

**WOODFORD COUNTY ZONING BOARD OF APPEALS**  
**VARIANCE APPLICATIONS OF PANTHER GROVE WIND, LLC**

**PROPOSED FINDINGS OF FACT**

**I. INTRODUCTION**

Panther Grove Wind, LLC (Panther Grove) filed its Applications for Special Use Permits to construct up to 86 wind turbines (later amended to 80 turbines) and two options for an Operations and Maintenance facility/laydown yard on October 14, 2020. The Applicant also seeks 16 Variances from Section 31 (the Tall Structures Ordinance or TSO) of the Woodford County Zoning Code. Findings of Fact regarding the Special Use Permit requests are addressed separately. The below Proposed Findings of Fact address the Variance applications.

On November 16, 19, December 1, 3, and 8, 2020, the Woodford County Zoning Board of Appeals (ZBA) heard evidence on Panther Grove's applications in regard to all Variance requests. Panther Grove presented evidence demonstrating that the Project far exceeds the requirements of Section 31 of the Woodford County Zoning Ordinance.

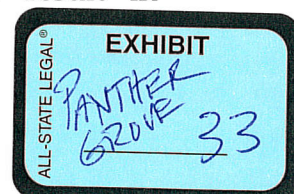
Panther Grove proffers the below findings of fact and incorporates by reference all written materials submitted to the ZBA, as well as the transcribed hearing testimony. Should the ZBA recommend approval of less than all of the Variance applications, it is requested that the ZBA identify the particular turbine numbers it is not approving for a Variance.

**II. WOODFORD COUNTY'S TALL STRUCTURES ORDINANCE**

Section 154.31 is Woodford County's Tall Structures Ordinance (TSO). The TSO provides its own Variance standard separate and distinct from that found in Section 154.25 (Variances). *See Woodford County Zoning Ordinance, §§ 154.25 and 154.31.*

The TSO provides its Variance standard in Section 154.31.8(A). It states:

"Variances. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Ordinance, may apply to the Zoning Board of Appeals for a Variance from such regulations. The application for Variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such Variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in



unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for Variance to the requirements of this Ordinance may be considered by the Zoning Board of Appeals unless a copy of the application has been furnished to the Illinois Department of Transportation Aeronautics Division for advice as to the aeronautical effects of the Variance. If the Illinois Department of Transportation Aeronautics Division does not respond to the application within fifteen (15) days after receipt, the Zoning Board of Appeals may act on its own to grant or deny said application."

*See Woodford County Zoning Ordinance, Section 154.31.8(A).*

- **The application for Variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.**

The FAA has issued a "Determination of No Hazard to Air Navigation" for each of the turbines within the Unzicker RLA setback. *See Group Exhibit 1, Appendix NN.* Accordingly, this factor of the TSO Variance standard is satisfied.

- **Such Variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance.**

Literal application or enforcement of the TSO will result in the Project becoming difficult to impossible to construct because the area near the Unzicker RLA offers some of the best properties in Woodford County (and the region) for wind generation due to that area's low population density, high ground, and landowner participation. In addition, such a literal application of the TSO will deprive landowners (Keith Unzicker's neighbors) with the long-term economic benefits associated with the location of wind turbines on their properties.

The 16 proposed Variances are not be contrary to the public interest and do not create a hazard to air navigation. Mr. Unzicker testified in detail about his grass airstrip near the north edge of the Project footprint. *See Hearing Transcript, 11/19/2020, p. 156.* Since August 2004 (prior to enactment of the TSO), the airstrip has had an existing cell tower obstruction nearby. *See Hearing Transcript, 11/19/2020, p. 156.* Mr. Unzicker has had his pilot's license since the fall of 1987, and he has been actively employed as a professional

pilot since 1989. *See Hearing Transcript, 11/19/2020, p. 158.* To date, he has logged over 12,000 hours of flight time. *See Hearing Transcript, 11/19/2020, p. 159.* By any measure, he is an experienced and skilled pilot.

The Unzicker RLA is a private visual flight rules (VFR) airstrip. This means that Mr. Unzicker controls who can fly and in and out of the field and only during VFR conditions. *See Hearing Transcript, 11/19/2020, p. 160.* The siting of the proposed wind turbines was considered by Mr. Unzicker himself. He assisted the Applicant in turbine placement near his airstrip. *See Hearing Transcript, 11/19/2020, p. 162.* Mr. Unzicker testified that aside from turbines 25 and 26, the locations of each of the remaining 16 turbines are “irrelevant” to his flight operations. *See Hearing Transcript, 11/19/2020, p. 162.* Nevertheless, he does not view the proposed locations of turbines 25 and 26 as representing a problem for takeoffs and landings. To the contrary, he testified that “[t]he proposed turbine locations allow sufficient space to maneuver the light aircraft I operate with an ample margin of safety.” *See Hearing Transcript, 11/19/2020, pp. 156-57.* Mr. Unzicker emphasized during his testimony that he would not have allowed the turbines to be sited where they are proposed (in Appendix MM of Group Exhibit 1) if he believed them to be unsafe. And while the turbines may have some impact on his advance flight planning, he will still be able to use his airstrip to the full extent he currently uses it. *See Hearing Transcript, 11/19/2020, p. 165.*

Additional testimony on this subject was provided by aviation expert Dan Underwood of Capitol Airspace Group. *Hearing Transcript 12/3/2020.* His PowerPoint presentation was entered into the record as Exhibit 20. Mr. Underwood testified that the FAA’s Determinations of No Hazard (DNHs) issued for all 16 wind turbines under consideration are significant because DNHs are not issued in the absence of a multi-agency analysis of any potential adverse effects on air navigation. *See Hearing Transcript 12/3/2020.* As Mr. Underwood explained, the FAA’s “prime objective” in conducting such aeronautical studies “is to ensure the safety of air navigation and efficient utilization of navigable airspace by aircraft.” *Hearing Transcript 12/3/2020; Exhibit 20.* With full knowledge of the Unzicker RLA, it does not regard any of the 16 proposed wind turbines to represent a hazard to aircraft operations.

Beyond explaining the FAA’s opinion on the matter, Mr. Underwood took the opportunity to inquire about the 16 proposed wind turbines with Mr. Unzicker. Mr. Unzicker shared with him his detailed planning for his arrivals and departures from his airstrip. *See Exhibit 20.* Mr. Unzicker explained that he not only prepared anticipated flight plans, but that he has already practiced these procedures in flight. Mr. Unzicker further shared that he has also developed “what if” emergency procedures in the event of a problem in the vicinity of the airstrip. *See Hearing Transcript 12/3/2020; Exhibit 20.* To Mr. Underwood, Mr. Unzicker’s planning further emphasizes the lack of realistic safety concerns for aircraft operations in the vicinity of the Unzicker RLA. *See Hearing Transcript*

12/3/2020; *Exhibit 20*. Mr. Underwood also reiterated that the Unzicker RLA is a private use airstrip, meaning that others must obtain Mr. Unzicker's permission to use it. *Hearing Transcript 12/3/2020*. Mr. Underwood testified that, should it prove helpful in securing the Variances, Mr. Unzicker is willing to request that his airstrip be removed from aviation sectional charts to make it less obvious to other flyers. *See Hearing Transcript 12/3/2020*. Finally – and crucially – Mr. Underwood concluded that there is nothing Mr. Unzicker can do today that he will be prevented from doing once the turbines are in place. *Hearing Transcript 12/3/2020*.

The allowance for the Variances does substantial justice balancing the private property interests of the owners of property nearby, and the Project, while also allowing for the continued utilization of the Unzicker airstrip. Further, not only is the spirit of the ordinance achieved via the Variances, they are expressly allowed under the TSO.

Finally, on September 23, 2020, the Applicant provided the proposed turbine locations located on Group Exhibit 1, Appendix MM to IDOT. On September 28, 2020, IDOT responded to the Applicant indicating “[t]he wind turbine generators depicted in the attached document comply with IDOT standards for the Unzicker Restricted Landing Area.” *See Group Exhibit 1, Appendix OO*. Accordingly, IDOT has determined that the turbine locations are appropriate under its standards.