shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any VARIANCE in the application of this ordinance or to effect any SPECIAL USE.

GENERALLY REGARDING RELEVANT LAND USE GOALS AND POLICIES

- 6. The *Land Use Goals and Policies* (LUGP) were adopted on November 29, 1977, and were the only guidance for amendments to the *Champaign County Zoning Ordinance* until the *Land Use Regulatory Policies- Rural Districts* were adopted on November 20, 2001, as part of the Rural Districts Phase of the Comprehensive Zoning Review (CZR) and subsequently revised on September 22, 2005. The relationship of the Land Use Goals and Policies to the Land Use Regulatory Policies is as follows:
 - A. Land Use Regulatory Policy 0.1.1 gives the Land Use Regulatory Policies dominance over the earlier Land Use Goals and Policies.
 - B. The Land Use Goals and Policies cannot be directly compared to the Land Use Regulatory Policies because the two sets of policies are so different. Some of the Land Use Regulatory Policies relate to specific types of land uses and relate to a particular chapter in the land use goals and policies and some of the Land Use Regulatory Policies relate to overall considerations and are similar to general land use goals and policies.

REGARDING SPECIFICALLY RELEVANT LAND USE GOALS AND POLICIES

- 7. There are goals and policies for agricultural, commercial, industrial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment.

REGARDING THE GENERAL LAND USE GOALS AND POLICIES

8. Regarding the General Land Use Goals and Policies:
- A. Only the fifth General Land Use Goal appears to be relevant to the proposed amendment. The fifth General Land Use Goal is:
- Establishment of processes of development to encourage the development of the types and uses of land that are in agreement with the Goals and Policies of this Land Use Plan
- The proposed amendment appears to **ACHIEVE** the fifth General Land Use Goal because it will make the *Zoning Ordinance* more consistent and clear, as follows:
- (a) Deletion of paragraph 6.1.4 A.1.(c) will make the Zoning Ordinance more internally consistent.
- (b) The proposed change to paragraph 9.1.7 E.1. will make the Zoning Ordinance consistent with state statute.
- D. None of the General Land Use Policies appear to be relevant to the proposed amendment.

PRELIMINARY DRAFT

DOCUMENTS OF RECORD

1. Memo to the Champaign County Board Committee of the Whole, dated, February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a proposed Zoning Ordinance text amendment clarifying standard conditions and clarifying wind farm shadow flicker requirements
2. Memo to the Champaign County Board Committee of the Whole, dated February 22, 2010, regarding direction to Zoning Administrator regarding a necessary zoning ordinance text amendment to conduct a Zoning Ordinance Text Amendment to make the Zoning Ordinance consistent with state law regarding the number of affirmative votes for a decision at the Zoning Board of Appeals
3. Application for Text Amendment from Zoning Administrator, dated March 3, 2010
4. Preliminary Memorandum for Case 664-AT-10, dated March 19, 2010, with attachments:
 - A Draft Proposed Change to Paragraph 6.1.4 A. 1.(c)
 - B Draft Proposed Change to Paragraph 9.1.7 E.1.
 - C Draft Finding of Fact for Case 664-AT-10

FINAL DETERMINATION

Pursuant to the authority granted by Section 9.2 of the Champaign County Zoning Ordinance, the Zoning Board of Appeals of Champaign County determines that:

The Zoning Ordinance Amendment requested in **Case 664-AT-10** should **{BE ENACTED / NOT BE ENACTED}** by the County Board in the form attached hereto.

The foregoing is an accurate and complete record of the Findings and Determination of the Zoning Board of Appeals of Champaign County.

SIGNED:

Doug Bluhm, Chair
Champaign County Zoning Board of Appeals

ATTEST:

Secretary to the Zoning Board of Appeals

Date

CASE NO. 664-AT-10

Champaign County Department of
 SUPPLEMENTAL MEMORANDUM
 March 25, 2010
 Petitioner: Zoning Administrator

PLANNING &
 ZONING

Prepared by: **John Hall**
 Zoning Administrator
J.R. Knight
 Associate Planner

Brookens
 Administrative Center
 1776 E. Washington Street
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(217) 384-3708

Request: **Amend the Champaign County Zoning Ordinance as follows:**

1. Delete paragraph 6.1.4 A.1.(c).
2. Revise paragraph 9.1.7 E.1. to change the required number of concurring votes needed for ZBA decisions from five to four to make the Zoning Ordinance consistent with state law.

STATUS

This is the first meeting for this case. Since the mailing staff has added new information to the Finding of Fact regarding the Second Industrial Land Use Goal and the Land Use Regulatory Policies.

NEW INFORMATION FOR FINDING OF FACT

1. The following should be added as revised Item 7 on page 4 of 7, as follows:
 (Underline and ~~strikeout~~ text indicate changes from the Preliminary Draft)

7. Regarding Land Use Goals and Policies for specific categories of land uses:
 - A. There are goals and policies for agricultural, commercial, and residential land uses, as well as conservation, transportation, and utilities goals and policies in the Land Use Goals and Policies, but due to the nature of the changes being proposed none of these specific goals and policies are relevant to the proposed amendment, except for the Second Industrial Land Use Goal.
 - B. The Second Industrial Land Use Goal appears to be relevant to the proposed amendment. The Second Industrial Land Use Goal is:

Location and design of industrial development in a manner compatible with nearby non-industrial uses.

The proposed amendment appears to {ACHIEVE} the Second Industrial Land Use Goal because it will make clear that a wind farm developer is required to provide mitigation for shadow flicker for land that receives more than 30 hours of shadow flicker in a given year.

2. The following should be added as new Item 9. on page 5 of 7, as follows:

9. None of the Land Use Regulatory Policies appear to be relevant to the proposed amendment.