

TUSCOLA COUNTY
AIRPORT ZONING BOARD OF APPEALS

Chairman Kosik called the meeting of the Airport Zoning Board of Appeals (AZBA) held at the HH Purdy Building, 125 W Lincoln Street, Caro MI 48723 on the 29th day of March 2022, to order at 5:00 o'clock p.m. local time.

Pledge of Allegiance – Chairman Kosik

Roll Call – Clerk Jodi Fetting

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

Members Absent: None

Also Present In-Person: Clerk Jodi Fetting, Heidi Stark, Dan Ettinger, Eean Lee, Nancy Laskowski, Jim Tussey, John Schneider

Also Present Virtual: Jon Lauderbach, Patty Witkovsky, Mary Drier, Laura Genovich

Oath of Office administered to Tim Kinney

Adoption of Agenda –
2022-M-AZ-005

Motion by Kinney, seconded by Hoose to approve the agenda as amended. Motion Carried.

Approval of Minutes –
2022-M-AZ-006

Motion by Clinesmith, seconded by Hoose to approve the February 16, 2022 minutes as presented. Motion Carried.

New Business – None

Chairman Kosik recused himself at 5:06 p.m.

Vice-Chairman Kinney assumed responsibilities of leading the meeting.

Closed Session – Per MCL 15.268(e)
2022-M-AZ-007

Motion by Kinney, seconded by Hoose that the AZBA Board meet in Closed Session under MCL 15.268(e) to consult with its attorney regarding trial or settlement strategy in connection with the following pending litigation matters: (1) *Pegasus Wind, LLC v Tuscola Area AZBA, et al*, Tuscola County Circuit Court Case No. 19-30829-AA and (2)

Pegasus Wind v Tuscola Area AZBA et al, Tuscola County Circuit Court Case No. 20-31066-AA; Michigan Court of Appeals Case No. 355715, (3) *Tuscola Area AZBA V Michigan Aeronautics Commission*, Court of Appeals No. 357209 as an open meeting would have a detrimental financial effect on the litigation and settlement position of the AZBA, with Laura Genovich, Jodi Fetting, and Eean Lee to be allowed to attend the closed session at 5:08 p.m. Roll Call Vote: Campbell – yes; Hoose – yes; Clinesmith – yes; Kinney – yes; Kosik – absent. Motion Carried.

Attorney Dan Ettinger objected to the closed session as he stated there is no detrimental financial effect.

Attorney Laura Genovich stated the closed session could proceed as the closed session reason stated was appropriate.

Recessed to Closed Session at 5:10 p.m.
Reconvened from Closed Session at 6:00 p.m.

2022-M-AZ-008

Motion by Hoose, seconded by Clinesmith to resume open session at 6:00 p.m. Motion Carried.

Old Business –

Pending Litigation Discussion

1. Tuscola County Circuit Court Case 19-30829-AA *Pegasus Wind, LLC v Tuscola County*
2. Tuscola County Circuit Court Case 20-31066-AA *Pegasus Wind v Tuscola County*; Court of Appeals Case No. 355715 *Pegasus Wind v Tuscola County*
3. *Tuscola Area AZBA v Michigan Aeronautics Commission* Court of Appeals Case No. 357209 (matter added)

Attorney Genovich explained to the Board that Judge Amy Grace Gierhart has issued an order in Circuit Court Case 19-30829-AA that the AZBA per the court order is to sign the 33 variances without conditions.

An Order to Show Cause has been scheduled for April 6, 2022 in front of Judge Amy Grace Gierhart if the variances are not signed. Matter discussed by the Board.

2022-M-AZ-009

Motion by Hoose, seconded by Clinesmith to have the Acting Chairperson sign the 33 variances without conditions. Roll Call Vote: Hoose – yes; Clinesmith – yes; Campbell – no; Kinney – yes; Kosik – absent. Motion Carried.

Attorney Genovich explained to the Board that it should be decided if the AZBA wants to appeal the decision on the 33 variances. Matter discussed by the Board.

2022-M-AZ-010

Motion by Hoose, seconded by Clinesmith to not appeal the decision regarding the 33 variances. Roll Call Vote: Clinesmith – yes; Campbell – no; Hoose – yes; Kinney – no; Kosik – absent. Tie Vote, motion failed.

2022-M-AZ-011

Motion by Campbell, (no second), to authorize an appeal on the decision regarding the 33 variances. Motion died for lack of support.

Attorney Genovich explained to the Board in Circuit Court Case 20-31066-AA (Court of Appeals Case No. 355715) that the AZBA denied the request for the 8 variances. Judge Amy Grace Gierhart affirmed the decision of the AZBA. The Court of Appeals reversed the decision of Judge Amy Grace Gierhart. The AZBA needs to decide if that matter should be appealed to the Michigan Supreme Court. Matter discussed by the Board.

2022-M-AZ-012

Motion by Campbell, seconded by Clinesmith to authorize Foster Swift to file an Application for Leave to Appeal to the Michigan Supreme Court in the 8 variance file Case No. 355715. Roll Call Vote: Campbell – yes; Hoose – yes; Clinesmith – yes; Kinney – yes; Kosik – absent. Motion Carried.

Attorney Genovich explained to the Board that in Court of Appeals Case No. 357209 regarding the Tall Structure Permit the AZBA filed an appeal to the Court of Claims which was dismissed for lack of standing. This can be appealed to the Michigan Supreme Court.

Member Kinney expressed that the Tall Structure Permit issued by MDOT required an aeronautic study which was not completed.

Matter discussed by the Board.

2022-M-AZ-013

Motion by Campbell, seconded by Clinesmith to authorize Foster Swift to file an Application for Leave to Appeal to the Michigan Supreme Court on the Tall Structure Cases File No. 357209 and File No. 357210 which have been consolidated. Roll Call Vote: Hoose – yes; Clinesmith – yes; Campbell – yes; Kinney – yes; Kosik – absent. Motion Carried.

-Attorney Genovich stated that since there was not a motion to appeal the 33 variances, she will take that as direction to not appeal the matter.

At 6:34 p.m., there were 6 participants attending the meeting virtually.

Public Comment –

-Nancy Laskowski stated that she appreciates the time the AZBA has spent on the matter of the airport.

-Jim Tussey thanked the AZBA for protecting the airport. He also stated he has a GIS map of where the wind turbines are located that are near the airport.

-Nancy Laskowski stated that when the life flights happen the pilot is diverting further south in order to land at the airport.

-Attorney Genovich will email the 33 variances to Clerk Fetting who will print for Tim Kinney to sign. Once signed, Clerk Fetting will return them to Attorney Genovich.

2022-M-AZ-014

Motion by Hoose, seconded by Campbell to adjourn the meeting at 6:42 p.m. Motion Carried.

Jodi Fetting
Tuscola County Clerk
Acting AZBA Secretary