

C O M M E N T

PRINCIPLES FOR SITING RENEWABLE ENERGY PROJECTS: A RESPONSE TO DEALS IN THE HEARTLAND

by Josh Mandelbaum

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I am a Senior Attorney at the Environmental Law & Policy Center (ELPC). I am based in Iowa, a state with 13,000 megawatts of wind generation—a significant amount of generation. I also have a second role not related to ELPC, but relevant to this panel: I’m a local elected official, so I deal with zoning. I am in a city so I don’t deal with large-scale renewable energy siting, but I know exactly how contentious zoning discussions can be and the impacts zoning fights can have on a community. Resistance to changed land use is not unique to rural communities, but it does impact how we solve renewable siting problems in this country.

This article is really important and timely in that it asks some key questions and makes some key points. One of the important observations in the article, and the authors’ rationale for tackling these siting issues, is that if we continue to do things as we have, there will be more renewable energy projects that fail than need to fail. Part of what that means is tackling the conflicts around renewable siting. Addressing conflict is part of the role that law plays—trying to help navigate how we balance competing interests.

There are a lot of different competing interests that come into play when addressing renewable energy siting. There are different policy goals. The climate policy goal is a central one and one of the motivations of this article. There are also local economic development and quality of life goals that impact how local officials react. There is also the broader philosophy of local control, which is a central piece of policy discussions in this country. As a local elected official, I value the importance of local control highlighted in this article, but local control isn’t an absolute. It can exist on a continuum and that sometimes is missing from discussions about renewable energy siting.

Editors’ Note: Josh Mandelbaum’s Comment is based on an edited transcription of his remarks at the Environmental Law and Policy Annual Review conference. See 2023-2024 Environmental Law and Policy Annual Review Conference, available at <https://www.eli.org/events/2024-environmental-law-and-policy-annual-review-elpar-conference>.

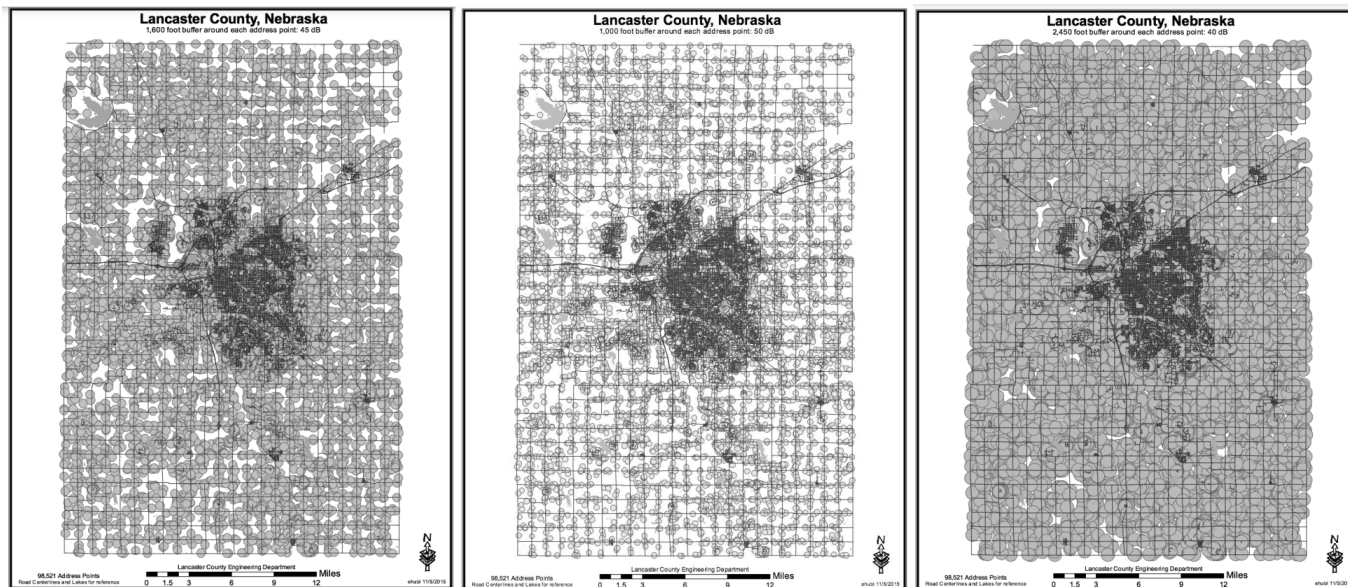
One policy interest that wasn’t really talked about in this article—but that is very much relevant—is that there are implications for property rights policy in how we resolve siting issues: What does the landowner get to do? How does a use impact the property rights of neighbors? Property rights are a piece of the cultural fabric in a lot of rural communities. Anecdotally, my in-laws chose to live in rural Story County, because my father-in-law’s hobby is ham radio. He wanted to put a 100-foot tower in his backyard, which he couldn’t do in the city. Property rights and greater freedom to do what one wants with their property is a piece of why people live in parts of rural America, and this property rights piece is an interest that needs to be considered and valued in the balancing of interests around renewable siting.

Siting principles for renewable projects can help bring balance to these conflicts. Principles can make their way into local or state law. They can also be reflected in the way developers approach projects and voluntary negotiations, and that’s important, too. Not all renewable project developers are equal. Developers can approach projects in vastly different ways and that impacts a community’s experience. Principles can help provide a check on what can sometimes be bad actors in the development community.

The first principle is that the door should remain open for clean energy development—wind, solar, and storage at all scales in all communities, including in the rural working landscapes. This principle takes one of the premises of this article, “I’m not anti-wind. I’m anti-how-this-was-done,”¹ at face value and really tries to engage and help solve that. There is another sentiment that was acknowledged in the conclusion of the article—even with all the policy recommendations on transparency and compensation, there are some folks who are going to be anti-wind regardless of those efforts. This principle makes a policy determination and reflects that more renewable generation projects is a direction that we need to go and that solv-

1. Christiana Ochoa et al., *Deals in the Heartland: Renewable Energy Projects, Local Resistance, and How Law Can Help*, 107 MINN L. REV. 1055, 1099 (2023) (“One interviewee summed up his feelings about the process by saying: ‘I’m not anti-wind. I’m anti-how-it-was-done-here.’”).

Figure 1. Wind Turbine Siting Potential in Noise Ordinance Scenarios of 50, 45, and 40 Decibels in Lancaster County, Nebraska



Source: Center for Rural Affairs, Information Guide: Wind Energy Ordinances, <https://www.cfra.org/publications/information-guide-wind-energy-ordinances> (2018).

ing siting conflicts means balancing interests, not banning renewable energy development.

Following from that is a second principle: Regulation should follow planning best practices. Any variation on a regulation that deviates too much from best practice into a de facto ban should be avoided. There are a lot of different pieces that can be covered in “best practices”—setbacks, decommissioning, and construction mitigation. Best practices will vary by technology and differ for wind versus solar, but best practices are pretty well-established and constantly worked on—and should be reflected in policy and law.

Avoiding the de facto ban on new renewable projects is an important part of this principle because the de facto ban is where local control may go too far. De facto bans happen with setback requirements. De facto bans happen with noise standards. In Iowa, a legislator proposed a solar bill to use Corn Suitability Rating² to determine what land was eligible for solar projects. Those are all ways to get to de facto bans.

To illustrate how a seemingly reasonable standard can become a de facto ban, it helps to review real world examples. For example, the Center for Rural Affairs *Information Guide: Wind Energy Ordinances* provided maps of Lancaster County, Nebraska, demonstrating where it was possible to build wind turbines with a noise ordinance of 50 decibel, 45 decibels, and 40 decibels. As the standard gets

more stringent (lower decibel limit), the buffer required from a turbine gets larger and the places that a turbine can be sited gets progressively smaller. Eventually, there is literally nowhere that a renewable developer can build. It makes projects impossible. Another common example is setbacks requirements. In Butler County, Nebraska, a 1,300-foot setback requirement limits siting options, but there are still multiple areas where a project can be built. Increase that setback requirement to 3,400 feet and a developer can build almost nowhere.

De facto bans get things out of balance and that is when state laws may look to bypass or preempt local laws. State-wide siting has happened in a number of different ways. One particularly interesting example that has not become law yet is the Iowa Legislature’s recent consideration of a gas station ban preemption. The local anti-wind folks were some of the most opposed to the proposed gas station ban because it was a ban on de facto bans. They were concerned that it would impact the local ordinances that were a major part of their tactics.

A third key principle is that the landowner should be the decisionmaker over whether their land is developed for clean energy development. This principle can be compatible with regulation particularly if the regulation gives property owners the ability to opt out or waive requirements as to their property. All of the current renewable projects are voluntary projects. Eminent domain has not been used for wind projects—a major piece of critical infrastructure—and that is unusual. In contrast, think about an interstate highway or a transmission line—those projects can’t be built without some use of eminent domain. Wind projects are being built because there are folks who voluntarily enter into contracts, who feel like they have been treated fairly, and will get something out of agreeing to host a renew-

2. See, e.g., Iowa Public Radio, “Iowa lawmakers advance a bill placing restrictions on solar panels built on farmland,” <https://www.iowapublicradio.org/state-government-news/2022-02-15/iowa-lawmakers-advance-a-bill-placing-restrictions-on-solar-panels-built-on-farmland> (proposed bill would prohibit installation of solar panel field on agricultural land “unless the land they want to install it on has a corn suitability rating of 65 or lower”) (2022).

able project on their land. As long as the law continues to provide property owners with the ability to make decisions about their land, there will continue to be siting options for renewable energy projects.

Part of the reason that landowners will consider renewable energy development has to do with the fact that rural America has been changing over time. Farms have become larger and larger, and large farms have pushed out small farms in a lot of cases. Wind and solar projects have been a lifeline to diversify revenue and sustain the existence of small farms in multiple cases by allowing a farmer to use a portion of land to add revenue from wind and solar leases. In other words, the lease provides a real and significant benefit to the participant.

Anecdotally, I have a neighbor who lives in Des Moines and grew up on a family farm. They now have wind turbines on their farm, and those wind turbines are retirement security for his father and allows him to continue living on the farm. The other interesting story related to that particular project is that it was outside of a small town. The small town annexed the land that the wind turbines were on to incorporate it into the city limits. The town wanted the tax benefits that were associated with the wind project, because it would help make tangible investments in the community.

An important principle for maintaining balance and protecting the rights of non-participating property owners in the siting discussion is that renewable projects should be

designed to reasonably protect health, safety, welfare, and quality of life. What that means is that a project or local ordinance can take steps to require radar systems to reduce nighttime light pollution from flashing red lights, because technology exists to solve the issue. Projects can also be designed using best practices to limit shadow flicker and to require construction mitigation. Projects can be sited to avoid unique local places and environmentally sensitive areas. But it does not mean that a community can regulate to the point of a de facto ban or use a vague notion of quality of life to prevent any change in the landscape. Rural landscapes are dynamic landscapes and always have been. The laws should balance quality of life with new uses but should not be used to prevent any change.

Finally, the principle of transparency should allow residents to understand and have input into a project before approval of the project. It is critical to engage communities so that they have input into a project and the potential for input as a project is being designed. But, again, transparency does not mean a veto over a project—transparency should be reasonable as well. There is more that can be done to have community engagement outside of the zoning or regulatory process. This includes public meetings where people can come provide input, identify sensitive areas in a county, and engage and share their concerns. There is research that shows that developers are willing to engage in this way and that their projects can benefit from such engagement.