

## HEGINS TOWNSHIP ZONING HEARING BOARD

**IN RE: APPLICATION OF ANTHRACITE RIDGE, LLC  
HEGINS TOWNSHIP WIND ENERGY SAFETY ORDINANCE**

### DECISION

#### **I. INTRODUCTION**

The Hegins Township Zoning Hearing Board conducted hearings on August 31, 2021, September 28, 2021, and November 23, 2021 at 6:30 p.m. The purpose of the hearings was to consider an application of Anthracite Ridge, LLC (“Anthracite” herein) under the Wind Energy Safety Ordinance of Hegins Township (“WESO” herein). Present at the hearing on August 31, 2021 were Zoning Hearing Board Chairman, Larry Umholtz, Zoning Hearing Board member, Todd Bixler, and Alternate Zoning Hearing Board member, Stephen Klinger. Member Stephen Klinger recused himself from participating in the hearings.

As stated above, the purpose of this hearing was to consider an application under the WESO. It was stipulated the Zoning Hearing Board of Hegins Township would hear this matter and the Schuylkill County Court so ordered that the Zoning Hearing Board hear it upon resolution of the Board of Supervisors of Hegins Township. The parties to this proceeding and their attorneys are as follows: Attorney Bruce Anders, representing five resident objectors, Attorney Donald Karpowich, representing Hegins Township, Attorney Martin Cerullo, representing the Schuylkill County Airport Authority, Attorney Jeff Wallitsch, representing the Department of Military and Veterans Affairs, and Attorney Major Voci R. Bennett, representing the Pennsylvania National Guard. Representing Anthracite is Attorney Charles B. Haws of the Barley Snyder Law Firm. All

witnesses were duly sworn, the property was posted and the notice of the hearing was properly advertised.

## **II. FINDINGS OF FACT**

1. Anthracite filed an application under the WESO with Hegins Township on July 12, 2021. The application was marked as Exhibit A-1.
2. Testifying for Anthracite in regard to the application was David Allen, Senior Project Manager for Earthres Group, Inc., and a professional engineer licensed in the Commonwealth of Pennsylvania.
3. Earthres Group, Inc. prepared the application under the WESO for Anthracite.
4. The WESO was adopted by Hegins Township on or about June 7, 2010 and is known as Ordinance No. 6-A, Book 4.
5. The Zoning Hearing Board held hearings on August 31, 2021, September 28, 2021, November 23, 2021 and made its decision on January 11, 2022.
6. At the hearing on November 23, 2021 the parties agreed that the Zoning Hearing Board would have sixty (60) days within which to issue its written decision in this proceeding.(TR. 11/23/21, p. 552).
7. The transcribing of the hearing of November 23, 2021 was completed on January 17, 2022 and forwarded to the Solicitor for the Zoning Hearing Board on that date.
8. By Resolution 1 of 2021-05-05, under date of May 5, 2021, the Board of Supervisors of Hegins Township appointed the Hegins Township Zoning Hearing Board to serve as Special Hearing Master to adjudicate Clean Air Generation LLC's and Anthracite's compliance with the WESO.

9. Anthracite provided the landowners' consent, the applicant and operators consent and notification to property owners within 1500 feet of the project. (TR. 8/31, p.39).
10. Section 6(a) of the WESO requires a narrative of the project. Anthracite provided that narrative. (TR. 8/31, p. 42-45).
11. Section 6(b) of the WESO requires copies of lease agreements or other agreements documenting permission of property owners for Anthracite to apply for a permit and Anthracite provided said documents. (TR. 8/31, p. 46-57).
12. Section 6(c) of the WESO requires identification of the properties on which the wind facility will be located. Anthracite provided that identification. (TR. 8/31, p. 57-64).
13. Anthracite has not provided information or provided evidence of its compliance with the Hegins Township SALDO. (WESO Section 5).
14. Anthracite indicated that the final agreement with turbine suppliers is not finalized.
15. Anthracite states in the narrative "The final contractual agreement with the turbine supplier is not finalized. The supplier is tentatively Vestas Wind Systems A/S (Vestas)."
16. Anthracite stated in the narrative that "Specific turbine locations may be adjusted subsequent to Township approval, while remaining in compliance with WESO guidelines."
17. Environmental Studies, page 6 of the Application, under the section labeled Birds, Anthracite states "Upon completion of the final project layout, the Project will develop a project specific document for best management practices to avoid or minimize impacts to migratory birds." (WESO Section 6(q)).

18. Environmental Studies, page 7 of the Application, under the section labeled Rare Plant, Anthracite states “As the project details are finalized, any layout changes will be communicated to the DCNR and steps will be taken as a result of consultations with the agency.” (WESO Section 6(q))
19. Section 4,(6)(q) WESO – requires copies of any propagation or migration studies, wetlands, historic and endangered species studies. None were submitted by Anthracite.
20. The Applicant is to submit all filings made with the FAA. Anthracite has not done that.
21. Applicant is to submit certificates of design compliance for equipment – Anthracite has not done that, but proposes to defer that to the building permit stage. (WESO Section 10(a))
22. Anthracite did not demonstrate compliance with the Uniform Construction Code. (WESO Section 10(b))
23. Anthracite has not submitted evidence with respect to mechanical brakes and standards of electric components, as required in the WESO.
24. Noise, page 15 of the Application, Anthracite states “Pending final design and the Township concurrence, a site specific model and analysis will be completed.
25. Shadow Flicker, page 16 of the Application, Anthracite states “Pending final design, an in-depth model and analysis will be completed.”
26. Section 4, (18) of the WESO – requires the Applicant to make reasonable efforts to avoid disruption of radio signals. Anthracite has made no showing in that regard with respect to the VOR signal broadcast from Ravine.
27. Decommissioning, WESO Section 20. Anthracite has provided no estimate of cost. While it correctly indicates that the financial security has to be provided prior to

construction, it has made no showing of the ability to post such financial assurance for the Township's benefit.

28. Section 4, (20)(g) of the WESO obligates the landowner to complete decommissioning if the facility operator does not do so within six months after cessation of operation. The Application directly says that the landowner, Rausch Creek, disclaims any and all responsibility for decommissioning.

29. With respect to the Development Agreement which the Ordinance obligates an Applicant to sign, paragraph 3 of the Development Agreement requires an FAA determination of no hazard for each wind turbine. Anthracite has not submitted any of its FAA filings, but has indicated in the Application the FAA has already issued a Notice of Presumed Hazard. See Application, Applicant's Exhibit 1, at page 10. Anthracite has given no indication of how it plans to address or resolve that issue. The Board has received written objections from the Schuylkill County Airport Authority, Airport Authority Exhibit 1, as well as from the military and National Guard about operations at Indiantown Gap. Those were submitted pursuant to Section 4 (7) of the WESO, which requires Anthracite to provide a copy of its Application to various governmental agencies, and affords those agencies an opportunity to comment. Anthracite cannot demonstrate the proposed project is consistent with the operations of the Schuylkill County Airport or the military training exercises conducted in the relevant area. The concession of Anthracite that the FAA has issued a Notice of Presumed Hazard, and the absence of approval from the FAA, is critical, as evidenced by Anthracite's witness' testimony: "So formal approval is required from the FAA in order for the project to proceed. All findings with the FAA and responses from them

override any correspondence from anybody from the Township.” T., 8/31/21, p. 91, lines 18-24. Anthracite does not have any approval from the FAA. The Notice of Presumed Hazard is not an approval and the Applicant acknowledges further FAA review is necessary. T., 9/28/21, p. 269, line 16- p. 270, line 1.

30. Anthracite attempts to justify its failure to submit its FAA filings to this Board by saying its FAA submissions were based on a different configuration of the project, with no idea when a revised submission may be made to the FAA. T., 9/28/21, p. 256, lines 7-17; p. 265, line 23; p. 257, line 22; T., 9/28/21, p. 335, lines 6-12. The FAA submission needs to be current. T., 9/28/21, p.333, lines 12-24. That is a failure to comply with the WESO; and there is no way for whatever may be submitted in the future to be reviewed as part of this public hearing process. T., 9/28/21, p. 268, lines 9-18; p. 308, lines 4-15.

31. The WESO specifies noise limitations of 45 DBA. Anthracite has provided no noise study and in fact proposes to conduct any future noise study under a standard which is different than that spelled out in the WESO. Application., p.14.

32. The Township provided a noise study conducted by Rand Acoustics, LLC under date of November, 22, 2021 stating as follows:

1. This review found the Application didn’t demonstrate noise compliance with evidence, and omitted information necessary to evaluate facility noise emission levels and potential adverse community noise impacts.
2. Whereas investigations of noise complaints from *smaller* turbines on *smaller topography and distances to neighbors* found noise exceeding 45 dBA, disturbing

sleep and amenity (enjoyment of property, quiet), with complaints and appeals to stop the noise thousands of feet from the turbines.

3. From the basic comparison, despite the lack of evidence in the Application, there is ample evidence from other turbines and every reason to expect exceedances of the Hegins Township noise regulation, and similar or louder night noise adverse impacts for neighbors.
  4. This review concludes that the Application facility if built could not comply with the noise regulation and would be certain to breach requirements to protect health and welfare in the Hegins Township Zoning Ordinance. (Exhibit T-1, TR. 11/23/21, p. 502-506).
33. John Franco, the Director of the Bureau of Environmental Management for the Department of Military and Veterans Affairs at Fort Indiantown Gap, testified that the impact on migratory birds would be considerable if the project of the wind facilities is completed. (TR. 11/23/21, p. 405-419).
34. Lieutenant Colonel Timothy Zerbe, Pennsylvania Army National Guard Army Aviation Officer, who is responsible for maintaining the readiness of all army aircraft in the Commonwealth of Pennsylvania, testified that the wind facility project would impact the ability of aircraft flying into the vicinity of the windmills. (TR. 11/23/21, p. 437-457). (See letter of 10/16/21 from Voci R. Bennett, Esquire)
35. William H. Willard, II, Manager of the Schuylkill County Airport, testified that the windmills and the wind facility project would have a negative impact on the operations at the Schuylkill County Airport. (TR. 11/23/21, p. 511-530). (See letter of 9/22/21 from Martin J. Cerullo, Esquire)

### **III. CONCLUSIONS OF LAW**

The application of Anthracite under the WESO fails to meet the terms and requirements of the WESO.



**IV. DECISION**

It is the decision of the Hegins Township Zoning Hearing Board to deny the application of Anthracite for a permit under the WESO as said application does not meet the requirements and provisions of the WESO.

Date: Jan 18, 2022

Larry C. Smoltz  
LARRY SMOLTZ

Date: 1-18-2022

Todd Bixler  
TODD BIXLER