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NEW ENGLAND GREEN BUILDING LEGAL BLOG
INFORMATION AND DISCUSSION ABOUT
THE LEGAL ISSUES ASSOCIATED WITH
GREEN BUILDING AND CONSTRUCTION.

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The Climate Change Bill and Local Land Use Regs

The Climate Change Bill has passed in the House, and now moves on to the Senate. One of the major components, and predictably, a significant source of contention is a provision that calls for utilities to obtain a set portion of their power from renewable sources. The original bill called for 25%, the final bill whittled that number to 15, with caveats where the standard can't be met in a cost effective manner.

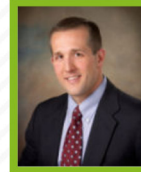
Why is the jump to renewable energy so hard? In some cases, further technological development is needed. In others, the economies of scale that will make certain technologies cost effective don't exist yet. But in other instances, our existing regulatory framework is to blame. Small wind turbine systems are a prime example.

Small wind turbine systems offer a great opportunity to power residences and small businesses. At a cost of \$6000 to \$20,000 for a small wind turbine system, the up-front cost is not prohibitive for many homeowners. And the benefits are considerable. Not only can owners save on power costs, but in many areas can sell excess power back to the local utility. Long term operating and maintenance costs are low. Yet there were only an estimated 4000 residential wind turbines nationwide by middle of 2008. Despite all of the benefits, small wind turbine systems are often stymied by local zoning regulations.

With respect to small wind systems, two categories of land use regulations, height restrictions and setbacks, are the most problematic. Municipal building height restrictions are driven by a variety of concerns – some aesthetic, and some practical. However, the reasons for limiting heights – including making sure that a building is not too tall for the municipality's firefighting equipment – often make little sense when applied to wind turbine systems. Nevertheless, local officials usually have very little latitude to approve a building permit for a wind turbine when height and setback requirements cannot be met.

So what's the answer? As the regulators of land use, it is incumbent on local municipalities to change their codes and carve out specific standards for wind generation facilities. In doing so, the interests of abutting property owners can be protected through reasonable standards specific to wind systems. And an interested

About Me



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Jon Wilkinson is an attorney with Wilkinson Law Offices in Portsmouth, NH. He is licensed to practice law in New Hampshire, Massachusetts, and New York. His practice focuses on design and construction, green building, land use, information technology law and non-profits.

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