



Residential Wind Turbines—HB 562

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New legislation requires that if a wind farm will generate between five megawatts and 50 megawatts it is subject to new provisions passed as part of the capital improvements bill that subject them to the Power Siting Board Certification.

The legislation specifies that in addition to certification criteria for larger generation projects, in they shall address location, erection, construction, maintenance, removal, use or enlargement and erosion control, recreational land use, wildlife protection, interconnection with power lines, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning and necessary cooperation for site visits and enforcement investigations. The rules shall also prescribe minimum setbacks of 750 feet from the nearest dwelling and 1.1 times the height of the wind turbine to the property line.

Wind farms smaller than five megawatts are not subject to the Power Siting Board jurisdiction. The new legislation specifically reserved to the local zoning authorities the right to circulate regulations that were stricter than those circulated by the the

Power Siting Board for the economically significant wind farms.

The Power Siting Board jurisdiction over a project means that the applicant is exempt from local building codes and does not have to apply for local zoning permits.

The Power Siting Board is chaired by the chairman of the Public Utilities Commission of Ohio (PUCO) and serves with 10 other members.

The Power Siting Board application process for a wind farm that is 50 megawatts or more takes approximately nine months to a year.

The application must contain: substantial information about the proposed project; detailed site selection study; extensive technical data relative to the project's site; the site's geography and topography, its geology and seismology, hydrology and wind; a layout and construction information about proposed and associated facilities, structures and equipment; applicant must disclose information about ownership, capital and intangible costs, expected operation and maintenance expenses; environmental data in regards to health, safety, atmospheric

emissions, noise and the impact of the construction activities.

Once application is received, the Power Siting Board has 60 days to review it for completeness. Once everything is received, the Power Siting Board staff will conduct its investigation and issue a report evaluating the application and make recommendations.

Two types of public hearings are conducted: a local public hearing and an evidentiary hearing to debate any contested technical issues. After the hearings the Power Siting Board will decide whether and under what conditions it will grant the certificate.

The Power Siting Board staff monitors the progress of construction and adherence to the conditions set forth in the certificate.

To review the entire HB562, please see the following web address:

http://www.legislature.state.oh.us/Bill-Text/127/127_HB_562_EN_N.html

LUC Model Residential Wind Turbine text is available at the LUC web-site.

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Getting to Know...

Member—Perry Township

Perry Township is located in the eastern part of Logan County. Perry Township was formed in 1830. Merle Ackley, Jeff Rosebrook, and Gary Baker are the Township Trustees and Cindy Stalling is the Fiscal Officer. Dan Ackley is the Zoning Inspector. Visit them on the web at: www.perrytwp.net.

There is an annual street dance held in East Liberty on the third Saturday in August each year.

Perry Township has an annual Fourth of July celebration held at Perry Park by the Perry Township Events Committee. They also hold an auction, Santa visit, Easter egg hunt, Chili cook-off, and Spaghetti Dinner annually.

Perry Township has a new walking track and restrooms at Perry Park. They have 24-hour coverage, seven days per week with the Fire Department. There are several medics that work at the department. The Fire De-

partment has expanded to the building beside it on State Street, behind the famous water trough.

They have the leading food pantry in the county located at the North Greenfield United Methodist Church in North Greenfield. The firemen go over and help unload the groceries for the pantry. They are open every other Friday from 2:00 to 4:00 pm.

Perry Township has a firefighter that has recently returned from Iraq and will be able to go back to volunteering with the Fire Department. He is Larry Wellington. They are very proud of him and Welcome him home.

Under new management is the East Liberty Lakes located on State Route 292. There was a baptism held there August 10, 2008.

The Trustees hold dumpster days twice a year, one in the Spring and one in the Fall. They are held on the

third Saturday in May and October.

Township meetings are held on the second Monday at 7:00 pm in the Community Room.

Last year the Logan County Commissioners moved forward with Phase II of the Logan County Comprehensive Plan. The goal of this plan was to have individual townships pursue their own plan. Perry Township was one of the first townships to commit to moving forward with a plan.

Perry Township has a committee comprised of its Zoning Commission, Board of Zoning Appeals and Zoning Inspector. This committee will be working in conjunction with LUC and Logan County Soil and Water Conservation District in creating this plan to guide the future growth and development of Perry Township.

Member—Village of Milford Center

The Village of Milford Center is located in the southern part of Union County. The mayor is Robert G. Mitchell, Jr and Dawn A Barnhardt is the Fiscal Officer. The members of the village council are: Anthony Smith, Tom Barnhardt, Jr., Christopher Burger, Jeff Parren and Aimee Robles. Milford Center's population is 750.

Milford Center will take part in the first Annual Union County Covered Bridge Festival on September 6, 2008. The Festival is from 9:00 am to 10:00 pm. From 8:00 am to 10:00

am a Pancake Breakfast will be served. At 9:00 am there will be a Fireman's Water Soccer Game at the Elementary School.

Also, at 9:00 am is the Vintage Quilt Display located at 173 W. State Street. This will include a loom and weave demonstration. This event will run until 3:00 pm.

There will be homemade food for sale throughout the day.

Many different souvenirs will be available for purchase including a replica of the first Union County Courthouse, which was located in

Milford Center. These and other souvenirs will be for sale in the old Courthouse building.

Milford Center's village council meetings are held on the second Monday each month at 7:30 pm.

Milford Center applied for CDBG funding in the amount of \$63,500.00 from the Union County Commissioners in 2006. This allowed the Village to install approximately 1400 feet of sidewalks and curbs along Mill Street. LUC did the grant administration for this project, which was completed in December 2007.

Staff—Kyle Hanigosky



Kyle Hanigosky is a Planner from the Cincinnati area and was hired at LUC in April 2008. Kyle graduated from the University of Cincinnati with a Bachelor's Degree in Urban Planning from the school of Design Architecture Art and Planning (DAAP).

Kyle's tasks include subdivision review and zoning for Logan, Union, and Champaign Counties, with emphasis in Union County. He also works with GIS Mapping software.

Kyle currently lives in Dublin and enjoys lifting weights, playing sports, music, and spending time with family and friends.

LUC Services—Zoning Map Updates

The Logan-Union-Champaign Regional Planning Commission can produce maps to fit the needs of your jurisdiction. LUC can produce maps for you, in house, ranging in size from 8.5" x 11" to 36" x 44". LUC can cre-

ate zoning maps, as well as maps for special projects or needs. These maps can include more detailed information, including demographics from the U.S. Census Bureau, emergency services, critical re-

sources, and infrastructure. If you are interested in having a map created for your jurisdiction, call the LUC office and speak with Wes Dodds or Kyle Hanigosky to set up a consultation.

Message from the Prosecutor—Nick Selvaggio



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Removing Junk Motor Vehicles from Private Property under House Bill 50; C.C.Op. 08-002

Greetings,

House Bill 50 has recently taken effect. This legislation enacts a new statute, R.C. 505.871, which expressly grants townships the authority to remove junk motor vehicles from private property. It also amends some related provisions. Some of you have expressed interest in utilizing this authority and this opinion letter provides a brief overview of House Bill 50.

Prior to the enactment of House Bill 50, townships usually addressed the subject of junk motor vehicles by enacting some sort of resolution. For example, R.C. 505.173(A) allows boards of township trustees to enact resolutions addressing the storage of junk motor vehicles on private property. R.C. 505.173(D) makes the violation of such resolutions a minor misdemeanor, punishable by a fine. R.C. 505.173(B) also gives townships the authority to file suit to prohibit the storage of junk motor vehicles in violation of any resolution enacted under this section. In addition to R.C. 505.173, many townships have chosen to address junk motor

vehicles in their zoning resolution.

Unfortunately, R.C. 505.173 and township zoning resolutions both lack "self-help" provisions similar to those found in the township nuisance abatement statutes, i.e., R.C. 505.86 and 505.87. While the Ohio Attorney General, in 1990 Ohio Atty. Gen. Ops. No. 1990-020, determined that junk motor vehicles were "refuse or other debris" under R.C. 505.87, this statute has its limitations. First, it requires a board of township trustees to find that a junk motor vehicle constitutes a nuisance. Quite simply, a junk motor vehicle does not always constitute a nuisance. Second, a township can only collect the costs incurred in removing junk motor vehicles under R.C. 505.87 by entering them upon the tax duplicate and then seeking foreclosure, a process that can take several years.

House Bill 50, while similar to R.C. 505.86 and 505.87, provides greater flexibility with regard to junk motor vehicles. For example, R.C. 505.871 does not require a finding of nuisance. Rather, a board of township trustees need only find that a junk motor vehicle or vehicles is present on the property. R.C. 505.871 also provides more options for townships wanting to recover the expenses incurred in the removal of junk motor vehicles.

At the outset, it should be noted that R.C. 505.871 utilized the definition of "junk motor vehicle" set forth in R.C. 505.173(E). According to that provision, a

"junk motor vehicle, is one that meets all of the following criteria:

- (1) Three model years old, or older;
- (2) Apparently inoperable, and
- (3) Extensively damaged, including, but not limited to, any of the following: missing wheels, tires, engine, or transmission.

This definition may be similar to the one currently found in your township's zoning resolution.

House Bill 50 also amends R.C. 505.85 so as to allow boards of township trustees to enter into contracts with motor vehicle salvage dealers, as defined by R.C. 4738.01, and scrap metal processing facilities, as defined by R.C. 4737.05, for the removal and/or disposal of junk motor vehicles located on private property.

Since we are currently experiencing high commodity prices, including scrap metals, motor vehicle salvage dealers and scrap metal processors might be willing to remove junk motor vehicles for free, or even pay the township for the right to remove junk motor vehicles, in exchange for the opportunity to scrap or otherwise dispose of them. Hopefully, this will eliminate the concern over townships having to "front" money to clean up a property on the expectation that the expenses will be recovered at some future date.

Removing a junk motor vehicle, however, is only half the battle. In Ohio, a motor vehicle cannot be disposed of without a certificate of title.¹ The Ohio Attorney General addressed this issue in 1995 Ohio Atty.Gen.Ops. No. 1995-043 and reached the following conclusion:

"When a board of township trustees has

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(Continued from page 3)

removed a motor vehicle from private property under the provisions of R.C. 505.87, the owner of the storage facility to which the vehicle has been removed may obtain a certificate of title as provided in R.C. 4505.101.”

The applicability of this language to vehicles removed under R.C. 505.871 should be obvious. The motor vehicle salvage dealer or scrap metal processor who removes a junk motor vehicle under R.C. 505.871 should be able to obtain a certificate of title under R.C. 4505.101. This ability to obtain a certificate of title is his incentive for removing the junk motor vehicle at no cost to the township.

The actual process of using R.C. 505.871 is similar to the existing nuisance statutes, i.e., R.C. 505.86 and 505.87. A step-by-step guide is included in this opinion. A sample letter to send to property owners and lien holders is also included.

It should also be noted that any collector’s vehicle that meets this definition of “junk motor vehicle” is subject to removal under R.C. 505.871.² However, Division (G)(2) of R.C. 505.871 limits the statute’s reach with regard to collector’s vehicles by incorporating R.C. 505.173(A). After reviewing R.C. 505.173(A), the office believes that the net effect of incorporating this provision will be to prohibit townships from removing what truly are collector’s vehicles that otherwise qualify as “junk motor vehicles” from private property pursuant to the procedure set forth in R.C. 505.871.

This apparent “loophole” for collector’s vehicles, however, does not “swallow up” R.C. 505.871. Township boards of trustees, when faced with the question of whether a “junk motor vehicle” is a collector’s vehicle, should pay attention to the circumstances surrounding the vehicle itself and not be blinded by its make and model. A clear distinction can and should be made between a ‘66 Mustang that is inoperable and missing major components because it is undergoing restoration and a ‘66 Mustang that is inoperable and missing major components because it has sat unattended on someone’s property for an extended pe-

riod of time. The former, while it might currently qualify as “junk motor vehicle,” is also a “collector’s vehicle” and cannot be removed under R.C. 505.871, while the latter is simply a junk motor vehicle that can be removed under that statute.

This distinction is consistent with the definition of “collector’s vehicle” contained in R.C. 4501.01(F), which speaks of vehicles “owned, operated, collected, preserved, restored, maintained, or used essentially as a collector’s item, leisure pursuit, or investment, but not as the owner’s principal means of transportation. The vehicle rusting away behind someone’s barn or garage is not being “used as a collector’s item, leisure pursuit, or investment.” The case law interpreting and applying R.C. 4501.01(F) also makes this distinction, looking at the actual circumstances surrounding the vehicle, not its make and model.³ In short, this office believes that the “junk motor vehicle” that also qualifies as a “collector’s vehicle” will be the exception, rather than the rule.

R.C. 505.871 also provides greater flexibility for the recovery of costs than either R.C. 505.86 or 505.87, both of which limit cost recovery to placing the expenses on the tax duplicate as a lien. In that regard, Division (E) of R.C. 505.871 allows the township to utilize “any lawful means” to collect the expenses incurred in removing or causing the removal of a junk motor vehicle. While Division (E) allows for these costs to be entered upon the tax duplicate as a lien against the land, the phrase “any lawful means” allows the township to recover these expenses through other means, including selling the junk motor vehicle itself after obtaining a certificate of title. Hopefully, motor vehicles salvage dealers and scrap metal processors will be willing to remove junk motor vehicles at no cost, thereby making cost recovery a non-issue.

Finally, if a township incurs cost in conjunction with the removal of a junk motor vehicle, these expenses must be paid out of the general fund from monies not otherwise appropriated. If the expenses exceed more than \$500.00, the board of trustees may borrow money from a bank or other financial institution.

If you have any questions or need fur-

ther assistance, please feel free to call this office.

Yours truly,

NICK A. SELVAGGIO, CHAMPAIGN
COUNTY PROSECUTING ATTORNEY

Scott D. Schockling
Assistant Prosecuting Attorney

¹ See R.C. 4505.03, .04

² A “collector’s vehicle” is defined in R.C. 4501.01(F) as “any motor vehicle or agricultural tractor or traction engine that is of special interest, that has a fair market value of one hundred dollars or more, whether operable or not, and that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector’s item, leisure pursuit, or investment, but not as the owner’s principal means of transportation.”

³ E.g., *LePage v Thorn Twp. Bd. Of Trustees*, Perry App. No. 03 CA 4, 2004-Ohio-380; *City of Cuyahoga Falls v. Wilkerson* (Dec. 20, 2000), Summit App. No. 2034, 2000 Ohio App. LEXIS 5965.

**See Page 6 For Revised Code
Section 505.871 Procedure**

Removal of Junk Motor Vehicles (Revised Code Section 505.871) (Sample Letter)

Date _____

Name of Address of landowner _____

VIA CERTIFIED MAIL# _____ (<— put the certified mailing number here)

Re: The property at _____
Parcel No. _____

Dear Landowner,

Please be advised that the _____ Township Board of Trustees, or its designate, has visited the property located at _____, _____ Township, Champaign County, Ohio. The Board has determined that (describe vehicle here) is a junk motor vehicle, as defined in Ohio Revised Code Section 505.173. The Board is also notifying, if they exist, any holders of liens of record upon the land of this determination.

In accordance with Ohio Revised Code Section 505.871, therefore, you are hereby advised of the following:

The Board has determined that (describe vehicle here) is a junk motor vehicle;

On (insert date), the Board has passed a resolution to that effect;

You are hereby ordered to remove said vehicle from the above described property;

If said vehicle is not removed within fourteen days of receipt of this letter, or if any agreement for its removal is not made by you (and if they exist, any holders of liens of record) and the Board within fourteen days from receipt of this letter, the Board will remove or cause the removal of said vehicle, and any expenses incurred by the Board in performing the task may be entered upon the tax duplicate and will be a lien upon the land from the date of entry. If the costs are so entered, they will be collected just like other taxes.

Please be advised that the expenses noted above include any labor, materials, and/or equipment needed to remove the junk motor vehicles.

Should you wish to contact us or make any arrangements, you may call (person) at (phone number).

You may demand a hearing in writing if provided to the township fiscal officer within fourteen days after receiving this letter. The demand for hearing must include your full name and a mailing address at which you will receive mail and both home and work telephone numbers. You should also identify all persons who share an interest in the property and all lien holders of whom you are aware and send them a copy of your demand. The hearing will be held at the next regular meeting of the Board of Township Trustees. At the hearing you may present testimony, under oath as to why the Board's finding regarding the vehicle as stated in this letter are incorrect. The Board will issue a written decision in your hearing within twenty-one days of the hearing. The Board may take the actions stated above beginning ten days after the mailing of the decision to you at the address you provided in your demand for hearing.

Very truly yours,

_____ Township Board of Trustees

cc: Lienholder name and address

Revised Code Section 505.871 Procedure

1. Board visits site and takes pictures of the junk motor vehicle (s).
2. Board passes resolution stating that “the vehicle is a junk motor vehicle.” It is important that the resolution describe the vehicle(s) to be removed. The more thorough the description the better. If more than one vehicle is to be removed from the property, they can be grouped into a single resolution, as long as there is an accurate description of each vehicle to be removed.
3. Board notifies landowners and any holders of liens of record upon the land (i.e. you need to determine whether any liens have been placed on the land) that:
 - The Board has determined that the vehicle(s) is a “junk motor vehicle.” Include an accurate description of the vehicle(s) so that there is no dispute over which vehicle(s) is at issue.
 - If such vehicle(s) is not removed within fourteen days after service of the notice, the Board may remove or cause the removal of the vehicle(s);
 - That any expenses incurred in removing or causing the removal of the vehicle(s) may be entered upon the tax duplicate and become a lien upon the land from the date of entry.
4. Notice to the landowner and any lien holders of record must be by certified mail. If the owner’s address is unknown and cannot be reasonably determined, or if a notice sent by certified mail is returned unclaimed, the Board must publish notice of the above in the *Urbana Daily Citizen* (or local paper), and must also post the notice on the principal structure on the land, if any.
5. If nothing is done within fourteen days of service of the notice (you may give extensions of time by agreement—do any such extensions in writing!), and if no demand for a hearing is received in that time, you

may remove or cause the removal of the junk motor vehicle(s).

For purposes of counting days, a notice sent by certified mail is considered served on the date it was received as indicated on the signed return receipt. A notice given by publication is considered served on the date of the newspaper publication.

6. Although R.C. 505.871 does not provide for a hearing, due process requires that provision be made for one since a “junk motor vehicle “ is a liberty or property interest entitled to protection under the Fourteenth Amendment to the United States Constitution. Thus, your letter must allow for a hearing.

If a hearing is demanded, hold the hearing according to the schedule and terms on the accompanying letter. Unless a collector’s vehicle is involved, the only possible issue at the hearing is whether the vehicle(s) meet the definition of “junk motor vehicle” set forth in R.C. 505.173(A). If it meets the definition, it is subject to removal under R.C. 505.871.

If you still believe that the vehicle is a junk motor vehicle after the hearing, send a decision in writing to all parties at the addresses given to you. After a reasonable time, say ten days, you may proceed with the removal of the vehicle(s).

If a collector’s vehicle might be involved, and a hearing is requested, the Board needs to focus on whether the vehicle(s) meets the definition of “collector’s vehicle” set forth in R.C. 4501.01(F). Attention should be paid to the circumstances of the particular motor vehicle, not its make and model. Not all ‘66 Mustangs are “collector’s vehicle,” nor should they be. If the motor vehicle does not meet the definition of “collector’s vehicle,” it is subject to removal under R.C. 505.871. The “junk motor vehicle” that actually qualifies as a “collector’s vehicle” will be the exception, rather than the rule.

If the vehicle(s) does not meet the definition of “collector’s vehicle” set

forth in R.C. 4501.01(F), the Board cannot remove the vehicle under R.C. 505.871. If the Board still wishes to act upon the situation, it might consider proceeding under the township’s zoning resolution.

7. Document every expense—labor, materials, equipment, etc. If you choose to do so, the Board may direct the Fiscal Officer to certify the expenses and a description of the property to the county auditor, who shall place the expenses on the tax duplicate as a lien against the land. In addition to labor and materials, be sure to include documentation of expense for your services and any notification costs.

Hopefully, this step will be the exception, rather than the rule, as motor vehicle salvage dealers and/or scrap metal processors may be willing to remove junk motor vehicles for free, in exchange for the right to obtain a certificate of title for the vehicle.

8. Also, keep in mind that any monies expended under R.C. 505.871 must be taken from the general fund. R.C. 505.871 also allows townships to borrow money for financial institutions if the cost of removal exceeds \$500.00
9. All monies collected will go back into the township’s general fund.

Newsletter

Are you interested in receiving this newsletter by e-mail? If so, e-mail heathermartin@lucplanning.com

LUC Regional Planning Commission Web-Site



LUC Regional Planning Commission's web-site is located at www.lucplanning.com. We are currently in the process of building a new web-site.

The new web-site will be efficient and user friendly. It will offer many different options to the user, such as fee schedules for the different member townships, zoning codes, zoning maps and useful links.

If your fee schedule or zoning code is not listed on our web-site, please send it to a staff member of LUC Regional Planning Commission so that we may place it on the web-site.

Logan County Land Trust's Annual Local Heritage Dinner



The Logan County Land Trust's Annual Local Heritage Dinner is being held on Sunday, September 14, 2008 at Winner Harvest Barn. Dinner will begin with Appetizers at 5:00 pm, then the Meal at 5:30 and Dessert at 6:45. **Ticket Donation**—The suggested price of your ticket includes a contribution to Logan County Land Trust to build its land protection program—help us save the land that supports us.

Suggested Donations: Table Sponsor \$150.00; Adult Couple \$40.00; Single Adult \$25.00; Children 12 to 18 \$10.00; and Children Under 12 are free.

For tickets contact any Logan County Land Trust board member or advisor: Vicky Boots, Jack Graham, Wesley Haun, David Knight, Tim Lyden, Doug Ritchey, Steve Schlumbohm,

Susan Schultz, J. MacAlpine Smith, Jenny Snapp, Bob Stoll, Jack Webb, Matt Wilson, Renee Winner

For more information contact Renee Winner at 937-585-4568

Join us for an enjoyable evening highlighting local landscape, local foods, and local talent.

Upcoming Trainings



- **Sustainable Codes Workshop**

The training will be held Thursday, September 4, 2008, from 8:30—5:00 pm at Knowlton Hall.

For questions related to the workshop, please contact Jennifer Evans-Crowley Phone: (614) 247-7479. Email: Cowley.11@osu.edu

- **Restoring our Prosperity, The State Role in Revitalizing Ohio's Older Industrial Communities**

The training will be held Wednesday, September 10, 2008 from 8:00 am—4:30 pm at the Greater Columbus Convention Center.

For questions related to the conference content, contact Peg Grannis Phone: (614)258-6200 ext. 22 Email: pgrannis@greaterohio.com

- **Ohio Land Use Conference**

The training will be held Monday, November 17 at OSU.

More information will be included in the next issue.



**LUC REGIONAL
PLANNING
COMMISSION**

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