

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 CAROL H. HOROWITZ

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

Carol H. Horowitz, duly sworn, deposes and says:

1. I am the Town Planner for the Town of Allegany (the "Town") and have been at all times relevant to the above-captioned proceeding. I received my B.A. from the University of California, Riverside in 1970, and received a Masters of City Planning from Harvard University in 1975.

2. My duties as Town Planner include preparing new and revised zoning ordinances; preparing comprehensive plans and land use plans; conducting land use studies and preparing land use maps; preparing environmental assessment forms pursuant to the requirements of the New York State Environmental Quality Review Act (“SEQRA”); and advising the Town of Allegany Planning Board (the “Planning Board”) on permitting, project siting, and environmental impact reviews.

3. I assisted the Planning Board and the Town Board with the revisions to the Zoning Ordinance dealing with wind energy facilities. Attached as **Exhibit A** is the most recent version of Section 5.25 of the Zoning Ordinance, entitled Commercial Wind Energy Conversion Systems (WECS), together with changes to the Zoning Ordinance’s definitions. The version of the ordinance attached to Petitioner’s brief is not the current version.

4. On July 11, 2011, the Planning Board adopted a statement of findings and decision pursuant to SEQRA, issued a special use permit, and approved the site plan for the Allegany Wind, LLC project.

5. On July 14, 2011, I filed the Planning Board’s decision in the office of the Town Clerk. Attached as **Exhibit B** is the date-stamped first page of the Planning Board’s Statement of Findings and Decision, showing the date of filing. A full copy of the Planning Board’s Statement of Findings and Decision is at pages 6489 to 6604 of the Certified Record.

History Of Changes To The Zoning Ordinance Related To Regulation Of Wind Energy Conversion Systems (“WECS”)

6. On August 28, 2007, the Town Board amended the Zoning Ordinance to include special laws applicable to WECS. This amendment to the Zoning Ordinance was

designed to provide the planning tools necessary to regulate and review large wind energy projects.

7. The 2007 amendments included provisions for siting, noise limitations, and procedures for project review. They require an applicant to obtain a special use permit and site plan approval from the Planning Board for any commercial WECS project.

8. On January 28, 2010, the Town Board again amended the Zoning Ordinance to require that all commercial WECS be located in a Wind Energy Overlay District. This amendment provided an extra level of review by requiring the Town Board's approval before a commercial WECS project could be constructed.

9. The 2010 amendments did not circumscribe the Planning Board's review authority. An applicant was still required to obtain a special use permit and site plan approval for a commercial WECS project.

10. In fact, the 2010 amendments specifically provide that any Wind Energy Overlay District may only be created after the Planning Board issues its approvals for the project. Moreover, the Planning Board was granted recommending authority for all rezoning requests under Section 5.25(B)(1).

11. The 2010 amendments require project applicants to submit a map or plan, showing the location of the proposed commercial WECS facility, including the location of adjoining properties that have granted noise (or other) setbacks for a proposed project.

12. On February 24, 2011, the Town Board again adopted amendments to the Zoning Ordinance relative to commercial WECS projects. The Town Board adopted a definition

of A-Weighted Sound Pressure Level, and standards for measuring noise impacts. The 2011 amendments did not in any way disturb the Planning Board's review authority over commercial WECS projects.

The Planning Board's Review Of Noise Impacts Related To The Allegany Wind Project

13. The Town Board hired independent consultants, Conestoga-Rovers & Associates ("CRA") and Hodgson Russ LLP, to aid the Planning Board in its review of potential environment impacts of the Project.

14. CRA's role was to provide independent review and assessment of all technical studies and reports submitted by the Applicant. CRA also provided additional studies and explanation as required by the Planning Board, and it aided the Planning Board in reviewing comments from the public.

15. The Planning Board completed an extensive review of noise impacts from the Project. CRA evaluated the potential environmental noise impacts from the project and vetted the Hessler Report for accuracy.

16. CRA was also commissioned to conduct an independent acoustic noise model assessment for eight resident receiver locations selected by the Planning Board. These eight receiver locations were not designated as "sensitive receptors" pursuant to Section 5.25(C)(2)(a)(ii) of the Zoning Ordinance; rather, these locations were chosen by the Planning Board to participate in CRA's independent study.

17. After review of the draft environmental impact statement ("DEIS") and CRA's memoranda, the Planning Board recommended to the Town Board that, for commercial

WECS, a 40 dBA noise limit be added to the Zoning Ordinance to replace the 3 dBA above background standard.

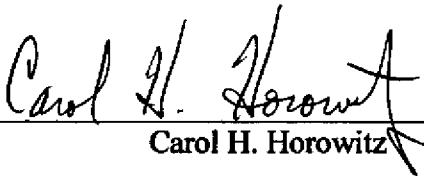
18. While the Town Board never adopted the Planning Board's recommendation, the Planning Board imposed a 40 dBA noise limit at all properties located more than 2,500 feet from a turbine. This was done as a mitigation measure to protect all members of the Town equally and to further mitigate potential noise impacts.

The Town Board Creates A Wind Energy Overlay District

19. On August 29, 2011, the Town Board adopted an ordinance creating a Wind Energy Overlay District for the Project. It did so after issuing its own statement of findings for the Project pursuant to SEQRA.

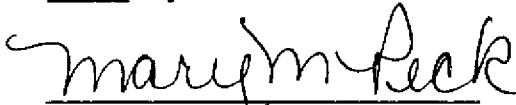
20. The Wind Energy Overlay District was created only after the Planning Board issued a special use permit and approved the site plan for the Project, pursuant to Section 5.25(B)(1) of the Zoning Ordinance.

21. The boundaries of the overlay district coincide with the Project location, as required by the Zoning Ordinance.



Carol H. Horowitz

Sworn to before me this
26 day of October, 2011



Notary Public

MARY M. PECK 4971535
Notary Public, State of New York
Qualified in Cattaraugus County
Commission Expires 09/06/2014