

## Towers

### Packet Synopsis

**Communication towers** have become a planning and zoning issue for many communities – cities, townships and counties. The explosion in personal communication devices and technological changes in the telecommunications industries have spurred increasing reliance upon and use of radio frequencies for voice and other media transmission from point to point. Since much of this reliance is occurring in the very high (VHF) and ultra high (UHV) radio spectrum, which because of the Laws of Physics have short ranges, these signals must be repeated and boosted at frequent physical intervals, creating the need strategically located towers to receive and retransmit signals over distances.

It has been generally thought that the federal government through the Telecommunications Act of 1996 and specifically its Section 253 has preempted “state or local authority via regulation or other legal requirement to prohibit or have the effect of prohibiting the ability of any [communications] entity to provide interstate or intrastate telecommunications services”. This is not the case.

**Telecommunication towers** are not the only towers that a community should consider when preparing and adopting its ordinance. **Amateur Radio Operator antennas** are also covered by the 1996 Act and Federal Communications Commission (FCC) regulations. Private **Wind Energy Conversion System (WECS) towers** should also be addressed as well. Cook County, Minnesota has had a land use dispute involving the erection of a private 90 foot wind generator tower in March 2001 because the subject has not been addressed in its county land use plan or supporting ordinance. The county established a zoning moratorium on towers until it could remedy this discrepancy. It adopted a zoning ordinance regulating towers, including **wind energy conversion system towers** on August, 31 2001, a copy of which is included in this packet.

The following materials have been selected for their applicability to helping Minnesota communities address the **tower** issue in their land use planning and land use controls:

Local Zoning of Telecommunication Facilities: Federal Policy, Issues, Municipal Research and Service Center; Adrian E. Herbst, 1997. – A good, clear presentation of the legal issues affecting local authority under the Telecommunications Act of 1996 including zoning and local fees. Contains citations to specific precedent-setting court cases.

Recommendations on Zoning for Wireless Telecommunications Towers and Antennas, League of Minnesota Cities, July 1996. – Excerpted in this Memorandum is a “Model Policy on Wireless Towers” for locations on municipal-owned property and an “Outline of Zoning Regulation” or a model for a municipal ordinance. The full publication is available from the League of Minnesota Cities.

Locate Wireless Telecommunications Towers Sensitive, Strategies for Smart Growth and Scenic Stewardship #6, Scenic America, Washington, DC, 2000. – Presents strategies – education, incentives, voluntary and regulations that communities can use to control and manage the locations and impacts of towers within and upon the community's sense of place.

Small Wind System Installation – Legal and Safety Issues, U.S .Dept. of Energy, Consumer Energy Information: EREC Reference Briefs – This paper, written for the private perspective, is a good check list of the issues that should be addressed in a zoning ordinance for regulating wind generators and their towers.

Article 13, Special Permit. – An example of a Nebraska county's Special Use or Conditional Use Permit to regulate its Wind Energy Conversion Systems. Of interest here is the ordinance subsection establishing a table using rotor diameter rather than tower height to determine setback requirements. However a five foot rotor could be installed upon a 200 foot tower under this ordinance.

Cook County Tower Facility Ordinance #46, Cook County, Minnesota. – This is a Minnesota county ordinance adopted as a result of a situation previously noted above. Cook County has chosen to combine zoning controls on all towers, telecommunications and electrical generating into one ordinance. Its statement of purpose is excellent and especially apropos to Cook County, noted for its scenic and wilderness grandeur.

## **INTERLIBRARY LOANS MATERIALS**

The following on **towers** can be borrowed via MnLINK.

- Implementing the New Telecommunications Law: A County and Local Officials Guide to the Telecommunications Act of 1996, American Planning Association, national Association of Counties, American Public Works Association, 34 pages.
- Zoning for wind machines: a guide for Minnesota communities, Energy Division, Minnesota Dept. of Energy and Economic Development, 1983.
- Permitting of wind energy facilities : a handbook, Therkelsen, Bob, NWCC Siting Subcommittee

## **LEGAL NOTES**

Minnesota Statutes § 116C.691 through § 116C.697 directly concern Wind Energy Conversion Systems (WECS).

MS § 116C.691 – Definitions. Establishes the legal definitions of Wind Energy Conversion Systems as either large - 5000 Kilowatts (5 MW) and over or, small – under 5000 Kilowatts (5 MW) and legally defines a Wind Energy Conversions System.

MS § 116C.697 – Preemptions. Preempts to the state via its Environmental Quality Board the siting of all Large Wind Energy Conversion Systems (LWECS) - 5 MW and over. It specifically states:

“A permit under sections 116C.691 to 116C.697 is the only site approval required for the location of a LWECS. The site permit supercedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments.”

Thus the state determines and regulates the siting and design of Large Wind Energy Conversion Systems.

However, control over Small Wind Energy Conversion Systems (SWECS), those under 5 MW, is still subject to the land use and zoning authority of local governments. MS § 116C.692 – Exemptions, (c), specifically notes that local governments may establish requirements for the siting and construction of SWECS. And MS § 116C.696 – Model ordinance, even authorized the EQB to assist local communities in drafting ordinances to regulate the siting, construction, and operation of SWECS.

The **Local Planning Assistance Center at the Department of Administration** helps local governments with planning efforts, including comprehensive planning, zoning, hazard mitigation planning, GIS applications and development issues.

Upon request, this document will be made available in an alternate format, such as Braille, large print or audiotape. For TTY, contact Minnesota Relay Service at 800-627-3529 and ask for the Department of Administration.

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