



## **ADVICE FROM AN EXPERT** *by Mick Sagrillo*

# **Zoning III**

## **ZONING OBSTACLES**

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In previous columns, I detailed a direction for weaving through the zoning maze in the quest for a building permit for a residential-sized wind system. In this column, we will examine a few more obstacles that you might encounter with your zoning board.

In many cases, a building permit for a wind generator tower will require that the zoning board grant you a conditional use permit or a variance from the existing code. Definitions may vary from document to document; however, in general, a variance refers to permission granted to a landowner to build a structure normally prohibited by a zoning ordinance. A conditional use permit allows a landowner to build a structure if certain stipulations or conditions are met.

Zoning ordinances are frequently written in such a way that the local governing body has some say about the structures that are built in their district. Quite often, compliance requirements are subjective decisions made on the boards' interpretation of their own local laws. Under our judicial system, you should expect your request for a variance or conditional use permit to receive the same treatment as any similar request.

For example, since most objections to wind turbines are made on aesthetic grounds, you can point out the similarity of a wind generator tower to a radio or television broadcasting tower, a cell phone repeater tower, or even a grain elevator or silo. Since these structures exist almost everywhere that zoning does, the zoning committee will be familiar with them. Unless a moratorium has been placed on new construction of such structures, a case can be made that you deserve similar treatment for your tower.

If yours is the first such structure in the neighborhood, the zoning committee may be hesitant to make a decision in your favor. Since members of your local zoning board live in the same community you do, they are subject to badgering by anyone opposed to your project. They are very sensitive to making what will be perceived as "the wrong decision." Again, any information or documentation about the benefits of other similar and successful wind installations will go a long way in your public relations campaign.

I have heard of instances where home-sized turbines were compared to wind farms. Don't allow this line of thinking to proceed. Your one relatively small wind generator is no more a wind farm than a minivan is a fleet of tractor trailers. There is just no comparison between your wind turbine and a utility scale wind turbine. This reasoning also extends to any news articles that opponents bring to the board's attention. By the

same token, do not allow the zoning board to apply wind farm turbine restrictions on your system. You are not building a wind farm.

Nor should you allow anyone to make a comparison between much of the experimental wind equipment manufactured during the Carter tax credit era and today's home-sized wind systems. Admittedly, many of those wind generators fell into disrepair and were left dangling from towers, or were simply abandoned. The industry has matured, and warranties now typically extend from three to five years on most equipment. Since there are few subsidies, today's wind equipment stands on its reputation for production and longevity. That compares very favorably to the 90-day warranties common 15 years ago.

Quite often you will encounter height restrictions in zoning ordinances. Once people grasp the necessity of a tall tower to a successful wind installation, they are more likely to grant the exemption. No one would reasonably expect a farmer to install a series of short silos on his farm in deference to a height restriction. The financial burden of multiple silos alone would make the requirement unreasonable. Short wind turbine towers are just as limiting in their own way as short silos or short transmission towers.

Don't be surprised, however, if the zoning committee restricts the placement of your tower so that, should it collapse, it would fall within the bounds of your property. This may or may not pose a problem with small lots. I know of one wind generator owner who installed a 70-foot tower on his 30-foot lot . . . in Minneapolis. Because this owner garnered support from his neighbors before he applied for a variance, the zoning committee saw no reason to turn his request down.

If you are granted a conditional use permit for your wind system, make sure you comply with all of the conditions spelled out in the permit. Do this in a timely fashion, and inform the building inspector or zoning administrator as milestones are met. Regardless of what you'd rather do, abide with the process and be accommodating. Non-compliance may cause you to lose the permit and require you to remove the tower at your cost. The likelihood of you securing a permit again will be greatly diminished.

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