

DRAFT

Public Meeting of Casco Township Planning Commission
Wind Energy Ordinance
March 13, 2013, 6 PM

MEMBERS PRESENT: Bruce Barker, Dian Liepe, Daniel Fleming, Paul Macyauski, David Campbell and Judy Graff

STAFF PRESENT: Janet Chambers, Recording Secretary

ALSO PRESENT: Patrick Hudson, Planner; Allan Overhiser, Supervisor, Dian & Tom Ostermann, Karen & Cary Shindeldecker, and Kevon Martis

1. Call to order and review of agenda

The meeting was called to order at 6:06 PM. There were no changes to the agenda.

2. Reading of meeting noticed in the South Haven Tribune on February 3, 2013 Zoning Ordinance Amendments involving the restatement of Section PP, Wind Energy Conversion Systems in Chapter 1S, Special Land Use

This is a continuation of the 3/6/13 Public Hearing. Currently in the Zoning Ordinance Wind Mills are allowed in 5 different districts. The existing ordinances are too restrictive to allow the current technology of Wind Farms. As a group the PC decided, if enacted, the new ordinances would allow WECS only in the AG district. Taking Wind Mills out of all districts other than AG will also require a notice in the paper and recommendation to the Board.

3. Public Correspondence none

4. Public Hearing on Proposed Amendment for Section PP

Graff noted that WECS is currently allowed in AG (Agricultural), RR (Rural Residential), C1 (Commercial 1), C2 (Commercial 2) and I (Industrial) districts. The township has limited space in C1, C2 and I, so they would not work in those districts. There would be room in RR, and additional AG, west of 196. Graff emphasized that it needs to be determined and made very clear to the Board, the recommended changes on a map.

Chairman Barker added it has been stated that WECS would only be located east of 196, but it is possible that with buy-in, there might be room, depending on setbacks, west of 196.

Hudson agreed with Graff and expanded on her comment. Removal of wind mills from all districts other than AG needs to be added to the next Notice of Public Hearing printed in the paper, along with the notice of continuation of this meeting.

Fleming and Macyauski questioned whether there are any Rural Residential areas where people might want to participate west of the interstate.

Graff reiterated that it must be made clear on a map, which sections the PC intends to allow WECS. Noting that there is RR and AG west of the interstate.

Macyauski noted that in the Master Plan Future Land Use Map, AG is only on the east side of 196. He questioned if it should be based this on the Zoning Ordinances or the Master Plan.

Hudson answered it must be based on the Zoning Ordinance because the Master Plan is simply a guide for the future.

Campbell recalled that last Wednesday it was stated that there could be an overlay within AG keeping WECS east of 196. Or, if all AG is included, then setbacks would be in place to prohibit WECS west of the freeway. He recalled maps showing buffer zones around districts other than AG, which would protect the area west of 196 from having WECS.

Hudson replied that the maps were just to help the PC visualize what was being considered.

Hudson added that if you want to say WECS is allowed only east of the interstate, than just say east of the interstate.

Liepe suggested that with the setbacks that have been considered, it would not be allowed west of the interstate, unless people combine land. Then WECS could go in west of the interstate.

Chairman Barker agreed, but cautioned against singling out some AG owners (west of interstate) because it could become a spot zoning issue.

Fleming stated that he understood most of the towers would be east of the expressway, but did not take that to mean there could not be any west of the interstate. Raaks or Hamlins are on the west side and may have room and may like to be included.

Liepe suggested letting the market drive it. They will need to be near power lines, which are not available west of the interstate.

Campbell stated that the fiduciary responsibility is to the public, the Township, and Master Plan, not just one group. He added allowing in all AG districts would be opening the township up for problems. If WECS is anywhere, there should be buffer maps keeping WECS away from densely populated areas. More needs to be considered than just the right of the farmers. Campbell stated that he would not like to see WECS allowed west of 196.

Fleming noted that if health and safety issues are the concern, they would be the same on both sides of the freeway.

Campbell replied that because of the population west of 196, allowing WECS in that area would be a problem. He added that just because there is controversy over studies on WECS, does not mean they are not valid. There are European studies that should be taken into consideration.

Chairman Barker questioned what would happen if it is allowed only east of 196, and there is a farmer or group of farmers west of 196 who are interested. Would they have the right to go to the

ZBA for a variance? He noted PC would just be making recommendation to the board. The board can change it if they want.

Hudson explained that if a dimensional restriction is what prevents them from being west of 196, and someone asks for a dimensional variance in an AG district west of freeway, it could be granted. If you wanted to be sure there are no WECS west of the freeway, you would have to create an overlay district.

Chairman Barker cautioned about that being viewed as spot zoning.

Fleming stated if health and safety is the issue, it should be looked at first to see what is needed to protect the health and safety of all residence, east and west of the interstate.

Macyauski added that many farmers have sold road frontage around the perimeter of their land and farm the middle, therefore there are many homes in the AG district.

Chairman Barker questioned whether there is a way for farmers to appeal. The freeway separates the township greatly. Why put the township in a situation where there would not be tight control over it.

Campbell stated the Master Plan (which eliminates AG west of freeway) should be a good reason for denying an appeal from someone west of 196.

Liepe suggested that it be included in all AG district. If there is a farmer west of 196 and they form a group, they can bring it in for SLU, and would not have to be allowed.

Macyauski stated that if you got enough people together, why single them out.

Campbell stated that it is a health and welfare issue. I'm not sure about the 1,250' setback deals with health and safety enough.

Macyauski stated if a buffer zone is set for health and safety to protect residence west of the freeway, then the same buffer should exist for residence east of the freeway.

Hudson stated that with SLU required within AG districts, and if setbacks didn't prohibit WECS west of 196, there would be 2 public hearings where the public could have a chance for input. One public hearing with the ZBA for a dimensional variance, then after a site plan review, there would be a second public hearing for a Special Land Use.

Chairman Barker questioned what areas would be affected if there was a 2,000 ft. buffer next to the RR districts.

Discussion ensued about setbacks from participating people and non-participating people, and buffers from RR districts or all districts other than AG.

Fleming again questioned why the health and safety would be different for residence in different zoning districts.

Hudson commented that expectations are different for those living in an AG district. You actually have to sign something saying that you are aware you are in an AG district and there would be crop dusting, pesticides, etc.

Graff noted that many people who live in Casco are not from AG districts and not familiar with the AG atmosphere.

In effort to move the discussion along, Chairman Barker stated the PC needs to remove wind mills from SLU from all districts other than AG. Then figure out the best way to define what areas within AG they will be allowed.

Hudson said that page 2, Locational Standard needs to be specifically defined from LR or RR. If you put a setback buffer from RR or LR, and someone requests to put a windmill in RR, you would be prohibiting that. You would be prohibiting a lot of AG area.

Macyauski questioned why there might be a variance. The ZBA does not give variances from SLU.

Hudson answered that the only reason a variance would be granted is if the property had no other value besides WECS.

Macyauski asked a clarifying question about setbacks from participating vs. non participating residence. If I sign off, the tower could be 1.1 x the height of the tower (550') from my house. If I don't sign off the tower could be 1,250 from my house. If I live in a residential area, and there is a 2,000' buffer, the tower would always be 3,250' from my house. If I get people participating, I can put it right on the 2,000 ft. setback.

Hudson did not agree with the 3,250' setback. Chairman Barker understood what Macyauski was saying. If setbacks start from the 2,000 ft. buffer line, there would be the 2,000' and the 1,250' setback.

Fleming again stated that the health and safety needs to be determined first.

Chairman Barker said he understood it the same way Macyauski did. You have a 2,000 ft. buffer, then you talk the 1250 setback from the buffer line.

Chairman Barker commented if there is a 2,000' buffer from LR and RR, should it include the separate residential area surrounded by AG, and the dark green (PUD) area show on the map. This would back up Campbell's concerns about protecting the residential areas. This would eliminate an area of AG, but they could go to the ZBA and make their case.

Hudson stated that the only case they could make is if there property is not useful for any other purpose.

Macyauski again questioned why there should be any difference in the health and safety of residence east or west of the interstate.

Hudson stated that, looking at it that way, it could be allowed everywhere.

Campbell added, " Or prohibit it everywhere".

Hudson replied that you cannot legally prohibit it everywhere.

Macyauski commented on the fact that sound levels could not exceed 55 decibels, even for participating residence.

Chairman Barker suggested using the 2,000 ft. buffer and remove the use of WECS in districts other than AG, it could be recommended to the board, and they can make changes if they want.

Macyauski said if a buffer is created in the AG district for the health and safety of people outside of the AG district, but you can put a WECS 1,250 from my house, that's not fair.

Hudson replied Life is not fair. The township has to balance rights, and consider how many people are affected in which locations. That is why you don't put a dynamite factory in a residential district. But, you do have to allow for them somehow. You have to decide where the fewest people are going to be affected. The fewest number of people are in the AG district.

Liepe stated the farmers have requested WECS, and the lakeshore people don't want it.

Macyauski questioned if it is ok to kill 100 people to save 200. He went on to say that he is representing people who don't know what is going on.

Chairman Barker said the PC represents the entire township.

Campbell stated that, in his opinion, the Master Plan is a legitimate way of stating it (no WECS west of 196)

Liepe said that she and her neighbors don't object. People look at things differently. She went on to say there has been a lot of time spent on this and the facts have been spelled out. The time has come to move on this.

Chairman Barker said that anyone within that 2,000' buffer could go for a variance and site their reasoning. Chunks of districts are totally different. The idea is to make sure everyone has the opportunity. Right now it seems logical to air on the side of caution.

Campbell added that a group that had a court case against Mason County, and the court ruled on the side of the County.

Keven Martis, 101 E Adrian St., Blissfield, MI 492289, stated that CARRE was the group funding the case against the county. He stated that according to the Mason County Zoning Ordinances, all SLU

conditions are to be met prior to the Planning Commission's approval of the SLU. CARRE did not believe that all of the conditions of the SLU were met, considering the loss of property value and health and welfare of neighbors. The court determined that if the PC passes approval of something can't be arbitrarily changed with more than a Scintilla of evidence, but less than preponderance. Therefore, in Martis' opinion, the court did not care that ALL conditions of the SLU were not met.

Martis gave Commissioners copies of Health & Safety Instructions for Wind Farm workers. It includes an evacuation area in case of emergency, which overlaps the property of non-participating properties. (attachment #1)

Hudson said he would add under Design Standards "The WESC setback starts 2,000 from any residential district.

Graff questioned if that would be considered "taking" of property.

Hudson answered that to be "taking", they would have to prove there was no other use for the property.

Liepe said that there could be blueberry farmers that might be interested.

Chairman Barker said to move on to other parts of the ordinance, and the board will also have to wrestle with this as well.

Fleming expressed concern about the RR district on the map. The lines were drawn at a confusing meeting. Some of the yellow (RR) is where there are big plats of land.

Chairman Barker said he would rather move on and the board can change it if they want.

Campbell questioned why not go by the Master Plan. The Master Plan says the area is AG.

Chairman Barker said the current zoning is what the PC has to go by.

Fleming suggested just using the freeway as the line.

Hudson said it could be from 196 instead of a buffer from residential districts that are on the west side of the freeway.

Liepe said that using the freeway would free up a large area.

Kevin Martis stated that he has dealt with Wind Energy Zoning across the state. He suggested that the fairest way to handle this is to set a very large setback, and turn it back to the developer to get buy-in. The property owners would have to sign a waiver and would be compensated. This would keep the developers away from high density areas and would be up to the property owner to participate. Require a waiver for anything within 40 times height of tower, and sound levels as high as 50 for participating, and 40 subject to waiver. This is the fairest way to give everyone input.

Macyauski thanked Martis for his input and said he thought it was a very good solution. There could be a 3,250' setback from any non-participating residence. It would be the people's choice if they wanted to consent to having it closer.

Chairman Barker said you have residential and AG.

Macyauski said he agreed 3,250 from anyone who doesn't buy in.

Fleming said because there are big areas that could have windmills, why not at least save the ZBA a little work.

Chairman Barker said to move on, just use 2,000 ft. setback for now and come back to it later.

The following changes were decided:

- Under 6 Design Standards will be a new "a. Location Standard"
- 6a will become 6b Height making Setbacks change from 6b to 6c Setbacks
- 6a(2) loses the number and gets folded into previous text
- 6b(1) will be moved under Setbacks adding the words **fall distance**, changing 1-5 to 2-6
- The existing #6 concerning a sound barrier will be removed
- Page 5 i. Noise Emissions (1) the words **within 2,000'** will be removed from both the 5th and 10th line, and the word ambient will be replaced with **background level measured with L90 scale** in both the 6th and 12th lines.

Campbell asked if someone was going to make contact with the South Haven Airport. Hudson said it is up to the State to contact the airport.

Graff felt the setbacks should be from the property lines and not from the dwellings. Houses can move, or be added on to, property sold, etc.

Macyauski agreed you shouldn't be able to take away a person's options of what to do with their own property or where their children play.

Campbell asked for clarification where the 1,250 came from

Liepe explained that 1,000 and 2,000 were considered and 1,250 is between that range.

Chairman Barker said that 2,000 is meant as a buffer for high density areas. There is a huge difference in the makeup of the districts.

Liepe said that first 2,000 was being considered, then we said from 1,000 to 2000, then we went to 1,500 being ½ way between. Then Chairman Barker said we needed to move on and to put 1,250 in there for now.

Macyauski asked if we came up with 1,250 because Barker was tired and wanted to move on. He said Liepe is saying her neighbors don't care. Campbell is saying 3,250' from residential. The AG district is

peppered with homes. The fairest way to do this is to let the people sign off if they want the wind turbines near them.

Cary Shindeldecker, 3514 W. Kistler Road, Ludington, MI, said he agreed with Graff, the measurement should be at the property line. Mason County had several complaints about the noise from a house 1830 to the nearest turbine, and that was from a County Commissioner.

Liepe Just because people don't object does not mean they don't care. If I sign a paper, I am saying I support this.

Hudson said we need to discuss what distance we want from any property line. What distance do we want to make it.

Macyauski said if we want to be fair and equitable, we should make it the same distance from any property line or they buy in.

Chairman Barker said right now we have 1,250 or they buy in.

Liepe said if we look at where these things would be, I don't believe there will be the issues you think there is going to be.

Macyauski said there won't be any issues at all if people sign off. Don't forget the little guy that borders the farms.

Supervisor Overhiser said there are so many small property owners, it would not work. A group of people came into the township hall together. He stated that they are not forgetting anyone.

Macyauski said just get buy in, big and small.

Martis said there is a variable in the amount of sound from different types of turbines. There is a chance there may not be approval because of airport aviation. He warned the PC to be careful with ambient plus numbers. Wind developers can inflate the ambient noise levels.

Cary Shindeldecker said that the State of Michigan recommended 40 decibels at the property line. As Martis said, ambient noise can be highly skewed. Infrequent things like cars, dog barking, gun shot, etc can raise the background level. An adequate definition of ambient noise would be a quiet background at night taken by an acoustics specialist. Sound level setbacks of 40 decibels will push turbines 2,600 to 3,000 ft. Shindeldecker grew up in farm areas. As tractors come and go they would close windows. His grandparents had a beef farm. He is familiar with the sounds and odors of farming and is ok with that. WECS are not rural things they are putting close to homes.

Supervisor Overhiser stated that if you have such strict noise levels, he does not agree with it being measured from the property line. If you do that, you are saying no to wind turbines. They can't comply with that by today's standards. A lot of the reports are made with older technology. If they are going to put a 2,000 ft setback, from non-participating neighbors, turbines will not get sited here. If technology changes maybe they will come someday. It is very difficult to read these things. There

are no conclusions that fit everybody. Overhiser said it has been suggested that he has a conflict of interest in this. With his proximity to the airport they may not be allowed. He was there to represent the land owners who came in. He added if the setback is 2,000', then do away with the 2,000' zone buffer.

Chairman Barker said that the logic is residential areas have smaller lots.

Chairman Barker asked about #6 on page 3 about sound barriers.

Hudson replied that in Germany there is a type of sound barrier that could be put up.

Chairman Barker said to take out #6.

Hudson said that G on page 4, Paint and Lighting is mainly meant for testing turbines because turbines over 200' are regulated by Federal Aeronautical rules.

Chairman Barker said there will be a bond for noise level testing and other costs.

Graff said that it should be right up front that the township will hire, a requestors expense, a third party expert to oversee this and the township will not send one penny because WECS should not be putting the township into financial problems.

Campbell said he wanted it to be noted that he completely disagrees with the amount listed on page 6 #5.

Chairman Barker agreed that it should be up front, possibly PP #1, the intent or the ordinance is that it does not cost the township. Decommission alone could be 11,000,000.

Graff stated that a wind expert, paid for by the utility, should be available to represent the township from the beginning to the end of the project, and while operational. This would cover sound measurements, complaint resolutions, etc. This will be stated as "Shall" not may.

Chairman Barker stated that he agrees with Campbell that the number on page 6 #5 is way too small an amount. But, he has no idea what the amount should be.

Graff suggested that the ordinance says "an amount to be defined and agreed upon during SPR".

Campbell suggested the audience be given time to speak before end of meeting

5. Resolutions requiring Planning Commission action; vote on recommendation to be given to Township Board. None at this time. Meeting will be continued at a later date.

6. Public Comment:

Cary and Karen Shineldecker live 1,139' from tower #20. There are 5 towers within ½ mile of their home; 13 towers within 1 mile and 26 within 1.5 miles. He showed a photo of his house with the windmill towering over it along with a letter explaining his reality of living next to a Wind Farm

(attachment #2). Their home is completely surrounded by towers and dominates the view out of every window. He said that Macyauski was looking out for the people of Casco Township in his statements tonight. He complimented the PC for the time and thought they have put into the WECS Ordinance. He said the PC is doing its due diligence, considering both people who are participating and those who are not. He said that since the towers started operation on Thanksgiving of 2012, it has negatively affected his health and every aspect of his life and lives of many of his friends and family.

In the past three months since the towers began operation, his home has been filled with high and low frequency noises. They not only hear the noises, but feel them through their bodies while inside their home. They feel the pulsing in their eyes, head, ears and chest and are constant and physiologically disturbing. Sleep deprivation is constant; headaches, blurred vision, migraines, ear pressure and anxiety are constant.

Neighbors, both participating and non-participating, are having similar symptoms. Some have moved, many are trying to sell their homes, or just abandon their homes.

Shineldecker bought a home in a rural area, farming all the way around. A pig farm is a mile northeast, a neighbor down the road has Holsteins. He grew up in an agricultural district. When he moved there it did not bother them. When wind turbines came. Leases were bought up, it was a done deal. There is 240 acres of AG and forestry property. He would have appreciated someone looking out for his interest. Noise levels should be taken at property lines. If he owns 80 acres and his son wants to build a home at the other end of his property, he should not have to live with the disturbance of the wind towers. He bought his property with the expectation that he could use all of it. His property value has been significantly affected. His house has been for sale, but nobody wants to buy a house in the middle of a wind farm.

A flicker study was done and determined that not more than 10 hours of flicker per year would be on non participating homes. 6.8 hours is what they were told, and 48.8 hours so far is what they have already had.

Turbine access roads should be kept away from non participating homes. From 3/8 of mile to neighbor another ¼ mile put in access in front of their house. During the construction phase dishes rattled, pipes shook, a semi ran over his sprinkler. Move access road away from non participating neighbors.

There should be a property value guarantee. Because of the disturbance from the WECS, Schliebecker put his house up for sale. For 2 years only one family looked at it twice and got no offers. Consumers is getting 175,000 hosting properties, county is making money, energy company getting grants and we can't sell our property. He feels they can't live there, but also has a sense of guilt to sell to someone who will find they can't live with it. Shineldecker said there should be a property value guarantee by the utility.

Shineldecker commented on discussion Casco PC had about charging someone for the cost of testing sound levels. Many people are on fixed incomes through township, they live from paycheck to paycheck. A complaint system that is a financial burden on them will keep them from complaining.

That was originally in Mason County Ordinance, but was taken out. Mary Riley, Building inspector, would tell you about that. He suggested the PC ask her about the complaint resolution system. You would want to know about people having problems. There are gag clauses for people who buy in. This makes others look like nagging complainers. The Gag order is on page 2 of Shineldecker's letter.

The ice detection system does not always work. Turbines have run all night with ¾" pieces of ice on them. Consumer's energy said they would set up an operational base to run, then said they would contract to outland services, now they run out of North Carolina. People in North Carolina have no idea when Ice occurs in Michigan. There is only one ice detection system, and should be two so you could compare to know if they are reading the same. With a redundant system they could have seen there was a problem. Turbines build up ice and creates a rough surface which is not aeronautically friendly. The turbines roar with unbalanced, rough surfaces. They have had 5 icing events since November. When ice built up on the tip of blades at 140 miles an hour, it can throw great distance or cause imbalance. Turbine can blow apart. Just this week it started to get loud with ice and did not shut off for an hour. Mason County just asked for a plan to have ice detectors tested, and redundant instruments, insult testing (test to failure).

Shineldecker said the US fish and wildlife Service has requested they not be within 3 miles of the lakeshore. A video is on u-tube showing Consumer's energy shadow flicker. The ordinance says 10 hours of flicker per year is acceptable. They are already way over that limit after 4 months. Shineldecker gave the PC a copy of the Casco Ordinance draft, with suggested changes he would make based on the Mason County experience. (attachment #3)

Living near wind turbines has greatly affected their ability to sleep, headaches and is not tolerable. After living with the towers, he recommended the following as a minimum to protect the residence:

- 35 dBA night time, measured at non-participating property lines
- Significant low frequency limits in the range to .25hz
- Background sound assessments taken at night without including sounds such as dogs barking, traffic, tractors, gunshots that would skew the levels taken by an acoustics professional
- Zero shadow flicker on non-participation property, at least 5400' away
- Turbine access roads should be a minimum of 450' from a non-participating property line, as he has one directly in front of his house.
- There should be a property value guarantee for non-participating property owners
- A complaint process that does not financially impact someone or allow gag clauses
- Ice detection systems that are tested with redundant systems that does not allow turbines to run with ice
- Bird and bat protection and documentation of incidents
- Setbacks of 1.5 miles from all non-participating properties

Karen Shineldecker was asked to tell about her experience. She started having headaches and ear pressure. She found herself going around her house trying to pop her ears, her teeth hurt. When she leaves the house early in the morning, she starts to feel better about noon with ibuprofen. Her 4 front teeth were loose; her dentist said it was because of stress. She feels a panic feeling in her heart.