

August 20, 2018

Mr. Mark Rehmstedt
Chairman, Town of Kendall

RE: Petition for Advisory Referendum

BY EMAIL ONLY

Dear Mark:

You have provided me with a series of documents signed by a number of individuals asking that “a referendum be passed by the Kendall Township Board that will allow the residents of our township to vote in the November Election as to whether or not wind turbines should be introduced into Kendall Township.”

The documents, which are not petitions conforming to the requirements of Wis. Stat. sec. 8.40, are apparently requesting that the Town Board adopt a resolution to hold an advisory referendum on the question of whether wind turbines should or should not be permitted in the Town. It should be noted at the outset that, regardless of whether the petition format conforms to the law or not, no governmental entity is required to hold an advisory referendum for any reason.

Recently, advisory referenda have been held in numerous cities, villages, towns and counties on everything from whether ATVs should be allowed on public streets to whether “dark store” legislation should be enacted to whether marijuana should be legalized. The referendum results are binding on nobody but sometimes give local officials a sense of a community’s opinion on a subject.

It is important, if an advisory referendum is called, that voters not be misled in any way. Here, the documents that were provided to you contain the statement that “[t]he majority of the residents should be the ones who decide on this very important issue.” Presumably, that ties in with the voting on whether or not wind turbines should be allowed in the Town. A person signing the petition might have believed, having read such a statement, that the town residents or town board have the authority to ban or prohibit the construction of wind turbines in the town.

That is not the case. Wisconsin Statute section 66.0401(1m) states:

AUTHORITY TO RESTRICT SYSTEMS LIMITED. No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission

under s. 196.378 (4g) (b). No political subdivision 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, 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.

The Wisconsin Public Service Commission has promulgated rules, found in Chapter PSC 128 of the Wisconsin Administrative Code, that govern the installation of wind energy systems. Section PSC 128.03, Wis. Admin. Code states:

PSC 128.03 Political subdivision authority. A political subdivision may not place any restriction, either directly or in effect, on the installation or use of a wind energy system except by adopting an ordinance that complies with this chapter and s. 66.0401, Stats., and is not more restrictive than this chapter.

Thus, while a political subdivision, including a town, may place restrictions on the installation of wind energy systems, **it may not prohibit the installation of wind energy systems.** If the Town chooses to place restrictions on the installation of wind energy systems, the limitations cannot be more restrictive than those established by the PSC and the permitting process must conform to the requirements of section PSC 128.30, Wis. Admin. Code.

If the Town Board chooses to have an advisory referendum, which, as noted above, it is under no obligation to do, the better question might be whether the Town of Kendall should establish its own permitting process consistent with the requirements of Wisconsin Statute sections 66.0401 and 66.0403 and Chapter PSC 128 of the Wisconsin Administrative Code. If an advisory referendum is held with a question such as the question that was provided to you, it will be important to emphasize to the voters that the referendum is simply an opportunity to make their opinion known but it in no way affects whether or not wind turbines or other wind energy systems will actually be installed anywhere in the town.

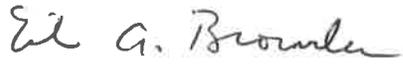
If the Board adopts a resolution calling an advisory referendum, the procedures and notices required for any type of referendum (i.e., Type A and C notices must be timely posted or published, ballots must be developed, etc.) must be followed. The question would need to be determined and in the hands of the County Clerk no later than August 28, 2018, to be on the November ballot.

AUGUST 19, 2018
PAGE 3

Please let me know if you have any additional questions.

Sincerely,

BOARDMAN & CLARK LLP

A handwritten signature in cursive script that reads "Eileen A. Brownlee".

Eileen A. Brownlee