

The selectboard has received a voter petition calling for a special town meeting. If approved by the voters, the petitioned article would require the board to enact an ordinance regulating wind tower development. Do the voters have the authority to direct the board to do this?

No. There is no express legal authority that gives the voters the power to direct the selectboard to enact an ordinance or policy regulating the development of wind energy facilities/towers. With very few exceptions, under Vermont law it is the selectboard – *not the voters* – that has the discretionary authority to enact public policy and adopt regulations. 24 V.S.A. § 1972.

Only *after* an ordinance or rule is adopted by the legislative body may the voters petition for a public vote on the matter, and then only to uphold or disapprove the action of the board. 24 V.S.A. § 1973. (For a more in-depth discussion of voter petition authority, see the February, 2003 *VLCT News* Ask the League article, which can be accessed at www.vlct.org.)

All that said, although the board is not required to warn a special town meeting in response to an invalid petition, it is probably best not to just ignore the petitioners either! The better response is to view the petition as symbolic of community interest and/or concern about a potentially controversial subject. As new wind energy facilities are proposed around the state, citizens are becoming more vocal and desirous of establishing clear public policies and rules for such development. Public sentiment runs strong on both sides of the issue. Some towns may wish to promote wind development, having decided that the benefits of this renewable energy resource far outweigh any perceived negative impacts. Other towns may feel just the opposite. No matter which sentiment is expressed by the petitioners, their clear message is – *We have an opinion. We want to be heard. We want you to do something.*

What can the selectboard do? The selectboard could offer to meet with the petitioners (and others) at a regularly scheduled selectboard meeting to discuss their interests. The board could also notice a special information meeting to solicit town-wide input on public policy. Before holding either meeting it is important for the board to understand the town's legal authority with regard to wind energy facilities. First, state law preempts municipal authority to regulate *commercial* (on-grid) wind energy facilities. 30 V.S.A. § 248. This fact should not discourage towns from adopting clear policies in the municipal plan, however, since the Public Service Board is required to consider documented municipal policy prior to issuing the required Certificate of Public Good.

The selectboard also lacks explicit legal authority to enact a stand-alone municipal ordinance regulating *non-commercial* wind energy facilities. On the other hand, noncommercial (off-grid) windmills and towers erected exclusively to serve a private property may be regulated under the town's zoning bylaws. Thus, once the selectboard has received sufficient public input, the board should consult with the planning commission and consider amending the town plan, as appropriate, to reflect the town's policy. Likewise, the planning commission and board may wish to amend the town's zoning bylaws as they relate to off-grid wind towers. By doing so, your citizens will thank you for: (1) *acknowledging their right to express their opinions*; (2) *listening to their concerns*; (3) *acting within your legal authority to respond to those opinions and concerns*. Good job!

On January 15, 2004, VLCT will host a daylong conference on Municipalities and Wind Power. Please plan to join us for an in-depth look at this subject!

- *Gail Lawson, Associate, VLCT Municipal Assistance Center*

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