

## LAND USE PLANNING AND ZONING COMMITTEE STAFF REPORT

PUBLIC HEARING

DECEMBER 2, 2009

### ITEM V:           **ORDINANCE AMENDMENT – Wind Energy Facility**

**REQUEST:** Green Lake County Land Use Planning and Zoning Committee is requesting an amendment to the Code of Green Lake County, Chapter 350 of the Zoning Ordinance; more specifically to delete all of Section 350-43.2. wind energy facility standards and to delete from Section 350-77. appropriate wind energy facility definitions.

**ADDITIONAL INFORMATION / ANALYSIS:** The purpose of this amendment is to address a recent Appeals Court decision in another Wisconsin county that made similar ordinance standards invalid. In addition, the Wisconsin legislature recently provided for the Wisconsin Public Service Commission to create minimum standards for wind energy facilities. Given these two actions and after discussion with the Land Use Planning and Zoning Committee legal counsel, the best course of action at this time is to delete this Section from the County Zoning Ordinance. At such time as is appropriate, the Land Use Planning and Zoning Committee and Department will take up the issue of developing standards for wind energy facilities to compliment those developed by the Wisconsin Public Service Commission, if needed.

Also, in Section 350-77. are definitions related to wind energy facilities. Those definitions stated in this report shall be deleted from the stated Section.

The proposed language to be deleted from the Zoning Ordinance is attached to this staff report.

**STAFF COMMENTS:** The Land Use Planning and Zoning Committee has several options in this regard and they are as follows:

- Forward onto the County Board with recommendation to adopt as proposed.
- Hold another public hearing to take additional public comment.
- Reject as proposed.

Strikethrough is proposed deleted language

ARTICLE V  
Non-building Structures

Language to be deleted.

~~§ 350-43.2. Wind energy facility.~~

~~This section is established to comply with the provisions of § 66.0401 Wis. Stats. This section is intended to provide regulatory provisions for the construction, operation and discontinuance of a wind energy facility. All wind energy facility provisions of this section are intended in their application to satisfy one of the following:~~

~~Serves to preserve or protect the public health or safety; or,~~

~~Does not significantly increase the cost of the facility or significantly decrease its efficiency; or,~~

~~Allows for an alternative facility of comparable cost and efficiency.~~

~~The provisions of this section shall apply to all sizes of wind energy facilities in all unincorporated areas of Green Lake County that have adopted Chapter 350 Zoning Ordinance, Code of Green Lake County.~~

~~A. Location of a wind energy facility. Subject to the provisions of § 350-43.2., a wind energy facility shall be allowed as a permitted use in all zoning districts except:~~

~~(1) NRC — Natural Resource Conservancy District~~

~~(2) M-1 — Mineral Extraction District~~

~~(3) M-2 — Sanitary Landfill District~~

~~(4) Sites of nonmetallic mining with a reclamation plan pursuant to~~

~~— NR 135 Wis. Admin. Rule.~~

~~B. General provisions. The provisions of this section shall apply to a new wind energy facility permitted after the effective date of this section. In addition, no expansion, modification or structural alteration to an existing wind energy facility shall be allowed unless in full compliance with this section.~~

~~C. Informational public meeting. Prior to issuance of a land use permit by the County Land Use Planning and Zoning Department an informational meeting shall be held for the public and the owner/operator of the wind energy facility. The intent of this meeting is for the owner/operator of the wind energy facility to provide operational plan information about the proposed wind energy facility. This meeting shall be held by the Land Use Planning and~~

Zoning Committee and their discretion shall be used to determine the scope of dialog allowed to provide a thorough understanding of the proposed project.

~~D. Standards for a wind energy facility.~~

~~— (1) Visual appearance. The visual appearance of a wind energy facility shall require the exterior surface be a non-reflective, non-obtrusive neutral color. Wind energy facility sites shall require all structures, as approved by the Land Use Planning and Zoning Department, to use materials, colors, and textures that will blend the wind energy facility into its surroundings.~~

~~— (2) Lighting. No wind energy facility shall be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA) and/or other governmental authority. If lighting is required, documentation of those FAA and/or other governmental authority requirements along with documentation that the lighting system being used reasonably minimizes visual disturbance while meeting such requirements shall be submitted to the Land Use Planning and Zoning Department.~~

~~— (3) Electrical wires. All electrical wires and lines connecting each wind energy facility turbine to the next turbine shall be installed underground.~~

~~— (4) Setbacks. In no case shall a wind energy facility turbine have a setback less than 3.5 times its total height from the building perimeter of existing inhabited building structures. Existing inhabited building structures are those such as but not limited to a dwelling, school, hospital, church, library or regular meeting places of governmental entities or clubs or organizations, existing as of the date of issuance of the County land use permit authorizing the wind energy facility.~~

Also, a wind energy facility turbine shall be setback a minimum of 1.1 times its total height from:

a. ~~a deed lot line separating landowners. However, a reduced setback may be allowed to a deed lot line between landowners that are both participating in the same wind energy facility project, if each landowner's easement agreement with the owner/operator of the wind energy facility expressly permits a reduced setback and/or permits overhang of the turbine across the deed lot line and a copy of such easement agreements evidencing such reduced setback (with applicable economic and other personal information redacted) have been filed with the Green Lake County Land Use Planning and Zoning Department.~~

b. ~~public road right-of-ways.~~

c. ~~above-ground telephone, electrical power or other utility lines.~~

~~For wind energy facility structures other than a wind turbine, the minimum setback shall be 1.1 times its height from any deed lot line and in no case shall the setback be less than the provisions of the underlying zoning district.~~

~~(5) Audible noise. The setback standard for a wind energy facility turbine as stated in (4) above is intended to provide for a maximum of 50 dBA at the perimeter of existing~~

~~inhabited structures as also described in (4) above. In those cases where the audible noise exceeds 50 dBA the wind energy facility owner/operator shall take commercially reasonable and appropriate corrective measures to cause compliance with the standards of this section.~~

~~In those cases where the ambient noise level (predevelopment) exceeds the 50 dBA standard, the dBA shall be adjusted to account for ambient noise level and measure only the incremental increase to ambient noise level caused by the wind energy facility in determining whether a wind energy facility exceeds the 50 dBA standard.~~

~~The burden of proof that a wind energy facility is exceeding the 50 dBA standard of this section shall be the responsibility of the party making such allegation. Noise level measurement techniques shall employ the International Electrotechnical Commission Standard 61400.~~

~~(6) Ground clearance. There shall be a minimum vertical distance of 50 feet for clearance between the tip of a wind energy facility turbine blade at its lowest point to the ground level~~

~~(7) Signal interference. The owner/operator of a wind energy facility shall take reasonable steps to eliminate and/or mitigate any interference with global positioning and like signals and/or electromagnetic communications such as but not limited to radio, telephone, microwaves or television signals caused by the wind energy facility~~

~~(8) Aerial Crop Spraying. The owner/operator of a wind energy facility shall take reasonable steps to cooperate with owners of agricultural property adjacent to the wind energy facility, where such adjacent users wish to engage in aerial crop spraying.~~

~~(9) Access and safety. Wind energy facility turbines, guy anchors, substations and electrical equipment including climbing aids shall be secured against unauthorized access by means of a locked barrier or security fence. Wind turbines shall not be climbable up to 15 feet above ground level via an external ladder. Wind turbines of tubular construction shall only require that any access door to the tubular tower be lockable.~~

~~(10) Signs. A wind energy facility shall post appropriate safety warning signs. No wind energy facility structures shall be used to advertise or promote any product or service with words or graphic representation. One sign, 8 square feet or less in size, mounted on a wind energy facility structure identifying the manufacturer and/or installer and/or operator of the wind energy facility shall be allowed.~~

~~(11) Infrastructure. The owner/operator of the wind energy facility shall identify all public infrastructure which may be impacted by the construction of the wind energy facility, such as but not limited to roadways and drainage ways. Following identification, the wind energy facility owner/operator shall meet with each public entity for the purpose of accurately and mutually agreeing on preconstruction conditions. Preconstruction documentation may be requested by either party in any form mutually agreed to, such as but not limited to inspection by a qualified independent third party, written or audio narratives, video recordings, still photographs or any combination of these. The wind energy facility owner/operator shall enter into a written agreement with the applicable public entity, which agreement shall require the wind energy~~

facility owner/operator to restore damaged public infrastructure, at a minimum, to documented preconstruction conditions.

~~— (12) Waste. Solid and hazardous waste produced by a wind energy facility, such as but not limited to crates, packaging materials, damaged or worn parts, as well as oils and lubricants shall be removed from the wind energy facility site promptly and disposed of in accordance with all applicable federal, state and local regulations. A wind energy facility shall identify construction lay down areas that shall be kept clean of any debris.~~

~~— (13) Abandonment; termination; site reclamation.~~

~~— a. A wind energy facility or part thereof that is out of service for 12 continuous months shall be deemed to have been abandoned. The owner/operator of the wind energy facility shall be notified of this abandonment status by the Land Use Planning and Zoning Department and then given the right to respond within 30 days. The abandonment status shall be withdrawn if the owner/operator of the wind energy facility provides information that demonstrates the wind energy facility or part thereof has not been abandoned.~~

~~— b. Termination of a wind energy facility or part thereof shall be documented in writing from the owner/operator of the wind energy facility, to the Land Use Planning and Zoning Department within 30 days of its termination.~~

~~— c. A wind energy facility or part thereof that is verified as abandoned or terminated shall be removed by the owner/operator of the wind energy facility within 6 months after receipt from the Land Use Planning and Zoning Department of written notification of required removal by certified mail. A wind energy facility or part thereof shall be reclaimed in accordance with (14) Reclamation.~~

~~— (14) Reclamation.~~

~~a. Except as provided in Section 14b below, the owner/operator of a wind energy facility shall prepare and file a reclamation plan outlining the anticipated means and costs of removing the wind energy facility or part thereof at the time of abandonment or termination. The plan shall be updated and resubmitted to the Land Use Planning and Zoning Department every five (5) years. The plan shall include at a minimum:~~

~~— (1) The anticipated life of the wind energy facility;~~

~~— (2) The estimated decommission, removal and reclamation costs in current dollars;~~

~~— (3) Process and personnel used to arrive at decommission, removal and reclamation cost estimate. Where the County reasonably disputes the owner/operator's estimated decommissioning and reclamation costs, a third party may be hired by the County and paid for by the owner/operator of the wind energy facility to verify the cost estimate;~~

~~— (4) Detailed description of decommission, removal and reclamation of structures and materials that make up the wind energy facility site or part thereof;~~

~~————— (5) Method of financial assurance generally stating that funds will be available for decommission, removal and restoration;~~

~~————— (6) A copy of any reclamation agreements between the landowner and the wind energy facility owner/operator, dealing with reclamation and the wind energy facility owner/operator's obligations with respect thereto.~~

~~b. In the case of a wind energy facility owner/operator, which is a publicly traded company, subsidiary or affiliate of a publicly traded company, the wind energy facility owner/operator shall provide a copy of a standard easement agreement with participating landowners addressing reclamation (with applicable economic and other personal information redacted), to the Land Use Planning and Zoning Department. Such copy of the easement agreement shall describe reclamation of the wind energy facility site or part thereof and the owner/operator's obligations with respect to such reclamation. If any particular landowner's easement agreement with the owner/operator of the wind energy facility varies in any material sense from the owner/operator's standard easement agreement form filed with the Land Use Planning and Zoning Department, the owner/operator's land use permit application to the Green Lake County Land Use Planning and Zoning Department shall include a copy of that nonstandard easement agreement (with applicable economic and other personal information redacted) addressing reclamation.~~

~~———— (15) Financial assurance. The wind energy facility owner/operator shall file a financial assurance to be renewed annually with Green Lake County, intended to completely address costs of removal and reclamation of the wind energy facility or part thereof. Such assurance may be in the form of a written commitment where supported by financial statements or other evidence of sufficient financial wherewithal, cash escrow, letter of credit, surety bond or other means reasonably satisfactory to Green lake County.~~

~~In the case of a wind energy facility owner/operator, which is a publicly traded company, subsidiary or affiliate of a publicly traded company, the wind energy facility owner/operator shall file a financial assurance to be updated annually with Green Lake County, intended to completely address costs of removal and reclamation of the wind energy facility or part thereof. Such assurance shall be in the form of a written commitment satisfactory to Green Lake County where supported by evidence such as but not limited to:~~

~~a. copies of easement agreements with landowners addressing removal or reclamation of the wind energy facility or part thereof as required under (14) above; and~~

~~b. financial statements or other evidence of sufficient financial wherewithal or other evidence of decommissioning reserves.~~

~~———— (16) Code compliance. A wind energy facility shall comply with the appropriate national, state and local electrical codes and regulations.~~

~~———— (17) Wind energy facility turbine. A wind energy facility turbine shall be installed with a tubular, monopole type construction. A meteorological tower may be a guyed type structure.~~

~~E.— Documentation of compliance with standards in subsection D. above shall be submitted with the land use permit application and be a requirement of issuance of a land use permit.~~

~~—(1) No action will be taken on a land use permit application until the completed application and all supporting documentation is received by the Land Use Planning and Zoning Department.~~

~~—(2) The owner/operator of the wind energy facility shall file a projected final site plan with the County Land Use Planning and Zoning Department, in a hard copy and electronic format, at the time of land use permit application. Such projected final site plan shall be replaced by an as-built site plan following construction. While it is understood that it is likely to have modifications between projected and final site plans, substantial reconfigurations may require a modification to the land use permit and hearing before the Land Use Planning and Zoning Department.~~

~~F.— Transferability. The Land Use Planning and Zoning Department shall be notified of any ownership change to a wind energy facility, in whole or in part. Prior to any change of ownership of any wind energy facility permitted in Green Lake County, written notification shall be given to the Land Use Planning and Zoning Department, of such change. The notification shall be signed by the previous owner and the future owner. The new owner(s) shall be bound by the criteria, standards and data provided and relied upon to issue the original land use permit for the wind energy facility.~~

#### **Definitions to be deleted from Section 350-77.**

~~PURE TONE — An audible noise such as but not limited to a whine, screech, thump or hum.~~

~~FAA — (Federal Aviation Administration) — The federal agency that regulates civil aviation.~~

~~HUB HEIGHT — When referring to a wind turbine, the distance measured from ground level to the center of the turbine hub.~~

~~MET TOWER — A meteorological tower used to monitor meteorological conditions and collection of data about those conditions.~~

~~TOTAL HEIGHT — When referring to a wind turbine, the distance measured from the ground level to the blade extended at its highest point.~~

~~WIND ENERGY FACILITY — An electricity generating facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, MET towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customer(s).~~

~~WIND TURBINE — A wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, base and pad transformer, if any.~~