

STATE OF NEW YORK
SUPREME COURT : COUNTY OF CATTARAUGUS

CONCERNED CITIZENS OF CATTARAUGUS COUNTY,
INC., and KATHY BOSER,

Petitioners,

Index No.: 2011-79455
Hon. Michael Nenno

For a Judgment Pursuant to Article 78 of the Civil Practice Law
and Rules

—against—

THE TOWN OF ALLEGANY PLANNING BOARD, THE
TOWN OF ALLEGANY TOWN BOARD, THE TOWN OF
ALLEGANY ZONING BOARD OF APPEALS, THE
TOWN OF ALLEGANY CODE ENFORCEMENT
OFFICER, and ALLEGANY WIND, LLC,

Respondents.

AFFIDAVIT OF GERARD E. DZUROFF

STATE OF NEW YORK)
)
COUNTY OF CATTARAUGUS) ss.:

Gerard E. Dzurhoff, duly sworn, deposes and says:

1. I am the Code Enforcement Officer for the Town of Allegany (the “Town”) and have been at all times relevant to the above-captioned proceeding.
2. I submit this affidavit in response to the Petition and, in particular, to Mr. Ted Gordon’s affidavit, wherein he asserts that his “residence” is a sensitive receptor under

Section 5.25 of the Town's Zoning Ordinance. Specifically, Mr. Gordon claims his "residence" is located within 2,500 feet of Turbine 18E of the Allegany Wind, LLC project (the "Project").

3. While the definition of "sensitive noise receptors" does include residences, it does not apply to illegally built structures where no one can lawfully reside.

4. Mr. Gordon, in violation of the Town's Zoning Ordinance and the New York State Uniform Fire Prevention and Building Code, maintains an illegal structure on his property, located at 180 Chipmonk Road, Allegany, New York 14706, SBL # 111.002-1-35.

5. No building permit has been issued for the structure, nor has a certificate of compliance or a certificate of occupancy been issued.

6. The records of the Town show Mr. Gordon's property as rural vacant property.

7. Mr. Gordon's structure does not appear on the Town's assessment roll, and he has been paying no real property taxes on the structure.


8. Upon information and belief, Mr. Gordon's structure sits upon property that is land-locked, meaning he has no legal means to access his property. New York Town Law § 280-a(1) prohibits the issuance of a building permit to any structure unless it has access to an official town, county, or state street or highway.

9. Upon information and belief, the septic system referenced by Mr. Gordon has not been approved by the County Health Department.

10. Because Mr. Gordon's structure is illegal, it cannot properly be considered a "residence"; it is not a sensitive receptor for purposes of the Zoning Ordinance.


Gerard E. Dzuroni

Sworn to before me this
25 day of October, 2011


Notary Public

LISA M. WOODAREK
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN CATTARAUGUS COUNTY
NO. 01W06051550
COMMISSION EXPIRES ON 12-4-20. *14*