

MINUTES – TOWN OF ALLEGANY PUBLIC HEARING ON THE SOUND AMENDMENT TO THE ZONING ORDINANCE II IN REGARDS TO WIND ENERGY CONVERSIONS SYSTEMS TUESDAY JANUARY 18, 2011 7:00 PM SENIOR CENTER

PRESENT WERE: Supervisor Eaton Councilman Jonak
Councilman Sendlakowski Councilman Hitchcock
Councilman Hare Attorney W. Tuttle
Town Clerk M. Peck

ALSO PRESENT: R.Phillips, F.DeFiore, H.Larson, C.Horowitz, Attorney D. Spitzer, G.Abraham, Esq., K.Sheen and many residents.

Salute to the Flag opened the Public Hearing at 7:00 PM.

Supervisor Eaton opened the Public Hearing announcing the reason for this public hearing: to address the sound issue for the amendment to the Zoning Ordinance II with respect to the wind energy conversions systems. Supervisor Eaton advised that residents have 30 days to submit written responses regarding this issue. They can be sent to the Town Clerk's Office, 52 W. Main St., Allegany, NY 14706. Supervisor Eaton then opened the floor to Attorney Dan Spitzer.

Attorney Spitzer: acknowledged the petition filed by Attorney G.Abraham o/b/o CCCC. It has been agreed upon that the petition would be granted regarding the noise and distance of the turbines. The question again, is how to enforce the law regarding decibel levels regarding distance, objects, etc.; the planning board suggested a 40 decibel limit... SEQR is the next step in this and per Carol Horowitz; the county recommends approval with no changes. Attorney Spitzer advised that the "amended law" would need to be on their desk at least 7 days prior to meeting and voting on it. Much discretion on if another public hearing is needed or not if any changes are made.

Al Henderson – Chipmonk Road. – read his letter which was about decibel levels and noise. He is against wind turbines in Chipmonk and the 40dB level amendment to the Zoning Ordinance II.

Ray Mosman – Chipmonk Road – against changing the ZOII regarding the noise levels. Believes people will suffer health problems if this is done. Asks Town Board to listen to the people.

David Koebelin – Hawthorn Lane.- read his letter which was about the proposed change to the ZO II and Section 3. Wanted to know how this section would provide enhanced protection. Is it possible that by making this amendment to the ZO II, would Everpower have an easier time moving in? Does not believe that laws should be modified in the middle of a process.

Gary Abraham, Esq. – believes there will be an enforcement problem. How does one enforce the change in the noise level? Night time is the time noise is heard most. Stated that DEC noise guidance is the closest to what is considered law. Suggests there will be an environmental impact if the level were left at 40dB- need a study done. Requested that 3dB or 6dB would be reasonable.

Karen Mosman – Chipmonk Road. – the proposed wind farm will surround 3 side of her home. Can hear things as far away as 3 miles, (trucks on expressway, trains, frackking of oil wells) these things were not continuous, but they were still noise. Everpower knew of our ZO when they came to town. She would like the peace & quiet and health & well-being left as is.

Richard Yaw – lived in Chipmonk for 40-some years. Would like it to stay the way it is.

Chris Napoleon – W. Branch Rd. – be cautious regarding this issue as technology is changing. Wind power is extremely dynamic.

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Kathy Boser – Chipmonk Road – people that live in Chipmonk, a rural area do so for the quiet. Feels an increase in the noise will affect health & well-being, and wants the Town Board to think of the residents and protect them.

Don Black – W. Five Mile Rd. - this is about Everpower. Not about good for us, for you or me.....it is about money. The money will not be here forever, but the wind turbines will be. Opposed it before and is opposed to it now. No more decibels.

Dave O'Dell – Chipmonk Road.- read his letter. Spoke about the enforcement of turbines. Has never heard of one being shut down.

Attorney Spitzer – has heard of six turbines being inspected, but not shut down.

Dave O'Dell – doesn't know if the turbines will drive us out of our homes, but does not want to find out the hard way. A wind farm in Ontario has 8 wind farms and many complaints have been made on 7 of them. This affects everyone's life.

#42-MOTION TO CLOSE PUBLIC HEARING

Motion by Hare to close the public hearing. 2nd by Sendlakowski. Jonak-aye, Sendlakowski-aye, Hitchcock-aye, Hare-aye, Eaton-aye. CARRIED.

This portion of the public hearing was closed at 7:54 PM

Supervisor Eaton opened this portion of the meeting to the Town Board and Planning Board members to ask questions of Attorney Spitzer and regarding the noise issues.

Councilman Hare – questioned that if we had a 40dB , would it be easier to police? Spoke about day – vs- night noise.

Attorney Spitzer - concerned about how to enforce this? Can one enforce over a wide variety of terrain a 3dB limit? There are many, many variables that need to be considered. You could put the cost of enforcement /litigation on the applicant as you must protect the entire town.

Supervisor Eaton – asked Attorney Spitzer about when an application is made, the applicant is provided with the rules --- what to do? He struggles with changing rules, doesn't want to continue on this way.

Attorney Spitzer – whatever the town decides, that is the way it is. This is a difficult decision. The applicant can always ask for a variance if they want to. If the town has a rational basis for whatever they decide, then it should be ok.

Councilman Hare- questioned if any Town Law was ever challenged by a Court?

Attorney Spitzer – not aware of any that compare to Allegany. Usually laws are shot down on SEQR or procedure issues, not on decibel levels.

Robert Phillips - Planning board will go with town board decisions.

#43-MOTION TO CLOSE MEETING

Motion by Hare to close meeting. 2nd by Sendlakowski. Jonak-aye, Sendlakowski-aye, Hitchcock-aye, Hare-aye, Eaton-aye. CARRIED.

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Meeting adjourned at 8:20 pm

Respectfully submitted,

Mary M. Peck, Town Clerk
1/19/11