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Planning Board Discusses Windmill Regulations

By Scott Nicholson

The Watauga County Planning Board ventured into new territory in recommending an ordinance to regulate windmills during last Monday's meeting.

The county had sought an opinion from the N.C. Attorney General's office on whether the state's 1983 Mountain Ridge Protection Act, commonly known as the "Ridge Law," applied to wind energy systems. According to the county's planners and legal staff, the answer was the county would have to come up with its own answer.

Under the proposed draft, smaller wind turbines designed for single homes or individual use would be easily permitted while commercial, large-scale "wind farms" would undergo a rigorous planning and environmental review process.

Under the proposed ordinance, wind turbines that generate 20 kilowatt-hours (kwh) of electricity or less could be operated as long as other requirements were met. The wind turbines in that category would have a maximum height of 135 feet as measured from the base to the highest point of the rotor blade. A typical residential household uses between five and eight kwh.

Possibly exempt

Andrea Capua, a member of the legal firm representing the county, told the board windmills or wind turbines were exempt from the ridge law. She said the planning board could choose not to regulate them or to anticipate an increasing use of such alternative energy systems and address them with an ordinance. She said the county could either address the issues as they arose or make a decision now on which issues were important enough to regulate. She said there was no case law on the 23-year-old statute that could shape court opinion.

Capua and county planning director Joe Furman crafted a draft of an ordinance based on similar ordinances across the nation, the county's cell tower ordinance, and suggestions made by Dennis Scanlin, an Appalachian State University professor who has long been involved in wind energy research.

The county's cellular tower ordinance requires a setback of at least the height of the tower, Furman said, with the idea that any falling tower would not damage adjoining properties. For wind turbines, Furman recommended a setback of at least one-and-a-half times the height of the tower. "It's borrowed partly from the cell tower ordinance, so the tower can't fall across the property line," he said.

The recommendation to require an increased distance away from homes was to insure the turbine couldn't hit a house, Furman told the board. Planning board chairman Ric Mattar said during high-wind events, the structure could be lifted and pushed some distance, or could also fall and slide downhill. The proposed draft also contains appearance provisions: "Small wind energy towers shall maintain a galvanized finish or be painted to conform the tower color to the surrounding



The Watauga County board of commissioners will have to decide if windmills, like those operated by Appalachian State University near Beech Mountain, will be exempt from the Ridge Law. Photos by Mike Rominger, Appalachian State University



environment to reduce visual obtrusiveness. No wind tower should have any signage, or writing or pictures that may be construed as advertising placed on it at any time.”

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Views and Noise



Two points in the proposed ordinance caused some debate among planning board members. Tom Foxx was concerned about a provision that placed extra burden on those who lived within a mile of the Blue Ridge Parkway and had to consider the parkway’s “viewshed” in placing a wind turbine. He said such language was discriminatory and gave advantage to someone who was “one foot more than a mile” whose wind turbine could be seen more easily than someone who might live much closer to the parkway.

“What’s the difference between a jet plane and a modern windmill?” Foxx said. “I look at a windmill as aesthetically pleasing.”

The planning board recommended moving language concerning the Blue Ridge Parkway’s proximity into the section of the ordinance addressing commercial wind farms. Such farms would require the presentation of an environmental impact statement, a public hearing and closer scrutiny of the project. Furman said commercial wind farms, though common in some areas, were not all that likely in the county. “The chances of that happening are not too great, given the land prices (here),” he said.

A second concern the planning board discussed was the noise of turbines. Furman said the noise was negligible, reminding the board of their experience visiting an ASU research station on Beech Mountain that houses a number of various-sized turbines. Furman said noise controls couldn’t be enforced without expensive equipment and training, and said the issue could be raised at a public hearing that’s required before any county ordinance can be adopted.

Capua said it was a “tough decision” and asked the board to consider how noise could be regulated when there were existing environmental factors that caused as much or more noise already.

Furman said the proposal would allow the planning board to make initial decisions on all commercial wind turbine permits, with the county commissioners serving as an appeals board. Furman said those bringing complaints should produce objective evidence and just “NIMBY-type complaints,” referring to the acronym for “Not in my back yard.”

‘Naturally Slender’

Capua’s legal memorandum interpreted the state’s ridge law as allowing structures that are “naturally slender” and are projections of a single building, though the statutory language provided a range of interpretations. The original ridge law grew out of concern over a condominium development at Sugar Mountain, and the statute specifically cites “tall buildings or structures.”

Wind turbines of over 20 kwh would require a full application, approval from the state utilities commission if the project will be connected to the power grid, boundaries and location of the wind farm or turbine, and addressing 19 different types of potential impacts. Wind turbines designated for generating electricity used off-site would be subject to the county’s High Impact Land Use Ordinance, with the appeals and fines process also using language from that ordinance. Turbines left inactive for six months would have to be removed.

With the planning board’s recommendation, the ordinance draft will be scheduled for a public hearing before being considered for adoption by the county commissioners.

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