

Subcommittee Meeting @ Mercer County Courthouse 5/19/2026

Board Members Present: Mike Eslinger, Kevin Haffner, Chris Renner Scott Harmstead

Attendees: Gene Wolf, Wes Klein, Michael & Kaylene Berg, Casey Voigt, Duane Miller, Wayne Bertsch Henry Rubin, Melissa Brooks, Chase Dauenhauer, Sheila Roth, Michelle Maas, Clifton Maas, Kimball Banks, Jack Schuh, Andy Thomas, Elizabeth Warner, Judy Knoell, Esther Grannis, Corrine & Shannon Sailer, Signe Snortland, Wayne Windhorst, Brianna Scheid, Scott Harmstead

Meeting Called to Order: 6:00PM

Mike- Change in some scheduling for June Meetings- June 2nd & 16th at 9AM is the next subcommittee meetings –Scott unable to attend evening meetings. Not sure if these will continue after, due to where we are at, along with budgeting.

Scott- Industrial District: We revised this and the draft you were provided is about 2 pages long, what we looked at was the uses. We put all the different uses into lists- the first list is what would be permitted and tried to keep everything that way (permitted). Conditional uses – Will say that right now fuel storage is permitted in industrial – One question on that is does the committee want that to stay?

Mike: What would be gallonage, what breaks down small? I know farmers have lots of storage on sight. I know 10k seems like a lot but that is the typical amount nowadays. If we do talk on a large scale they can have as much as 100k on sight or more. Would it be unlimited to be over 10,001?

Scott- Over 10k is unconditional. The other is anhydrous. Where would you want this? Right now, it is on its own.

Mike- In large quantities it is considered a hazard. Here again we have farmers with huge anhydrous on sight with direct fuel. The trucks haul about 18 tons or 19 tons. It should be less than a semi load to be considered small on sight.

Scott- That makes a lot of sense. Spurs, switching guards, etc. listed as permitted but may have vibrations, noises etc. that classify it as conditional, but we have it as permitted.

Mike- Putting it under conditional use would give us the option to do the study?

Scott- Not necessarily, even under that or not you can make it have a study.

Mike & Kevin- Leave it as is.

Mike- That is railroad switching terminals. Which if plant in Richardton grows there could be more.

Scott- Current decimal limit- 45 decimals or less- I suggest we move that.

Public Comment- Wouldn't the railroad be assed already?

Scott- They would have to buy additional property to make the noise requirement? That's a steep requirement.

Scott- Noise Mitigation Section Now, I am suggesting applying to conditional uses later.

Public Comment- Normal conversation is between 50-60 decibels

Scott- Issue is the property boundaries, does that mean rail or any use. Best way to do it is to the next home/ closest home.

Mike- Leave it for now and move it

Scott- I would remove it and apply it to conditional uses.

Public Comment- And still at the property line?

Scott- Possibly, I do not think it is a good idea.

Chris- I would do it to the homes not the property line.

Public Comment- Where did this 1200ft come from?

Scott- I just left that already how it was. That is standard.

Public Comment- This wouldn't apply to data centers?

Scott- It would and apply to all industrial setbacks we are not getting into data centers tonight. I would recommend moving the screening ordinances residential buffer, fire fighter access to the other draft under industrial use draft that was discussed at the other meetings- traffic impact study, EM, etc- It would be putting all standards into one area then a table at the end and would say which spot you are in

Mike- So cover any type of industry?

Scott- Yes

Chris- What would be front yard setback 100 ft from road center line

Scott- You are talking about part F. I just re used what was already used. It was in the existing ones.

Mike- Just to sum it all up, we are breaking industrial district standards into a table where the standards would be in a different chapter. The ordinance needs to be broad but also areas that need to be specific, this will hopefully cover everything.

Scott- Idea I have with draft to talk about a way to deal with protection from nuisance claims. Think about what we have for protection on AG, this would be semi similar but for industrial. This is for consideration for you to think about.

Mike- I agree we should have that.

Chris- Would the county engineer review it?

Scott- Absolutely and they already have been looking at it.

Mike- Can we make sure legal counsel looks at this and signs off on it.

Public Comment- Does nuisance law take over state law?

Scott- That would be where the legal would review this. We can't conflict with it.

Public Comment- What if they are exceeding noise because of early construction and they are using generators before building is completed and they go over the noise limit?

Scott- It is a good question but it's highly unlikely because there are some requirements that companies have along with our ordinances.

Chris- If they test generators once a month- we can put in the permit they can only test so many at a time. But if there is an emergency you can except them to keep mufflers etc. in good working condition.

Mike- A lot of this I have found out is required by their insurance companies. They have more control over that than some of the plants do. Once a permit comes in, we can look at the SOP and decide.

Public Comment- Page 7 says only 1 generator can be tested at a time.

Chris- I don't know how loud they are or what they require for decibels currently

Scott- That gets through industrial piece- battery storage standards little background we have looked at this for other counties, evaluated other ordinances that have it, this is a relatively new thing however I am not associating with industry and have heard them speak about it 1 of 2 way is permitted through PSC. Meant to help smooth out market pressures across grid. In McKenzie County the industry is looking at a sight from 5-10 acres of footprint. They contain current technology lithium batteries. A whole bunch of cell phones or batteries basically in these contains. There are a lot of different national codes that can decide what they can or cannot do. Cannot be too close to streams, requirements for fire safety, building electrical codes- this is residential and commercial. Then you get into the bigger stuff, these need to be reviewed more clearly. Essentially, we will go through all of these: There should be a noise study, monitoring to apply with a number of codes, 500 ft from occupied building, 500 ft opened or active coal seen, 100ft from weapons, safety requirement, access requirement, height limit, 3rd party inspections, hazard material, liquid containment, environmental protection, making sure clear space adjacent to it, end of use- talks of reclamation requirements.

Public Comment- 500 ft from active coal, why this is?

Scott- This is because of wildfire protection and water resources. Etc.

Mike- On the outset and looking at this to protect nature wetland, I do not think 100 ft is that much. I like things the same, so 500 ft I think is important.

Public Comment- If you want to protect coal at 500ft then our wetland is just as important.

Mike- I would like to move it to 500ft.

Mike- General permitting required on residential, how small are you considering residential?

Scott- I do need to fix this and add the definitions in there.

Scott- If you look at the national fire protection standards is 500ft. The industrial commission is from oil and gas wells. Oil and gas wells are a lot more hazardous than these. But there are multiple reasons that I say the 500ft recommendation is a minimum. The common thing is to let it burn; you can't use conditional firefighting for this. So, the requirement for emergency response would apply to the battery and storage. Have an emergency response plan, working with the emergency manager, fire break of at least 50ft. Those are all approaches the state is requiring for commercial products.

Scott- Solar and Energy- With this the current draft was prepared a year ago, talks about a special use permit, I changed this to a conditional use permit. I like how this draft was set up. Talks about farms, ranches, houses etc. Talks about your right- I am not suggesting a change to any of that. Solar farms are bigger than meg a watt- currently in AG should be in industrial. Currently is 2500 ft from the nearest home, I am not saying I want to change it, but this is more than any example I could find anywhere. Greatest I found was 1000 ft. The idea I had was to take it and leave it or change setbacks and base it on the size of projects.

Mike- Here again I like constantly, I think we should make it the same for solar. It is an approved ordinance and has gone through legal and all the loops.

Chris- The thing about wind the towers will continue to get bigger.

Mike- I am concerned we will be challenged in court. I am thinking it's an ordinance now, it's past the tests and I say we leave it.

Chris- I say 500ft.

Scott- The sight or view of it such as glares and land use intensity.

Chris- The only thing I can think of is glare and heat.

Scott- These are normally 2-4 degrees warmer. As far as mitigation for it is more ground cover/grass. Decent amount of space so more things can grow in between. I put a suggestion that would require what I just described and if it gets over the ft amount, you could require an assessment that would test if it would make a cumulative impact. It will not be as great as building a subdivision, especially if you do it right and get things to grow.

Public Comment- You are changing it either way because you are increasing the heat.

Scott- It is a project that has ranch land or crop land. There is not a lot out there for requirements and these are some of the things I saw out there. Partly above that on page 5 I added in there regarding airports.

Mike- Some of this information was taken from Bowman County, and they spent a lot of time on the effects it does on airports.

Scott- Bottom of page 5 dual use: doing a project that is not only accommodating for livestock to walk under it or grazing. Not sure how feasible it is from an industry standpoint.

Mike- I am in favor of all the tweaks except the setback I think it should stay the 2500ft since it is already an ordinance and was already reviewed by legal. And if they are going to challenge legally then they will have to challenge everything. Chris, are you okay with that?

Chris- I think it's a bit much for wind but it's okay for solar.

Mike- I would like it in there and it can go to the board and they can decide. So right now, we will leave it and let them decide.

Public Comment- Any provision on cleaning up, say such as wind, tornadoes? How do you hold someone accountable to clean up?

Kevin- Typically they are probably dealing with insurance companies.

Mike- Your saying has a timeline for cleanup.

Scott- Most of the time it will come down to insurance, but we can investigate adding something.

Public Comment- Garbage could end up on neighboring property.

Break 7:09 PM-7:22PM

Scott- Wind Energy- I did not make any changes; I am just going to go through my comments. First comment is on the wind facility, or sighting permit can't that just be a conditional use permit? Page 5 on setbacks- not proposing any changes there mainly the same as solar. I would like to replace this with a table to make it cleaner.

Mike- Same requirements just different format.

Scott- Correct. One comment on page 6 c. It is a one mile from property line - should this be non-participating property line? Right now, it is any property line which would be impossible.

Mike- Change to non-participating

Scott- I can do that. 2 Miles is the largest setback I have seen. One thing we could do is do a buffer. Just an idea for an exercise.

Public Comment- With setbacks. There are several companies that change the size of turbines. Technology is always changing. I would like to see a tier. I don't know how you would tier it but technology changes and locked into a setback and everything changes then you can't change the setbacks.

Mike- We already had this question in another way, so there is a restriction on them changing the height of towers.

Scott- This is also similar on page 8.

Chris- On letter C what is the point of staying a mile away if there is nothing on that property. What are we protecting?

Public Comment- Protects from the blade falling off etc. I think the mile with our type of wind would give the landowner, even nonparticipating, would give the landowner some protection.

Scott- From my perspective that dig into that so I cannot justify that up or down.

Mike- I know there are sometimes also sheets of ice that fall off. We have already lived with the mile- I would leave it at that

Comment- On part B we are leaving the 2 miles? What is your requirement for it to be non-habitable.

Mike- When wind towers first came out, they used to consider only the 911 address your permanent address but now we have these shops with living quarters that some people live in during the spring in fall, there are also hunting cabins, people that set up trailers when they are calving. We are trying to go beyond what we consider a 911 address. We run into people that do 3 months farming then leave the

state all together. All those things were considered and that's why all turbines would be set back 2 miles from a habitable location.

Scott- I think it would be best to come back to the board with a definition of all of these

Public Comment- Can we look at something with damages for wind? Can we put something in there that states need to compensate damages for timely manner?

Scott- We can investigate something like that, but that is getting out of planning and zoning and would be more state's attorney.

Public Comment- Or do the wind companies have to clean up their other damage first before coming to this county?

Mike- If a company has a bad reputation, that is where the permit comes in.

Public Comment- From zoning would they have to provide damage claims that are open in the ND

Scott- That is way more legal than anything.

Mike- We can do homework on this, but this is something we would have legal for. The public needs to be aware when these companies come and apply and that we are picking good companies. There are good ones and we just need to pick the right one.

Kevin- You are asking for a certificate of liability?

Scott- The county should not get into property owner vs property owner, that is where we need the state's attorney.

Public Comment- Wind companies don't buy the land this wouldn't be property owner and property owner it would be property owner and wind company.

Public Comment- Is the topic of transferring ownership talked about in this? Say they have decided to sell their project? What that fall under industrial use standards.

Scott- The ownership of the permit? Not the permit necessarily the overall project?

Mike- The answer is a definite yes.

Public Comment- And would it have to be approved?

Mike- Yes, it would get approved with the county commissioners and they would be having to do the same things and follow the same conditions.

Meeting adjourned at 8:00PM.

