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June 5, 2006

Sandor Fox, Chairman  
Town of Cohocton Planning Board  
c/o Sandra Riley, Town Clerk  
15 South Main Street  
Cohocton, New York 14826

Dear Chairman Fox and Board Members,

We are writing in response to the Planning Board's request for public input about two initiatives that are currently before the Board for review – the proposed Town of Cohocton Windmill Law #2 and the Draft Environmental Impact Statement (DEIS) recently submitted by the UPC Wind corporation.

For purposes of clarity, we have divided our comments into two sections, one for the proposed new Law and the other for the DEIS.

In preparation for our comments, we have done some rather extensive research into the matter that lies before us as a community. Even though our conclusions may not agree with the sense of the subject you might have held previously, we are hoping that you will receive our observations in the constructive spirit in which they are being offered and review them carefully and thoughtfully along with those others are submitting. For supporting information please visit the companion website we have set up online at [www.cohoctonfree.com](http://www.cohoctonfree.com).

Thank you for your interest in the future of our Town, your receptivity to the cogent input of its citizens, and the seriousness with which you are fulfilling the oath of your office.

Sincerely yours,

Enclosures:  
Comments on the Windmill Law and DEIS  
Drafts of Windmill Law #2 and an alternate

# Comments on Town of Cohocton Windmill Law #2, 2006

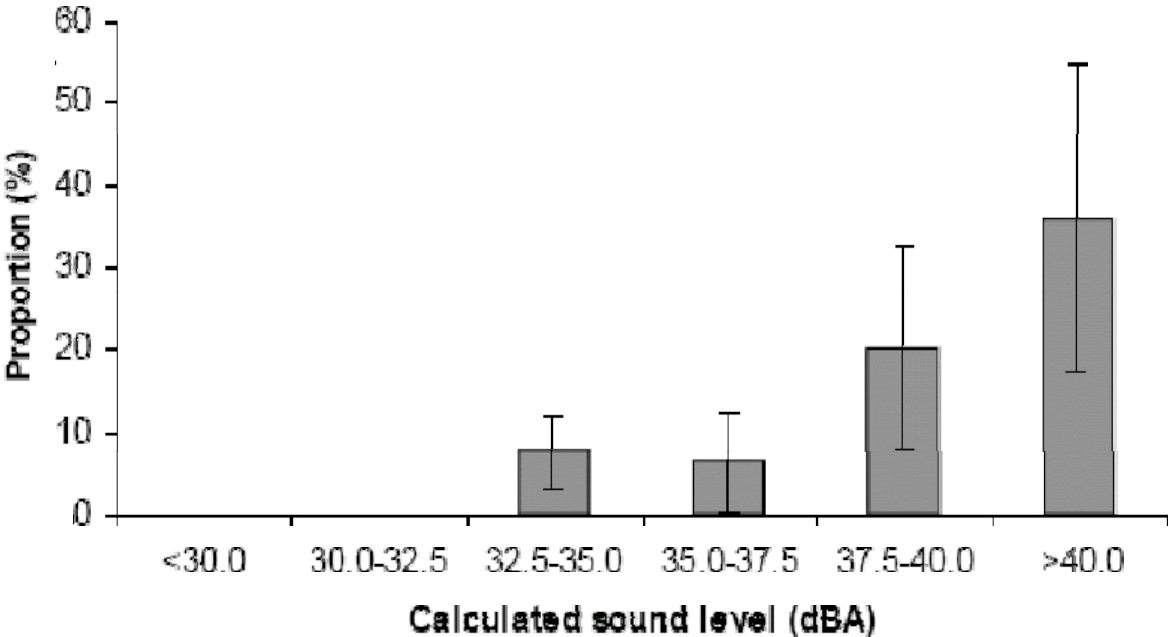
## Background

In January 2006, in response to overtures made by the UPC Wind corporation and in coordination with them but without significant publicity to or input from the community, the Cohocton Town Board passed Windmill Law #1. When this Law was challenged by an Article 78 action in May, the response of the Town Board was to propose withdrawing the first Law and replacing it with a new version, Windmill Law #2 (WL2), with legal guidance provided by the developer’s lawyer. This second version currently stands before the Planning Board for review.

## Our Observations

A) WL2 was clearly written with the best interests of the developer in mind and is inadequate to protect the interests of Town residents who live near potential turbine sites. This is true throughout the Law, but we will focus on three areas – noise levels, remediation of infractions, and loss coverage.

1. Noise levels are limited in WL2 to 52 dBA at 1500’ from the base of each tower. This limit is unreasonably high. A rigorous scientific study done in Sweden in 2002 documented the annoyance produced by wind turbines in nearby residents at different sound levels. They noted that “the annoyance increased with increasing sound pressure levels exceeding 35 dBA. No respondent stated themselves ‘very annoyed’ at sound pressure levels below 32.5 dBA. At sound pressure levels in the range of 37.5 to 40.0 dBA, 20% were very annoyed, and above 40 dBA 36%”.



The proportions “very annoyed” by noise outdoors from wind turbines (95%CI) at different A-weighted sound pressure levels [Pedersen and Persson Waye 2002]

This study did not even measure levels above 50 dBA, but one can assume from the data collected that the number of those “very annoyed” could be well over 50% at 52 dBA, especially if the disturbance is at night.

With documented annoyance or “noisome nuisance” levels as high as these, European countries with greater wind power experience than ours have set much more stringent rural noise limits than those specified in WL2:

Country	Daytime	Night
Denmark	45 dBA	40 dBA
Germany	45 dBA	35 dBA
Netherlands	40 dBA	30 dBA
Sweden	40 dBA	40 dBA

Given that the wind in our area is strongest at night, we believe that 30-35 dBA should be the maximum permitted turbine noise level outside homes. And since the large turbines selected by UPC (originally designed for offshore placement) cannot be this quiet at 1500’, a reasonable noise ordinance as suggested would require them to be placed farther away from residences, perhaps as much as 2500’ or more, rendering the proposed configuration of wind turbines in the current DEIS completely unacceptable.

2. The penalty specified in Section 1170 of WL2 for failure to comply with its terms, namely a \$250 daily fine for each offense, is wholly inadequate to the potential circumstances. There are no provisions for identifying who may declare authoritatively that an offense has occurred nor who will be responsible to pay a fine or correct an offense if the developer or any one of its successors declares bankruptcy.

Since many of the alleged offenses may involve excessive sound levels, there is no provision for a properly equipped and trained Town sound enforcement officer authorized to respond to complaints and make regular sound checks. If excessive sound levels are detected that cannot be remedied by modifications to one or more of these \$2 million installed turbine units, who will require the developer to remove or relocate the offending units?

3. There appear to be no provisions within WL2 for the assessment, arbitration or adjudication of legal actions that may result from landowners who have reason to believe that they have suffered losses in use, enjoyment, or resale value of their property.

B) The process of approval is not commensurate with the size and scope of the project being considered, nor does it appear to have taken previous Town zoning guidelines and decisions into adequate account.

What is being discussed is an industrial project encompassing all of the hilltops within the Town and carrying a budget well in excess of \$100 million. This is

perhaps the largest single construction project the Town has ever faced with the broadest impact on current residents, the environment, and the future of the Town's economy, and the decision-making power has thus far been allowed to remain in the hands of a small group of individuals who will not be accountable to the electorate until after they have rendered an irrevocable judgment.

1. This particular project should have been publicized broadly and opened up to significant community input well in advance of last fall's Town elections. Notification of citizens through filing in the classified section of the *Hornell Evening Tribune* is inadequate.
2. Landowners with property bordering on leased lands have not been consulted or offered compensatory leases for the effect such a project will have on them. When Columbia Natural Resources sought permission to search for natural gas under our hills, they were required to recruit a vast majority of landowners aboveground before they could proceed, even if no visible wells or construction would result. How much more should those who wish to harvest the wind above be required to have the permission of all whose land lies below before erecting any network of visibly and audibly intrusive turbines.
3. Projects of this magnitude and laws proposing such sweeping changes in local zoning should always be made subject to a binding referendum of the entire Town electorate prior to approval. The New York State Legislature should act rapidly to require voter approval of any wind power proposal in the future to prevent aggressive developers from dividing our region up into small, segmented pieces and then pushing their projects quietly in private negotiations before exposing them as virtually accomplished facts to the general public. In the meantime, the Town of Cohocton's elected officials should take the lead by rescinding Windmill Law #1, deferring any further decision in favor of the plan, and reaffirming its confidence in democracy by placing the entire matter before its citizens in this fall's elections rather than forging ahead with preconceived ideas about what is best, based on the one-sided presentations of a developer.
4. The Town has a clearly defined and established set of zoning guidelines that need to be reviewed thoroughly and taken into authoritative account. The question about whether the permit process was handled lawfully in the erection of test towers is also not insignificant.
5. We believe that it is completely inappropriate, if not outright illegal, for the Cohocton Town Board and Planning Board to be guided and represented by a lawyer who has been hired and paid for by the developer. Mr. Ruzow's services should be discontinued immediately and neutral legal counsel obtained at the taxpayer's expense if the Town Board feels that the windmill option should be kept open. Similarly, we believe that Board members whose families have signed leases or who have received other incentives or inducements from the developer should recuse themselves or resign.

C) The proposed Windmill Law #2 assumes that it is in the community's best interest to permit the construction of an industrial wind power plant in the Town. Our research has led us to the opposite conclusion. We believe that the Western New York area, especially within and surrounding the Finger Lakes, is an inappropriate site for wind farm development for several reasons:

1. In contrast to offshore sites, the wind patterns in our region are less consistent in strength and are predictably strong primarily at night and in the winter, times when demand for electrical power and displacement of power generated by fossil fuel will be at its lowest. The supply and demand nature of the market may even render a portion of the wind power generated unusable on the grid. While an offshore wind turbine may be expected to produce a yield of marketable power during the daytime hours and summer cooling season of up to 40% of its rated capacity, a reasonable estimate for similar turbines mounted in the Finger Lakes region is closer to half of that and possibly even as low as 8-10%.
2. Since the return investors and the Town (in the form of PILOT revenue) have been promised is based on the volume of electricity actually sold on the market, wind turbines in our region can be expected to significantly underproduce equivalent machines in more suitable locations, causing those who have placed their hopes in unrealistically optimistic performance estimates to be seriously disappointed.
3. In addition, New York's Finger Lakes region is most noted for its natural attractiveness as a tourist destination and a place of recreation. Its lakes, hills, villages, working farms, vineyards, and scenic beauty are unparalleled in this area of the world. Many people, seeking respite from the noisy industrial and commercial clatter and clutter of our urban areas, have come and increasingly invested here because they've been drawn by the unspoiled tranquility of the land and the graciousness of its people. The last thing that this growing segment of citizens and landowners wants to witness is the viewscape and soundscape they have invested in overrun by a sprawling and noisy industrial development.
4. There is a unique set of climatic conditions in the Finger Lakes region that predisposes our area to unusual accumulations of ice during winter storms. Recent years have brought at least 2 devastating "ice storms" that have toppled thousands of mature trees and caused substantial and widespread damage. We believe that enormous wind towers, located on hilltops unsheltered from the wind, would be extremely vulnerable to dangerous and expensive failure during any future ice storm.
5. While wind power industrialization of our Town may produce a modest financial benefit for a small number of its landowners, another predictable result will be a significant reduction in the value of its recreational land. Over time, whatever tax gains the Town may receive from PILOT revenues

will be more than offset by losses sustained by the drop in recreational and retirement property value.

As a result of these and other observations we strongly believe that, while it may be in our community's best interest to permit the construction of small windmills for the use of individual landowners, our region is not suitable for large industrial windmill installations. For your serious consideration, we have appended an alternate Windmill Law #2, modeled on one passed earlier this year by the Town of Malone, NY, that codifies this conclusion in legislative form.

## **Comments on Draft Environmental Impact Statement (DEIS)**

### Background

After recruiting the support of individual landowners and town officials for several years, then notifying the general public for the first time by mass mailing in mid-April 2006, the developer posted its 800+ page completed DEIS online within a week and opened a campaign office in downtown Cohocton beside the Post Office within 2 weeks. Yard signs and brochures, along with embroidered hats for the gentlemen and bandanas for the ladies, were all ready. Obviously, a lot of advance planning has gone into preparing for this public debut. Now we, the public, have been asked to submit our comments prior to June 9, so that you as our Planning Board can make a balanced decision. But it's been rumored that your minds are already made up, no matter what we might say. I hope and pray that it isn't true.

### Our Observations

First let me ask you to forgive some of us for being upset and angry. Something that you've known about for quite a while is coming as a surprise and shock to many of us, and it's taking us a little while to get our bearings and composure together. We really aren't a bunch of shoot-from-the-hip hotheads. Please listen to us with open minds and hearts – I think we've got something valuable to say.

A) What the DEIS reveals are the details of a coordinated and one-sided sales pitch put together by a well-financed corporation that hopes to make money in the new field of wind power speculation. This is not a balanced, neutral analysis of potential environmental impact. Whenever there are two sides to an issue, the DEIS presents the wind developer's side. When there is a range of scenarios, from worst case to best case, the DEIS presents the best case. The DEIS consistently minimizes the potential negative impact of the project, while the corporate sales force maximizes its potential benefits to investors and the community. Behavior like this is only natural and to be expected - they want to sell their project.

There are many particulars in an 800+ page document that can be singled out for critical analysis, but the primary take-home observation is that the entire document, for all of its apparently clinical neutrality, is remarkably and understandably self-serving and lop-sided in favor of the developer's perspective.

That having been said, we would like to focus on just three impact areas - viewscape, soundscape, and property value.

1. Visual Impact or Viewscape. The DEIS reluctantly acknowledges that the developer's project may have, in some observers' eyes, a negative visual impact. It is quick to point out rather disingenuously that others might think that the wind towers are quite lovely and an asset to the view. What we are interested in is the negative impact, and if a significant number of people in our community and the surrounding area think that 400' high wind towers will be ugly, then we have a negative impact. The DEIS does nothing to quantify the degree of this negativity. What it does provide are a series of simulated views of wind towers and line poles off in the distance with no surrounding objects to give them any perspective. Most of the retouched photos were taken in the winter with the ground covered in white snow. To make this assessment valid what needs to be done, at a minimum is:
  - a. Commission a neutral agency to produce a set of simulations of towers in settings where they are beside and around human structures like houses, barns, silos, and other buildings.
  - b. Similarly produce a set of animated simulations of towers at night, lit up with flashing and rotating aircraft warning lights, the way the installation would look up close as well as to passers-by from Route 390. This can be done readily with contemporary computer simulation software.
  - c. Have public meetings and post simulations online in which more accurately representative depictions, as noted above, can be examined by the general public, and then conduct a broad-based study asking people to vote on whether they think the installation improves or degrades the viewscape.
  
2. Auditory Impact or Soundscape. This subject has already been discussed in a previous section of this letter addressing the proposed Windmill Law #2. Again, the DEIS admits that some may find the noise generated by the proposed turbines to be disturbing, but alleges that they really shouldn't be bothered. Computer simulations are produced to show alleged sound patterns. No data gathered at actual installations of the proposed equipment is presented. Nothing is said about sound being carried on the wind, about wind speed at nacelle and rotor height being much greater than at ground level, about the annoying nature of the repetitive and incessant sound pattern generated by wind turbines. Concerns about these matters are dismissed as being ill informed and anecdotal information about people carrying on conversations while standing under functioning turbines is presented instead. The subject of sleep disturbance is avoided. The DEIS clearly states that the proposed turbines themselves will generate 105.3 dBA of sound, not including the more intrusive aerodynamic sound of the rotor blades, but then brushes this off as noise that will somehow dissipate into the air. It is like incinerator operators dismissing the dark belching clouds of

refuse pouring from their smokestack as just something that the air will absorb. This section of the DEIS is wholly inadequate.

3. Diminishment in the real property value of land and dwellings in the immediate vicinity of wind turbines is not addressed by the DEIS in any quantitative way that relates to our specific real estate environment. Studies in other areas are referenced in which widely aggregated property values are looked at, but local realtors with an intimate knowledge of the dynamics of our market have not been consulted and polled. The focused and dramatically negative effect on the holdings of neighboring landowners who purchased recreational and retirement property for its peace, tranquility, and unspoiled view has not been addressed at all.

In conclusion, it is our conviction that Windmill Law #2 is sincerely misguided and should be replaced by a law resembling the alternate model we have presented. If this were done, the remaining issues discussed in this letter would be moot.

Should the Planning Board choose to proceed in a direction that remains favorable to the developer we believe they should open the decision-making process to a binding referendum of the electorate in which residents in the Town are allowed to choose between two alternatives, one that would permit and the other that would prohibit industrial wind turbines.

In preparing for such a referendum, we believe that any proposed law that would permit industrial wind turbines should include within it provisions which address the remaining specific concerns we have raised. Once such a law were drafted, and if it were to be approved, the developer would then need to start the review process over with a significantly revised DEIS which takes the realities of the new Law, as well as other specific concerns raised by the community, into clear account.

Thank you very much for taking the time to review and consider our input. If you have any questions, please do not hesitate to contact us.

We certify that the observations and opinions expressed here are entirely the result of our own independent research and not solicited or paid for by any outside entity.

Sincerely yours,



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