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April 10, 2006

COPY

VIA FACSIMILE

Mr. Henry M. Slater  
Zoning and Building Code Enforcement  
Town of Dryden  
65 East Main Street  
Dryden, New York 13053

Re: Installation of wind turbines

Dear Henry:

At last Tuesday evening's Zoning Board meeting, the second applicant was interested in installing a wind turbine on her property. She had come before the Zoning Board with the request that the Zoning Board interpret the Town of Dryden's Zoning Ordinance to provide that this wind turbine could be considered a "public utility" (under Section 500.5) and therefore an allowed use in any zoning district. Failing favorable determination on this request, the applicant in the alternative requested that the Zoning Board grant a use variance for her to install the wind turbine. As you know, and, in my opinion, correctly, the Zoning Board determined that the applicant's proposed wind turbine was not a public utility. Also, in my opinion, correctly, the Zoning Board denied the applicant's request for a use variance, because the applicant had not submitted to the Zoning Board any of the information required under the applicable statutes for the Zoning Board to even consider the grant of a use variance.

During the hearing, you mentioned that you and other Town officials had been working on a proposed ordinance that would allow and regulate the installation of facilities such as wind turbines. You mentioned that the proposed legislation was to be submitted to the Town Board in the near future for the Board's consideration. Having thought about this matter somewhat further since the Zoning Board meeting, I would like to note the following.

Although I have not had an opportunity to review the specific legislation being proposed, as attorney for the Town's Zoning Board, I would like to encourage the Town Board to adopt legislation of some form that would permit and regulate structures such as wind turbines. The Town's Zoning Ordinance does not specifically address the installation or placement of accessory buildings on residential lots. Nevertheless, accessory buildings are routinely permitted, such

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as garages and sheds. Further, the Town's Zoning Ordinance does not have any specific regulations limiting height of structures. Consequently, I could imagine a situation in which a residential property owner attempts to install a wind turbine and categorize it as an accessory structure to their home (rather than as a public utility, as last week's applicant proposed). In this situation, I believe the property owner would have a strong argument in support of being treated comparably to a property owner seeking to install a garage or a shed.

If the Town adopted an ordinance that specifically permitted and regulated structures such as wind turbines, the Town would have a much better opportunity to control the development of such structures, and limit their location, size and other features. Therefore, I believe it would be in the Town's best interest to act on adoption of legislation of this sort in the earliest possible time frame. By doing so, the Town may avoid challenges, and possibly successful challenges, at considerable expense to the Town, by applicants interested in developing wind turbines to serve their individual residences.

As always, I welcome your thoughts and comments on these issues. I would greatly appreciate your forwarding a copy of this letter to the Town Board for their review in connection with their consideration of the proposed legislation.

Very truly yours,



Randall B. Marcus