

**TUSCOLA AREA AIRPORT
ZONING BOARD OF APPEALS**

RESOLUTION DENYING

PEGASUS WIND, LLC'S APPLICATION FOR VARIANCES FOR 33 TURBINES

At a meeting of the Tuscola Area Airport Zoning Board of Appeals ("ZBA"), held on the 25th day of July, 2019, at 4:30 p.m. at the Tuscola Technology Center, 1401 Cleaver Road, Caro, Michigan

PRESENT: Tim Kinney, Bill Campbell, Don Clinesmith, Paul Hoose

ABSENT: Keith Kosik

The following preamble and resolution was offered by Campbell and seconded by Clinesmith

WHEREAS, the Airport Zoning Act, MCL 259.454(1), provides: "The board of appeals shall allow a variance if a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations."

WHEREAS, Section 5.2G(2) of the Tuscola Area Airport Zoning Ordinance (the "Ordinance") provides that variances shall be allowed for any of the following reasons:

- (a) A literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship.
- (b) Relief granted would not be contrary to the public interest and approach protection.
- (c) Relief granted would do substantial justice.

(d) Relief granted would be in accordance with the spirit of the regulations of this Ordinance; and

WHEREAS, on or about April 18, 2019, Pegasus Wind, LLC (“Pegasus Wind”) submitted Airport Zoning Permit Applications (“Applications”) under the Ordinance for 40 wind turbines that are part of the proposed Pegasus Wind Energy Center (the “Project”) in Tuscola County, Michigan; and

WHEREAS, the Airport Zoning Administrator reviewed the Applications for compliance with the Ordinance; and

WHEREAS, on or about June ¹³~~10~~, 2019, after further review for compliance with the Ordinance, the Airport Zoning Administrator conditionally approved 7 of the Applications and denied 33 of the Applications; and

WHEREAS, the Airport Zoning Administrator denied 33 Applications because the proposed structures would raise descent minimums contrary to Section 3.6G of the Ordinance; and

WHEREAS, the Airport Zoning Administrator also denied 7 of those 33 Applications because the proposed structures would also exceed the Legal Height Limitations of Section 3.3 of the Ordinance; and

WHEREAS, on or about June 11, 2019, Pegasus Wind applied with the ZBA for variances for the 33 turbines that were denied permits by the Airport Zoning Administrator: 17 turbines in Zone B and 16 turbines in Zone E of the Airport Zoning Area; and

WHEREAS, Pegasus Wind’s variance applications included the variance application form, the required filing fee, a narrative in support of the variance application with 5 exhibits

attached, a site plan, Special Land Use Permits (“SLUP”), and an FAA-issued Determination of No Hazard (“DNH”); and

WHEREAS, Exhibit 5 to Pegasus Wind’s variance applications identifies the turbines for which it is applying for a variance, as well as the reason each turbine requires a variance; and

WHEREAS, the ZBA held public meetings regarding Pegasus Wind’s variance applications on June 25, 2019 and on July 9, 2019 during which the ZBA provided Pegasus Wind an opportunity to present in support of the Applications and wherein members of the public were provided with an opportunity to comment on the variance applications; and

WHEREAS, the ZBA accepted written comments from the public related to the variance applications until July 25, 2019; and

WHEREAS, the ZBA received numerous written comments from members of the public; and

WHEREAS, upon consideration of Pegasus Wind’s 33 variance applications and supporting materials, the presentation made by Pegasus Wind, public comments at the public meetings, and all other information and materials provided to the ZBA, the ZBA finds that, consistent with the Airport Zoning Act and the Ordinance, Pegasus Wind’s variance applications shall be denied for all 33 turbines for the reasons stated in the June 25, 2019 and the July 9, 2019 meeting and as discussed further below.

NOW, THEREFORE, IT IS RESOLVED AND THE ZBA FINDS AS FOLLOWS:

1. Pegasus Wind has not shown that a literal application or enforcement of the regulations would result in practical difficulty with respect to all 33 turbines.

Specifically, Pegasus Wind has not demonstrated a literal application of the height requirements in Section 3.3 and the requirements of Section 3.6G would create a

practical difficulty for Pegasus Wind. Factual evidence to clearly demonstrate why other alternatives which would comply with the ordinance, such as shorter turbines or certain other potential alternative locations are not viable options has not been convincingly established.

2. Pegasus Wind has not shown that granting it variances for the 33 turbines would not be contrary to the public interest and approach protection.

Although approach protection was part of the consideration undertaken by the FAA's study of the turbines at issue, certain additional risks would remain as a result of the siting of the proposed turbines which appear contrary to the public interest and the safety of approaches at the Tuscola Area Airport.

3. Pegasus Wind has not shown that granting it variances for the 33 turbines would do substantial justice.

Substantial steps have been taken by the applicant with regard to the construction of the structures at issue within the 33 variance applications, but any reliance by the applicant on the probability of the granting of such variances is premature.

Additionally, denying the variances is consistent with the protection of the safety of the airport approach plan and is in furtherance of substantial justice.

4. Pegasus Wind has not shown that granting it variances for the 33 turbines would be in accordance with the spirit of the regulations of this Ordinance.

- a. The spirit and intent of this Ordinance is reflected in the stated purpose in Section 1.2, which is "to promote the health, safety, and welfare of the inhabitants of the County of Tuscola by preventing the establishment of airport hazards, restricting the height of structures and objects of natural growth and otherwise regulating the

use of property in the vicinity of the Tuscola Area Airport; providing for the allowance of variances from such regulations...”

- b. Taking into account the evidence submitted with regard to the 33 variance applications, and the evidence submitted is most consistent with the spirit of the Ordinance to deny the 33 variance applications in this matter. Significant potential risk of airport hazard is posed by the proposed structures.
- 5. Because Pegasus Wind’s applications for height variances under Section 3.3 for 7 turbines, and for variances under Section 3.6.G for all of the 33 proposed turbines do not meet the requirements of the Airport Zoning Act and the Ordinance, Pegasus Wind is not entitled to variances.
- 6. All resolutions in conflict in whole or in part are revoked to the extent of such conflict.
- 7. This resolution may be appealed in conformity with the Airport Zoning Act.

A vote on the above Resolution was taken and was as follows:

ADOPTED:

YEAS: Campbell, Clinesmith, Kinney

NAYS: Hoose

7/25/19