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March 27, 2003

Ms. Elma Anderson
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Dear Ms. Anderson:

You ask whether the prohibitions on municipal regulation found in Wis. Stat. § 66.0401(1) are applicable to municipal regulation of commercial wind energy systems.

It is my informal opinion that the answer is yes.

Wisconsin Stat. § 66.0401(1) provides:

(1) **AUTHORITY TO RESTRICT SYSTEMS LIMITED.** No county, city, town or village may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48(2)(h)1.g., or a wind energy system, as defined in ... [66.0403(1)(m)], unless the restriction satisfies one of the following conditions:

- (a) Serves to preserve or protect the public health or safety.
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (c) Allows for an alternative system of comparable cost and efficiency.

Wisconsin Stat. § 66.0403(1)(m) provides: ““Wind energy system”” means equipment that converts and then stores or transfers energy from the wind into usable forms of energy.”

Wisconsin Stat. § 66.0403(12)(a) provides: “This section may not be construed to require that an owner obtain a permit prior to installing a solar collector or wind energy system.”

In *State ex rel. Numrich v. City of Mequon*, 2001 WI App 88, 242 Wis. 2d 677, ¶¶ 15-17, 626 N.W.2d 366, *review denied*, 2001 WI 88, 246 Wis. 2d 167, 630 N.W.2d 220, the court of appeals construed what are now Wis. Stat. §§ 66.0401 and 66.0403 in the following fashion:

We draw the following conclusions from the statutory scheme. First, the owner of an energy system does not need a permit to construct such a system. Therefore, barring any other enforceable municipal restrictions, an owner may construct such a system without prior municipal approval...

Second, unlike most land use regulations that require a permit and which are designed to protect the public and nearby property owners by placing restrictions on the permittee, WIS. STAT. § [66.0403] operates largely in the reverse. It serves to *benefit and protect* the owner of a solar or wind energy system permit....

Third, WIS. STAT. § [66.0401] represents a legislative restriction on the ability of local governments to regulate solar and wind energy systems. Local restrictions are permitted only if they serve the public health or safety, do not significantly increase the cost or decrease the efficiency of the system, or allow for an alternative system of comparable cost and efficiency. Beyond those, no other restrictions are allowed. The statute is not trumped, qualified or limited by § [66.0403] or by a municipality's zoning and conditional use powers.

(Italics in original.)

In *Numrich*, the court of appeals did not discuss the purpose of municipal zoning ordinances. The purpose of county zoning ordinances is to “promote the *public health, safety, convenience and general welfare.*” See Wis. Stat. § 59.69(1). See also Wis. Stat. § 60.61(1), which states that the purpose of town zoning ordinances is to “promote the *public health, safety and general welfare.*” Given these statutes, *Numrich* does not construe Wis. Stat. § 66.0401(1) so as to invalidate all county or town zoning regulations concerning solar or wind energy projects.

It remains to be seen how closely the courts will parse local zoning regulations in an effort to ascertain whether they are limited to public health and safety considerations. For example, general zoning regulations limiting residential uses to residential districts and commercial uses to commercial districts may well promote public health and safety. See, e.g., *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Willow Creek Ranch v. Town of Shelby*, 2000 WI 56, 235 Wis. 2d 409, ¶ 44, 611 N.W. 2d 693; *State v. Quality Egg Farm, Inc.*, 104 Wis. 2d 506, 516, 311 N.W.2d 650 (1981). Cf. *Clark v. Winnebago County*, 817 F.2d 407, 409 (7th Cir. 1987).

Ms. Elma Anderson

Page 3

Your concern is whether the restrictions upon the exercise of local authority in Wis. Stat. § 66.0401(1) are applicable to commercial wind energy systems. Wisconsin Stat. § 66.0403(l)(m) defines “wind energy system” to mean “equipment that converts and then stores or transfers energy from the wind into usable forms of energy.” “If the language of the statute clearly and unambiguously sets forth the legislative intent, we apply that intent to the case at hand and do not look beyond the legislative language to ascertain its meaning.” *Lincoln Savings Bank, S.A. v. DOR*, 215 Wis. 2d 430, 441, 573 N.W.2d 522 (1998), citing *Kelley Co., Inc. v. Marquardt*, 172 Wis. 2d 234, 247, 493 N.W.2d 68 (1992). There is no exception or qualification that limits this definition to residential properties. On its face, the statute applies to commercial as well as residential properties.

Extrinsic materials may be examined to see if they support the conclusion that the language of the statute is plain. See *State v. Martin*, 162 Wis. 2d 883, 897 n.5, 470 N.W.2d 900 (1991); *State ex rel. Hill v. Zimmerman*, 196 Wis. 2d 419, 427 n.5, 538 N.W.2d 608 (Ct. App. 1995). The drafting file to chapter 351, Laws of 1981, indicates that the bill attempted to integrate Iowa House Bill 766 with Assembly Substitute Amendment 1 to 1981 Assembly Bill 62. The drafting file contains a March 4, 1982 Milwaukee Sentinel newspaper account summarizing the actions taken by the Senate following the Assembly’s passage of 1981 Assembly Bill 62. The article summarizes that bill as one which would “help homeowners *and businesses* make certain that access to the sun or wind needed in energy systems is not shut off” (emphasis supplied). Although legislation including wind energy systems was not enacted until 1993 Wisconsin Act 414, sec. 417 was passed, there is nothing in the legislative history limiting the application of chapter 351, Laws of 1981, solely to residential properties.

I therefore conclude that the prohibitions on municipal action found in Wis. Stat. § 66.0401(1) are applicable to municipal regulation of commercial wind energy systems.

I am also enclosing a copy of 77 Op. Att’y Gen. Preface (1988) for your future use and consideration in submitting opinions to this office.

Very truly yours,

Peggy A. Lautenschlager
Attorney General

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