

LAW OFFICE OF GARY A. ABRAHAM

170 No. Second Street
Allegany, New York 14706
716-372-1913; fax is same (please call first)

gabraham44@eznet.net
www.garyabraham.com

May 14, 2012

Town of Allegany Planning Board
Frank DeFiore, Chairman

Peter Hellier
Rick Kavanagh
Helen Larson
John Sayegh

Town Hall
52 West Main Street
Allegany, NY 14706

**Re: Everpower request for an extension of time;
SUPPLEMENTAL COMMENTS**

Dear Mr. DeFiore and Members of the Board:

Please consider the comments below as a supplement to my letter to you, dated May 11.

Specific misrepresentations made by Everpower prior to last July's decision to approve a special use permit and site plans, had the Planning Board been aware of them, may have resulted in the Board placing further conditions on its approvals to avoid exceeding the zoning law's noise limits at least two residences. These are the residences of Ted Gordon and James Severtson. Project maps showing the locations of these two properties are attached.

The Town's zoning law, at Section 5.25(B)(3)(h)(iii) requires, prior to project approval, "analyses at affected sensitive noise receptors located within 2500 feet of the [nearest] turbine." Everpower misrepresented to the Board Ted Gordon's location within 2500 feet of a planned turbine location. Mr. Gordon is correctly identified on a project map included with the DEIS, (see DEIS, Figure 4: Wind Turbine Setback Distances, attached), but the FEIS provides no analysis of the impact of the project on him and removed him from final project maps.

It is very likely that a significant adverse noise impact will occur at Mr. Gordon's home. The FEIS states that twelve turbine locations will cause an exceedence of the Town's 45 dBA noise limit at seven residential properties whose owners have not signed noise easement agreements. FEIS, sec. 4.8, pp. 26-27. Figure 2.5.1 in the DEIS shows that mountaintop locations like Mr. Gordon's have a background sound level of 30 dBA or less at night. See DEIS, REPORT No. 1827-111308-B, Rev. D, dated January 27, 2010, p. 10 (attached).¹ Thus, based on

¹ This conclusion is based on computer modeling of project noise that was seriously criticized in public comments, based upon failure to adhere to published standards in acoustics for modeling elevated noise sources, and for failure to model noise during low-background-noise nighttime conditions. See FEIS, sec. 4.8, pp. 17-19.

Everpower's own predictions, several residents much farther away than Ted Gordon will suffer noise in excess of 45 dBA, and the zoning law limits noise to 3 db above the background sound level at Mr. Gordon's property. See Allegany Zoning Ord. II, sec. 5.25(C)(2)(a)(ii).

Recently, Mr. Gordon received notice that his property tax assessment went from \$900.00 last year to \$64,800.00. This is a changed circumstance that should lead the Board to direct Everpower to finally assess noise impacts of the project on Mr. Gordon. It represents a new recognition by the Town that Ted Gordon has a proper septic system, has an easement to use the private road off the end of Chipmonk Rd. where his house is located, and he is not a seasonal resident; he sleeps there every night.

James Severtson's property falls within the 2500 distance from the nearest planned turbine location, but his house does not. However, it appears his house is located within the 40 dBA contour line of Everpower's noise model. According to the zoning ordinance, Everpower is required to obtain written consent from Mr. Severtson to "allow noise levels to exceed the maximum limits otherwise allowed." Allegany Zoning Ord. II, Sec. 5.25(C)(3)(a). The Planning Board last year decided to limit noise impacts at residences farther away than 2500 feet to 40 dBA. Mr. Severtson has not provided Everpower with the required written consent.²

Thus, the Planning Board should not renew the current permit at this time. Had it known that certain information provided to the Board by Everpower was incorrect, the Board may have placed further conditions on the permit to avoid exceeding limits imposed by the Town's zoning law. See Town Law § 274-b(4). Instead, the Planning Board should review its previous decision in light of our allegations that Everpower misrepresented crucial facts.

Sincerely,

/s/

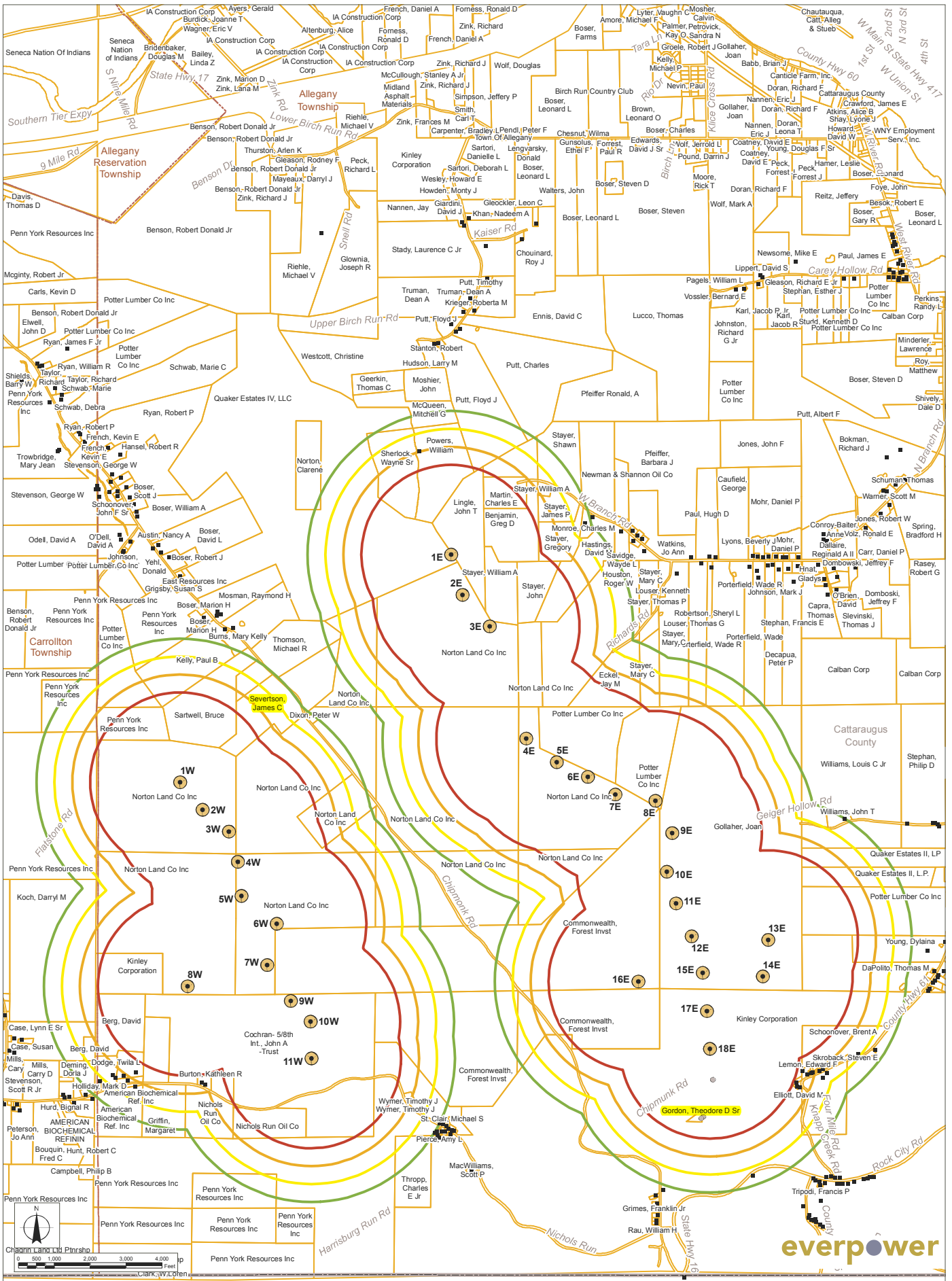
Gary A. Abraham

gaa/attachments: 1. Everpower Renewables, Draft Environmental Impact Statement ("DEIS"), Figure 4: Wind Turbine Setback Distances (January 2010)

 2. Everpower Renewables, DEIS, REPORT No. 1827-111308-B, Rev. D, Plot 1: Project Sound Emissions, graphic at p. 10 (January 27, 2010)

cc: John Hare, Town Supervisor
 Carol Horowitz (via email)

² As stated in his affidavit, submitted in connection with CCCC's lawsuit challenging the project approval.



everpower

Allegany Wind Power Project
 Town of Allegany - Cattaraugus County, New York
 Draft Environmental Impact Statement
 Figure 4: Wind Turbine Setback Distances

- Permanent Residence
- Seasonal Residence
- ▭ Parcel Boundary
- ▭ Township Boundary
- ▭ County Boundary
- Wind Turbine
- ▭ 2500 foot Setback
- ▭ 3000 foot Setback
- ▭ 3500 foot Setback
- ▭ 4000 foot Setback

January 2010

Notes:
 Base Map: Cattaraugus County Parcel Data.



Description:

Plot 1

Expected Project Sound Emissions (dBA) Plotted to NYSDEC Impact Threshold of 40 dBA with Nordex N100 Turbines with an Omnidirectional 7 m/s Wind -100 Meter Hub Height-

Project:

Allegany Wind Farm

Drawing Number:

EA-Rev-L-1-1

Date:

January 27, 2010

Prepared for:

Everpower Renewables

Legend:

- Turbine Location
- ◆ Nearby Residence
- ◆ Participating Residence
- Participating Property

dBA Values:

- 50 dBA
- 45 dBA
- 40 dBA

Border scale in meters
Units are UTM NAD83 Zone 17

Hessler Associates, Inc.

Consultants in Engineering
Acoustics Since 1976

3862 Clifton Manor Place
Haymarket, VA 20169
(703) 753-1602
(703) 753-2291
www.hesslernoise.com

