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VIA EMAIL ONLY

Roger V. Barth, Esquire
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RE: Wind Energy Proposed Lease
A review of issues for the Town of Yates Landowner Contemplating Industrial Turbine
Leases

Dear Dad:

You have asked me to review and comment on the Lease which Yates and Somerset landowners are being asked to sign to permit industrial 570 foot wind turbines on their properties. I do so in the following context, while trying to analyze the document fairly.

For 47 summers, I have driven down Route 63 through Lyndonville, trying to be the first to see the waters of Lake Ontario. I have listened to the sounds of the waves hitting the shore, the sound of a rooster waking the neighborhood, the sound of poplar leaves rustling in the wind. I have a son, lovingly raised in Lyndonville by his father, and his family who are now my family. My immediate and extended family comes home to Lyndonville from California, Florida, Maryland and Washington every year. I married a man who fell in love with this town, and we are now blessed to own our home here, a dream we worked long and hard to realize.

And now the Wind Turbine companies begin to eye this beautiful town as ground zero for their massive industrial project. They want NO ONE to talk to each other about this. That is my first concern.

After my review I cannot stress enough that each person approached should talk to friends and neighbors, do investigation of their own, and most importantly **SEEK LEGAL COUNSEL---BEFORE SIGNING ANYTHING!**

Here are several reasons why I wouldn't sign or advise anyone I cared about to sign this contract:

- 1) **They don't want you to talk about this lease to anyone!** (§16.1) "Landlord shall maintain in strictest confidence for benefit of Tenant all terms of this lease." Why? Who makes good decisions without talking to others, getting advice and good counsel? What about talking to neighbors and others affected by these leases? Nope, not allowed.
- 2) **Requires Subordination of Mortgages.** (§7.7) This may be a violation of your current mortgage triggering a default and requiring all sums to be immediately due and owing. You, the Landlord, may not be able to get a new mortgage, (refinance) lien (home equity line of credit) nor will you be able to sell to someone who needs to obtain a mortgage to complete the purchase. What Bank would give a mortgage if it is in SECOND place to a lease to a wind company??
- 3) **They can put the turbine wherever they want.** (§4.8) Sure, they will "consider" your request "whenever reasonable". This language provides the Landlord no protection. What if your definition of reasonable is different from theirs, as it surely will be?
- 4) **Restoration only if "Commercially Reasonable."** (§6.3) This means if it costs them too much money, they don't have to do it. (It will cost too much!)
- 5) **They can put roads anywhere on your property** (§6.6) You cannot use them without their permission.
- 6) **They can install gates or fences wherever.** (§6.8)
- 7) **One time payment for crop/livestock damage** (§6.7) & **Payments** (§6.7.4) Payments for damages must be arbitrated if not agreed to. Local landowners will have to pay half the cost of arbitrating any disputes over payments.
- 8) **Tenant can transfer without notice to Landlord** (§9.1 & 9.2) The lease has no requirement for there to be a transfer to a commercially viable company. If a transfer is made then the current Tenant is released from all liability. As a landlord is it wise for a lease to permit your tenant to be able to transfer the lease to a new tenant without notice to you and without your ability to get a credit and reference check?
- 9) **WAIVER OF JURY TRIAL** (§13.7) A local jury is likely to punish a big company who comes in and harms one of their own or their town. They want you to give up one of the most fundamental rights you have!
- 10) **WAIVER OF ALL DAMAGES OTHER THAN DIRECT DAMAGES, NO PUNATIVES** (§13.8) The ONLY way to punish a big company is with big damage awards. Not surprisingly, they want people to waive these awards. "Actual" damages awards are a slap on the wrist.

11) **THERE ARE NO SUBSTANTIAL PROVISIONS TO PROTECT LANDLORD.**

There is no provision to protect the Landlord from damages if the turbine is too loud, if the flicker effect makes you unable to enjoy your life, if your neighbor sues you for damages to their peaceful enjoyment. If you decide you cannot live near these industrial machines and you want to sell there is no assurance that you would get the current market value for the property.

Where is the “security deposit” or Landlord protection? How about the cost to make the property as it was before the tenants made changes? Without a big pot of money set aside to pay for the removal there is no assurance the industrial turbines and associated roads and equipment will ever be removed and the land made whole. Oh, you can pay to have them removed, and they will “reimburse you”. Well, most of us will not have the financial ability to “remove” one of these 570 foot (think 50 story) structures, or two or three. Estimates to remove are hundreds of thousands of dollars—each.

As far as them paying you back for removal, you may need money to hire a good lawyer AND be able to find someone to sue since the initial tenant will likely be gone and there is no guarantee that the new tenant will have any assets or be willing to pay your costs.

They offer signing bonuses to entice people to sign without investigation, without discussion. I just hope the people of this town we love get the advice they need, so they are protected from any company seeking to take advantage of them. There are too many issues with this “Contract” to mention. I was recently informed about an extensive non-attorney review of similar industrial wind leases at the following site: <http://www.wiseenergy.org/Energy/Leaseholder.pdf>.

I hope this brief review is helpful.



M./Krista Barth, Esquire

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