



DRAFT UNAPPROVED

ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, November 23, 2009

Meeting called to Order with the Pledge of Allegiance at 7:00 p.m.

Members present: M. Vermetten (Chair), B. Carstens (Vice Chair), C. David, S. Feringa, R. Hardin, D. Krause, D. White, P. Yamaguchi, J. Zollinger

Members excused: None

Staff Present: J. Hull, Zoning Administrator
S. Vreeland, Township Manager/Recording Secretary
J. Jocks, Legal Counsel

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA: Motion by Carstens, support by David to approve the agenda as presented. Motion carried unanimously.

- 1. Consent Calendar:**
Motion by White, support by Zollinger to approve the Consent Calendar as presented, including:

Receive and File:

- a) Draft Unapproved Minutes of:**
 - 1. 11-10-09 Board Meeting**
 - 2. 11-04-09 Farmland & Open Space Advisory**
- b) Planning & Zoning News October 2009**
- c) Status Update – VGT-Phase I SUP Application #2009-01P**

Action:

- d) Approve 10-26-09 Planning Commission meeting minutes**

Motion carried unanimously.

- 2. Correspondence:** None

- 3. Limited Public Comment:** None

- 4. Presentations:** None

- 5. Public Hearings:** None

- 6. Old Business:**

- a) Wind Energy Ordinance: Amended Draft Language:** Hull provided an updated ordinance draft for the Commission based on concerns raised by the public at a previous public hearing on a previous draft. He investigated the scientific basis for proposed standards in the state model ordinance and compared them to standards elsewhere in the state, nation and world. The new draft varies fairly little from original, mainly by providing flexibility when it comes to the number and level of studies to be required as part of an approval process.

The draft has been rewritten by legal counsel to make it more readable and clear as to

what is permissible and what is not.

One key section has to do with a decommissioning plan for a large-scale wind generation site that is part of the main power grid. There are also stated requirements for how long a wind energy generation tower may sit idle before it is removed, and for performance bonding for eventual demolition.

Vermetten did find the new draft more readable and thanked Hull and Jocks for their efforts. Jocks agreed with Hull that few changes were made to the original draft. In his mind the most significant changes are to utility grid energy systems, where studies are largely at the Commission's discretion as opposed to mandatory at the outset of the consideration process. His concern is that if the township offers too much discretion it can be frustrating to applicants if they are asked for additional studies throughout the process and requiring certain studies of one applicant but not another can raise questions of equity in treatment. His other concern is with the proposed bonding section because it would be easy to establish a reasonable bond amount for a small 1-2 tower system, but for a really large utility grid energy system the bond amount could be quite sizeable. Jocks also recommends that the wind generation ordinance and the cell tower ordinance need to deal with setbacks and view shed protection similarly. To him the height of the tower should include the length of the blade at maximum vertical extension.

Jocks noted one typographical error, and Carstens noted one as well. David noted Section 13.2.8 regarding shadow flicker, and asked if there are any available measures for reducing it. It's a function of sunshine. Zollinger stated that there is software available to determine how to orient or locate a tower to minimize shadow flicker and perhaps we should specify use of such software to deal with this issue. White is concerned that seeking to regulate for shadow flicker could conflict with optimal placement for wind generation, and he and Vermetten suspect that setback requirements will handle most of the problems with flicker that might arise.

White also asked about requirements for wildlife studies. He noted that bird migration can be affected by landscape. A few years ago there were few geese on Ken Engle's land across from his property, but ever since Ken planted different crops on the site there have been huge numbers of geese. A migration study at one point in time could very quickly become outdated. Yamaguchi also asked if there are any extensive studies of migratory habits and species in Acme Township. Hull believes that extensive studies should not be required in situations where they may not be necessary or when a less intense study would serve. White does not believe migratory studies should be required at all based on his personal experiences with hunting and farming and the changes he has seen over time in where birds can be found. Carstens stated that 3-4 years ago the DNR determined that Petobego Swamp was unhealthy due to excessive vegetation. They lowered water levels over several years and were hoping to perform a controlled burn, but have not yet done so due to economic constraints. By lowering the water level a benefit almost equal to a burn has been seen, and they are planning to raise the water levels again. He believes that the lower water levels explain why there have been fewer bird species in the swamp over the past few years, but that the birds will return when the water level rises again. Maple Bay was preserved largely because it is a significant flyway.

Hardin wondered if the township were to use migratory patterns as a basis for an approval decision, would we have to require a tower to come down whenever migratory patterns change? As to the bonding question, he also noted that LochenHeath is a prime example of a situation where bonds were called into play to help solve problems a developer could not.

Yamaguchi agrees with White on the migratory standards issue. Vermetten asked if there is data available from the wind generation units in Emmet and Leelanau Counties and near Mackinac City regarding impacts on migratory birds, and have we investigated whether ordinances in those areas contain standards for migratory bird studies. Vermetten is concerned with language such as “reasonable” and “appropriate” because it leads to the filing of many lawsuits. It leads to applicants having to deal with statements and concerns about where migratory birds used to be. He believes that the avian and wildlife impact section would be difficult to use unless the language is strengthened. Hardin noted that in Long Lake Township a BATA request for a wind tower is stalled due to question of required studies and the ability to perform them at certain times of year, and this problem could cost BATA a grant for the project.

Hull suspects that language of this nature exists because somewhere at some time there was a conflict with a migratory pattern that varied little. The question is whether the Commission wishes to remove the language or strengthen it. David would be uncomfortable if the issue were not dealt with in some way, even though he believes it is unproven that small wind energy generation installations increase bird mortality. He would like to have a tool to use at least relative to larger installations. Vermetten recalled statistics provided by Hull showing that birds are in much less danger from wind generation rotor blades than from family pets.

Krause observed that the “Midwest flyway” is as wide as the entire state of Michigan. This is their migratory area. How can the township infer that a tower would create a major impact in a flyway this size?

Carstens supports wind energy generation and understands why some commissioners are questioning the potential migratory bird study requirement. However many people paid money to preserve areas in the township largely to preserve and protect bird habitats. Would it make sense to put a wind tower in close proximity to an eagle nest? Perhaps it would be wise to prohibit towers in close proximity to properties specifically preserved for wildlife habitat. Krause feels that this concern is covered in the first paragraph of proposed Section 13.4.2.6. Vermetten could support retaining only that paragraph if the word “reasonable” is removed and the language indicates that measures to mitigate avian and wildlife impacts shall be taken. White believes that setback requirements are sufficient by themselves.

Motion by White, support by Yamaguchi to strike Section 13.4.2.6 in entirety. David would not support complete elimination of any consideration for migratory birds. Krause would support the retention of the first paragraph as described above. Hardin would also tend to support that approach. **Motion failed by a vote of 4 in favor (Feringa, Vermetten, White, Yamaguchi) and 5 opposed (Carstens, David, Hardin, Krause, Zollinger).**

Motion by Krause, support by Zollinger to retain only paragraph one of Section 13.4.2.6, striking the rest of the section, and striking the words “all reasonable” in paragraph one. Carstens would prefer insertion of language into the remaining paragraph that indicates that situations where measure should be taken would include areas near wildlife preserves. **Motion carried by a vote of 6 in favor (David, Hardin, Krause, Vermetten, Yamaguchi, Zollinger) and 3 opposed (Carstens, Feringa, White).**

Returning to Section 13.4.3, Hull and Jocks provided two alternatives for this paragraph. The one with asterisks was intended to be used with Section 13.4.4,

Bonds. Hardin believes that a company pursuing a large scale wind energy development ought to know it will be a costly venture and be prepared to bond for it. Zollinger agreed, noting that the community does need protection in the event a project is not completed or is shut down. David asked if there are any general ordinance provisions for dealing with disused structures of every kind in a less expensive way; there are not. Hardin believes that the difference between the two presentations is that in one it allows the applicant to express a plan for the worst case, and that the other requires the applicant to follow the township's plan for the worst case. Feringa stated that wind towers are valuable and it is very unlikely that a system developer would leave one derelict without selling it. He asked if anyone is aware of a decommissioned wind generation facility that has become derelict, and feels that this section is yet another way that the township may potentially make wind generation unfeasible within the township. Hardin respected Feringa's concerns about making the process too difficult, but also recalls that LochenHeath's developers envisioned a world-class golf community and at present it is little more than a dustbowl. Hull drew attention to the concept that the bond would be for decommissioning costs *net of salvage value*. If the tower components are very valuable this alone would tend to reduce the potential size of any performance bonds. Vermetten is very concerned that the township not create a "feel-good illusory" ordinance that seems progressive but is so difficult that it actually prevents creation of the land use.

Motion by David, support by Krause to adopt Section 13.4.3 Decommissioning, and that Sections 13.4.3 Removal of Abandoned Utility Grid Wind Energy Systems and 13.4.4 Bonds be deleted. Motion passed by vote of 8 in favor (Carstens, David, Feringa, Hardin, Krause, Vermetten, Yamaguchi, Zollinger) and 1 opposed (White).

Zollinger asked if the proposed ordinance sufficiently addresses what he calls "hybrid" systems that are designed primarily to meet the needs of the property owner but may also sell surplus power back to the grid. Jocks pointed out that this situation is not prohibited, and it is recognized by requiring that any system that sells power to the grid meets state and federal regulations.

Zollinger also asked why in Section 13.4.2.3 the ordinance is discussing shielding of lighting required due to tower height to reduce glare and visibility from the ground instead of simply requiring that minimum FAA requirements be met. Jocks supports the language as protecting people on the ground from lights any brighter than the minimum required by the FAA or shedding light downward in a manner that would be a nuisance. Zollinger noted that any such lights would likely be several hundred feet in the air and would be visible but are unlikely to shed nuisance lighting, and he would prefer not to add any additional expense for shielding. Hardin believes that the light would be somewhat shielded by the fact that the base of the tower is broader than the top where the lights would be.

Section 13.4.2.4 requires that the minimum vertical blade tip clearance from grade be 20'; Zollinger asked where this figure came from and why it is what it is. He could imagine that some farming equipment would be taller than this. This specification is in the model ordinance.

Section 13.4.2.5 deals with visual impacts on viewsheds. Krause thought that this consideration had been removed from the cell tower and wind generation ordinances because the Commission felt it was not possible to adequately define viewsheds to be protected. Feringa noted that to reach the optimal wind conditions many wind generation systems could tend to be at higher elevations and on ridgelines. Jocks is

hearing that the viewsheds defined in the Master Plan are not seen as valid viewsheds anymore. To him it would therefore make sense to either continue to protect them or to change or eliminate the concept and definition from the Master Plan. Krause suggested that rather than prohibiting location of a wind tower within a viewshed, the language could be changed to say that viewsheds should be considered. Hardin noted that the cell tower in Yuba was relocated as much as possible to keep it out of a defined viewshed, so they have some utility. Vreeland observed that one person's viewshed is of no matter to another person, and this could be way too vague and open-ended. David suggested that one factor to be considered would be the effect on views. Vermetten noted that people view resources differently; one man's nature preserve is another man's duck hunting paradise.

Jocks provided the draft cell tower ordinance amendment, which staff is holding back from final approval by the Board to ensure consistency of certain points between that ordinance and the wind generation ordinance. Vermetten read from the requirement regarding viewshed protection that was developed for the cell tower ordinance, which discusses remaining outside of viewsheds defined in the Master Plan unless certain conditions are met. Feringa noted that a wind energy provider is unlikely to relocate a proposed tower a few feet one way or the other if they wind speed drops by several miles per hour and the energy generation is less effective to preserve a scenic view. Zollinger agrees, and noted that most prime wind energy generation sites are going to be right in the middle of prime viewsheds as commonly defined. Feringa also noted that by the time a proposed wind energy facility comes to the township it will have been extensively studied and the location will be non-negotiable. Hardin wonders if township regulation will be trumped in short order by state and federal-level regulation. Representative Walker already tried to remove the ability to regulate this land use from local units of government and vest it in the state, and the state is now mandating that all the energy utilities provide a certain percentage of their power from renewable energy sources by certain dates. He believes that the cell tower ordinance provisions in this regard should be dictated by the wind generation ordinance provisions.

Krause suggested that only the last sentence of the section remain, and that the same sentence be used in the cell tower ordinance. Zollinger, Hull and Vreeland all believe this would be problematic because the language says that location within a viewshed *shall be avoided*, but that is not a prohibition. It seems it would only lead to debate with an applicant. Vreeland stated that without offering an opinion on the viewsheds issue and whether they are good or bad or should or should not be defined or protected, it is her general perception as an observer of the process that time and time again both Commission and public discussion has been leading towards a strong desire not using viewsheds as a key standard for the siting of various land uses.

Motion by Krause, support by Feringa to strike the last sentence in Section 13.4.2.5. Motion carried by unanimous roll call vote.

Discussion turned to Section 13.4.2.7, Shadow Flicker. Zollinger understands that there is a computer model that can be run where situation parameters are input and one can determine whether and how shadow flicker will occur and if it is likely to negatively impact surrounding land uses. Hull asked how the township would deal with a situation where a neighboring vacant landowner claims that shadow flicker might negatively impact their potential future development. Vermetten suggested amending the language of this section to match that discussed earlier relative to wildlife, to state that measures shall be taken to limit and mitigate shadow flicker.

Motion by White, support by Zollinger to amend the language of Section

13.4.2.7 to state that measures shall be taken to limit and mitigate shadow flicker. Motion carried by unanimous roll call vote.

Motion by Carstens, support by Yamaguchi to continue the public hearing on the revised proposed wind energy generation ordinance for the December 21 meeting. Motion carried unanimously.

A brief recess was declared from 8:43 p.m. to 8:51 p.m.

- b) **Discussion on Ordinance Amendment to §7.4 Signs:** Hull stated that after earlier discussion with the Commission about the sign ordinance, he and Jocks discussed the concept that many of the issues dealt with in the ordinance are not actually things the township can decide. To help with the process Hull made a table showing what signage is allowed in the current and proposed ordinances by zoning district. He also began wondering if the Commission would be able to effectively make decisions about potential changes in allowable sign sizes without photos of various options. Can the Commission consider various figures by themselves, or do they need visual assistance?

Carstens asked why we would be considering potential changes to sign requirements. Hull noted that the signage section of the ordinance is currently organized very poorly, and it does not address some situations we may soon encounter such as downtown area signage. Carstens asked former Commissioner Pat Salathiel for advice, since he worked hard on the current sign requirements. She shared with him a document with model sign ordinances for the Grand Traverse area that were drafted, in part, by Mark Wycoff from the Land Policy Institute at MSU. Carstens also called Russ Soyering, Traverse City's Planner, to ask for his opinion. The response was that Acme's signage ordinance is viewed as somewhat of a "gold standard," in terms of being highly restrictive and helping to prevent visual clutter. County Planner John Sych's input was that he also believes that our ordinance is a model ordinance and he wondered why we might want to change it. Carstens therefore advises caution in the face of any potential changes to the current standards.

Vermetten feels that the signage changes dramatically when one crosses the boundaries into neighboring townships, and he personally favors smaller signage that is less visually cluttered. He has been in many towns such as Vail where signs are smaller and far from the road, and they are visually appealing while people still find their way to the businesses. He asked what additional information Hull might provide at a subsequent meeting to make the issues more understandable. Hull would take pictures of various signs around town and provide dimensions so that responses could be elicited. Carstens found the illustrations Hull created to accompany his text very useful. David and Zollinger feel that the material already provided is sufficient for productive discussion. Zollinger asked what the key five or six issues that definitely need changing might be.

Carstens stated that Traverse City permits changeable message LED signs but only if the message changes no more frequently than every 24 hours. He says that Elmwood Township's sign ordinance is close to as restrictive as ours.

Yamaguchi would appreciate preparation of a presentation that would provide more examples. Feringa favors restrictive sign ordinances but feels that the proposed ordinance is not yet readable enough. Vermetten prefers restrictive sign ordinances as well. Krause would appreciate having more work done on the ordinance readability. David feels he has sufficient information but understands that others wish to have more information. White believes that agricultural signs need to be addressed more

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fully, particularly off-site seasonal signage to direct people to farms that are off the major highways. He asked who performs sign enforcement; the Zoning Administrator does. Zollinger would appreciate more information, especially a list of the top five issues that need to be addressed and things that would make permitting and enforcement more rational for staff. Carstens would appreciate more background “vision” information that will help to keep signs small and the ordinance fairly restrictive. Vermetten liked Zollinger’s and White’s questions in particular. He expressed appreciation for the perspectives that White and Feringa can bring in particular to sign regulation in agricultural and business situations. He noted that he has traveled in many areas where signage is very small or almost non-existent, yet people still find their way to the businesses. Overall there appeared to be consensus that the Commission wishes to preserve the strict sign size, number and placement regulations currently in place but is open to reorganizing this section of the ordinance to make it more readable and usable and ease enforcement and permit issuance.

Staff and legal counsel will work on simplifying the draft for continued discussion on December 21.

7. New Business: None

8. Public Comment/ Any other Business that may come before the Commission:

Vreeland stated that over the past several months the staff has been having problems with meeting packets left in the mailbox outside for pickup going missing and not connecting with Commissioners or Trustees. We will no longer leave the packets out there unattended and are weighing various options for how to change our delivery methods while keeping them convenient. She apologized to anyone who has been inconvenienced by not receiving their packet on a timely basis because it has gone missing. She and Vermetten noted that while most information in the packets is public record information, occasionally there are attorney-client privileged communications in them.

Meeting adjourned at 9:22 p.m.