

REPORT OF TOWN OF MADISON WIND ADVISORY COMMITTEE

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Introduction

In late January of 2012, residents of the Town of Madison and neighboring Towns learned that EDP Renewables North America, LLC (also known as Horizon Wind Energy) was well along in the process of planning a large wind turbine project in the Southeastern portion of the Town. EDP is a subsidiary of EDP Renovaeis, headquartered in Madrid, Spain whose assets are wholly-owned by Energais de Portugal, headquartered in Lisbon, Portugal. In anticipation of developing its project, EDP formed a single-purpose shell entity called Rolling Upland Wind Farm, LLC and registered it in New York State on February 7, 2011.

EDP proposed to construct a 60MW wind energy facility consisting of thirty-six (36) 492 foot tall turbines over an area of approximately 7,500 acres. EDP submitted an application to the Town Planning Board, dated December 16, 2011, for a special permit to construct and operate its facility. As more residents became aware of EDP's plans, the community and a number of Town officials began to question the wisdom of siting a project of this magnitude in populated, developed areas. In connection with its application, EDP submitted a Draft Generic Environmental Impact Statement, which was the subject of a public hearing on April 18, 2012. A significant number of residents provided their input at this hearing and elsewhere and urged the Town Board to consider adopting a one year moratorium on wind development in the Town in order to re-evaluate the Town's existing Wind Power Facility Special Use Permit Regulations in light of recent technological developments. The Town Board

adopted this moratorium law on June 28, 2012, agreeing that the existing regulations had not anticipated the possibility of a project involving a large number of turbines as tall as the ones that EDP proposed.

EDP formally withdrew its application by letter, dated December 4, 2012, to the Planning Board and announced its intention to submit to the review of the State Siting Board pursuant to Article X of the Public Service Act. To date, EDP has not acted on this intention.

The moratorium law directed the Planning Board to appoint a Wind Advisory Committee to gather information and make recommendations to the Planning Board. The Committee first met on July 19, 2012 and thereafter met regularly on a monthly basis. This report and the draft Wind Power Facilities Law that the Committee developed are the products of this collective effort and are hereby submitted to the Planning Board in fulfillment of the Committee's responsibilities under the moratorium law.

Findings

The Committee viewed its role, first and foremost, as that of fact finder. The Committee agreed that wind energy is a renewable resource that may be converted to electricity and that it has the potential to reduce dependence on non-renewable sources of energy.

However, careful regulation of the siting and operation of wind power facilities is necessary to reduce negative impacts such facilities may cause. Potential impacts include, but are not limited to, noise, vibration, shadow flicker, ice throw, damage to roads, and contamination of soil and water. Additional considerations are effects on wildlife, hunting, outdoor activities, and property values. Furthermore, decommissioning is a significant concern. Adequate assurances of financial resources to fund the decommissioning of turbines that are either at the end of their useful life or are inoperable and the restoration of land are critical. The Committee did extensive research about these possible impacts. Indeed, as this report was being prepared, new studies have become available. For instance, the issue of low frequency noise or infrasound

generated by wind turbines and its effects on the health and well-being of people requires further careful study. A selected bibliography of the Committee's source material is attached as Appendix A. One thing is clear from reviewing these materials: while people may differ in their opinions about how large setbacks ought to be, the larger the setback from residences and other structures, the less the negative impacts.

Because the State of New York has enacted Article X of the Public Service Law, which allows the State to take control of the permitting process for industrial scale wind energy facilities, the Town of Madison must establish reasonable regulations so that the State's Siting Board will seriously consider and honor the Town's development standards. Accordingly, the Committee fashioned a law that is both reasoned and reasonable in order to insure that the Siting Board will give the Town's local law and the wishes of this community the greatest possible deference when considering any project affecting the Town. The regulations implementing Article X were adopted in July, 2012. To date, no application has been submitted to the Siting Board for review for any project in the State.

The Committee recognizes that the development of wind power is a laudable goal that can bring revenue to the Town and to the people who agree to lease their land for such development. At the same time, this development has the potential to do harm. We agreed easily that proper siting of any wind project is crucial to the resolution of these contradictions. We have attempted to create a law that will protect our residential areas and those individuals who are not willing to sign agreements with the developer, and, at the same time, permit development in areas where the landowners desire or do not object to the siting of large turbines on or near their property.

Summary of the Proposed Law

The law is divided into five parts. Article I spells out the purpose and intent of the law and, most importantly, states the unanimous findings of the Committee after extensive research and discussion. The materials cited in Appendix A of this Report support these findings.

A Special Permit will be required in order to erect wind measurement towers and small wind energy conversion systems (turbines) as well as large industrial turbines. No wind measurement tower or small turbine may exceed 150 feet in height. Small turbines are those that would be operated by residential or commercial property owners to generate power for their own consumption. No permit would be required under this law for any small turbine that is used solely for agricultural or farm operations in a certified agricultural district. Large industrial turbines may not exceed 390 feet in height. No special permit would be transferrable unless the proposed transferee submits acceptable evidence of its financial and operational ability to meet all of the requirements of the law.

Article II lays out the requirements for applying for a wind measurement tower permit, notification requirements to the Town and to surrounding property owners and development standards for wind measurement towers, such as setback, height, operation and removal requirements. Currently, no permit is required to erect a wind measurement tower, and the Town has no control whatsoever over these towers.

Article III in a similar fashion lays out the requirements for applying for a permit for small turbines and establishes development and operating standards for them. These requirements are relatively modest since the Committee believes that the installation and operation of small turbines to be owned and used by residential and commercial property owners will not have a significant negative impact on neighboring property owners and, therefore, should be encouraged.

Article IV addresses large industrial scale turbines and projects similar to the one that EDP proposed. The Committee has attempted to cover important issues that are not addressed by the Town's current law such as site control and the scope and size of large turbines and multi-turbine projects. We have also learned from the Town's experience with EDP that other issues needed to be addressed with greater precision and in greater detail. The application and notice requirements, development standards, safety measures, setback and noise limits are relatively strict, but they are consistent with the provisions and requirements of recently enacted wind facilities laws in other jurisdictions, both

in and out of New York State. Under the proposed law, for instance, it would not be possible for the developer to obtain a special permit unless it demonstrates in its application that it controls all of the property necessary to construct the project described in the application. In addition, the terms of any PILOT agreement would need to be determined before any special permit could be granted. Both of these application requirements would protect the Town from “bait and switch” tactics and the use of generic (not site-specific) Environmental Impact Statements and ensure that the Town and the developer have the opportunity to evaluate the viability of a project based upon actual facts, as opposed to conjecture.

As mentioned above, the Committee has tried to create a balance. The proposed law deliberately distinguishes between Participating and Non-Participating Property Owners. A participating owner is a property owner who has signed some sort of agreement with the developer. Participating owners have made a conscious choice to live with the turbines and their effects. A Non-participating owner is a property owner who has no agreement with the developer. Non-Participating owners have either decided not to sign an agreement with the developer and, in doing so, have chosen not to live among industrial scale turbines, or they have been offered no choice in the matter.

The Committee believes that this element of choice is of utmost importance. Non-participating owners are deserving of the greatest possible protections against interference with their lives, their homes, their property, their safety and their well-being. On the other hand, participating owners have made a choice to live with and accept the consequences of their decisions. Their wishes and right to use and dispose of their property as they see fit must be preserved to the greatest extent possible.

Accordingly, the setback requirement for a large turbine is 3,560 feet from the property line of any non-participating owner, whereas the setback requirement for large turbines located on lands of participating owners is two and one-half (2.5) times the Turbine Height from any other turbine or any house or other structure. This is the minimum distance that the Committee felt would be safe to account for potential equipment failure, ice throw and similar dangers. The Planning Board may also modify participating owners’ noise limits, at its

discretion, provided that all of the adjacent participating owners have consented to such modification. Our hope and intent is that large turbine development will proceed in those areas of the Town where landowners are most disposed toward such development, while preserving other areas of the Town for more compatible uses, such as residential, agricultural and commercial development.

Finally, Article V establishes requirements for liability insurance, decommissioning, bonds and other financial assurances, regular inspections and the consequences of any failure to maintain and operate a turbine, application fees and penalties for violations of the law. These provisions are consistent with the provisions of other recent local laws studied by the Committee.

CONCLUSION

The Committee offers this report and the proposed Wind Power Facilities Law for the Planning Board's review and consideration. It is the profound hope of those who have served on the Committee that the Planning Board will endorse the Committee's work and recommend the proposed law to the Town Board for adoption substantially as written.

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APPENDIX A - DRAFT #2

January 9, 2013

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