

May 24, 2016

Here are the minutes for the Fenner ZBA on April 20, 2016.

Please note that there are discrepancies in the Windmills in question for Mr. Senehi's request. I have Windmills (or towers) WT-1 and WT-3 in my notes. Mr. Stokes references WT-1 and WT-1 and then he references WT-1 and WT-2.

Should I try to contact Mr. Senehi or Mr. Stokes to determine which windmills are actually affected by this variance?

thanks,

Cindy Gavula

Minutes of the Town of Fenner ZBA April 20, 2016

From Cindy Gavula

Board Members in attendance:

Rudolf Braun (Chairman)

Joe Livingston

Mary Rose Proctor

Cindy Gavula

Last meeting was on Dec. 16, 2015

1. Mr. Pace requested an extension on the use variance. There was no public comment. The board granted the extension for one year unanimously.

2. Mr. Senehi requested an area variance for his property (Tax Map #79.-1-3). He plans to construct a wind farm on this property but requests a variance in order to move the planned placement of two windmills.

Public commentary:

1. Mr. and Mrs. McGinnis requested that the variance not be granted unless they could be assured that noise from the windmill would be disruptive to future development of their own property.
2. Mr. McLaughlin requested that the variance not be granted.
3. Mr. and Mrs. Cox, whose property will not be affected by the proposed variance, spoke in favor of Mr. Senehi's request.

The board reviewed the possible new placements of the windmills, and then reviewed Mr. Senehi's reply to the county's comments (see enclosure). The town's attorney then reviewed the ZBA's responsibilities under the law.

After discussion, the board unanimously granted the area variance to Mr. Senehi provided that windmills WT-1 and WT-3 are regulated such that the windmills would be shut down when an easterly wind is greater than 22 meters per second. (see below for the resolution generated by the town lawyer, Mr. James Stokes.)

RESOLVED that upon the application and upon the proofs and proceedings offered at the public hearing, which was or is hereby closed, the ZBA hereby determines that this application constitutes an unlisted action as defined by the New York State Environmental Quality Review Act and that the granting of the requested area variance will not result in any significant adverse environmental impacts and that the benefit to the applicant in granting the requested variance in this instance outweighs any alleged detriment to the health, safety and welfare of the community as the ZBA has been unable to identify any adverse impacts associated with the granting of the requested variance. As such the applicant's request for an variance is hereby GRANTED to the extent that Towers WT-1 and WT-2 may be erected with a setback of 500 feet from the nearest property line upon the condition that upon completion of the construction of the project, the Town Code Enforcement Officer shall be provided with a certification from the contracted operator of the project that the SCADA controls for Towers WT-1 and WT-2 have been programmed

such that these towers will shut down in the event of an easterly wind in excess of 22 meters per second.

(amended to reflect towers 1 & 2)

Submitted and prepared by Cindy Gavula

On May 26 Mr. Senehi requested that the application be amended:

From Mr. Senehi via email

I am writing to Clarify my application for an area variance with the Zoning Board of Appeals. The Planning board approved the locations of the turbines and substation relocation in December of 2014 when it was presented with the current turbine locations and substation relocation. The project was forced to move one turbine to meet Public Service Commission requirements in the Article VII amendment process and has had to use a different model turbine than was originally approved which has a height of 80 meters (nacelle) and 52 meters (blades). This translates to a setback requirement of 566 ft. according to the Town of Fenner Local Law 1997-1 which is different from the required setback of the original turbines of 500 ft. and I am requesting a setback of 500 feet for **ALL** five (5) turbines. This a reduction of 66 ft. for **ALL** five (5) turbines. Everything in my original application still applies and that request was for all five turbines from beginning.

- This will have no effect on any government facilities and the turbines will still be more than 566 feet from any road.
- There will be no substantial change to the neighborhood or detriment to adjoining properties. Only one turbine is moving 40 feet due to the requirement from the Public Service Commission.
- There will be no environmental or physical effect on the district at all. The only change in the planned construction of the facility is the 40 foot relocation of WT1.
- There are absolutely no alternatives due to the PSC order and the DEC delineated wetlands on the property.
- This difficulty was not self-created. National Grid required the project to do the Article VII amendment that before the summer of 2014 was not required. The original turbines are no longer available to the project.
- Justice will be served by granting the variance because it will make it possible for the project to be built. It has already been approved by the town planning board, it will benefit the town of Fenner and its residents and will be the same project that was originally approved just with slightly different turbines and one of the five turbines relocated 40 feet from its previous location. The viewshed will not change not will any adjoining properties be ill-effected.

David Senehi

Mr. Senehi was informed via email May 26, 2016:

David,

Thank you for the clarification.

The county review of your original application notes "The applicant has requested...an area variance so that a wind turbine..."

The ZBA minutes reflect a variance for Turbines 1 and 3

The resolution from the town attorney reflects (corrected version) Turbines 1 and 2

The legal notice stated "area variance requested by David Senehi for a wind turbine"

At no point does it seem the parties involved understood the application to be for an area variance for all 5 turbines

The Planning Board minutes from 9/17/14 were for setbacks for WT1 and WT2 for the sub-station. There is no mention of the Planning Board approving the "different model turbines than originally approved", and in fact they could not have without a variance from the ZBA. 12/17/14 Planning Board minutes also only reference the sub-station location. (I spoke with Donna Griffin today and she has no recollection of the Planning Board discussing "different model turbines than originally approved")

As discussed in February 2016 when the ZBA application was filed, the Planning Board will need to meet to look at and approve the new drawings with the correct locations and details after ZBA approval.

Below you state "This will have no effect on any government facilities and the turbines will still be more than 566 feet from any road." Please clearly identify where there should be a set back of 566' but you would like a 500' set back and indicate what property lines will be affected.

Upon receipt of your response I will forward the appropriate information to the county for review.

Mr. Senehi's response May 27, 2016:

Good Morning Paula,

The 500' setback is being requested for the west and north property lines. The East and South property line setbacks will still be the required 566'. The turbines will be more than 700' from Cody Road which is the south property line. Thank you for your help in clearing this up. If there are any other questions please let me know. Have a great holiday weekend.

Best regards,
Dave

June 3, 2016 all new information submitted to the county as required by General Municipal Law 239 L and M. Recommendation from county received June 20, 2016.

A new ZBA meeting needs to be scheduled when Mr. Senehi pays the required \$50 fee. (not paid as of July 18, 2016)

As noted in the May 26, 2016 email after the ZBA meeting the Planning Board will then need to meet regarding this project.

Board Members

Rudolf Braun (ZBA Chairman)

Joe Livingston

Paul Little

Mary Rose Proctor

Cindy Gavula

Meeting called to order at 7:31 by Mr. Braun in the matter of Tx Map #79.-1-3 in Town of Fenner, concerning area variances requested by David Senehi for 5 turbines.

On April 20, 2016 the ZBA granted area Variances for wind turbines1 (WT1) and WT2 with the stipulation that the proposed facility uses SCADA controls, which will prevent WT1 And WT2 from operating when wind direction is from the East (so that in the event of blade failure, no blades or fragments of blade would be thrown towards bordering properties effected by the change in setback). During the meeting of April 20, Mr. Senehi also offered calculations showing that maximum blade throw would be less than 500 feet.

Currently, Mr. Senehi requests area variances for all five turbines. He requests changing the setbacks on all five turbines to 500ft vs 566ft. 566ft is the setback required by Town of Fenner zoning codes.

Mr Senehi stated the the Cody Road Wind Farm was approved by the planning board several years ago. The setback changes are required because Mr. Senehi must now use wind turbines which differ from his original application. The new wind turbines are larger and thus require a larger setback, which exceed the limits of his property lines . He also had to move the location of turbine #1 to meet Public Service Commission (PSC) requirements In the Article VII amendment process. Mr. Senehi stated that the placement of the proposed wind turbines is limited by the power line running through the eastern portion of his property and the wetland also located on the eastern portion of his property. He states that he has sought easements from his neighbors, who declined his request. At the most recent meeting on Aug 17, he presented a map showing where the proposed wind turbines would be placed and some of the locations where the 566ft setbacks went over his property line.

In his letter dated May 26, 2016 to the Town he made the following arguments in favor of variance to reduce the setbacks which he repeated at the meeting on Aug 17:

-no effect on government facilities, turbines will be >566ft from any road

-no substantial change to the neighborhood or detriment to adjoining properties. Only one turbine is moving 40 ft due to PSC requirements (as noted above)

-no environmental or physical effect on the district at all. the only change in the facility is the 40ft relocation of WT1 (wind turbine 1)

-there are absolutely no alternatives due to the PSC order and the DEC delineated wetlands on the property.

-this difficulty was not self-created. National Grid required the project to do the Article VII amendment that before the summer of 2014 was not required. The original turbines are no longer available to the project.

-Justice will be served by granting the variance because it will make it possible for the project to be built. It has already been approved by the town planning board. It will benefit the town of Fenner and its residents and will be the same project that was originally approved just with slightly different turbines and one of the five turbines relocated 40 ft from its previous location. The view shed will not change, nor will any adjoining properties be ill-affected.

During the meeting on Aug. 17 he stated that the larger wind turbines required a slightly larger setback which didn't fit on his property thus requiring variances for all five wind turbines. He noted that the newer proposed wind turbines were a few decibels (dB) quieter than the older models. He also showed a map which demonstrated that the turbine noise at 500 ft was 48dB.

He stated that ice throw was not a risk because the SCADA controls would ensure that the wind turbines would not operate when the weather was favorable for icing.

Public Comment

1. Questions were asked and answered about the proposed substation although this did not pertain to the requested variances.

2. Mr. Gary McLaughlin, who owns property adjoining the proposed wind farm at 5056 Buyea Road spoke against granting any variances. He was concerned whether the new turbines were approved.

He noted that at the ZBA meeting on April 20, two adjoining neighbors directly affected by the variances for WT1 and WT2 (McLaughlin and McGinnis) requested that the variances not be granted. Neither of the neighbors properties are district C properties.

He felt that the neighboring properties are unnecessarily and unfairly affected. He felt that Mr. Senehi did not exhaust all other options, specifically that he did not seek a compromise with the PSC, DEC or National Grid.

He feels that Mr. Senehi's property is too small for the project and questions the changing plans.

Mr. McLaughlin is concerned about the noise which a wind farm will generate, noting that he can hear one turbine from a pre-existing wind turbine that is half of a mile distant. He is concerned about construction noise and the changing view from his property should five wind turbines be erected at the proposed site. He is concerned for his, his family's and his neighbors general physical and mental health.

At the meeting, he also expressed concern about how the proposed wind farm might affect his insurance rate rates.

3. Mr. Richard Foringer, who is a resident of Fenner, spoke in support of Mr. McLaughlin and against granting the variances. He stated that he moved to Fenner years ago for peace and quiet and lost all that with the construction of wind turbines around his home. He specifically mentioned persistent blade noise and light pollution from clearance and strobe lights. The noise and light pollution significantly and adversely affect his quality of life and he feels that the proposed wind farm would adversely affect neighboring properties if constructed too close to existing or proposed homes. He also mentioned the adverse effects from construction traffic. He also wondered what would happen if one or more turbines malfunctioned. Would they be fixed? He cited an existing wind turbine in Fenner (#18), which has been malfunctioning, making a loud, disturbing, whining noise which has not been corrected even after several months of complaints.

4. Paula Douglas feels that the setbacks should not be changed. She expressed concern that it might set a precedent.

End public comment

Rudolph Braun, ZBA chairman, felt that granting variances in the setbacks of all five wind turbines was too great a change. He stated that by nullifying the setback rules for all the turbines was tantamount to changing town law, which is the prerogative of the elected town board members. The other members of the ZBA agreed.

The Fenner ZBA unanimously denied the area variances to reduce the setbacks from 566ft to 500ft for all five wind turbines at the proposed Cody Road Wind Farm.

Mr. Senehi asked what he was supposed to do now. It was suggested that Mr. Senehi discuss changing town law with the town board if he cannot change his wind farm plans.

Mr. Senehi wanted to know if the variances granted for WT1 and WT2 were still in effect, since the ZBA has now refused variances for all five turbines. This is unclear and should be discussed with legal counsel.

Note SCADA = Supervisory control and data acquisition

(Minutes transcribed by Cindy Gavula 8/18/16)

**Town of Fenner
Zoning Board of Appeals
Minutes of the meeting on November 22, 2016**

Members of the ZBA:

Chairman Rudy Braun
Jon Livingston
Paul Little
Mary Rose Proctor
Cindy Gavula (secretary)

Also attending and speaking:

David Senehi, Green Power Energy, LLC (applicant)
Scott Chatfield, attorney for the applicant
Mark Levy standing in for James Stokes, Town of Fenner Attorney
Four members of the Planning Board including Donna Griffin (chairwoman), Judy Carmon, Peter Snyder, plus one other member.

And community members, including the following who spoke during the Public Hearing

Jim McGinnis 3546 Cody Rd
Judy McGinnis 3545 Cody Rd
Mike McGinnis 3580 Cody Rd
Gary McGlaughlin 5056 Buyea Rd
Rick Bosworth 3320 Cody Rd
Greg Gavula 5393 Nelson Rd
Mary Costello 3580 Cody Rd

Opening the meeting and explanation of application for Area Variance

Mr. Levy, standing in for the town attorney, offered his assistance in running the meeting and also recommended that joint meeting of the Zoning Board of Appeals (ZBA) and the Planning Board be run as two consecutive meetings beginning with the ZBA.

The ZBA meeting was opened by Chairman Braun at 7:36 pm to discuss the application for an additional area variance by Mr. Senehi for Green Power Energy, LLC-3633/3649 Cody Road. The applicant was states that he was required to relocate the proposed positions of certain wind towers in his wind farm, due to Public Service Commission regulations. In addition, wind tower (or turbine) placement is limited by DEC regulations due to the presence of wetlands on his property. In the revised site plan (dated 9/25/2016) the distance between towers 1 and 2, 3 and 4, and 4 and 5 do not meet the statutorily required separation between towns of 569.08 feet. Therefore the applicant sought area variance for each of those tower placements as indicated in the Site Map amended 9/25/16 supplied by Mr. Senehi and shown to the ZBA and interested members of the public during the ZBA meeting (the map remained with Mr. Senehi). The distance between the three tower placements would be:

Between towers 1&2, 449 feet
3&4, 456 feet
4&5, 494 feet

Madison County GML (9/29/2016) (enclosure 1) states that the revised placement would not have any county-wide effect. They also cited the 2012 Columbia Center for Climate Change Law Model Municipal Wind Siting Ordinance, which was written by lawyers at Columbia School of Law after an analysis of New York State municipal ordinances including towns like Cazenovia, New York. Based on this retrospective analysis of several New York town

ordinances by The Columbia Center for Climate Change Law a set back of 1x the tower height was recommended. The author of the Madison county GML notes that the requested variances are greater than 1x tower height.

Presentation by Mr. Chatfield, attorney for the applicant

Mr. Chatfield, the attorney representing Green Power Energy, LLC spoke to the ZBA on behalf of his client, Mr. Senehi. Mr. Chatfield stated that when granting or denying an area variance the ZBA must weigh the private benefit of the applicant versus the potential detriments to the health, safety and welfare of the community.

He stated that any risk resulting from close placement of these wind turbine towers belonged solely to the applicant (Mr. Senehi). The potential benefit to the applicant is profit. Also there would, according to Mr. Chatfield, be a potential benefit to society in the production of energy from wind. He re-stated that there is no potential detriment to the community from allowing the towers to be placed closer together than statutorily allowed by zoning. He referred to the laws of the New York State Legislature regarding area variance, reading the statues aloud and raising the following points.

Will there be an undesirable change in the community by allowing reduced distances between the above mentioned towers? He stated that reduced distances would not produce an unfavorable change.

Can the benefit be achieved by other means? Mr. Chatfield said the wind farm cannot be profitable with only four wind turbines. He noted that the wake effect will be minimized with the current placement when prevailing winds are taken into consideration.

Is the request substantial? Is there an substantial impact on the health, safety or welfare of community . He stated that other communities allow wind turbine placements closer together than guidelines.

Is there an adverse effect on physical in environmental characteristics of the neighborhood? He reminded the board to only consider the area variances in question.

Is the change or difference self-created? He stated that area variances are not dispositive. He stated more recent amendments to state law make the granting of area variances easier. He discussed how zoning is in derogation of common law and that variances should be granted to landowners to allow them to utilize their property unless there is a risk to community. He stated that there is no risk to the community, only a possible risk to the applicant, should closer placement of the towers produce insufficient energy or result in some accident.

Then Mr. Chatfield suggested that the reason the Planning Board was to meet after the ZBA, was because they couldn't complete their business with Mr. Senehi without the area variances. He said that a public hearing is required, but that the ZBA must only attend to the issues germane to the specific area variances, even if the speakers are heartfelt.

As a result of ZBA member questions, he stated that tower placement recommendations are not universally applied, although he did mention that the tower placement was in compliance with the Columbia Center for Climate Change Law. He and Mr. Senehi stated that tower 1 cannot go further south and that towers 4&5 are locked into place based on property lines and resultant set backs.

Based on a question from the ZBA, it was noted that GE (manufacturer of the proposed wind turbines) has analyzed site and expected wind loads. The turbines will be monitored by on site SCADA's and GE.

Meeting was opened for the Public hearing

Jim McGinnis wanted to know why engineers were not consulted to provide guidance for this project. He said that there are standards (to determine wind turbine placement).

Mr. Chatfield briefly interrupted to announce that he had advised his client not to respond to questions brought up in public hearing.

Judy McGinnis questioned why a GE representative wasn't present for this meeting.

Jim McGinnis passed out copies Wind Energy Model Ordinance which were accepted but not reviewed during the meeting. He also stated that he was concerned that he hadn't received notice of a Planning Board meeting about this wind farm. A member of the planning board (Donna Griffin) stated that notices were sent out. Donna Griffin also stated that engineering and environmental studies were provided in the past.

Jim McGinnis was also concerned about the effect close tower siting might have on TV reception or hunting. He also questioned what happens if wind mills break down or malfunction, what is the maintenance schedule and whether there is adequate insurance.

Mike McGinnis questioned whether ice throw might adversely effect the towers if they are too close together.

Gary McLaughlin presented a letter stating his concerns and read it aloud (see enclosure 2).

Jim McGinnis questioned Mr. Senehi's record. He wondered who was working with Mr. Senehi on the project, and who was Mr. Senehi's consulting engineer.

Rick Bosworth stated that he was concerned that allowing the area variance could set a precedent.

Greg Gavula questioned why an engineering firm didn't review this project, and its potential impact on the environment. He too was concerned that granting an area variance could set a precedent. He also questioned if there should be an accident, who is liable.

Donna Griffin said that very thick engineering reports were on file with the Town Clerk.

Greg Gavula questioned whether the engineering reports addressed the reduced spacing.

Jim McGinnis referred to Town of New Hartford's ordinances on wind energy and handed out copies which were accepted but not reviewed.

Mary Costello reminded the ZBA Chairman about a letter from Paula Douglas (see enclosure 3) which was read aloud to the public. Mary Costello also stated that wind mills do fall flat sometimes (and not just crumple in place, as was asserted earlier by Mr. Chatfield during his presentation).

Public hearing was closed at 9:02 pm.

Mr. Chatfield stated to the board that nothing said in the public comments had any bearing on the issue before the ZBA.

Gary McLaughlin stated there are standard setbacks for distances between towers in SEQRA, which was refuted by Mr. Chatfield.

Mr. Chatfield said other codes (by other municipalities) are irrelevant, and only the Town of Fenner codes mattered. He said the property is zoned C and that the wind farm is allowed. The only question before the ZBA is whether to allow variances for the shorter than statutorily required placement of the towers. He said that since the only risk of allowing the towers to be placed closer together than 569.08 feet is to the applicant (in the form of lost profit), and that there is no risk to the community, that the variance must be granted.

Based on questions by ZBA members, Mr. Senehi stated that placements closer than 569.08 feet were reviewed by GE and a professional engineer. The placement is less than ideal resulting in an 8% loss in efficiency due to wake effects or the necessity of turning a wind turbine off to prevent wake effects. The resultant loss in power production (8%) will be less than if the proposed wind farm was reduced from five to four turbines. He stated that he foresees profitability with five turbines even with reduced efficiency from the closer placement.

He stated that SCADA controls (plus oversight by GE) will ensure that turbines won't run if ice formation is a possibility, if the wind is blowing from the east toward properties effected by area variances from spring of 2016, or when wind direction and tower placement might produce wake effects.

He stated that the closer placement of towers would not increase the noise level beyond 50 decibels (dBA) at 500 feet from the turbines.

He also stated that it was in the best interests of GE to help him ensure proper, safe running of the turbines (GE 2.3-107 turbines).

Note: the proposed turbine placements are based on the Site Map amended 9/25/16.

Jon Livingston made a motion to grant the area variances.

Mary Rose Proctor seconded the motion

Rudy Braun voted in favor of granting the variances.

Paul Little and Cindy Gavula voted against the motion.

The motion passed 3 in favor, two against.

The ZBA granted the area variances as requested by Mr. Senehi allowing the tower placement noted in the 9/25/16 site map with the following distances between the towers as follows:

1&2, 449 feet

3&4, 456 feet

4&5, 494 feet

Minutes recorded by Cindy Gavula-secretary