

Monroe judge holds key to wind fight: Town of Howard, development opponents waiting on lawsuit judgment

By ROB MONTANA - STAFF WRITER

The merits of an Article 78 proceeding filed against the Town of Howard by a group of residents were hashed out in Monroe County Supreme Court last week.

The outcome of that is still likely a couple weeks away, as Judge Joseph Valentino reserved judgment in the case. The attorneys also have another week to get in any final comments in writing for him to use when making a decision.

In addition to the town, the suit also is filed against Howard Wind LLC, EverPower Global Corporation and the Steuben County Industrial Development Agency. Among the additional respondents listed in the suit are councilmen William Hatch and Robert Palmer, who have signed lease agreements with EverPower.

Art Giacalone, the Buffalo-based attorney representing the residents - Eric and Kyle Hosmer, Gerald Hedman, Richard Mariotto, William and Nikki Harkenrider, and James Lindsay - said the town board is "attempting to serve two masters at one time." He also alleged Lowell Smith reached an agreement with EverPower in March 2005, but didn't file it with the county until June 15 of this year.

"They were publicly elected and trusted, the people had confidence in them," Giacalone said. "Then they went after personal gain by signing contracts with EverPower.

"We believe the three of them had a disqualifying conflict of interest when they voted for the town's environmental assessment law," he added.

Giacalone said the board had EverPower's help when drafting its wind ordinance, and knew they would reap monetary reward by the project moving forward.

"This isn't a situation where board members didn't have in mind the fact they were apt to benefit financially," he said. "They tailored the law for EverPower while they had a contract with EverPower."

He added the board could - and should have - placed more stringent restrictions on wind projects. Among the areas Giacalone would like to see tightened up include more meaningful setbacks and strict noise level requirements.



LYNN BRENNAN
Anti-wind farm signs line Turnpike Road in Howard Monday afternoon.

"Instead they just followed the recommendations of EverPower and adopted an incredibly weak law so they have the eyewash of telling the public they are protecting the town," he said. "Then EverPower, a few weeks later, files an application for a project."

Corning-based attorney Thomas Reed is defending the Town of Howard. He did not return several phone calls seeking comment.

At a June meeting of the Howard town board, Reed told those in attendance the town would "vigorously defend that lawsuit, and we'll take it one step at a time." He noted the law was adopted to allow the town to regulate possible construction of wind farms in Howard.

"What the law does is it said you have to come to the town board to obtain a permit for construction," Reed said. "To obtain the permit you have to meet the criteria set in the law."

Giacalone also had a problem with the claim by lawsuit respondents saying if the court does what his clients are asking there won't be any law in town restricting wind farm projects.

"Our response to that is if the court agrees with us, these three town board members can attempt to get out of their contracts so they don't have a financial interest or they can step down from the board and be replaced by people that do not have a financial interest," Giacalone said. "If they really care about the well-being of other residents in town they would place the interest of citizenry ahead of their own personal gain."

The residents brought the suit against the town asking a local wind law be stricken, alleging "three of the town's five councilmen had conflicts of interest which disqualified them from voting on the law." The complaint also states the board did not "comply with the requirements of the State Environmental Quality Review Act" before it adopted the law.

The suit was transferred to Monroe County Supreme Court after three Steuben County judges recused themselves from the matter.