

Remedy proposed on wind power projects would take away landowners' rights

In a recent op-ed piece, Alan Michka, a Lexington resident, argued that his basic rights had been taken away when a wind power project was approved in that township, which is part of Maine's unorganized territory (UT). He not only got that wrong, but the remedy he proposed would actually take away rights -- and not just where wind projects are involved.

When communities elect to disorganize or when individuals move to an unorganized town, they forfeit home rule powers and in effect are part of one eight-million-acre municipality. In municipalities, zoning is usually decided by town meeting or city council, but since the UT has no municipal government, the Legislature is the zoning authority and has delegated some of its authority to the Land Use Planning Commission (LUPC).

An individual must now have the right, title and interest in a piece of land before he or she can petition LUPC for rezoning. There is no legal right for anyone to petition LUPC to rezone land that they do not own. This is the "right" that wind power opponents are seeking through LD 616, which could allow a small number of voting residents (just three in Bernard township) to trigger rezoning of an entire township.

Mr. Michka asserts that he lost the right to be heard during the zoning by the Legislature, which he would have had if LUPC had done the rezoning. But the Legislature has its own public hearing process, and this was not lost during the review of the wind power act. He is not entitled to the LUPC zoning process when the Legislature decides to exercise its zoning power in the UT. He may not have been aware of the bill nor participated in the process, but that does not mean the public process did not occur. Indeed, most people rely on legislators to represent them in the legislative process. A lack of participation in the legislative zoning process does not justify the creation of a new process at LUPC for people to undo the legislative zoning on land they do not own.

Just imagine what would happen in your town if your neighbor could change the zoning on your property to alter the allowed uses. Giving individuals the right to request rezoning of land owned by a neighbor is unprecedented.

Mr. Michka makes it clear he believes this dangerous precedent should extend beyond wind farms to other permitted uses that neighbors might not approve. Once a zone is created and plans are made for an approved development, it is unjust to have a system that can be manipulated by so few. Neighbors could undo zoning concept plans and development plans. Farming and forestry practices might be eliminated as a zoned use.

In 2009, the Legislature exercised its zoning power in the UT to identify places where it appeared most appropriate to locate windmills, based on wind speed and proximity to the transmission system. This "expedited zone" was created because the rezoning process as applied to windmills was controversial and unpredictable. The Legislature provided a more consistent approach to locate windmills in order to reach state energy goals.

Allowing windmills in a zone only provides an opportunity to build; it does not provide permission. There's ample opportunity for public comment on windmills and other projects.

The Legislature directed the Maine Department of Environmental Protection to adopt permitting standards that address specific impacts from windmills, such as noise, shadow flicker and visual impacts. These standards mitigate adverse impacts to neighbors and the environment, and also can result in denial of projects that have unreasonable adverse impacts. The permit review process provides the public with the opportunity to submit evidence and voice their concerns about the impacts of a project near them, especially since recent legislation allows neighbors to intervene and request an adjudicatory hearing on a project.

The effort by neighboring landowners to undo the legislative decision with a new rezoning process -- so they can eliminate even the possibility of a windmill being built in their township -- shows how controversial and unpredictable the zoning process would be if it is done for each individual project, let alone by petition from other people. Piecemeal rezoning decisions would likely lead to appeals that simply delay the review process and make it more expensive without adding any more substantive review of impacts that are already addressed in the permitting process.

This is not a fair or productive way to balance economic and environmental aspects of wind energy. Small and large landowners in the UT have worked hard to return the planning and vision for the jurisdiction closer to the regions (vs. other regions of the state having a disproportionate influence over the northern region).

The Wind Power Act in 2008 was designed to balance the social, economic and environmental aspects of windmills, just as LURC's reinvention as LUPC did in 2012. There's no need to resurrect or reinvent a process that was time-consuming, expensive, inefficient and a poor way to establish public policy, especially in light of the improvements to the planning process since 2008.