

January Month-End Report

*5 draft applications, issued 6 permits, 92 open permits, no open complaints & conducted 13 site visits at various locations throughout the county.
Revenues: \$669 mtd, \$1,067 ytd .*

The Zoning Board of Appeals meeting scheduled for 2/14/23 will be canceled due to no agenda items. There are three board seats that have expired. Two members seeking re-appointment & one vacant seat.

Attending FEMA on-line seminar: NFIP Fundamentals for New Floodplain Managers on 2.22.23. Plan to attend Spring IACZO conference on 4.28.23 at La Salle County Conference Center at Starved Rock State Park.

Public Act 102-1123 (HB 4412) was signed by the Governor on 1.27.23.

- 'The new requirements established under an amendment to section 5/5-12020 of the Counties Code (**55 ILCS 5/5-12020**) creates statewide siting criteria while specifically preempting any more restrictive county ordinance.', © 2023 Illinois Association of County Board Members and Commissioners. All rights reserved.

- The state statute has already been updated to the new information. <https://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=005500050HDiv%2E+5%2D12&ActID=750&ChapterID=12&SeqStart=82900000&SeqEnd=85700000>

- It has been suggested that we continue to follow our current ordinance until any/all text amendments to the Bond County Zoning Ordinance are passed. The state has given counties until **May 27, 2023** to complete updating their ordinances.

- Suggest board have the Bond County Zoning Board of Appeals review **5-12.4 Solar Farm Energy Systems (SFES)** section of the Bond County Zoning Ordinance and propose any needed amendments to ensure it complies with all applicable state laws/statute(s). Specific areas of concern include but not limited to:

1. Conflicting requirements with Counties Code 55 ILCS 5/5-12020
2. Application requirements, special use permit etc.
3. Set-back & height requirements
4. Public hearing dates/timelines
5. County highway/road usage/restrictions
6. Decommissioning plan
7. Zoning certificate of compliance, including but not limited to ag impact mitigation/DNR
8. Indemnification & liability
9. Impact study, complaint resolution, emergency plan, fencing/shrubbery requirements
10. Insurance & user agreements

COUNTY BULLETIN

JANUARY 2023

LIVE WEBINAR

Employee Performance Management and Employee Termination

Thursday, March 16, 2023
2:00 p.m. CST

Register at www.ilcounty.org

Sweeping change impacts county regulation of commercial wind and solar projects

by Alex Rives, Jessica Pullen and Andy Keyt

In a final move enacting legislation which curtails a county's zoning authority over commercial wind and solar facilities, Governor Pritzker has signed into law **House Bill 4412** ("HB 4412"). Curiously tagged on to a Telehealth-Athletic Trainers bill, a portion of HB 4412 significantly changes a county's ability to regulate the standards and siting requirements for commercial wind and solar farms.

The new requirements established under an amendment to section 5/5-12020 of the Counties Code (*55 ILCS 5/5-12020*) creates statewide siting criteria while specifically preempting any more restrictive county ordinance. Many changes are relatively uncontroversial, but others will substantially impact how zoning offices and county officials address zoning applications and the development of commercial wind and solar projects going forward. While there are more changes than we can address in this space, we plan to hold a workshop event in the near future to address best practices for counties in light of the new legislation.

APPLICABILITY

The amended statute only applies to so-called "commercial" wind and solar energy facilities. Commercial wind energy facility means a wind energy conversion facility generating 500 kilowatts (1/2 a megawatt) in total nameplate generating capacity.

Given the operating capacity of current wind turbine models, any new or repowered facility would fall under this provision. Commercial solar energy facility means "any device or assembly of devices that (i) is ground installed and (ii) uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices reside." See *55 ILCS 5/5-12020; 35 ILCS 200/10-720*.

The amendments do not impact any previously filed application or a facility that has submitted an Agricultural Impact Mitigation Agreement to the state.



Solid Waste Planning Grant



The Illinois Environmental Protection Agency (IEPA) announced a new funding opportunity to assist counties in implementing their solid waste planning obligations under the Illinois Solid Waste Planning and Recycling Act (SWPRA). A Notice of Funding Opportunity (NOFO) has been posted to the IEPA website www.epa.illinois.gov.

Under the SWPRA, counties are obligated to revisit their Solid Waste Management Plans every five years and, if necessary, submit plans with significant updates to the Illinois EPA. The IEPA Material Management and Compliance Section is responsible for reviewing any solid waste management plans with significant updates submitted pursuant to the SWPRA. Through this funding opportunity, IEPA intends to provide interested counties required to develop a county solid waste management plan, financial assistance to help prepare the next plan update.

Each county is eligible for up to \$10,000 in funding. Applications will be accepted through 5:00 p.m. (CST) on March 3, 2023.

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Wind and solar regulation *continued*

Effective Date

The amendments go into effect on January 27, 2023. Given the onerous requirements and some significant ambiguities, the immediacy of the effective date will pose challenges to counties in allowing time for consideration of the county's own standards which must also be consistent with the statutorily required amendments. **Those changes must be adopted within 120 days of the effective date (or by May 27, 2023) in order for the county to retain any significant local control.**

• SUBSTANTIVE CHANGES •

Physical Siting Limitations

The amendments are far reaching, essentially requiring a complete rewrite of many zoning codes and eviscerating the power of counties. However, the traditional siting hearing must still take place in the form of a public hearing before a county's zoning board of appeals. The amendments also incorporate timing requirements. A public hearing must be conducted within 45 days of the facility filing an application, and the county board's decision as to the application must come within 30 days or less of the hearing's conclusion.

Importantly, the amendments set statewide maximum restrictions on setbacks, sound, and shadow flicker. County zoning provisions in conflict with the statutory amendments must be amended to comply with the new standards. If a county fails to do so, arguably, no setbacks will exist, nor any limits on sound or shadow flicker. Accordingly, it's important to begin addressing these changes now.

For commercial wind energy facilities, the following notable setbacks are the maximum allowable setbacks (measured from center of the base of the tower to the nearest point on the outside wall of the structure):

- 2.1 times the height of the tower (measured from the blade in upright position) from occupied community buildings (school, place of worship, day care facility, public library or community center);
- 1.1 times the height of the tower from participating residences;
- 2.1 times the height of the tower to nonparticipating residences;
- no setback requirement is allowed to the boundary line of a participating property;
- 1.1 times the height of the tower to the boundary lines of nonparticipating property owners;
- 1.1 times the height of the tower to the center point of a public right-of-way;
- 1.1 times the height of the tower to overhead communication and electric transmission lines (excluding those to houses or outbuildings)
- No setback requirement is allowed for overhead utility service lines to individual houses or outbuildings; and
- 2.1 times the height of the tower to fish and wildlife areas and nature preserves

Shadow flicker is only regulated as to nonparticipating and occupied community buildings, setting the standard at 30 hours of shadow flicker. Sound limits for both solar and wind facilities are subject to the Illinois Pollution Control Board standards. A county could set less restrictive requirements as to sound, but not as to shadow flicker.

For commercial solar facilities, the maximum allowable setbacks are:

- 150 feet from the nearest point on the outside wall from community buildings and nonparticipating properties;
- No setback from the boundary line of a participating property owner;
- 50 feet from the nearest edge of a public right-of-way; and
- 50 feet from the nearest point on the property line of a nonparticipating property.

Solar facilities are restricted to no higher than 20 feet above ground when the arrays are at full tilt. The perimeter must also be enclosed by fencing at least 6 feet tall and no more than 25 feet tall.

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Wind and solar regulation *continued*

OTHER KEY PROVISIONS: *The most important part of these amendments is subpart (g) which states, in part:*

“A county may not place **any** restriction on the installation or use of a [wind or solar facility] unless it adopts an ordinance that complies with this Section. A county may not establish siting standards for supporting facilities that preclude development of [wind or solar] facilities.

A request for siting approval or a special use permit for a [wind or solar facility] shall be approved if the request is in compliance with the standards and conditions imposed by this Act, the zoning ordinance adopted consistent with this Code, and the conditions imposed under State and federal statutes and regulations.”

See 55 ILCS 5/5-12020(g) (emphasis added).

Accordingly, a county must take some action to update its zoning regulations via a text amendment, or it will have no setback provisions to enforce, and other key siting requirements could be lost as well. **These text amendments must occur within 120 days of the effective date of the new law.**

In addition, counties may not impose “unreasonable fees” and those fees must be consistent with other fees for projects in the county with similar capital value and cost. The state has also limited the power of counties to contract with solar and wind developers by forcing counties to accept the same decommissioning requirements set forth in the Agricultural Impact Mitigation Agreement and requiring that counties offset a facility’s salvage value from the developers’ financial assurances for decommissioning.

PARTING THOUGHTS: There are numerous unanswered questions and ambiguities as a result of the statutory amendments. It is clear the legislature intended to restrict local authority in the siting of wind and solar facilities. However, there remain areas that the state has left for counties to regulate. Enacting changes consistent with the new law by the end of May 2023 will be key for counties in ensuring they maintain some level of local control over the siting of wind and solar farms. In the coming months, we plan to continue this discussion with a wind and solar zoning seminar on how to best address these issues within your zoning code and how to address these issues during a siting hearing.

About the authors

Alex Rives joined Heyl Royster as an associate in 2020 after receiving her J.D. from Southern Illinois University School of Law and her B.A. from the University of Illinois at Urbana-Champaign, where she double-majored in Political Science and Communication. She focuses her practice on defending clients in civil litigation.

Jessica Pullen joined Heyl Royster in 2022 after earning her J.D. from the University of Illinois College of Law in 2022, cum laude. With degrees in Criminology and Law, Jessica has an eye for the details as she defends clients in civil litigation and transactional matters across various practice areas.

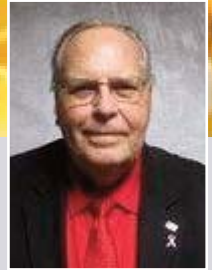
Andrew Keyt is Chair of the firm’s Governmental Practice. He advises public bodies in all areas such as litigation, risk management, contracting and procurement, employment, corporate governance, and sunshine laws. He also focuses on the representation of public and private bodies in land use and zoning procedure and litigation.

NEWS & UPDATES



Gov. Pritzker announced the state’s public health emergency (COVID-19 Disaster Proclamation) will end on May 11, 2023, aligning the state with the federal government’s decision to end the national public health emergency. Ensuring Illinois’ and the federal government’s health emergencies were linked brought in additional federal funding and expanded healthcare access for residents across the state. Illinois residents were able to collect additional SNAP benefits, more than 1.4 million children received Pandemic EBT (nutrition) support, and Medicaid expansion ensured access to telehealth options and the resources Illinoisans needed to stay healthy.

Will County Board is moving forward with demolishing the vacant courthouse in downtown Joliet which was built in 1969. The board approved an engineering contract with Kluber, Inc. for \$173,750 to prepare the scope of services needed to demolish the four-story concrete building. The old courthouse has sat vacant for more than two years after the new 10-story courthouse opened nearby.



William Meyer
Madison County Board

Madison County Board Member William “Bill” Meyer is being remembered as a “true public servant.” He served about 18 years as a Madison County Board member, from 2000-2016 and 2020-2023. He also served 22 years as a Village of Hamel trustee and six years as village president.

“He served his district faithfully,” Chair Kurt Prenzler said. “Bill was ‘Mr. Hamel’.” He represented northeast Madison County well and used his experience in business on the county board.”

Meyer served on various committees to include building and zoning, transportation, grants and finance.

County Board Member Stacey Pace of Troy, who sat next to Meyer at county board meetings, said she is struggling with the loss. “He was my friend and mentor,” Pace said. Adding that Meyer was honest, helpful and someone she could depend on.

“He was someone I could call and he would give it to me straight,” Pace said.

Circuit Clerk Tom McRae said he got to know Meyer when the two of them served on the County Board together. “Nobody worked harder than Bill. It didn’t matter if it was for a park district, fire district or road project, he fought for his constituents.”

“He also served in the U.S. Army during Vietnam and was shot down two weeks before he was to come home,” McRae said. “His snowmobile was even decked out like his Vietnam helicopter.”