

Select Board Question #2 DRAFT DRAFT DRAFT October 2015

The short answer is that regulations regarding zoning will play no role in the decision making process concerning the MTL-Iberdrola industrial wind proposal. However, the submitted question has a long preamble which strongly implies that, as there is no zoning, any development is permissible since the property owners have the right to do what they wish.

This MTL-Iberdrola proposed industrial wind project is subject to Vermont State Public Service Board approval. Therefore, the property owners DO NOT have the right to do what they wish. The PSB is bound to weigh the effects on the right to enjoy one's property of those who will be affected by the proposal. In a variety of ways, this proposal has the potential to significantly harm the property rights of a large number of people. If constructed the project would be the largest industrial wind operation in Vermont. There would be a far greater number of nearby residents than there are in any other industrial wind operation in Vermont. There are competing property rights here. To quote Michael McCann from his testimony regarding a similar proposal in Illinois, "The approval of wind energy projects within close proximity to occupied homes is tantamount to an inverse condemnation, or regulatory taking of property rights, as the noise and impacts are in some respects a physical invasion, an easement in gross over neighboring properties, and the direct impacts reduce property values and the rights of nearby neighbors." There are over forty residences within a half-mile of the boundaries of the MTL-Iberdrola industrial wind proposal with a power line running through the middle of it. Most wind turbines will be near the boundaries of the project property.

Any land use is subject to Vermont State law and regulation. In particular, this proposal, were it for a ski development, subdivision, etc. would be subject to the stringent requirements of Act 250. The purpose of Act 250 is to provide "a public quasi-judicial process for reviewing and managing the environmental, social and fiscal consequences of major subdivisions and developments in Vermont through the issuance of land use permits." Act 250 exists independently of local zoning. Among the criteria that must be met for Act 250 approval are those that deal with headwaters, floodways, streams, wetlands, scenic beauty, wildlife habitat, and soil erosion, all of which are pertinent issues in this case. However, as an alternative energy development, the MTL-Iberdrola industrial wind proposal is exempt from Act 250 and subject to the much less stringent Act 248.

Though opposition cannot be stated in terms of calling attention to violation of zoning ordinances, individuals and the towns affected have every right to voice the strongest objection and to organize opposition to the proposed project including pointing out the numerous drawbacks. Just because this proposal is not governed by zoning regulations, we do not lose the right or duty as citizens of a democracy, to voice our opposition. On the contrary, because our property rights are being threatened, we must defend them.

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