

JONESFIELD TOWNSHIP ZONING BOARD OF APPEALS

Applicant: DTE Electric Company, One Energy Plaza, Detroit, MI 48226

Requests for Interpretation:

- 1) Whether the height restrictions of Section 305(2)(a) or Section 305(2)(c) of the Jonesfield Township Zoning Ordinance (“Ordinance”) apply to wind turbine generator towers (referred to as WTG towers in the Ordinance).
- 2) The meaning of the terms “Wind turbine generators” and “WTG towers” as used in Sections 504.1, 504.2, and 612(l) of the Ordinance.
- 3) The meaning of the term “property line” as used in Section 612(l) of the Ordinance.

Standard of Review: Applicant requests an interpretation of the Ordinance as provided by Ordinance Section 903(3) and MCL 125.3603. The ZBA reached its determination based on the standards within the Ordinance, by, among other things, applying principals of ordinance interpretation outlined in the Ordinance and articulated by Michigan courts, and by reviewing the plain and ordinary meanings of commonly used words and phrases when undefined in the Ordinance.

September 24, 2020 Public Hearing: The ZBA opened a public hearing at 6:00 p.m. for the request for interpretation of the relevant sections of the Ordinance. The ZBA heard a presentation by the Applicant and comments from members of the public.

Findings of Fact: The ZBA makes the following findings based upon the Ordinance, as well as information and comments received in the submitted materials and at the public hearing:

1. Section 305(2)(a) enumerates a list of structures subject to a 175 ft height limitation: “chimneys, smokestacks, water towers, and standpipes.”
2. Section 305(2)(c) exempts a list of “tower structures” from height limitations in particular zoning districts (allowing them to exceed maximum heights as long as for each additional foot in height an applicant adds an additional foot in front, side, and rear setbacks). These structures include, but are not limited to, “radio or transmitting towers, microwave relay towers, or cellular phone towers” and are subject to “Special Use Permit requirements specified in Chapter 6 [of the Ordinance].”
3. Sections 504.1 and 504.2 include as special uses subject to review and approval in A-1 and A-2 Districts: “Wind Turbine Generators (WTG’s).”
4. “Wind Turbine Generators” are undefined in the Ordinance.
5. “WTG tower” is used in Section 612(l) of the Ordinance.

6. "WTG tower" is undefined in the Ordinance.
7. "Property line" is used, among other sections, in Section 612(l) of the Ordinance.
8. "Property line" is undefined in the Ordinance.
9. The purpose of regulating special uses under the Ordinance is to allow those uses in a manner that does not negatively impact the character of the land uses in the surrounding area. See generally, Ordinance, Section 606.
10. The ZBA may clarify any portion of the Ordinance when the Zoning Administrator is unable to clearly determine its intent or effect. Ordinance, Section 903(3)(D).

Legal standards for review:

1. Ordinance, Section 201 outlines various rules of how to interpret the Ordinance. Specifically:
 - a. Undefined words and phrases shall be defined using their common or customary usage. Ordinance, Section 201(a).
 - b. The particular shall control the general. Ordinance, Section 201(c).
2. Courts interpret zoning ordinances using the plain language of words and phrases before looking at the intent underlying a zoning ordinance provision. *Brandon Charter Township v Tippett*, 241 Mich App 417, 422; 616 NW2d 243 (2000).
3. It is proper to consult a dictionary to determine the plain and ordinary meaning of terms undefined in a zoning ordinance. *Risko v Grand Haven Charter Twp Zoning Bd of Appeals*, 284 Mich App 453, 460; 773 NW2d 730 (2009).
4. A court interpreting a zoning ordinance will try to avoid interpretations that cause absurd zoning results. *Detroit International Bridge Company v Commodities Exp Co*, 279 Mich App 662, 674; 760 NW2d 565 (2008).
5. Where possible, ordinances should be read in harmony with one another as opposed to choosing a reading that poses a conflict. *Knauff v Oscoda County Drain Commissioner*, 240 Mich App 485, 492; 618 NW2d 1 (2000).
6. When statutes or ordinances list classes or certain land uses without excluding others, it is appropriate to include unlisted land uses of the same kind, class, or nature where appropriate. *People v Jacques*, 456 Mich. 352, 355; 572 NW2d 195 (1998).

7. All words of an ordinance should have meaning, and the reader should not render any provision meaningless unless required by law. *Diallo v LaRochelle*, 310 Mich App 411, 418; 871 NW2d 724 (2015).
8. A circuit court must give deference to the factual findings of a ZBA. *Hughes v Almenna Township*, 284 Mich App 50, 60; 771 NW2d 453 (2009).
9. The Michigan Zoning Enabling Act specifies that a circuit court should review a ZBA decision to determine if the decision, among other things, is supported by substantial evidence on the record and is reasonable. MCL 125.3606.

Based on the record and on its exercise of judgment, the Zoning Board of Appeals concludes:

1. *The maximum height of wind turbine generator towers (WTG towers) is controlled by the height limitation exemption in Ordinance Section 305(2)(c) and inferred in Section 612(l).*

WTG towers are subject to height restrictions in a particular zoning district only to the extent that if a tower exceeds a zoning districts height limitation, an applicant must increase all applicable setbacks (front, side, and rear) by one foot by each foot of additional height.

In zoning ordinances, where general words are followed by a list of two or more things, the general words apply to things of the same general class. Ordinance Section 305(2)(c) specifies a height exemption for various towers including “[t]ower structures such as radio or transmitting towers, or cellular phone towers.” The tower structures it controls are also special uses in Chapter 6 of the Ordinance, and subject to the height restrictions in their zoning districts. On the other hand, Ordinance, Section 305(2)(a), meanwhile, controls “[s]pecial structures such as chimneys, smoke stacks, water towers, and standpipes.” It imposes a 175 ft maximum height restriction on those structures. Neither section explicitly imposes a height restriction on wind turbine generator towers.

In the absence of specific reference to wind turbine generator towers in Sections 305(2)(a) or (c), the ZBA can turn to the same tools of interpretation courts use to construct statutes. One such canon of statutory instruction calls for lists of certain things to include unlisted things that are of the same kind, class, or nature where appropriate. It is the opinion of the ZBA that “WTG towers” are more closely related to radio or transmitting towers than chimneys or standpipes. Furthermore, it is the ZBA’s opinion that WTG towers are “tower structures” which the height exemption language Section 305(2)(c) applies to. WTG towers are free standing structures, similar to commercial uses such as radio transmission towers and cellphone towers, and should be subject to the same height regulations as other similar tower structures that require special use permits and not regulations that apply to residential towers such as chimneys or standpipes.

In addition to the plain language of Ordinance Section 305(2)(c) that allows certain tower structures to be exempt from zoning district height requirements, the particular section of the Zoning Ordinance that regulates WTG towers infers they can exceed 175 feet in height. Section

612(l) of the Zoning Ordinance requires towers to be lighted to standards required by the Federal Aviation Administration (“FAA”). It is the Township’s understanding that all wind turbine structures that exceed 200 feet must be marked and/or lighted. See e.g., FAA Advisory Circular, Section 2.1, dated December 4, 2015 here: https://www.faa.gov/documentlibrary/media/advisory_circular/ac_70_7460-11.pdf. Because the Zoning Ordinance contemplates marking wind energy structures pursuant to FAA rules, it infers that WTG towers can exceed 200 feet (and be lighted).

Applying the height restrictions of Section 305(2)(c) requires WTG towers to conform to the requirements of Section 612(l), that subjects WTG towers to setbacks based on total height and sound vibrations. This decision comports with the necessary considerations under Section 903 of the Zoning Ordinance.

The ZBA finds that this determination will avoid substantial adverse effects to utility wind projects. If the 175 ft height restriction of Section 305(2)(a) applied to WTG towers, it would drastically limit the commercial viability of utility wind operations. The ZBA takes note that rapid developments in structural engineering indicate that a flat height limitation is inappropriate for utility wind operations.

This construction, however, does not merely avoid economic loss. It provides a useful and meaningful restriction on the height of WTG towers that respects the setback considerations from nearby parcels and dwellings. Using the height exemption mechanism in Section 305 of the Zoning Ordinance by requiring one foot of setbacks per one additional foot of height of a tower balances allowing certain tower structures within the Township, while also ensuring they are sufficiently distanced from other land uses by having greater setbacks that correspond to a particular tower’s height.

This construction of the height restrictions in Section 305 is also not contrary to the Jonesfield Township Master Plan because it preserves agricultural land uses. Chapter 5 of the Master Plan specifically calls for agricultural preservation measures that wind turbine generators achieve by protecting the agricultural land from other, more urban developments.

The ZBA also finds that this determination does not negatively impact the character of land uses near such a proposed special use.

Therefore, WTG towers should be subject to the height restrictions of Section 305(2)(c), which in turn requires that wind turbine generator towers must comply with the height and setback restrictions of Section 612(l) of the Ordinance.

2. *“Wind Turbine Generators” refer to a land use consisting of more than one WTG tower, and “WTG tower” refers to individual towers and tower-mounted equipment.*

It is the ZBA’s opinion that the Ordinance’s reference to Wind Turbine Generators is a special land use that refers to all infrastructure necessary for a utility-scale wind energy development (wind turbines, collection cables, substations, laydown yards) and the Ordinance’s use of the undefined term WTG tower is a specific land use for an individual wind turbine.

Section 201(a) of the Ordinance provides that “[w]ords and phrases that are not defined in this chapter shall be defined in terms of their common or customary usage.” When interpreting the language of an ordinance, a word or phrase is given meaning by its context or setting. The ZBA must interpret the Ordinance based on the common meaning of the words, the intent of the Ordinance as a whole, and the intent and purpose of the Section of the Ordinance containing the particular word or phrase in question.

The terms “Wind Turbine Generators” and “WTG tower” are not defined in the Zoning Ordinance, so they are defined by their common meaning based on their context and setting in the Ordinance using the principals and law identified above in this decision.

“Wind Turbine Generators” are special land uses in the A-1 and A-2 Zoning Districts. The term is used again in Section 612(l) as a special land use category. Because the Ordinance refers to multiple wind turbine generators, indicated by the presence of the plural “s” at the end of the term, the ZBA finds that the common plain meaning and intended use of the term “Wind Turbine Generators” refers to a utility-scale special land use, including the connection cables, substations, and towers that allow multiple towers to work together as a viable use. Constructing the term in this way ensures that the accessory and customarily incidental uses necessary to operate multiple wind turbines are included as part of the intended land use and special permitting process or otherwise the approving of such a use would be rendered meaningless as it could not function.

In addition to the plain language inferring that “Wind Turbine Generators” should be defined to mean all the infrastructure necessary for a wind energy development, interpreting the term to mean an individual wind turbine would not read the Ordinance in harmony. Section 612(l) of the Zoning Ordinance also uses the term WTG tower when discussing setbacks and lot size requirements. The use of the singular “tower” infers that this term relates to individual wind turbines. It would be a duplicative unharmonious reading of the Zoning Ordinance to interpret Wind Turbine Generators as meaning individual towers, when another term for individual wind towers already exists.

The ZBA also finds that any alternative reading of “Wind Turbine Generators” that does not include multiple structures and the necessary accessory structures would frustrate the purpose of the special land use in Chapter 5. Requiring an applicant to apply for separate special use permits for each individual tower and every structure incident to producing electricity could result in inconsistent decisions that remove the viability of allowing utility-scale wind energy developments as the Zoning Ordinance intends by including the special land use. Therefore, the “Wind Turbine Generators” special land use should be interpreted to mean an electricity generating system consisting of one or more WTG Towers under common ownership, operation or control, and includes substations, cables/wires and other structures (e.g., junction boxes, related measuring or testing towers and equipment) accessory to such system, whose main purpose is to supply electricity to off-site customers. The term WTG tower should be interpreted as individual towers and related components within a “Wind Turbine Generators” land use that convert wind energy into electricity through the use of a wind turbine generator and includes the necessary components (such as turbine, blades, the tower, foundation, and related electrical equipment).

In arriving at these definitions, the ZBA finds that these meanings comport with the required principles of consideration for the ZBA to reach these conclusions. These definitions are also in harmony with the wind ordinances of nearby Townships so as to ensure conformity in the land uses of the area.

The separate definitions do not have a substantially adverse economic impact on property values. These definitions do, however, support the efficient management of the special land use permitting process both from the perspective of applicants and the Township offices. Inundating the Planning Commission with special land use permits for every proposed turbine site would require a much more convoluted process than treating all WTG towers with common ownership as one special land use application.

Meanwhile, the definitions do not merely avoid economic loss. They also comport with the usage of “Wind Turbine Generators” and “WTG Towers” throughout the Zoning Ordinance, and render the regulations placed on those distinct entities meaningful. Specifically, “WTG Tower” is used in Section 612(l) as a subject of specific height, setback, sound, and vibration regulations. The ZBA finds the plain meaning and common sense indicate that WTG stands for Wind Turbine Generator, and that the use of the term indicates a single structure comprised of a tower, nacelle, and rotor blades. This interpretation serves to protect the nearby land uses from the negative impacts of WTG Towers as they are the primary focus of setback and sound regulation in section 612(l).

The interpretations are not contrary to the public purpose, nor do they conflict with any other sections of the Zoning Ordinance or Chapter 5 of the Master Plan. They are based on the plain meaning of the terms as used and are constructed in harmony with the purpose of permitting utility scale wind projects within the Township.

3. *“Property line” refers to the edges of parcels of land.*

The ZBA must interpret the Ordinance based on the common meaning of the words, the intent of the Ordinance as a whole, and the intent and purpose of the Section of the Ordinance containing the particular word or phrase in question. A plain language interpretation of the undefined term “property line” as used in Ordinance Section 612(l) leads to a requirement that individual wind turbine (WTG turbines) must be setback from adjacent property lines of other properties—not a “project area” as asserted by DTE.

Here, DTE requests that the ZBA should find “property line” to mean the edge of the special land use area, which is a contiguous section of multiple parcels. This effectively extends the point of setback, sound, and vibration regulations in Section 612(l) to the nearest property line of non-participating parcels (while non-participating is a term regularly used in wind ordinances, it is not used in the Jonesfield Township Zoning Ordinance).

Because “property line” is undefined, the ZBA must look first to the plain and ordinary meaning of property line. The Merriam-Webster Dictionary defines “property” as something owned or possessed (*specifically*: a piece of real estate). See definition of “Property,” Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/property>. The term “line”

means the boundary of an area. See definition of “Line,” Merriam-Webster Dictionary Online. <https://www.merriam-webster.com/dictionary/line>. When reviewing the dictionary definitions together, the ZBA notes that the plain meaning of term property line means the boundary of individual pieces of real estate (e.g., residences and farms) and not some theoretical project boundary.

Likewise, reading the Zoning Ordinance in harmony suggests that a project boundary interpretation is not correct. When reading the Zoning Ordinance, WTG towers specifically have to be set back from adjacent property lines and road rights-of-way. Ordinance, Section 612(l). To interpret “property lines” as a project boundary, the result would essentially be subjecting the broader use of Wind Turbine Generators (the entire project) to the setback standards. The Zoning Ordinance specifically uses the term WTG towers for the setback requirements suggesting that they should be setback from individual property lines.

Moreover, the Zoning Ordinance has numerous examples of individual land uses (such as an individual wind turbine) needing to be setback from individual adjacent properties. For example, Table 612(a) requires Junk Yards to be setback 100 feet from adjacent property lines as well as Grain and Seed Elevators needing to be 100 feet from adjacent property lines. Given the many examples in Table 612(a) interpreting property lines as individual neighboring properties rather than a project area, the ZBA finds it would be unharmonious to treat property line regulations related to wind energy developments differently than various other special uses.

As used in Section 612(l), “property line” refers to the setback requirements and sound and vibration regulations. The intention of these restrictions on WTG towers in Section 612(l) is to protect adjacent property owners from the negative impacts of the special land use. The ZBA notes that individual wind turbines could cause sound and vibration issues to all individual property owners (participating and non-participating) and it is likely an absurd zoning result to interpret property line as some “special use boundary,” which would make those performance standards only apply to a few property owners outside the project boundary. The use of a project boundary as a “property line” would effectively remove performance standards from applying throughout most of any wind energy development project area (that are intended to protect the general health, safety, and welfare of all property owners).

Accordingly, a proper interpretation of the term “property line” throughout the Ordinance requires WTG towers to be setback from individual property lines (for individual pieces of real estate) rather than some project boundary.

Decision: For these reasons, and based on the findings of fact, the ZBA has constructed the following terms that are not defined in the Ordinance:

Wind Turbine Generators: An electricity generating system consisting of one or more WTG Towers under common ownership, operation or control, and includes substations, cables/wires and other structures (e.g., junction boxes, related measuring or testing towers and equipment) accessory to such system, whose main purpose is to supply electricity to off-site customers.

WTG Tower: Individual towers and related components within a "Wind Turbine Generators" land use that convert wind energy into electricity through the use of a wind turbine generator and includes the necessary components (such as turbine, blades, the tower, foundation, and related electrical equipment).

Property line: The boundaries of individual pieces of real estate without reference to a "project area" or a group of properties subject to a single special use application.

And the height limitations for wind turbines are as reached
Roll Call Vote of ZBA Members: by the ZBA in its decision AT
its conclusion in the decision, pg. 3.

Yes Ruth Coppens
Yes Larry Tibbits
Yes Richard Bleeker

Ruth A. Coppens
ZBA Chairperson

The ZBA Chair certifies that a majority of the entire ZBA membership voted to approve the above decision.

Ruth A. Coppens
ZBA Chair/Authorized Member

Dated: September 24, 2020

CERTIFICATION

I, the duly acting Secretary of the Jonesfield Township Zoning Board of Appeals, certify that on this date I witnessed the signature set forth above and attest to the accuracy of this Decision, which was approved by the Zoning Board of Appeals at a duly scheduled and conducted meeting on September 24, 2020.

[Signature]
ZBA Secretary

Dated: 9/24/, 2020