

March 17, 2010

Supervisor Aubertine
Members of the Lyme Town Board
Mr. Paul Norton, Chairman
Members of the Lyme Planning Board

Re: Ethical Considerations Regarding the Revision of Lyme's Wind Facilities Law

Ladies and Gentlemen:

It will be of the utmost importance to take steps to insure that any deliberations and any decisions made regarding the proposed law governing the siting of wind turbines in the Town of Lyme be conducted in a way as to be free of any influence or perceived influence by wind developers or those who have signed contracts with wind developers. It is clear from the situation in our neighboring community of Cape Vincent that all of the proceedings there with respect to wind turbines have been tainted by corruption fostered by the actions of the wind developers. We must do everything we can to avoid any perception that Lyme's decisions are similarly tainted.

We have in Lyme some situations where members of the Town Board or the Planning Board must remove themselves from participation in any discussion of or any actions taken with respect to the wind law to avoid any perception of a conflict of interest.

The wind developers have recently complied with the Attorney General's request by filing documents listing leaseholders who are town officials or have close family members who are town officials. The documents released by BP and Acciona both name Mr. Donald Bourquin, a former member of the Lyme Planning Board and a recently elected Town Board member as a relative of those having signed lease agreements and expecting payments from wind developers. I believe, therefore, that Mr. Bourquin must recuse himself from any participation or decision making with respect to Lyme's wind law. This is in no way a reflection on Mr. Bourquin's character or judgment. He has been a capable and energetic public servant and the town will continue to benefit from his work in other respects. If he stays away from the process, it will remove any concern about his influence and any possible criticism of his motives.

I also have concerns regarding the objectivity of Supervisor Scott Aubertine. Although he is not listed in the disclosures from BP or Acciona as an interested party, I am concerned that he has demonstrated a pronounced tendency to promote the developer's interests. Scott sent a letter on March 25, 2008

addressed to “Fellow Councilmen and Planning Board Members,” demonstrating his concern for the interests of the developer. His cover letter transmitted BP’s proposal for modification of “Lyme’s Proposed Wind Energy Facility Ordinance,” together with his own slight modifications to BP’s plan.

In his letter Scott states, *“I feel my proposal offers a fair and equitable compromise between BP’s proposal and the proposed zoning laws.”*

My questions to Scott are as follows:

- Our proposed zoning law was the result of extensive work and research by the Lyme planning board assisted by interested citizens. It was based on the results of a town-wide survey of taxpayers and vetted by several public hearings and a review by the county planning board. What justification can there possibly be for modifying Lyme’s law to suit the wishes of BP?
- If, as seems apparent in your letter, you have chosen to represent BP’s point of view, how can you also fairly represent Lyme’s citizens as you were elected to do?
- What is the legal basis for giving BP’s management and shareholders or any other developer, a voice in the affairs of our community?

Scott Aubertine’s proposal to compromise the law developed by the efforts of Lyme’s Planning Board by adopting portions of BP’s proposal indicates a clear conflict of interest with respect to wind energy issues. As a public official, he cannot fairly represent the interests of our residents when he has chosen to represent BP. That he has done this following a detailed survey, two public hearings where a clear majority advocated adoption of the law, followed by a review before the County Planning Board, resulting in only some small changes in the wording and organization of the law, reveals an intent to sabotage the law resulting from the combined thoughts and efforts of our residents in favor of the commercial interests of the developer.

As part of a continuing education program, as a member of the Planning Board, I have attended the Tug Hill Commission’s annual conference on local government at JCC. One of the sessions, given in 2008, concerned ethics of public officials. Some specific examples of the types of activities that violate ethics laws of New York State include:

- *No officer should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.*
- *No officer should engage in any transaction as representative or agent of the municipality with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.*
- *An officer should not by his conduct give reasonable basis for the*

impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
— *An officer should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.*

To illustrate the seriousness of such ethical lapses, the prescribed penalties for such violations are a fine (up to \$10,000), a suspension from office, and/or a removal from office. Ethics claims against local representatives would be made to the local county District Attorney.

Because Scott Aubertine has clearly chosen to represent BP's position against the clearly expressed preferences of the people he was elected to represent, he has given a reasonable basis for the impression that he can be influenced and has and will raise suspicion among the public that he may be engaged in acts which are in violation of his trust. Scott cannot fairly represent the interests of the residents of Lyme in this matter and consequently must recuse himself from further discussions or any voting having to do with the issues of wind turbines or related installations in the Town of Lyme.

The new members of the Lyme Planning Board will also need to be questioned as to any involvement with wind developers before taking part in discussions of the proposed law. All of our public officials must first represent the wishes of the citizens of Lyme, whom they represent, while carefully upholding all appropriate laws. It is imperative that no public official represents or gives the appearance that he represents any outside interests that might compromise his capacity to act in the interests of the residents and taxpayers of the Town of Lyme.

If Mr. Aubertine or Mr. Bourquin are not willing to voluntarily remove themselves from proceedings having to do with the revision and adoption of a wind law in the Town of Lyme, the Board should ask the town attorney to contact the Attorney General's office. I believe that Mr. Gebo, our attorney, has opined that none of the Town Board members have conflicts according to the town's ethics law. I believe the town's law is improper as, while towns may enact their own ethics laws, such laws may not be less stringent than the state ethics laws.

Sincerely,

Albert H. Bowers III