

IN THE COURT OF COMMON PLEAS  
OF CARBON COUNTY, PENNSYLVANIA

Broad Mountain Power LLC,

Appellant

v.

Board of Supervisors of Packer Township,

Appellee

CIVIL ACTION - LAW  
LAND USE APPEAL  
PROCEDURAL CHALLENGE

19-2180

WRIT OF CERTIORARI

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
COUNTY OF CARBON )

TO: BOARD OF SUPERVISORS OF PACKER TOWNSHIP  
2234 Hudson Drive  
Weatherly, PA 18255

Pursuant to 53 P.S. § 11003-A(b), you are hereby commanded to certify to the Court of Common Pleas of Carbon County, under certificate of the Chairperson of the Board of Supervisors of Packer Township, your entire record in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the Board of Supervisors, and file the record in its entirety with the Writ in the Office of the Prothonotary of Carbon County, Pennsylvania within 20 days after receipt of this Writ of Certiorari and Notice of Land Use Appeal filed in this matter.

Date: August 29, 2019

SEAL OF

Joann M. Behrens  
PROTHONOTARY

THE COURT

BY: Debra K. Wolherchak Deputy

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

CARBON

County

*For Prothonotary Use Only:*

Docket No:

19 - 2180

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

**Commencement of Action:**

- Complaint       Writ of Summons       Petition  
 Transfer from Another Jurisdiction       Declaration of Taking

Lead Plaintiff's Name:

BROAD MOUNTAIN POWER LLC

Lead Defendant's Name:

BOARD OF SUPERVISORS OF PACKER TOWNSHIP

Are money damages requested?  Yes  No

Dollar Amount Requested:  within arbitration limits  
 outside arbitration limits  
 (check one)

Is this a *Class Action Suit*?  Yes  No

Is this an *MDJ Appeal*?  Yes  No

Name of Plaintiff/Appellant's Attorney: MICHAEL KLEIN, ESQUIRE

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

**Nature of the Case:**

Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

SECTION B

**TORT** (do not include Mass Tort)

- Intentional  
 Malicious Prosecution  
 Motor Vehicle  
 Nuisance  
 Premises Liability  
 Product Liability (does not include mass tort)  
 Slander/Libel/ Defamation  
 Other: \_\_\_\_\_

**CONTRACT** (do not include Judgments)

- Buyer Plaintiff  
 Debt Collection: Credit Card  
 Debt Collection: Other  
 \_\_\_\_\_  
 Employment Dispute: Discrimination  
 Employment Dispute: Other  
 \_\_\_\_\_  
 Other: \_\_\_\_\_

**CIVIL APPEALS**

- Administrative Agencies
- Board of Assessment  
 Board of Elections  
 Dept. of Transportation  
 Statutory Appeal: Other  
 \_\_\_\_\_

- Zoning Board  
 Other:  
 LAND USE APPEAL  
 \_\_\_\_\_

**MASS TORT**

- Asbestos  
 Tobacco  
 Toxic Tort - DES  
 Toxic Tort - Implant  
 Toxic Waste  
 Other: \_\_\_\_\_

**REAL PROPERTY**

- Ejectment  
 Eminent Domain/Condemnation  
 Ground Rent  
 Landlord/Tenant Dispute  
 Mortgage Foreclosure: Residential  
 Mortgage Foreclosure: Commercial  
 Partition  
 Quiet Title  
 Other: \_\_\_\_\_

**MISCELLANEOUS**

- Common Law/Statutory Arbitration  
 Declaratory Judgment  
 Mandamus  
 Non-Domestic Relations Restraining Order  
 Quo Warranto  
 Replevin  
 Other: \_\_\_\_\_

**PROFESSIONAL LIABILITY**

- Dental  
 Legal  
 Medical  
 Other Professional: \_\_\_\_\_

<b>Court of Common Pleas of Carbon County</b>		<b>19-2180</b>
<b>Civil Cover Sheet</b>		For Prothonotary Use only (Docket Number)
<b>PLAINTIFF'S NAME:</b> Enter names (last, first, middle initial) of plaintiff. If the plaintiff is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two plaintiffs, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties. BROAD MOUNTAIN POWER LLC		<b>DEFENDANT'S NAME:</b> Enter names (last, first, middle initial) of defendant. If the defendant is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two defendants, list the additional parties on a separate sheet of paper. Husband and wife should be listed as separate parties. BOARD OF SUPERVISORS OF PACKER TOWNSHIP
<b>PLAINTIFF'S ADDRESS &amp; TELEPHONE NUMBER:</b> Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation. 354 DAVIS ROAD OAKVILLE, ONTARIO L6J 2X1		<b>DEFENDANT'S ADDRESS AND TELEPHONE NUMBER:</b> Enter the address and telephone numbers of the parties at the time of filing of the action. If any party is a corporation, enter the address and telephone number of the registered office of the corporation. 2234 HUDSON DRIVE WEATHERLY, PA 18255 (570) 427-8969
<b>ADDITIONAL PLAINTIFF'S NAME:</b>		<b>ADDITIONAL DEFENDANT'S NAME:</b>
<b>ADDITIONAL PLAINTIFF'S ADDRESS/ TELEPHONE NO:</b>		<b>ADDITIONAL DEFENDANT'S ADDRESS /TELEPHONE NO:</b>
<b>TOTAL NUMBER OF PLAINTIFFS:</b> Indicate the total number of plaintiffs and the total number of defendants in the action.		<b>TOTAL NUMBER OF DEFENDANTS:</b> Indicate the total number of plaintiffs and the total number of defendants in the action.
<b>STATUTORY BASIS FOR CAUSE OF ACTION</b> If the action is commenced pursuant to statutory authority ("Petition Action"), the specific statute must be cited LAND USE APPEAL BROUGHT UNDER THE PA MUNICIPALITIES PLANNING CODE, 53 P.S. § 11001-A, ET SEQ.		
<b>RELATED PENDING CASES:</b> (All previously filed related cases must be identified by docket number. Indicate whether they have been consolidated by Court Order or Stipulation.)		
<b>TO THE PROTHONOTARY:</b> Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth below.		
<b>NAME OF PLAINTIFF'S/APPELLANT'S ATTORNEY:</b> Unrepresented filers must provide their name, address, telephone number and signature. BRIAN P. STAHL, ESQUIRE		<b>ADDRESS</b> HOURIGAN, KLUGER & QUINN, P.C. 600 THIRD AVENUE KINGSTON, PA 18704
<b>PHONE NUMBER</b> (570) 287-3000	<b>SUPREME COURT IDENTIFICATION NUMBER</b> 203941	<b>E-MAIL ADDRESS:</b> BSTAHL@HKQLAW.COM <b>FAX NO. (OPTIONAL – FOR SERVICE):</b> Providing the fax number shall authorize the service of legal papers by facsimile transmission. See Pa.R.CP.440(d) (570) 287-8005
DATE: <u>AUGUST 28, 2019</u>		SIGNATURE: <u>Brian P. Stahl</u>

2019 AUG 29 11:11 AM  
 PROTHONOTARY  
 FILED

FILED

2019 AUG 29 AM 11:41

CARBON COUNTY  
PROTHONOTARY

COZEN O'CONNOR  
By: Michael Klein, Esquire (No. 23854)  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101-1638  
(P) 717-703-5903  
(F) 866-248-5448  
mklein@cozen.com

HOURIGAN, KLUGER & QUINN  
By: Brian P. Stahl, Esquire (No. 203941)  
600 Third Avenue  
Kingston, PA 18704-5815  
(P) 570-287-3000  
(F) 570-287-8005  
bstahl@hkqlaw.com

*Attorneys for Appellant Broad Mountain Power LLC*

IN THE COURT OF COMMON PLEAS  
OF CARBON COUNTY, PENNSYLVANIA

Broad Mountain Power LLC,  
Appellant  
v.  
Board of Supervisors of Packer Township,  
Appellee

CIVIL ACTION - LAW  
LAND USE APPEAL  
PROCEDURAL CHALLENGE  
19-2180

NOTICE OF LAND USE APPEAL

Appellant, Broad Mountain Power LLC, by its attorneys, Cozen O'Connor and Hourigan, Kluger & Quinn, hereby appeals from the enactment of Ordinance No. 2019-2 by the Board of Supervisors of Packer Township (the "Board of Supervisors") on July 30, 2019, and in support thereof states the following:

1. Appellant, Broad Mountain Power LLC is a Delaware Limited Liability Company, registered in Pennsylvania, with a principal office address of 354 Davis Road, Oakville, Ontario L6J 2X1, that leases real estate in Packer Township, Carbon County, Pennsylvania from Hazleton Electric Supply Company said property described in Carbon County Recorder of Deeds

Book 452 page 659 bearing Carbon County Tax Parcel ID 120-45-A20 and from Kovatch Enterprises, Inc. said property described in that certain boundary survey prepared by Keystone Consulting Engineers, Inc, dated February 15, 2012, last revised May 20, 2013 bearing Carbon County Tax Parcel IDs 113-45-A2; 113-45-A3; 120-45-A21; 121-46-A3; 121-46-A4; 121-46-A6; 121-46-A7; 121-44-B3; 127-46-A2; 128-46-A1; 128-46-A3; 128-46-A4; 121-44-B2; 121-44-B4; 122-44-A1; 122-44-A2; 128-44-B2; 128-44-B3; and 128-44-B4, and is adversely affected by Ordinance No. 2019-2 (hereinafter "Ordinance No. 2019-2"), which consists of a number of amendments to the Packer Township Zoning Ordinance, Ordinance No. 08-006 (the "Zoning Ordinance"), and is designed to apply only to wind turbines, windmills, and wind farms within Packer Township.

2. Under said leases, Appellant is authorized to exercise certain rights of the relevant landowners, including all rights necessary to develop, construct, operate and maintain a wind farm on the leased properties, to apply for any necessary government authorizations related to the wind farm, and to appeal any governmental decisions affecting the wind farm; and is a "landowner", as defined in Section 107 of the Pennsylvania Municipalities Planning Code, ("MPC") 53 P.S. § 10107. A true and correct copy of the Memorandum of Agreement between Appellant and Hazleton Electric Supply Company is attached hereto as Exhibit "A." A true and correct copy of the Memorandum of Agreement between Appellant and Kovatch Enterprises, Inc. is attached hereto as Exhibit "B."

3. Appellant is an aggrieved lessee because the enactment of Ordinance No. 2019-2 was (i) procedurally defective; (ii) will have a detrimental effect on its use and enjoyment of its interests in the above-described properties for the development, construction, operation and expansion of a wind farm; (iii) negatively and significantly impact the value of the leased

property; and (iv) detrimentally affect or obstruct future development of the leased property as a wind farm.

4. At its May 7, 2019 regular meeting, the Board of Supervisors voted to forward a proposed amendment to the Zoning Ordinance to the Carbon County Planning Commission for the County Planning Commission's review and comment.

5. The Board of Supervisors waited until June 14, 2019 to submit proposed amendments (the "Originally Proposed Amendments") to the Zoning Ordinance to the Packer Township Planning Commission (the "Township Planning Commission"). A complete copy of the Originally Proposed Amendments considered by the Township Planning Commission is attached as Exhibit "C".

6. The Township Planning Commission convened for a special meeting on June 19, 2019 for the purpose of providing its recommendations regarding the Originally Proposed Amendments.

7. During the Township Planning Commission's June 19, 2019 special meeting, the Township Planning Commission announced that it did not have sufficient time to review the Originally Proposed Amendments and would meet again on June 25, 2019 to continue its discussion.

8. The Board of Supervisors submitted a notice of a public hearing regarding the Originally Proposed Amendments to the Zoning Ordinance to The Journal-Herald and said notice was published on Thursday, June 20, 2019 (the "First Notice"), a copy of which is attached as Exhibit "D".

9. A complete copy of the Originally Proposed Amendments that were referenced in the First Notice is attached hereto as Exhibit "C", and is the same version of amendments that was

provided to the Township Planning Commission for its review and comment on or about June 14, 2019.

10. As announced at the conclusion of its June 19 special meeting, the Planning Commission met on June 25, 2019 and discussed additional recommendations regarding the Originally Proposed Amendments.

11. A public hearing on the Originally Proposed Amendments was held on July 2, 2019, after which the Board of Supervisors decided to table the Originally Proposed Amendments. A copy of the transcript of the public hearing held on July 2, 2019 is attached as Exhibit "E".<sup>1</sup>

12. On July 21, 2019, the Board of Supervisors had published in the Standard-Speaker a public notice of a special meeting for the sole purpose of acting upon substantially changed and different amendments (the "Revised Proposed Amendments") than the Originally Proposed Amendments. A copy of the Revised Proposed Amendments is attached as Exhibit "F". A copy of the proof of service of the notice of special meeting is attached as Exhibit "G".

13. The July 21, 2019 public notice set July 30, 2019 as the date for the special meeting in the Packer Township Building. As advertised, the special meeting took place on July 30, 2019 at which time the Board of Supervisors considered whether to amend the Zoning Ordinance by adopting the Revised Proposed Amendments.

---

<sup>1</sup> On behalf of the Appellant, undersigned counsel submitted a Right to Know Request to Packer Township on July 3, 2019 for a certified copy of the audio recording of the public hearing that was created by the Township. Following the Township's refusal to provide the public record, counsel for the Appellant filed a Right to Know appeal with the Pennsylvania Office of Open Records. The appeal was docketed to Office of Open Records Docket No: AP 2019-1125 and consolidated with a similar appeal for Township records docketed to Office of Open Records Docket No. 2019-1118. Thereafter, on July 31, 2019 (the deadline established by the Office of Open Records to make submissions in support of its position), the Township produced an uncertified copy of the requested audio recording. By correspondence dated August 16, 2019, the Township forwarded an unsworn and non-compliant certification of the requested audio recording. By decision dated August 20, 2019, the Office of Open Records issued its Final Determination in the matter, granted the appeal, and directed the Township to produce a certification that complies with the requirements enunciated in *Phila. Dist. Attorney's Office v. Cwiek*, 169 A.3d 711, 715 (Pa. Commw. 2017) (citing *Butler v. Dauphin County Dist. Attorney's Office*, 163 A.3d 1139, 1145 (Pa. Commw. 2017)). As on the filing of this appeal, the Township has not produced the required certification of the audio recording.

14. At the July 30, 2019 special meeting the Board of Supervisors passed the Proposed Revised Amendments by voting to enact Ordinance No. 2019-2. A copy of a transcript of the Special Meeting is attached as Exhibit "H". A copy of Ordinance No. 2019-2, as enacted, is attached as Exhibit "I".

**Timeliness of Appeal and Burden of Proof**

15. The Appellant is an aggrieved party in that its leased property is subject to the procedurally defective zoning amendment and the amendment makes the placement of a wind farm on its leased property impractical, if not impossible.

16. Subsection 5571.1(b)(1) of the Judicial Code provides that “[a]ny appeal raising questions relating to an alleged defect in statutory procedure shall be brought within 30 days of the intended effective date of the ordinance.” 42 Pa.C.S. § 5571.(b)(1).

17. “[T]he party alleging the defect must meet the burden of proving that there was a failure to strictly comply with statutory procedure.” 42 Pa.C.S. § 5571.(e)(1)(emphasis added).

18. Ordinance No. 2019-2 was adopted by the Board of Supervisors on July 30, 2019 and this appeal raising question to alleged defects in statutory procedure is being brought within 30 days of the effective date of the ordinance.

**THE AMENDMENTS AND ORDINANCE NO. 2019-2 ARE PROCEDURALLY DEFICIENT**

19. Section 609 of the MPC, 53 P.S. § 10609, establishes the procedures to be followed in the enactment process of zoning ordinance amendments. Additionally, Section 610 of the MPC, 53 P.S. § 10610, establishes the requirements for publication, advertisement and availability of proposed zoning ordinances.

20. The Board of Supervisors and Packer Township did not strictly comply with the required statutory procedure in the enactment process of the Ordinance No. 2019-2, based on a



series of procedural defects, detailed more fully below. As a result, the amendments and Ordinance No. 2019-2 are void *ab initio* and the actions of the Board of Supervisors in amending the Packer Township Zoning Ordinance of 1989, as amended, was erroneous, arbitrary, capricious, discriminatory, an abuse of discretion, and contrary to law for the reasons that follow.

**Publication and Advertisement of the June 19, 2019 Special Meeting of the Planning Commission Was Insufficient and Failed to Provide the Planning Commission the Statutory Time Period to Review the Amendments**

21. Pursuant to Section 609(c) of the MPC dealing with the enactment of zoning ordinance amendments, “[i]n the case of an amendment other than that prepared by the planning agency, the governing body shall submit each such amendment to the planning agency at least 30 days prior to the hearing on such proposed amendment to provide the planning agency an opportunity to submit recommendations.” 53 P.S. § 10609(c).

22. Section 709 of the Sunshine Act, 65 Pa.C.S.A. § 709, states in pertinent part “[a]n agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice.”

23. Section 703 of the Sunshine Act defines public notice as follows:

“ Public notice.”

(1) For a meeting:

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 (relating to definitions), which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 709(c) (relating to public notice).

(2) For a recessed or reconvened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 709(c).

65 Pa.C.S.A. § 703.

24. Packer Township did not provide published notice of the place, date and time of the June 19, 2019 special meeting of the Planning Commission in a newspaper of general circulation.

25. Despite voting to send the proposed amendments to the County Planning Commission at its May 7, 2019 meeting, the Board of Supervisors provided the Original Proposed Amendments to the Planning Commission only eighteen (18) days prior to holding the July 2, 2019 public hearing, not at least thirty (30) days prior to the hearing as required by Subsection 609(c) of the MPC.

**Publication and Advertisement of the Amendments Was Insufficient**

26. Pursuant to 53 P.S. § 10610 dealing with "Publication, Advertisement and Availability of Ordinances" the MPC provides, in part: "Proposed zoning ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendments may be examined without charge or obtained for a charge not greater than the cost thereof."

27. The First Notice, Exhibit D, does not comply with, and is in violation of Section 610(a) of the MPC, 53 P.S. § 10610(a), because it does not state that copies of the proposed

ordinance may be examined without charge or obtained for a charge not greater than the cost thereof.

28. The Notice of Special Meeting, Exhibit G, does not comply with, and is in violation of Section 610(a) of the MPC, 53 P.S. § 10610(a), because it does not state that copies of the proposed ordinance may be examined without charge or obtained for a charge not greater than the cost thereof.

29. The MPC further provides that: "Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail." 53 P.S. § 10610(a).

30. The First Notice, Exhibit D, does not comply with, and is in violation of Section 610(a) of the MPC, 53 P.S. § 10610(a), because it does not include the full text and does not provide any detail regarding the provisions intended to be amended.

31. The Notice of Special Meeting, Exhibit G, does not comply with, and is in violation of Section 610(a) of the MPC, 53 P.S. § 10610(a), because it does not include the full text and does not provide all detail regarding the provisions intended to be amended.

32. The MPC further provides if, like here, the full text of the amendments are not included as part of any publication that: "(1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published. (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances." 53 P.S. § 10610(a)(1)-(2).

33. The Board of Supervisors had published in The Journal-Herald on June 20, 2019 the notice of the public hearing on the Originally Proposed Amendments. In said notice, Exhibit D, it is stated that "Complete copies of the proposed Ordinance Amendment are available for public inspection at the Township Office located at 2234 Hudson Drive, Weatherly, Pennsylvania, the Carbon County Law Library, Courthouse, Jim Thorpe, Pennsylvania and *The Journal Herald*, 211 Main Street, White Haven, Pennsylvania."

34. Despite the representations made in the notice of public hearing about the locations where complete copies of the proposed ordinance amendments were available for public inspection, no complete copy of the proposed ordinance amendments was available for public inspection at The Journal-Herald address, and no attested copy of the proposed ordinance amendments was available for public inspection at the county law library address.

35. The failure of the Board of Supervisors to make complete copies of the proposed ordinance amendments available for public inspection at the county law library and The Journal-Herald is a violation of Section 610(a)(1)(2) of the MPC, 53 P.S. § 10610(a)(1)(2).

36. As discussed above, the Board of Supervisors had published in the Standard-Speaker on July 21, 2019 the notice of the special public meeting for the sole purpose of acting upon the Revised Proposed Amendments. In said notice, Exhibit G, it is stated that "Complete copies of the proposed Ordinance Amendments are available for public inspection at the Township Office located at 2234 Hudson Drive, Weatherly, Pennsylvania, the Carbon County Law Library, Courthouse, Jim Thorpe, Pennsylvania and the Standard-Speaker, 23 North Wyoming Street, Hazleton, Pennsylvania."

37. Despite the representations made in the notice of special public meeting about the locations where complete copies of the proposed ordinance amendments were available for

public inspection, no complete copy of the proposed ordinance amendments was available for public inspection at the Standard-Speaker address, and no attested copy of the proposed ordinance amendments was available for public inspection at the county law library address.

38. The failure of the Board of Supervisors to make complete copies of the proposed ordinance amendments available for public inspection at the county law library and the Standard-Speaker is a violation of Section 610(a)(1)(2) of the MPC, 53 P.S. § 10610(a)(1)(2).

39. Section 610(b) of the MPC requires that "In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall, at least ten days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

40. Substantial amendments were made in the proposed amendments. The Originally Proposed Amendments, Exhibit C, were substantially changed and substantially differ from the Revised Proposed Amendments, Exhibit F, which were voted on and enacted by the Board of Supervisors on July 30, 2019. Examples of several of the substantial changes made by the Revised Proposed Amendments include:

- Section 802.28.D.(3) Maximum Height: reduces maximum turbine sweep from 350 feet to 280 feet

- Section 802.28.F Removal: increased the removal of below ground improvements from 3 feet to 4 feet

- Section 802.28.S Noise: reduced the decibels not to exceed 45 A-weighted and c-weighted decibels to not to exceed 39 A-weighted and C-weighted, and added reference to World Health Organization standards

- Section 802.28.S.(1) Overnight Noise: reduced the decibels between 10 pm and 7am from 42 A-weighted and C-weighted to 36 A-weighted and C-weighted, and reduced exception for ambient noise from 42 decibels to 39 decibels

-- Section 802.28.W Shadow Flicker: reduced the acceptable hours per year from 20 hours/year to 8 hours/year, and from 30 minutes/day to 12 minutes/day

-- Section 802.28.X (3) Traffic: Added that road damage repairs would be "as specified in a Road Maintenance Agreement to be made between the Township and applicant, as applicable."

-- Section 802.28.CC Visual Analysis: adds panoramic requirement

-- Section 802.28.SS (1) Battery Energy Storage Systems (1): increased setback of BESS building from minimum of 200 feet from property or street ROW line to 4 times total height to the top of the maximum sweep blade of the turbine or mill

-- Section 802.28.UU Animal Life Impact Analysis: Adds requirement of an impacts analysis upon livestock, animal life, fish and fowl within a five mile radius of the project boundaries, by a qualified professional.

41. As indicated above, due to the substantial changes in the proposed amendments Section 610(b) of the MPC requires that the governing body shall at least 10 days prior to enactment, readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

42. As the proof of publication, Exhibit G, indicates, the public notice of the special meeting scheduled for July 30, 2019, discussing the amendments was published in the Standard-Speaker on July 21, 2019. This public notice does not comply with, and violates the 10 day notice requirement of Section 610(b) of the MPC because it was not published at least 10 days prior to July 30, 2019, the date the Board of Supervisors voted to approve the Revised Proposed Amendments and enact Ordinance No. 2019-2.

43. Section 609(d) of the MPC "requires that when a proposed amendment is changed substantially, as is the case here, that the governing body shall hold another "public hearing", pursuant to public notice, before proceeding to vote on the amendment.

44. As the proof of publication, Exhibit G demonstrates, the Board of Supervisors did not provide public notice of another "public hearing". As the proof of public notice indicates, the Board of Supervisors advertised a "special meeting" and not a "public hearing". The failure to advertise a "public hearing" is a violation of Section 609(d) of the MPC.

45. Pennsylvania Courts have consistently interpreted ambiguous notices in favor of property owners. *Valianatos v. Zoning Hearing Board of Richmond Township*, 766 A.2d 903, 906-907 (Pa. Cmwlth. 2001) *citing*, *Appeal of the City of New Kensington*, 208 A.2d 853 (Pa. 1965); *Belle Vernon v. Board of Commissioners of Rostraver*, 487 A.2d 490 (Pa. Cmwlth. 1985) (holding that a notice was inadequate because it called for a 'meeting' and not a 'hearing'); *Tinicum Township v. Tinicum Township Zoning Hearing Board*, 624 A.2d 232 (Pa. Cmwlth. 1993).

46. The Board of Supervisors further violated Section 609 of the MPC by holding a "special meeting" on July 30, 2019, rather than a "public hearing", as required.

47. The public notice of special meeting is contradictory in that it states the Board of Supervisors will conduct a special meeting for the sole purpose of "acting upon" an amendment and then goes on to state that the purpose of the special meeting is to "consider an amendment". As referenced above, Pennsylvania Courts have consistently interpreted ambiguous notices in favor of property owners. *See, e.g., Valianatos*, 906-907.

48. For all the reasons discussed above, the Appellant is an aggrieved landowner and is directly and adversely affected by the procedurally defective zoning amendment process and the invalid zoning amendment, as adopted.

49. The procedural defects also deprived the public of its right to participate in the consideration and enactment of a very important municipal land use decision, which impacts

three major Packer Township zoning districts (A-1 Agricultural, C-1 Conservation, and R-1 Single-Family Residential).

50. Ordinance No. 2019-2 should be ruled void *ab initio* because the Board of Supervisors and Packer Township failed to: (i) provide proper public notice of the June 19, 2019 special meeting of the Planning Commission; (ii) provide the Planning Commission with the statutory time period to review the proposed amendments; (iii) include in the Notice of Special Meeting a statement that copies of the proposed ordinance may be examined without charge or obtained for a charge not greater than the cost thereof; (iv) make complete copies of the proposed ordinance amendments available for inspection at the county law library, The Journal-Herald and the Standard-Speaker; (v) at least 10 days prior to enactment, readvertise in one newspaper of general circulation in the municipality, a brief summary setting forth all the amendment provisions in reasonable detail, together with a summary of the amendments; (vi) provide notice of another “public hearing”; (vii) hold a public hearing before proceeding to vote on and enact the proposed amendments; and (viii) provide an unambiguous and non-contradictory notice regarding the Board of Supervisors intentions for its July 30, 2019 “special meeting”.

WHEREFORE, Appellant respectfully requests that this Court invalidate Ordinance No. 2019-2 due to procedural defects in the enactment, and award such other relief as the Court deems necessary and appropriate.



Respectfully submitted,

COZEN O'CONNOR



---

Michael Klein, Esquire (No. 23854)  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101-1638  
(P) 717-703-5900  
(F) 717-703-5901  
mklein@cozen.com

HOURIGAN, KLUGER & QUINN



---

Brian P. Stahl, Esquire (No. 203941)  
600 Third Avenue  
Kingston, PA 18704-5815  
(P) 570-287-3000  
(F) 570-287-8005  
bstahl@hkqlaw.com

Dated: August 29, 2019

**VERIFICATION**

I, Charles Ashman, the President of Broad Mountain Power LLC, on behalf of Broad Mountain Power LLC hereby verify that the statements made in the foregoing Land Use Appeal are true and correct to the best of my knowledge, information and belief and that these statements are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

Date: August 29, 2019

Charles Ashman

CERTIFICATE OF COMPLIANCE

We certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Michael Klein, Esquire

Signature: Michael Klein  
Michael Klein, Esquire  
PA I.D. No. 23854

Submitted by: Brian P. Stahl, Esquire

Signature: Brian P. Stahl  
Brian P. Stahl, Esquire  
PA I.D. No. 203941

2019 AUG 29 AM 11:41  
CARBON COUNTY  
PROthonotary  
FILED

CARBON COUNTY RECORDER OF DEEDS  
ANITA M DIETRICH, ACTING RECORDER  
PO BOX 89  
JIM THORPE, PA 18229-0089



CARBON COUNTY COURTHOUSE  
JIM THORPE

Instrument Number - 201902193  
Recorded On 4/12/2019 At 2:41:53 PM  
\* Instrument Type - MISCELLANEOUS  
Invoice Number - 267522  
\* Grantor - HAZLETON ELECTRIC SUPPLY COMPANY  
\* Grantee - BROAD MOUNTAIN POWER LLC  
\* Customer - HOURIGAN, KLUGER & QUINN PC

Book - 2421  
\* Total Pages - 10

Starting Page - 68

**\* FEES**

PA WRIT TAX	\$0.50
RECORDING FEES	\$33.00
COUNTY ARCHIVES FEE	\$2.00
ROD ARCHIVES FEE	\$3.00
TOTAL PAID	\$38.50

**\* RETURN DOCUMENT TO:**

HOURIGAN, KLUGER & QUINN PC  
600 THIRD AVENUE  
KINGSTON, PA 18704

I hereby CERTIFY that this document is  
Recorded in the Recorder of Deeds Office  
Of Carbon County, Pennsylvania



*Anita M Dietrich*  
Anita M. Dietrich  
Acting Recorder of Deeds

This is a certification page

**DO NOT DETACH**

This page is now part  
of this legal document.

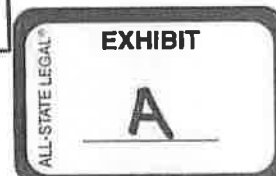
\* - Information denoted by an asterisk may change during  
the verification process and may not be reflected on this page.

0270D9



Book: 2421 Page: 68

CERTIFICATION OF PARCEL NUMBERS ONLY  
DOES NOT CERTIFY CONTENTS  
OF THIS DOCUMENT  
CARBON COUNTY RECORDER OF DEEDS



RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

Broad Mountain Power LLC  
Attn: Broad Mountain Wind  
Farm Project Manager  
354 Davis Road, Suite 100  
Oakville, ON  
Canada L6J 2X1

Tax Id./Parcel Nos.: 120-45-A20 **ABMT**

MEMORANDUM OF AGREEMENT  
(CARBON COUNTY)

**THIS MEMORANDUM OF AGREEMENT** (this "Memorandum") is made and entered into as of APRIL 10, 2019, by and between Hazelton Electric Supply Company, a Pennsylvania corporation ("Owner"), and Broad Mountain Power LLC, a Delaware limited liability company (together with its successors and assigns, hereinafter "Grantee"). Owner and Grantee may also be referred to herein as the "Parties" or each a "Party".

WITNESSETH

1. The Parties have entered into a Wind Energy Lease and Easement Agreement (the "Original Agreement") dated as of December 1, 2017 ("Effective Date"). Grantee's name was incorrectly referenced in the Original Agreement as "Hazelton Electric, Co. Inc." and Owner's correct name is "Hazelton Electric Supply Company".
2. The Parties have entered into an Amended and Restated Wind Energy Lease and Easement Agreement, dated as of APRIL 10, 2019 (the "Agreement"), by which the Parties have agreed to amend and restate the Original Agreement in its entirety.
3. By its terms, the Agreement grants Grantee certain rights in and to certain land more particularly described in Exhibit A attached hereto and incorporated by reference (the "Property").
4. The Agreement concerns the development of a wind energy conversion project by Grantee on the Property and/or on other properties within the county, state and/or locality in which the Property is located (the "Project").
5. The Term of the Agreement commences on the Effective Date and expires on third (3<sup>rd</sup>) anniversary of the Effective Date ("Development Term"). Upon commencement of construction, as more particularly described in the Agreement (the "Construction Start Date"), the Term shall automatically be extended for a period of twenty-six (26) years following the first day Grantee begins selling electricity in commercial quantities, as more particularly described in

the Agreement (“**Commercial Operations Date**”), as more particularly defined in the Agreement (“**Operation Term**”). Grantee may further extend the Term for an additional twenty-five (25) years (“**Renewal Term**”). Collectively, the Development Term, Operation Term, and Renewal Term, the “**Term**”.

6. By the Agreement, Owner grants Grantee certain exclusive and non-exclusive license, easement and lease rights to the Property as more particularly set forth in the Agreement, but which rights include all rights necessary to develop, construct, operate and maintain the Project.

7. By the Agreement, Owner shall have no ownership interest and other interest in any Windpower facilities installed on the Property by Grantee and Grantee may remove any or all Windpower facilities at any time.

8. By the Agreement, Grantee and any successor or assign of Grantee has the right under the Agreement, without need for Owner’s consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property for wind energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Grantee’s the Agreement, or any right or interest in the Agreement, or any or all right or interest of Grantee in the Property or in any or all of the windpower facilities that Lessee or any other party may now or hereafter install on the Property provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the Term; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Agreement; and (iii) Grantee shall not be relieved from liability for any of its obligations under the Agreement by virtue of the assignment or conveyance unless Grantee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Grantee shall have no continuing liability.

9. By the Agreement, the easement and rights granted to Grantee therein shall burden the Property and shall run with the land. The Agreement shall inure to the benefit of and be binding upon the Grantee and, to the extent provided in any assignment or other transfer under the Agreement, any assignee or Grantee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.


10. The Parties have executed and recorded this Memorandum for the purpose of giving record notice of the Agreement and of the exclusive rights and easements it grants Grantee. All of the terms, covenants and conditions regarding the Agreement are more particularly set forth in the Agreement, and incorporated herein by reference. In the event of conflict between the terms and conditions set forth in this Memorandum and the terms and conditions set forth in the Agreement, the terms and conditions of the Agreement will govern and control.

*[Signature page to follow]*

IN WITNESS WHEREOF, the Parties have executed this Memorandum on the date and year above written.

**OWNER:**

**Hazleton Electric Supply Company,  
a Pennsylvania corporation**

  
Name: James S. Dulcey  
Title: President


STATE OF PENNSYLVANIA :  
COUNTY OF Luzerne: SS

On this, the 10<sup>TH</sup> day of April, 2019, before me Brooke L. McHenry the  
President undersigned officer, personally appeared James S. Dulcey who acknowledged himself to be the  
President of Hazleton Electric Supply Company, a Delaware limited liability company, and  
that he as such President being authorized to do so, executed foregoing instrument for the  
purpose therein contained by signing the name of the corporation by himself as President

In witness whereof, I hereunto set my hand and official seals.

  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
BROOKE L. MCHENRY - Notary Public  
Luzerne County  
My Commission Expires Oct 6, 2021  
Commission Number 1321888


CERTIFICATION OF PARCEL NUMBERS ONLY  
DOES NOT CERTIFY CONTENTS  
OF THIS DOCUMENT  
CARBON COUNTY ASSESSMENT OFFICE  


[Signature page to Memorandum (Owner)]

IN WITNESS WHEREOF, the Parties have executed this Memorandum on the date and year above written.

**GRANTEE:**

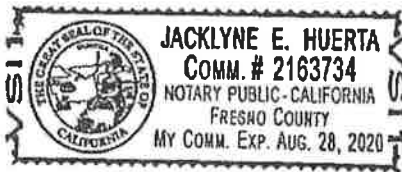
**Broad Mountain Power LLC,  
a Delaware limited liability company**

  
Name: Steven Burns  
Title: Secretary & Treasurer

STATE OF California PENNSYLVANIA: : SS  
COUNTY OF Fresno :

On this, the 11<sup>th</sup> day of April, 2019, before me Jacklyne E Huerta, the undersigned officer, personally appeared Steven Burns, who acknowledged himself to be the Secretary/Treasurer of Broad Mountain Power LLC, a Delaware limited liability company, and that he as such Secretary/Treasurer being authorized to do so, executed foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as Secretary/Treasurer

In witness whereof, I hereunto set my hand and official seals.



  
Notary Public

[Signature page to Memorandum (Grantee)]



**EXHIBIT A TO MEMORANDUM OF AGREEMENT**

**DESCRIPTION OF THE PROPERTY**

The following real property located in Carbon County, State of Pennsylvania is more particularly described as follows:

All that parcel of land and premises described and set forth in the Deed made to Hazelton Electric Supply Company, Inc., dated and recorded in Deed Book 452, P 659 in the records of Carbon County, PA which real property is also referenced as Tax ID 120-45-A20 in the records of Carbon County, PA, and as more fully described in copy of the aforesaid deed, attached hereto.

*[Exhibit A to Memorandum]*

# This Indenture, Made the

11th day of OCTOBER in the year of our Lord one thousand nine hundred and EIGHTY-FOUR (1984).

**Between** MARION J. LAZUR, Single, and THERESA LAZUR and THOMAS S. LAZUR, her husband, all of the Township of Rush, County of Schuylkill and Commonwealth of Pennsylvania, Grantors and Parties of the First Part,

— AND —

HAZLETON ELECTRIC SUPPLY COMPANY, INC., a Pennsylvania Corporation, with its principal place of business at Village of Coxeville, Township of Banks, County of Carbon and Commonwealth of Pennsylvania, Grantee and Party

of the second part: **Witnesseth**, That the said part les of the first part, for and in consideration of the sum of One Dollar (\$1.00)

~~lawful money of the United States of America, well and truly paid by the said party of the second part to the said part les of the first part, at and before the executing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, release, convey and confirm into the said party of the second part, its successors and assigns.~~

ALL THAT CERTAIN tract or piece of land situate in the Township of Packer, Carbon County, Pennsylvania, being 400 acres surveyed to Abner Doomer; more accurately described as follows:

ALL THAT CERTAIN tract or piece of land situated in the Township of Packer, Carbon County, Pennsylvania, beginning at a post; THENCE, by John Hears Warrantee Tract and by Nicholas Shaffer Warrantee Tract, South seventy-one degrees (71°), West three hundred thirty-seven and four tenths (337.4) perches to a Chestnut;

THENCE, by John Moyer Warrantee Tract, South nineteen degrees (19°), East sixty-six (66) perches to a post, South seventy-one degrees (71°) West, one hundred eight and one tenths (108.1) perches to a post;

THENCE, by James McNeal Warrantee Tract, South nineteen degrees (19°) East one hundred two and five tenths (102.5) perches to a post;

THENCE, by John Young Warrantee Tract, North seventy-one degrees (71°) East, four hundred forty-five and five tenths (445.5) perches to a post;

THENCE, by Henry Goodheart Warrantee Tract, North nineteen degrees (19°) West, one hundred sixty-eight and five tenths (168.5) perches to the beginning.

CONTAINING four hundred (400) acres, eighty-nine (89)

BOOK 452 PAGE 257

perches, allowance, etc. which said tract of land was surveyed in pursuance of a warrant dated April 20, 1793 granted to the said Abner Deemar.

EXCEPTING and RESERVING only the fifth part of all gold and silverore for the use of the Commonwealth to be delivered at pit's mouth, clear of all charges.

BEING THE SAME PREMISES which Marion J. Lazur, Single, by Deed dated January 18, 1980 and recorded April 9, 1980 in and for the County of Carbon, at Jim Thorpe, Pa., in Deed Book Volume 411, page 981 granted and conveyed unto Marion J. Lazur and Theresa Lazur, her mother, grantors herein, in fee.

To the best knowledge, information and belief of the said Grantors, the premises above mentioned has not been, nor is presently being used for the disposal of hazardous waste.

THIS DEED is to correct the Deed dated September 24, 1984 and recorded September 25, 1984 in Carbon County Deed Book Volume 451, page 185. The intention of this deed being to renounce any reservation of mineral rights as contained in the prior deed. It being the intention of the parties to convey the aforementioned premises together with mineral rights.

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions; remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof: And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said part 1st of the first part, of, in, and to the said premises, with the appurtenances:

To have and to hold the said premises, with all and singular the appurtenances buildings and improvements thereon erected unto the said party of the second part, - its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever,

And the said Parties of the First Part, for themselves, their heirs, executors and administrators, do by these presents, covenant, grant and agree, to and with the said party of the second part, its successors and assigns forever, that they the said Parties of the First Part, their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended to be, with the appurtenances, unto the said party of the second part, its successors and assigns, against them the said Parties of the First Part, their heirs, and against all and every other person or persons, whatsoever lawfully claiming or to claim the same or any part thereof, by, from or under him, her, them or any of them,

SHALL and WILL

WARRANT and forever DEFEND.

In witness whereof, the said part 1st of the first part to these presents have hereunto set their hands and seals. Dated the day and year first above written.

Signed, sealed and Delivered }  
IN THE PRESENCE OF US

Marion J. Lazur (SEAL)  
(Marion J. Lazur)

Theresa Lazur (SEAL)  
(Theresa Lazur)

Thomas S. Lazur (SEAL)  
(Thomas S. Lazur)

BOOK 452 PAGE 692

State of PENNSYLVANIA )  
County of SCHUYLKILL ) ss.

On the 21th day of OCTOBER, 1984, before me,  
a Notary Public, in and for the said County and State,

the undersigned officer, personally appeared MARION J. LAZUR, Single and THERESA LAZUR and THOMAS S. LAZUR, her husband, who are,

known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they have executed the same for the purposes therein contained, and desired the same might be recorded as such.

In Witness Whereof, I hereunto set my hand and official seal.

The address of the within-named Grantee  
is House 33, Coxeville,  
Beaver Meadows, PA 18216  
On behalf of the Grantee

*Thelma E. Dennis*  
THELMA E. DENNIS, NOTARY PUBLIC  
RUSH TOWNSHIP, SCHUYLKILL COUNTY  
MY COMMISSION EXPIRES 1-1-1987  
Member, Trustees of O'Connell's

*Deed.*

MARION J. LAZUR, Single and  
THERESA LAZUR and THOMAS S.  
LAZUR, her husband

- TO -

HAZLETON ELECTRIC SUPPLY  
COMPANY, INC.

PREMISES, 400 acres and 80  
perches situate in Packer  
Township, Carbon County,  
Pennsylvania.

CONSIDERATION: \$1.00

1981 John C. Clark Co. Inc. 734

*John C. Clark*  
*Dennis H. M. ...*

Recorded, in the Office for the Recording of Deeds in and for Carbon  
County in Deed Book No. 452  
page 659 &c.

74456  
FILED

Witness my hand and seal of Office this 14th  
day of Nov. Anno Domini 1984

NOV 14 1984  
10:00 A.M.  
JAMES F. WALKER  
RECORDER OF DEEDS

Recorder *James F. Walker*  
Deputy Recorder

15/19P

RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

FILED  
08/29/2019 11:29:10 AM  
ANITA M. DIETRICH  
ACTING RECORDER OF DEEDS  
CARBON COUNTY  
Pennsylvania

Broad Mountain Power LLC  
Attn: Broad Mountain Wind  
Farm Project Manager  
354 Davis Road, Suite 100  
Oakville, ON  
Canada L6J 2X1

128-44-B2AAGMT 121-44-B4AAGMT 127-46-A2AAGMT

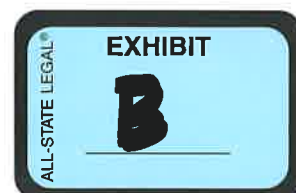
Tax Id./Parcel Nos.: ~~113-45-A2; 113-45-A3; 120-45-A21; 121-46-A3; 121-46-A4; 121-46-A6;~~  
~~121-46-A7; 121-44-B3; 127-46-A2; 128-46-A1; 128-46-A3; 128-46-A4; 121-44-B2; 121-44-B4;~~  
~~122-44-A1; 122-44-A2; 128-44-B2; 128-44-B3; 128-44-B4~~

MEMORANDUM OF AGREEMENT  
(CARBON COUNTY)

**THIS MEMORANDUM OF AGREEMENT** (this “Memorandum”) is made and entered into as of August 15, 2019, by and between Kovatch Enterprises, Inc., a Pennsylvania corporation (“Owner”), and Broad Mountain Power LLC, a Delaware limited liability company (together with its successors and assigns, hereinafter “Grantee”). Owner and Grantee may also be referred to herein as the “Parties” or each a “Party”.

WITNESSETH

1. Owner and Grantee entered into that certain Wind Energy Lease and Easement Agreement (the “Original Agreement”), dated March 23, 2017 (the “Original Lease Date”).
2. The Parties have entered into an Amended and Restated Wind Energy Lease and Easement Agreement (the “Agreement”) dated as of the Original Lease Date (“Effective Date”), by which the Parties have agreed to amend and restate the Original Agreement in its entirety.
3. By its terms, the Agreement grants Grantee certain rights in and to certain land more particularly described in Exhibit A attached hereto and incorporated by reference (the “Property”) which Property is located in Carbon County, Pennsylvania. In the event of a conflict between the legal description in Exhibit A and the parcel numbers identified at the beginning of this Memorandum, the legal description shall control.
4. The Agreement concerns the development of a wind energy conversion project by Grantee on the Property and/or on other properties within the county, state and/or locality in which the Property is located (the “Project”).
5. The term of this Agreement shall begin on the Effective Date and expire on March 23,



2022 (“**Development Term**”).

6. If, prior to the expiration of the Development Term, Grantee commences construction of the Project (the date Grantee commences construction shall be the date on which Grantee either (a) issues a Final Notice to Proceed (or similar directive) to a general contractor for the construction of the Project, or (b) the date specified by Grantee in a notice of construction sent to Owner, said date the “**Construction Start Date**”), the Term shall automatically be extended for a period of twenty-six (26) years following the Commercial Operations Date (“**Operation Term**”), provided, however, that in no event shall the aggregate length of the Development Term and the Operations Term exceed a period of twenty-nine (29) years and eleven (11) months.
7. By the Agreement, Owner grants Grantee certain exclusive and non-exclusive license, easement and lease rights to the Property as more particularly set forth in the Agreement, but which rights include all rights necessary to develop, construct, operate and maintain the Project, to apply for any necessary government authorizations related to the Project, and to appeal any governmental decisions affecting the Project.
8. By the Agreement, Owner shall have no ownership interest and other interest in any Windpower facilities installed on the Property by Grantee and Grantee may remove any or all Windpower facilities at any time.
9. By the Agreement, Grantee and any successor or assign of Grantee has the right under the Agreement, without need for Owner’s consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property for wind energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more qualified third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more qualified third parties or to any affiliate of Grantee’s the Agreement, or any right or interest in the Agreement, or any or all right or interest of Grantee in the Property or in any or all of the windpower facilities that Grantee or any other party may now or hereafter install on the Property provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the Term; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Agreement; and (iii) Grantee shall not be relieved from liability for any of its obligations under the Agreement by virtue of the assignment or conveyance unless Grantee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Grantee shall have no continuing liability.
10. By the Agreement, the easement and rights granted to Grantee therein shall burden the Property and shall run with the land. The Agreement shall inure to the benefit of and be binding upon the Grantee and, to the extent provided in any assignment or other transfer under the Agreement, any assignee or Grantee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.
11. The Parties have executed and recorded this Memorandum for the purpose of giving record notice of the Agreement and of the exclusive rights and easements it grants Grantee. All of the terms, covenants and conditions regarding the Agreement are more

particularly set forth in the Agreement, and incorporated herein by reference. In the event of conflict between the terms and conditions set forth in this Memorandum and the terms and conditions set forth in the Agreement, the terms and conditions of the Agreement will govern and control.

*[Signature page to follow]*

CERTIFICATION OF PARCEL NUMBERS ONLY  
DOES NOT CERTIFY CONTENTS  
OF THIS DOCUMENT  
CARBON COUNTY ASSESSMENT OFFICE  
8/29/19



IN WITNESS WHEREOF, the Parties have executed this Memorandum on the date and year above written.

**OWNER:**

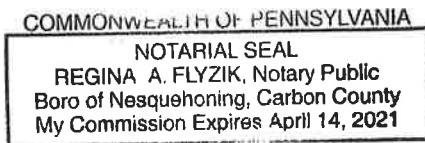
**Kovatch Enterprises, Inc.,  
a Pennsylvania corporation**

Kathy Kovatch Reaman  
Name: KATHY KOVATCH REAMAN  
Title: President

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF CARBON :

On this, the 21 day of August, 2019, before me REGINA A FLYZIK, the undersigned officer, personally appeared KATHY KOVATCH REAMAN, who acknowledged himself to be the PRESIDENT of Kovatch Enterprises, Inc., a Pennsylvania corporation, and that she as such PRESIDENT being authorized to do so, executed foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as PRESIDENT

In witness whereof, I hereunto set my hand and official seals.



Regina A Flyzik  
Notary Public

[Signature page to Memorandum (Grantee)]



## EXHIBIT A TO MEMORANDUM OF AGREEMENT

### DESCRIPTION OF THE PROPERTY

**ALL THAT CERTAIN** plot, piece, parcel or tract of land lying on and over the Broad Mountain, partly within the Borough of Nesquehoning, Carbon County, partly within the Township of Packer, Carbon County, and partly within Rush Township, Schuylkill County, Commonwealth of Pennsylvania, and more particularly bounded and described as follows in accordance with a boundary survey prepared by Keystone Consulting Engineers, Inc, dated February 15, 2012, last revised May 20, 2013:

**BEGINNING** at a concrete monument placed to mark a corner of lands of Lansford-Coaldale Joint Water Authority (D.b.v. 173, Pg. 266), said monument being located on a course of North twenty-four degrees, seventeen minutes, twenty-nine seconds West (N24°17'29"W) at a distance of six hundred ninety and twenty-nine hundredths (690.29) feet from an old planted stone marking the corner between the Christian Miekst (Micksh) Warrantee Tract and the William Lehman Warrantee Tract; said concrete monument is also located on a course of North ten degrees, twenty-six minutes, twenty-five seconds East (N10°26'25"E) at a distance of four thousand five hundred twelve and no hundredths (4512.00) feet from an old Lehigh Coal and Navigation Company set stone marking the extended centerline tangent of the former Lansford-Hauto railroad tunnel;

**THENCE** from the Point of Beginning North seventy-nine degrees, four minutes, forty-four seconds West (N79°04'44"W) along lands of the Lansford-Coaldale Joint Water Authority (D.b.v.173, Pg.266), a distance of five hundred thirty-one and eighteen hundredths (531.18) feet to a found iron bolt marking a corner of other lands of the Lansford-Coaldale Joint Water Authority (D.b.v.165, Pg.73);

**THENCE** the following eight (8) courses and distances along other lands of the Lansford-Coaldale Joint Water Authority (D.b.v.165, Pg.73), along a line mutually agreed upon by Kovatch Enterprises, Inc. and Lansford-Coaldale Joint Water Authority as the boundary between their respective properties, in accordance with their agreement recorded in Record Book Volume 1965 at Page 244 in the office for the recording of deeds in and for Carbon County at Jim Thorpe, Pa.:

1. North twenty-five degrees, forty-three minutes, ten seconds West (N25°43'10"W), passing an iron pin found at one thousand sixty and sixty hundredths (1060.60) feet, a total distance of four thousand, six hundred forty-three and thirty-three hundredths (4643.33) feet to a set concrete monument;
2. North sixty-four degrees, fifteen minutes, fifty-five seconds East (N64°15'55"E), a distance of eight hundred twenty-four and sixty-eight hundredths (824.68) feet to a found concrete monument;
3. North twenty-five degrees, forty-six minutes, fifty-two seconds West

- (N25°46'52"W), a distance of two thousand three hundred fourteen and three hundredths (2314.03) feet to a found concrete monument;
4. South seventy degrees, fifty-two minutes, fifty seconds West (S70°52'50"W) along and partly in the Broad Mountain Access (Fireline) Road, a distance of two thousand eight hundred thirty-five and forty-six hundredths (2835.46) feet to an iron pin set near the center of the road;
  5. South twenty degrees, eighteen minutes, forty-one seconds East (S20°18'41"E), a distance of seven hundred eight and three hundredths (708.03) feet to a found concrete monument;
  6. South twenty-one degrees, forty-three minutes, twenty-eight seconds West (S21°43'28"W), a distance of five thousand fifty-seven and fifty-three hundredths (5057.53) feet to a concrete monument on the east side of the former Pennsylvania Power and Light Company right-of-way;
  7. South forty-seven degrees, twenty-nine minutes, no seconds East (S47°29'00"E) along the east side of the former Pennsylvania Power and Light Company right-of-way, a distance of one thousand one hundred thirty-seven and sixty-eight hundredths (1137.68) feet to a found concrete monument;
  8. South eighty-three degrees, twenty-three minutes, thirteen seconds East (S83°23'13"E), a distance of four thousand two hundred sixty-three and twenty-six hundredths (4263.26) feet to a found concrete monument;

**THENCE** North seventy-two degrees, forty-one minutes, thirteen seconds East (N72°41'13"E) along land of the Lansford-Coaldale Joint Water Authority, a distance of six hundred eighteen and fifty hundredths (618.50) feet to a concrete monument set; said monument being located on a course of North thirty-nine degrees, ten minutes, ten seconds West (N39°10'10"W), at a distance of two thousand two hundred ninety-one and ninety-three hundredths (2291.93) feet from a found iron pin;

**THENCE** South fifty-nine degrees, twenty-nine minutes, thirty-three seconds West (S59°29'33"W) along land now or formerly of Lake Hauto Club (D.b.v.729, Pg.678), along other lands now or formerly of Lake Hauto Club (D.b.v.734, Pg.30), and also along other lands now or formerly of Lake Hauto Club (D.b.v.762, Pg.717), a distance of seven thousand eight hundred forty-five and ninety-seven hundredths (7845.97) feet to a 2 inch diameter drill hole in rock;

**THENCE** South sixty-one degrees, nineteen minutes, forty-six seconds West (S61°19'46"W) along other lands now or formerly of Lake Hauto Club (D.b.v.1410, Pg.289), a distance of one thousand and thirty-eight hundredths (1000.38) feet to a set concrete monument in the easterly line of the Zachariah Robins Warrantee Tract, being land now or formerly of Kenneth Carl and Catherine A. Breisch (D.b.v.2182, Pg.1958)

**THENCE** North nineteen degrees, thirty-three minutes, sixteen seconds West (N19°33'16"W) along the easterly line of the Zachariah Robins Warrantee Tract, being land now or formerly of Kenneth Carl and Catherine A. Breisch (D.b.v.2182, Pg.1958), a

distance of two thousand nine hundred ninety-three and twenty-three hundredths (2993.23) feet to a set concrete monument;

**THENCE** South sixty-eight degrees, thirty-two minutes, twelve seconds West (S68°32'12"W) along land now or formerly of Kenneth Carl and Catherine A. Breisch (D.b.v.2182, Pg.1958), a distance of one hundred twenty-eight and ninety-nine hundredths (128.99) feet to a mining roof bolt found at a corner of land now or formerly of Thomas Bryan Lazur and Marion Janet Lazur (D.b.v.1426, Pg.357), purported to be on the Schuylkill-Carbon County line, said mining roof bolt being located on a course of South twenty-eight degrees, eleven minutes, forty-seven seconds West (S28°11'47"W), at a distance of one hundred seventy-three and forty-six hundredths (173.46) feet from an old stone pile marking the northeast corner of the Zachariah Robins Warrantee Tract and the southeast corner of the Leonard Epply Warrantee Tract;

**THENCE** North forty-two degrees, twenty-nine minutes, fifty-one seconds West (N42°29'51"W) along land now or formerly of Thomas Bryan Lazur and Marion Janet Lazur (D.b.v.1426, Pg.357) and the purported Schuylkill-Carbon County line, a distance of two thousand sixty-nine and forty-nine hundredths (2069.49) feet to a concrete monument found in the Broad Mountain Access (Fireline) Road, marking a corner of remaining land now or formerly of Wayne S. Postupack and Daniel C. Postupack (D.b.v.1890, Pg.970);

**THENCE** North sixty-five degrees, thirty-five minutes, two seconds East (N65°35'02"E) along remaining land now or formerly of Wayne S. Postupack and Daniel C. Postupack (D.b.v.1890, Pg.970), a distance of seven hundred thirty-eight and ninety-six hundredths (738.96) feet to an iron pin found in the Broad Mountain Access (Fireline) Road;

**THENCE** North sixty-seven degrees, four minutes, thirty seconds East (N67°04'30"E) along the same, a distance of four hundred forty-two and fifty-two hundredths (442.52) feet to a concrete monument found in the Broad Mountain Access (Fireline) Road, said monument being located on a course of North thirty-five degrees, twenty-six minutes, thirty-seven seconds East (N35°26'37"E) at a distance of three hundred thirteen and thirty-five hundredths (313.35) feet from an old planted stone marking the northwest corner of the John Deemer Warrantee Tract and the southwest corner of the Robert Gray Warrantee Tract;

**THENCE** North twenty-one degrees, twenty-seven minutes, forty-two seconds West (N21°27'42"W) along the same, a distance of one thousand two hundred ten and sixteen hundredths (1210.16) feet to a concrete monument found, said monument being located on a course of south eighty-five degrees, two minutes, twenty-five seconds East (S85°02'25"E) at a distance of two hundred thirty-eight and seventy-three hundredths (238.73) feet from an old planted stone marking the southeast corner of the Killian Epply Warrantee Tract and the northeast corner of the Leonard Epply Warrantee Tract;

**THENCE** the following five (5) courses and distances along land about to be conveyed to Wayne S. Postupack and Daniel C. Postupack:

1. North sixty-eight degrees, thirty-four minutes, forty-three seconds East (N68°34'43"E), a distance of one thousand thirty and twenty-one hundredths (1030.21) feet to a found concrete monument;
2. North twenty-one degrees, twenty-seven minutes, forty-one seconds West (N21°27'41"W), a distance of two thousand seven hundred ninety-five and forty-four hundredths (2795.44) feet to a concrete monument;
3. North forty-eight degrees, forty minutes, thirty-nine seconds West (N48°40'39"W), a distance of four hundred seventy-two and fifteen hundredths (472.15) feet to a found concrete monument;
4. South sixty-eight degrees, eleven minutes, forty-five seconds West (S68°11'45"W), a distance of eight hundred fourteen and twenty-eight hundredths (814.28) feet to a found iron pin;
5. North fifty-six degrees, thirty-five minutes, twenty-four seconds West (N56°35'24"W), a distance of ninety-five and sixty-six hundredths (95.66) feet to an old planted stone found marking the northeast corner of the Killian Epply Warrantee Tract and the southeast corner of the Theodorus Keel (Kiel) Warrantee Tract, being the southeast corner of land now or formerly of Paul Hinderliter et al (D.b.v.422, Pg.583);

**THENCE** North twenty-one degrees, thirteen minutes, fifty-nine seconds West (N21°13'59"W) along the easterly line of the Theodorus Keel (Kiel) Warrantee Tract, being land now or formerly of Paul Hinderliter et al (D.b.v.422, Pg.583), crossing the WTG Central, Inc. pipe line, a distance of two thousand five hundred seventy-seven and sixteen hundredths (2577.16) feet to a concrete monument set in line of land now or formerly of Clyde Luther Hinkle, Jr. (D.b.v.1030, Pg.409), said monument being located on a course of North seventy-six degrees, fifty-nine minutes, forty seconds East (N76°59'40"E) at a distance of two hundred three and forty-seven hundredths (203.47) feet from an old iron pin found in stone pile;

**THENCE** North seventy-six degrees, fifty-nine minutes, forty seconds East (N76°59'40"E) along land now or formerly of Clyde Luther Hinkle, Jr. (D.b.v.1030, Pg.409), a distance of nine hundred fifteen and seventy-five hundredths (915.75) feet to a concrete monument set at the southwest corner of land now or formerly of SWJJ Real Estate LLC (D.b.v.1023, Pg.76);

**THENCE** North sixty-five degrees, thirty-eight minutes, forty-four seconds East (N65°38'44"E) along land now or formerly of SWJJ Real Estate LLC (D.b.v.1023, Pg.76), a distance of one thousand three hundred fifty-seven and ninety-five hundredths (1357.95) feet to an old stone pile found marking the southwest corner of land now or formerly of Diane Roinick and Linda Roinick Snyder (D.b.v.484, Pg.713);

**THENCE** North sixty-five degrees, thirty-eight minutes, forty-four seconds East (N65°38'44"E) along land now or formerly of Diane Roinick and Linda Roinick Snyder (D.b.v.484, Pg.713), a distance of two thousand eight hundred forty-three and eighty-five hundredths (2843.85) feet to an old stone pile corner;

**THENCE** North twenty-five degrees, two minutes, twenty-four seconds West (N25°02'24"W) along the same, a distance of three hundred fifty and seventy-six hundredths (350.76) feet to an iron pin found at the southwest corner of land now or formerly of Richard and Barbara Genetti (D.b.v.305, Pg.427);

**THENCE** North sixty-eight degrees, thirteen minutes, seventeen seconds East (N68°13'17"E) along land now or formerly of Richard and Barbara Genetti (D.b.v.305, Pg.427), a distance of nine hundred eighty-nine and eighty-six hundredths (989.86) feet to an old iron pin found in stones;

**THENCE** North sixty-eight degrees, eleven minutes, twenty-five seconds East (N68°11'25"E) along land now or formerly of Barbara Genetti (D.b.v.409, Pg.982), a distance of nine hundred eighty-two and seventeen hundredths (982.17) feet to an iron rebar found marking a corner common to land now or formerly of Larry G. and Janet T. Gerhard (D.b.v.523, Pg.118) and land now or formerly of Hazleton Electric Supply Company (D.b.v.452, Pg.659);

**THENCE** South twenty degrees, seventeen minutes, forty-two seconds East (S20°17'42"E) along land now or formerly of Hazleton Electric Supply Company (D.b.v.452, Pg.659), passing an iron pin found at one thousand four hundred ninety-nine and ninety-nine hundredths (1499.99) feet, a total distance of one thousand six hundred ninety-one and thirty-nine hundredths (1691.39) feet to a found iron pin;

**THENCE** North sixty-eight degrees, thirty-five minutes, forty-five seconds East (N68°35'45"E) along the same (said line having been established by a prior court decree of January 28, 1999), a distance of seven thousand six hundred seventy-nine and fifty-three hundredths (7679.53) feet to a found iron rebar and cap;

**THENCE** North twenty degrees, fifteen minutes, twenty-two seconds West (N20°15'22"W) along the same, passing an iron rebar found at four hundred ninety and eighty-nine hundredths (490.89) feet, a total distance of two thousand seven hundred seventy-nine and seventy-four hundredths (2779.74) feet to an iron pin in stones found at the southwest corner of land now or formerly of Bernadette Fetchko (D.b.v.437, Pg.142);

**THENCE** North seventy-one degrees, twenty-two minutes, fifty-five seconds East (N71°22'55"E) along land now or formerly of Bernadette Fetchko (D.b.v.437, Pg.142), land now or formerly of James and Kathleen Dulcey (D.b.v.381, Pg.772), land now or formerly of William R. Mokes (D.b.v.857, Pg.573) and land now or formerly of

Neil and Rosalie Craig (D.b.v.692, Pg.89), a distance of one thousand four hundred forty-two and ninety-five hundredths (1442.95) feet to an old stone in stone pile found;

**THENCE** North sixty-nine degrees, fourteen minutes, thirty-two seconds East (N69°14'32"E) along land now or formerly of Pensco Trust (D.b.v.1373, Pg.322), a distance of two thousand two hundred seventy-nine and forty hundredths (2279.40) feet to an old stone pile found marking the southeast corner of the John Mears Warrantee Tract and the southwest corner of the John Smoker Warrantee Tract, being the southwest corner of land now or formerly of Niles and Birte Grover (D.b.v.239, Pg.543);

**THENCE** North sixty-nine degrees, twelve minutes, thirty seconds East (N69°12'30"E) along land now or formerly of Niles and Birte Grover (D.b.v.239, Pg.543) and along land now or formerly of Hazleton City Authority (D.b.v.324, Pg.413), passing an old stone pile found at two thousand two hundred sixty-four and thirty-seven hundredths (2264.37) feet, a total distance of four thousand six hundred sixty-six and twenty-six hundredths (4666.26) feet to an iron bar found in stones in line of other lands now or formerly of Hazleton City Authority and marked as corner #2A by the Commonwealth of Pennsylvania Game Commission, said corner #2A being located on a course of North thirty-nine degrees, twenty-seven minutes, fifty-six seconds East (N39°27'56"E) at a distance of twenty-seven and twelve hundredths (27.12) feet from an old stone and pile found marking the northeast corner of the George Graff Warrantee Tract;

**THENCE** South twenty degrees, thirty-nine minutes, nine seconds East (S20°39'09"E) along land now or formerly of Hazleton City Authority, claimed by the Commonwealth of Pennsylvania Game Commission, passing within nine and fifty-two hundredths (9.52) feet to the west of an old stone marking the southwest corner of the Mathias and Andrew Gangwere and Jacob Glayder Warrantee Tract and the northwest corner of the John Hazelwood Warrantee Tract at one thousand four hundred eighty-six and ninety-eight hundredths (1486.98) feet, a total distance of three thousand five hundred thirty-five and fifty-eight hundredths (3535.58) feet to a small pile of stones at Commonwealth of Pennsylvania Game Commission State Game Land 141 corner #50, said corner #50 being located on a course of South thirty degrees, fifty-two minutes, fifty-five seconds East (S30°52'55"E) at a distance of thirty-one and ninety-three hundredths (31.93) feet from an old planted stone found marking the southeast corner of the George Graff Warrantee Tract;

**THENCE** South sixty-eight degrees, fifty-eight minutes, nineteen seconds West (S68°58'19"W) along the line painted and blazed by the Commonwealth of Pennsylvania Game Commission, a distance of five thousand three hundred sixty-six and twenty-six hundredths (5366.26) feet to a small pile of stones at Commonwealth of Pennsylvania Game Commission State Game Land 141 corner #51;



**THENCE** South sixty-eight degrees, thirty-seven minutes, twenty-three seconds West (S68°37'23"W) along the same, a distance of two thousand six and fifty-three hundredths (2006.53) feet to a small pile of stones at Commonwealth of Pennsylvania Game Commission State Game Land 141 corner #52, said corner #52 being located on a course of South thirty-eight degrees, twenty-six minutes, fifty-one seconds East (S38°26'51"E) at a distance of three hundred fifty-eight and fifty-nine hundredths (358.59) feet from an old stone pile found marking the northwest corner of the Joseph Henzy (Henry) Warrantee Tract and also a corner of the Henry Goodhart Warrantee Tract;

**THENCE** South sixty-nine degrees, seven minutes, three seconds West (S69°07'03"W) along the same, a distance of six hundred forty-nine and thirty-five hundredths (649.35) feet to a small pile of stones at Commonwealth of Pennsylvania Game Commission State Game Land 141 corner #53 on the easterly side of a forty (40) feet wide easement for access in favor of the Nesquehoning Borough Authority (D.b.v.550, Pg.393);

**THENCE** South twenty degrees, forty-six minutes, no seconds East (S20°46'00"E) still along the line painted and blazed by the Commonwealth of Pennsylvania Game Commission and along the easterly side of the aforementioned easement, a distance of four hundred and no hundredths (400.00) feet to a concrete monument set at a corner of land now or formerly of the Nesquehoning Borough Authority (D.b.v.550, Pg.393);

**THENCE** the following three (3) courses and distances along land now or formerly of the Nesquehoning Borough Authority (D.b.v.550, Pg.393):

1. South sixty-nine degrees, nineteen minutes, fifty-one seconds West (S69°19'51"W), a distance of one thousand three hundred eleven and thirty-six hundredths (1311.36) feet to a concrete monument set;
2. South thirty-two degrees, thirty-eight minutes, fifty-four seconds East (S32°38'54"E), a distance of five thousand eight hundred fifty-one and ten hundredths (5851.10) feet to a concrete monument set;
3. South fifty-six degrees, thirty-six minutes, twenty-eight seconds East (S56°36'28"E), a distance of one thousand three hundred thirty-two and sixty-nine hundredths (1332.69) feet to a concrete monument set at a corner of land now or formerly of Kovatch Enterprises, Inc. (D.b.v.550, Pg. 398);

**THENCE** South eighteen degrees, two minutes, twelve seconds East (S18°02'12"E) along land now or formerly of Kovatch Enterprises, Inc. (D.b.v.550, Pg. 398), a distance of eight hundred seventy-four and no hundredths (874.00) feet to a concrete monument set at a corner of other lands now or formerly of Kovatch Enterprises, Inc. (D.b.v.511, Pg.418), said monument being located on a course of North eighteen degrees, two minutes, twelve seconds West (N18°02'12"W) at a distance of

eight hundred and no hundredths (800.00) feet from an old stone in large pile marking the western-most corner of the Peter Baynton Warrantee Tract;

**THENCE** South eighty-two degrees, two minutes, eighteen seconds West (S82°02'18"W) along other lands now or formerly of Kovatch Enterprises, Inc. (D.b.v.511, Pg.418), a distance of nine hundred eighty-one and fifty-six hundredths (981.56) feet to an concrete monument set;

**THENCE** South fifty-seven degrees, six minutes, twenty-eight seconds West (S57°06'28"W) along the same, a distance of four thousand four hundred sixty-three and fifty-seven hundredths (4463.57) feet to a concrete monument set at a corner of land of Lansford-Coaldale Joint Water Authority (D.b.v.173, Pg.266);

**THENCE** North seventy-four degrees, forty-seven minutes, twenty-one seconds West (N74°47'21"W) along land of Lansford-Coaldale Joint Water Authority (D.b.v.173, Pg.266), a distance of four hundred one and forty-six hundredths (401.46) feet to the place or **POINT OF BEGINNING**.

**EXCEPTING** thereout and therefrom those three (3) certain parcels of land previously conveyed as follows:

1. 1.008 acres of land conveyed to Crown Atlantic Company LLC by deed dated November 17, 2000 and recorded in Deed Book Volume 918 at Page 531.
2. 0.516 acres of land conveyed to Kovatch Enterprises, Inc. on July 13, 2015 by deed recorded in Deed Book Volume 2181 at Page 810, as Parcel #4.
3. 0.132 acres of land conveyed to Kovatch Enterprises, Inc. by deed dated July 13, 2015 and recorded in Deed Book Volume 2181 at Page 810, as Parcel #3.

**CONTAINING** within said bounds 3,439.323 acres of land, according to a survey prepared by Keystone Consulting Engineers, Inc., dated February 15, 2012, last revised May 20, 2013, from field surveys conducted between April, 2011 and February, 2012 and recorded in Map Book Volume 4 at Page 297 in the office for the recording of deeds in and for Carbon County at Jim Thorpe, Pa.

**BEING** all those same premises which Blue Ridge Real Estate Company, by its Deed dated December 12, 1988 and recorded in Deed Book Volume 513 at Page 1, and subsequently by corrective deed recorded in Deed Book Volume 544 at Page 345, did grant and convey unto Kovatch Enterprises, Inc., less and excepting therefrom the following:

1. Conveyance to Nesquehoning Borough Authority in November, 1991, recorded in Deed Book Volume 550 at Page 393, in accordance with a land exchange jointly between Kovatch Enterprises, Inc. and Nesquehoning Borough Authority as shown on a certain plan titled "Subdivision Plan 'Land

Exchange' Jointly for Kovatch Enterprises, Inc. and The Nesquehoning Borough Authority", dated March 8, 1991, last revised March 25, 1991 and recorded in Map Book Volume 2 at Page 315.

2. Intended conveyance to Wayne S. and Daniel C. Postupack, in accordance with a land exchange jointly between Kovatch Enterprises, Inc. and Wayne S. and Daniel C. Postupack, as shown on a certain plan titled "Land Exchange Jointly for Kovatch Enterprises, Inc., Wayne S. Postupack and Daniel C. Postupack", recorded in Map Book Volume 4 at Page 217;
3. All those certain premises conveyed to Hazleton Electric Supply Company by virtue of a court decree dated January 28, 1999.

**SUBJECT TO** a right-of-way 25 feet wide, granted to the Commonwealth of Pennsylvania Department of Forests and Waters for fire suppression purposes, by deed dated October 28, 1936 and recorded in Miscellaneous Deed Book Volume 19 at Page 353.

**SUBJECT TO** a pipe line right-of-way in favor of WTG Central, Inc., dated July 30, 1987 and recorded in Miscellaneous Deed Book Volume 58 at Page 433.

**SUBJECT TO** an easement 40 feet wide for access, ingress and egress in favor of Nesquehoning Borough Authority, extending northward from the northern limit of Nesquehoning Borough Authority property, through, over and across lands of Kovatch Enterprises, Inc., to the Broad Mountain Access (Fireline) Road, in accordance with the agreement recorded in Deed Book Volume 550 at Page 393, and as shown on a certain plan titled "Subdivision Plan 'Land Exchange' Jointly for Kovatch Enterprises, Inc. and The Nesquehoning Borough Authority", dated March 8, 1991, last revised March 25, 1991 and recorded in Map Book Volume 2 at Page 315.

**SUBJECT TO** easements of varying widths about to be conveyed to Wayne S. and Daniel C. Postupack, through lands of Kovatch Enterprises, Inc. and along the existing Broad Mountain Access (Fireline) Road and along the existing Dennison Road, as shown on a certain plan titled "Land Exchange Jointly for Kovatch Enterprises, Inc., Wayne S. Postupack and Daniel C. Postupack", recorded in Map Book Volume 4 at Page 217;

**SUBJECT TO** an easement for electric utilities along Dennison Road as described in Miscellaneous Deed Book Volume 12 at Page 8, and in Deed Book Volume 918 at Page 531.

**SUBJECT TO** an easement for access and utilities from Pennsylvania State route 54, along public roads and along Dennison road, to the existing Crown Atlantic Company, LLC cell tower site on the Broad Mountain, as recorded in Miscellaneous Deed Book Volume 70 at Page 81, and in Deed Book Volume 918 at Page 531.

**TOGETHER WITH** an easement 25 feet wide about to be conveyed to Kovatch Enterprises, Inc., along the northerly side of the existing Broad Mountain Access (Fireline) Road through lands of Wayne S. and Daniel C. Postupack, as shown on a certain plan titled "Land Exchange Jointly for Kovatch Enterprises, Inc., Wayne S. Postupack and Daniel C. Postupack", recorded in Map Book Volume 4 at Page 217;

**UNDER AND SUBJECT**, nevertheless, to all exceptions, reservations, restrictions, easements, rights-of-way, conditions, agreements, rights, covenants and privileges as granted or conveyed to others by Grantor's predecessors in title by indentures or agreements in writing or otherwise, whether visible or not and whether recorded or not, or as otherwise appear in the chain of title.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWNSHIP OF PACKER, CARBON COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 08-006 AND THE PACKER TOWNSHIP ZONING ORDINANCE REGARDING SPECIFIC STANDARDS FOR THE REGULATION OF WIND TURBINES, WIND MILLS AND WIND FARMS WITHIN THE TOWNSHIP**

WHEREAS, the Board of Supervisors of the Township of Packer has duly adopted and does maintain a Zoning Ordinance within the said Township of Packer; and,

WHEREAS, Section 609 of the Pennsylvania Municipalities Planning Code authorizes municipalities to amend their Zoning Ordinance; and,

WHEREAS, the Supervisors of Packer Township believe that it is in the best interest of Packer Township to amend the specific standards and regulations pertaining to the construction and establishment of wind mills, wind turbines and/or wind farms by conditional use in certain areas of the township; and,

WHEREAS, after consideration and comment from the Planning Commission and after a public hearing duly conducted thereon, pursuant to the terms and provisions of the Pennsylvania Municipalities Planning Code, as amended, and the Township of Packer Zoning Ordinance; and

NOW THEREFORE, the Board of Supervisors of Township of Packer hereby adopts the following amendments to the Zoning Ordinance and Ordinance No. 08-006 as follows:

**Section 2. A-1 Agricultural District.** Section 501.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete "Stand Alone Wind Mill" and also "Wind Farm". Section 501.5 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

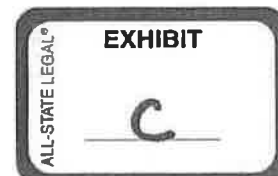
"Stand-Alone Wind Mill"

"Wind Farm"

"Wind Turbine"

**Section 3. R-1 Single Family Residential District.** Section 502.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete "Stand Alone Wind Mill" and also "Wind Farm". Section 502.5 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

"Stand-Alone Wind Mill"



“Wind Farm”

“Wind Turbine”

**Section 5. C-1 Conservancy District.** Section 504.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete “Stand Alone Wind Mill” and also “Wind Farm”. Section 504.4 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

“Stand-Alone Wind Mill”

“Wind Farm”

“Wind Turbine”

**Section 7: Supplemental Regulations.** Article VIII of the Packer Township Zoning Ordinance shall be amended in order that the existing provisions of Section 802.28 “Stand-Alone Wind Mills and Wind Farms” are hereby replaced with the following new text:

A. Purposes. These provisions are intended to provide compatibility between wind turbines, wind mills. Stand-alone wind mill and/or wind farms and adjacent uses by establishing setbacks and controls on noise, shadow flicker and other adverse effects, as well as to minimize potential hazards.

B. The applicant shall demonstrate to the satisfaction of the Zoning Hearing Board and/or the Packer Township Supervisors relative to a conditional use hearing, using technological evidence that the Wind Mills, wind turbines stand-alone wind mills or wind farms must be located where proposed in order to function to industry standards.

C. For the purposes of this subsection, the term “Residential Lot” shall mean : a) a lot that is occupied by a principal existing dwelling unit, or b) a lot that is residentially zoned, is undeveloped, is not owned by a governmental entity, and has a lot area of less than 10 acres.

D. Setbacks and Maximum Height. The wind turbine, wind mill, or stand-alone wind mill shall be set back from the lot line of a “Residential Lot” a distance of not less than four times the maximum height to the top of the maximum sweep of the blade of the turbine or mill, unless a written waiver is provided by the owner of such lot. The turbine height shall be measured from the ground level. The setback shall be measured from the base of the turbine or mill to the nearest lot line.

(1) Unless a larger setback is required by another provision of this Section, all wind turbines, wind mills or stand-alone wind mills shall be set back from each

lot line and each street right-of-way a maximum distance equal to 4 times the total height to the top of the maximum sweep of the blade of the turbine or mill. However, a setback from a lot line may be reduced if a written waiver is provided by the owner of such adjacent lot and approved by the applicable board.

(2) Unless a larger setback is required by another provision of this Section, if a wind turbine or wind mill has a total height to the top of the maximum sweep of the blade of the turbine or mill of greater than 250 feet above the adjacent ground level, it shall have a minimum setback from a "Residential Lot" of 1,500 feet.

(3) The maximum height to the top of the maximum sweep of the blade of a wind turbine or wind mill above the adjacent ground level shall be 350 feet.

**E. Waterway Setbacks.** The applicant shall provide evidence that the base of any wind turbine or wind mill shall be setback the following minimum distances: a) 500 feet from the centerline of a perennial waterway, b) 2,000 feet from the average water level of a public water supply reservoir, and c) 500 feet from any wetland of more than 0.25 acres in size.

**F. Removal.** The owner of wind turbines or wind mills shall completely remove all above-ground structures and all below-ground improvements that are less than 3 feet below the ground level within 9 months after any wind turbine(s) or wind mill(s) are no longer used to generate electricity. If the owner of the wind turbines or wind mill(s) fails to complete the removal, then the Board of Supervisors may require that the landowner accomplish the removal. Upon the request of either the owner of the wind turbines or wind mills or the landowner, this time limit may be extended to a total of 12 months by the Board of Supervisors if the owner is showing a good faith effort to comply. Driveways shall be removed and disturbed earth shall be re-seeded, unless the applicant provides evidence in writing to the Board of Supervisors that a particular feature is needed to serve a new approved use.

(1) The wind turbine(s) or wind mill(s), the below ground improvements and the driveways to be removed shall be collectively referred to as "Items Subject to Removal".

(2) Prior to the issuance of a Building Permit to construct the Items Subject to Removal, the owner of the turbines shall obtain and deliver to the Township a letter of credit or similar financial assurance acceptable to the Township to secure performance of the owner's obligation to remove the Items Subject to Removal. This financial assurance shall be known as the "Removal Bond".

(3) The Removal Bond shall be equal in value to 110% of the estimated amount of the costs to remove the Items Subject to Removal. The owner shall re-evaluate the

amount of the Removal Bond at least once every five years after the initial estimate was submitted to the Township. A copy of the revised evaluation shall be submitted in writing to the Township. The estimates of the costs shall be provided by an independent licensed Professional Engineer, with the costs of the evaluation paid by the owner. The qualifications of such person(s) who will complete the estimate shall be provided in writing in advance to the Board of Supervisors, and shall be subject to acceptance by the Board of Supervisors, provided such acceptance shall not be unreasonably withheld.

(4) If a Township Municipal Code Official has reason to believe that a wind turbine or wind mill has become a safety hazard, the Municipal Code Official shall send an order in writing to the owner of the wind turbine to require the owner to provide evidence within 7 days that the wind turbine or wind mill is safe, or is actively being repaired to become safe. If the Municipal Code Official determines that insufficient efforts are being made by the owner in a timely manner to resolve safety hazards, the Municipal Code official may require that the wind turbine or wind mill be removed within a reasonable period of time stated in writing by the Municipal Code Official, considering the severity of the hazard.

G. Minimum Height. The minimum height of the lowest position of the wind rotor shall be thirty (30) feet above the ground. Wind Turbines or wind mills shall not be climbable for at least the first 12 feet above the ground level.

H. Codes. The wind turbine or wind mill and its installation shall meet applicable regulations of the Uniform Construction Code and the National Electrical Code. The safety features of the wind turbines shall be certified by the Underwriters Laboratory or an equivalent independent organization. Any new electrical wiring must be underground to the maximum extent feasible.

I. Standards. The design of the wind turbines or wind mills and related on-site facilities shall conform to applicable written industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar independent certification organizations.

J. High Winds. Wind Turbines or wind mills shall be equipped with a redundant braking system to address high winds. This shall include both aerodynamic over-speed controls (including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes may be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

K. Colors. The color of the wind turbine or wind mill should be non-obtrusive, such as



white, off-white or gray, unless the applicant shows that an alternative is necessary to reduce hazards to birds and bats.

**L. Lighting and FAA approval.** Wind turbines or wind mills shall meet any lighting requirements or any other requirements of the Federal Aviation Administration (FAA). Any other exterior lighting visible from beyond the property, other than security lighting, shall be described on the plans and be subject to approval by the Zoning Hearing Board and/or the Board of Supervisors, as the case may be. The applicant shall provide evidence of the successful completion of FAA review and issuance of any required FAA approval prior to receiving building permits.

(1) Applicant should provide documentation of the response to the Notice of Proposed Construction Form required to be submitted to the FAA and the PA DOT Bureau of Aviation. The Notice of Proposed Construction Form is required to be completed to provide for pilot hazard awareness with low altitude flight requirements. Example: The wind mill facility located near Mahanoy City is a registered location and shown on a map provided by the Pa DOT Bureau of Aviation.

**M. Signs.** Wind turbines or wind mills shall not display an advertising, except for a single sign of up to 5 square feet to identify the manufacturer. Safety warning signs and emergency contact information signs may also be displayed. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations of the wind mills/wind turbines/wind farm.

**N. Warning Sign.** At least one warning sign shall be placed near any electrical transformer or substation.

**O. Guy Wires.** If guy wires are used, and they are not within a fence, they shall be marked near their base with reflectors, flags, reflective tape, aviation marker balls or similar method.

**P. Interference.** The applicant shall document that the radio, television, telephone or reception of similar signals from nearby properties will not be disturbed or diminished. The applicant shall make reasonable efforts to avoid any disruption or loss of radio, television, or similar signals, and shall mitigate any harm caused by the Wind turbine(s). For example, the applicant may be required to provide a resident with an alternative method of receiving television signals if there is significant interference.

**Q. Support Facilities.** Accessory electrical facilities are allowed, such as a transformer or mechanical buildings, provided they meet principal building setbacks. In addition, an accessory building may house necessary maintenance and safety equipment, provided it is setback a minimum of 200 feet from any exterior line. Landscaped visual screening shall

surround any buildings or electrical substations, except at a driveway crossing. Such screening shall primarily include evergreen trees with an initial height of 6 feet. Such planting shall be outside of any fence around such buildings or electrical substations.

**R. Forest Preservation.** The site plan shall show proposed driveways, turbines, mills and areas of woods proposed to be cleared or preserved. The delineation of areas of woods to be cleared or preserved shall be binding upon the project, unless a revised plan is later submitted for approval. The applicant shall show that the clearance of woods has been held to a reasonable minimum, and in no case shall there be clearance of more than 10 percent of the total woodland area on the tract for use.

**S. Noise.** The audible sound from the wind turbine(s) or wind mill(s) shall not exceed 45 A-weighted decibels, and shall also not exceed 45 C-weighted decibels, as each is measured at the lot line of a "Residential Lot", unless a written waiver is provided by the owner of such dwelling. This requirement shall be a maximum noise level using Lmax standard, and not based upon an average. The modeling of noise shall follow published standards for precision of the American Wind Energy Association and AWEA Standard 2.1-1989 titled "Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I" First Tier for minimum standards for precision methods of measuring and reporting acoustic emissions.

(1) The above maximum noise limits shall be reduced to 42 A-weighted and 42 C-weighted decibels between the hours of 10 pm and 7 am. However, the noise limits shall not be reduced below 45 decibels where the applicant provides evidence that the current continuous background (ambient) sound level without the wind turbines would be higher than 42 decibels.

(2) All required noise studies and testing shall be completed by a qualified independent professional specializing in noise analysis. The qualifications of the person(s) conducting the analysis shall be included in the application. ANSI standards shall be used for calibration of the noise meter.

(3) With the application, the applicant shall provide a written noise study that projects the maximum sound levels at the nearest five (5) dwellings, and that recommends measures that may be used as conditions by the applicable Board hearing the matter in order to minimize noise impacts. The noise study shall document compliance with the A- and C-weighted decibels level requirements of this Section.

(4) The applicant shall provide an independent written test of actual noise produced by the project upon completion, and every two subsequent years after the project is completed, to document compliance with the noise standards in this Section. If the project will involve more than 10 total wind turbines/mills, then

the noise study shall also be completed after each 10 wind turbines/mills are put into service. If the testing finds that the noise levels in this Section are being violated, then the owner of the wind turbines/mills shall immediately take the wind turbine(s)/mill(s) out of service until such modifications, replacement, or repairs are made to the wind turbine(s)/mill(s) as are required or necessary to make them comply with the noise levels of this Section.

(5) In addition to the noise studies provided above, at any time when the Zoning Officer has reasonable cause to believe that the noise limits of this Ordinance are being violated, the Zoning Officer may request that the Township or its authorized agents conduct its own tests to ascertain compliance with the noise limits. If the tests do not find a violation, then the Township shall be responsible to pay for the costs of such Township-sponsored tests.

(6) If the Township institutes an enforcement action because of a violation of the noise limits, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Township, the judgment shall require the owner of the project to pay all of the Township's reasonable costs and expenses to prove non-compliance with the noise requirements, including the tests to determine the noise levels. Such costs shall be paid within 30 days by the owner of the project after the final judgment. In the event the owner does not pay such costs within 30 days, the Township may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

T. Land Development Approval. "Land Development" approval shall be needed for the installation of two or more wind turbines/wind mills.

U. Hydrogeologic. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide a hydrogeologic study by a qualified professional. Such study shall consider impacts of the project upon groundwater recharge, adjacent water supplies and water quality, and include recommendations for conditions that may be established to minimize negative impacts. While it is recognized that a municipality does not have the authority to regulate blasting operations, the hydrogeologic study shall also consider potential impacts of blasting upon groundwater supplies and wetlands.

V. Birds and Bats. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot(s) which may be created from an existing lot by subdivision or

otherwise after the effective date of this Amendment, the applicant shall provide an analysis of the impacts of the project upon birds and bats within a five mile radius of the project boundaries, by a qualified professional. Such study shall include recommendation for conditions that may be established to minimize negative impacts.

**W. Shadow Flicker.** Shadow flicker is defined as the flickering effect caused when rotating wind turbine/wind mill blades periodically cast shadows through constrained openings. The applicant shall provide an analysis with a map of the shadow flicker impacts of the project upon any dwellings that will be impacted by this effect. The analysis shall be conducted by a qualified professional using generally accepted modeling methods, and shall estimate the number of hours per year that dwellings will be impacted by shadow flickering. No lot line of a lot occupied by a dwelling and no outdoor recreation field, outdoor recreation court or outdoor playground within a public park or homeowner association recreation area shall be affected by shadow flicker for a total of more than 20 hours per year, and no more than 30 total minutes per day. This requirement shall only apply to dwellings and recreational facilities that existed at the time of submission of initial site plans to the Township. Such analysis shall include recommendations for conditions that may be established to minimize the number of affected dwellings or recreational facilities, the hours affected and the severity of the impacts from shadow flicker. This provision shall not apply to a dwelling or recreational facility if a written and signed waiver is provided by the owner of an affected property.

(1) In addition to the analysis provided above, at any time when the Zoning Officer has reasonable cause to believe that the shadow flicker is in violation of this subsection, the Zoning Officer may request that the Township or its authorized agents conduct its own tests to ascertain compliance with the shadow flicker provisions of this subsection. If the tests do not find a violation, then the Township shall be responsible to pay for the costs of such Township-sponsored tests.

(2) If the Township institutes an enforcement action because of a violation of this subsection, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Township, the judgment shall require the owner of the project to pay all of the Township's reasonable costs and expenses to prove non-compliance with the shadow flicker requirements, including the tests to determine the amount/times of shadow flicker. Such costs shall be paid within 30 days by the owner of the project after the final judgment. In the event the owner does not pay such costs within 30 days, the Township may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

**X. Traffic.** The applicant shall submit a traffic study which shall identify the public

roads to be used for the construction, operation or maintenance of the wind turbine/wind mill/wind farm project, and which analyzes how such traffic will be safely accommodated on public roads, considering the length and weight of truck loads, the weight limits of bridges, the geometry of intersections and the slope of roads. The applicant shall have the burden of proof showing that the route will be able to safely accommodate the traffic without creating hazards or damage to roads or bridges.

(1) The Packer Township Engineer, or a qualified third party engineer hired by Packer Township and paid for by the Applicant, shall document road conditions prior to construction. Such engineer shall document road conditions again within 30 days after construction is complete, or as weather permits.

(2) Packer Township may require the Applicant to post bond for damage to the road in compliance with state regulations and Township Ordinances.

(3) Any road damage caused by the applicant or its contractors shall be promptly repaired at the Applicant's expense.

(4) If access to the Wind Turbine/Wind Mill/Wind Farm shall be provided by means of a public street or easement to a public street, all such easements shall be improved to a width of not less than ten (10) feet with a durable, dust-free, all weather surface. No access easement shall exceed a grade of fifteen (15%) percent.

(5) The Applicant shall demonstrate that it has appropriate financial resources to ensure prompt repair of damaged roads.

Y. Emergencies. The Applicant shall submit an emergency response plan, which shall address matters such as firefighting. The emergency response plan shall be submitted to local fire officials and the Carbon County Emergency Management office for comment, and shall be found to be acceptable by the Board hearing the matter. The Board may establish reasonable conditions to address fire hazards. The applicant shall offer or provide training to local emergency responders in the proper response to on-site hazards, at no costs to the Township. If locked gates control access to the property, Township fire officials shall be provided with keys, security codes or similar methods to access the property in an emergency.

(1) The owner of the turbines/mills shall prepare and submit a Spill Prevention and Control program. Sufficient equipment shall be kept on-site to contain reasonably expected spills from the turbines/mills into the groundwater or surface water or such equipment shall be funded as necessary by the applicant if it will be maintained by one or more emergency service providers in the vicinity.

(2) The applicant shall provide a fire control plan, including details about any fire suppression system proposed for any wind mill/wind turbine or wind farm or attendant structures.

Z. Lightning and Fire Hazards. The project shall include suitable measures to reduce hazards from lightning strikes and other fire hazards. Examples of these types of measures may include, but are not limited to use of non-combustible oils, heat barriers around combustible materials, smoke fire detection systems inside the turbines/mills, and/or fire suppression systems. Those measures shall be described in writing as part of the application, and may be made a condition of approval.

AA. Property Values. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot which may be created from any existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall submit an analysis by a qualified appraiser of the actual impacts upon residential property values of a similar set of wind turbines in a mostly rural community within the United States.

(1) Such analysis shall compare changes in property values of impacted dwellings to changes in property values of non-impacted dwellings over the same time period. Properties within a one mile radius of a wind farm shall be considered, as well as properties outside that radius. The study shall be completed by an appraiser who has an active MAI, SRA or SRPA certification from the Appraisal Institute. The appraiser must also have a Pennsylvania appraiser license. Such analysis shall include recommendations for conditions that may be established to minimize the impact upon residential property values.

BB. Ice Hazards. The Board hearing and considering the application may place conditions upon an approval to address ice throw hazards, such as requiring mechanisms to sense heavy ice buildup, and which allow remote controlled or automatic shutdown of turbine/mill blades.

CC. Visual Analysis. The applicant shall present at a hearing to consider the application, an analysis of the visual impacts of the project. This analysis shall accurately illustrate the visual impact from 5 different locations, as viewed from 2 public roads and from 3 dwellings in various areas that will experience the greatest impacts. Additionally the applicant shall present a three-dimensional computer generated surface model that accurately depicts the wind turbines/wind mills in proper scale and location in relationship to the surrounding terrain. No less than 5 viewpoints, at such locations as may be determined by the board considering the application, shall be presented.

(1) Properties adjacent to the wind farm will be designated so impacts to adjacent properties are shown separately. Properties up to a radius of five miles will be

determined. Impacts per each mile radius will be shown separately

DD. Expert Credentials. The qualifications of experts who provide information or testimony regarding compliance with technical standards of this Section shall be provided to the Zoning Officer and the Board conducting the hearing considering the application. The Board conducting the hearing considering the application shall have the authority to determine the credibility of the testimony and reports of various experts and may weigh the value of the testimony and reports as a result.

EE. Fencing and Security. The applicant shall show the locations and describe the height and materials of the fencing that is proposed. The Board conducting the Hearing and considering the application may require additional fencing of up to 8 feet in height enclosing the individual wind turbines/wind mills and related equipment as a condition, if determined to be needed for security reasons. Elevator doors servicing wind turbines/wind mills shall have secure locks.

FF. Inspections. The owner of the wind turbines/windmills shall engage a Professional Engineer to inspect the wind turbines/wind mills to ensure that are structurally sound and operating properly. If the inspection report recommends that repairs or maintenance be completed, the owner of the wind turbines/wind mills shall provide a written schedule to the Township for completion of the work. Such inspections shall occur a minimum of once every two years after a wind turbine becomes operational. A copy of the inspection report shall be provided in writing to the Township.

GG. Electrical Setbacks. Each wind turbine/wind mill shall be setback a minimum distance of 2 times the total height to the top of the maximum sweep of the blade of the turbine/mill height from any ground electric power line, telecommunications line or pole or tower that supports such line. This requirement shall not apply for a line that may be approved to be connected to a turbine/mill and that would not adversely affect other customers of the line was damaged.

HH. Ridgetops. Where practical and feasible considering wind conditions and topography, and where other alternatives exist, the applicant shall show that they have worked to minimize the number of wind turbines/wind mills placed along the tops of the most visually prominent ridgelines, as viewed from public roads and existing dwellings.

II. Insurance. During all times of on-site construction and operation and until completion of removal, the owner of the wind turbines/wind mills shall maintain a current general liability insurance policy covering bodily injury and property damage, with a minimum limit of \$1 million per occurrence and \$2 million in the aggregate. Certificates shall be made available to the Board of Supervisors of Packer Township upon request.

JJ. Complaints. The operator shall publicize the phone number, mailing address and

email address of a specific contact person who is authorized to receive complaints and questions from neighbors and Township officials on behalf of the operator. Such information shall be sent by first class mail to all property owners of lots within 300 feet of the exterior lot line of any lot on which wind turbines/wind mills/wind farms are located. Such mailing shall occur prior to commencing of operations and at any subsequent time when the phone number, mailing address or email address may change. Such person or their designee shall regularly respond to such complaints and questions.

**KK. Natural Diversity.** The applicant shall complete a Pennsylvania Natural Diversity Inventory search for the affected land areas, and submit the results of that search and any follow-up written communications from state or federal agencies on the matter to the Board presiding over the Hearing considering the application.

**LL. Structure Safety.** The applicant shall demonstrate that the proposed Wind Mills/Wind Turbine or Wind Farm are safe and the surrounding areas will not be negatively affected by the structure failure, falling ice or other debris, electromagnetic fields or radio interference. All Wind mills/Wind turbines shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania Registered Professional Engineer that all wind mills/wind turbines will be designated and constructed in accord with accepted engineering practices and all requirements of any applicable construction code. Within forty-five (45) days of completion of construction and before initial operation, the owner and/or operator of the wind farm/wind mills/wind turbines shall provide a certification from a Pennsylvania Registered Professional Engineer to the Township Zoning Officer that the Wind Farm/Wind Mills/Wind Turbines and all structures comply with all applicable regulations.

**MM. Licenses: Other Regulations.** The applicant shall demonstrate that the required permits and licenses from the Federal Energy Regulatory Commission, The Pennsylvania Department of Environmental Protection, the Pennsylvania Public Utility Commission, the Federal Aviation Administration and other agencies have been obtained. The applicant shall also document compliance with all applicable state and federal regulations by providing to the Township copies of all required documents, studies, and responses; (e.g. National Environmental Policy Act, Pennsylvania Natural Diversity Index Submission, Pennsylvania Historical and Museum Commission compliance)

**NN. Vibration.** The applicant shall demonstrate that there will be no vibration associated with the operation of the wind mill/wind turbine or wind farm which is detectable without instruments at or beyond the property line; and no use shall generate any vibration which is capable of causing damage to buildings, structures, equipment alignment, or structural soundness.

**OO. Soil Erosion and Sedimentation Control: Stormwater Management.** The applicant shall demonstrate that any soil disturbance shall comply with the soil erosion and



sedimentation control requirements of the Carbon County Conservation District and the Pennsylvania Department of Environmental Protection, and no approval shall be granted under this ordinance until the applicant provides a copy of the approved soil erosion and sedimentation control plan and any required permits. A stormwater control plan and stormwater management facilities plan shall also be provided in accord with the Township Stormwater management requirements.

**PP. Maintenance; Identification; notice of problems.** Wind Mill/Wind Turbine/Wind farm maintenance and continued compliance with this Ordinance shall be monitored by the Zoning Officer. There shall be affixed to the Wind Mill/ Wind Turbine and security fence in an accessible, visible place, the name and address of the owner(s) and a 24 hour emergency telephone number. This information shall be kept current by the owner(s). The zoning officer shall inform the owner(s) of any safety problems, maintenance problems, or any matter relative to the Wind Mill/Wind Turbine in accordance with the enforcement requirements of this ordinance, sent to the posted address. If the problem outlined in the letter from the Zoning Officer is not resolved within thirty (3) days of receipt of the notice or within such other period allowed in writing by the Zoning Officer, this shall constitute a violation of the ordinance. An unresolved violation shall constitute grounds for revoking the permit for the Wind Mill/Wind Turbine/Wind farm.

**QQ. Braking System.** Wind mills/Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls ( including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered as sufficient braking system for overspeed protection.

**RR. Miscellaneous:** The Wind Mills/Wind Turbines/Wind Farm shall comply with all other applicable regulations and requirements as set forth in the Zoning Ordinance.

**SS. Battery Energy Storage Systems.** These systems including energy management, backup power, load leveling, frequency regulation, voltage support, and grid stabilization facilities, as well as any other type of battery energy storage facility.

(1) **Location.** Any proposed battery energy storage system shall be located entirely within an enclosed building or enclosed buildings. The building(s) shall be located a minimum distance of two-hundred (200') from any property or street right-of-way line.

(2) **Containment.** The applicant shall propose containment facilities on the site to store any leakage from stored battery cells, the cascading failure of battery cells, or the release of the stored energy during an incident. The facilities shall have the capacity to completely contain all released materials, within an earthen impoundment, an underground tank, or other storage-type facility. Any earthen

containment facilities shall be completed lined with a composite liner made of a geomembrane along with a geosynthetic clay liner to prevent infiltration into the underlying soils. More than one (1) such facility is allowed to be installed on the site. All materials stored in containment facilities shall be disposed of in accordance with applicable United States Environmental Protection Agency (EPA) regulations.

TT. Power Purchase/Sale Agreements. Any Power Purchase agreement or other agreement for the sale of power generated from the stand alone wind mills, wind farms and wind turbines is required to be provided by the applicant. Applicant of a stand-alone wind mills, wind farms and wind turbines to be connected to the utility grid shall provide written authorization from the local utility company to the Township acknowledging and approving such connection. The local utility provider shall be contacted to determine grid connection and net metering policies.

**Section 8. Repealer.**

All ordinances or parts thereof inconsistent with the provisions of this Ordinance Amendment are hereby repealed to the extent of inconsistency.

**Section 10. Effective Date:**

This Ordinance shall take effect and be in force after its enactment by the Board of Supervisors as provided by law.

ORDAINED AND ENACTED as an Ordinance by the Board of Supervisors of the Township of Packer, Carbon County, Pennsylvania, in lawful session duly assembled this

\_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOWNSHIP OF PACKER

by: \_\_\_\_\_  
Chairman of the Supervisors

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

ATTEST: \_\_\_\_\_  
Secretary

# Public Notices

## PUBLIC HEARING

THE WEATHERLY BOROUGH ZONING HEARING BOARD WILL CONDUCT A PUBLIC HEARING, THURSDAY, JUNE 27, 2019 AT 4:00 P.M. IN THE MUNICIPAL BUILDING TO HEAR THE FOLLOWING:

REQUEST OF Luke Medico, 12 Eight Iron Drive, Mountain Top, PA 18707 to renovate a building to have a commercial business on the first floor and apartments on the second and third floors of the building; 17 Wilbur Street; Weatherly, PA 18255

APPLICATION DOES NOT COMPLY WITH DISTRICT REGULATIONS. FOR A PERMITTED PRINCIPAL USE IN A COMMERCIAL DISTRICT, HAVING APARTMENTS ABOVE A COMMERCIAL BUSINESS IN A COMMERCIAL ZONE. AND ZONING ORDINANCE OF REQUIRED OFF STREET PARKING INTERESTED PARTIES SHOULD APPEAR AT THE HEARING AT 10 WILBUR STREET; WEATHERLY, PENNSYLVANIA 18255

**HAROLD PUDLINER**  
ZONING OFFICER  
BOROUGH OF WEATHERLY

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN, that Letters Testamentary have been issued in the Estate of Barbara J. Hoffman a/k/a/ Barbara Jean Hoffman a/k/a Barbara Hoffman, late of 859 Buck Mountain Road, Weatherly, Lehigh Township, Pennsylvania who died on the 27th day of April, 2019 by the Register of Wills of Carbon County to **Bonnie Kane**, 879 Buck Mountain Road, Weatherly, PA 18255. All persons indebted to said estate are requested to make payment, and those having claims to present the same without delay to:

**Daniel A. Miscavage, Esquire**  
Gillespie, Miscavage & Ferdinand, LLC  
67 North Church Street  
Hazleton, Pennsylvania 18201

## PUBLIC NOTICE

NOTICE IS GIVEN, that the Packer Township Board of Supervisors, Carbon County, Pennsylvania, proposes to enact the following Ordinance at a meeting of such Council to be duly called and duly held not less than seven (7) days nor more than sixty (60) days after the date of publication of this Notice.

AN ORDINANCE OF THE TOWNSHIP OF PACKER, CARBON COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 08-006 AND THE PACKER TOWNSHIP ZONING ORDINANCE REGARDING SPECIFIC STANDARDS FOR THE REGULATION OF WIND TURBINES, WIND MILLS AND WIND FARMS WITHIN THE TOWNSHIP

The Packer Township Board of Supervisors proposes to adopt an ordinance amendment establishing specific standards for the regulation of construction, erection and maintenance of wind turbines, windmills and wind farms within the township. A letter to the ordinance committee reviewed in the Township Offices, Township Building, 2234 Hudson Drive, Weatherly, PA, the Carbon County Law Library, Courthouse, Jim Thorpe, Pennsylvania and the *Journal-Herald*, 211 Main Street, White Haven, Pennsylvania.

BY THE ORDER OF THE SUPERVISORS OF PACKER TOWNSHIP  
**Robert T. Yurchak, Esquire**  
Solicitor  
1 East Catawissa Street  
Nesquehoning, PA 18240

## PUBLIC NOTICE

Notice is hereby given that on July 2, 2019 at 5:30 p.m., the Packer Township Board of Supervisors will conduct a public hearing in the Township Building, 2234 Hudson Drive, Weatherly, Pennsylvania.

The purpose of the public meeting is to discuss, inform and receive public comments on proposed Amendment of the Zoning Ordinance for Packer Township. The Township will be considering an amendment to the Ordinance No. 08-006 relating to specific standards for the regulation of wind turbines, wind mills and wind farms within the township. The proposed amendments address the following:

- Section 2. A-1 Agricultural District Residential District
  - Section 5. C-1 Conservancy District
  - Section 7. Supplemental Regulations
  - Section 8. Repealer
  - Section 10. Effective Date
- Complete copies of the proposed Ordinance Amendment are available for public inspection at the Township Office located at 2234 Hudson Drive, Weatherly, Pennsylvania, the Carbon County Law Library, Courthouse, Jim Thorpe, Pennsylvania and the *Journal-Herald*, 211 Main Street, White Haven, Pennsylvania.
- Robert T. Yurchak, Esquire**  
PACKER TOWNSHIP SOLICITOR  
1 East Catawissa Street  
P.O. Box 127  
Nesquehoning, PA 18240

## PUBLIC NOTICE

Penn Lake Park Borough is accepting bids for paving and pothole patching in the borough. Bids will be accepted until July 9, 2019. Bids can be mailed to Penn Lake Park Boro, PO Box 14, White Haven, Pa 18661 or emailed to [pibboroscretary@yahoo.com](mailto:pibboroscretary@yahoo.com).

## LEGAL NOTICE

NOTICE IS HEREBY GIVEN that Letters of Administration have been issued in the Estate of **Thomas M. Mazur, a/k/a Thomas Mazur**, late of Hazleton, Luzerne County, Pennsylvania (date of death July 10, 2013) to **Leslie M. Moyer, 249 Lauderburn Avenue, Weatherly, PA 18255**. All persons indebted to said Estate are requested to make payment, and those having claims to present the same without delay to the Administrator or to:

**Joseph R. Ferdinand, Esquire**  
Gillespie, Miscavage & Ferdinand, LLC  
67 North Church Street  
Hazleton, Pennsylvania 18201



FAITH ANN SCHAFTER

## Graduates cum laude

Faith Ann Schafter of 326 Barry's Road, White Haven, graduated from Kings College on May 19. She received a Bachelor of Science degree in neuroscience, and graduated cum laude.

Faith was a member of the Sigma Zeta math and science honor society. She is employed at Smith Healthcare, and applying to graduate school. She is the daughter of Darryl and Cheryl Schafter.

## Radio Club to meet

The Delaware-Lehigh Amateur Radio Club will hold its monthly meeting Thursday, July 11, at 7:30 pm in the Bethlehem Township Community Center, 2900 Farmersville Road, Bethlehem. Program: "Digital Mobile Radio

and Packer Radio Roundtable" - Presenter: Mark / W2MB. Members and others interested always are welcome. Directions: <https://tinyurl.com/y852acvn>. FMI: [www.DIARC.org](http://www.DIARC.org), [KG3AW@ARRL-net](mailto:KG3AW@ARRL-net), or 610.432.8286.

Carbon County Law Office for 28 Years

**Atty. Cindy Yurchak**

- Family Law • Real Estate
- Civil Law • Criminal Defense

570-427-9817

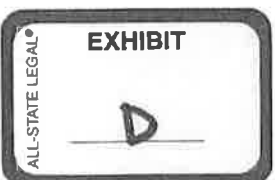
Carbon, Luzerne & Schuylkill  
121 Carbon St. Weatherly

Bath time can be rough, but we're here to help.

**Hair of the Dog Salon-n-Boutique**

570-579-7735  
109 West Broad St., Hazleton, PA  
[hairofthedogpa.com](http://hairofthedogpa.com)

Find us on facebook.



MEETING

BOARD OF SUPERVISORS

PACKER TOWNSHIP

RE: ZONING ORDINANCE

HEARING

BOARD OF SUPERVISORS  
SUZIE GERHARD, CHAIRMAN  
TERRY DAVIS

CORY GERHARD

ROBERT YURCHAK, SOLICITOR

STEPHANIE STOLPE, TOWNSHIP SECRETARY

TUESDAY, JULY 2, 2019

PACKER TOWNSHIP  
2234 HUDSON DRIVE  
WEATHERLY, PENNSYLVANIA

TERESA A. CROSSIN, RMR  
NOTARY PUBLIC

KEYSTONE COURT REPORTING AGENCY, INC.  
4099 BIRNEY AVENUE, SUITE 9  
MOOSIC, PA 18507  
(570) 558-3011 (800) 570-3773

KEYSTONE COURT REPORTING AGEN



**FAX (570) 558-3014**

(At this time the Pledge of Allegiance  
was recited.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

SECRETARY STOLPE: All comments  
will be limited to three minutes.

Please state your name for the record.

And the meeting is also being recorded  
for the purposes of preparing minutes.

CHAIRMAN GERHARD: I would like to  
open the meeting to the floor for public  
comment.

JOHN KOVATCH: I have a comment.  
I am John Kovatch. I represent Kovatch  
Enterprises. We own about 3400 acres of  
A-1 property in Packer Township. And I  
am almost assuming that this ordinance  
that you are talking about will not  
apply to the existing project that we  
have under application?

SUPERVISOR DAVIS: That's correct.  
That's correct.

JOHN KOVATCH: Will it apply to  
future projects that we would be  
involved in in that area?

SUPERVISOR GERHARD: If it is

1 related to wind farms, it could affect  
2 it, sure.

3 JOHN KOVATCH: I would just like  
4 to go on record as opposing it applying  
5 to any future -- current or future  
6 development projects.

7 The other thing is if we ever  
8 received any notice. We travel around  
9 regularly, we haven't seen anything  
10 posted. We haven't got anything in the  
11 mail. Being a large landowner, this is  
12 impacting our land, we received no  
13 notice about this impending amendment to  
14 the ordinance.

15 CHAIRMAN GERHARD: It was  
16 advertised.

17 SUPERVISOR GERHARD: The notice  
18 was publicized in the newspaper. It  
19 doesn't necessarily have to be posted  
20 because they didn't change the usage of  
21 the land. They didn't change the zoning  
22 district.

23 JOHN KOVATCH: Was it advertised  
24 in the newspaper? Could you tell me  
25 which paper?

1 CHAIRMAN GERHARD: Journal Herald.

2 SUPERVISOR GERHARD: The Journal  
3 Herald.

4 JOHN KOVATCH: Where is that at?

5 SUPERVISOR GERHARD: White Haven,  
6 White Haven newspapers.

7 CHAIRMAN GERHARD: It is White  
8 Haven/Weatherly newspaper.

9 SUPERVISOR GERHARD: White  
10 Haven/Weatherly newspaper.

11 JOHN KOVATCH: Once again, if this  
12 ordinance passes, this amendment passes,  
13 it does not apply to the current wind  
14 project?

15 SUPERVISOR GERHARD: That's  
16 correct.

17 JOHN KOVATCH: That's correct, it  
18 does not?

19 SUPERVISOR GERHARD: It does not.

20 JOHN KOVATCH: Okay, thank you.

21 JAMES DULCEY: My name is James  
22 Dulcey, 174 Dulcey Road.

23 I have a problem with this because  
24 the way you guys did this application we  
25 can't have any windmills on our farms of

1           any kind. We can't pump water. We  
2           can't make electricity for the farm.  
3           And that's the future in farming.

4                     Out West, they are doing it  
5           everywhere. They have miniature mills  
6           all over these farms to reduce the  
7           costs. And why do you do an ordinance  
8           so general and not allow windmills on a  
9           farm when there has been windmills on  
10          these farms for 150 years? Can anybody  
11          answer that question? Why would you do  
12          that? I have a windmill right now on a  
13          farm that's running.

14                    I mean, you know, you guys know  
15          this is going to get challenged. I  
16          mean, you can't do this. That's like  
17          passing an ordinance I don't want your  
18          cattle there; you know what I am saying?  
19          Windmills have been on farms forever.  
20          It is ridiculous.

21                    I mean, this is -- you know, Jeff  
22          and I talked about it. He is upset  
23          about it, I am upset it because in the  
24          future you are going to have miniature  
25          windmills on farms. It's going to be.



1                   So you guys say no windmills on  
2                   any farms; I mean, who would draw up  
3                   such an ordinance? Could anybody answer  
4                   a question there? Was this your idea,  
5                   Suzie? You won't answer the question.  
6                   It is ridiculous.

7                   CHAIRMAN GERHARD: This is a board  
8                   of three, not one.

9                   JAMES DULCEY: Well, could anybody  
10                  answer this question?

11                  SUPERVISOR GERHARD: We all work  
12                  on this together. That's why we have a  
13                  public meeting to take your concerns,  
14                  positive and negative, everybody. We  
15                  will take all of this into  
16                  consideration. We appreciate it. Thank  
17                  you.

18                  JAMES DULCEY: All right. Well, I  
19                  think it is wrong. And to say you can't  
20                  have any windmills on any farms is  
21                  ridiculous. I think it's more spite  
22                  work because, you know, you guys haven't  
23                  been that favorable towards the farming  
24                  industry in this valley. You know,  
25                  there is cease and desist on our farm

1 and there have been all kinds of  
2 shenanigans played.

3 The same thing with the complaint  
4 about the gravel on the road. I went  
5 right up there. It had nothing to do  
6 with Jim Sernak.

7 SUPERVISOR DAVIS: This is just  
8 the windmills.

9 JAMES DULCEY: I will speak at the  
10 next meeting. But this windmill  
11 ordinance is ridiculous.

12 CHAIRMAN GERHARD: Thank you for  
13 your comments. Anyone else?

14 MR. WALSH: Good evening,  
15 everyone. My name is Kevin Walsh. I am  
16 here from the law offices of Hourigan,  
17 Kluger & Quinn. We represent Broad  
18 Mountain Power, LLC.

19 I am just trying to find out some  
20 more information about the ordinance as  
21 to how it was drafted, who drafted it.

22 SUPERVISOR GERHARD: This is a  
23 public hearing.

24 MR. WALSH: I understand. And I  
25 am trying to solicit more information.

1 SUPERVISOR GERHARD: It is  
2 soliciting information from the public  
3 at this point?

4 MR. WALSH: I am asking the board  
5 on the record who prepared the ordinance  
6 and who was involved.

7 THE SOLICITOR: As Mr. Gerhard  
8 said earlier, it was done together.

9 MR. WALSH: Okay. Were any  
10 professional consultants involved in  
11 this, any planning consultants? I know  
12 from my work as a solicitor a lot of  
13 times we would have a planning  
14 consultant take a look at it, issue  
15 comments and that sort of thing.

16 THE SOLICITOR: It has been viewed  
17 by the Carbon County Planning Commission  
18 and Carbon County Engineering.

19 MR. WALSH: Did they issue any  
20 comment letters?

21 SUPERVISOR GERHARD: Yes.

22 MR. WALSH: Is it possible to get  
23 a copy of those?

24 THE SOLICITOR: We will talk about  
25 that later.

1 MR. WALSH: Okay. What is the  
2 reasoning for the Board of Supervisors  
3 proposing this?

4 SUPERVISOR GERHARD: Because we  
5 feel that we need changes in our  
6 Township. It has been a long time  
7 coming and it has been years in the  
8 process. And, finally, we are coming to  
9 where this thing comes up to a vote here  
10 very soon on changes. And it has been a  
11 long long time now, we are just finally  
12 coming to an end with that.

13 MR. WALSH: Okay. And the reason  
14 I am asking is you have the ordinance  
15 from 2008, it has restrictions on the  
16 winds farms. What has changed between  
17 then and now?

18 SUPERVISOR DAVIS: I wasn't here  
19 in 2008, so I can't answer that.

20 MR. WALSH: Okay. I mean, why the  
21 impetus now? Other than the application  
22 and the current zoning hearings, what is  
23 spurring this?

24 SUPERVISOR GERHARD: I think it  
25 has been talked about for a long time.

1 I mean, whether you heard about it or  
2 not is nothing new. It is just now that  
3 it is coming out where we are finally  
4 moving on it.

5 MR. WALSH: I guess to ask it a  
6 different way, why did you think action  
7 was necessary?

8 SUPERVISOR GERHARD: It is time.  
9 It was coming. It has been in the  
10 process, I think, for a long time now to  
11 update all of our ordinances.

12 CHAIRMAN GERHARD: We are working  
13 on more than one ordinance.

14 SUPERVISOR GERHARD: All of them.

15 MR. WALSH: Okay. So this is  
16 part --

17 CHAIRMAN GERHARD: And this is one  
18 of them.

19 SUPERVISOR GERHARD: We have  
20 multiple ones coming forward here in the  
21 future that we are looking into this and  
22 this is just one of them.

23 MR. WALSH: Now, in regard to the  
24 proposed ordinance, it prohibits wind  
25 farms in agricultural. It is allowed

1 for them as a conditional use in C-1, I  
2 believe.

3 What is the basis for the  
4 differentiation?

5 SUPERVISOR GERHARD: Thank you. I  
6 didn't hear it.

7 SUPERVISOR DAVIS: His three  
8 minutes are up.

9 MR. WALSH: I am still going to  
10 ask the questions for the purpose of the  
11 record. I understand it is a public  
12 hearing. You have allotted a half hour  
13 for it.

14 THE SOLICITOR: Didn't say we  
15 can't have more, I am just saying this  
16 is what we allotted for tonight. You  
17 know we can have more in the future as  
18 long as it is before the ordinance is  
19 adopted.

20 MR. WALSH: The hearing has been  
21 going for nine minutes.

22 THE SOLICITOR: I understand that.

23 MR. WALSH: You have allotted a  
24 half hour.

25 THE SOLICITOR: You are not

1           allotted the half hour, the public is  
2           allotted a half hour, yeah, when other  
3           people are waiting to talk.

4           MR. WALSH:   Would it be all right  
5           if we still have time left at the end of  
6           the half hour if I could follow up?

7           THE SOLICITOR:   That's up to the  
8           board to see what time we got left.

9           MR. WALSH:   Okay.

10          KEN SENCY:   Yes, my name is Ken  
11          Sency.   At the planning meeting, are you  
12          going to consider any of the changes  
13          that they were proposing?

14          CHAIRMAN GERHARD:   Yes.   We just  
15          got them, so we are reviewing them and  
16          that's why we are having this so we can  
17          put all the information together and  
18          make a decision on it.

19          SUPERVISOR DAVIS:   We are going to  
20          sit down in the near future and talk.

21          KEN SENCY:   Just from what the  
22          attorney just said, over the last, I  
23          believe it is eight years, at least  
24          seven years, I have been in this room a  
25          few times with developers for wind

1 projects on the mountain, and up until  
2 now everything has been very positive.  
3 The ordinance was accepted and  
4 everything else. What I just heard you  
5 say that -- I have a hearing impairment  
6 so if I am wrong, I think I heard you  
7 say that you have been considering this  
8 for a couple of years or a year.

9 SUPERVISOR GERHARD: A lot of  
10 these changes with all of our  
11 ordinances, we have been updating them  
12 the past few years. I have only been in  
13 a year and a half, but we are in the  
14 process of updating all of our  
15 ordinances. So this is just one of them  
16 with our ordinances.

17 KEN SENCY: Okay. In my mind, and  
18 I don't have an exact date, we have been  
19 on this project for about eight years  
20 and we have had at least three meetings  
21 in this room and there was not a  
22 negative word about it. Thank you.

23 SUPERVISOR GERHARD: Thank you.

24 WAYNE POSTUPAK: Wayne Postupak.  
25 We have about 300 acres in Packer



1 Township on the mountain and are just  
2 concerned that we are adopting an  
3 ordinance that pretty much makes my  
4 property useless. I don't know what  
5 other possible uses we can have. I  
6 mean, it is not like we are looking to  
7 develop it in any way but if it should  
8 happen, why should we be penalized for  
9 such if it is a windmill farm or  
10 something else, are you going to enact  
11 an ordinance against a prison or a  
12 building or industrial park? I mean, at  
13 what point do we say, all right, enough  
14 is enough. I mean, I pay taxes up  
15 there. I am entitled to have use of my  
16 property.

17 So I think it is a real issue that  
18 we are starting to really limit the uses  
19 of our properties. And, like I said, I  
20 do pay taxes up there and I think I am  
21 entitled to use the property as I should  
22 see fit.

23 CHAIRMAN GERHARD: As we do pay  
24 taxes, also. And we are here -- we took  
25 an oath for the security and safety of

1 the residents, of all residents of  
2 Packer Township, and that's what we are  
3 doing, our jobs.

4 WAYNE POSTUPAK: I understand  
5 that. At what point in time -- you  
6 know, it is easy for people that don't  
7 have an interest in the property to tell  
8 you how to use it. And that's kind of  
9 the problem that I have is when we get  
10 to enacting ordinances that limit my  
11 uses when nobody else seems to have  
12 problems with telling me what I can do  
13 and can't do with my property.

14 CHAIRMAN GERHARD: We are here for  
15 the safety of our residents only.

16 WAYNE POSTUPAK: I don't see how  
17 this -- I mean, you still have windmills  
18 on in industrial use. I am saying what  
19 I am getting at from reading the  
20 ordinance is that you can still put them  
21 on industrial properties. Other than --  
22 and this is for the planning board, you  
23 have to have uses within your Township  
24 for all -- any kind of use that you  
25 might have.

1                   SUPERVISOR GERHARD: Not within  
2                   the entire Township. You can restrict  
3                   areas where it is to be allowed.

4                   WAYNE POSTUPAK: You can restrict  
5                   areas where it can be allowed, right.

6                   SUPERVISOR GERHARD: You don't  
7                   have to allow them everywhere in the  
8                   Township. And, again, that's not  
9                   forestalling somebody for asking for a  
10                  variance.

11                  WAYNE POSTUPAK: Thank you.

12                  KENNETH ZULOCK: My name is  
13                  Kenneth Zulock, 1209 Grist Mill Drive.  
14                  I heard these gentlemen and all they are  
15                  concerned with is their own pockets.  
16                  That's all they are concerned with. He  
17                  wants use of his land but if it affects  
18                  the use of my land, then I don't want  
19                  it. I am all for anything you can do to  
20                  stop any of these gentlemen from doing  
21                  anything further or doing anything now.  
22                  Because I know Mr. Dulcey says he has a  
23                  windmill on his one property. Is that  
24                  the one where the water tank is?

25                  JAMES DULCEY: Yes.

1 KENNETH ZULOCK: Well, how high is  
2 that windmill?

3 JAMES DULCEY: 42 feet.

4 KENNETH ZULOCK: It is 42 feet.  
5 It is not 675 feet, is it?

6 JAMES DULCEY: I have nothing to  
7 do with that. Suzie Gerhard --

8 KENNETH ZULOCK: No, no, no,  
9 that's what you said earlier. You  
10 already have a windmill.

11 JAMES DULCEY: I have a windmill.

12 KENNETH ZULOCK: Well, let's  
13 compare apples and apples.

14 JAMES DULCEY: I am not saying  
15 about putting a 600-foot windmill.

16 KENNETH ZULOCK: Now, I know you  
17 don't play by the rules because --

18 JAMES DULCEY: Oh, here it goes.

19 KENNETH ZULOCK: Because you --

20 CHAIRMAN GERHARD: Gentlemen,  
21 gentlemen.

22 KENNETH ZULOCK: You also have a  
23 trailer within 15 feet of my property.

24 SUPERVISOR GERHARD: Hey, guys.

25 CHAIRMAN GERHARD: Let them go.

1           Let them go.

2                   KENNETH ZULOCK: I am making a  
3           statement. And I am entitled to make a  
4           statement.

5                   Now, I am for anything that you do  
6           to stop all of this nonsense in this  
7           Township. I supported you and I think  
8           most of the people in this Township  
9           support it, also. We don't want it. We  
10          don't want anything. I didn't move in  
11          this area, I didn't move to Packer  
12          Township to hear windmills running and  
13          lights flickering in my yard. And I am  
14          the one in the affected zone during the  
15          winter months or whatever. I didn't  
16          move here for that. I moved here so I  
17          could live my life peacefully and  
18          without all of this nonsense going on.

19                   They are only in it for their own  
20          pockets. They don't care about the rest  
21          of the people in Packer Township.

22                   SUPERVISOR GERHARD: Thank you,  
23          Kenneth.

24                   CHAIRMAN GERHARD: Is there anyone  
25          else who would like to speak?

1 MR. WALSH: If there is nobody  
2 else, I do have a few more issues.

3 So, regarding allowing the  
4 conditional use for conservation but not  
5 allowing it for agricultural, what is  
6 the reasoning behind that? I mean,  
7 doesn't that discriminate against  
8 landowners with no rational basis?

9 THE SOLICITOR: Does it?

10 MR. WALSH: I am asking what is  
11 the justification.

12 THE SOLICITOR: I am asking you  
13 does it.

14 MR. WALSH: Well, we can have a  
15 Court determine it.

16 THE SOLICITOR: Doesn't stop them  
17 from using it agriculturally.

18 MR. WALSH: Right.

19 THE SOLICITOR: It is zoned  
20 agricultural. It doesn't stop them from  
21 using it agriculturally.

22 MR. WALSH: Why split it up  
23 conservation versus agriculture?

24 THE SOLICITOR: That one I can't  
25 answer.

1                   CHAIRMAN GERHARD: We feel that's  
2                   in the best interest for the residents  
3                   of our Township.

4                   MR. WALSH: How so?

5                   SUPERVISOR DAVIS: For the  
6                   property values. I mean, it just  
7                   totally ruined the valley.

8                   MR. WALSH: What would?

9                   SUPERVISOR DAVIS: The sights, the  
10                  sights of these windmills. I mean, it's  
11                  going to destroy the valley.

12                  MR. WALSH: Sights in allowing  
13                  them in the A-1?

14                  SUPERVISOR DAVIS: Yes.

15                  We have a question back there.

16                  COLLEEN GERHARD: My name is  
17                  Colleen Gerhard. I live at 180 Oak Mill  
18                  Road. I am all for free enterprise. We  
19                  have many small businesses in this  
20                  Township. But when you are bringing  
21                  something into the Township that is  
22                  affecting other people, their lives,  
23                  their property, their safety, and just  
24                  the ruralness of this Township, I am all  
25                  for this amendment and this ordinance.

1                   SUPERVISOR GERHARD: Thank you,  
2                   Colleen.

3                   RON HOUSER: My name is Ron  
4                   Houser, H-O-U-S-E-R, and I don't want  
5                   windmills. I moved here 40 years ago  
6                   and there was no windmills here. I  
7                   could see all the way to practically  
8                   past the still creek. Every day I go  
9                   out my door and I do not see nothing but  
10                  mountains. I do not want to see  
11                  anything up there that is going to harm  
12                  the wildlife, my horses, or anybody's  
13                  livestock.

14                  I have a little horse business; I  
15                  don't want it ruined. I don't want it  
16                  ruined by Mr. Kovatch, Mr. Dulcey, or  
17                  anybody. I don't think it is right.  
18                  For all of these years, it was the same  
19                  and it was nice and it was peaceful. I  
20                  just don't want it ruined. You know, I  
21                  am not going to live forever but I will  
22                  tell you what, I want my last years to  
23                  be the same as they were for the last  
24                  40.

25                  It is not right. They are not



1 here. They are not living here. They  
2 can't even see the mountain and they  
3 don't care what they do. So I think  
4 they should think about other people.  
5 They don't need the money, they are  
6 loaded, they are rich. I don't think it  
7 is right.

8 The people have to look at the  
9 mountain every day and look and see how  
10 beautiful it is and then to have a bunch  
11 of windmills 650 feet high and ruin it  
12 and what it is going to do, it is not  
13 right.

14 CHAIRMAN GERHARD: Thank you.

15 BRAD BITTNER: My name is Brad  
16 Bittner, 624 Wetzel Run Drive.

17 On the windmills, I am not sure of  
18 the ordinance and how it reads but I  
19 know darn well that a 650-foot close to  
20 700-foot structure, two dozen of them,  
21 requires variance and exception from the  
22 Township and the residents. I don't  
23 even know why we are even -- to this  
24 day, it is something that should be shut  
25 down. That's egregious. There are no

1 wind turbines anywhere near that height  
2 anywhere in this country. These are the  
3 biggest ones that will be built.

4 I work in the Wilkes-Barre area.  
5 Like today, I came up the Turnpike, you  
6 can see those turbines. There is only  
7 about eight of them and they dominate  
8 that mountain. Now, there is nobody  
9 living very close to them. But those --  
10 everybody here has been to Wilkes-Barre  
11 and everybody has seen those. Those are  
12 330 feet, so they are half the size.  
13 You put it in a valley that is this  
14 tight together and double the size, that  
15 is a clear detriment to everybody's  
16 property value.

17 There is no reason on God's earth  
18 that any kind of exception, variance, or  
19 any kind of special treatment should be  
20 given them. That is not something  
21 that's permitted; you know what I mean?

22 If I want to plant a vegetable  
23 garden, I don't need to come to the  
24 Township to ask permission. If I want  
25 to put Godzilla 25 times on top of Broad

1 Mountain, I need to get permission and  
2 an exception. And if the Township wants  
3 that ordinance, I don't see any reason  
4 to give permission.

5 SUPERVISOR GERHARD: Thank you  
6 very much.

7 CHARLENE BITTNER: My name is  
8 Charlene Bittner, 624 Wetzel Run Drive.

9 I am sure quite a few people in  
10 Packer Township, they travel very far to  
11 work or at least 45 minutes. The reason  
12 why we do that is so we have this  
13 quality of life. We can live closer,  
14 but, I mean, I value my quality of life  
15 in Packer Township. I think it is God's  
16 country. It is beautiful. And I am  
17 sure there is a lot of people that would  
18 say, well, you could save two hours out  
19 of their day so they could have this  
20 quality of life.

21 CHAIRMAN GERHARD: Thank you.

22 A VOICE: If I may again, we had  
23 an opportunity to talk to some people up  
24 in Bradleyville recently and when the  
25 question of land values come up I had

1 the gentleman that we were talking to  
2 tell me, he say, try and buy a piece of  
3 ground up there. He says you can't buy  
4 anything. They are right there on that  
5 wind farm right on the mountain. And he  
6 says it is -- he says it has just become  
7 part of the landscape.

8 So if you are going to consider  
9 land values into your equation as far as  
10 making a decision, just talk to the  
11 people who live by it.

12 KENNETH ZULOCK: How tall are  
13 they?

14 A VOICE: I don't know. I am just  
15 telling you that they do live by it.  
16 But I am just saying that I did talk to  
17 people who live right next to them and  
18 they don't have any of these issues that  
19 you are talking about and their land  
20 values, their housing, their values have  
21 not dropped at all. So, if anything,  
22 they have escalated.

23 So I am just giving you something  
24 to think on. It is not only a detriment  
25 to the land value, it is also an

1           increase in the value. Because  
2           windmills are coming, alternative energy  
3           sources are coming, solar, windmill. I  
4           think I just read on the Internet where  
5           green energy has surpassed coal for the  
6           first time, so batteries and everything  
7           else and the escalation of solar and  
8           windmill, it's all coming to pass. So  
9           your ordinance is -- just keep that in  
10          mind.

11                   SUPERVISOR GERHARD: Thank you.

12                   ROBERT SELLER: Robert Seller  
13           chairman of the planning commission. We  
14           spent two nights over the last two weeks  
15           making comments. I know you got them  
16           yesterday. I reviewed them and I am  
17           sure Marty would agree with me that we  
18           hope that you take all of them comments.  
19           I think there was 26 of them. I think  
20           we had a comment of everything and  
21           incorporate it as much as you can into  
22           the new ordinance.

23                   CHAIRMAN GERHARD: Thank you.

24                   SUPERVISOR DAVIS: Thanks, Bob.

25                   MR. WALSH: There was discussion

1           regarding property values, and I know  
2           you had mentioned that, sir. Is there  
3           any information that you have to suggest  
4           that, you know, a wind farm would be  
5           detrimental to the health, safety, and  
6           welfare?

7                   SUPERVISOR GERHARD: No, we are  
8           just looking out for the people in our  
9           Township.

10                   JIM GERHARD: My name is Jim  
11           Gerhard, 2531 Wetzel Run Drive. My  
12           father was born and raised about a  
13           hundred yards from here and my  
14           grandfather. I moved from New Jersey to  
15           come back to where my family is from and  
16           get away from this kind of nonsense; so,  
17           that's all I have to say.

18                   CHAIRMAN GERHARD: Thank you.

19                   A VOICE: One more comment in  
20           closing on all of that. Sometimes I  
21           sound real stupid but Henry Ford was  
22           quoted one time as saying if I ask the  
23           people what they want, they would have  
24           said faster horses. Windmills are the  
25           future. It is where we are going to get

1 power from.

2 Pennsylvania, I believe, is  
3 adopting an ordinance to have carbon  
4 free energy by 2025, I believe. New  
5 York just passed an ordinance, whatever  
6 they passed, that they will be carbon  
7 free by, I think, 2050 in New York.  
8 Green energy is coming. Windmills do  
9 keep getting taller and they keep  
10 getting more efficient. It's where we  
11 are going to get our power from in the  
12 future. So, that's all, thank you.

13 SUPERVISOR GERHARD: Thank you.

14 BOB HOUSER: I just don't  
15 understand what he doesn't and everybody  
16 else that understands in this room, you  
17 know, we residents do not want the  
18 windmills. No matter how much you try  
19 to make it look good, you put down on  
20 paper, it's going to save the world, it  
21 is not going to save the world. You  
22 know, if you want them, take them to  
23 Florida. Put them up down there and see  
24 what the people tell you. See if they  
25 like it.

1                   Everybody wants clean energy  
2                   except when it is in their backyard.  
3                   Well, now it is in our backyard and we  
4                   don't want it. It is as simple as that.  
5                   Why does this have to be so complicated?  
6                   Go put them someplace where somebody  
7                   wants them. It is as easy as that.  
8                   They will find out who wants them and  
9                   put them there. Then when they start  
10                  having health problems and your animals  
11                  get sick or their dogs start doing  
12                  something or something happens to  
13                  somebody, that's all right then, that's  
14                  because they wanted them. Don't push it  
15                  on somebody that doesn't want them,  
16                  because if something happens, what is he  
17                  going to do, tell us to sell our houses  
18                  and everything? Is that what he wants?  
19                  Then we have to all move away if there  
20                  starts to be a problem.

21                  There is a lot of ifs here and you  
22                  put a lot of people's houses and  
23                  people's lives at risk because who knows  
24                  what is going to happen in general.  
25                  They are going to find out in five years



1           it is going to cause cancer or it's  
2           going to do something to my horses or  
3           something or what it's going to do to  
4           anything else around here. And then it  
5           is too late and then they are up and who  
6           is going to make them take them down.  
7           Nobody is going to make them take them  
8           down because they will say it is too  
9           expensive to take them.

10                   And the bond that they are going  
11           to float, who knows in 20 years if it's  
12           going to be enough money to take them  
13           down.

14                   A VOICE: That's a big if. That's  
15           a big problem.

16                   BOB HOUSER: Even if they are in  
17           business, is that going to be enough  
18           money? Like when the percentages go up,  
19           and they put \$300 million aside, what if  
20           it says 600 million a day to take them  
21           down, who is going to care. I am done.

22                   SUPERVISOR GERHARD: Thank you,  
23           Bob.

24                   A VOICE: Why are we here? Why  
25           did you, Susan, and your husband allow

1           this to happen, this ordinance? You are  
2           the reason it happened.

3                   SUPERVISOR GERHARD: 6:00, the  
4           meeting is over.

5                   CHAIRMAN GERHARD: The public  
6           meeting is adjourned at this time.

7  
8                   (At this time the meeting  
9                   in the above-captioned matter  
10                  was concluded.)

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**C E R T I F I C A T E**

I, Teresa A. Crossin, do hereby certify that  
the proceedings were listened to by me and are  
contained fully and accurately to the best of my  
ability in the above matter.

*Teresa A. Crossin*

Teresa A. Crossin, RMR

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWNSHIP OF PACKER, CARBON COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 08-006 AND THE PACKER TOWNSHIP ZONING ORDINANCE REGARDING SPECIFIC STANDARDS FOR THE REGULATION OF WIND TURBINES, WIND MILLS AND WIND FARMS WITHIN THE TOWNSHIP

WHEREAS, the Board of Supervisors of the Township of Packer has duly adopted and does maintain a Zoning Ordinance within the said Township of Packer; and,

WHEREAS, Section 609 of the Pennsylvania Municipalities Planning Code authorizes municipalities to amend their Zoning Ordinance; and,

WHEREAS, the Supervisors of Packer Township believe that it is in the best interest of Packer Township to amend the specific standards and regulations pertaining to the construction and establishment of wind mills, wind turbines and/or wind farms by conditional use in certain areas of the township; and,

WHEREAS, after consideration and comment from the Planning Commission and after a public hearing duly conducted thereon, pursuant to the terms and provisions of the Pennsylvania Municipalities Planning Code, as amended, and the Township of Packer Zoning Ordinance; and

NOW THEREFORE, the Board of Supervisors of Township of Packer hereby adopts the following amendments to the Zoning Ordinance and Ordinance No. 08-006 as follows:

**Section 2. A-1 Agricultural District.** Section 501.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete “Stand Alone Wind Mill” and also “Wind Farm”. Section 501.5 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

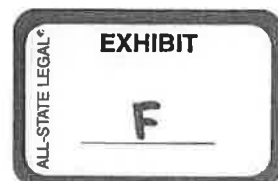
“Stand-Alone Wind Mill”

“Wind Farm”

“Wind Turbine”

**Section 3. R-1 Single Family Residential District.** Section 502.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete “Stand Alone Wind Mill” and also “Wind Farm”. Section 502.5 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

“Stand-Alone Wind Mill”



“Wind Farm”

“Wind Turbine”

**Section 5. C-1 Conservancy District.** Section 504.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete “Stand Alone Wind Mill” and also “Wind Farm”. Section 504.4 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

“Stand-Alone Wind Mill”

“Wind Farm”

“Wind Turbine”

**Section 7: Supplemental Regulations.** Article VIII of the Packer Township Zoning Ordinance shall be amended in order that the existing provisions of Section 802.28 “Stand-Alone Wind Mills and Wind Farms” are hereby replaced with the following new text:

A. **Purposes.** These provisions are intended to provide compatibility between wind turbines, wind mills. Stand-alone wind mill and/or wind farms and adjacent uses by establishing setbacks and controls on noise, shadow flicker and other adverse effects, as well as to minimize potential hazards.

B. The applicant shall demonstrate to the satisfaction of the Zoning Hearing Board and/or the Packer Township Supervisors relative to a conditional use hearing, using technological evidence that the Wind Mills, wind turbines stand-alone wind mills or wind farms must be located where proposed in order to function to industry standards.

C. For the purposes of this subsection, the term “Residential Lot” shall mean : a) a lot that is occupied by a principal existing dwelling unit, or b) a lot that is residentially zoned, is undeveloped, is not owned by a governmental entity, and has a lot area of less than 10 acres.

D. **Setbacks and Maximum Height.** The wind turbine, wind mill, or stand-alone wind mill shall be set back from the lot line of a “Residential Lot” a distance of not less than four times the maximum height to the top of the maximum sweep of the blade of the turbine or mill, unless a written waiver is provided by the owner of such lot. The turbine height shall be measured from the ground level. The setback shall be measured from the base of the turbine or mill to the nearest lot line.

(1) Unless a larger setback is required by another provision of this Section, all wind turbines, wind mills or stand-alone wind mills shall be set back from each

lot line and each street right-of-way a maximum distance equal to 4 times the total height to the top of the maximum sweep of the blade of the turbine or mill. However, a setback from a lot line may be reduced if a written waiver is provided by the owner of such adjacent lot and approved by the applicable board.

(2) Unless a larger setback is required by another provision of this Section, if a wind turbine or wind mill has a total height to the top of the maximum sweep of the blade of the turbine or mill of greater than 250 feet above the adjacent ground level, it shall have a minimum setback from a "Residential Lot" of 1,500 feet.

(3) The maximum height to the top of the maximum sweep of the blade of a wind turbine or wind mill above the adjacent ground level shall be 280 feet.

E. Waterway Setbacks. The applicant shall provide evidence that the base of any wind turbine or wind mill shall be setback the following minimum distances: a) 500 feet from the centerline of a perennial waterway, b) 2,000 feet from the average water level of a public water supply reservoir, and c) 500 feet from any wetland of more than 0.25 acres in size.

F. Removal. The owner of wind turbines or wind mills shall completely remove all above-ground structures and all below-ground improvements that are less than 4 feet below the ground level within 9 months after any wind turbine(s) or wind mill(s) are no longer used to generate electricity. If the owner of the wind turbines or wind mill(s) fails to complete the removal, then the Board of Supervisors may require that the landowner accomplish the removal. Upon the request of either the owner of the wind turbines or wind mills or the landowner, this time limit may be extended to a total of 12 months by the Board of Supervisors if the owner is showing a good faith effort to comply. Driveways shall be removed and disturbed earth shall be re-seeded, unless the applicant provides evidence in writing to the Board of Supervisors that a particular feature is needed to serve a new approved use.

(1) The wind turbine(s) or wind mill(s), the below ground improvements and the driveways to be removed shall be collectively referred to as "Items Subject to Removal".

(2) Prior to the issuance of a Building Permit to construct the Items Subject to Removal, the owner of the turbines shall obtain and deliver to the Township a letter of credit or similar financial assurance acceptable to the Township to secure performance of the owner's obligation to remove the Items Subject to Removal. This financial assurance shall be known as the "Removal Bond".

(3) The Removal Bond shall be equal in value to 110% of the estimated amount of the costs to remove the Items Subject to Removal. The owner shall re-evaluate the

amount of the Removal Bond at least once every five years after the initial estimate was submitted to the Township. A copy of the revised evaluation shall be submitted in writing to the Township. The estimates of the costs shall be provided by an independent licensed Professional Engineer, with the costs of the evaluation paid by the owner. The qualifications of such person(s) who will complete the estimate shall be provided in writing in advance to the Board of Supervisors, and shall be subject to acceptance by the Board of Supervisors, provided such acceptance shall not be unreasonably withheld.

(4) If a Township Municipal Code Official has reason to believe that a wind turbine or wind mill has become a safety hazard, the Municipal Code Official shall send an order in writing to the owner of the wind turbine to require the owner to provide evidence within 7 days that the wind turbine or wind mill is safe, or is actively being repaired to become safe. If the Municipal Code Official determines that insufficient efforts are being made by the owner in a timely manner to resolve safety hazards, the Municipal Code official may require that the wind turbine or wind mill be removed within a reasonable period of time stated in writing by the Municipal Code Official, considering the severity of the hazard.

G. Minimum Height. The minimum height of the lowest position of the wind rotor shall be thirty (30) feet above the ground. Wind Turbines or wind mills shall not be climbable for at least the first 12 feet above the ground level.

H. Codes. The wind turbine or wind mill and its installation shall meet applicable regulations of the Uniform Construction Code and the National Electrical Code. The safety features of the wind turbines shall be certified by the Underwriters Laboratory or an equivalent independent organization. Any new electrical wiring must be underground to the maximum extent feasible.

I. Standards. The design of the wind turbines or wind mills and related on-site facilities shall conform to applicable written industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanisheer Lloyd Wind Energies, or other similar independent certification organizations.

J. High Winds. Wind Turbines or wind mills shall be equipped with a redundant braking system to address high winds. This shall include both aerodynamic over-speed controls(including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes may be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

K. Colors. The color of the wind turbine or wind mill should be non-obtrusive, such as

white, off-white or gray, unless the applicant shows that an alternative is necessary to reduce hazards to birds and bats.

L. Lighting and FAA approval. Wind turbines or wind mills shall meet any lighting requirements or any other requirements of the Federal Aviation Administration (FAA). Any other exterior lighting visible from beyond the property, other than security lighting, shall be described on the plans and be subject to approval by the Zoning Hearing Board and/or the Board of Supervisors, as the case may be. The applicant shall provide evidence of the successful completion of FAA review and issuance of any required FAA approval prior to receiving building permits.

(1) Applicant should provide documentation of the response to the Notice of Proposed Construction Form required to be submitted to the FAA and the PA DOT Bureau of Aviation. The Notice of Proposed Construction Form is required to be completed to provide for pilot hazard awareness with low altitude flight requirements. Example: The wind mill facility located near Mahanoy City is a registered location and shown on a map provided by the Pa DOT Bureau of Aviation.

M. Signs. Wind turbines or wind mills shall not display an advertising, except for a single sign of up to 5 square feet to identify the manufacturer. Safety warning signs and emergency contact information signs may also be displayed. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations of the wind mills/wind turbines/wind farm.

N. Warning Sign. At least one warning sign shall be placed near any electrical transformer or substation.

O. Guy Wires. If guy wires are used, and they are not within a fence, they shall be marked near their base with reflectors, flags, reflective tape, aviation marker balls or similar method.

P. Interference. The applicant shall document that the radio, television, telephone or reception of similar signals from nearby properties will not be disturbed or diminished. The applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television, or similar signals, and shall mitigate any harm caused by the Wind turbine(s). For example, the applicant may be required to provide a resident with an alternative method of receiving television signals if there is significant interference.

Q. Support Facilities. Accessory electrical facilities are allowed, such as a transformer or mechanical buildings, provided they meet principal building setbacks. In addition, an accessory building may house necessary maintenance and safety equipment, provided it is setback a minimum of 200 feet from any exterior line. Landscaped visual screening shall



surround any buildings or electrical substations, except at a driveway crossing. Such screening shall primarily include evergreen trees with an initial height of 6 feet. Such planting shall be outside of any fence around such buildings or electrical substations.

R. Forest Preservation. The site plan shall show proposed driveways, turbines, mills and areas of woods proposed to be cleared or preserved. The delineation of areas of woods to be cleared or preserved shall be binding upon the project, unless a revised plan is later submitted for approval. The applicant shall show that the clearance of woods has been held to a reasonable minimum, and in no case shall there be clearance of more than 10 percent of the total woodland area on the tract for use.

S. Noise. The audible sound from the wind turbine(s) or wind mill(s) shall not exceed 39 A-weighted decibels, and shall also not exceed 39 c-weighted decibels, as recommended by the World Health Organization and is measured at the lot line of a "Residential Lot", unless a written waiver is provided by the owner of such dwelling. This requirement shall be a maximum noise level using Lmax standard, and not based upon an average. The modeling of noise shall follow published standards for precision of the American Wind Energy Association and AWEA Standard 2.1-1989 titled "Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I" First Tier for minimum standards for precision methods of measuring and reporting acoustic emissions.

(1) The above maximum noise limits shall be reduced to 36 A-weighted and 36 C-weighted decibels between the hours of 10 pm and 7 am. However, the noise limits shall not be reduced below 39 decibels where the applicant provides evidence that the current continuous background (ambient) sound level without the wind turbines would be higher than 36 decibels.

(2) All required noise studies and testing shall be completed by a qualified independent professional specializing in noise analysis. The qualifications of the person(s) conducting the analysis shall be included in the application. ANSI standards shall be used for calibration of the noise meter.

(3) With the application, the applicant shall provide a written noise study that projects the maximum sound levels at the nearest five (5) dwellings, and that recommends measures that may be used as conditions by the applicable Board hearing the matter in order to minimize noise impacts. The noise study shall document compliance with the A- and C-weighted decibels level requirements of this Section.

(4) The applicant shall provide an independent written test of actual noise produced by the project upon completion, and every two subsequent years after the project is completed, to document compliance with the noise standards in this

Section. If the project will involve more than 10 total wind turbines/mills , then the noise study shall also be completed after each 10 wind turbines/mills are put into service. If the testing finds that the noise levels in this Section are being violated, then the owner of the wind turbines/mills shall immediately take the wind turbine(s)/mill(s) out of service until such modifications, replacement, or repairs are made to the wind turbine(s)/mill(s) as are required or necessary to make them comply with the noise levels of this Section.

(5) In addition to the noise studies provided above, at any time when the Zoning Officer has reasonable cause to believe that the noise limits of this Ordinance are being violated, the Zoning Officer may request that the Township or its authorized agents conduct its own tests to ascertain compliance with the noise limits. If the tests do not find a violation, then the Township shall be responsible to pay for the costs of such Township-sponsored tests.

(6) If the Township institutes an enforcement action because of a violation of the noise limits, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Township, the judgment shall require the owner of the project to pay all of the Township's reasonable costs and expenses to prove non-compliance with the noise requirements, including the tests to determine the noise levels. Such costs shall be paid within 30 days by the owner of the project after the final judgment. In the event the owner does not pay such costs within 30 days, the Township may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

T. Land Development Approval. "Land Development " approval shall be needed for the installation of two or more wind turbines/wind mills.

U. Hydrogeologic. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide a hydrogeologic study by a qualified professional. Such study shall consider impacts of the project upon groundwater recharge, adjacent water supplies and water quality, and include recommendations for conditions that may be established to minimize negative impacts. While it is recognized that a municipality does not have the authority to regulate blasting operations, the hydrogeologic study shall also consider potential impacts of blasting upon groundwater supplies and wetlands.

V. Birds and Bats. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment,

including any new lot(s) which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide an analysis of the impacts of the project upon birds and bats within a five mile radius of the project boundaries, by a qualified professional. Such study shall include recommendation for conditions that may be established to minimize negative impacts.

W. Shadow Flicker. Shadow flicker is defined as the flickering effect caused when rotating wind turbine/wind mill blades periodically cast shadows through constrained openings. The applicant shall provide an analysis with a map of the shadow flicker impacts of the project upon any dwellings that will be impacted by this effect. The analysis shall be conducted by a qualified professional using generally accepted modeling methods, and shall estimate the number of hours per year that dwellings will be impacted by shadow flickering. No lot line of a lot occupied by a dwelling and no outdoor recreation field, outdoor recreation court or outdoor playground within a public park or homeowner association recreation area shall be affected by shadow flicker for a total of more than 8 hours per year, and no more than 12 total minutes per day. This requirement shall only apply to dwellings and recreational facilities that existed at the time of submission of initial site plans to the Township. Such analysis shall include recommendations for conditions that may be established to minimize the number of affected dwellings or recreational facilities, the hours affected and the severity of the impacts from shadow flicker. This provision shall not apply to a dwelling or recreational facility if a written and signed waiver is provided by the owner of an affected property.

(1) In addition to the analysis provided above, at any time when the Zoning Officer has reasonable cause to believe that the shadow flicker is in violation of this subsection, the Zoning Officer may request that the Township or its authorized agents conduct its own tests to ascertain compliance with the shadow flicker provisions of this subsection. If the tests do not find a violation, then the Township shall be responsible to pay for the costs of such Township-sponsored tests.

(2) If the Township institutes an enforcement action because of a violation of this subsection, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Township, the judgment shall require the owner of the project to pay all of the Township's reasonable costs and expenses to prove non-compliance with the shadow flicker requirements, including the tests to determine the amount/times of shadow flicker. Such costs shall be paid within 30 days by the owner of the project after the final judgment. In the event the owner does not pay such costs within 30 days, the Township may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

X. Traffic. The applicant shall submit a traffic study which shall identify the public roads to be used for the construction, operation or maintenance of the wind turbine/wind mill/wind farm project, and which analyzes how such traffic will be safely accommodated on public roads, considering the length and weight of truck loads, the weight limits of bridges, the geometry of intersections and the slope of roads. The applicant shall have the burden of proof showing that the route will be able to safely accommodate the traffic without creating hazards or damage to roads or bridges.

(1) The Packer Township Engineer, or a qualified third party engineer hired by Packer Township and paid for by the Applicant, shall document road conditions prior to construction. Such engineer shall document road conditions again within 30 days after construction is complete, or as weather permits.

(2) Packer Township may require the Applicant to post bond for damage to the road in compliance with state regulations and Township Ordinances.

(3) Any road damage caused by the applicant or its contractors shall be promptly repaired at the Applicant's expense as specified in a Road Maintenance Agreement to be made between the Township and the applicant, as applicable.

(4) If access to the Wind Turbine/Wind Mill/Wind Farm shall be provided by means of a public street or easement to a public street, all such easements shall be improved to a width of not less than ten (10) feet with a durable, dust-free, all weather surface. No access easement shall exceed a grade of fifteen (15%) percent.

(5) The Applicant shall demonstrate that it has appropriate financial resources to ensure prompt repair of damaged roads.

Y. Emergencies. The Applicant shall submit an emergency response plan, which shall address matters such as firefighting. The emergency response plan shall be submitted to local fire officials and the Carbon County Emergency Management office for comment, and shall be found to be acceptable by the Board hearing the matter. The Board may establish reasonable conditions to address fire hazards. The applicant shall offer to provide training to local emergency responders in the proper response to on-site hazards, at no costs to the Township. If locked gates control access to the property, Township fire officials shall be provided with keys, security codes or similar methods to access the property in an emergency.

(1) The owner of the turbines/mills shall prepare and submit a Spill Prevention and Control program. Sufficient equipment shall be kept on-site to contain reasonably expected spills from the turbines/mills into the groundwater or surface water or such equipment shall be funded as necessary by the applicant if it will be

maintained by one or more emergency service providers in the vicinity.

(2) The applicant shall provide a fire control plan, including details about any fire suppression system proposed for any wind mill/wind turbine or wind farm or attendant structures.

Z. Lightning and Fire Hazards. The project shall include suitable measures to reduce hazards from lightning strikes and other fire hazards. Examples of these types of measures may include, but are not limited to use of non-combustible oils, heat barriers around combustible materials, smoke fire detection systems inside the turbines/mills, and/or fire suppression systems. Those measures shall be described in writing as part of the application, and may be made a condition of approval.

AA. Property Values. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot which may be created from any existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall submit an analysis by a qualified appraiser of the actual impacts upon residential property values of a similar set of wind turbines in a mostly rural community within the United States.

(1) Such analysis shall compare changes in property values of impacted dwellings to changes in property values of non-impacted dwellings over the same time period. Properties within a one mile radius of a wind farm shall be considered, as well as properties outside that radius. The study shall be completed by an appraiser who has an active MAI, SRA or SRPA certification from the Appraisal Institute. The appraiser must also have a Pennsylvania appraiser license. Such analysis shall include recommendations for conditions that may be established to minimize the impact upon residential property values.

BB. Ice Hazards. The Board hearing and considering the application may place conditions upon an approval to address ice throw hazards, such as requiring mechanisms to sense heavy ice buildup, and which allow remote controlled or automatic shutdown of turbine/mill blades.

CC. Visual Analysis. The applicant shall present at a hearing to consider the application, an analysis of the visual impacts of the project. This analysis shall accurately illustrate the panoramic visual impact from 5 different locations, as viewed from 2 public roads and from 3 dwellings in various areas that will experience the greatest impacts. Additionally the applicant shall present a three-dimensional computer generated surface model that accurately depicts the wind turbines/wind mills in proper scale and location in relationship to the surrounding terrain. No less than 5 viewpoints, at such locations as may be determined by the board considering the application, shall be presented.

(1) Properties adjacent to the wind farm will be designated so impacts to adjacent properties are shown separately. Properties up to a radius of five miles will be determined. Impacts per each mile radius will be shown separately

DD. Expert Credentials. The qualifications of experts who provide information or testimony regarding compliance with technical standards of this Section shall be provided to the Zoning Officer and the Board conducting the hearing considering the application. The Board conducting the hearing considering the application shall have the authority to determine the credibility of the testimony and reports of various experts and may weigh the value of the testimony and reports as a result.

EE. Fencing and Security. The applicant shall show the locations and describe the height and materials of the fencing that is proposed. The Board conducting the Hearing and considering the application may require additional fencing of up to 8 feet in height enclosing the individual wind turbines/wind mills and related equipment as a condition, if determined to be needed for security reasons. Elevator doors servicing wind turbines/wind mills shall have secure locks.

FF. Inspections. The owner of the wind turbines/windmills shall engage a Professional Engineer to inspect the wind turbines/wind mills to ensure that are structurally sound and operating properly. If the inspection report recommends that repairs or maintenance be completed, the owner of the wind turbines/wind mills shall provide a written schedule to the Township for completion of the work. Such inspections shall occur a minimum of once every two years after a wind turbine becomes operational. A copy of the inspection report shall be provided in writing to the Township.

GG. Electrical Setbacks. Each wind turbine/wind mill shall be setback a minimum distance of 2 times the total height to the top of the maximum sweep of the blade of the turbine/mill height from any ground electric power line, telecommunications line or pole or tower that supports such line. This requirement shall not apply for a line that may be approved to be connected to a turbine/mill and that would not adversely affect other customers if the line was damaged.

HH. Ridgetops. Where practical and feasible considering wind conditions and topography, and where other alternatives exist, the applicant shall show that they have worked to minimize the number of wind turbines/wind mills placed along the tops of the most visually prominent ridgelines, as viewed from public roads and existing dwellings.

II. Insurance. During all times of on-site construction and operation and until completion of removal, the owner of the wind turbines/wind mills shall maintain a current general liability insurance policy covering bodily injury and property damage, with a minimum limit of \$1 million per occurrence and \$2 million in the aggregate. Certificates shall be made available to the Board of Supervisors of Packer Township upon request.

JJ. Complaints. The operator shall publicize the phone number, mailing address and email address of a specific contact person who is authorized to receive complaints and questions from neighbors and Township officials on behalf of the operator. Such information shall be sent by first class mail to all adjoining property owners and all property owners of lots within 300 feet of the exterior lot line of any lot on which wind turbines/wind mills/wind farms are located. Such mailing shall occur prior to commencing of operations and at any subsequent time when the phone number, mailing address or email address may change. Such person or their designee shall regularly respond to such complaints and questions.

KK. Natural Diversity. The applicant shall complete a Pennsylvania Natural Diversity Inventory search for the affected land areas, and submit the results of that search and any follow-up written communications from state or federal agencies on the matter to the Board presiding over the Hearing considering the application.

LL. Structure Safety. The applicant shall demonstrate that the proposed Wind Mills/Wind Turbine or Wind Farm are safe and the surrounding areas will not be negatively affected by the structure failure, falling ice or other debris, electromagnetic fields or radio interference. All Wind mills/Wind turbines shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania Registered Professional Engineer that all wind mills/wind turbines will be designated and constructed in accord with accepted engineering practices and all requirements of any applicable construction code. Within forty-five (45) days of completion of construction and before initial operation, the owner and/or operator of the wind farm/wind mills/wind turbines shall provide a certification from a Pennsylvania Registered Professional Engineer to the Township Zoning Officer that the Wind Farm/Wind Mills/Wind Turbines and all structures comply with all applicable regulations.

MM. Licenses: Other Regulations. The applicant shall demonstrate that the required permits and licenses from the Federal Energy Regulatory Commission, The Pennsylvania Department of Environmental Protection, the Pennsylvania Public Utility Commission, the Federal Aviation Administration and other agencies have been obtained. The applicant shall also document compliance with all applicable state and federal regulations by providing to the Township copies of all required documents, studies, and responses; (e.g. National Environmental Policy Act, Pennsylvania Natural Diversity Index Submission, Pennsylvania Historical and Museum Commission compliance)

NN. Vibration. The applicant shall demonstrate that there will be no vibration associated with the operation of the wind mill/wind turbine or wind farm which is detectable without instruments at or beyond the property line; and no use shall generate any vibration which is capable of causing damage to buildings, structures, equipment alignment, or structural soundness.

OO. Soil Erosion and Sedimentation Control; Stormwater Management. The applicant shall demonstrate that any soil disturbance shall comply with the soil erosion and sedimentation control requirements of the Carbon County Conservation District and the Pennsylvania Department of Environmental Protection, and no approval shall be granted under this ordinance until the applicant provides a copy of the approved soil erosion and sedimentation control plan and any required permits. A stormwater control plan and stormwater management facilities plan shall also be provided in accord with the Township Stormwater management requirements.

PP. Maintenance; Identification; notice of problems. Wind Mill/Wind Turbine/Wind farm maintenance and continued compliance with this Ordinance shall be monitored by the Zoning Officer. There shall be affixed to the Wind Mill/ Wind Turbine and security fence in an accessible, visible place, the name and address of the owner(s) and a 24 hour emergency telephone number. This information shall be kept current by the owner(s). The zoning officer shall inform the owner(s) of any safety problems, maintenance problems, or any matter relative to the Wind Mill/Wind Turbine in accordance with the enforcement requirements of this ordinance, sent to the posted address. If the problem outlined in the letter from the Zoning Officer is not resolved within thirty (30) days of receipt of the notice or within such other period a allowed in writing by the Zoning Officer, this shall constitute a violation of the ordinance. An unresolved violation shall constitute grounds for revoking the permit for the Wind Mill/Wind Turbine/Wind farm.

QQ. Braking System. Wind mills/Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls ( including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered as sufficient braking system for overspeed protection.

RR. Miscellaneous: The Wind Mills/Wind Turbines/Wind Farm shall comply with all other applicable regulations and requirements as set forth in the Zoning Ordinance.

SS. Battery Energy Storage Systems. These systems including energy management, backup power, load leveling, frequency regulation, voltage support, and grid stabilization facilities, as well as any other type of battery energy storage facility.

(1) Location. Any proposed battery energy storage system shall be located entirely within an enclosed building or enclosed buildings. The building(s) shall be located a minimum distance equal to 4 times the total height to the top of the maximum sweep of the blade of the turbine or mill from any property or street right-of-way line. However, a setback from a lot line may be reduced if a written waiver is provided by the owner of such adjacent lot and approved by the applicable board.



(2) Containment. The applicant shall propose containment facilities on the site to store any leakage from stored battery cells, the cascading failure of battery cells, or the release of the stored energy during an incident. The facilities shall have the capacity to completely contain all released materials, within an earthen impoundment, an underground tank, or other storage-type facility. Any earthen containment facilities shall be completely lined with a composite liner made of a geomembrane along with a geosynthetic clay liner to prevent infiltration into the underlying soils. More than one (1) such facility is allowed to be installed on the site. All materials stored in containment facilities shall be disposed of in accordance with applicable United States Environmental Protection Agency (EPA) regulations.

TT. Power Purchase/Sale Agreements. Any Power Purchase agreement or other agreement for the sale of power generated from the stand alone wind mills, wind farms and wind turbines is required to be provided by the applicant. Applicant of a stand-alone wind mills, wind farms and wind turbines to be connected to the utility grid shall provide written authorization from the local utility company to the Township acknowledging and approving such connection. The local utility provider shall be contacted to determine grid connection and net metering policies.

UU. Animal Life, Fish and Fowl. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot(s) which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide an analysis of the impacts of the project upon livestock, animal life, fish and fowl within a five mile radius of the project boundaries, by a qualified professional. Such study shall include recommendation for conditions that may be established to minimize negative impacts.

**Section 8. Repealer.**

All ordinances or parts thereof inconsistent with the provisions of this Ordinance Amendment are hereby repealed to the extent of inconsistency.

**Section 10. Effective Date:**

This Ordinance shall take effect and be in force after its enactment by the Board of Supervisors as provided by law.

ORDAINED AND ENACTED as an Ordinance by the Board of Supervisors of the Township of Packer, Carbon County, Pennsylvania, in lawful session duly assembled this

\_\_\_\_\_ day of \_\_\_\_\_, 2019.

TOWNSHIP OF PACKER

by: \_\_\_\_\_  
Chairman of the Supervisors

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

ATTEST: \_\_\_\_\_  
Secretary

The Standard Speaker (Under act P.L. 877 No 160. July 9,1976)  
Commonwealth of Pennsylvania, County of Luzerne

PACKER TOWNSHIP BOARD OF SUPERV  
5550 QUAKAKE ROAD  
WEATHERLY PA 18255

Account # 216192  
Order # 82358531  
Ad Price: 420.48

WIND TURBINES WIND MILLS

Ann Marie Fortese

Being duly sworn according to law deposes and says that (s)he is Billing clerk for The Standard Speaker, owner and publisher of The Standard Speaker, a newspaper of general circulation, established in 1865, published in the city of Hazleton, county and state aforesaid, and that the printed notice or publication hereto attached is exactly as printed in the regular editions of the said newspaper on the following dates:

07/21/2019

Affiant further deposes and says that neither the affiant nor The Standard Speaker is interested in the subject matter of the aforesaid notice or advertisement and that all allegations in the foregoing statement as time, place and character or publication are true *Ann Marie Fortese*

Sworn and subscribed to before me  
this 2nd day of August A.D., 2019

*Sharon Venturi*  
(Notary Public)

Commonwealth of Pennsylvania - Notary Seal  
Sharon Venturi, Notary Public  
Lackawanna County  
My commission expires February 12, 2022  
Commission number 1254228  
Member, Pennsylvania Association of Notaries

Legal Notices

PUBLIC NOTICE

NOTICE IS GIVEN, that the Packer Township Board of Supervisors, Carbon County, Pennsylvania, will conduct a special meeting for the sole purpose of acting upon the following Ordinance on July 30, 2019 at 6:00 p.m. in the Township Building, 2234 Hudson Drive, Weatherly, Pennsylvania.

The purpose of the special meeting is to consider an amendment to the Ordinance No. 08-006 relating to specific standards for the regulation of wind turbines, wind mills and wind farms within the township. The proposed amendments address the following:

- Section 2. A-1 Agricultural District
- Section 3. R-1 Single Family Residential District
- Section 5. C-1 Conservancy District
- Section 7: Supplemental Regulations
- Section 8. Repealer
- Section 10. Effective Date

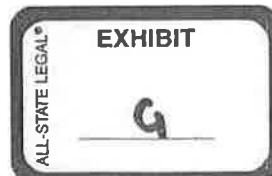
Amendments to the ordinance have been made since its initial advertisement and which amendments include the following:

- 1- increasing the depth of below ground improvements to be removed from 3 to 4 feet under ground in Section 7 F
- 2- Decreasing the maximum height of any wind mill or wind turbine from 350 feet to 280 feet in Section 7 D.
- 3- reducing the decibel level from 45 to 39 decibels at a lot line of a residential lot in Section 7 S.
- 4- increasing the setback of any battery storage system buildings in Section 7 SS.
- 5- Adding section 7 UU which requires a study of the impacts upon animal, livestock, fish and fowl life within a five mile radius of any proposed accumulation of 2 or more wind mills or turbines on a lot.
- 6- reducing the amount of exposure of dwellings to shadow flicker from 20 hours per year to 8 hours per year or a maximum of 12 minutes per day.

Complete copies of the proposed Ordinance Amendment are available for public inspection at the Township Office located at 2234 Hudson Drive, Weatherly, Pennsylvania, the Carbon County Law Library, Courthouse, Jim Thorpe, Pennsylvania and The Standard Speaker, 23 North Wyoming Street, Hazleton, Pennsylvania.

BY THE ORDER OF THE SUPERVISORS OF PACKER TOWNSHIP

Robert T. Yurchak, Esquire, Solicitor  
1 East Catawissa Street  
Nesquehoning, PA 18240



SPECIAL MEETING  
BOARD OF SUPERVISORS  
PACKER TOWNSHIP

SPECIAL MEETING

BOARD OF SUPERVISORS  
SUZIE GERHARD, CHAIRMAN  
TERRY DAVIS  
CORY GERHARD  
ROBERT YURCHAK, SOLICITOR  
STEPHANIE STOLPE, TOWNSHIP SECRETARY

TUESDAY, JULY 30, 2019

PACKER TOWNSHIP  
2234 HUDSON DRIVE  
WEATHERLY, PENNSYLVANIA

TERESA A. CROSSIN, RMR  
NOTARY PUBLIC

KEYSTONE COURT REPORTING AGENCY, INC.  
4099 BIRNEY AVENUE, SUITE 9  
MOOSIC, PA 18507  
(570) 558-3011 (800) 570-3773  
FAX (570) 558-3014

KEYSTONE COURT REPORTING AGENCY



1                   CHAIRMAN GERHARD: I would like to  
2 call the special meeting of the Packer  
3 Township Supervisors to order for the  
4 sole action upon adoption of Ordinance  
5 08006.

6                   Please stand for the pledge of  
7 allegiance.

8                   (At this time the pledge of  
9 allegiance was recited.)

10                  SECRETARY STOLPE: Roll call.  
11 Sue?

12                  CHAIRMAN GERHARD: Yes.

13                  SECRETARY STOLPE: Cory?

14                  SUPERVISOR GERHARD: Yes.

15                  SECRETARY STOLPE: Terry.

16                  SUPERVISOR DAVIS: Yes.

17                  SECRETARY STOLPE: Bob.

18                  THE SOLICITOR: Yes.

19                  SECRETARY STOLPE: Stephanie is  
20 here.

21                  There will be a three-minute time  
22 limit on all comments.

23                  CHAIRMAN GERHARD: I would like to  
24 open the meeting to the floor for  
25 comments only.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. STAHL: Good evening. My name is Brian Stahl. I am here on behalf of Broad Mountain Power. How are you.

I had just a question for the Supervisors in advance. We had submitted two right to know requests for audio recordings of the July 2nd hearing on this proposed ordinance and the July 2nd Supervisors' meeting. I just wanted to make sure I confirmed with Solicitor Yurchak in advance of the meeting that those audio recordings, were being preserved; is that correct?

SUPERVISOR DAVIS: Is that a question?

MR. STAHL: That's a question.

SUPERVISOR DAVIS: We are asking for comments.

MR. STAHL: The comment is that I would ask you to preserve all of those records as it is the obligation of the Township. We made the request for those records on July 3rd, we are now here on July 30th, so I am wondering what the need for the significant delay is.

1 SUPERVISOR DAVIS: We will take  
2 that into consideration.

3 MR. STAHL: Thank you. And then I  
4 do have some additional questions that I  
5 would just like to get into the meeting  
6 minutes. You can choose to answer them  
7 or not.

8 In the section related to maximum  
9 height, why did the Supervisors -- what  
10 is the rationale for limiting the wind  
11 turbine height in the proposed ordinance  
12 amendment to 280 feet?

13 SUPERVISOR DAVIS: That's a  
14 question.

15 MR. STAHL: It is.

16 SUPERVISOR DAVIS: We are not  
17 answering questions.

18 MR. STAHL: Did the Supervisors  
19 consult with any experts regarding the  
20 280-foot maximum height limit?

21 SUPERVISOR DAVIS: Is that a  
22 question?

23 MR. STAHL: It is.

24 SUPERVISOR DAVIS: We are not  
25 answering questions.

1 MR. STAHL: Where did the 39  
2 decibel limit from Section 802.28S come  
3 from?

4 SUPERVISOR DAVIS: Is that another  
5 question?

6 MR. STAHL: It is.

7 SUPERVISOR DAVIS: We are not  
8 answering questioning.

9 MR. STAHL: What is the ambient  
10 noise level here in the Township? Does  
11 anybody know?

12 SUPERVISOR DAVIS: Bob.

13 THE SOLICITOR: You can read the  
14 questions into the record. That is as  
15 much as it is going to be. They are not  
16 going to answer questions. This is for  
17 comments and comments only. That's all  
18 that is required under the Openings  
19 Meetings Act.

20 MR. STAHL: I don't believe so  
21 because I believe these are  
22 substantive --

23 THE SOLICITOR: I have it right  
24 here. Do you want to read it?

25 MR. STAHL: No, I just want to



1           make a comment first. I believe there  
2           are substantive changes to the proposed  
3           ordinance that the Supervisors are  
4           considering, so I believe that there is  
5           another step that's required before you  
6           adopt it this evening. I think these  
7           are substantial changes. I am just  
8           wondering what the Township's position  
9           is on the changes that were made.

10                    The height was reduced  
11           significantly to only 280 feet. That is  
12           beyond the industry standard for the  
13           wind turbine industry, so I am wondering  
14           what the Supervisors' position is and  
15           the guidance that they are getting.

16                    In addition, the decibel limit  
17           being 39 decibels, that, again, is well  
18           beyond industry standards and I am  
19           wondering what the ambient noise is here  
20           in the Township. I believe that's fair.

21                    I am also wondering why the  
22           property setback of four times the  
23           turbine height was introduced.

24                    SUPERVISOR DAVIS: Ask these  
25           people.

1 MR. STAHL: I am asking the  
2 Supervisors who are proposing to adopt  
3 this.

4 SUPERVISOR DAVIS: We are not  
5 answering questions.

6 MR. STAHL: Why were the removal  
7 of the below ground improvements changed  
8 from 3 feet to 4 feet, Section 802.28F?  
9 What was the rationale for changing  
10 that?

11 SUPERVISOR DAVIS: That's a  
12 question.

13 MR. STAHL: Are you going to  
14 answer the question?

15 SUPERVISOR DAVIS: No.

16 MR. STAHL: Why did the Township  
17 change the shadow flicker limits that  
18 were set forth in the original ordinance  
19 that was circulated to both the Township  
20 and the County Planning Commission? Can  
21 you please tell me what the basis for  
22 reducing the shadow flicker was?

23 SUPERVISOR DAVIS: Time is up.

24 MR. STAHL: I just have a couple  
25 more questions. Please control the

1 audience. I think I have a right --

2 THE SOLICITOR: There is a time  
3 limit.

4 MR. STAHL: Then I am going to  
5 submit a list of questions to the Board,  
6 if the Board could read these and  
7 consider these, whether they are going  
8 to answer any of these questions. I  
9 believe they are valid under this  
10 proposed ordinance and I believe the  
11 Township is acting hastily in adopting  
12 this ordinance without consulting the  
13 proper experts. Whether you are for  
14 this project or against this project --

15 JOHN KOVATCH: I am John Kovatch  
16 representing Kovatch Enterprises. I  
17 would just like to get on the record  
18 that we vigorously oppose this ordinance  
19 as it will limit our ability to use our  
20 property as we see fit and limit our  
21 financial gains from this property.

22 I also have -- I will close with a  
23 question that you won't answer -- why  
24 for seven years, over seven years have I  
25 come here with various people on

1 windmills and Packer Township warmly  
2 accepted this project, in fact, put  
3 zoning in place to let it happen, why  
4 after seven years is this all of a  
5 sudden a bad idea. Thank you.

6 CHAIRMAN GERHARD: Anyone else?

7 BOB JAIS: I am Bob Jais, I am in  
8 favor of it. Pass it. Thank you.

9 CHAIRMAN GERHARD: Mr. Dulcey.

10 JAMES DULCEY: My name is James  
11 Dulcey. I reside at 174 Dulcey Road. I  
12 would like to be on record, I would like  
13 to be oppose anything that would hurt  
14 farming or agricultural in any way. And  
15 windmills have been on farms for  
16 hundreds of years.

17 CHAIRMAN GERHARD: Thank you.

18 WAYNE POSTUPAK: Wayne Postupak.  
19 Again, we are landowners up on the  
20 mountain. We are not included in the  
21 project, but I think to hastily adopt an  
22 ordinance that has significant impact on  
23 being able to use our ground, we  
24 vigorously oppose any such ordinance, no  
25 matter what the use is. I think you

1 need to do more investigation.

2 CHAIRMAN GERHARD: Thank you.

3 Anyone else?

4 BOB HOUSER: My name is Bob  
5 Houser. I live at 1266 Quakake Road. I  
6 am against this. I am for the change,  
7 the ordinance. I don't understand why  
8 we have to put up with this. Nobody  
9 wants it. Look at this place, it is  
10 packed. You can see that all of these  
11 people are here against this. It's  
12 going to hurt people's health,  
13 livestock, just the mountain, itself,  
14 and the wildlife. They don't care.

15 He has had that land there for how  
16 many years and didn't really care and  
17 when they put the other ordinance in, it  
18 was 80 to 100 feet or whatever it is,  
19 that was for these little windmills for  
20 like to generate electricity on a house  
21 or something, not a giant windmill to  
22 power a city. This is a joke.

23 CHAIRMAN GERHARD: Thank you.

24 Anyone else?

25 TONY STANG: My name is Tony

1 Stang. I live at 1708 Round Head Drive.  
2 I am for this. And the big thing that  
3 is a problem to me is this is in all  
4 forms industrialization. They hide  
5 behind wind farms and think that it is  
6 agricultural but their machines, they  
7 are 600 feet high, they are going to  
8 make noise. They are going to pollute.  
9 They are going to destroy the  
10 environment and affect the community.

11 You can't put 21 600-foot  
12 structures on a mountain and then tell  
13 us you won't see them. You wouldn't  
14 hear them. It's like they won't even be  
15 there. Not to mention the infrasound  
16 and electromagnetic field that nobody  
17 knows but a lot of people are sensitive  
18 to it. And if half the people here are  
19 sensitive to it, their side will be,  
20 well, this person isn't affected, so you  
21 are crazy.

22 It is wrong. I am for this  
23 ordinance.

24 CHAIRMAN GERHARD: Thank you.

25 Anyone else?

1 COLLEEN GERHARD: My name is  
2 Colleen Gerhard. I live on 180  
3 Yokomo(sic) Road. I am all for the  
4 ordinance. We do not need this kind of  
5 project in our community. It is  
6 destructive. It is not an asset.

7 CHAIRMAN GERHARD: Thank you.

8 AL BOSTOR: My name is Al Bostor.  
9 I live at 119 Lake Drive, Nesquehoning.

10 I find it a bit ironic that we  
11 have a Canadian company with American  
12 subsidiaries wanting to put these  
13 windmills up.

14 The top of that hill is parallel  
15 to state game lands, so anything that is  
16 affected there affects the wide range of  
17 state game lands. To strip a lot of the  
18 trees and brush and stuff off the top of  
19 that hill has a dramatic impact on the  
20 water flow down into Lake Hauto where  
21 there are a number of state identified  
22 virgin streams with wildlife in them.  
23 That drainage will come right down into  
24 Lake Hauto because the top of those  
25 hills will be basically barren.

1           The power generated here, my  
2           understanding, goes to another state.  
3           It does not serve any purpose for the  
4           people here. We don't get a damn thing  
5           out of this.

6           Secondly, without subsidies from  
7           the government, these projects would not  
8           be possible because they are not cost  
9           effective. You take the government  
10          subsidy out of here and not one of these  
11          guys could start a small business  
12          funding this thing from the beginning.  
13          So without the government, they are out  
14          of business. And the cost of energy  
15          from these things, instead of -- if you  
16          go on the website right now, you want to  
17          buy green energy instead of your regular  
18          electricity, it is about 14 to 15 cents  
19          whatever kilowatt hour, whatever,  
20          instead of 6 or 7 that we are paying  
21          now; so, we are going to double.  
22          Without the subsidies, that cost of that  
23          power is probably 45, 50, 60 cents  
24          without the subsidies. Okay. We really  
25          don't like that.



1           The second thing I have not been  
2           able to find is if this thing is  
3           approved and these windmills go in, some  
4           being 65 floors high, stories high, what  
5           happens at the end. I am only told that  
6           they disarm the arms of the windmill and  
7           the rest of the structure stays in  
8           ground. I want to know what funds, what  
9           billions or millions of dollars have  
10          been set aside to dismantle these things  
11          to take those eyesore down or does the  
12          government pick up the bill again for  
13          all of the crap that's left in place and  
14          all the land that it has destroyed  
15          underneath it.

16                 I have not seen any figures to  
17                 suggest to me that that money is in  
18                 hand, is accessible. I never seen a  
19                 game plan -- and I have missed some of  
20                 the meetings -- that says these things  
21                 will come down at a certain period of  
22                 time. I have not seen that. It may  
23                 have been here; I have not seen those  
24                 records.

25                 I have also on the Internet seen

1 that there is roughly 1500 windmills  
2 that are inoperable today. They require  
3 minimum maintenance but when they need  
4 maintenance, there is almost no ability  
5 to really maintain them. When they go  
6 dead, they go dead, they are out of  
7 service.

8 So my comment is I am not even for  
9 the ordinance, I don't even think the  
10 ordinance stands. I don't even want  
11 them here. Because I don't think that  
12 they can do anything except leave  
13 monuments of destruction.

14 SUPERVISOR DAVIS: Your time is  
15 up.

16 CHAIRMAN GERHARD: Thank you.

17 BRADFORD BITTNER: My name is  
18 Bradford Bittner, 624 Wetzel Run Drive.

19 The first time I ever saw wind  
20 turbines was in California, Southern  
21 California. I landed at Ontario  
22 Airport. And this was 22 years ago.  
23 Those windmills are all sitting there  
24 vacant. The company did not take them  
25 out, did not do anything with them.

1 They are sitting there as a blight in  
2 the desert. And there is about 300 of  
3 them there.

4 And his bond, I mean, he talks a  
5 good game but his bond, you know, you  
6 could take that -- don't take it to the  
7 bank because it is not worth anything.

8 KEN SENCY: My name is Ken Sency  
9 from Packer Township. I am for the  
10 ordinance. The only thing -- it is not  
11 a question -- is why is the wind company  
12 so afraid of this ordinance. I thought  
13 there was only going to be 80 megawatt,  
14 21 to 26 windmills. What else is  
15 coming?

16 CHAIRMAN GERHARD: Is there anyone  
17 else.

18 LARRY STEWART: Larry Stewart. I  
19 live at 62 Center Lane in Packer  
20 Township. And I just wanted to comment  
21 the main reason Kovatch is interested in  
22 putting this through, yes, it is his  
23 land but he is going to make a lot of  
24 money off of that. Because each one of  
25 those sites he gets royalties from the

1 lease of it; so, that's the only reason  
2 he wants it in. If he wouldn't be  
3 getting money -- it's all money. That's  
4 all it is.

5 Secondly, I have worked for over  
6 60 years, okay. I now have retired.  
7 When I come out of my home in the  
8 morning, I don't want to see whirling  
9 windmills and either hear noise or I  
10 don't want to see flashing lights. You  
11 know, my wife has a vertigo condition as  
12 it is now and those flashing light and  
13 dark shadows off of the blades aren't  
14 going to make her any better.

15 But I am now retired. I want to  
16 live here in peace and serenity. I like  
17 the wildlife. I like the beauty of the  
18 mountain. I don't need anything  
19 interfering with that. That's not why I  
20 retired. And if that's going to happen,  
21 I am thinking of moving out.

22 COLLEEN JAIS: My name is Paula  
23 Jais. I live at 5197 Quakake Road. I  
24 am for the new wind ordinance. If there  
25 was any doubt in anyone's mind after

1           seeing that bullshit balloon test on  
2           Friday that this company is on the up  
3           and up, I can't see how anyone could  
4           want them even in our neighborhood.

5                   KATHY COLANGELO: Kathy Colangelo.  
6           I live at 670 Wallace Way. I want to  
7           say I support the changes to the  
8           ordinance. We will be directed affected  
9           by that where we live. We are concerned  
10          about the way it looks, our decrease in  
11          property values, the vertigo, just the  
12          whole project all around; so, I support  
13          the changes to the ordinance.

14                   FRANK COLANGELO: Frank Colangelo,  
15          670 Wallace Way. I support the new  
16          ordinance.

17                   MICHELE GERHARD: Michele Gerhard,  
18          670 Quakake Road. I support the  
19          ordinance. That stupid balloon test  
20          that you put up the other day was  
21          ridiculous because when you show that  
22          simulated photo, there is 17 wind  
23          turbines behind my house, not one  
24          balloon that I could barely see.

25                   CHARLENE BITTNER: Charlene

1 Bittner, 624 Wetzel Run Drive. I fully  
2 support the amendment. I don't know  
3 what would happen to all of the lost tax  
4 money once our property values go down  
5 and have to be reassessed, so that's one  
6 thought there.

7 And the other thing, I just have  
8 one more thing to say, why was that done  
9 on a Friday during work hours.

10 NANCY DETRICK: Nancy Detrick. I  
11 live at 1347 Quakake Road. I totally  
12 support the changes to the ordinance.

13 CHAIRMAN GERHARD: Is there anyone  
14 else?

15 MR. STAHL: I have a follow-up.  
16 It seems like there is a lot of  
17 questions about whether this ordinance  
18 is intended to apply to the current  
19 application before the Zoning Hearing  
20 Board. This ordinance isn't intended to  
21 apply to the current project that's  
22 before the Zoning Hearing Board,  
23 correct?

24 SUPERVISOR DAVIS: Is that a  
25 question?

1 MR. STAHL: I am asking the  
2 Supervisors.

3 THE SOLICITOR: I think you know  
4 the law. There is a pending application  
5 doctrine, is there not?

6 MR. STAHL: There is.

7 THE SOLICITOR: Well then that's  
8 applicable, isn't it? That is  
9 applicable, isn't it?

10 MR. STAHL: You are saying this  
11 amendment is going to be applicable to  
12 the --

13 THE SOLICITOR: I didn't say that.  
14 Please don't put words in my mouth.

15 MR. STAHL: I am not. I am just  
16 trying to get clarity.

17 THE SOLICITOR: You know the  
18 answer to that question. You don't have  
19 to ask me.

20 MR. STAHL: I just want to make  
21 sure that the public and the Board will  
22 answer --

23 SUPERVISOR DAVIS: Is that a  
24 question?

25 MR. STAHL: It was.

1           SUPERVISOR DAVIS: We are not  
2 taking questions.

3           MR. STAHL: Thank you.

4           SUPERVISOR DAVIS: Anybody else?

5           CHAIRMAN GERHARD: Is there any  
6 more comments?

7           MICHELLE DAVIS: Michelle Davis,  
8 5058 Quakake Road. I am for the new  
9 ordinance and the changes in it.

10          DENISE POLISHAK: Denise Polishak,  
11 615 Wallace Way. I am supporting the  
12 changes also to keep our neighborhood  
13 the way it is.

14          NONA TITUS: Nona Titus, I live at  
15 184 Wallace Way. Look at me, I am a  
16 baby boomer. If the life span of this  
17 project is 15 to 20 years, that's a life  
18 sentence for me that I will have to deal  
19 with these things.

20          What really concerns me is my  
21 2-year-old and 2-and-a-half-year-old  
22 grandchildren will have to live with the  
23 monstrosity, too.

24          BOB JAIS: When they did this wind  
25 test, no matter how bad it is, I am for



1 the new ordinance to stop this, but when  
2 they put those balloons up, I could see  
3 the first one, and as bad as it was, I  
4 could see the one at the other end of  
5 the valley. So I am going to be able to  
6 see every one of those damn balloons.  
7 There is going to be -- turbine. I will  
8 see them every day I walk out of my door  
9 in the back.

10 DUNCAN STEWART: My name is Duncan  
11 Stewart. I live at 1177 Driscoll Drive.  
12 I support the changes. These absolutely  
13 create a visual that many of the local  
14 residents do not want, but one of my  
15 major concerns, because I live in a very  
16 close residence to where one of the  
17 monolithic structures will be located,  
18 in October of 2018, the World Health  
19 Organization released new guidance as  
20 far as setbacks, as far as health  
21 effects, as far as noise, and just how  
22 people's lives are negatively impacted.

23 RYAN MOKES: I am Ryan Mokes. I  
24 am 1625 Spring Mountain Road. I support  
25 the ordinance change. You know, most

1           everybody in here knows where I live.  
2           The reason I bought that property was to  
3           have a beautiful view of this valley and  
4           I am going to see every one of those  
5           turbines, you know. I live on top of  
6           Spring Mountain so my back deck is  
7           looking over the valley and I really  
8           don't want to look at that eyesore.

9                   CHAIRMAN GERHARD: Is there anyone  
10           else?

11                   SUPERVISOR GERHARD: I have  
12           something I would like to say to the  
13           residents of our Township.

14                   The past year and a half, I have  
15           proudly represented the people of Packer  
16           Township. We, as the Township, are  
17           proud of our rural and farming lifestyle  
18           we have.

19                   I have been open to opinions and  
20           have listened to the concerns of our  
21           residents, both positive and negative.  
22           I firmly believe that we have one of the  
23           last remaining most beautiful rural  
24           townships in this area. Let's do our  
25           best to keep it this way and do positive

1 growth for our children and their  
2 future. We all need to stick together  
3 as a Township to make sure it remains  
4 the home we all love and care so deeply  
5 for. It will affect all of us in the  
6 coming years and we need to be sure we  
7 take a stand together.

8 Mr. Dulcey, we have seen you  
9 express your opinions in various ways.  
10 Some of those ways many of us firmly  
11 disagree with. You have voiced your  
12 concern at previous meetings stating  
13 that you want to preserve our valley.  
14 Is there any information how you can  
15 preserve your farm, along with anyone  
16 else that may be interested in doing.

17 Broad Mountain Power, we cannot  
18 support a business that shows support  
19 for a resident in our Township that is  
20 harassing community leaders. It is very  
21 sad to see the bullying that is  
22 occurring right now in our Township. Is  
23 that the example you want to set for our  
24 children? We must come together and  
25 make decisions that are in the best

1 interest of our Township and residents.

2 Thank you.

3 CHAIRMAN GERHARD: Is there anyone  
4 else with comments?

5 SUPERVISOR GERHARD: I make a  
6 motion to adopt an ordinance of the  
7 Township of Packer, Carbon County,  
8 Pennsylvania, amending Ordinance No.  
9 08-006 and the Packer Township zoning  
10 ordinance recording specific standards  
11 for the regulation of wind turbines, and  
12 windmills and the wind farms within the  
13 Township.

14 SUPERVISOR DAVIS: I will second  
15 it.

16 CHAIRMAN GERHARD: And I agree.

17 SECRETARY STOLPE: Roll call.  
18 Terry.

19 SUPERVISOR DAVIS: Yes.

20 SECRETARY STOLPE: Cory?

21 SUPERVISOR GERHARD: Yes.

22 SECRETARY STOLPE: Suzie?

23 CHAIRMAN GERHARD: Yes.

24 SECRETARY STOLPE: The motion  
25 carries with a vote of 3 to 0.

1 SUPERVISOR GERHARD: I make a  
2 motion to adjourn the meeting.

3 SUPERVISOR DAVIS: I will second  
4 it.

5 CHAIRMAN GERHARD: And I agree.

6 SECRETARY STOLPE: All in favor.

7 (Collectively aye.)

8 SECRETARY STOLPE: Any opposed?

9 Motion carries with a vote of 3 to 0.

10 CHAIRMAN GERHARD: Meeting  
11 adjourned.

12  
13 (At this time the meeting  
14 in the above-captioned matter  
15 was concluded.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, Teresa Crossin, do hereby certify that the proceedings and evidence are contained fully and accurately, to the best of my ability, in the stenographic notes taken by me on the proceedings of the above cause and that the copy is a correct transcript of the same.

*Teresa Crossin*

---

TERESA CROSSIN, RMR  
KEYSTONE COURT REPORTING AGENCY  
4099 BIRNEY AVENUE, SUITE 9  
MOOSIC, PA 18507

ORDINANCE NO. 2019-2

AN ORDINANCE OF THE TOWNSHIP OF PACKER, CARBON COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO. 08-006 AND THE PACKER TOWNSHIP ZONING ORDINANCE REGARDING SPECIFIC STANDARDS FOR THE REGULATION OF WIND TURBINES, WIND MILLS AND WIND FARMS WITHIN THE TOWNSHIP

WHEREAS, the Board of Supervisors of the Township of Packer has duly adopted and does maintain a Zoning Ordinance within the said Township of Packer; and,

WHEREAS, Section 609 of the Pennsylvania Municipalities Planning Code authorizes municipalities to amend their Zoning Ordinance; and,

WHEREAS, the Supervisors of Packer Township believe that it is in the best interest of Packer Township to amend the specific standards and regulations pertaining to the construction and establishment of wind mills, wind turbines and/or wind farms by conditional use in certain areas of the township; and,

WHEREAS, after consideration and comment from the Planning Commission and after a public hearing duly conducted thereon, pursuant to the terms and provisions of the Pennsylvania Municipalities Planning Code, as amended, and the Township of Packer Zoning Ordinance; and

NOW THEREFORE, the Board of Supervisors of Township of Packer hereby adopts the following amendments to the Zoning Ordinance and Ordinance No. 08-006 as follows:

**Section 2. A-1 Agricultural District.** Section 501.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete "Stand Alone Wind Mill" and also "Wind Farm". Section 501.5 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

"Stand-Alone Wind Mill"

"Wind Farm"

"Wind Turbine"

**Section 3. R-1 Single Family Residential District.** Section 502.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete "Stand Alone Wind Mill" and also "Wind Farm". Section 502.5 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

"Stand-Alone Wind Mill"



"Wind Farm"

"Wind Turbine"

**Section 5: C-1 Conservancy District.** Section 504.3 of Article V of the Packer Township Zoning Ordinance shall be amended to delete "Stand Alone Wind Mill" and also "Wind Farm". Section 504.4 of Article V of the Packer Township Zoning Ordinance shall be amended to add the following provision:

"Stand-Alone Wind Mill"

"Wind Farm"

"Wind Turbine"

**Section 7: Supplemental Regulations.** Article VIII of the Packer Township Zoning Ordinance shall be amended in order that the existing provisions of Section 802.28 "Stand-Alone Wind Mills and Wind Farms" are hereby replaced with the following new text:

A. **Purposes.** These provisions are intended to provide compatibility between wind turbines, wind mills, stand-alone wind mill and/or wind farms and adjacent uses by establishing setbacks and controls on noise, shadow flicker and other adverse effects, as well as to minimize potential hazards.

B. The applicant shall demonstrate to the satisfaction of the Zoning Hearing Board and/or the Packer Township Supervisors relative to a conditional use hearing, using technological evidence that the Wind Mills, wind turbines stand-alone wind mills or wind farms must be located where proposed in order to function to industry standards.

C. For the purposes of this subsection, the term "Residential Lot" shall mean : a) a lot that is occupied by a principal existing dwelling unit, or b) a lot that is residentially zoned, is undeveloped, is not owned by a governmental entity, and has a lot area of less than 10 acres.

D. **Setbacks and Maximum Height.** The wind turbine, wind mill, or stand-alone wind mill shall be set back from the lot line of a "Residential Lot" a distance of not less than four times the maximum height to the top of the maximum sweep of the blade of the turbine or mill, unless a written waiver is provided by the owner of such lot. The turbine height shall be measured from the ground level. The setback shall be measured from the base of the turbine or mill to the nearest lot line.

(1) Unless a larger setback is required by another provision of this Section, all wind turbines, wind mills or stand-alone wind mills shall be set back from each



lot line and each street right-of-way a maximum distance equal to 4 times the total height to the top of the maximum sweep of the blade of the turbine or mill. However, a setback from a lot line may be reduced if a written waiver is provided by the owner of such adjacent lot and approved by the applicable board.

(2) Unless a larger setback is required by another provision of this Section, if a wind turbine or wind mill has a total height to the top of the maximum sweep of the blade of the turbine or mill of greater than 250 feet above the adjacent ground level, it shall have a minimum setback from a "Residential Lot" of 1,500 feet.

(3) The maximum height to the top of the maximum sweep of the blade of a wind turbine or wind mill above the adjacent ground level shall be 280 feet.

E. Waterway Setbacks. The applicant shall provide evidence that the base of any wind turbine or wind mill shall be setback the following minimum distances: a) 500 feet from the centerline of a perennial waterway, b) 2,000 feet from the average water level of a public water supply reservoir, and c) 500 feet from any wetland of more than 0.25 acres in size.

F. Removal. The owner of wind turbines or wind mills shall completely remove all above-ground structures and all below-ground improvements that are less than 4 feet below the ground level within 9 months after any wind turbine(s) or wind mill(s) are no longer used to generate electricity. If the owner of the wind turbines or wind mill(s) fails to complete the removal, then the Board of Supervisors may require that the landowner accomplish the removal. Upon the request of either the owner of the wind turbines or wind mills or the landowner, this time limit may be extended to a total of 12 months by the Board of Supervisors if the owner is showing a good faith effort to comply. Driveways shall be removed and disturbed earth shall be re-seeded, unless the applicant provides evidence in writing to the Board of Supervisors that a particular feature is needed to serve a new approved use.

(1) The wind turbine(s) or wind mill(s), the below ground improvements and the driveways to be removed shall be collectively referred to as "Items Subject to Removal".

(2) Prior to the issuance of a Building Permit to construct the Items Subject to Removal, the owner of the turbines shall obtain and deliver to the Township a letter of credit or similar financial assurance acceptable to the Township to secure performance of the owner's obligation to remove the Items Subject to Removal. This financial assurance shall be known as the "Removal Bond".

(3) The Removal Bond shall be equal in value to 110% of the estimated amount of the costs to remove the Items Subject to Removal. The owner shall re-evaluate the

amount of the Removal Bond at least once every five years after the initial estimate was submitted to the Township. A copy of the revised evaluation shall be submitted in writing to the Township. The estimates of the costs shall be provided by an independent licensed Professional Engineer, with the costs of the evaluation paid by the owner. The qualifications of such person(s) who will complete the estimate shall be provided in writing in advance to the Board of Supervisors, and shall be subject to acceptance by the Board of Supervisors, provided such acceptance shall not be unreasonably withheld.

(4) If a Township Municipal Code Official has reason to believe that a wind turbine or wind mill has become a safety hazard, the Municipal Code Official shall send an order in writing to the owner of the wind turbine to require the owner to provide evidence within 7 days that the wind turbine or wind mill is safe, or is actively being repaired to become safe. If the Municipal Code Official determines that insufficient efforts are being made by the owner in a timely manner to resolve safety hazards, the Municipal Code official may require that the wind turbine or wind mill be removed within a reasonable period of time stated in writing by the Municipal Code Official, considering the severity of the hazard.

G. Minimum Height. The minimum height of the lowest position of the wind rotor shall be thirty (30) feet above the ground. Wind Turbines or wind mills shall not be climbable for at least the first 12 feet above the ground level.

H. Codes. The wind turbine or wind mill and its installation shall meet applicable regulations of the Uniform Construction Code and the National Electrical Code. The safety features of the wind turbines shall be certified by the Underwriters Laboratory or an equivalent independent organization. Any new electrical wiring must be underground to the maximum extent feasible.

I. Standards. The design of the wind turbines or wind mills and related on-site facilities shall conform to applicable written industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanisheer Lloyd Wind Energies, or other similar independent certification organizations.

J. High Winds. Wind Turbines or wind mills shall be equipped with a redundant braking system to address high winds. This shall include both aerodynamic over-speed controls (including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes may be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

K. Colors. The color of the wind turbine or wind mill should be non-obtrusive, such as

white, off-white or gray, unless the applicant shows that an alternative is necessary to reduce hazards to birds and bats.

L. Lighting and FAA approval. Wind turbines or wind mills shall meet any lighting requirements or any other requirements of the Federal Aviation Administration (FAA). Any other exterior lighting visible from beyond the property, other than security lighting, shall be described on the plans and be subject to approval by the Zoning Hearing Board and/or the Board of Supervisors, as the case may be. The applicant shall provide evidence of the successful completion of FAA review and issuance of any required FAA approval prior to receiving building permits.

(1) Applicant should provide documentation of the response to the Notice of Proposed Construction Form required to be submitted to the FAA and the PA DOT Bureau of Aviation. The Notice of Proposed Construction Form is required to be completed to provide for pilot hazard awareness with low altitude flight requirements. Example: The wind mill facility located near Mahanoy City is a registered location and shown on a map provided by the Pa DOT Bureau of Aviation.

M. Signs. Wind turbines or wind mills shall not display an advertising, except for a single sign of up to 5 square feet to identify the manufacturer. Safety warning signs and emergency contact information signs may also be displayed. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations of the wind mills/wind turbines/wind farm.

N. Warning Sign. At least one warning sign shall be placed near any electrical transformer or substation.

O. Guy Wires. If guy wires are used, and they are not within a fence, they shall be marked near their base with reflectors, flags, reflective tape, aviation marker balls or similar method.

P. Interference. The applicant shall document that the radio, television, telephone or reception of similar signals from nearby properties will not be disturbed or diminished. The applicant shall make reasonable efforts to avoid any disruption or loss of radio, television, or similar signals, and shall mitigate any harm caused by the Wind turbine(s). For example, the applicant may be required to provide a resident with an alternative method of receiving television signals if there is significant interference.

Q. Support Facilities. Accessory electrical facilities are allowed, such as a transformer or mechanical buildings, provided they meet principal building setbacks. In addition, an accessory building may house necessary maintenance and safety equipment, provided it is setback a minimum of 200 feet from any exterior line. Landscaped visual screening shall

surround any buildings or electrical substations, except at a driveway crossing. Such screening shall primarily include evergreen trees with an initial height of 6 feet. Such planting shall be outside of any fence around such buildings or electrical substations.

R. Forest Preservation. The site plan shall show proposed driveways, turbines, mills and areas of woods proposed to be cleared or preserved. The delineation of areas of woods to be cleared or preserved shall be binding upon the project, unless a revised plan is later submitted for approval. The applicant shall show that the clearance of woods has been held to a reasonable minimum, and in no case shall there be clearance of more than 10 percent of the total woodland area on the tract for use.

S. Noise. The audible sound from the wind turbine(s) or wind mill(s) shall not exceed 39 A-weighted decibels, and shall also not exceed 39 c-weighted decibels, as recommended by the World Health Organization and is measured at the lot line of a "Residential Lot", unless a written waiver is provided by the owner of such dwelling. This requirement shall be a maximum noise level using Lmax standard, and not based upon an average. The modeling of noise shall follow published standards for precision of the American Wind Energy Association and AWEA Standard 2.1-1989 titled "Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I" First Tier for minimum standards for precision methods of measuring and reporting acoustic emissions.

(1) The above maximum noise limits shall be reduced to 36 A-weighted and 36 C-weighted decibels between the hours of 10 pm and 7 am. However, the noise limits shall not be reduced below 39 decibels where the applicant provides evidence that the current continuous background (ambient) sound level without the wind turbines would be higher than 36 decibels.

(2) All required noise studies and testing shall be completed by a qualified independent professional specializing in noise analysis. The qualifications of the person(s) conducting the analysis shall be included in the application. ANSI standards shall be used for calibration of the noise meter.

(3) With the application, the applicant shall provide a written noise study that projects the maximum sound levels at the nearest five (5) dwellings, and that recommends measures that may be used as conditions by the applicable Board hearing the matter in order to minimize noise impacts. The noise study shall document compliance with the A- and C-weighted decibels level requirements of this Section.

(4) The applicant shall provide an independent written test of actual noise produced by the project upon completion, and every two subsequent years after the project is completed, to document compliance with the noise standards in this

Section. If the project will involve more than 10 total wind turbines/mills, then the noise study shall also be completed after each 10 wind turbines/mills are put into service. If the testing finds that the noise levels in this Section are being violated, then the owner of the wind turbines/mills shall immediately take the wind turbine(s)/mill(s) out of service until such modifications, replacement, or repairs are made to the wind turbine(s)/mill(s) as are required or necessary to make them comply with the noise levels of this Section.

(5) In addition to the noise studies provided above, at any time when the Zoning Officer has reasonable cause to believe that the noise limits of this Ordinance are being violated, the Zoning Officer may request that the Township or its authorized agents conduct its own tests to ascertain compliance with the noise limits. If the tests do not find a violation, then the Township shall be responsible to pay for the costs of such Township-sponsored tests.

(6) If the Township institutes an enforcement action because of a violation of the noise limits, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Township, the judgment shall require the owner of the project to pay all of the Township's reasonable costs and expenses to prove non-compliance with the noise requirements, including the tests to determine the noise levels. Such costs shall be paid within 30 days by the owner of the project after the final judgment. In the event the owner does not pay such costs within 30 days, the Township may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

T. Land Development Approval. "Land Development" approval shall be needed for the installation of two or more wind turbines/wind mills.

U. Hydrogeologic. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide a hydrogeologic study by a qualified professional. Such study shall consider impacts of the project upon groundwater recharge, adjacent water supplies and water quality, and include recommendations for conditions that may be established to minimize negative impacts. While it is recognized that a municipality does not have the authority to regulate blasting operations, the hydrogeologic study shall also consider potential impacts of blasting upon groundwater supplies and wetlands.

V. Birds and Bats. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment,

including any new lot(s) which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide an analysis of the impacts of the project upon birds and bats within a five mile radius of the project boundaries, by a qualified professional. Such study shall include recommendation for conditions that may be established to minimize negative impacts.

**W. Shadow Flicker.** Shadow flicker is defined as the flickering effect caused when rotating wind turbine/wind mill blades periodically cast shadows through constrained openings. The applicant shall provide an analysis with a map of the shadow flicker impacts of the project upon any dwellings that will be impacted by this effect. The analysis shall be conducted by a qualified professional using generally accepted modeling methods, and shall estimate the number of hours per year that dwellings will be impacted by shadow flickering. No lot line of a lot occupied by a dwelling and no outdoor recreation field, outdoor recreation court or outdoor playground within a public park or homeowner association recreation area shall be affected by shadow flicker for a total of more than 8 hours per year, and no more than 12 total minutes per day. This requirement shall only apply to dwellings and recreational facilities that existed at the time of submission of initial site plans to the Township. Such analysis shall include recommendations for conditions that may be established to minimize the number of affected dwellings or recreational facilities, the hours affected and the severity of the impacts from shadow flicker. This provision shall not apply to a dwelling or recreational facility if a written and signed waiver is provided by the owner of an affected property.

(1) In addition to the analysis provided above, at any time when the Zoning Officer has reasonable cause to believe that the shadow flicker is in violation of this subsection, the Zoning Officer may request that the Township or its authorized agents conduct its own tests to ascertain compliance with the shadow flicker provisions of this subsection. If the tests do not find a violation, then the Township shall be responsible to pay for the costs of such Township-sponsored tests.

(2) If the Township institutes an enforcement action because of a violation of this subsection, and if the owner is found liable for the violation in a civil enforcement proceeding, then in addition to any other rights or remedies available to the Township, the judgment shall require the owner of the project to pay all of the Township's reasonable costs and expenses to prove non-compliance with the shadow flicker requirements, including the tests to determine the amount/times of shadow flicker. Such costs shall be paid within 30 days by the owner of the project after the final judgment. In the event the owner does not pay such costs within 30 days, the Township may pursue appropriate remedies at law or equity to recover such costs and expenses from the owner, including placing a municipal lien against the property upon which the project is located.

X. Traffic. The applicant shall submit a traffic study which shall identify the public roads to be used for the construction, operation or maintenance of the wind turbine/wind mill/wind farm project, and which analyzes how such traffic will be safely accommodated on public roads, considering the length and weight of truck loads, the weight limits of bridges, the geometry of intersections and the slope of roads. The applicant shall have the burden of proof showing that the route will be able to safely accommodate the traffic without creating hazards or damage to roads or bridges.

(1) The Packer Township Engineer, or a qualified third party engineer hired by Packer Township and paid for by the Applicant, shall document road conditions prior to construction. Such engineer shall document road conditions again within 30 days after construction is complete, or as weather permits.

(2) Packer Township may require the Applicant to post bond for damage to the road in compliance with state regulations and Township Ordinances.

(3) Any road damage caused by the applicant or its contractors shall be promptly repaired at the Applicant's expense as specified in a Road Maintenance Agreement to be made between the Township and the applicant, as applicable.

(4) If access to the Wind Turbine/Wind Mill/Wind Farm shall be provided by means of a public street or easement to a public street, all such easements shall be improved to a width of not less than ten (10) feet with a durable, dust-free, all weather surface. No access easement shall exceed a grade of fifteen (15%) percent.

(5) The Applicant shall demonstrate that it has appropriate financial resources to ensure prompt repair of damaged roads.

Y. Emergencies. The Applicant shall submit an emergency response plan, which shall address matters such as firefighting. The emergency response plan shall be submitted to local fire officials and the Carbon County Emergency Management office for comment, and shall be found to be acceptable by the Board hearing the matter. The Board may establish reasonable conditions to address fire hazards. The applicant shall offer to provide training to local emergency responders in the proper response to on-site hazards, at no costs to the Township. If locked gates control access to the property, Township fire officials shall be provided with keys, security codes or similar methods to access the property in an emergency.

(1) The owner of the turbines/mills shall prepare and submit a Spill Prevention and Control program. Sufficient equipment shall be kept on-site to contain reasonably expected spills from the turbines/mills into the groundwater or surface water or such equipment shall be funded as necessary by the applicant if it will be

maintained by one or more emergency service providers in the vicinity.

(2) The applicant shall provide a fire control plan, including details about any fire suppression system proposed for any wind mill/wind turbine or wind farm or attendant structures.

Z. Lightning and Fire Hazards. The project shall include suitable measures to reduce hazards from lightning strikes and other fire hazards. Examples of these types of measures may include, but are not limited to use of non-combustible oils, heat barriers around combustible materials, smoke fire detection systems inside the turbines/mills, and/or fire suppression systems. Those measures shall be described in writing as part of the application, and may be made a condition of approval.

AA. Property Values. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot which may be created from any existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall submit an analysis by a qualified appraiser of the actual impacts upon residential property values of a similar set of wind turbines in a mostly rural community within the United States.

(1) Such analysis shall compare changes in property values of impacted dwellings to changes in property values of non-impacted dwellings over the same time period. Properties within a one mile radius of a wind farm shall be considered, as well as properties outside that radius. The study shall be completed by an appraiser who has an active MAI, SRA or SRPA certification from the Appraisal Institute. The appraiser must also have a Pennsylvania appraiser license. Such analysis shall include recommendations for conditions that may be established to minimize the impact upon residential property values.

BB. Ice Hazards. The Board hearing and considering the application may place conditions upon an approval to address ice throw hazards, such as requiring mechanisms to sense heavy ice buildup, and which allow remote controlled or automatic shutdown of turbine/mill blades.

CC. Visual Analysis. The applicant shall present at a hearing to consider the application, an analysis of the visual impacts of the project. This analysis shall accurately illustrate the panoramic visual impact from 5 different locations, as viewed from 2 public roads and from 3 dwellings in various areas that will experience the greatest impacts. Additionally the applicant shall present a three-dimensional computer generated surface model that accurately depicts the wind turbines/wind mills in proper scale and location in relationship to the surrounding terrain. No less than 5 viewpoints, at such locations as may be determined by the board considering the application, shall be presented.



(1) Properties adjacent to the wind farm will be designated so impacts to adjacent properties are shown separately. Properties up to a radius of five miles will be determined. Impacts per each mile radius will be shown separately

DD. Expert Credentials. The qualifications of experts who provide information or testimony regarding compliance with technical standards of this Section shall be provided to the Zoning Officer and the Board conducting the hearing considering the application. The Board conducting the hearing considering the application shall have the authority to determine the credibility of the testimony and reports of various experts and may weigh the value of the testimony and reports as a result.

EE. Fencing and Security. The applicant shall show the locations and describe the height and materials of the fencing that is proposed. The Board conducting the Hearing and considering the application may require additional fencing of up to 8 feet in height enclosing the individual wind turbines/wind mills and related equipment as a condition, if determined to be needed for security reasons. Elevator doors servicing wind turbines/wind mills shall have secure locks.

FF. Inspections. The owner of the wind turbines/windmills shall engage a Professional Engineer to inspect the wind turbines/wind mills to ensure that are structurally sound and operating properly. If the inspection report recommends that repairs or maintenance be completed, the owner of the wind turbines/wind mills shall provide a written schedule to the Township for completion of the work. Such inspections shall occur a minimum of once every two years after a wind turbine becomes operational. A copy of the inspection report shall be provided in writing to the Township.

GG. Electrical Setbacks. Each wind turbine/wind mill shall be setback a minimum distance of 2 times the total height to the top of the maximum sweep of the blade of the turbine/mill height from any ground electric power line, telecommunications line or pole or tower that supports such line. This requirement shall not apply for a line that may be approved to be connected to a turbine/mill and that would not adversely affect other customers if the line was damaged.

HH. Ridgetops. Where practical and feasible considering wind conditions and topography, and where other alternatives exist, the applicant shall show that they have worked to minimize the number of wind turbines/wind mills placed along the tops of the most visually prominent ridgelines, as viewed from public roads and existing dwellings.

II. Insurance. During all times of on-site construction and operation and until completion of removal, the owner of the wind turbines/wind mills shall maintain a current general liability insurance policy covering bodily injury and property damage, with a minimum limit of \$1 million per occurrence and \$2 million in the aggregate. Certificates shall be made available to the Board of Supervisors of Packer Township upon request.

JJ. Complaints. The operator shall publicize the phone number, mailing address and email address of a specific contact person who is authorized to receive complaints and questions from neighbors and Township officials on behalf of the operator. Such information shall be sent by first class mail to all adjoining property owners and all property owners of lots within 300 feet of the exterior lot line of any lot on which wind turbines/wind mills/wind farms are located. Such mailing shall occur prior to commencing of operations and at any subsequent time when the phone number, mailing address or email address may change. Such person or their designee shall regularly respond to such complaints and questions.

KK. Natural Diversity. The applicant shall complete a Pennsylvania Natural Diversity Inventory search for the affected land areas, and submit the results of that search and any follow-up written communications from state or federal agencies on the matter to the Board presiding over the Hearing considering the application.

LL. Structure Safety. The applicant shall demonstrate that the proposed Wind Mills/Wind Turbine or Wind Farm are safe and the surrounding areas will not be negatively affected by the structure failure, falling ice or other debris, electromagnetic fields or radio interference. All Wind mills/Wind turbines shall be fitted with anti-climbing devices, as approved by manufacturers. The applicant shall submit certification from a Pennsylvania Registered Professional Engineer that all wind mills/wind turbines will be designated and constructed in accord with accepted engineering practices and all requirements of any applicable construction code. Within forty-five (45) days of completion of construction and before initial operation, the owner and/or operator of the wind farm/wind mills/wind turbines shall provide a certification from a Pennsylvania Registered Professional Engineer to the Township Zoning Officer that the Wind Farm/Wind Mills/Wind Turbines and all structures comply with all applicable regulations.

MM. Licenses: Other Regulations. The applicant shall demonstrate that the required permits and licenses from the Federal Energy Regulatory Commission, The Pennsylvania Department of Environmental Protection, the Pennsylvania Public Utility Commission, the Federal Aviation Administration and other agencies have been obtained. The applicant shall also document compliance with all applicable state and federal regulations by providing to the Township copies of all required documents, studies, and responses; (e.g. National Environmental Policy Act, Pennsylvania Natural Diversity Index Submission, Pennsylvania Historical and Museum Commission compliance)

NN. Vibration. The applicant shall demonstrate that there will be no vibration associated with the operation of the wind mill/wind turbine or wind farm which is detectable without instruments at or beyond the property line; and no use shall generate any vibration which is capable of causing damage to buildings, structures, equipment alignment, or structural soundness.

OO. Soil Erosion and Sedimentation Control; Stormwater Management. The applicant shall demonstrate that any soil disturbance shall comply with the soil erosion and sedimentation control requirements of the Carbon County Conservation District and the Pennsylvania Department of Environmental Protection, and no approval shall be granted under this ordinance until the applicant provides a copy of the approved soil erosion and sedimentation control plan and any required permits. A stormwater control plan and stormwater management facilities plan shall also be provided in accord with the Township Stormwater management requirements.

PP. Maintenance; Identification; notice of problems. Wind Mill/Wind Turbine/Wind farm maintenance and continued compliance with this Ordinance shall be monitored by the Zoning Officer. There shall be affixed to the Wind Mill/ Wind Turbine and security fence in an accessible, visible place, the name and address of the owner(s) and a 24 hour emergency telephonic number. This information shall be kept current by the owner(s). The zoning officer shall inform the owner(s) of any safety problems, maintenance problems, or any matter relative to the Wind Mill/Wind Turbine in accordance with the enforcement requirements of this ordinance, sent to the posted address. If the problem outlined in the letter from the Zoning Officer is not resolved within thirty (30) days of receipt of the notice or within such other period allowed in writing by the Zoning Officer, this shall constitute a violation of the ordinance. An unresolved violation shall constitute grounds for revoking the permit for the Wind Mill/Wind Turbine/Wind farm.

QQ. Braking System. Wind mills/Wind Turbines shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls ( including variable pitch, tip and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered as sufficient braking system for overspeed protection.

RR. Miscellaneous: The Wind Mills/Wind Turbines/Wind Farm shall comply with all other applicable regulations and requirements as set forth in the Zoning Ordinance.

SS. Battery Energy Storage Systems. These systems including energy management, backup power, load leveling, frequency regulation, voltage support, and grid stabilization facilities, as well as any other type of battery energy storage facility.

(1) Location. Any proposed battery energy storage system shall be located entirely within an enclosed building or enclosed buildings. The building(s) shall be located a minimum distance equal to 4 times the total height to the top of the maximum sweep of the blade of the turbine or mill from any property or street right-of-way line. However, a setback from a lot line may be reduced if a written waiver is provided by the owner of such adjacent lot and approved by the applicable board.

(2) Containment. The applicant shall propose containment facilities on the site to store any leakage from stored battery cells, the cascading failure of battery cells, or the release of the stored energy during an incident. The facilities shall have the capacity to completely contain all released materials, within an earthen impoundment, an underground tank, or other storage-type facility. Any earthen containment facilities shall be completely lined with a composite liner made of a geomembrane along with a geosynthetic clay liner to prevent infiltration into the underlying soils. More than one (1) such facility is allowed to be installed on the site. All materials stored in containment facilities shall be disposed of in accordance with applicable United States Environmental Protection Agency (EPA) regulations.

TT. Power Purchase/Sale Agreements. Any Power Purchase agreement or other agreement for the sale of power generated from the stand alone wind mills, wind farms and wind turbines is required to be provided by the applicant. Applicant of a stand-alone wind mills, wind farms and wind turbines to be connected to the utility grid shall provide written authorization from the local utility company to the Township acknowledging and approving such connection. The local utility provider shall be contacted to determine grid connection and net metering policies.

UU. Animal Life, Fish and Fowl. If a cumulative total of 2 or more wind turbines/wind mills are planned to be installed on any lot existing on the effective date of this Amendment, including any new lot(s) which may be created from an existing lot by subdivision or otherwise after the effective date of this Amendment, the applicant shall provide an analysis of the impacts of the project upon livestock, animal life, fish and fowl within a five mile radius of the project boundaries, by a qualified professional. Such study shall include recommendation for conditions that may be established to minimize negative impacts.

**Section 8. Repealer.**

All ordinances or parts thereof inconsistent with the provisions of this Ordinance Amendment are hereby repealed to the extent of inconsistency.

**Section 10. Effective Date:**

This Ordinance shall take effect and be in force after its enactment by the Board of Supervisors as provided by law.

ORDAINED AND ENACTED as an Ordinance by the Board of Supervisors of the Township of Packer, Carbon County, Pennsylvania, in lawful session duly assembled this

30 day of July, 2019.

TOWNSHIP OF PACKER

By: *Sue Ann Shand*  
Chairman of the Supervisors

*Carl*  
Member

*Ray*  
Member

ATTEST: *Stephanie Stelp*  
Secretary