

TUSCOLA COUNTY  
AIRPORT ZONING BOARD OF APPEALS

Chairman Keith Kosik called the meeting of the Airport Zoning Board of Appeals (AZBA) of the County of Tuscola, Michigan, held at the HH Purdy Building, 125 W Lincoln Street, Caro MI 48723, on the 5<sup>th</sup> day of March, 2020, to order at 9:02 a.m. local time.

Roll Call – Clerk Jodi Fetting

Members Present: Keith Kosik, Tim Kinney, Bill Campbell, Paul Hoose, Don Clinesmith

Members Absent: None

2020-M-AZ-018

Motion by Clinesmith, seconded by Campbell to recess the meeting and reconvene the meeting at 9:15 a.m. at the Caro Area District Library located at 840 W Frank Street, Caro Michigan. Roll Call Vote: Campbell – yes; Kinney – yes; Clinesmith – yes; Hoose – yes; Kosik – yes. Motion Carried.

Meeting recessed at 9:04 a.m. at the HH Purdy Building.

Notice posted on the front door of the HH Purdy Building regarding change of location.

Chairman Keith Kosik reconvened the meeting at 9:15 a.m. at the Caro Area District Library.

Roll Call – Clerk Jodi Fetting

Members Present: Tim Kinney, Bill Campbell, Paul Hoose, Don Clinesmith, Keith Kosik

Members Absent: None

Also Present: Clerk Jodi Fetting, Jamie Nisidis, Laura Ambro, Jonathan Lauderbach, Dan Ettinger, Mark Trumbauer, Ryan Pumford, Phil Pavlov, Jim Tussey, Mike Pattullo, Carmell Pattullo, Don Atkerson, John Schneider, Ken Hecht, Eileen Doering, Lisa Geiger, Neil Arnold, Eric Russell, Carol Hess, David Traubenkraut, Mike Putnam, Jade Edwards, Danelle Herzig, Mary Brissette, Dennis Ackerman

Pledge of Allegiance

Adoption of Agenda –

2020-M-AZ-019

Motion by Kinney, seconded by Campbell to approve the agenda as presented. Roll Call Vote: Kinney – yes; Campbell – yes; Hoose – yes; Clinesmith – yes; Kosik – yes. Motion Carried.

Approval of Minutes –

2020-M-AZ-020

Motion by Clinesmith, seconded by Kinney to approve the February 20, 2020 minutes as presented. Roll Call Vote – Campbell – yes; Hoose – yes; Clinesmith – yes; Kinney – yes; Kosik – abstain. Motion Carried.

New Business – None

Chairman Kosik recused himself at 9:18 a.m. due to potential conflict of interest.

Vice-Chairman Kinney assumed responsibilities of leading the meeting.

Old Business -

Closed Session – To Discuss Written Legal Memorandum

2020-M-AZ-021

Motion by Clinesmith, seconded by Campbell that the AZBA Board meet in Closed Session under Section 8(h) of the Open Meetings Act to discuss the contents of a written legal memorandum from its attorney, which is exempted from disclosure under Section 13(1)(g) of the Freedom of Information Act, with Jamie Nisidis and Jodi Fetting to be allowed to attend the closed session at 9:18 a.m. Roll Call Vote: Hoose – yes; Clinesmith – yes; Campbell – yes; Kinney – yes; Kosik – absent. Motion Carried.

Reconvened from Closed Session at 11:17 a.m.

Board Discussion/Action –

Vice-Chairman Kinney explained that the Court of Appeals has denied the AZBA's appeal of Judge Gierhart's decision regarding the AZBA's denial of the thirty-three (33) variance applications.

2020-M-AZ-022

Motion by Campbell, seconded by Clinesmith that the AZBA file an Application for Leave to Appeal with the Supreme Court seeking leave to appeal from the Court of Appeals' denial of the AZBA's Application for Leave to Appeal regarding Pegasus' thirty-three (33) variance applications. Roll Call Vote: Campbell – yes; Hoose – no; Clinesmith – yes; Kinney – yes. Kosik – absent. Motion Carried.

2020-M-AZ-023

Motion by Clinesmith, seconded by Hoose to issue Certificates of Variance per the motion read by Jamie Nisidis:

To issue Certificates of Variance to Pegasus Wind based on its thirty-three (33) variance applications for turbines, subject to the following reasonable conditions that are necessary to effectuate the purpose of the Tuscola Area Airport Zoning Ordinance:

1. Pegasus Wind and any successor will indemnify and hold harmless the Tuscola Area Airport Zoning Board of Appeals (AZBA), Tuscola County, the Tuscola Area Airport Authority, and each of their members or agents, for any and all claim, loss, damages or attorney fees resulting or arising from any aviation accident caused in whole or in part by the existence of the wind turbines for which Certificates of Variance are issued.
2. Pegasus Wind will provide evidence of decommission bonds sufficient to cover all costs associated with the removal of the wind turbines for which Certificates of Variance are issued.
3. Pegasus Wind shall not dispose of decommissioned turbines or parts of turbines by burial, stockpiling or otherwise in Tuscola County.
4. All conditions imposed by the Federal Aviation Administration (FAA) and the Michigan Aeronautics Commission (MAC) shall automatically become part of the Certificates of Variance.
5. Pegasus Wind shall indemnify the Tuscola Area Airport Authority for any grant monies it is required to reimburse to the grantor as a result of a determination that it violated its grant assurances based on the existence of the turbines for which Certificates of Variance are issued, up to \$2.6 million.
6. The Certificates of Variance are null and void if the AZBA's denial of Pegasus Wind's other eight (8) variance applications is upheld after all appeals are exhausted.
7. The Certificates of Variance are null and void if the AZBA's appeal to the Supreme Court regarding the 33 turbines for which Certificates of Variance are issued, is successful.
8. The turbines for which the Certificates of Variance are issued do not effect Visual Flight Rules (VFR) operations in the vicinity of the turbines as specified in 14 CFR Part 91, as stated by Pegasus Wind.
9. The turbines for which the Certificates of Variance are issued do not effect Instrument Flight Rules (IFR) operations, including raising any published approach visibility minimums or decision altitude minimums.
10. The turbines for which the Certificates of Variance are issued do not interfere with the ASR-11 primary radar in the area of the turbines.

Roll Call Vote: Hoose – yes; Clinesmith – yes; Campbell – no; Kinney – yes; Kosik – absent. Motion Carried.

Public Comment –

-Don Atkerson discussed the potential disposal procedure for decommissioned turbines.

-Dan Ettinger stated the AZBA has one job which is to issue Certificates of Variance based on the denial by the Court of Appeals. He stated the AZBA does not have authority to issue with conditions.

-Eric Russell stated the FAA approved the 33 turbines and the project should move forward.

-Dennis Ackerman stated it should be researched where a fiberglass boat is disposed of and where the ash from the coal plant in Bay County is buried.

-Mary Brissette made a statement on behalf of Nancy Laskowski that Nancy is supportive of the AZBA. Mary also stated the 8 additional turbine requests are to be a part of this project.

-Mike Pattullo presented a press release from Alan Armstrong regarding the case styled *Tuscola County Area Airport Authority et al. v. Stephen Dickson, Administrator*.

-Don Clinesmith stated that the AZBA set forth conditions to the Certificates of Variance as he is here to protect the airport.

-Carol Hess questioned how the AZBA will handle a variance request when submitted by the Caro Center for the new construction as it will be within the 5,000 foot guidance of the ordinance.

-Don Atkerson stated even though the FAA did not have a problem with the construction of the wind farm, they cannot override the decision made by the AZBA.

2020-M-AZ-024

Motion by Campbell, seconded by Hoose to adjourn the meeting at 11:47 a.m. Voice Vote with all members in favor. Motion Carried.

Jodi Fetting  
Tuscola County Clerk

On behalf of  
William Campbell  
AZBA Secretary