Hi, Nick

Last evening Windham's Planning Commission held two public hearings, one on the changes to our zoning regulations and one on changes to our enhanced energy plan. Here are two issues that came to light with which we need your assistance.

1).  Based  upon advice I received from Les Blomberg, the sound expert you connected me with a few months ago, our Planning Commission voted to adopt the following sound standards as the two Actions Steps under Policy 4.10 of our Enhanced Energy Plan.

        Wind turbines will not exceed 41 dBA Fast Lmax daytime at the closest property line and 39 dBA Fast Lmax nighttime.

        Limit source noise dBC Fast Lmax minus dBA Fast Lmax to less than 15 dB beyond the property line and inside homes, schools and town offices and buildings.

However, Sec. 505, of our Zoning Regulations, which you helped us rewrite, only includes the first sound standard: 41dMA day, 39 dBA night.  (See the second bullet point under "Regulations" under WIND ENERGY SYSTEMS on p.32 of the attached document.)  Should the second bulleted sound standard be added to this section of the zoning regulations to make it identical with the sound standards in the enhanced energy plan?

For the sake of consistency, it makes sense to have the same standard in both documents – so yes, I would suggest, including the second bulleted sound standard into the zoning regulations.

2)  The revised language which you helped us craft in Sec. 207 (point 4) and Sec. 209 (point 10) of the Zoning Regulations says as follows:

Ridgelines are defined as all land above 2000 feet.  Ridgelines shall be left in their natural condition, free from all development, including roads, building structures, utilities, wireless broadcast telecommunications facilities, and industrial wind turbines, with the following exception:

1.    Existing homes above 2000 feet may install solar arrays or wind energy systems for on-site electricity consumption if they abide by all relevant zoning regulations.

The revised language in our enhanced energy plan is identical, but it also includes two other exceptions, including one which says "Existing homes above 2000 feet may install net-metered solar arrays or wind energy systems not to exceed 15 kW capacity."

Note: the reason these two exceptions are included in the Town Plan and not the Zoning regulations is because they deal with renewable energy infrastructure that cannot be regulated by zoning, but do require a Section 248 certificate of public good.

There are several vacant lots for sale in the Timber Ridge area of Windham which are above 2000 feet in elevation.  There also is a specific piece of land that I am thinking of that is located along a road near the bottom of one of the ski slopes that has a building on it (more like a camp than a residence) and quite a bit of recently cleared land.  If you asked anyone driving on that road if they felt they were on a ridgeline, I'm sure they would say no.  The road is flat and you can look up and see the top of the ridge looming above you.  It seems to me that the revised language that we are poised to adopt will prevent any development on all of these parcels. I think that is potentially a big problem.  Needless to say, those pieces of land will lose a great deal of their value if they cannot be developed.  It is our intention to preserve and protect our ridgelines, especially from large scale industrial wind turbines, but it is not our intention to stop landowners who are not at the top and most visible parts of those ridgelines from building on their land.  None of the properties I am referring to are included in the list of Scenic Resources on p. 71 of the town plan.  In fact, none of them are even visible from a distance.  Do we need to add another exception to the enhanced energy plan and zoning regulations to allow development on such properties, or do we need to further clarify what a ridgeline is, or what parts of ridgelines are off limits to development?

This goes back to our original discussion regarding ridgelines.  There is some tension here - you need to be specific enough to clearly identify where development is prohibited or limited, while also allowing the type of development that you want to allow.  As we have discussed, it can be challenging to define in words what is a “ridgeline,” and so one way to do this is to block out the areas that are considered “ridgeline” on a map.  If “ridgeline” is defined by language instead of visually on a map, then it needs to be clear.  Defining by elevation – i.e. all land over 2,000 feet – is a simple, clear, and unambiguous way to do this but, as you note here, it can be over-inclusive and have the effect of prohibiting development on areas that may not fall into the sensitive category of land you are intending to protect.

With that in mind, in this case, you could be more nuanced and add another exception to the 2,000 foot prohibition.  For example, you could say that certain specific uses (e.g. single family residence, accessory dwelling unit, bed and breakfast) are allowed in the Recreational Commercial District as a conditional use above 2,000 feet (or increase the max elevation, i.e. up to 2,500 feet).

Alternatively, you could keep the prohibition on development above 2,000 feet, as it is now, but then set a higher limit (e.g. 2,500 feet) for the Recreational Commercial district.

Generally, the response to your question is yes, you can generally prohibit development above 2,000 feet, and then make certain, specific exceptions to that prohibition.  Again, I suggest making these as specific as possible, and making these conditional uses, rather than permitted uses, because that adds an additional level of review and control for the town.

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