



County council opposes proposed windmill bill

By M. Patricia Titus
News Editor

County staffer Hal Godwin asked the Sussex County Council on Tuesday to take a position on proposed state legislation dealing with how county and local governments, and homeowners associations, control the placement of wind-powered energy systems – namely wind turbines and windmills.

He said a current proposal would aim to eliminate restrictive covenants, to prohibit any local or county government action or HOA covenant or restriction that prevents a property owner using alternative wind-based systems for energy.

Council members showed some discomfort with the removal of such power from government and HOAs, as well as the potential for impacts on neighboring homeowners.

“Houses are very close,” Councilman George Cole (R-4th) said of some neighborhoods, noting that there is sometimes 20 feet or less between houses. “If this doesn’t get approved,” he added, “we need to direct our board [of adjustments] to at least have a minimum. They’re just approving all kinds of things right now, and that bothers me.”

Councilwoman Joan Deaver (D-3rd) said she had similar concerns about solar power systems, having recently seen a solar panel installed that was “almost half the size of the mobile home. I think we need to look at the setbacks,” she said.

Council President Vance Phillips (R-5th) asked for clarification as to whether the legislation would prevent a HOA from restricting windmills.

“I believe it does,” County Administrator David Baker said.

County Solicitor David Griffin detailed the legislation’s impact, noting that it sets a state-level requirement for a minimum parcel size of 1 acre for wind-power systems to be allowed by right.

“It lumps county, local and HOA together,” he said of the affected entities. “But they must meet the minimum requirements.”

Those requirements include the 1-acre minimum parcel size, except for systems integrated into the home’s structure (which have no minimum parcel size); a setback of a least 1.5 times height of the windmill; less than 5 db noise generated; not using the windmill for advertising signs, etc.; and that related electrical wiring be located underground.

“You can create additional restrictions but can’t take away these,” Griffin emphasized, noting that the bill synopsis says it “bans use of covenants and restrictions to prohibit installation of wind systems” and that the state sets those minimum requirements.

“If you want to set additional restrictions, you can,” he reiterated. “I don’t know if there will be an outcry by the public. Someone at the state level has decided that the law should promote ability of homeowner to install windmills,” he emphasized.

Cole said he felt the county has been somewhat unique in it has mostly dealt with cluster developments of late, in which the space between homes is very small and covenants are controlled by a developer or HOA. He noted that the state had already addressed a similar issue, in terms of HOAs restricting flags, “And the state said you couldn’t do that.”

Council members said they were also concerned about the potential impact on county height restrictions. “If you put it on a house that’s 40 feet high, does it include house height in that?”

Currently, according to Planning Director Lawrence Lank, those seeking to add a rooftop wind system have to go before the county’s board of adjustment for approval, unless the property is larger than 5 acres, due to the county’s cap of 42 feet in height for a home. The BoA has approved most of these applications.

Still, he said, they had already had one such installation on pole collapse because it wasn't up to the specifications of the manufacture. One installed on a house had to be removed due its vibrations causing potential damage to the structure, he noted.

"We've had both tower and house-mounted" proposals go before the board, he said – about 50/50 in percentage of each. "We had a run on them for four to six months, but it's slowed up quite a bit. ... "If the tower is 150 feet (tall), it would have to have a 300-foot setback," he added. "But they would end up applying for a variance."

"It sounds like this law would conflict with our code," Phillips noted of the legislation.

Cole said his concerns were with the existing ability for the BoA to approve a variance for height to install a system, without a system for the county to inspect resulting installations to ensure they were built to manufacturer specifications.

Wilson noted that a Delaware Electric Cooperative official had recently told him that such a home installation would cost the home owner five times more than buying power from the cooperative. "I don't know why you would want them," he opined.

Councilman Michael H. Vincent (R-1st) said he too had some problems with parts of the legislation. "I don't have issue with the 1-acre lot size, but roof-mounted is an issue, with no minimum. Some of these houses are real close together. I'm not sure I'm comfortable just going through the BoA. We need to make sure they are certified and have some kind of standards.

The council voted unanimously on Tuesday to send a letter to the General Assembly, opposing the legislation as written. "The HOA should have some say in this," Cole added in his motion.