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17-2295-EL-BGN 18-0488-EL-BGN

From: Ed Clark [mailto:eclark@clouseelectric.com]

Sent: Saturday, June 23, 2018 3:38 PM

To: Puco ContactOPSB <contactopsb@puco.ohio.gov>

Subject: COA affirms setback distance for Eastern Indiana wind farm | The Indiana Lawyer

https://www.theindianalawyer.com/articles/42798-coa-affirms-setback-distance-for-eastern-indiana-wind-farm

Ed Clark

Project Coordinator/Estimator

Office- <u>419-447-0165</u> Mobile- <u>419-618-0031</u>

Fax- 419-447-0166 Email- eclark@clouseelectric.com

Web- www.clouseelectric.com

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# COA affirms setback distance for Eastern Indiana wind farm

<u>Jennifer Nelson</u> February 14, 2017

The Indiana Court of Appeals on Tuesday upheld a Rush County zoning ruling requiring industrial wind turbines to be at least 2,300 feet from some people's property lines. The judges emphasized that the zoning ordinances outline minimum distances and the zoning board is able to increase those distances when warranted.

Flat Rock Wind LLC seeks to construct a wind farm on more than 29,000 acres in Rush and Henry counties with 95 wind turbines, with 65 of those in Rush County. Flat Rock in March 2015 filed an application for approval of a special exception to the Rush County zoning ordinance to build and operate a portion of the wind energy conversion system in Rush County. Zoning ordinances require a minimum setback of 1,000 feet from residential dwellings. But there were concerns about harmful side effects of the placement of the turbines, and studies showing sleep disruption, stress and annoyance associated with wind turbines near residences.

Flat Rock then amended its application to have a 1,400-foot setback from non-participating owners, those who weren't leasing land to Flat Rock as part of the project. A zoning board member moved to make the minimum 2,300 feet, which passed by a majority vote.

Flat Rock sought judicial review of the setback condition, which Special Judge Matthew Bailey upheld. Bailey also allowed several landowners to intervene, which Flat Rock challenged on appeal.

Judge Patricia Riley for the Court of Appeals wrote that the BZA has the power to impose the enlarged setback condition under Section 6.4 of the Rush County Zoning Ordinance by its reference to a "minimum setback distance."

"Based on the explicit language of the Zoning Ordinance, we conclude that the BZA did not exceed its authority by creating the Setback Condition, as well as a new method for measuring this Setback. In interpreting the Zoning Ordinance, the BZA viewed the siting setback as a 'minimum' guideline, which was subject to 'reasonable restrictions' to preserve the health and safety of the public," Riley wrote.

The COA also affirmed the trial court's decision to grant the remonstrators' motion to intervene. Flat Rock claimed it was an abuse of discretion because the remonstrators didn't show that they were "aggrieved" under Indiana statute. Indiana cases addressing Trial Rule 24(A)(2), which was used by the judge and allows for intervention, impart a three-part test, requiring intervenors to show an interest in the subject of the action; disposition of the action may as a practical matter impede the protection of that interest; and representation of the interest by the existing parties is inadequate.

Riley noted if the decision of the BZA was ever modified or reversed, remonstrators' health and real estate values will be directly affected and they would no longer be adequately represented by the BZA.

The case is Flat Rock Wind, LLC v. Rush County Area Board of Zoning Appeals, et al., 70A01-1606-PL-1382.

From: Ed Clark [mailto:eclark@clouseelectric.com]

Sent: Monday, June 25, 2018 11:46 AM

To: Puco ContactOPSB <contactopsb@puco.ohio.gov>

Subject: Another Opposed Letter in the paper

https://www.thenews-messenger.com/story/news/local/2018/06/22/wind-turbines-get-mixedreception-sandusky-seneca-counties/624747002/



#### Ed Clark

Project Coordinator/Estimator

Office- 419-447-0165 Mobile- 419-618-0031

Fax- 419-447-0166 Email- eclark@clouseelectric.com

Web- www.clouseelectric.com

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# Proposed wind farm generates controversy

SOME RESIDENTS IN SANDUSKY AND SENECA COUNTIES SAY TOWERING TURBINES WOULD SHATTER THEIR PEACE AND QUIET.

Story by Daniel Carson/Videography and photos by Molly Corfman

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REPUBLIC - About five miles of oak trees, shallow streams and farmland separate Chris Zeman's and Gary Baldosser's homes in rural Seneca County.

The divide runs much wider between the two men when it comes to wind turbines and whether Seneca and surrounding counties should embrace or reject these nearly 600-foot-high towers of renewable energy.

Neither Zeman nor Baldosser has ever been able to see a 591-foot wind turbine from their backyards, but that could change pending the outcome of setback legislation in front of the Ohio Legislature.

APEX Clear Energy wants to install roughly 80 turbines in Seneca and Sandusky counties combined, with structure heights ranging from 442 to 591 feet, said company spokesperson Natasha Montague.

Seneca Wind is a proposed 200 megawatt wind farm in Seneca County's Scipio, Reed, Venice, Eden and Bloom townships that would consist of up to 82 wind turbines and be built on approximately 25,000 acres of privately leased land.

Sugar Creek slowly wound its way next to rows of trees in Zeman's backyard, as he walked in the road past a giant weeping willow on a narrow stretch of Township Road 138.

It's quiet where Zeman lives and he's adamant that he moved out to the country in 2009 for a sense of relaxation he couldn't find elsewhere.

He hadn't anticipated flickering lights, turbine noise and churning propeller blades would be part of his everyday landscape.

"If I wanted to live next to a power plant, I'd move next to one," Zeman said, as he noted the tallest proposed APEX wind turbines in Seneca County would be taller than the Washington Monument (listed as 555 feet tall).

Indeed, a 591-foot wind turbine would be taller than all but five buildings in Ohio.

Zeman helped found the Seneca Anti-Wind Union, a group of more than 100 landowners opposed to wind turbines they say will rob them of a peaceful quality of life they've enjoyed for years.

His anti-wind stance puts him in direct opposition with county landowners like Baldosser, a fourth-generation Adams Township farmer and vocal proponent of wind development in Seneca County.

When he and his family first started investigating leasing opportunities related to wind energy in 2009, Baldosser said the move represented a way to keep his farm sustainable in the face of higher property taxes and corn/bean production costs that had ballooned 300 percent.

As he's looked closer at wind development, Baldosser sees it as way bigger than what it can do for him personally.

It's a way for landowners to generate revenue in Seneca County's townships that doesn't involve taxes on their property, Baldosser said.

He's held discussions with three different developers, including APEX, about installing a wind turbine on his property.

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Chris Zeman, who lives north of Republic, has been one of the most vocal critics of a proposed APEX Clean Energy wind farm project in Seneca County, contending that the turbines would bring unwanted noise, light flickers and construction activity near his home.

(Photo: Molly Corfman/The News-Messenger)

Baldosser said he hasn't seen the latest proposed placement maps and doesn't know if he'll get a wind turbine on his property, although he's pretty sure there will be several units in his neighborhood.

"I hope I get a turbine," he said.

# Setback legislation

Nelson and Ann Wright moved to their 1.75-acre property on Seneca County Road 34 in the 1970s.

They wanted to get away from noise and pollution.

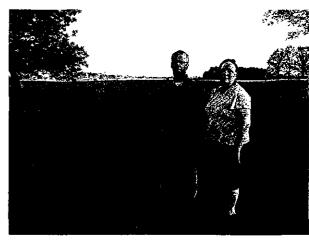
Geese, eagles and bats come and go through the Wrights' trees at various times, day and night, and they like to sit out back in their lawn chairs and watch the sun set behind their red barn.

A proposed wind turbine would be placed on their neighbor's property, Nelson Wright said.

"Now we're going to have a windmill here within a very close distance to our house," he said.

State law passed in 2014 calls for wind turbines on commercial wind farms to be at least 1,125 feet from the tip of the turbine blade at ninety degrees to the nearest adjacent property line, unless the applicant obtains waivers.

Rep. Bill Reineke, R-Tiffin, held a press conference in Columbus in April with Seneca County Commissioner Holly Stacy and several local officials to urge support for Senate Bill 238, introduced by Sen. Matt Dolan, R-Chagrin Falls.



Nelson and Ann Wright say the quiet, peaceful setting of their 1.75acre property in Adams Township in Seneca County would be ruined if a wind turbine were built on their neighbor's property.

(Photo: Molly Corfman/The News-Messenger)

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That bill would require turbines to be at least 1,225 feet from the nearest home, rather than from the property line.

Under Dolan's bill, the minimum distance to the property line would be defined as 1.2 times the total height of the wind turbine and its blade.

Reineke cited a study from A Renewable America that claimed Ohio could see more than \$4 billion in investment from wind farm construction, with the proposed SB 238 effectively lifting a state moratorium on wind farms.

APEX spokesman Montague said the company considers the setback reform provisions in SB 238 a true compromise that would move the state's property line setback to a level more stringent than pre-2014 distances, encourage smart wind development and restore individual property rights.

She said similar language was included in Sub House Bill 114, now pending in the Senate.

"We support that bill's swift passage before the summer recess," Montague said.

The Ohio Senate Energy and Natural Resources Committee heard testimony on HB 114 Wednesday, according to the committee's schedule.

Although the bulk of APEX's turbines would be installed throughout Seneca County, there are a few proposed for Sandusky County.

Sandusky County Commissioner Kay Reiter said she wasn't sure exactly how many turbines APEX plans to put up in the county.

"There was a time they anticipated there could be six," Reiter said.

Ron Kelbley, a member of the anti-wind union, has lived on Sandusky County Road 113 in Bellevue for about 25 years.

He'd like wind turbine setbacks of at least a half-mile to mitigate the sound coming from the turbines' blades.

"The further away, the more it drops off," Kelbley said of the sound and vibrations from the turbines.

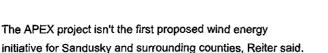
Kelbley said he received a letter two weeks before Thanksgiving last year about the proposed APEX project.

That was the first he'd heard about the possibility of wind turbines that would be visible from his backyard.

#### **Potential revenues**

Reiter said the APEX project represents a \$65 million capital investment for both counties.

She said the Sandusky County commissioners are supporting APEX and its wind turbines.



She recalled a wind project, similar in size to APEX's and proposed in 2013, that would have stretched across Sandusky, Erie, Seneca and Huron counties.

That project went on the back burner, but Reiter said the county's east side, as well as most of Seneca County, is in a wind field favorable for renewable energy development.

"That's what helped them identify this area as a potential site for the project," Reiter said.

Montague said the APEX turbines will generate approximately 200 megawatts if all are running at full capacity at a given moment.

She said the Republic Wind project will bring \$38.8 million in landowner payments, \$36 million that will support local schools and \$18 million in new revenue for counties and townships.

David Zak, president and CEO of the Tiffin-based Seneca Industrial & Economic Development Corp., provided estimated tax revenue figures from the Seneca County Auditor's Office that showed annual APEX service payments through Adams Township of \$87,120 each to the Bellevue City School District and Clyde-Green Springs Schools.

Bellevue's school district also would see considerable annual APEX service payments from turbines in Reed (\$17,898) and Thompson (\$252,620) townships.

# Alternative energy zones

There are federal and state tax incentives for companies to build wind farms. Companies that begin construction on wind facilities by Dec. 31, 2019 can qualify for federal renewable electricity production credits.

In 2017, that credit came to \$0.019 per kilowatt hour for wind production, according to the Internal Revenue Service. The credit lasts for 10 years after the facility is placed in service.



Ron Kelbley lives in Sandusky County, just north of the county line with Seneca County and is opposed to proposed wind energy development that would be visible from his backyard.

(Photo: Molly Corfman/The News-Messenger)

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Seneca and Sandusky counties hold state alternative energy zone (AEZ) designations.

The Ohio Legislature passed SB 232 in 2010 and established AEZs that allow counties to reduce tax rates on alternative energy companies.

Seneca County Commissioner Mike Kerschner said that in addition to the APEX and Seneca Wind proposals there are four or five other wind energy projects in various stages of development in the region, a result of the county's AEZ designation.

"Because the welcome mat is out," said Kerschner, the lone Seneca County commissioner to oppose the APEX and Seneca Wind projects.

Kerschner said he initially signed a resolution two years ago to support wind development because there wasn't any pushback from county property owners.



Wind turbines are churning in Findlay. More than 80 turbines have been proposed by APEX Clean Energy in Sandusky and Seneca counties.

(Photo: Molly Corfman/The News-Messenger)

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The Seneca County commissioner said he's seen a groundswell of opposition in recent months, with more than 1,000 people signing a petition that asked county commissioners to rescind Seneca County's AEZ designation.

Kerschner made a motion recently to rescind the designation, but it failed to get a second from Stacy or fellow commissioner Shayne Thomas.

Montague said more than 400 landowners have signed up to participate in the Republic Wind project.

The Ohio Power Siting Board (OPSB) regulates major utilities facilities and economically significant wind farms, those greater than 5 megawatts.

Baldosser said he has been surprised and frustrated by the fierce opposition to the APEX project, especially given that there had been ongoing discussions regarding wind development in Seneca County for more than a decade and applications made to the OPSB.

Baldosser considers wind development a once-in-a-lifetime opportunity for Seneca County.

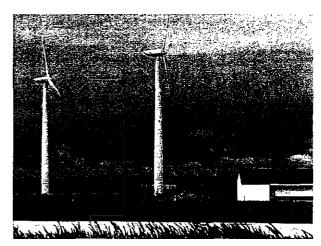
"This is not about subsidies. This is about an industry that can stand on its own merits and produce renewable energy for America," Baldosser said.

# **Future of wind development**

APEX's wind farm construction is projected to begin in 2019, and could take as little as six months to erect all of the turbines.

"There will certainly be slow-turning vehicles and use of road shoulders, so traffic will be impacted. It is important to note that we must work with the townships and county engineer to determine road-use requirements and specifications," Montague said.

In Ottawa County, bird conservation groups opposed a wind turbine project at Camp Perry and declared victory in June 2017 in their fight



Wind turbines have been built in Port Clinton but bird conservation groups declared victory in June 2017 when their opposition to a proposed turbine at Camp Perry led to the project being dropped.

(Photo: Molly Corfman/The News-Messenger)

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(https://www.portclintonnewsherald.com/story/news/local/2017/07/07/bird-conservationists-score-win-against-proposed-wind-turbine-project/458614001/) against the project.

The Ohio Air National Guard had proposed a \$1.5 million taxpayer-funded, 198-foot wind turbine at the Camp Perry Joint Training Center, but the plan was dropped after organizations including the American Bird Conservancy and local Black Swamp Bird Observatory voiced opposition, saying it would pose a "grave threat" to migrating birds, bald eagles, and bats.

The Seneca Anti-Wind Union has raised similar concerns about the proposed Seneca County wind farms.

Montague said <u>shadow flicker (http://windenergyfoundation.org/wind-at-work/public-health-safety/public-health/shadow-flicker/)</u> — which occurs when the blades of a turbine pass in front of the sun to create a recurring shadow on an object — is limited to 30 hours per year in Ohio and turbine sound levels would not exceed 46 dBA (A-weighted decibel levels) at any nonparticipating residence.

Those sound levels would be lower than the inside of a car or an office setting, she said.

APEX has worked with the Ohio Department of Natural Resources and U.S. Fish and Wildlife for several years to determine methods to mitigate impact on migratory birds as well as native bird and bat species.

"The project regions are miles from the migration areas along the coast and quite a way outside the 'extensive monitoring areas' designated by ODNR," Montague said.

Mike Kessler, Zeman's neighbor, said he will be able to see three wind turbines behind his house on Township Road 175.

He doesn't consider the current minimum setbacks to be a safe distance from his home and worries about health issues related to the wind turbines.

"How can anybody sleep at night when you have something churning all night long?" Kessler said.

The issue of wind development in Seneca County has resulted in conflicting opinions and disagreements between township trustees, state representatives, school board members, neighbors and family members.

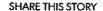
For Kerschner, his opposition boils down to the importance of quality-of-life issues, even as he acknowledges there is not another industry on the horizon to take wind energy's place in Seneca County.

"This is money that we do not have now. It's not like we're losing something that's been an ongoing income," he said.

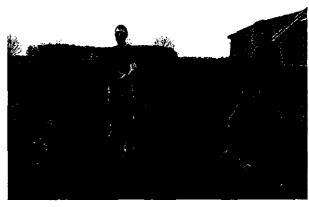
dacarson@gannett.com

419-334-1046

Twitter: @DanielCarson7



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Michael Kessler, left, and Chris Zeman talk about proposed wind turbines at Kessler's Seneca County home. Both men are opposed to proposed wind energy development in their area.

(Photo: Molly Corfman/The News-Messenger)

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Matt.

Attached are a few pages, one of the pages is from the safety manual from Vest. These are not as tall as the 591 foot tall turbines that are propose for our area. This model has a 328 hub height. In the document they are asking for 1300 feet and possibly a fence if they can not provide adequate safe distances to keep people and children out of the area. With the existing setback, we can have these proposed turbines closer than this to the homes and if the setbacks were to be lessen, now you are talking about yards being inside of this area.



Ed Clark

Project Coordinator/Estimator

Office- <u>419-447-0165</u> Mobile- <u>419-618-0031</u> Fax- <u>419-447-0166</u>

Email- eclark@clouseelectric.com

Web- www.clouseelectric.com

issued by: Technology Type: MAN Class: II Page 3 of 32

# 1. Introduction

A turbine connected to the grid implies certain elements of danger if it is handled without exercising proper caution.

For safety reasons, at least two persons have to be present during a work procedure.

The work must be properly carried out in accordance with this manual and other related manuals. This implies, among other things that personnel must be instructed in and familiar with relevant parts of this manual.

Furthermore, personnel must be familiar with the contents of the "Substances and Materials" regulations.

Caution must especially be exerted in situations where measurement and work is done in junction boxes that can be connected to power.

Consequently the following safety regulations must be observed.

# Stay and Traffic by the Turbine

Do not stay within a radius of 400m (1300ft) from the turbine unless it is necessary. If you have to inspect an operating turbine from the ground, do not stay under the rotor plane but observe the rotor from the front.

Make sure that children do not stay by or play nearby the turbine. If necessary, fence the foundation. The access door to the turbine must be locked in order to prevent unauthorised persons from stopping or damaging the turbine due to mal-operation of the controller.

# Address and Phone Number of the Turbine

Note the address and the access road of the turbine in case an emergency situation should arise. The address of the turbine can often be found in the service reports in the ring binders next to the ground controller. Find the phone number of the local life-saving service.



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\*June 2011 was when Blue Creek Wind Farm's amended permit was filed with OPSB. Commercial Operation began in June 2012.

Blue Creek Wind Farm is in 3 townships in Van Wert County and 3 townships in Paulding County.

Blue Creek Wind Farm is constructed throughout the entirety of Union Township, but only in parts of the other 5 townships.

This is why Union township was chosen for research.

<sup>\*\*</sup> Values based on Van Wert County Auditor's Current Valuations

issued by: Technology Type: MAN Class: II Page 3 of 32

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From: Ed Clark [mailto:eclark@clouseelectric.com]

Sent: Wednesday, June 27, 2018 9:42 AM

To: Puco ContactOPSB <contactopsb@puco.ohio.gov>

Subject: (1) Seneca Anti-Wind Union - Home

Bill Reineke has pull his support for the changing the setback laws.

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Sandusky County and
Portions of Senera County

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Board – Board Member

June 26, 2018

Over the past several months, I have taken time to conduct due diligence in understanding both sides of the wind setback debate and specifically how the 88th House District feels on the topic. From the beginning, it has been my sincere hope that a fair compromise could be reached between those in support of wind energy development and those with concerns. I have taken the time to listen, engage, and evaluate how my constituents view reducing the wind turbine setback requirements.

Based on my continued engagement with the constituents I was elected to represent, I have come to the conclusion that no changes should be made to Ohio's current wind turbine setbacks. Under current law, the setbacks can be reduced if "good neighbor" waivers are reached with affected landowners in the project footprint. Property rights are key and landowners on both sides of this issue have valid arguments. In pursuit of a compromise, it is unfair for one set of landowners to completely win this debate, and property rights should never be subject to a vote.

Current law provides sufficient protection for the health, safety, and welfare of the district but also allows for the free market to work. If a wind developer and an affected neighboring landowner can come to an agreement, which results in a waiver being signed, then that is all that should be required.

I have appreciated the immense outreach and engagement from all of my constituents, both those who are for and those against reductions in the wind turbine setback requirements. This has been a contentious issue that I have personally wrestled with during these past several months, as valid arguments have been presented by both sides.

It is my sincere hope that our community can maintain a sense of civility in our discourse with each other. This issue has been divisive and pitted neighbors against each other. While it is alright to disagree, we must remember to be respectful of others' opinions when engaging in public discourse.

As your State Representative, I will continue to monitor and advocate for the district on this important issue. If you have any questions, comments, or concerns, please do not hesitate to reach out to my office at 614-466-1374 or email me at Rep88@ohiohouse.gov.

Sincerely,

Bill Reineke

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