



From the Desk of Executive Director By: Richard J. Stadelman

Wind Turbine Siting

Many towns across the state have been facing the issue of siting of wind turbines used to create power. Proposed turbines have been from one or two towers to multiple turbines in grid patterns over several square miles. Some towers would exceed 350 to 400 feet in height. These proposals have triggered local neighbors to the proposed wind turbines to push the town and county boards to adopt ordinances to try to regulate the siting to protect their interests and the community interests.

The concerns raised from neighbors include the danger from a tower collapsing, noise impacts, impact on birds and other wildlife, shadow/flicker effect, possible throwing ice, reduction in property values, impacts on local roads, and more. To protect these neighbors and the community interests there have been ordinances drafted.

The state law however limits the restrictions that a town, village, city or county can adopt on the installation of wind energy systems (as well as solar energy systems) under Sec. 66.0401 of Wis. Statutes by saying that any local restriction must satisfy one of the following:

- (a) Serves to preserve or protect the public health or safety;
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency;
- (c) Allows for an alternative system of comparable cost and efficiency.

While there has been several different examples of ordinances that have been examined and even adopted by some towns and counties around the state, the wind turbine developers continue to argue that most local ordinances are not defensible, because

they do not meet the criteria in Sec. 66.0401 of Wis. Statutes.

The ordinances that have some of the strongest limitations have established setbacks and noise restrictions on the proposed wind turbines. Trempealeau County, for example, has set a minimum setback from any wind turbine to a neighboring residence of at least one mile in distance. Other examples have picked ½ mile setback down to as low as 1,000 feet from residences. For noise restrictions some ordinances have limited the noise at the property line of the wind turbine to no more than 5 dba over ambient noise levels. While these standards are very technical, the industry has stated that these limitations are beyond any standards for any other industry and are not reasonable limitations. Several lawsuits against towns and counties have been threatened by wind turbine developers, including the filing of notices of claims, which is the first step in filing a lawsuit.

Several towns officers over the last year have asked our Association for a model ordinance to regulate wind turbine siting. We have not felt comfortable recommending any one ordinance as the best example, because there does not appear to be a good consensus on what are reasonable and defensible setback and noise levels, among other issues to be included in these ordinances. Several citizens groups around the state have cited studies to defend the higher standards, but the industry counters that the studies are not scientific or peer reviewed studies that support the standards.

Our Association has always believed in local control over impacts over business and industries that impact their citizens and community. We also have recognized that at

times state guidelines for local governments to adopt and enforce have been beneficial to avoid continued legal challenges. The use of state standards applied locally for new and expanding livestock facilities over 500 animal units is one example of this practice. The town and county have the authority to adopt local ordinances to require permits under either a licensing ordinance or zoning conditional use for new and expanding livestock facilities. The state law and administrative rules set the minimum standards the livestock facilities are required to meet to address odor, groundwater runoff, manure management, and other requirements. The state rule developed a standard application for local governments to use in judging whether the livestock facility meets the state standards. This model also allowed for the local authority to enforce and regulate the livestock facilities once in operation.

Many may remember that before the livestock facility siting law (Sec. 93.90 of Wis. Statutes) in 2004, there were legislative bills to totally preempt the town and county authority over adopting local ordinances which established setbacks and standards which many believed were unreasonable. While no bill has been introduced to totally preempt local control over wind turbines in Wisconsin, some have advocated that all licensing and regulation be moved to the State Public Service Commission without any local control involved.

It also needs to be pointed out that the use of "wind energy" as an alternative source of energy in our state has been advocated by many groups. The state has goals to have 25% of its state energy generated by renewable sources by 2025. The Governor has created both a Task Force on Global Warming and an Office of Energy Independence within the Governor's administration to seek these goals. While

"wind energy" is one of the politically popular alternative energy sources being promoted, the impacts of the wind turbines on immediate neighbors can be very significant.

Within the past month, the State Public Service Commission staff has met with our Association, Wisconsin Counties Association, wind developers, and promoters of wind energy to discuss the development of a possible model to site wind turbines in Wisconsin and still protect the interests of neighbors and the community. The concepts discussed have paralleled the processes in the livestock facility siting law and rule.

First, the state legislature would give legislative authority to the Public Service Commission to develop state standards (minimum and maximum limitations) on such things that would include *"visual appearance, lighting, electrical connections to the power grid, setback distances, maximum audible sound levels, proper means of measuring noise, interference with radio, telephone, or television signals, decommissioning, or matters of public health and safety concerning wind energy systems."*

Second, the standards would be developed by a administrative rule by the Public Service Commission (PSC), however, there would be no authority for emergency rule making. Our Association's concern is that the rule making be as open to public input as possible. In fact, we would encourage a technical advisory committee be developed by PSC, which would include individuals representing the neighbors most impacted by wind turbines.

Third, the wind turbine siting rules would allow towns and counties the option of adopting the state standards or not adopting any requirements if they so choose. The state standards would include a process with timelines for decisions by local government to give predictability to the

industry. Appeals of local decisions applying the state standards to wind turbines over 1 megawatt in size would be to the PSC. Appeals of local decisions applying the state standards to wind turbines under 1 megawatt in size would be to circuit courts.

Fourth, we have expressed as one of our bottom lines in this process that control over weight limits on town and county highways would remain in full control of the town and county as it did under the livestock facility siting law. Town and county authority to establish both seasonal and special weight limits under Sec. 349.16 of Wis. Statutes has always been subject to a standard of reasonableness. It should be recognized that with large wind turbines in excess of 200 or 300 feet in height, that there will be impacts on local highways both at the time of construction and during times of needed maintenance. To reach the "hub" of a large wind turbine, a very large and heavy crane will be needed to service the facility.

While there will be some who will argue that we should not allow any wind turbines within a mile or less of residences in Wisconsin for various reasons, the reality is that the proponents of wind energy will keep pushing for siting of these large turbines in Wisconsin. We want to retain as much local control and oversight over these facilities as possible.

The Wisconsin Towns Association Board of Directors has authorized the staff to support a legislative bill to authorize the PSC to develop state standards for local ordinances for wind turbine siting. The board has expressed two points that need to be recognized in this bill and the rules. First, that the rule development by PSC be done in the most deliberative process possible taking into account impacts on immediate neighbors by using a technical advisory committee or advisory committee including citizen neighbors in development

of the rules. Second, that the law and rule recognize impacts on adjacent neighbors to the wind turbines and that such impacts be compensated appropriately by the wind turbine developers.

It needs to be pointed out that at the time of writing this article (late February, 2008) that the state legislature is nearing the end of the current regular floor session, scheduled to end as of March 13, 2008. It may be too late in this session to pass such a law. Current ordinances in place will stand until challenged in courts. If current ordinances can meet one of the limitations mentioned on page one of this article under Sec. 66.0401 of Wis. Statutes, they will stand. However, if the current ordinances will not meet one of these limitations, the ordinances may be struck down. Thus in the present state of the law, towns and counties will have to individually be able to defend their local standards. We will provide an update on the status of this issue in coming months.

WTA Capitol Day

On behalf of the WTA Board of Directors and the Urban Towns Committee Executive Board, thank you to the 125 town officers who attended the 2008 WTA/UTC Capitol Day on Wednesday, February 13, 2008. Through the efforts of these individuals we were able to promote the interests of town government on several key issues. Participants came from across the state, including by bus from Barron, Rusk, and Chippewa counties. Again, for all that attended, thank you for your personal efforts!

WISLINE Training in coming Months

Please note the special WISLINE training programs on topics from *Annual Meeting* to *Alcohol Licensing* to *Open Meeting* to *Public Records* to *Parliamentary Procedure* to *Minute Taking* which are noticed later in this magazine. If you want more information call (608) 262-9960.