

TUSCOLA COUNTY BOARD OF COMMISSIONERS
December 11, 2019 Minutes
H. H. Purdy Building

Commissioner Bardwell called the special meeting of the Board of Commissioners of the County of Tuscola, Michigan, held at the Caro High School Auditorium in the City of Caro, Michigan, on the 11th day of December 2019, to order at 4:03 o'clock p.m. local time.

Prayer – Commissioner Grimshaw

Pledge of Allegiance – Commissioner Young

Roll Call – Clerk Fetting

Commissioners Present: District 1 - Thomas Young, District 2 - Thomas Bardwell, District 3 - Kim Vaughan (via Google Hangouts), District 4 - Mark Jensen, District 5 – Daniel Grimshaw

Commissioner Absent: None

Also Present: Clerk Jodi Fetting, Clayette Zechmeister, Eean Lee, Deputy Ryan Robinson, Steve Anderson, Valerie Lohr, Duane Hornbacher, Kristine King, Eric King, Laura Strzelewicz, Mark Strzelewicz, Tim Kinney, Bill Campbell, Chris Graf, Jim Mantey, Clayton Johnson, Jamie Nisidis, Jim Tussey, Wayne Koper, John Schneider, Larry Ruckle, Samantha Hughes, Paula Hughes, Eileen Doering, Ann McLaughlin, Nancy Laskowski, Barb Ruckle, Mike Pattullo, Tom Hess, Carol Hess, Richard Peterhans, Fran Silvernail, Norm Stephens, David Davidson, Colleen Russell, Rick Russell, Jon Link, Joe Greene, Jim McLoskey, Rick Lipan, Ione Vyse, Lynn Schriber, Jeff Montei, Jan Daniels, Carl Childs, David Kukuski, Greg Ackerman, Duane Lockwood, Mark Trumbauer, Jon Lauderbach, Michele Lee Hile, Heidi Stark, Dale Jansen, Garrett Tetil, Carrie Nicols, Al Endres, Mike Putnam, Don Atkerson, Maureen Atkerson, Keith Aeder, Joe Fessler, Deb Fessler, Jade Ackerman, Carmell Pattullo, Pat Schefsky, Mary Brissette, Ken Houghtaling, Mike Day, Brad Barnes, Lisa Geiger, Ted Schunn, Doug Shannon, David Traubenkraut, Richard Koener, Mike Hormel, Doug Foster, Paula Sleight, Neil Arnold, Justin Nitz

Adoption of Agenda -
19-M-255

Motion by Young, seconded by Jensen to adopt the agenda as presented. Motion Carried.

Public Comment -

-Jan Daniels - Jan expressed concern over potential interference that wind turbines may cause to flight care landings at the airport.

-David Kukuski - David asked the Board to not spend additional county funds on this matter.

-Dale Jansen - Dale asked the Board to support the Judge's decision.

-Richard Peterhans - Richard is not against wind power but he does not feel that they should not be placed in populous areas or near an airport. Richard asked the Board to appeal the Judge's decision.

-Al Endres - Al asked the Board to appeal the Judge's decision. Al feels that an ordinance is put in place for a reason and asked the Board to uphold the ordinance.

-Nancy Laskowski - Nancy stated that Pegasus has requested the variance permits be issued immediately which she feels is in violation of the ordinance.

-Wayne Koper - Wayne asked the Board to follow the guidelines that are given to them and to do what is right.

-Don Atkerson - Don feels that permits are required to be filed properly and he does not feel that Pegasus filed the required permits properly.

-Jim Tussey - Jim spoke on behalf of the Airport Authority. Jim asked the Board to support the Airport Zoning Board of Appeals and support their decision. The Friends of the Airport have committed to fund any additional legal fees the Airport Zoning Board of Appeals (AZBA) may incur in this appeal matter. Jim also feels that a pre-approval by the AZBA could have been sought prior to moving forward with the project.

-Keith Aeder - Keith stated he feels that the issue at hand is property rights. Keith stated that he feels zoning ordinances have the ability to give the person the right to appeal. Keith compared the number of accidents caused by turbines versus other means such as vehicle accidents.

-Maureen Atkerson - Maureen stated ordinances need to be followed.

-Jade Ackerman - Jade is in support of the wind project and asked the Board to support the project.

-Carl Childs - Carl stated that he does not feel that safety with flight care is an issue. He stated that an Appeal Board is put in place in order for a person to seek relief from an ordinance.

-Pat Schefsky - Pat spoke on behalf of landowners and the rights of the landowners. Pat referenced the Judge's decision in a previous case, the determination from the Federal Aviation Administration (FAA) and Tall Structures. He asked that the Board support the Judge's decision.

-Ken Houghtaling - Ken stated he feels the wind turbines and the airport can co-exist together. The Zoning Appeal Board is put in place for a reason. He stated the current Townships that have turbines are providing a financial benefit to the county. He asked the Board to not spend any further county funds on the appeal.

-Larry Ruckle - Larry asked if a person that assisted in writing the ordinance could objectively serve on the AZBA Board. He questioned if Bill Campbell has a prejudice.

-Brad Barnes - He lives in Wisner Township and lives among the current wind turbine project. He does not have a problem with wind turbines. He stands by the Judge's decision. He wondered if the Board has researched where the financial backing of the anti-wind group is coming from. He owns property in Juniata Township that has a turbine contract on it and that contract will help to maintain the family homestead. He feels there are false facts that are being published.

-Joe Fessler - Joe stated his Dad, Stanley Fessler, is in favor of the wind turbines. Joe is in favor of renewable energy. He would prefer to see the wind turbines instead of solar panels.

-Bill Campbell - Bill stated that he does not feel that he is biased in the matter. He referenced that the Airport Enabling Act provides that the AZBA shall be provided funds.

-Mike Day - Mike asked the Board if they had received the communication from John McQuillan, which the Board has.

-Mary Brissette - Mary referenced the funds that are being put into escrow as the tax distribution is being fought by NextEra. She asked the Board to appeal the Judge's decision.

-Barb Ruckle - Barb stated that NextEra has filed an additional 8 variance applications. She feels this is setting a precedent and is outside of the ordinance. She asked the Board to appeal the Judge's decision.

-Ted Schunn - Ted stated the Judge's job is to administer the law and he feels that she voted the way that she should have by following the law. Ted feels there

are obstacles in everyday driving and as drivers you have to learn how to adjust just as pilots could also if necessary.

-Joe Greene - Joe asked the Board to appeal the Judge's decision. He stated he has had a meeting with the FAA and they are watching the proceedings in Tuscola County. He stated the runway expansion is still being planned.

-Garrett Tetil - Garrett stated that the Board will have to make a decision to defend one of the sides of the issue. Garrett is in support of appealing the Judge's decision.

-Carol Hess - Carol referenced that the Court of Appeals only reviews the facts presented and does not take emotions into play. She is in support of Judge Gierhart's decision in this case and in every case she handles everyday on behalf of Tuscola County. She asked the Board to support the County and its vitality.

-Greg Ackerman - Greg presented a social media post by Kevon Martis who is an anti-wind activist. The FAA protects airspace and does not willingly give up airspace. He feels the community has been torn apart by this anti-wind group. He asked the Board to not use county funds to appeal this decision.

Tom Hess - Tom read a letter on behalf of Tom Hile that is in support of the wind project and that the FAA made the correct decision.

-Mike Patullo - Mike referenced the appeal cases that were filed in Ellington Township. He asked the Board to appeal the Judge's decision.

-Rick Russell - Rick stated he feels the Board should have accepted the settlement offer. He stated he has not heard of any of the current companies that currently use the airport that they would not use the airport if the turbines were erected. He asked the Board to support the Judge and not appeal the decision.

-Jim Mantey - Jim stated that he does not feel anyone in the room is against renewable energy. He referenced the local zoning board of appeals and the guidelines laid out by the Zoning Enabling Act. He supports the AZBA Board's decision.

-Heidi Stark - Heidi referenced the appeal process, when an appeal is appropriate and when an appeal is allowed by an ordinance. The Board should make their own decision on if the Judge's order should be appealed and not look to the AZBA Board to make that decision.

- Norm Stephens - Norm stated this decision will set a state-wide precedence. Norm referenced a wind project in South Dakota that is experiencing issues similar to Tuscola County.
- Jan Daniels - Jan spoke in response to the flight care availability at the airport.
- David Davison - David stated that the wind turbines currently in operation are financially supporting the entire county. In the townships where there are wind turbines, NextEra has made road improvements as needed.
- Lisa Geiger - Lisa feels this issue is affecting the relationships in the community. She asked the Board to stand behind the decision of the AZBA.
- Wayne Koper - Wayne stated this has been an emotional property rights issue as well as a financial issue. Wayne recognizes there are some benefits of the wind turbines but also sees that it could cause derelicts.
- Nancy Laskowski - Nancy referenced the Emergency Management Plan that included population counts within it and feels that it shows a decrease in population in Fairgrove and Gilford Township. If the Board does not vote to appeal the Judge's decision, she asked the Board to seek separate counsel in that matter so there would not be a conflict of interest.
- Jim Tussey - Jim referenced that in Almer Township and the Airport Authority that there was no outside funding found and that the funding is being provided by local residents. He referenced FAA opinions and that state and local laws must be followed. He feels the airport ordinance is to protect the airspace.
- Mike Day - Mike stated the Akron-Fairgrove school district is seeing an increase in enrollment and an increase in the number of residents in the township.
- Greg Ackerman - The FAA did rule to protect the airspace and denied 8 turbines that they felt would impede the runway expansion.
- Mary Brissette - Mary referenced that the Political Action Committee (PAC) that was formed to fight the Almer Township wind project was funded by Juno money.
- Don Atkerson - Judge's decisions can be overturned and asked the Board to appeal the Judge's decision.

- Carol Hess - Carol referenced the decrease in the population and school enrollment in Tuscola County is mainly because of lack of job opportunity. She stated local business owners she has talked to would like to build the tax base of

Tuscola County. She expressed her support of the wind turbine project within Tuscola County.

-Ken Houghtaling - Ken stated that new ordinances are being developed in Gilford Township and the Township is not getting participation in developing them. He feels that is the time for residents to speak out not afterward in a situation like this. Houses have recently sold in Gilford Township for fair-market value.

-Maureen Atkerson - She does not feel the issue is where the leases were signed within the airport zoned area. She feels that the people in attendance are not against wind turbines.

-Al Endres - Al agreed that community residents do not get involved until there is a large issue at hand. He stated that Judge Gierhart knew whatever decision that she made, it would be appealed and he feels that she did the best she could. He feels that the community needs to come together to move this county forward just as they did for the Caro Center. He asked if a compromise was possible.

-Doug Shannon - Doug is on the Fairgrove Township Zoning Board and is currently a pilot. He does not see any danger being caused by the wind turbines to the pilots. He does not feel the airport will close because of the wind turbines as they will not affect air traffic.

-Rick Russell - Rick stated that the county population is decreasing due to the aging population. Relationships have been broken and he does not feel those can be mended due to the financial loss to the lease holders.

-Bill Campbell - Bill stated that he has not heard anyone state that the airport ordinance is not a good law. The emotions should not play a part as it is a matter of law.

-Larry Ruckle - The people of the county elected Judge Gierhart and supported her to be the Judge of the county.

-Richard Koener - Richard is a former pilot but the aircraft that he flew were too large to fly into the Caro Airport. He researched the instrument decent and he would be available if the Board would have any questions. What happens in Tuscola County will set precedence.

-Mike Pattullo - Mike addressed why he has stayed involved in the fight against the wind turbine project over the last 4 years.

-Garrett Tetil - Garrett spoke in favor of appealing the Judge's decision.

-Mike Hormel - Read a statement on behalf of David Craig in support of the turbine project.

-Tom Hess - Read a letter on behalf of Pat Sheridan, who is in support of the wind turbine project. Pat has concerns about the ownership of the Tuscola Area Airport.

New Business -

Closed Session -

19-M-256

Motion by Young, seconded by Jensen that the 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 Tim Kimmey, Clayette Zechmeister, and Jodi Fetting to be allowed to attend the closed session at 6:32 p.m.

Commissioner Grimshaw questioned why Tim Kinney, the AZBA Vice-Chairman, can be allowed to attend the closed session meeting. Board discussed.

Roll Call Vote: Young - yes; Vaughan - yes; Jensen - yes; Grimshaw - no; Bardwell - yes. Motion Carried.

Board reconvened from Closed Session at 8:34 p.m.

Board Discussion -

-Commissioner Bardwell addressed how the Board of Commissioners were originally involved in the adoption of the Airport Ordinance.

-Commissioner Grimshaw thanked Tim Kinney for his expertise in the field and providing insight. He also thanked Clayton Johnson and Jamie Nisidis. Commissioner Grimshaw shared his thoughts that the county should not have adopted the airport ordinance in the first place as it is not Tuscola County's Airport. It is only an airport located within the jurisdiction. In reviewing the ordinance, he also feels that the two propane companies currently located near the airport are in violation of the ordinance. He also referenced the new build of the Caro Center will be in violation of the ordinance as well. His concern is how to pick and choose how to enforce the ordinance based on the business or matter at hand. He also shared a concern of how to enforce the ordinance, whose responsibility is it to enforce the ordinance and whose responsibility would it be to tell a person about the Airport Ordinance. Commissioner Grimshaw referenced the guidelines provided in the ordinance is to have the appeal filed to Circuit Court but once the Circuit Court issues an opinion, the ordinance is silent as to whose right it is to appeal the Judge's decision. He does not feel that the Judge is 100% wrong in her decision. There were accusations made against

Judge Gierhart accusing her of bribery and he feels that is wrong. Allowing this topic to divide a community as it has is wrong and he feels that it has to stop. He referenced viewpoints that he has received from residents within his district and they do not have a dog in the fight so they don't have a desire to fight this

-Commissioner Jensen stated that he has reached out to residents of his jurisdiction and they are not aware of the issue at hand. Even though he is elected to serve a district, he is also here to represent the entire county. He does believe in property owners rights and their ability to protect those. He feels that people have sat on both sides that he knows and respects but their opinions have been very different. He feels that people's statements are half truths and have twisted their comment to benefit their cause which makes it difficult to determine what really is the truth.

-Commissioner Young feels that it was not proper to take the \$10 million offer as he felt that the people deserved their day in court. He feels that by taking the offer at that time, that would not have happened. He feels he should support the Judge's decision.

-Commissioner Vaughan understands this is a difficult decision for everyone that is at the meeting. Ordinances are written so that variance requests can be filed. After Circuit Court rendered the decision, then it has to be decided where to go from there. Everyone on the Board wants what is right for the county and the airport. He hopes that once this matter has passed, that the county can heal from all of this.

-Commissioner Bardwell stated the Board has taken this decision to heart and is diversified in the thoughts that each Commissioner has. Our local economy is struggling, which has caused a decrease in student enrollment and jobs. We have had the fight of the Caro Center twice and are still waiting to see if it will come through. A county needs a good school system and a good hospital. An airport is also an important key factor. The airport is a \$50 million asset which can either grow, stay the same or decrease. Commissioner Bardwell understands that no matter what decision is made tonight that half of the room will be upset with that decision. As we move forward and begin to settle down as a community on this issue, it is very hard not to look at the revenue at the county level. If cuts need to be made at the county level, it would affect full-time employees. Some in the audience have an idea of what they feel the Board should do, but the board has to look at the county as a whole and viability for the future. If appealed and reversed, he feels it may go to the Supreme Court. There is a section of people stating what they want but there is also a larger section that is quiet. The County has never been this late in preparing a budget and the Board's attention needs to begin focusing on that. In the first Caro Center discussion, the needed variance was discussed. The existing water tower is grandfathered in. The first design of the new Caro Center was supposed

to be lower than the water tower. The second design will not be lower than the water tower which will require a variance request.

19-M-257

Motion by Grimshaw, seconded by Vaughan that the Board of Commissioners does not support an appeal of Judge Gierhart's decision. Roll Call Vote - Grimshaw - yes; Young - yes; Vaughan - yes; Jensen - yes; Bardwell - no. Motion Carried.

19-M-258

Motion by Grimshaw, seconded by Jensen to allow Braun Kendrick to represent the AZBA in the appeal if Braun Kendrick chooses to do that without there being a conflict of interest and without there being any county funding.

Board discussed the matter of allowing this to proceed with Braun Kendrick.

Roll Call Vote: Young - yes; Vaughan - yes; Jensen - yes; Grimshaw - yes; Bardwell - yes. Motion Carried.

Old Business - None

Other Business as Necessary - None

Extended Public Comment -

-Nancy Laskowski stated that the Board of Commissioners is not administering the ordinance as it should be as no one has been assigned or equipped to enforce the ordinance and she is asking the board to do that.

-Bill Campbell wanted to clarify that Indianfields does have an Airport Overlay Ordinance that he wrote. It is not written in as much detail but the Township does have an ordinance on file.

-Keith Aeder thanked the Board for their work as it was a hard decision and he appreciates their effort.

-Ken Houghttaling thanked the Board for their time and comments.

-Commissioner Bardwell on behalf of the Board thanked Barbara Ruckle, the School Board and Superintendent Newman for allowing the use of the auditorium. He also appreciates everyone who attended and their endurance.

-Commissioner Gimshaw thanked everyone who came whether for or against and for participating.

-Commissioner Vaughan appreciated everyone attending.

Motion by Vaughan, seconded by Jensen to adjourn the meeting at 9:34 p.m.

Jodi Fetting
Tuscola County Clerk