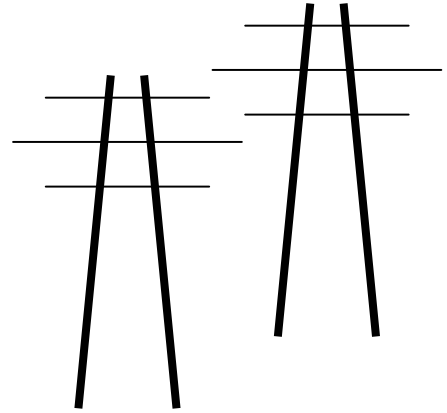


# Legalelectric, Inc.

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September 9, 2019

Eric Hartman, Zoning Administrator  
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Luverne, MN 55156

via email only: eric.hartman@co.rock.mn.us

Kyle Oldre, Rock County Administrator  
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Don Klosterbuer, Rock County County Atty.  
120 N McKenzie Street  
Luverne, MN 56156

via email only: drklosterbuer@khlawmn.com

RE: In the Matter of the Juhl Energy Development in partnership with Agri-  
Energy/GEVO, Sections 17 & 19, Luverne Township

Dear Mr. Hartman, Mr. Oldre, and Mr. Klosterbuer:

I am sending this letter on behalf of John and Kathy Jarchow, and attached please find the Affidavit of John Jarchow. Attached also is a formal Data Practices Act Request for information that should be in the record and information that should have been provided with the application.

Mr. Jarchow recently contacted me about the above-entitled CUP application. He has appeared before the County Board, most recently on September 3, 2019, regarding the above-entitled CUP application, and has sent comment letters to the County's Planning Commission.

I've reviewed what I can find on the county's website, and have found the Agenda packet for the September 3, 2019 Board meeting, and the "Rock County Wind Fuel" presentation (prospectus?) which was also on the county website.

In trying to get a handle on the status of this CUP proceeding, not much is available on line. It seems there maybe two applications, one for the Section 19 proposal and another for the Section 17 proposal, as there is separate information and apparently separate application in the files, for the “Turbine 1” and “Turbine 2” sites. The Rock County Wind Fuel” presentation was provided by link on the County Board site.

The September 3, 2019 cover of the County Board packet says:

*Items for your review:*

1. *Copy of Application*
2. *Copy of public notice*
3. *Aerial photo showing the proposed location for the turbine*

County Board packet for “September, August 3, 2019”(sic). Items 2 and 3 are present, but the only thing required for a Wind Turbine application that was shown in the “Application” provided in the packet, beyond the information on the coversheet of “Rock County Planning and Zoning, Request for Conditional Use Permit, Wind Turbines” are the contact information and a listing of applicable federal, state and local permits (although there is no record of FFA hazard determinations).

The County Board packet cover sheet also contains a list of “evidence” to be provided prior to on-site construction being commenced” which is a listing of items that are to be produced in an application:

1. *Evidence of a power purchase agreement and related documents with GEVO/Agri Energy, Missouri River Energy Services, the City of Luverne Municipal Utility, and Juhl Energy Development;*
2. *Evidence of Decommissioning Security including the description, type of security, entity holding the funds, and the manner in which the funds can be accessed;*
3. *Evidence of setback waiver agreements or presentation of Setback Waiver Agreements for each adjacent property owner within the Rock County Renewable Energy Ordinance property boundary setback of 3 Rotor Diameters in the East/West configuration and 5 Rotor Diameters in the North/South configuration from the location of the turbine;*
4. *Evidence of Land and Wind Energy System site control (leases and easements), Rights of Entry for the turbine locations and the associated construction requirements;*
5. *Evidence of Underground utility easements;*
6. *An “operating agreement with Rock County for the terms and conditions and use of the County Roads, plus provisions if there should be damage for the restoration, repair or payment, and the permit the placement of underground utilities beneath the roads;*
7. *Identify a key contact for both Wind Energy Conversion Systems;*
8. *Evidence of all applicable federal, state, and local permits (FAA, MN PUC, MPCA, MnDOT, Rock County).”*

According to the County’s application form for a Conditional Use Permit for wind turbines, this listing is information that turbines is to be provided in an application! From a review of the County Board packet, the application was grossly deficient. The application should have been returned to the developer as incomplete, and it was not. It is the job of Zoning and Land Use to review applications prior to forwarding to the Planning Commission for a hearing. That did not happen. It is the job of the Planning Commission to review the application, and if it is not there to review, the Planning Commission should reject the application or return it as incomplete – how can any decision made on such a deficient application ?

**At this time, I request a full copy of the application; request a copy of all materials provided to the Planning Commission for review, and request all materials provided to the Rock County Board in the packet for the September 3 meeting.**

**That said, I’m also looking for a copy of the Planning Commission meeting minutes and hearing notes or transcript, the Planning Commission’s recommendation and the Findings of the Planning Commission.** Please let me know of the links to both, or send the packet, minutes, and Recommendation and Findings to me via email, above, at your earliest convenience.

One troubling example of inconsistency is found on the first page of the agenda packet, where I note that proposed condition, #3, addresses setbacks:

*Evidence of setback waiver agreements or presentation of Setback Waiver Agreements for each adjacent property owner within the Rock County Renewable Energy Ordinance property boundary setback of 3 Rotor Diameters in the East/West configuration and 5 Rotor Diameters in the North/South configuration from the location o the turbine;*

Agenda Packet, p. 1 and 5. However, the County’s Setback Guidelines are as follows:

**4. Setback Guidelines.**

Object	Setback
Residence	750 feet
Project Boundary Property Line	5 x Rotor’s Diameter
Public Roads (from right of way)	300 feet
Boundary line of State and County Parks	1 mile
Boundary line of Cities	1 mile
Other Structures	Needs to be considered

The County Ordinance provides for a 5x Rotor Diameter setback from the wind project's property boundary line, land where the project has land or wind rights. The "Rock County Wind Fuel" presentation slide describing setback waivers states 3x Rotor E-W and 5x Rotor N-S. Rock County Wind Fuel, slide 17. What is the origin of these numbers? Based on the county ordinance 5x Rotor Diameter, at 381 foot rotor diameter, the uniform setback should be 1,905 feet to comply with the county ordinance. *Id.*, p. 12 (rotor diameter 381 feet).<sup>1</sup> There is no 3xRD in the County Ordinance.

In 2005, the legislature authorized county regulation of Small Wind Energy Conversion Systems (SWECS) less than 5 MW, and the option of county authority for permitting of Large Wind Energy Conversion Systems (LWECS) of less than 25 MW. The legislature mandated that small wind general permit standards be adopted, and that the Commission and counties be allowed to both grant variances to the general permit standards and that counties could adopt ordinance standards more restrictive than general permit standards. The PUC issued its "Order Establishing General Wind Permit Standards" for LWECS less than 25 MW in early 2008.<sup>2</sup> The County Ordinance does not address all of the setback categories, and does not address many of the conditions listed in the PUC's "Order Establishing General Wind Permit Standards." Does the County utilize the setbacks and conditions in the PUC Order? What is the County's practice?

Waivers do not seem the appropriate means to circumvent the County Ordinance. Typically where there is an overlap onto the property of another, easements are secured via "Good Neighbor Agreements," and the landowner is compensated, nominally, for this encroachment on their property. The notion of a "waiver" presumes an encroachment. Even with a "Good Neighbor Agreement," because the setbacks are a part of the County Renewable Energy Ordinance, it appears that the developer should seek a variance, as an easement wouldn't address non-compliance with a County Ordinance. In addition, by posturing this matter to be granted a CUP prior to securing the "waivers" and a variance, that's putting the cart before the horse. The demonstration of constructability and necessary land rights should be made with the application, or in any case, prior to issuance of the permit.

**At this time, I also request copies of "waivers" and any "Good Neighbor Agreements" that have been secured, number 3 of "conditions" list of evidence to be provided.**

Waiver of setbacks is an issue as I have clients in the Bent Tree project, near Albert Lea, who suffered for years living in the midst of a wind project, at a rough distance of 1,125 and 1,525 feet. The noise levels deprived these two families of the use and enjoyment of their property and it took many years to reach resolution. Two noise monitoring studies by the Dept. of Commerce demonstrated that noise exceeded the standards of the MPCA's noise rule. See Minn. R. 7030.0400. We were able to secure buyouts of these two families – the first buyouts of landowners affected by wind turbines in Minnesota. They did not want to leave their homes, of course, but once a wind turbine is up, mitigation options are few, either remove the turbine or

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<sup>1</sup> The County Ordinance has a setback of "750 feet" and does not provide a "+ distance required to meet state noise standard."

<sup>2</sup> Small Wind Standards, PUC Docket E,G-000/MM-07-1102, [https://legalelectric.org/f/2018/05/WindStandards\\_4897855.pdf](https://legalelectric.org/f/2018/05/WindStandards_4897855.pdf)

remove the landowner with a buy out.<sup>3</sup> The Public Utilities Commission approved the Bent Tree Settlement Agreements for the Hagens and Langruds in July, 2018.<sup>4</sup>

The Juhl Energy “Rock County Wind Fuel” presentation does show maps with noise and shadow flicker modeling results, but there are no studies in the Board packet. The presentation references an “Appendix 1” but that is not attached. **At this time, I request a copy of “Appendix 1”** and if it is not in County’s possession, please notify. This, as well as the other missing information outlined above, should be in the Planning Commission’s packet and a part of the Board’s record prior to any decision.

Noise monitoring is an issue, particularly in light of Freeborn Wind’s failure to demonstrate it could comply with the MPCA noise standard, and the Bent Tree noise studies showing exceedences. Wind developers have been found to improperly utilize a 0.5 ground factor when 0.0 is the appropriate ground factor for a turbine hundreds of feet in the air with direct access to the receptors.<sup>5</sup> The use of 0.5 as ground factor for sound modeling for most projects, but not wind because it is elevated, this was verified by Mike Hankard, Hankard Environmental, testifying in the Badger Hollow solar project.<sup>6</sup> The International Standard ISO 9316-2, the noise modeling standard was not developed for wind turbine noise emanating 483 feet in the air. It was developed for noise modeling of a facility on the ground and noise impact on “receptors” also on the ground. *Id.* Use of the 0.5 ground factor rather than the 0.0 ground factor as a modeling assumption underpredicts noise by 3dB(A), a doubling of sound pressure, and when added to the modeling 3 dB(A) margin of error, there is a resulting increase by a factor of four! Wind developers have also failed to include ambient noise studies in conjunction with their project noise modeling, failing to comply with the Minnesota Department of Commerce Wind Noise Guidance and MPCA’s interpretation of noise rules.<sup>7</sup> The MPCA’s Frank Kohlasch filed a letter in the Freeborn Wind docket stating explicitly that ambient noise was to be included – that “the MPCA has historically, and consistently, interpreted and applied said noise standards for *total* sound.”<sup>8</sup> The reliability and credibility of the noise modeling must be established.

A probably overlooked paragraph in the County Ordinance addresses screening, and this is also not covered in the materials in the County Board packet:

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<sup>3</sup> Bent Tree Phase I Noise Monitoring Report: [https://legalelectric.org/f/2017/10/BentTree\\_NoiseMonitoring\\_20179-135856-01.pdf](https://legalelectric.org/f/2017/10/BentTree_NoiseMonitoring_20179-135856-01.pdf) Bent Tree Phase 2 Noise Monitoring Report::

<https://legalelectric.org/f/2018/02/BentTree08573PostConstNoiseMonPhaseIIReport2718.pdf>

<sup>4</sup> Bent Tree Settlement Agreement: [https://legalelectric.org/f/2018/06/18-05908-573-DW\\_ORDER.pdf](https://legalelectric.org/f/2018/06/18-05908-573-DW_ORDER.pdf)

<sup>5</sup> Testimony of Schomer, Wisconsin PSC Docket 2535-CE-100: [https://legalelectric.org/f/2019/09/Schomer\\_Pages-from-Transcript-Schomer-see-p-572.pdf](https://legalelectric.org/f/2019/09/Schomer_Pages-from-Transcript-Schomer-see-p-572.pdf)

<sup>6</sup> Testimony of Hankard, WSPC Docket 9697-CE-100: [https://legalelectric.org/f/2019/09/Page-122-from-9697-CE-100-101\\_Tr-45-234\\_Hankard.pdf](https://legalelectric.org/f/2019/09/Page-122-from-9697-CE-100-101_Tr-45-234_Hankard.pdf)

<sup>7</sup> Online at <https://mn.gov/eera/web/project-file?legacyPath=/opt/documents/FINAL%20LWECS%20Guidance%20Noise%20Study%20Protocol%20JULY%209%202013.pdf> See MPCA’s Comment, Appendix A (p. 12 of 13).

<sup>8</sup> MPCA’s Frank Kolasch letter, September 11, 2018, Freeborn Wind docket IP-6946/WS-17-410. [https://legalelectric.org/f/2019/02/Exhibit-M\\_Kohlasch\\_Letter\\_20189-146351-01.pdf](https://legalelectric.org/f/2019/02/Exhibit-M_Kohlasch_Letter_20189-146351-01.pdf)

**(f) Screening: There may be critical vistas or views from public roads to scenic locations which are negatively impacted by wind turbines. It may be appropriate to require landscaping materials at a scenic overlook which screen the view of or distracts attention from the turbines in order to minimize the visual impact.**

See County Ordinance and Wind Turbine Application form. What is contemplated as screening for a 483 foot wind turbine? How has this been addressed in prior wind turbine CUPs?

Preventative and precautionary siting is particularly important where the nuisance is moving to the pre-existing, established community. In the words of the Rock County CUP Ordinance, the CUP may not be granted unless the Planning Commission finds, and the Board adopts a finding:

- 1) That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.
  
- 5) That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

Has the Planning Commission made such findings regarding this permit application? There are no Planning Commission Findings or Recommendation of the Planning Commission in the Board's meeting packet.

It's my understanding that this September 3, 2019 CUP permit agenda item was postponed and is on the agenda for the next meeting of the County Board, scheduled for September 10, 2019. The county has a statutory mandate to issue a permit within 60 days of application, with a potential extension by the County Board of another 60 days if warranted. The applications in the County Board packet are dated August 9, 2019. It appears that it should have been rejected on receipt as incomplete, to be refiled when the requisite information was included. If, presuming the application was complete as of the August 9, 2019 filing date, the first deadline for County Board action on the application would be October 8, 2019. The County's schedule reflects meetings for September 24 and October 8, two additional meetings prior to the first 60 day deadline. However, because the application should be rejected as incomplete, or denied by the Board without prejudice, that clock has not yet begun to tick and the deadlines are not relevant.

**At this time, the Jarchows request that this CUP permit application be removed from the agenda for the September 10, 2019 meeting -- that the application be returned to the developers as incomplete, without prejudice, to be refiled when complete.**

**In the alternative, the Jarchows request that the CUP permit application be denied by the County Board, without prejudice, and that the developers may file a complete application at any time, beginning the process anew.**

If the CUP permit application is not removed from the agenda, I request 5 minutes to speak at the Tuesday County Board meeting.

Please let me know if you have any questions or require further information.

Very truly yours,



Carol A. Overland  
Attorney at Law

cc:     Rock County Board of Commissioners  
       Gary Overgaard                     via email only: gary.overgaard@co.rock.mn.us  
       Stan Williamson                    via email only: stan.williamson@co.rock.mn.us  
       Greg Burger                        via email only: greg.burger@co.rock.mn.us  
       Sherri Thompson                   via email only: sherri.thompson@co.rock.mn.us  
       Jody Reisch                         via email only: jody.reisch@co.rock.mn.us

**BEFORE THE**  
**ROCK COUNTY BOARD OF COMMISSIONERS**

Gary Overgaard	Commissioner – District 1
Stan Williamson	Commissioner – District 2
Greg Burger	Commissioner – District 3
Sherri Thompson	Commissioner – District 4
Jody Reisch	Commissioner – District 5

In the Matter of the Juhl Energy Development  
in partnership with Agri-Energy/GEVO,  
Section 19, Luverne Township

**APPLICATION FOR**  
**CONDITIONAL USE PERMIT**

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**AFFIDAVIT OF JOHN JARCHOW**

**IN SUPPORT OF**

**REQUEST FOR REMOVAL OF JUHL CUP REQUEST FROM AGENDA**

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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF ROCK        )

I, John Jarchow, after swearing on oath, state and depose as follows:

1. Together with my wife, Kathy Jarchow, we are landowners living in the area proposed for the above-captioned “Juhl Energy Development in partnership with Agri-Energy/GEVO, Section 19, Luverne Township.”
2. We were unable to attend the Rock County Planning Commission due to our son’s wedding in Arizona, and sent a letter to be read to the Planning Commission. I, John Jarchow, did attend and speak at the Rock County Board meeting on September 3, 2019.
3. Some of what I am saying below is similar to what I have said in my letter to the Planning Commission and also before the County Board – I am framing this as an



Affidavit, under oath, to emphasize the serious nature of this project's detrimental impact on our life.

4. At the Planning Commission meeting, through a letter read at the meeting on my behalf, I took issue with the Planning Commission's analysis of the requirements of a Conditional Use Permit applicant. I provided the County Board with many references to issues related to wind turbines and the manner in which these issues are addressed in other parts of the country in comparison to the Rock County Zoning Ordinance.
5. The Planning Commission has the responsibility to assure an application for a Conditional Use Permit complies with Rock County's Zoning Ordinance. Subdivision 4, "Findings" states that, in pertinent part:

No conditional use shall be recommended by the County Planning Commission unless said Commission shall find:

- 1) That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.
- 5) That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration, so that none of these will constitute a nuisance, and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.
6. The Juhl Energy Development in partnership with Agri-Energy/GEVO, Section 19, Luverne Township does not comply with these two paragraphs of the Zoning Ordinance.
7. It is my understanding that setback waivers would be required, and that itself is a demonstration that the project cannot comply with the Zoning Ordinance. It is also my understanding that not all landowners affected by this failure to comply with the Ordinance had signed waivers. A permit should not be approved before all necessary waivers are provided, but more importantly, why would the county issue a permit where the project admittedly won't meet the requirements of the Ordinance?
8. When we were last looking for a home, prior to our purchase of our current home, we were looking to downsize and design a forever home that would require less maintenance than the one we were in, and one which we could leave at times to travel. We are around 60 years old and have children in Texas and Colorado and also a lake resort in northern Minnesota, and we plan on spending more time with our grown children and at the lake when we retire. We both have lived in the Luverne

area our entire lives and plan on continuing to have this our home base and our forever home here regardless what else we do.

9. Our enjoyment of or property is the primary consideration of our purchase of our home at 1044 – 90<sup>th</sup> Avenue, in rural Luverne. We chose this home specifically to enjoy a rural lifestyle, and carefully sought a property without land-use activities “in the immediate vicinity” that could “substantially diminish and impair property values within the immediate vicinity.” We also very specifically considered our options in the area and told the realtor we were working with that we were not interested in properties near others that could “constitute a nuisance.” We also very specifically told our realtor that we would not consider a property in or near a wind project due to my direct knowledge of what that would entail.
10. In our search for our new home, we enlisted realtors and looked privately at many properties in Rock, Nobles, and Murray counties, counties where there are numerous wind projects.
11. I am a nutritionist who works with local cattle operations in these counties and have seen these projects start from one or two towers to thousands of towers in and around my clients. I have experienced many negative issues with Stray Voltage in some of these operations. I have not even tried to bring this issue up yet as it pertains to livestock, but have one of my neighbors and clients that is very worried about what might happen if these towers are built.
12. My work brings me to multiple areas with wind projects, and I have been annoyed by these towers and the noise they make for years working around them. As we were looking at properties I commented to Kathy more than once about my observance that some properties were available at very attractive prices, lower than would otherwise be offered, because they were close to wind towers. I did not keep a record of these properties, as we would not consider them, and moved on. I was curious enough to look at a couple, but could not even start to think that I could be comfortable living by them because of the annoying sound of the project’s turbines. Kathy would not even come with me to look if there were in a tower area because of the annoyance.
13. At one point we were offered a similar property to the one we eventually purchased for a third of what we paid for our current home. This Property was in a very nice area of Nobles County, but it had a wind tower within a half mile. This and other properties were offered to us privately. There was a common theme of frustration the sellers had over trying to sell their properties.
14. As our search progressed, we reached a point that the first question we would ask a realtor or a private party about a property was how close to a wind tower the property was. If it was within a couple of miles we would just pass. We decided that the lower prices were not worth the daily annoyance and nuisance that the towers produced.

15. We sold our home, and were down to the time when we had to vacate our home that we had sold, and had nowhere to go, so we temporarily moved into a friend's house in Luverne. We kept looking at houses and eventually found the property where we now live. That was roughly 4 years now, and since then we have been working to make it our own. We have invested in updates and modifications over these years. There are wind towers in the distance, 4 miles or farther, but not close enough to hear.
16. We have lived in a number of locations over the years in and around Luverne but the place we have now is atop a hill and has the most beautiful views of sunrises and sunsets we have ever experienced in this area. We chose this specific property for the viewshed it offers.
17. We positioned our home on this property, removed many run down buildings, but kept a portion of the existing house and updated with additional living and storage space. It is truly customized to our preferences. A focus of our modifications was our desire to be able to enjoy beautiful sunrises and sunsets. If this wind project is allowed, we will be looking and listening to both of the proposed wind towers against sunrises, a very frustrating thought. We also understand that if this use is permitted, there is a phase 2 project already planned to erect more towers further restricting our enjoyment of this natural beauty.
18. When faced with the prospect of encroachment of turbines, I am concerned that our level of annoyance these wind towers would mean that we would have to move away from them and that we would suffer a decreased marketability and a diminished value, perhaps even a substantial loss, if we must market and sell this beautiful place.
19. For the Planning Commission and County Board, the issue before you is whether the project would "not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity." For myself and my wife, this project would be injurious to the use and enjoyment of our property. It may also substantially diminish and impair the value of my property. A detriment to the use and enjoyment of my property is the essence of nuisance, in this case where the nuisance is moving into the area, one where we are living, a purpose that is already permitted.
20. I have not been able to find online the Planning Commission's basis for finding that the project as proposed is in compliance with #1 and #5 of the Zoning Ordinance requirements for a Conditional Use permit. I ask that the County provide me with the record of the Planning Commission recommendation and the basis for these Findings.
21. At the meeting of the County Board, Juhl's representative, stated in the that they have done studies showing that there is no evidence of negative property values attributable to wind turbines, but did state that there of course could potentially be less people interested in purchasing a home around a wind tower. Although it is mentioned in their proposal, I have not seen the study he refers to. However, I know

that there are other studies showing the opposite, that utility infrastructure can have an extreme impact on both marketability and valuation. It seems to me that that statement alone would prove a potential value and marketability issue.

22. I am also concerned with the attitude towards land owners in the area. Mr Thibert explained to me the impact on our land and our lives will be minimal. Any impact on our land and our lives is a textbook example of nuisance. The impact of the project is such that it is injurious to our use and enjoyment of our property. The language of the Zoning Ordinance requires that the use "will not be injurious."
23. I contacted Alan Cox from Cox Realty in Adrian last week and asked him his opinion on property values around wind projects. Alan said it would be hard to come up with a formula to calculate the negative affect commercial wind projects have on neighboring properties, but did state that properties around wind towers are harder to sell.
24. I would be happy if the setbacks from my residence would be 2 miles and there are studies that would show that this distance is reasonable. However, we're not seeking any compensation and we don't want to move. We're just looking to keep the peace and quiet we love in this area. We are also not looking to sell our land, we do not want to sell "wind rights" or host a turbine, although we have never been approached. If a reasonable agreement is not reached, we would consider selling our 120 acre farm to Juhl and begin the difficult process of a forever home all over again.

Further your affiant sayeth naught.

September 9, 2019

  
John Jarchow

Signed and affirmed before me this  
9<sup>th</sup> day of September, 2019.

  
Notary Public

