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Cohocton Wind Watch sues planning board, UPC

Town supervisor says he hasn't seen legal documents yet

By BOB CLARK - STAFF WRITER

BATH - Opponents of Cohocton wind power have taken legal action against the proposed \$225 million UPC Wind Management project and the town planning board they claim is acting in "malfeasance."

Cohocton Wind Watch LLC and 34 Town of Cohocton property owners filed three separate Article 78 lawsuits with the Steuben County Supreme Court on Friday against the Town of Cohocton planning board, UPC, and 55 property owners who have signed leases with UPC.



Wind turbines for the Cohocton project are stored behind the former Foster Wheeler plant in Dansville prior to their installation.

"The planning board has blatantly refused to incorporate any of the protective safeguards into their findings," James Hall of CWW said in a prepared statement. "The planning board has committed malfeasance. All residents and property owners bear the financial burden and risk of town insolvency coming out of a wind project that is doomed to implode."

"We haven't been served," Cohocton Town Supervisor Jack Zigenfus said. "It's kind of hard to comment about something I haven't seen yet."

"[The filings] was certainly not unexpected," Zigenfus said, adding that CWW members have been threatening the town and UPC since the project was first proposed.

The lawsuits list 13 charges against UPC and the Town of Cohocton planning board:

1. The applications for Special Use Permits were improperly executed and are not valid.
2. The respondents failed to insure that turbines will be installed and operated according to state, federal and industry standards.
3. The current site plans violate local ordinances for the setback distance of turbines from residences, right-of-ways, roads, and property lines.
4. The setbacks were not accurately measured.
5. The planning board set two standards for setbacks for residences and other property and public roads, which endangers the users of seasonal properties and motorists.
6. The planning board violated state Open Meeting Laws by holding "secret meetings."
7. The planning board granted special use permit for an electrical substation, which lacks required road access.
8. A change in the site plan required additional public hearings, which were not held.
9. The planning board failed to consider the potential effects of the project on a nearby inactive hazardous waste disposal site.
10. The potential effects of the project on the groundwater were inadequately assessed.
11. The planning board should not have issued a special use permit allowing construction before all other necessary permits were issued.
12. The planning board failed to adequately consider the visual impact of the project on the Town of Cohocton.
13. The noise levels of Turbine Number 9 impinge on property owned by James Hall in the Town of Prattsburgh.

All three Article 78 filings are almost word-for-word identical in their complaints against the planning board and UPC, the only real difference between each filing being the names of the petitioners.

On the filing number 97758, CCW and 31 residents are listed as petitioners. On filing number 97759, Rodney Baetzhold and Dan Wing are listed as petitioners. On filing number 97760, Dale Hersch is listed as the sole petitioner.

All three cases will be heard by Steuben County Supreme Court Judge Marianne Furfure at 10 a.m. on Oct. 2 in Bath.

"They first filed a Article 78 in Ontario County, which the judge dismissed," Zigenfus said, adding that even though CWW claims to have appealed that decision, the Town of Cohocton has not been served with any documents involving an appeal.

Hall predicted that more lawsuits may be filed in the future.

"This round of litigation most likely will be only the beginning of a flood of actions coming from parties unrelated to us or CWW," he said.

"The project has been approved by every agency," Zigenfus said. "You don't just walk in and say, 'give me a permit.'"

Zigenfus also noted that no building permits have been issued, and any statements claiming that construction has begun on anything other than a staging area are, "completely false."

Cohocton Wind Watch will host a public information meeting from 7-9 p.m. Sept. 11 at the Cohocton Elementary School.