

Jonesfield Township Zoning Board of Appeals
PO Box 117
Merrill, MI 48637

Attention: Chairperson Ruth Coppens

In Response to the Letter from Miller Canfield Paddock and Stone P.L.C

Re: DTE Electric Company Request for Zoning Ordinance Interpretation

Background of the WTG ordinance and the Planning Commission's work.

1. Planning Commission members believed the existing ordinance was for "backyard" household wind turbines and would not and did not provide guidance and a level of structure needed to plan for a wind energy generation system as now proposed by DTE.
2. The Planning Commission wished to develop a new ordinance that takes into consideration an Industrial Wind Turbine Generator and Connected Energy Grid System that is now proposed by DTE.
3. The Planning Commission developed an ordinance that changed the existing ordinance to encompass a Wind Turbine Generator Energy System. The township board further approved the ordinance.
4. The new ordinance for a Wind Energy System was not accepted by vote of the people of the township by a 2/3rds majority.
5. The Planning Commission decided not to revise the newly voted down ordinance to be more widely accepted by the people of the township therefore leaving the township with the existing ordinance which the planning commission believed was for backyard household windmills and not an Industrial Windmill Generator and Energy System.

My Answers to DTE's request to their Interpretive Question for the Section 305 Height Exception.

A Wind Turbine Generator (WTG) does not resemble a communication tower in looks or function. The only resemblance is that they are both typically taller than their surrounding landscape. Most communication towers are not a solid structure but made up of connected tubular steel and not enclosed. There are no mechanical functions to communication towers. There is not the concern for shadow flicker, noise levels, mechanical failure, ice throw, bird kill, and other aspects of WTG sightings with regards to communication towers. The only similarity is height.

A WTG is an enclosed structure with a large mechanical turbine paced on top with large blades that rotate the turbine and produce an electrical current that is connected by miles of wire to a gathering station. As proposed by DTE, all these electrical power plants are connected by underground or overhead wire to a gathering substation at Dice and Merrill roads and then transferred by more overhead wires to the electrical grid through another substation located in Richland Township. There are to be 26 WTG's interconnected through our township.

Typically communication towers are placed singularly in location and are tied wirelessly to other towers to create a network of wireless receiving and sending stations that are miles apart and in a rural setting such as Jonesfield township there may only be one tower.

DTE uses Section 612(K) as a basis for height standards that should apply to a WTG since there are no height standards for communication towers in Section 612(K) and they conclude a WTG should be regulated like a communication tower. They ignore the minimum setback on communication towers need to be sighted from other communication towers a minimum of 2 miles as stated in Section 612(k). They pick one aspect of section 612(k) while ignoring others. As DTE makes an assumption that a WTG is similar to a communication tower then one can assume the communication tower setbacks from each other set at a 2 mile distance is for aesthetics to the landscape as there is no worry of shadow flicker, noise levels, ice throw and mechanical safety as there is with a WTG. An argument can then be made that placing WTG within the 2-mile setbacks that are set for communication towers should not be allowed. If you agree that the height exception for a WTG follows the height exception for a communication tower, then the 2-mile setback from other towers should also be adhered to.

DTE contends WTG towers are not similar to structures listed in Subsection (2)(a) but fall within Section 305(2)(c) and contends the WTG towers are dissimilar to structures listed in subsection (2)(a) due to the fact the structures are incidental and subordinate to the principal use. I argue that the principal use of the parcel that the structure called a WTG as proposed by DTE is agriculture and that the WTG is subordinate to the agricultural use. If it is not subordinate, then the WTG goes against our Master Plan Goal of: Maintain Jonesfield Township as a rural residential community that is characterized by productive farmlands and attractive open space areas.

It can also be argued that the mechanical nature of a wind turbine generator would more closely resemble those in 305(2)(e) structures for Agricultural operations, which are limited to a height of 85 feet. Structures of this height would be those such as an elevator grain leg or silo which have a mechanical and storage aspect to them.

Again, placing a WTG into a category of a communication tower when there are other subsections such as Special structures or Agricultural structures seems like a far stretch when looking at form and function. If the argument is made on height, then we must consider the 2-mile setback between towers that is called for in the communication tower subsection.

DTE contends that WTG are not part of Section 305(2)(a) because WTG are allowed in the A-2 zoning district and the structures in 305(2)(a) are not. It can be easily argued and was by the planning commission that when the existing ordinance was developed that the WTG was for "backyard" wind turbines and not industrial wind turbines as proposed by DTE. Therefore, WTG was allowed in zoning district A-2. In fact, DTE's argument on this actually solidifies the argument for differentiating between an Industrial Windmill as proposed by DTE and a backyard windmill and DTE's definition of a windmill should then only be allowed in zoning district A-1.

My Answers to DTE's request to their Interpretive Question for the Undefined terms "Wind Turbine Generators" and WTG Tower"

DTE requests that the definition of a Wind Turbine Generators within the Jonesfield Ordinance be defined as a Wind Energy System that includes multiple interconnected towers with access roads, substations and connecting underground and overhead wires. The Planning Commission has made the determination that the ordinance covers "backyard" wind turbine generators and not Utility scale turbines with the needed access roads, substations, and wires. That is why a new ordinance that covered a Utility Scale Wind Energy System was developed and summarily voted down by the residence of the township in a public vote. To now change the definition of the existing ordinance to fit a definition into something that was voted down by the residence circumvents the role of the Planning Commission.

The current WTG ordinance was developed before the State of Michigan passed legislation in 2008 mandating utilities use renewable energy. Before the Renewable Energy Standard was developed there was no development of wind energy "farms" around the state like we see now and its reflected in our existing ordinance due to the fact the term WTG is not even defined. Obviously, there was not much thought put into the ordinance at the time it was developed, and someone can safely assume it was because there were no Utility Scale Wind Energy Systems being developed.

DTE wants to make the distinction that the use of the plural Wind Turbine Generators (WTG's) as described within section 612(l) describes multiple WTG that are connected and include the connection lines, substations, access roads and other assets that would be included in a Utility Scale Wind Energy System. If you review all of Section 612 most of the special uses are expressed in the plural use of the noun such as Hospitals, Funeral Homes, Vet Clinics, Riding Stables, Junk Yards, Landing Strips, etc. Concluding by using the plural form of WTG that one must conclude it describes an interconnected wind energy system is unsubstantiated and can be easily discarded that when the ordinance was developed that the plural use of WTG's simply meant there is the possibility that more than one parcel owner may put up their own windmill. Just like there may be more than one Vet Clinic, Dog Kennel, Hospital, Riding Stable, Junk Yard, etc.

DTE also wants to look at neighboring townships and how they define and describe WTG and WTG's in regard to an ordinance for a Utility Scale Wind Energy System. DTE fails to recognize that Jonesfield township did develop definitions and ordinance to regulate a Utility Scale Wind Energy System similar to the neighboring townships they want to compare to. The voters of township voted down the ordinance so taking a stance that the current ordinance definition of WTG'S should then equal a definition of a Utility Scale Wind Energy System is wrong and goes against how the people of the township voted.

In conclusion,

It is the Planning Commissions role to develop the ordinance and determine appropriate definitions. The Planning Commission reviews ordinances on a regular basis and determines if changes to existing ordinances need to change or even if new ordinances need to be developed. The Jonesfield Township Planning Commission made the determination that the existing WTG ordinance was inadequate during review. A new ordinance was developed that included definitions that DTE is asking for now in our existing ordinance. The Planning Commission approved the new ordinance, the Township Board also approved but the ordinance was however voted down by a majority of the citizens of the township therefore leaving the exiting ordinance in place for the Planning Commission to

revisit. The Chairman of the planning commission then made the decision to leave the existing ordinance in place and was supported by a majority of the Planning Commission.

Two out of the three members of the current Zoning Board of Appeals are on record voting for a Utility Scale Wind Energy System that included replacing the current ordinance and its definitions with a new ordinance and definitions very similar to what DTE is requesting. They are now asked by DTE to make a determination of the same ordinance and definitions. This is a clear conflict as they are already on record voting on the same matter. Members of the ZBA should not make a determination on an item that has already come before them. This should exclude Richard Bluemer and Larry Tibbits from voting on DTE's request before the Zoning Board of Appeals of Jonesfield Township.

I respectfully submit this letter in response to DTE's request to the Zoning Board of Appeals. I am on record requesting the Planning Commission revisit the WTG ordinance and that we be allowed to do our job of developing an ordinance the citizens of the township want in regards to a Utility Scale Wind Energy System as proposed by DTE.

Sincerely,

Michael Kenny
Jonesfield Township Citizen and Parcel owner
Jonesfield Township Planning Commission Member