

My name is Jerry Hawkins. I am an attorney at Hite, Fanning & Honeyman, LLP in Kansas who has had the very challenging task of trying to advocate on behalf of landowners opposed to having industrial wind turbines next to their properties in Kansas.

These people are expected to not only lose many tens of thousands (or considerably more) in their property values, but also the use and enjoyment of their land, so that the owners of land next to them can earn \$8,000 a year per turbine on a lease. Sometimes those leaseholders do not even live on the property, in the county, or even in Kansas.

Frequently we find the law must catch up with developments in industry. **House bill 2273** is a long-overdue effort to uniformly establish minimum rights of neighboring property owners in Kansas and to begin to level the playing field. If Kansas wants to be a leader in industrial wind, it must also show leadership in addressing the problems attendant to large-scale industrial wind projects.

One of the problems attendant to industrial wind is its margin. It is not economically independent or self-sustaining. As you know, it must rely on others. We are already aware of production tax credit provided at the federal level, and the 10-year property tax abatement currently provided at the state level – those costs are shared by taxpayers. This tax break is lost revenue which could otherwise be devoted to paying for other state budgetary needs, but if the electorate feels energy incentives like are worth the return, then that is the state's choice. **The problem on today's agenda is there are people in Kansas who are expected to pay far more than their fair share for Kansas' continued development in industrial wind.**

There is a hidden subsidy for industrial wind. That subsidy is the economic and non-economic hardship born upon Kansans who, over their objection, face the potential of living too close to or within the footprint of an industrial wind farm. It costs them significantly; both economically and non-economically.

The subsidy's significant economic costs for the neighbors:

- The wind industry robs Peter to pay Paul.
- Economically, neighbors to industrial wind projects will lose a significant portion of their property value. Neighboring properties for non-leaseholders do not sell as quickly, or for as much, as ones which are not next to wind turbines. This common-sense point is supported by the opinions of those in real estate as well as multiple studies available. The massive size of a wind project leads to much wider day and nighttime visibility and impact. Estimates show property values decrease between 25 to 40% as much as 1.5 miles away from a wind farm. Some properties are felt to be affected to the extent they are unsaleable. I am happy to provide information on this subject which I have collected upon request.

- The wind industry categorically denies their turbines have any negative effect on neighboring property values – NO MATTER HOW CLOSE TO A HOME- and cite the National Berkley study to support it. Before you just take that conclusion at face value, (1) ask if makes common sense to you or defies common sense, and (2) take a look at the critiques of the study. The Berkley study has a significant problem with the methodology used, as discussed in Albert R. Wilson’s article “Wind Farms, Residential Property Values and Rubber Rulers.” Wind developers, in their leases, will require the leaseholder to release them from any liability for a number of commonly held beliefs concerning the effects of turbines. Whether they agree those effects actually occur or not, they must at least concede that *reasonable minds might believe* those effects occur. And if reasonable people believe there are potential negative effects of wind turbines, that will affect property values.
- Economically, consider the fact that oftentimes the largest asset a person has is their home. For example, hypothetically, if a home could lose 40% of its value if a turbine is built within a half mile of it. If that property was worth \$200,000, and has a mortgage of \$150,000, then that homeowner loses **more than all** of the \$50,000 in equity they had in their home. The disparity is felt even harder by people with more valuable properties, such as a client I have who built a well above million-dollar home in an area not zoned for industrial use, but now faces the possibility of a change in zoning and CUP because his neighbors have been given an opportunity to earn \$8,000 a year. Should any of these people have to subsidize the wind project as a result of setback distances being too small?

The subsidy’s non-economic costs for the neighbors:

- Without a uniform law in Kansas, turbine setback distances can be from the neighboring home instead of where they should be: the neighboring landowner’s property line. Diagrams showing this problem, dubbed “trespass zoning,” are available. Without House Bill 2273, the “subsidy” shouldered by neighboring landowners (especially those who have not yet built homes on their land) includes them involuntarily giving up the ability to build a home or other structure on a portion of their land, because it would be too close to their neighbor’s turbine.
- Shadow flicker. Multiple videos are available to show the miserable experience world-wide with shadow flicker. Turbines have to be tall to capture the wind, they are becoming taller and taller, and frequently they are placed in elevated areas to take advantage of higher wind speeds. This can lead to shadow flicker. Wind developers say they will use computers to model shadow flicker and make efforts to reduce it, but are not willing to guarantee it. Either legislation needs to be enacted to require a guarantee of zero shadow flicker year-round, or a greater minimum setback distance is needs to be established. Otherwise, shadow flicker is yet another subsidy borne exclusively by neighboring landowners.
- Noise and infrasound. Industrial wind turbines are noisy, the sound is intermittent, contains very low frequency noise and vibration. Multiple studies (and studies of the studies) confirm the existence of adverse health effects of industrial wind turbines. Recently, in late 2018, The World Health Organization came forward with their conclusion

that wind turbine noise is a health hazard. The wind industry responds to this large and growing mass of literature largely by defining “adverse health effect” narrowly (losing sleep and its consequences isn’t an adverse health effect, they argue). Greater setback distances would eliminate the subsidy people living among the turbines pay with their health and loss of sleep.

- Safety – wind turbine failures and fires are reported. There is no national database indicating the exact frequency, and some recent articles point out that this is underreported. Housebill 2273, by establishing a minimum setback distance from a property line, could provide greater time to control a fire before it affects adjacent homes or neighborhoods.
- Moving is a difficult choice landowners experiencing these unwanted effects. How do they list their property under these circumstances? Would their real estate agent (or potential buyers) be persuaded by any study relied upon by wind developers and conclude the property is worth exactly what it was worth without the neighboring turbines?
- And then there are the continuous, simultaneous blinking red lights, another issue Housebill 2273 attempts to address.

Compensation can be paid to neighboring landowners:

- Even though neighboring landowners do not sign leases, as House Bill 2273 makes clear, they could waive or negotiate away minimum setback distances.
- So even if a uniform minimum setback distance is established by House Bill 2273, it would not prohibit a wind developer from paying a landowner compensation for agreeing to a reduction in that setback distance. Presently, they have no reason to pay neighboring landowners anything other than a de-minimis contribution (so-called “good-neighbor agreements”). If wind developers have millions of dollars to pay to local governments for PILOT payments, then they have funds to negotiate waivers of the setback distances if House Bill 2273 presents a problem. Data on what wind developers have paid counties as incentives in PILOT payments is available from the Kansas Legislative Research Department.

Industrial wind is moving closer to the cities in Kansas:

- There are a lot of open areas in Western Kansas not occupied by wind turbines. Notwithstanding, it is foreseeable that industrial wind will look at building closer to our major cities as other subsidy programs (like the production tax credit or 10 year state tax abatement) are phased out.
- The incentive for wind developers to build between the towns surrounding our larger cities includes the desire to reduce costs associated with connecting to the grid.
- But, as you move closer to the major cities and nestle between the surrounding cities, the potential for having a rural landowner who commutes to the city increases. Hobby farms understandably are more common closer to our major cities compared to large-scale farms in western Kansas. The land may appear similar, but the location can make a difference in how owners could potentially use the land.

- Sumner County, Kansas, as you know is just to the south of Sedgwick County and Wichita. Sumner County has one existing industrial wind farm at the south edge of the county north of the Oklahoma border, and one which has been approved but not constructed in the central area of the county, and more recently wind developers have their eye on the northern edge of the county. Sumner County has experienced more and more opposition from neighboring residents the further north (and closer to the Wichita metro area) the projects are proposed.
- Industrial wind developers are proposing turbines in Reno county between Hutchinson and Wichita near Haven. That proposal has also generated opposition and controversy.
- So one question is this: as wind expansion continues, do we want industrial wind turbines moving in closer to our larger cities? As the purse strings are tightened on federal and state subsidies, where and how will the wind developers be looking to try to reduce their costs?

Continued local control is not the answer for minimum setback distances:

- Minimum setback distances from the homes or properties of non-participating landowners should be addressed on a statewide level going forward.
- It's complicated: listen to the proponents of this bill, then the rebuttal of the wind developers on this bill, and you will quickly realize the issues get complicated. There's a potential incentive to just "trust" the conclusions of the developers and their allies because it takes effort and research to disagree with them. It takes effort to read, study the issues, find out where there is disagreement and why, and reach a conclusion.
- Consistency: Kansas has maximum and minimum speed limits, it has a uniform building code, it has minimum requirements expected of liability insurance carriers and for many other business and professions. These are questions involving public safety and welfare. While historically they might have once been left to local control, eventually they are subject to more uniform statewide control.
- Leadership: If Kansas wants to be a pioneer in industrial wind, it needs to take a leadership role in making the tough decisions on minimum requirements.
- Neutrality: Local leadership has the difficult problem of appearing neutral in making these decisions. The decision makers are literally told that if the wind projects are not approved, it will result in the loss of PILOT payments being made to the counties they lead. This economic leverage/incentive offered by wind developers to the local leaders creates bias or at least the potential appearance of bias.
- Competition to be the least restrictive: Leaving minimum setback distances entirely within local control puts the counties in competition with one another, so that the counties which have the most relaxed standards are told by developers they will get the projects. Wind developers will state to local officials that if setback distances are increased, it will kill the project and they will have to approach another county. This has the potential to motivate counties to establish *the least restrictive standards* (and therefore the greatest contribution/subsidy by the neighboring landowners).

- The question is who is in the best and most neutral position to resolve minimum setback distances fairly. **If the wind industry does not want the Kansas Legislature to address the minimum setback distance issue, “why?” Could it be that they would rather continue to use their leverage over local county officials of “agree or we will go somewhere else”?**
- A slower, considered approach to the minimum setbacks and other rights at a statewide level has the potential to protect Kansans in a way that local decision-makers may not be as well equipped to do.
- As Housebill 2273 must make clear, these would only be minimum requirements. Local authorities would be free to add to them and would retain authority to decide whether any wind project is consistent with their comprehensive plan.

In conclusion:

- Wind energy’s problem stems from its margin. It has to rely on others to be profitable. In the past and present it has looked to the federal government, state government and the hidden subsidy paid by the neighbors for this help.
- Due to a lack of fair and consistent setback distances, neighbors to industrial wind projects are paying far more than their fair share toward industrial wind development economically and non-economically. To date, this has happened in some of the more isolated, rural areas of the state, but wind developers are eyeballing land closer to our major cities.
- Establishing minimum setback distances statewide through HB 2273 would help level the playing field and protect all Kansans going forward.
- If increasing setback distances causes a shift in how industrial wind in Kansas is funded or develops in the future, then that’s okay. If Kansas’ wind is a cost-effective natural resource worth harnessing, the industry will find a way. But the industry in Kansas cannot be fairly sustained on the model it is currently using.

Jerry Hawkins

Hite, Fanning & Honeyman, LLP

316-265-7741.