

William Cundiff

From: Robert Anders [lhanders3@aol.com]
Sent: Friday, December 31, 2010 7:35 AM
To: WCundiff@DouglasMa.org
Subject: p.v.g.
Attachments: Hammond Property Value.pdf

hi bill, please post this news piece. it indicates that property valley guarantees are becoming prevalent in wind projects. thanks bob

**RESIDENTIAL PROPERTY VALUE GUARANTEE AGREEMENT
TO BE INCLUDED IN ANY INDUSTRIAL WIND TURBINE
PERMIT ISSUED BY THE TOWN OF HAMMOND AND SHALL
BECOME A PART OF THE TOWN OF HAMMOND WIND LAW.**

This Residential Property Value Guarantee Agreement (“Agreement”) made and entered into on this ___ day of _____, 20___, by and between _____ State of New York and any successors in interest or ownership in part or in whole to any Industrial Wind Turbine Project within the Town of Hammond, hereinafter referred to as the (“Guarantor”) and _____ and _____ residing at _____, Hammond, New York, (“Property Owner/Owners”).

RECITALS

WHEREAS, Property Owners own eligible Property as described herein (“Property”). That property having a legal description located in the Town of Hammond, St. Lawrence County, New York, and being described as follows:

SAID PROPERTY BEING LOCATED WITHIN A TWO (2) MILE RADIUS OF ANY WIND TOWER, AS MEASURED FROM THE BASE OF THE WIND TOWER AT GROUND LEVEL TO THE NEAREST PROPERTY LINE OF THE RESIDENCE EXISTING AT THE TIME THIS PROPERTY VALUE GUARANTEE AGREEMENT IS ENTERED INTO.

WHEREAS, Guarantor has been granted a Permit by the Town of Hammond, St. Lawrence County, for the construction and operation of the _____, consisting of Wind Turbines on properties located in the Town of Hammond, St. Lawrence County, State of New York.

WHEREAS, Guarantor agrees to alleviate any concerns to the Citizens of Hammond, regarding the preservation of Property Values in the Town of Hammond, and

in consideration of the Town of Hammond granting to the Guarantor the right to construct and operate the _____ with Industrial Wind Turbines within the Guidelines of the Hammond Wind Law, and

WHEREAS, Property Owners are desirous of preserving the equity that they have in their Residential Properties prior to the construction and operation of the _____ Wind Farm that if the Property described herein is sold at a price less than the Asking Price as a result of proximity to the Wind Turbine, as determined by the Procedures contained herein, and the Guarantor will guarantee payment to the Property Owner/Owners of such difference.

IT IS AGREED AS FOLLOWS:

1. **EFFECTIVE DATE OF THE AGREEMENT:** This agreement shall become effective and binding on the Guarantor when signed by both parties, which must be entered into within **ONE HUNDRED EIGHTY (180) DAYS** from the Town of Hammond issuing a permit to a Wind Development Company referred to above as the Guarantor. A list of all potential Lease Agreements have been made known between the Land Owner and the Guarantor, however, the actual placement has not been determined by the Guarantor. If any new Lease Agreements are entered into by the Guarantor with any new property owner, then the neighboring property owner within a TWO (2) MILE radius of that landowner, will be notified by Certified Mail by the Guarantor. The Property Owner shall have **NINETY (90) DAYS** after receipt of said letter, to give notice to the Guarantor of their intent to enter into a Property Value Guarantee Agreement.
2. **ELIGIBILITY: EXERCISE OF GUARANTEE:** Any Individual, Sole Proprietorship, Corporation, Partnership, or Limited Liability Company, owning property that is within a TWO (2) mile radius of the base of any wind tower that is part of the Hammond Wind Project is covered by this Guarantee and described in Paragraph one above. This Guarantee is limited only to Real Property owners that own property in the Town of Hammond at the time that the Town of Hammond issues a Permit to any Wind Developer. A further definition of Property Owners shall include heirs and immediate family members of the Property Owner on the effective date above stated.
3. **QUALIFIED PROFESSIONAL APPRAISER and PROPERTIES TO BE USED AS COMPARABLES:** For the purpose of this Agreement, a Qualified Professional Appraiser shall mean a person who is licensed by the State of New York, not related to the Property Owner, who is not an employee or contractor of the Property Owner or Guarantor, and does not have a business relationship with the Property Owner or the Guarantor, and who is a member of at least one National Appraisal Association. All appraisal reports shall conform to the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institutes. All Real Estate

Comparables used in any Appraisal shall not be from the Town of Hammond, but shall be from the neighboring Town of Alexandria, where there are no Wind Farms due to the proximity of the local Maxon Air Field. Sales of like or similar properties sold up to 3 years prior to the date of the Appraisal can be used after taking into consideration an inflationary factor. If there are no Comparable Values in the Town of Alexandria, then the Appraiser can use land transfers from within a 50 mile radius of the Town of Hammond.

4. **AGREED TO ASKING PRICE:** The Asking Price is the value of the Property at the time that the Property Owner decides to sell, however, the listing of the real property, must take place within a **FIVE (5) YEAR PERIOD** from the entering into this Property Value Guarantee Agreement. The Asking Price of the property may be mutually agreed to by the Property Owners and the Guarantor. The Asking Price can be mutually amended by the Property Owners and the Guarantor at any time, subject to their mutual agreement.

5. **DETERMINATION OF ASKING PRICE BY APPRAISAL:** If the Parties are unable to agree upon the Asking Price of the Property prior to the Property Owner listing the Property for sale, then the Guarantor shall hire, at their expense a qualified professional appraiser presently doing business in Jefferson or Onondaga County, and shall notified the Property Owner of such appraiser. If the Property Owner objects to the Guarantor's choice of appraisers, it shall so state those objections, in writing, within **THIRTY (30) DAYS** of the notification of the choice of the appraisal, to Guarantor. In the event Property Owner reasonably objects, the Guarantor shall select an Appraiser with MAI Certifications and all selected Appraisers shall adhere to the following guidelines:

When a qualified professional appraiser is selected pursuant to Paragraph 5 above, he or she shall be instructed to determine the fair market value, which will become the **ASKING PRICE**, of the Property as follows:

- a. Assume that no wind energy center or commercial wind tower was located within a **FIVE (5)** mile radius.

- b. Utilize comparable properties, developed as the Property was developed as of the date of this Guarantee and located sufficient distance away from the Hammond Wind Project, within the Town of Alexandria, so that in the opinion of the appraiser, the selling price of that property was not influenced by the presence of the Hammond Wind Farm.

- c. Use both the Comparable Sale Method and the Cost Replacement Method in determining a Fair Market Value. If

there is wide difference between the Fair Market Value at the time of listing and the Cost Replacement Method, then the Cost Replacement Method shall be the controlling method, and shall be used as an Asking Price. The Standard Depreciation rates established by the Standards of Professional Appraisals Practice of the Appraisal Institute shall be used.

- d. Establish a fair market value, which is based upon the Property as developed on the date that the Town of Hammond issues a permit for a Hammond Wind Farm.
- e. Prepare a full narrative appraisal, which conforms to the Code of Professional Ethics and Standards of Professional Appraisals Practice of the Appraisal Institute.
- f. Prepare the Appraisal in full compliance with any and all state standards and state regulations which pertain to the preparation of an appraisal of the Property except those standards and regulations which conflict with these instructions, and
- g. The Appraiser shall note the condition of the premises, both interior and exterior, at the time of the appraisal.

If the Property Owner and the Guarantor accept the appraisal value, then such appraisal shall constitute the ASKING PRICE, and the Property Owners shall offer the above defined property for sale at no less than the agreed upon price.

If either the Property Owner or the Guarantor does not accept the appraisal value, then the non-accepting party may retain a second qualified professional appraiser, of its choice, to be paid for by the Guarantor. The second appraiser shall be given a copy of the first appraisal, and check said appraisal for accuracy, and then shall submit their appraisal for consideration by the parties. If the second appraiser shall be within 5 percent of the first appraiser, then the higher appraisal shall be the agreed upon ASKING PRICE. If the Guarantor or the Property Owner is unsatisfied with the value, then the party who is still unsatisfied with the ASKING PRICE, shall hire at its own expense, an MAI certified Appraiser to establish a value. In the event that the other party shall hire his or her own MAI certified Appraiser to establish a value, then the ASKING PRICE shall be the average between the two (2) Appraisals and the MAI certified appraisal. There shall be NO APPEAL from the value determined by the MAI Appraisals. There shall be no requirement for Discovery or Interrogatories by either party. There shall be no requirement for cost receipts by the Property Owner. The Property Owner shall give open inspection of the property within reasonable time periods, for any appraiser to inspect the property. Any request for inspections must be complied within 72 hours of the requested time period.

TIME LIMITS: The first and second appraisals shall be completed within 30 days of the property owner notifying the Guarantor of their intent to list their property for sale. The MAI appraisal must be completed within 75 days of the property owner notifying the Guarantor or Guarantor notifying the Property Owner of their dissatisfaction with the first two appraisals. The second appraisal can be eliminated if a MAI Appraiser is used for the second appraisal, at which time the ASKING PRICE shall be the average between the first appraisal and the MAI Appraisal.

6. LISTING WITH BROKER: Property Owners shall utilize the services of a New York State certified Real Estate Broker, with membership with the St. Lawrence County and Jefferson County Board of Realtors with access to the Multiple Listing Service for the St. Lawrence and Jefferson Counties. The selection of the Realtor shall be at the sole discretion of the Property Owner for the first SIX (6) months. If the property has not sold within that period, then the Guarantor shall have the option of selecting a Realtor for the balance of the time period, which shall be for THREE (3) MONTHS. The total number of days that a property shall be listed for prior to the Guarantor being obligated under this Property Value Guarantee Agreement shall be **270 DAYS**. The Realtor shall be paid the normal rate as established within St. Lawrence County and the commission rate shall not exceed 6% for residential properties. All commissions shall be paid by the Property Owner.

7. TERM OF LISTING: The Property Owner shall list the Property, at the ASKING PRICE, as determined in Paragraphs 4 or 5, or at a higher value. During the listing term, the Property Owners shall accept any offer of purchase for the ASKING PRICE, or any offer of purchase otherwise acceptable to the Guarantor. If the accepted price includes any concessions to the Buyer, i.e.: Payment of up to \$8,000.00 for Buyers costs for securing a mortgage or closing costs, then those costs shall be added to the ASKING PRICE and shall be reimbursed by the then Guarantor. (In this current market, it is a common procedure to add the Buyers costs to a contract so as to allow the Buyer to purchase the property with no money down.) If the \$8,000 is added to the ASKING PRICE, then the Guarantor shall not be responsible for the Buyers costs.

Said listing contract shall include: (a) that the Broker shall list the Property in the multiple listing exchange; (b) that the property will be so listed until the occurrence of either the (i) sale of the Property or (ii) expiration of a period of 270 days; (c) that the Broker shall not be entitled to any commission after the expiration of the listing contract, unless a Buyer that the Broker showed the property to, shall enter into a Contract with the Property Owner, within 180 days after the expiration of said listing.

The Property Owner shall cooperate with the Broker in obtaining a purchase offer pursuant to the terms set forth in the listing agreement and shall make, in good faith, all reasonable efforts necessary to conclude a sale pursuant to the said terms. **UNDER NO CIRCUMSTANCES SHALL THERE BE ANY VERBAL COMMUNICATION BETWEEN THE PROPERTY OWNER AND THE POTENTIAL PURCHASER.** There will be no anti-wind signs on the property listed for sale. Any requests for information regarding Wind shall be referred to the Guarantor for release of information.

- 8. OFFERS TO PURCHASE:** If the Property Owner accepts any offer of Purchase for the ASKING PRICE then in that event, Guarantor will have no financial liability to the Property Owner. No Furniture or items at the property shall be included in the Sales Contract other than appliances, drapes, and items attached to the dwelling. The Guarantor may be notified by telephone of any and all offers so that they will be able to make counter offers as listed in paragraph 9 below. The Guarantor shall also be notified in writing within 48 hours confirming any telephone communications with the Realtor or Property Owner.
- 9. GUARANTOR'S CONSENT TO PURCHASE:** Guarantor shall have the right to make counter offers on any offers of purchase which are below the ASKING PRICE, said counter offer being made within 48 hours of the submitted original offer or counter offers. In the event the purchaser accepts any such counter offer, or counter offers, made or requested by the Guarantor, or in the event the Guarantor otherwise consents to the sale of the Property below the ASKING PRICE, the Guarantor shall pay to the Property Owners, at closing, the difference between the ASKING PRICE and the sales price so established.
- 10. SALE WITH OR WITHOUT GUARANTOR'S CONSENT:** If the Property Owners have not received an offer of purchase at the ASKING PRICE within 270 days of listing the property for sale, or the Guarantor has not consented to the sale of the Property below the ASKING PRICE, the Property Owner may sell the Property at the highest offer of Purchase still pending or at the next good faith bona fide offer to purchase. The Property Owner shall notify the Guarantor, in writing of its intention to accept such offer. The Guarantor has 72 hours to notify the Property Owner of their intent to either accept the terms of the offer or to Purchase the Property at the ASKING PRICE. If the Guarantor elects to purchase the property, then said closing must take place within 30 days with the presentment of a Warranty Deed with lien covenant. If there should be a title defect, then the Guarantor shall give the Property Owner sufficient time to cure the defect or to Purchase Title Insurance, with said Title Insurance cost paid for by the Property Owner.
- 11. PROPERTY OWNER'S CLAIM:** If the property has sold for less than the ASKING PRICE, as determined herein, it shall make a claim to the

Guarantor, requesting payment for the difference between the ASKING PRICE and the SALES PRICE, after deducting Real Estate Commissions and normal costs associated with sale of real estate in St. Lawrence County. If the Guarantor does not make payment within 10 days of the sale, then the PROPERTY OWNER is shall be paid interest on said monies owed by the Guarantor at the rate of ONE (1) PERCENT PER MONTH, and shall be liable to the Property Owner for all costs incurred in collection, plus normal Attorney Fees incurred by the Property Owner. There is **NO APPEAL FROM THIS PROPERTY VALUE GUARANTEE AGREEMENT BY EITHER PARTY.**

12. GOOD NEIGHBOR AGREEMENT: If any Property Owner should enter into a so-called Good Neighbor Agreement, wherein they allow the placement of a Wind Turbine closer than 2 miles and/or if they should receive any compensation from the Wind Turbine Company, then they shall be excluded from this PROPERTY VALUE GUARANTEE PROGRAM unless the Guarantor waives this provision and allows the neighbor to enter into this Guarantee binding the Guarantor.

13. EXCLUSIVE OPTION OF ANY RESIDENTIAL PROPERTY OWNER LIVING WITHIN ANY CLOSE PROXIMITY TO A WIND TURBINE: If any Property Owner lives within TWO (2) MILES of any Wind Turbine Leaseholder or under consideration for a Wind Turbine Lease, now or in the future, and if that Property Owner desires to move from the Town of Hammond because a Wind Turbine is to be located within TWO (2) miles of his or her residence, measured from the corner of the Property Owner's residence to the wind turbine measured from the base of the turbine, then that Property Owner has a once in a lifetime right to be reimbursed for his real property and 5 acres surrounding that residence, at the then Appraised Value under the below described procedures, HOWEVER, this option cannot be used in conjunction with any future Guarantee of the Sale of a Residence:

- a. The Property Owner must notify the Guarantor within 90 days of the issuance of a permit for an Industrial Wind Farm, that they do not wish to live in the Town of Hammond with the existence of a Wind Turbine located on an existing leaseholder's property within a TWO MILE RADIUS of their dwelling.
- b. If the Guarantor should at any time later, decide to enter into any additional leases with neighboring landowners and to place a Wind Turbine closer than TWO (2) MILES to any Property Owners Residence, then this Property Owner shall have the same absolute right to claim under this Paragraph 13, regardless of whether they gave a previous notice to the Guarantor. The Guarantor is required to serve notice by Certified Mail to all Property Owners residing within a TWO (2) MILE RADIUS of any new Potential Leaseholders. The Property Owner must give notice by Certified Mail to the Guarantor within 90

days of receipt of their Certified Letter, stating that they desired to exercise this Exclusive Option.

- c. The Property Owner must have been the legal owner of the real property at the time that the Town of Hammond issued a permit to an Industrial Wind Turbine Developer.
- d. Prior to this **EXCLUSIVE OPTION TAKING PLACE**, the Property Owner and the Guarantor shall enter into 30 day cooling off period wherein the property owner is obligated to meet with the Guarantor, to discuss the entering into a Good Neighbor Program wherein the property owner would receive a monthly/annual payment and/or share in the revenue that the landowner with the industrial wind turbine would receive, making the adjoining landowner a recipient of the financial rewards of the industrial wind turbine program. If an agreement cannot be reached within this 30 day period, then the Property Owner and the Guarantor shall proceed to sub-paragraph e below.
- e. The Guarantor shall then consider the relocating of the proposed Wind Turbine so as not to be within a TWO (2) mile radius of the Property Owners residence. If the Turbine is moved so that it is not within a TWO (2) mile radius of the Property Owners Residence, then the Property Owner would no longer qualify under the Residential Property Value Guarantee Agreement. The Guarantor shall have 30 days in which to make this decision.
- f. If the Property Owner and the Guarantor are still unable to reach a mutually satisfactory resolution within 60 days of the Property Owner serving a Certified Letter to the Guarantor, then the Property Owner, at his sole expense, shall order ONE (1) MAI Appraisal from a Qualified Appraisal Company certified to prepare Trial Ready Appraisals within the State of New York to be completed within 90 days after the Property Owner and the Guarantor are unable to reach a resolution. The Value determined by the Appraisal Company shall be the cost replacement value after taking into consideration any depreciation under standard guidelines for Appraisals.
- g. If the Guarantor should not agree with the value, then the Guarantor has the right to order a second MAI Appraisal to be completed within 45 days of receiving the Property Owner's MAI Appraisal. These 2 Appraisals are to be added together, to be divided by 2, to determine an average value. If the Property Owner is not satisfied with the Guarantor's Appraisal, then he has the right to order a Third MAI Appraisal, at which time all THREE (3) Appraisals are to be added together, divided by 3, for an average value. The cost of the third appraisal shall be shared between the Property Owner and the Guarantor. This is the final value, and shall be the controlling value. There is no Appeal from this value. The Property Owner is to then present the Guarantor with a Warranty Deed with Lien Covenant, 40-Year Abstract and 10-year Tax Search. If there should be any defect

in Title, then the Property Owner has the option of curing the defect under normal New York State Bar Association standards or to provide Title Insurance against said defect. A closing date is to be set 30 days after the title is cured. The Property Owner is to vacate the property at closing and to leave the property in a broom clean condition. The Payment shall be made in Certified Funds at closing. If the Guarantor refuses to make this payment, then the Property Owner is entitled to interest at the rate of ONE (1) PERCENT per month from the date that the closing is scheduled, and to all reasonable Attorney Fees to enforce collection. There is **NO APPEAL FROM THIS PROVISION BY EITHER THE PROPERTY OWNER OR THE GUARANTOR.**

14. ASSIGNMENT OR TRANSFER: Neither this Agreement nor the rights under it may be assigned, conveyed, or otherwise transferred by the Property Owner. The Guarantee given by the Guarantor to guarantee the Property Value and to purchase the Property, is personal, and does not run with the land, however, said Agreement shall inure to the benefit of the Property Owners, their personal representatives, trustees, guardians, custodians or their heirs, but in all events, shall terminate after an arms length sale to a 3rd party. The Guarantee given by the Guarantor, shall continue and obligate any future transferee, assignee, purchaser or successor in interest or Bankruptcy.

15. APPLICATION OF LAW DISPUTES: This Agreement shall be construed consistent with the Law of New York. Disputes concerning the application or terms of this Agreement, include enforceability and collection, shall be subject to the Supreme Court of the State of New York.

Signed this _____ day of _____, 2011, between:

GUARANTOR:

By: _____

PROPERTY OWNER:

Property Address:

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) SS:

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) SS.

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, husband and wife, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that they executed the same in their capacity, and that their signatures on this instrument, the individual or individuals, or the persons upon behalf of which the individuals acted, executed the instrument.

Notary Public