

Jonesfield Township Zoning Board of Appeals (ZBA) Minutes

September 24, 2020

ZBA Chair Coppens called the meeting to order at 6:03 p.m. under the Merrill Village Pavilion (217 N. Eddy St., Merrill, MI) with the pledge of allegiance.

PRESENT: Ruth Coppens, Chair; Larry Tibbits, Secretary; and Richard Bluemer, Member

ABSENT: None

GUESTS: Chris Patterson and Kyle O'Meara (Fahey Schultz Burzych Rhodes PLC – Township Attorneys), Dale Deibel, Roland Piechotte, George Kipfmiller, Barry Draves, Ron Garrett, Terry McDonald, Tim Morrison, Janson Hannath and Emily Palacios representing DTE, Jennifer Stewart (Spicer Group – Township Planner), Eric Deibel, Andrew Deibel, Larry Wagner, Lee Glazier, Mark Gath and Larry Fleming.

- I. The agenda was approved by the ZBA without modification (passed unanimously).
- II. Tibbits motioned to approve the minutes from July 13, 2020, seconded by Bluemer. Approved (passed unanimously).
- III. There were no public comments unrelated to the public hearing. Ample time was given later in the meeting for public comments during the public hearing.
- IV. Township Attorney Chris Patterson began by explaining why we are here, the difference between the Planning Commission and the Zoning Board of Appeals and the statutory authority of the Zoning Board of Appeals. Patterson then read aloud each ZBA member's conflicts of interest statements. Dick Bluemer clarified his conflict statement to make clear he had not signed an agreement. Tibbits motioned to approve the conflict of interest statements as edited, seconded by Bluemer. Carried (passed unanimously). These conflict disclosure statements are of public record and become part of these meeting minutes. **See attached September 24, 2020 Conflict Disclosures.**
- V. The three issues that DTE asked the ZBA to look at are 1) Does the Zoning Ordinance reference to a 175 feet maximum height restriction apply to wind turbines, 2) How should the Township interpret the undefined terms of "Wind Turbine Generators" and "WTG tower" in the Zoning Ordinance? and 3) Does the undefined term "property line" in the Zoning Ordinance refer to individual property lines or a wind project boundary line? **See attached DTE August 26, 2020 Interpretation Request.**
- VI. The public hearing began at 6:24 p.m. with Emily Palacios presenting the content and basis of DTE's (via Miller Canfield) request for Zoning Ordinance Interpretations dated August 26, 2020.

- VII. Before opening the public hearing, Patterson reviewed the content of Mike Kenny's written letter to the ZBA. That letter becomes part of these proceedings and part of the public record available for review. **See attached September 23, 2020 Mike Kenny Letter.**
- VIII. During the public hearing public comment period, presenters were asked to limit their comments to three minutes and a couple of presenters were given an opportunity to finish their presentations after all other speakers had a chance to give their thoughts. Below is a summary of public comments:
1. **Michael Kenny (Township Resident) (Submitted Letter)**
 - a. Submitted a three-page letter on September 23, 2020.
 - b. Disagrees with DTE's proposed interpretations.
 - c. Wind turbines are unlike cell towers (not sited miles apart) and should be subject to more stringent height restrictions.
 - d. Plural in Wind Turbine Generators means could be more than one parcel owner with a wind turbine.
 2. **Dale Deibel, 4751 North Steel Road (Township Resident) (Spoke Twice)**
 - a. Opposes a wind energy project in the Township.
 - b. Wind turbines unlike cell towers since they are sited closer to each other; thus, they should be subject to the Zoning Ordinance's height restrictions in Section 305(2)(a).
 - c. Plain language of property line does not mean project boundary.
 - d. Wind turbines red lights negatively impact the Township's rural character and may impede future residential development.
 3. **Rolland Piechotte, 4837 N. Steel Road (Township Resident)**
 - a. Opposes wind project.
 - b. Township residents voted a proposed wind ordinance down a year and a half ago.
 - c. In his opinion, Township Board members in the past wanted to apply more stringent height limitations to wind towers to limit noise and light pollution.
 4. **Larry Wagner, North Merrill Road (Township Resident)**
 - a. DTE is locating turbine now in middle of his farm, which will negatively impact his farming operation.
 5. **Barry Draves, N. Steel Road (Township Resident)**
 - a. Against proposed DTE wind project in the Township.
 - b. States a wind project will negatively impact the preservation of agricultural land.
 - c. Concerned about restoration of roads.
 6. **Tim Morrison, 1551 N. Chapin Road (Township Resident) (Spoke Twice)**
 - a. Appreciated DTE citing language in the Ordinance.
 - b. Disagrees with DTE's suggested interpretations.
 - c. Believes the plain language of property line means an individual property lines, not a project boundary.

- d. Made argument that the differences between collection and generation and the Zoning Ordinance's reference to essential services should mean Wind Turbine Generators should not include uses other than wind turbines.
7. **Dave Stevens (Mt. Haley Township Resident)**
 - a. Concerned whether a fire department could put out a turbine fire.
 - b. States the proposed wind project won't meet the special use standards in the Zoning Ordinance.
 8. **Ron Garrett, 3694 East Kent Road (Township Resident)**
 - a. Commends the Township for continuing to follow the zoning process for the proposed wind project.
 9. **Lee Glazier (Township Resident) (Spoke Twice)**
 - a. States there was a lot of misinformation spread during the vote on the proposed wind ordinance.
 - b. Believes DTE has been cordial during this process.
- IX. The public comment period closed at 7:28 p.m. with Township Attorney Chris Patterson stating that the ZBA is obligated to entertain request for interpretation under the Zoning Ordinance and then he went over his recommendations to the ZBA on the three items of determination and the request for definitions.
- X. Chair Coppens then asked the ZBA members their thoughts having just heard DTE's request and after hearing our legal firms position on their request. Bluemer, Tibbits and Coppens agreed with Patterson's legal position which agrees with DTE on issues one and two and disagrees with DTE on what a property line is. The ZBA believes that the plain reading of the language in the ordinance is clear concerning this third issue. Chair Coppens then provide the following motioned to accept our legal counsel's recommendation, seconded by Bluemer.
- a. The motion stated "*I move to accept the proposed final written decision of the Zoning Board of Appeals final decision addressing the August 26, 2020 DTE Energy's request for interpretation as modified on Page 8 to indicate that height limitations are interpreted as part of the final decision as analyzed by the ZBA on pages 3-4*". By roll call vote; Coppens – YES, Tibbits -YES, Bluemer – YES . The decision hereby passed unanimously, was signed, and posted at Jonesfield.com and is available for public viewing at the Jonesfield Township Office. **See attached September 24, 2020 ZBA Interpretation Decision.**
- XI. Bluemer motioned to adjourn at 7:51PM, seconded by Tibbits (passed unanimously).
- XII. After the meeting, David Stevens handed secretary Tibbits written comments that he would like added to the record of the meeting.

Submitted by Larry Tibbits, Secretary of the Zoning Board of Appeals.