**MEETING MINUTES**

**PINE TOWNSHIP PLANNING COMMISSION**

January 24, 2022

A meeting of the Pine Township Planning Commission held at the Pine Township Hall, 7900 W. 2nd Street, Stanton, Michigan 48888

1. **Call to Order**

A meeting called to order by Vice-Chairman Gary Christensen at 5:00 p.m., followed by the Pledge of Allegiance

 **Attendees**

Attendees include: Bob Behrenwald, Gary Christensen, Jamie Gorby,

 Dan Main. Also Present: Leslie Abdoo, Foster Swift Collins & Smith, PC (approximately 16 members of the public in attendance)

 **Absent:** Chris Bell, Scott Millard, and Tyler Nadeau

1. **Approval of Agenda**

Moved by Dan Main; supported by Bob Behrenwald. All were in favor

**MOTION PASSED**

1. **Approval of Minutes**
2. January 10, 2022

Moved by Jamie Gorby; supported by Dan Main. All were in favor

**MOTION PASSED**

1. **Old Business**

 None

1. **New Business**
2. Continue Wind Ordinance Draft

Gary Christensen looked to L. Abdoo for updated changes from the 1/10/22 meeting. L. Abdoo circulated revised bylaws from 1/10/22 meeting in which the Commission directed L. Abdoo to draft language to address when a quorum may not be achieved due to conflicts. Page 3, above paragraph 5, a new paragraph specifies:

*4.* *If a majority of members are disqualified by reason of a conflict of interest and a quorum does not otherwise exist for the purpose of transacting business of the Planning Commission, then all members will participate in the matter, despite any conflicts of interest.*

L. Abdoo indicated the only redline change in this draft, Page 11, 5 (a) wherein a motion was made, seconded, and voted to decrease setback from 2,640’ or 5 Xs tip height of turbine, whichever is greater; to 1,750’ or 3 Xs tip height of each turbine, whichever is greater. Additionally, a decrease in setback from the nearest body of water from 2.5 miles to 1.5.

No questions were raised regarding these changes.

L. Abdoo indicated a change on Page 16, paragraph three, relating to decommissioning. Instead of requiring all underground wiring removed upon decommissioning, a change was made to read:

*3. All underground wiring for the removed turbine or components must be cut off at a depth of ten (10) below grade and land restored with topsoil upon decommissioning.*

 This is consistent with the changes made earlier in the ordinance regarding depth of underground wiring at 10’ rather than 20’ originally, due to concerns related to damage that may occur upon decommissioning.

L. Abdoo stated those were the only changes requested to be made from the January 10, 2022, meeting.

Jamie Gorby and Bob Behrenwald indicated they had no questions or comments regarding changes.

Gary Christensen had concerns voiced by commissioners at previous meetings regarding the ordinance being too restrictive or not restrictive enough. Christensen stated: We are here to protect Pine Township. Christensen stated he conducted research on other ordinances in different townships and indicated that Pine Township’s figures are right in the middle of those numbers and cannot be considered too restrictive. Regarding height, Christensen indicated that, while there may not be turbines in the state of Michigan that are 400’, they are available, and not utilizing available technology isn’t the fault of Pine Township. Christensen indicated that for every sound study referenced, there is another that states the opposite. Christensen addressed an audience member’s disappointment in Pine PC not having gone on the Apex tour to see the turbines and indicated that Pine’s topography is not the same. Short of bringing a turbine to Pine Township and listening to it, it will not be the same. Christensen also stated that an Apex tour may run afoul of the Bylaws of Pine Township in that Pine has an “ex parte” clause that prohibits any such tour. Christensen also discussed private property rights and indicated property owners have the right to do what they wish with their property within the confines of zoning laws. Christensen feels the draft of the wind ordinance is a good one. Christensen also voiced concern regarding lease language having to do with wildlife and deforestation and stated he does not feel they can make any other changes to improve upon this draft ordinance.

Jamie Gorby inquired of L. Abdoo what next steps are in this process. L. Abdoo stated next process is to schedule a formal public hearing and indicated that the PC can do that at the next meeting, February 14, or March, depending on newspaper publication. The public hearing will allow public comment formally tailored to the wind ordinance. Following the public hearing, the PC may make changes to the ordinance if they feel it is necessary. Otherwise, next step is making a formal recommendation that the board approve the ordinance. L. Abdoo will prepare a resolution in advance of that meeting for the PC to present to the board. The specific motion will be to recommend approval to the board. L. Abdoo advised, depending on when the newspaper publishes, public hearing could be held on February 14.

Jamie Gorby referenced a discussion had at the 1/10/22 board meeting wherein reference was made to cancelling the February 14 special PC meeting if the PC felt as though they had completed the wind draft. Gorby inquired if February 14th could be the public hearing. Christensen indicated two other special use items were scheduled for the 14th. L. Abdoo indicated, as long as publication is accomplished by the 30th of January, the public hearing could be scheduled for February 14th. At the February 14th Public Hearing, if the PC is satisfied with the ordinance, they may make a recommendation to the board for consideration. L. Abdoo indicated the draft ordinance must go to the Montcalm County PC for advisory review only. The County has 30 days to respond. After the expiration of 30 days, the board can adopt the ordinance. The board may consider it before the 30 days expire but may not formally adopt the ordinance until the expiration of 30 days.

Gary Christensen questioned why the County is involved. L. Abdoo stated it is part of the process within the Zoning Enabling Act. The statute requires that only township planning commissions must send copies of zoning text amendments to county or regional planning commissions for advisory review of comment, unless the County Board of Commissioners has adopted a resolution waiving the authority. L. Abdoo wants to ensure that none of the processes are skipped.

Gary Christensen handed a sheet of paper to L. Abdoo for interpretation. L. Abdoo advised that the township is not subject to the county zoning ordinance because Pine has a zoning ordinance. The township zoning trumps the county ordinance. L. Abdoo referred to a section of the statute that required zoning text amendments be sent to the County PC for advisory review. L. Abdoo advised the Pine Township Board does not have to take any of the County’s comments into consideration. The Township may adopt regardless of County input.

Christensen commented that the County had bad things to say about the Sidney ordinance, and L. Abdoo restated that it is only advisory review, and the township does not have to make any changes. Christensen asked L. Abdoo if she would oversee the draft ordinance from this point forward, and L. Abdoo advised she would prepare the appropriate paperwork.

Jamie Gorby asked for direction regarding a motion to approve the draft as written among PC members. L. Abdoo advised and gave direction to Gorby regarding language referencing a public hearing.

Jamie Gorby moved to approve the draft ordinance as written and schedule public hearing for the 14th of February; supported by Bob Behrenwald. “All in favor?” Gary Christensen, “I,” Jamie Gorby, “I,” Dan Main “I.” “All opposed?” Bob Behrenwald, “I.”

**MOTION PASSED**

Gary Christensen asked Bob Behrenwald what he did not like about the ordinance. Behrenwald stated he was not in favor of the decreased setbacks and always thought this should be an industrial project. Discussion had among Christensen and Behrenwald. L. Abdoo referred to the zoning districts. Behrenwald does not think it should be light industrial and would like to see strictly an industrial district established. Discussion ensued between L. Abdoo and Behrenwald. Behrenwald referenced industrial being the other side of Briggs Rd -- 91 and the other side of Briggs Rd. L. Abdoo advised, unless the ordinance is outdated, there is no industrial district, only light industrial. Behrenwald referenced a map. Christensen directed Behrenwald to Chapter 4 and indicated there is no plain “industrial” district. Behrenwald stated there should be one if they are going to build an industrial product. Behrenwald referenced the sawmills and the changes made to accommodate sawmills. Behrenwald wants to see an industrial district added. L. Abdoo advised Behrenwald of the process. Behrenwald was adamant in his view that these (turbines) are not light industrial or commercial.

Christensen suggested we table the vote, and L. Abdoo advised it was a three to one vote and the motion passed. Discussion had if there was a quorum. L. Abdoo clarified there was a quorum of the people present and the motion passed. Jamie Gorby stated there was a motion made, supported, and encouraged PC to move forward. L. Abdoo informed Behrenwald that there will be a public hearing. If at the next meeting, after the public hearing, the PC wants to make additional changes before board approval, the PC may do so. L. Abdoo advised that creating an industrial district would require massive revision to Pine’s zoning ordinance.

Gary Christensen moved the PC into the public comment phase. Jamie Gorby announced she made copies of the new “public comment policy” and gestured that the copies are located at the front table.

(Public comment began at 5:29 p.m.)

Judy Graham, 2268 Lake Shore Drive, Trufant. Stated that February 14 at five o’clock is early and suggested a seven o’clock start time on a date other than when a board meeting is scheduled at seven o’clock to accommodate adequate time for comment at the public hearing.

Gary Christensen confirmed with L. Abdoo what will take place on February 14th. L. Abdoo advised that it will be a regular PC meeting with the addition of public comment regarding the draft wind ordinance.

Jamie Gorby indicated the PC has followed the survey, listened to public comment continuously, and feels that residents will feel good about it (the wind ordinance). Gorby would like to move forward with the Feb 14 public hearing.

Gary Christensen inquired of L. Abdoo if they have a quorum. L. Abdoo advised that it is a quorum of the members present.

Behrenwald and Christensen discussed the two special uses scheduled for February 14th. Discussion had among PC and L. Abdoo regarding time constraints on February 14th. L. Abdoo suggested holding the public hearing at a different location and indicated meetings could be held at different locations simultaneously.

Dan Main inquired, if public hearing is held on February 14th, would Tyler Nadeau present the draft to the board at the February 14th board meeting or wait for 30 days for County review. L. Abdoo advised Nadeau can present it at the February 14th meeting, but the board may not adopt until after the 30-day review. Discussion had among PC members. Main referenced the possibility of a joint meeting. Behrenwald indicated that they have never had a joint meeting within his tenure. Jamie Gorby indicated Nadeau felt confident in presenting to the board. L. Abdoo indicated the board may take questions of the PC members in attendance at the board meeting.

Behrenwald indicated special use permits only last, at most, 15 minutes each. Discussion had between Christensen and Behrenwald regarding sawmill versus gravel pit.

Terry Crawford referenced the special use for sawmill was granted at the PC meeting had at the Sportsman’s Club. Behrenwald indicated that it would not take long.

Leslie Rydahl, Pine Township, indicated more time will be needed to accommodate the public hearing. L. Abdoo indicated that the public hearing is in addition to the public comment at the regular PC meeting held that evening. L. Abdoo suggested to advise public that public comment at this PC meeting is strictly related to PC business and not to address the draft wind ordinance until the public hearing on wind later in the meeting. L. Abdoo indicated that, if the regular PC meeting or comment runs long, they can announce that the public hearing will be held on an alternate date, but that notice would have to be republished in the newspaper. L. Abdoo recommends holding the public hearing on a night where there is no other township business conducted.

Robert Scott stated Pine Twp. is only the second township to adopt amendments to the wind ordinance and further indicated the township hall most likely will not accommodate the number of people. Gorby concurred and will contact the Sportsman’s Club to seek availability.

Vinny Trierweiler offered the Wildflower Schoolhouse in Trufant for the public hearing. L. Abdoo quickly researched if public hearings are required to be held within the township. L. Abdoo later indicated that the Open Meetings Act does not require public hearings be held within the township, but within a reasonable distance from the public with which it serves. Discussion ensued among PC members. Gorby will schedule the public hearing.

Discussion had regarding publication days. Brandon Schreur from The Daily News indicated The Daily News publishes six days a week, with the exclusion of Sunday.

Dave Bean, Pine Twp., following up on discussion from last meeting regarding Zoning Board of Appeals. Bean sought clarification regarding setbacks and inquired if ZBA can change the ordinance for a particular area or setbacks in general. Bean has concerns with waivers and long-term effects on sales of property and reduced property values as the result of recorded waivers with the Register of Deeds and impact on property tax revenue to the township. Bean intends to educate himself on the role of ZBA and their authority regrading turbines, waivers, and reduction in property tax revenue.

Gary Christensen indicated that the ZBA may have more to do with the actual siting of turbines, not height or sound.

Bob Behrenwald indicated that the ZBA can grant variances.

L. Abdoo indicated variances require specific standards and it is very difficult to meet all the categories and requirements in this type of situation.

Dan Main inquired if waivers can be limited. For instance, sound waiver can only be increased or decreased within certain parameters. L. Abdoo indicated that parameters could be imposed in waiver language.

Dave Bean shares concern for long-term effects of waivers.

Robert Scott, Sidney Township, indicated the PC has done a great job. He does not agree with everything the PC has done but agrees with Vice Chairman that the PC has done a great job protecting its Township. Robert Scott referenced Dave Bean’s concerns and stated L. Abdoo is correct that the ZBA, when following the standards, probably cannot grant variances. However, the ZBA does not always follow the law and they often do what they think they ought to do. Having to go through an appeal of the ZBA can be a very expensive process. One alternative is to state in the ordinance that this is not subject to a ZBA action. State they may not take an appeal to the ZBA in the ordinance. He believes the Zoning Enabling Act allows that. Consider doing that if there are concerns that the ZBA would be changing things more than the PC thinks is appropriate and would defer to L. Abdoo.

Robert Scott stated that the County has very pro-wind people sitting on the board, and they had very negative things to say about the Sidney ordinance. The County did not even tell the Sidney people they were reviewing the ordinance. Sidney people were notified from a third party. Do not be surprised if they say terrible things about the ordinance. Recommends ignoring County comments.

Gary Christensen inquired how to write in language to prohibit appeal to ZBA.

Robert Scott indicated that the Zoning Enabling Act speaks to a provision in special use permits that prohibits appeal to ZBA.

Gary Christensen reviewed the bylaws, Page 3, (1)(a):

*When the appeal is of an administrative or other decision by Commission and the member of the Commission sits both on the Commission and Zoning Board of Appeals.*

Christensen asked if this was an issue for Dan Main. L. Abdoo said, if a decision on a special land use was appealed to the ZBA, the member that sat on the PC on the decision, that also sits on the ZBA, should not vote on the decision at the ZBA level because they have already decided the issue at the PC. That is for administrative decision by the planning commission, such as a special land use permit. The PC does not consider variances. Variances are only for the ZBA. If a developer wants to construct a windfarm but needs a variance from setback as to a particular property, and they submit application for special land use permit request, the township can deny because it is non-compliant with zoning ordinance. They first need a variance from the ZBA. The ZBA makes the decision in advance of the special land use permit process. L. Abdoo gave examples of ZBA and special land use scenarios.

Main asked if he would have to recuse from special land use permitting. L. Abdoo advised he would not have to recuse because it is deciding a different issue. L. Abdoo stated, if a decision of the PC were appealed to the ZBA, Main could not decide that same issue twice.

Gary Christensen asked if there was further public comment

Wendie Switala, Douglass Township, inquired as to height and sound proposed in draft ordinance.

Gary Christensen stated height is 350’ and sound is 40.

Wendie Switala asked if that was Lmax.

Gary Christensen referenced an article written by a reporter from New York last July regarding turbines in Carson City.

*I parked my car at the edge of a field, about 500 feet from a turbine, got out, and sat on the hood. At first, I thought it sounded like a hair dryer on the high setting two rooms over – a noise that might require you to turn up the volume on the TV, but a noise you would almost certainly get used to. The longer I sat there thinking about the humming gears, though, the more I was sure I detected subtle changes in pitch and intensity. The noise started to sound more like a plane landing, or taking off, or somehow doing both at the same time, on and on. It sounded like an endless transition.*

Of course, that is one person’s view. Unless there is one sitting here, we do not know what it will sound like here. It is just a guess.

Any further public comments?

(No response)

(Public comment concluded at 5:59 p.m.)

Jamie Gorby moved to adjourn; Bob Behrenwald supported. All were in favor.

MOTION PASSED

(Applause)

Minutes submitted by:

Leslie Rydahl, Recording Secretary

Pine Township Planning Commission

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Recording Secretary Date of Approval