

Original Questions:

1. If conflicts arise, what type of conflict resolution requirements should be in the ordinance? *See response below.*
2. One of the citizen concerns is regarding a proper complaint resolution process that would include penalties in order to enforce any wind developer to comply or mitigate potential problems such as noise, flicker, critical habitat impacts, property value impact, etc. *See response below.*
3. Are we likely to get into situations where neighbors end up in litigation? What happens to the neighbor who doesn't want a turbine/s on their property and ends up living close to one on their neighbor's property, say 1500 feet, and begins to exhibit symptoms such as sleeplessness, depression, or already is compromised by these conditions when the turbine is installed and things get worse for them, etc.? Will that neighbor have to move from their property? *See response below.*
4. I would like to understand how conflicts might be resolved and who would pay for any resolutions of conflicts that involved removal or relocation of turbines. For example, once the turbines are installed does the township have any recourse for non-payment of taxes, turbines that are installed in a manner not according to contract, turbines that are installed under false pretenses (suppose the company says that the turbine will not sound like more than a humming refrigerator and that turns out not to be the case)? What can be done? What government entity has controls over the companies and what are the specific controls. Could this pit the state government against the township government and cause a gridlock that will be harmful to residents. *See response below.*
5. What should be a complaint resolution process if people living close to wind turbines have a complaint on sound? *See responses below to questions FF1, FF2, and FF3.*

Questions and Responses

These questions may have been recategorized and reorganized. Some may have been sent to another "theme" area (this will have been explained in red under the "Original Questions" section). In other cases two or more questions will be answered with one response.

FF 1. If conflicts arise, what type of conflict resolution requirements should be in the ordinance?

Response: The Michigan Zoning Enabling Act does not delegate a procedure for compelling an applicant, township, or other interested or affected person, to a special use or other proceeding for a permit or approval from a township planning commission, zoning board of appeals, or township board. Accordingly, a conflict resolution procedure would have to be made available to the parties, by contracting with a conflict resolution service, such as the Conflict Resolution Service ("CRS"), Traverse City, where one or more of the parties or persons would request a mediation of a dispute or issue arising out of the request for special use or other permit or approval for wind turbine location, system, setbacks, or other conditions that are imposed upon a permit.

The CRS has a form and procedure for mediation by a facilitator who is neutral and meets with all the parties, who voluntarily agree to participate. These are called "stakeholders" in the conflict resolution process. The facilitator helps the stakeholders or participants reach their own agreement that resolves all or part of the dispute and issues. This could be offered by the township or the CRS to the persons involved in these proceedings. All parties would agree to participate in good faith, but they would have to agree separately to do so, by contract, because it cannot be compelled as a condition to the permit or built into the ordinance. It is unlikely, absent express delegation of authority under the state zoning law, that a party can be forced to participate in conflict resolution by ordinance.

On the other hand, by making it available on a voluntary basis, it is usually to the parties or affected persons benefit to seek a resolution if for nothing more than understanding each other and the issues better. This can lead to other resolutions, or at least establish trust, should an adversarial process become necessary.

However, it is possible that something akin to conflict resolution could be built into the ordinance as part of the application process. An application must meet certain informational requirements, related to various standards that must be reviewed to assure compliance with the ordinance. This is typically part of the township zoning administrator's responsibility in determining whether an application for a special use permit is "administratively complete." As part of the wind turbine or generator ordinance, there undoubtedly will be standards that address noise, vibration, visual impacts, setbacks, and other issues dealing with the impacts and compatibility of wind turbines and related facilities with adjacent land uses, residences, property owners, and the character of the surrounding area. Neighbors, who live adjacent in the area, will have concerns about impacts and these issues.

As part of the application process, the applicant wind turbine developer and company could be required, as an informational requirement, to meet with all landowners, occupants, and neighbors in the surrounding area, and discuss and a list of their concerns, and how they addressed those concerns. The applicant company could be asked to file such a "neighborhood impact and compatibility" assessment, listing all neighbors, occupants, or land owners, and the issues or concerns, and the status of agreement. This document would then be used as part of the information submitted by the applicant in advance so that issues or concerns are "scoped" and addressed, and if not addressed, the issues will be a base line of information that must be considered related to the standards and health, safety, and welfare or reasonableness of the decision that ultimately must be made. Such a process could also identify areas that need to be addressed satisfactorily by evidence as part of the decision making process. This is a suggested approach that could bring about some resolution of conflicts, and if not, at least identify potential conflicts to address.

FF 2. One of the citizen concerns is regarding a proper complaint resolution process that would include penalties in order to enforce any wind developer to comply or mitigate potential problems such as noise, flicker, critical habitat impacts, property value impact, etc.

Response: The township zoning ordinance could establish, and condition to each special use permit, a process for a complaint with the zoning administrator or a board, such as the zoning board of appeals, under the heading "interpretation" or claimed violation of the ordinance or special condition to a special use permit. The township can in its ordinance provide for misdemeanor and penalties, but this will have to be addressed by a separate township ordinance. Townships are limited to misdemeanors and fines, so the process would be limited, and the township would enforce in court by prosecution, criminal or civil, as other infractions or violations.

However, if there are standards that address the issues mentioned (i.e. flicker, habitat, noise) they can be treated as a "good neighbor" or nuisance provision, and enforced by cease and desist or other remedy, issued by township, on complaint of an affected person. If the company fails to comply, it could be enforced in circuit court, as criminal or civil infraction or as injunctive remedy, under an ordinance or perhaps as a public nuisance statute violation. The key is the strictness and clarity of the standard that prohibits the violation or concern that you seek to address.

However, the problem is the creation of a process with sufficient penalties to enforce the violation. The township cannot create rights or remedies in affected persons; that is a matter left to the legislature by statute or the common law, such as the law of nuisance, where people can bring court actions for injunctive relief and/or damages. However, a township can enforce its own standards or conditions of a permit, and specify who can file a complaint with the township, and how that complaint for violation would proceed.

In short, a standard or condition to a special use permit can be declared to have the force of law, and enforced as any other violation of the zoning ordinance.

FF 3. Are we likely to get into situations where neighbors end up in litigation? What happens to the neighbor who doesn't want a turbine/s on their property and ends up living close to one on their neighbor's property, say 1500 feet, and begins to exhibit symptoms such as sleeplessness, depression, or already is compromised by these conditions when the turbine is installed and things get worse for them, etc.? Will that neighbor have to move from their property?

Response: The affected neighbor has only the remedies, per above, or those by Michigan statute or common law giving him or her the right to bring a claim for injunction and/or damages in circuit court, such as an action for private or public nuisance. Symptoms that constitute unreasonable interference with use and enjoyment of property, form the basis of a claim for nuisance, although the remedy and extent of injunction or damages includes "reasonable" interference. A person more vulnerable than another will still have to demonstrate unreasonableness to the ordinary person as well. However, again, the ordinance could provide some remedy per FF 2 above, and again, the affected person would either have to file a lawsuit or move; it would be simply a matter of choice.

While it would have to be researched, the other possibility is to require as a condition of a special use permit, or an entire turbine development in a township, that the company establish a trust fund for violations, remedies, costs and fees of experts to investigate and correct problems. This was done when landfills and hazardous waste facilities were built in the late 1970s and 1980s, and in some instances set up as a condition of issuing a special use permit because the zoning act authorizes a township to impose conditions, and the trust fund would be provided for problems, including a company that abandoned a turbine and just walked away from it.

FF 4: I would like to understand how conflicts might be resolved and who would pay for any resolutions of conflicts that involved removal or relocation of turbines. For example, once the turbines are installed does the township have any recourse for non-payment of taxes, turbines that are installed in a manner not according to contract, turbines that are installed under false pretenses (suppose the company says that the turbine will not sound like more than a humming refrigerator and that turns out not to be the case)? What can be done? What government entity has controls over the companies and what are the specific controls. Could this pit the state government against the township government and cause a gridlock that will be harmful to residents.

Response: See answers to FF1 and FF2 above. All of these issues could be handled by imposing compliance and enforcement as a condition of a special use permit (SUP) or overall development of wind turbines by a company in a township. Again, the conditions could then be enforced if violated, and to back up non-payment or remedial costs, a trust fund or large bond/letter of credit could be required. Until the state government passes its own siting and operational limitations and enforcement or permit controls, the matter is left up to townships based on the strength of its zoning ordinance or township police power ordinances.

The situation described could pit state government against local government, but only if state government passes its own siting law that expressly preempts local zoning or township police power ordinances that are more stringent than the state statute. This has often happened in the case of siting waste disposal facilities, because state law allows for a solid waste plan in each county, and if permitted by state in accordance with the plan, local zoning requirements, in most instances, are prohibited. No such state law exists at this point for wind turbines and/or siting them.

While not directly related, one suggestion would be for a company wanting to develop wind turbines to apply for a preliminary approval of its entire development plan in one or more townships, by PUD (planned unit development), and then, and only then, could a SUP be applied for and obtained for a particular turbine. This would address the planning, impacts, and remedies comprehensively, perhaps even more initially as part of an amendment to a master plan. The company could be required to do all kinds of things to provide information, and to pay for costs of township for independent reviews, studies, as part of the development of a turbine plan for one or more townships. This way there would be a PUD step, cumulative

and comprehensive as to the plan, and a SUP step, site and turbine specific, should a turbine for specific site be authorized and within the PUD comprehensive planned development.