

William Cundiff

From: Jay Talerman [jay@bbmatlaw.com]
Sent: Friday, October 22, 2010 12:11 PM
To: William Cundiff
Cc: 'Adelle Reynolds'; 'Dan Heney'; neexpansion@aol.com
Subject: Re: Turbine Setbacks

Bill,

Rod makes some excellent points and I am not in a position to argue with him about what industry standards are with respect to setbacks. However, while such standards are helpful, they are essentially irrelevant. Rather, the only thing that is relevant is the ZBA's (or Adele's) understanding of the provision. That is, if there is any ambiguity in the measuring point for setbacks, the opinion of counsel is not determinative. Only the ZBA's intent and understanding is determinative and I would not be so bold to substitute my opinion for that of the ZBA. Perhaps Rod should either seek an amendment of the variance or a clarification of the same from the ZBA. If he does so, he can present the plans, correspondence, standards, etc that he references.

J

----- Original Message -----

From: William Cundiff
To: jay@bbmatlaw.com
Cc: 'Adelle Reynolds'; 'Dan Heney'; neexpansion@aol.com
Sent: Thursday, October 21, 2010 1:31 PM
Subject: RE: Turbine Setbacks

Hi Jay:

The Applicant asked that I forward the attached explanation email to you regarding the setbacks, so I am doing so. Also, The Applicant further asked that you discuss this question with Lisa Meade of your office as she had participated in the discussions pertaining to drafting the variance decision (setbacks in particular). Please let us know if this changes your previous comments (below).

-Bill

From: jay@bbmatlaw.com [mailto:jay@bbmatlaw.com]
Sent: Wednesday, October 20, 2010 12:55 PM
To: Bill Cundiff
Subject: Re: Turbine Setbacks

While there is some ambiguity, I would take position that the set back would be from the widest/closest point of the structure. If the foundation is underground, that may not be a measuring stick. My position is based upon the purpose of setbacks in general - ie, relief from the closest point. I could envision an argument that the tips should not be used but based on the current language, I can't accept that, absent some evidence (plans, memoranda) to the contrary.

Sent via BlackBerry by AT&T

From: "William Cundiff" <wcundiff@douglasma.org>
Date: Wed, 20 Oct 2010 12:19:00 -0400
To: 'Jay Talerman'<jay@bbmatlaw.com>
Subject: RE: Turbine Setbacks

Hi Jay –

Any input on this?

-Bill

From: William Cundiff [<mailto:wcundiff@douglasma.org>]
Sent: Tuesday, October 12, 2010 10:34 AM
To: 'Jay Talerman'
Cc: 'Steve Zisk'; 'Dan Heney'; 'Adelle Reynolds'
Subject: Turbine Setbacks

Hi Jay –

The ZBA Variance Decision for the Wind Farm Project states in relevant part: *“The wind turbines shall be set back one thousand (1,000) feet, or more, ... from any residential structure ...”* and further says: *“No turbine shall be located closer than 150 feet to any property line ...”* and has other similar setback language throughout the variance decision. The question is where is this setback measured to on the wind turbine itself? The foundation, the monopole, the tip of the blade? Please let me know your thoughts on this.

Thanks,

Bill

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