

CHARTER TOWNSHIP OF MONITOR
REGULAR PLANNING COMMISSION MEETING
April 3, 2018

The meeting was called to order by Chairman J. Bellor at 7:00 p.m.

The Pledge of Allegiance was recited by all present.

Members present: J. Bellor, R. Campbell, D. Darland, J. Frank, C. Hoyle, T. Miller, B. Reder
Members absent: None
Also present: R. Sheppard, Planning Attorney; P. Lippens, Planner
Others present: Kenneth M. Malkin, Township Supervisor
Public present: See Sign-In Sheet

Motion by B. Reder seconded by T. Miller to adopt the agenda authorizing the addition of scheduling a Special Use Hearing with required publication on May 1, 2018 for Halla Mechatronics a North American subsidiary of the Halla Group located at 3933 Monitor Road if deemed necessary,
Motion carried.

Motion by C. Hoyle seconded by B. Reder to approve the minutes of the March 6, 2018 regular meeting as presented.
Motion carried.

Public Input

Chairman J. Bellor opened and closed public comment at 7:03 pm.

Gloria Byrne of 3706 W. Winfield, Saginaw Michigan commented on Section 3.32 Special Land Use Procedures which provides for the notification of residents within a 300' foot radius of the application. As this procedure relates to a Wind Development, considering the size, scope and visual impact of the wind towers, she questioned if the 300' feet notification is enough of a notice to give to the surrounding residents. She would like the Planning Commission to consider increasing this notification in excess of 300' feet for the development of wind energy.

R. Sheppard stated that 300' foot notification requirement is pursuant to the State of Michigan statute and is calculated from the outer perimeter of the parcel itself. By default, this will encompass a very large area of notification.

G. Byrne asked if it was within the legal rights of Monitor Township to extend or increase the notification area.

R. Sheppard stated although it could be extended, due to the standard of how these notifications are conducted, he would not recommend it.

Public input was closed at 7:07 pm.

Items for Consideration – Revised Zoning Ordinance – Public Hearing

J. Bellor opened the Public Hearing for the Revised Charter Township of Monitor Zoning Ordinance at 7:07 pm.

P. Lippens provided an overview stating that the entire revision process has taken nearly two (2) years to audit, review and update Zoning Ordinance #52 which has been in effect since 2002. The amendments proposed are consistent with the 2013 Master Plan. This is the most substantial single re-write of the Zoning Ordinance for quite some time although it has been a common occurrence to review and amend from time to time. The major changes include variations to special land use requirements by district, consolidating and updating permitted uses by zoning district, accessory structures, fences, pool requirements, vehicle storage, signage requirements to be consistent with the most recent Supreme Court decision on municipality regulation, updating the language of various sections to bring current to state regulatory measures, a revision to the definition of front yard, and various modifications were made to definitions in general for future zoning changes.

R. Sheppard commented that these revisions bring our Zoning Ordinance up to the current standards of today.

J. Bellor stated that many of the changes added flexibility to the Ordinance.

P. Lippens notified the public that were in attendance for the public hearing on the zoning ordinance that this would be the time to voice concerns as the rest of the meeting will be dedicated to discussion.

Paul Funk, of DTE Energy provided comment on a letter dated April 3, 2018 which was provided to all of the Planning Commission members. In synopsis, the letter contains five comments; with the first two comments referring to the existing Wind Energy Ordinance which he feels is well-written. He provided that in his opinion there would only be two suggestions to the current text, stating that in the definition of leased unit boundary the very first sentence the letter “a” should be omitted. It eliminates the possible misconception that two leased pieces of property would not have to have a setback between two leased pieces of property. The second comment on the existing ordinance would be on the decibel level, which is 55 dBA – they would recommend using the industry standard which is **Leq, for a period of one hour**. [Leq is the preferred method to describe sound levels that vary over time, resulting in a single decibel value which takes into account the total sound energy over the period of time of interest.] Not only is this recommended through the State of Michigan and Michigan State University, the manufacturer also utilizes this measurement when reporting noise level. These two small changes would represent good zoning for the safety, health and welfare of your community.

P. Funk made three comments on the revision. The proposed 200% setback for non-participant property lines he feels is unnecessary as the turbines are already required to be 1300 feet back from the county road. This would be creating a greater setback to an empty field. This is beyond the safety zone that any manufacturer requires for wind turbines. The second comment regarding the change to the noise decibels changing from 55 dBA to 45 dBA would essentially impose a greater setback on an empty field. It is not proven that noise levels adversely affect

anyone's health, safety or welfare. He feels that the 45 dBA makes sense to a properties residence. This would give a little better than a ¼ mile separation from where people currently live. The third and last comment involves the decommissioning and removal standards. DTE Energy does have a strong obligation for what gets removed and decommissioned, but says that most of what is written in our requirement would be in what is in the public right-of-way. He understands why we would require complete removal of what is in the road right-of-way, but from his stand point the rest of the decommissioning should only include all of the above ground. The landowners would make the decision of what else would be removed that is below 4' feet. Most of the farmers in other areas that are already doing re-powering are not taking out the collection line that is buried deeper as it further damages the farmer's field again. Lastly, P. Funk commented on the consideration of imposing a cash requirement on decommissioning. DTE Energy is a public entity which has rate payers. It would be very difficult for DTE Energy to justify to the State of Michigan that 12 to 15 million dollars, or whatever that number is, be held as a non-usable escrowed amount for thirty years. Cash or surety bonds have been used effectively in other communities and surety bonds can be easily managed to stay in effect.

In closing DTE Energy feels that the current ordinance is most preferable taking into consideration the two small revisions previously mentioned. DTE Energy is five to six years out from any development in the region. In the beginning phases they already have 25,000 acres of land commitment and hopes that Monitor Township passes an ordinance that allows these landowners to take action on their easements for their benefit.

J. Bellor mentioned that they have received written input from several residents that are in favor of wind developments.

Motion by B. Reder, seconded by T. Miller that all correspondence received regarding the wind ordinance be formally entered on the record.

Motion carried.

B. Reder offered his viewpoint regarding the cash deposit for decommissioning of wind turbines. Based on what he has recently learned about renewable energy developments, he understands that reconstruction and improving these developments is more likely than abandonment or decommissioning. He feels that a cash deposit is somewhat restrictive. A surety bond makes more sense.

Ken Malkin, Supervisor, is in receipt of the correspondence that P. Funk provided. He had identified the same two changes in the current ordinance that P. Funk pointed out and is favorable to these revisions. The suggested metric is also a more reasonable measure of sound. It is worthy to consider if the current ordinance is kept as written, after making the two technical changes, a surety bond would be acceptable. But if the additional revisions are made, the Township Board would have to develop a schedule and set the dollar amount. The amendments are not clear enough to allow the Board the discretion to set up a schedule of a combination of cash or surety bonds. It might be a reasonable compromise to require a cash bond on the first turbine and surety bonds on the remainder. In addition, there might be enough experience at that time to be satisfied with only requiring surety bonds. The Board would have some flexibility. We have a good work product already, and B. Reder makes a good point on the bonds.

C. Hoyle agrees with B. Reder and believes adding references to new technology and innovation be included. There should be valid options prior to decommissioning such as refurbishing the unit or bringing it up to current technology.

R. Campbell inquired as to how long the standard DTE Energy lease is with the property owner.

Rick Benson, of Atwell LLC. [representing DTE Energy] stated that in the past a lease was a perpetual agreement but currently it is a standard forty (40) year agreement with an option of an additional twenty (20) years, for a total of sixty (60) years. The estimated life-span of a turbine is twenty-five (25) to thirty (30) years.

R. Campbell agrees considering the costs of the project that it would be highly unlikely that DTE Energy would abandon a turbine or development based on this considerable investment and would use the latest technology to capitalize on upgrading installed units.

J. Frank recollects that there was a joint meeting between the Planning Commission and Township Board where as the consensus was to require a cash bond.

T. Miller feels there should be some concern for consistency regarding requiring cash to cash bonds. In addition, there is an argument to be made for surety bonds now. The current ordinance in effect is consistent with the State of Michigan and Michigan State University guidelines and should continue to be followed. He feels that the field trip was educational not only for him but others in attendance. For example clearly the soil base can be farmed over. He also was unaware that wind farms are consistent with PA116, which promotes the preservation of farmland. It appears to be a win-win situation to encourage wind development in our community. It provides tax advantages to the Township and income to the land owner and it certainly is necessary for the environment.

D. Darland reminded everyone that the tax benefit may not be available for too much longer as very shortly, for instance, all personal property held in Industrial Zoning District will become tax exempt due to past legislation that were passed with the State of Michigan. With that said, any tax benefit to the Township may not be available in the next few years.

P. Funk concurred adding that currently wind turbines and their supporting structures are taxed at 30%. He is unaware of what the future will bring but royalties to the land owners will continue.

K. Malkin believes J. Frank makes a good point and his recollection of the joint meeting is correct, but a majority of the Board members did attend the site visit and many opinions may have changed. K. Malkin will support whatever the Planning Commission chooses to do. K. Malkin recommends making the ordinance more flexible with regard to acceptance of surety bonds or cash bonds or a combination thereof; however, other than the two technical changes the current ordinance in place is well-drafted and offers sufficient protection.

R. Sheppard stated that adding the option of cash and/or bond is feasible as this would be considered only a slight modification and would not require another hearing or public re-

notification. He reminded everyone that there would need to be a process in place to keep track of the bond renewals.

T. Miller asked P. Funk if they have any current leases that have required cash or surety bond or a combination of both.

P. Funk confirmed that all of their leases are secured by surety bonds and DTE Energy does not do cash bonds.

T. Miller stated that with that statement, it would effectively end any wind investment in Monitor Township.

P. Funk feels that any comment from him on that matter would be withheld as it would be for the financial side of DTE Energy to decide if it is feasible to comply. He is not sure the State of Michigan would allow it and he has been told that no cash bonds have been executed thus far for any wind development in Michigan. In the beginning phases of a development, during the construction or maintenance of roads there may be a cash payment made that is held in an account with the difference returned upon completion of the project, but this differs from a cash bond. These types of payments are also made for site plan review of the project.

There was additional discussion regarding the consideration of granting flexibility in the requirement and the available terms of surety bonds.

K. Malkin offered comment regarding surety bonds and how they are effectively discharged or released. For bonds that are in effect for more than one year, a paid receipt is obtained when renewed as bonds do not necessarily expire. There are automatic termination provisions when premiums are not paid. Proper management is required to monitor the renewal of bonds.

J. Bellor called upon Scott Carmona of 5757 S. 2 Mile Road, who publically suggested there should be consideration for accepting an irrevocable letter of credit from a bank or other financial institution. He has had good success in business using this type of document to guarantee leases.

The consensus agreed to consider this as a desired viable option.

R. Sheppard suggested that DTE Energy lobby in Lansing to have the State of Michigan become the repository of the funds to decommission towers when required. This has been done effectively for oil and gas wells. Although a lengthy process, this can be done over and above the final wind energy ordinance that the Township agrees upon.

J. Frank went on record to comment with regard to the thirty (30) letters received. There is not one individual that signed the letter that lives near the proposed developments. They reside in the southern part of the Township.

T. Miller commented that regardless of where these residents live, they would have the same tax advantages and benefits afforded to them by having a wind development.

P. Lippens commented on the original verbiage stating that the type of requirement could be decided upon when approving a special land use based on the current or older language. The modified version could be amended to require a combination of cash, surety bond and/or irrevocable letter of credit from a bank or financial institution.

K. Malkin suggested further clarification pointing out two sections of the amended wind energy ordinance where it implies cash payment yet under 13(c) it requires a bond to be posted as opposed to cash.

R. Sheppard asked those present if there were any other areas of public concern with the revised zoning ordinance as a decision will need to be made to keep the current ordinance in effect, with minor changes, or consider the newly amended version.

Lee Koch of 2971 Carter, Auburn, Michigan (Beaver & Williams Township) spoke, wanting to commend the Planning Commission for doing an awesome job in his opinion. He is currently working with Beaver Township Planning Commission and they won't even discuss wind energy or listen to the land owner. Their ordinance and the way it is written will not allow wind development.

Motion by C. Hoyle supported by D. Darland to close the public hearing at 8:01 pm.

Motion carried.

Motion by R. Campbell supported by B. Reder to request the Chairman to suspend the regular order of business.

Motion carried.

Motion by B. Reder supported by T. Miller to schedule the public hearings for the May 1st, 2018 Planning Commission meeting for the following applicants:

- **Amend Special Land Use Approval** for Jam Ventures of Bay City, LLC. d/b/a: Westside Storage – Joseph Mulders 5964 Two Mile Road
- **Special Land Use Approval** for Phantom Fireworks/Monitor Lanes 1700 S. Euclid Avenue
- **Special Land Use Approval** (if necessary) for Halla Mechatronics 3933 Monitor Road

Motion carried.

A request was made to have the chair return the meeting to the regular order of business.

The Commissioners discussed the two (2) technical changes needed to modify the current wind energy ordinance. The definition of leased unit boundary: the very first sentence the letter “a” **should be omitted**. The second revision to be made on the existing ordinance would be the decibel level making the correction to use the industry standard metric for measuring compliance with this sound pressure level shall be **Leq, (1-hour)**. There was also consensus on also adding flexibility of acceptance of a cash or surety bond and/or irrevocable letter of credit from a bank or financial institution.

P. Lippens reviewed the agreed upon changes and stated that part of the discussion that remains that the Planning Commission will need to consider is the changes discussed last month which was the lowering of the decibels, increase of the site setback percentage to 200%, shadow flicker and minimum lot size change requiring five (5) acres, but sites with multiple units requiring two (2) acres per turbine. Additionally changes were made to the restoration of the soil upon decommissioning and removal.

P. Lippens in recapping the conversation from last month he feels there is a legitimate public purpose to regulating setback. The 200% setback and 45 dBA are defensible. If a question of encouraging reasonable application in the Township, he agrees the old standards currently in effect did just that and offered a certain amount of protection.

Motion by B. Reder supported by T. Miller to incorporate the three agreed upon changes to the **existing Zoning Ordinance #52 language**, taking the “a” out of leased unit boundary definition; using the industry standard metric unit of measurement Leq(1-hour) when measuring compliance with this sound pressure, and adding the option of accepting a cash bond, surety bond or irrevocable letter of credit from a bank or other approved financial institution. Point of Reference: DTE Energy Letter Dated: April 3, 2018

Roll Call Vote:

Yes: Hoyle, Miller, Reder, Campbell, Bellor

No: Darland, Frank

Absent: None

Motion carried.

Motion by J. Bellor supported by R. Campbell to make the necessary changes to the existing wind energy ordinance as detailed in the prior motion and forward the revised Zoning Ordinance to the Township Board with the recommendation to approve.

Roll Call Vote:

Yes: Hoyle, Miller, Reder, Campbell, Bellor

No: Frank, Darland

Absent: None

Motion carried.

Reports

J. Bellor gave a report regarding the DTE Energy Open House he attended on March 13, 2018. He thanked DTE Energy for hosting the Wind Turbine Visit on March 29, 2018 in Breckenridge, Michigan.

B. Reder acknowledged the petitions provided by Atwell LLC. that have been received promoting the wind developments in Monitor Township from area residents.

Communications

The Commissioners acknowledged receipt of Communications.

Motion by C. Hoyle supported by R. Campbell to adjourn.

Motion carried.

Meeting was adjourned at 8:22 p.m.

Respectfully submitted,

Dan Darland
Secretary

DD/blfp