

Board of Zoning Appeals

February 14, 2019

Members present: Chairman, Phil Rooney; Vice-Chairman, Doug Warren; Kerry Trombley; Brett Gies (alternate).

Mr. Rooney called the meeting to order at 6:00 p.m.; introduced the members to the audience and the general rules were reviewed.

Case# 57980-BA-19 was introduced by Mr. Erik Adkins as follows:

CASE# 57980-BA-19,
Address: 2749 Crystal Avenue
Zone: I-1, Light Industrial

Filed by Matt Klein, ESQ., on behalf of the Hengsteler Family, regarding a variance from section 1161.14.6 of the City of Findlay Zoning Ordinance concerning approved small wind turbines. The applicant is proposing to erect a wind-turbine at 2749 Crystal Avenue, which is certified by the Tüv Nord Group. This section requires the small wind-turbine be certified by the Small Wind Certification Council (SWCC).

The intention of the code, by using regulations set by the Small Wind Certification Council, is to limit the allowable size of wind-turbines within city limits. For instance, the SWCC certifies two types of turbines; small wind-turbine, which has a swept wind area of 200m², and medium wind-turbine, which has a swept wind area of 1000m². This information is still accessible via the SWCC website and is still applicable.

Proposed, is a wind-turbine with a swept wind area of 5,944.7m², which far exceeds the limitations set forth by the standards set as mentioned above.

Prior to this meeting, the case went before the City Planning Commission and was tabled.

Doug Warren asked Erik if the City was re-doing their Zoning related to wind-turbines?

Erik stated that at this time the answer is no, but it is something we are going to look at.

Phil Rooney informed that he had spoken to Matt Cordonnier of Regional Planning about that and Matt stated that there was nothing pending for council right now regarding a Zoning change for this.

Jereme Kent, CEO of One Energy Enterprises was sworn in by Phil Rooney (inaudible).

Sarah Corney, attorney for the applicant, the Hengsteler family, attending on behalf of her partner, Matt Klein who could not make it. They have represented the Hengsteler family through the annexation process, the zoning into Light Industrial process, now into the variance.

Phil Rooney stated that in order to grant the variance, the code sets forth seven factors they look at. He asked the applicant why a variance is necessary in this matter based on the seven factors. Reference: Chapter 1115.05 of the City Zoning Code – A. through G.

Jereme Kent stated that the way the City of Findlay Ordinance as written and exists today, leaves a lot of room for improvement and clarity. This variance is trying to solve one particular issue, which is that the certifying body that they are asked to be certified under, in accordance with this variance, no longer exist. (Inaudible) dissolved and fully disposed of their assets in 2016. They were sold to the Solar Rating and Certification Corporation, they then rebranded with a different name, but the entity we are talking about in this ordinance no longer exist.

Doug Warren stated that there are approved turbines on the list that the SWCC did approve when they existed, so we do not need to debate that issue. If you had one that was on that list, then we would be talking about that.

Jeremy Kent stated that having an ordinance that says turbines only existed 3 years ago and no new turbine ever, creates a hardship, and is having a practical difficulty complying because he would like to take a turbine that is newer than that and get it approved and has no avenue to do that. That is where he believes there is a variance request.

Doug Warren asked, so you would go to this same group and try to get your turbine approved under their ordinance when your turbine is like five times higher and bigger and the tip velocity is five times greater than anything that is on their list.

Jeremy Kent stated that statement is factually incorrect. The tip velocity is the same. The tip velocity of all of these turbines are almost identical. The tip speed ratio is determined based on the speed of which the tip is going to hit optimum power. The tip speed ratio for a three blade upwind turbine is usually seven times the prevailing wind speed. Therefore, this turbine operates at a lower speed. This turbine spins slower and it travels a greater distance. The difficulty they are having is that they have no certification body to go to right now, as the ordinance exists today because that certification body does not exist. What they are proposing that an alternate certification body, TÜV Nord Group Nord, who is one of the top five certification bodies in the world, who is certifying to the same IEC 61 400 standard, be approved as an alternate. They are not asking for any variance on height or size, the only variance they are asking for is the implacable code section referenced 1161.14.6. This is a variance request do to practical difficulties complying with the standard, as it exists and a hardship do to not having any certification agency to go to.

Kerry Trombley asked why they chose to go to TÜV Nord Group Nord instead of ICC SWCC.

Jeremy Kent explained they have no active phone number for their wind group; they are a solar company; and they do not comply with the ordinance, as it exist.

Item A. Conditions and Circumstances: They exist today and did not exist 4 years ago; they exist in a time after the certification body existed.

Item B. Property Rights: The only certification agency no longer exists. They will comply and exceed all performance, durability and safety requirements.

Item C. Applicant's Disregard: They do not control the time and fact that the small wind certification council does not exist anymore. They did not create this issue, it is an issue created by the fact that the code is out dated.

Item D. Harmony with Locality: Wind turbines are already permitted. As the rules are today, without a variance, they could build a 731-foot tall wind turbine in the center of that property, and be in compliance. So surely, a 403-foot high wind turbine will not alter the character of the neighborhood beyond what was originally intended. Does this variance materially alter from what has already been approved?

Kerry Trombley asked: When you say size, you are only referring to tower height not the area of the blades. What size is this wind turbine in regards to the small, medium SWCC standard?

Jereme Kent stated that size is in regards to the tower height. In the state of Ohio, anything above 5 megawatts for a wind project is governed by state jurisdiction not local jurisdiction. Findlay Ordinance does not define what a small wind turbine is.

Kerry Trombley asked Erik Adkins how many wind turbines are inside the city limits and what size are they.

Erik Adkins stated he was aware of three; Kohl's Distribution has two of them and a University one on West Foulke. He believes they are small size, about 200 m2.

Item E. Magnitude of Variance: Has a minimal request, just to certify with a different agency.

Item F. Alternatives: They have no alternative or recourse except to use turbines that are outdated technology and do not make sense for this project and would not be able to get the full benefit out of the land. Their turbine is modern, quieter, safer, and has far more protective features than any turbine that was certified by there.

Phil Rooney asked if there is a reason this turbine has to be right next to the facility.

Jereme Kent stated that in the State of Ohio, in order to use net metering, you have to be on continuous property.

Item G. Substantial Justice: They are trying to assure that safe, quality wind turbines are built in the City of Findlay and they are absolutely meeting that intent and they are absolutely meeting or exceeding the requirements by having the same standard of certification with a far more reputable and far bigger certification agency.

Kerry Trombley asked Jereme Kent, in his opinion, is the size of the wind turbine material to the SWCC certification.

Jereme Kent stated that he believed it was material to the department grant that helped form it. When they started out, they started out with very small turbines and then the larger ones.

Doug Warren and Jereme Kent discussed snow and ice detection hardware.

Phil Rooney asked if anyone else would like to speak.

David Burns, 2740 Crystal Avenue was sworn in and spoke about his concerns with health issues. He has a nerve stimulator and his research states that he should stay away from high lit magnetic fields. The stimulator controls his pain and his only options would be to turn it off or to move. He stated that he is also concerned about the shade flicker.

Jamie Cunningham, 208 Township Road 14, Van Buren was sworn in and spoke about her many concerns about health issues, safety issues, and the negative affect they will have on the neighborhood.

John Thomas, 2730 Crystal Avenue, was sworn in and spoke stating he understands that wind turbines are a thing of the future; however, they have their place that is further away from residential areas were they don't affect anybody, such as in a rural area/ farmland area. His research has made him a believer in the health problems that are caused such the flicker. There are cases that have made people go nuts due to this. This will also hurt their property value if they choose to sell.

Russell Cunningham, 208 Allen Township Road 14, Van Buren was sworn in and spoke about concerns about health side effects which has been documented, the distance that people should be away from these, including the effects on the residents of Tree Line. Their rental properties will not be full any more, and then who will reimburse them.

Dale Barr, 2750 Crystal Avenue was sworn in and stated that the turbines are interesting to watch and he has no problem with them on that property. He stated he prefers the turbine be there instead of more industrial that has more traffic and he already has headlights shining through his bedroom windows all night.

Brett Geise stated that the city has ordinances in place for screening and buffering of properties of industrial use next to residential zones. This board holds no weight toward requiring this. These items would be covered with the City Planning Commission.

Phil Rooney asked if there were any communications.

Erik Adkins read a letter from Brian Thomas into record stating he is opposed to the wind turbine being constructed at the proposed location do to the potential to affect the traffic pattern for Category D aircraft. There are currently two Category D aircraft based at the Findlay Airport and the hope to increase that number in the future.

Kerry Trombley asked Jereme Kent how large of a magnetic field does this turbine produce and how far does that extend out?

Jereme Kent stated that at ground level they could not measure the magnetic field bigger than they have in their office. Their office is 615 feet away from the nearest turbine and surrounded by five turbines that are operating right now. They have no medical issues on site, they have had autistic children tour the site with local schools and go in the turbines, they have had thousands of people tour the site, and valuable people that work at the office, with no medical issues. No magnetic field issues, including with people with pacemakers that have been inside the turbine.

Kerry Trombley asked Jereme Kent about the sound and the wind speed compared to the turbines in the code.

Jereme Kent stated that their turbines are quieter at ground level (approximately 50 dba).

Kerry Trombley asked Jereme Kent about the tip velocity comparison between this turbine and the ones that were approved by the SWCC.

Jereme Kent stated that he does not have the SWCC tip velocities in front of him so he cannot give that information. Their tip velocity is on the order of 140 miles per hour.

Evelyn Jett, 2700 Crystal Avenue was sworn in and asked what happens to the turbines when they no longer run? Will they remain there no longer working?

Phil Rooney asked Jereme Kent what they do when they decommission a wind turbine.

Jereme Kent stated that the scrap alone would be worth more than the take down cost. Therefore, they are never just left. They are required through all of their contracts to take the turbines down at the end of their life.

Kerry Trombley asked Erik Adkins if the city would require a demo if the owner did not remove the turbine, per any code?

Erik Adkins stated that there are codes that require removal of abandoned signage, etc. and would be similar to the applicable piece of the code.

Jereme Kent stated that the city could declare it a public hazard and they have ways to compel it to come down if it were not being taken care of.

Doug Warren asked you suggested that Tüv Nord Group Nord would be better to certify, were they around when the code was written?

Jereme Kent stated that yes they have been around since 1980 something.

Phil Rooney stated that he would like to thank everyone for the very professional way that everyone conducted himself or herself.

Phil Rooney asked if anyone wanted to make a motion or a discussion.

Doug Warren stated the magnitude of the variance, harmony with location, he feels very comfortable that given all of the options of certification agencies that were in place when the code was written, that the code writers definitely intended that wind generators that are built in the city should be smaller diameter bladed wind turbines. He feels that is very clear. He thinks the issue is, do we want to give a variance for this larger diameter wind turbine when the intent of the code was that the city should require smaller diameter blades; medium; or much smaller than this.

Kerry Trombley stated that he does agree with part of what the applicant is saying that it does create a hardship that the SWCC is no longer in existence but we have to understand what is the intent of the

code and the code is called small wind turbines. It is there multiple times and the successor to the SWCC states up to 200 m2. This is significantly larger than that. He thinks that is the heart of this question.

Phil Rooney stated that he is going to play devil's advocate and we can think about this before we make any kind of motions. Does the fact that this facility meets all the zoning requirements as far as setbacks, proximity from structure, height, etc. bare into your decision? The code is not written very well; however, the job to re-write the Zoning code falls on City Council not this board.

Kerry Trombley agrees the code is poorly written; but this board's job is to apply the code as it is written.

Phil Rooney asked if anyone would like to make a motion and requested to explain the criteria that justifies the motion.

Kerry Trombley made a motion to deny the variance request specifically E. Magnitude of the Variance and F. Alternatives.

Doug Warren second the motion.

Phil Rooney: We have a motion and a second to deny the variance. All those in favor of denying the variance say "aye".

Members of the board: "aye."

Phil Rooney: All those opposed say 'aye'.

(Brett Geise abstained; No one opposed).

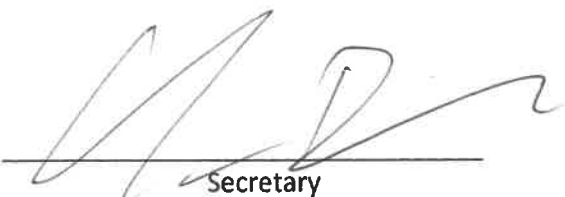
Phil Rooney: Motion passed 3 to 1. The variance request is denied.

December 20, 2018 meeting minutes were approved (Brett Geise abstained).

The meeting was adjourned.



Chairman



Secretary