

WOODFORD COUNTY ZONING BOARD OF APPEALS

In Re: Applications of Panther Grove Wind)
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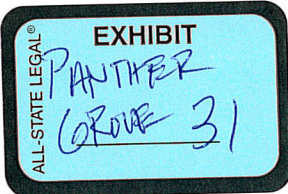
Zoning Case Nos. 20-11-S and
2020-24-V–2020-40-V

Memorandum of Law Regarding Standard of Review

Panther Grove Wind, LLC is the Applicant for Special Use and Variance Requests before the Woodford County Zoning Board of Appeals (“ZBA”). The Applicant filed its applications on October 14, 2020. The hearings related to said applications began on November 16, 2020, and reconvened on November 19, 2020, December 1, 2020 and December 3, 2020. More hearings are scheduled to occur. The Applicant seeks Special Use Permits for 86 wind turbines (later amended to 80 turbines) and 16 variances from Woodford County’s Tall Structures Ordinance.

Zoning decisions, such as the ones before this ZBA, are viewed by reviewing courts via the so-called “LaSalle and Sinclair” factors. *LaSalle National Bank v. County of Cook*, 12 Ill. 2d 40 (1957); *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370 (1960); *City of Chicago Heights v. Living Word Outreach Full Gospel Church and Ministries, Inc.*, 196 Ill. 2d 1, 15 (2002).¹

¹ The *LaSalle* factors that may be considered when determining validity of a zoning decision are: (1) The existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restrictions, (3) the extent to which the destruction of property values of plaintiff promotes the health, safety, morals or general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the subject property for the zoned purposes, and (6) the length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the subject property. *LaSalle*, 12 Ill. 2d at 46-47. Two other factors have been added to this list: (7) the need and demand for the use; and (8) The extent to which the use conforms to the municipality’s comprehensive planning. *Sinclair Pipe Line Co. v. Village of Richton Park*, 19 Ill. 2d 370, 378 (1960); *Hoffman v. City of Waukegan*, 51 Ill. App. 2d 241 (2d Dist. 1964). No single factor is controlling. *Family Christian Fellowship v. County of Winnebago*, 151 Ill. App. 3d 616, 619 (2d Dist. 1986) (citing *LaSalle*, 12 Ill. 2d at 47-48).



However, where a zoning ordinance approves of a particularized special use (in this case Woodford County's Zoning Code approves of wind farms as a special use) the recognition of the allowed use "is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood. *City of Chi. Heights v. Living Word Outreach Full Gospel Church and Ministries*, 196 Ill.2d 1, 17 (2001). The Illinois Supreme Court explained that such a finding limits the circumstances in which a special use permit should be denied. "Because special uses, as such, are considered compatible with other uses in the zoning district in which they are included, it is generally held that an application for a special use permit may not be denied on the ground that the use is not in harmony with the surrounding neighborhood." *Living Word*, 196 Ill.2d at 21.

Further, any decision on a special use permit must keep in mind the reasonableness of the public health, safety, morals or general welfare. As noted by several courts, a zoning decision faces reversal where ". . . denial of a special use permit, including the conditions or restrictions suggested by zoning procedures and record as part of such permit, does not bear a **real or substantial relation** to the public health, safety, morals or general welfare . . ." *Duggan v. Cnty. of Cook*, 60 Ill. 2d 107, 116 (1975) (*emphasis added*); *Columbus Park Cong. v. Board of Appeals of Chicago*, 25 Ill. 2d 65 (1962); *Lazarus v. Village of Northbrook*, 31 Ill. 2d 146 (1964).

In the case presently before the ZBA, Panther Grove has met, and far exceeded, the requirements for the issuance of the special use under Section 28 of the Woodford County Zoning Ordinance. Logically distant or remote issues of chance or fear may not be factored into the ZBA's decision. Rather, its decision must be based on the real/ substantial relationship to the factors laid out before it.

As the evidence will show the vast amount of evidence before the ZBA mandates approval of the totality of the Special Use Permit Applications.

PANTHER GROVE WIND, LLC
TRI GLOBAL ENERGY

By: s/ Andrew J. Keyt
Heyl, Royster, Voelker & Allen, P.C.
Andrew J. Keyt, ARDC #6277778
John P. Heil, Jr., ARDC #6237286

Heyl, Royster, Voelker & Allen, P.C.
P.O. Box 6199
300 Hamilton Blvd.
Peoria, IL 61601-6199
Telephone: 309-676-0400
E-MAIL: akeyt@heyvroyster.com
E-MAIL: jheil@heyvroyster.com
SECONDARY E-MAIL: dnuske@heyvroyster.com
38783294_1