

Local Wind Law Options

One of the most frequent requests we get at *Alliance for Wise Energy Decisions* (AWED), is for help in writing a local industrial wind energy ordinance. (We'd appreciate your [feedback](#) if you have anything to contribute to this issue.)

An underlying assumption of our recommendations, is that the majority of the local legislators are *genuinely* focused on what is in the best interest of: neighbors to such a project, community businesses, and the local environment. [Read [this](#) about how easy it is for legislators to get off track.]

In the unfortunate case where representatives have been co-opted, the basic choices are: **1)** if they are open-minded, educate them back to reality, **2)** replace them with citizen-oriented people, or **3)** sue them to act responsibly [in the US, a federal [section 1983 lawsuit](#) is the most powerful option available].

Even when the community has conscientious representatives, an industrial Wind Energy Facility (WEF) is a unique, highly technical matter that local legislators rarely have expertise with. That's the reason AWED and [WiseEnergy.org](#) were created: to educate citizens and their representatives on industrial wind energy realities.

After you have educated, citizen-oriented legislators, what are your ordinance options? There are two primary ways you can go with industrial wind energy: **1)** *regulate* it, or **2)** *prohibit* it. There are some interesting options here, so let's look at these closer...

REGULATE Wind Energy —

In North Carolina we have taken this route — and it has proven to be very [successful](#). The KEY premise behind this choice is that regulations are **not** about *excluding* wind energy, but rather to **protect** the health, safety and welfare of citizens, existing businesses, the local environment, and the military. *I can not emphasize the importance of this perspective too strongly!*

What protections are reasonable? There are literally dozens of complications from wind energy development, so we have condensed them down to the five most important concerns that need to be properly addressed by a local ordinance: **1)** Property Value Guarantee, **2)** Property Line Setbacks, **3)** Property Line Noise Limits, **4)** Environmental Tests, and **5)** Decommissioning.

In each of these areas, the conditions should be written based on: **a)** scientific evidence, and **b)** legal precedent. [Please carefully read this general **discussion** for more specifics about each of the five key regulated matters.](#) **Here is the same information formulated into a [letter](#) to local legislators.**

Since wind energy is a relatively new legal matter, there is not a lot of wind-specific case law precedence. In that situation, our advice is to extract what relevant material there is (maybe from other seemingly unrelated areas), and then to forge ahead writing a law that provides **protections** that are in the best interest of the community.

There are many communities throughout the US that have written good wind regulations [e.g. [Madison \(Idaho\)](#) and [Somerset \(NY\)](#)].

In our view the absolute best example of a proper regulatory local wind ordinance is [Carteret County](#) (NC), closely followed by the [Town of Newport](#) (NC). Let me know any questions on either of these.

PROHIBIT Wind Energy: Option 1 —

One of my other activities has been to assist my NY town (Greig) in fighting off a proposed major commercial water extraction business. Over the last ten years the history of this is a [very long story](#) — but so far we have been successful. Right now the town is reviewing its options for an ordinance, and we have been ably assisted by some very competent attorneys.

One proposal put forward is an outright **prohibition** of commercial water extraction. Briefly, the recommended strategy is not to single out that one activity, but rather to include it with a smorgasbord of other “objectionable” business ventures. Those are collectively defined as “prohibited uses.”

In doing some research on the origins of this tactic, it came about because the town of Dryden (NY) wanted to prohibit fracking. What they came up with is no small matter, and has even gotten the attention of the [NY Times](#). In late June (2014) the NYS Court of Appeals [affirmed](#) the legitimacy of their prohibition law.

It seems logical that wind energy could easily be inserted as one of the several prohibited items. I've taken the liberty to [tweak the words](#) a bit to demonstrate how wind energy could be incorporated. As always, please consult with a competent attorney. [Note: a Dryden attorney said that to do this right, there are other matters that need to be done (e.g. a survey), so allot at least two years to do this properly.]

PROHIBIT Wind Energy: Option 2 —

Some communities have taken the bull-by-the-horns, and just outlawed industrial wind energy. The NY town of Stafford is a good example. Their [wind law](#) includes the statement “F. Commercial wind energy systems prohibited. Commercial wind energy systems shall not be allowed in any area or zone within the Town of Stafford.” I do not believe that this has been legally challenged, and not sure how well it would hold up...

PROHIBIT Wind Energy: Option 3 —

Under the category of “There’s more than one way to skin a cat” you should be aware of an organization called *Community Environmental Defense Legal Fund* ([CELDF](#)). They go about addressing these types of situations (industrial wind energy) in a completely different way.

My layperson’s translation is that they feel that corporations (e.g. wind developers) have usurped rights that they are not Constitutionally entitled to. CELDF’s strategy is to have community meetings to educate citizens about that, and then assist them in writing a law to protect their inherent interests.

Several communities have taken this approach, and passed laws prohibiting industrial wind energy (among other things). Here is a sample story about the Town of [Grafton](#) (NH) and the accompanying CELDF [press release](#).

Here is the [law](#) passed by Sugar Hill (NH), prohibiting industrial wind energy provided by outside developers. This [background document](#) prepared for those citizens beforehand is very instructive... The [Town of Wales](#) (NY) passed a similar law against fracking, which could be modified to include wind energy.

A downside of this approach is that the community is actually taking on bigger (e.g. Constitutional) issues. However, it may be appropriate, and others are doing it. For those interested, I can put you in touch with the appropriate CELDF personnel.

There are some other things to consider before making the REGULATE vs PROHIBIT decision, like:

1 - A key matter is: *how legally defensible is the ordinance the community passes?* In our view, it is easier to defend proper **protections**, rather than an outright ban. The reason for this is that there is substantial scientific evidence to support the five (5) elements of a proper protection ordinance (e.g. setbacks). Legally defending an outright ban is harder to do.

2 - Another significant matter is: *how complicated and detailed an ordinance will citizens be able to convince their local representatives to write?* It should be apparent that the longer and more complicated it is, the more resistance they will get from their local representatives. It may seem that a prohibition is simpler, but that is not the case. [For example, to have a "Dryden" type of law will require over 20 pages of text, plus having a town-wide Survey, plus implementing a town-wide Comprehensive Plan, etc.]

3 - Timing is also a BIG variable. Human nature being what it is, many communities don't start protecting themselves until the wind energy wolf is at the door. Passing a proper regulatory law (since a model local wind law had already been written), can be done in sixty days or so. Passing a prohibition typically takes 2± years — which is impossible if a wind project is immanent.

4 - There is also the Public Relations issue. To get any legislation passed, strong community support is needed. The question is: *which approach will result in MORE community backing?* In our experience, more citizens will support a protections oriented ordinance, than will support an outright wind energy ban.

5 - To our knowledge, no community that has written a proper protections ordinance has then had a problem with industrial wind energy.

So, the bottom line is that writing a regulatory law with proper protections:

- 1) is simpler,
 - 2) is more legally defensible,
 - 3) is quicker,
 - 4) will get more community support, *and*
 - 5) works extremely well.
-

This was written from a US perspective, but even within the US, every state has their own quirks. Whether citizens fighting wind energy are in the US or not, there are some ideas here that can be adopted for their circumstances.

The bottom line is that we are in a serious fight, so the more options we are aware of — and take advantage of — the better.

John Droz, jr.

physicist & environmental advocate

“aaprjohn *at* northnet *dot* org”

10/10/16